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September 10, 2021

SENT VIA WEB PORTAL

Mark L. Johnson
Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

Re: *Washington Utilities and Transportation Commission v. Puget Sound Energy*,
Dockets UE-190529, UG-190530, UE-190274, UG-190275, UE-171225, UG-171226,
UE-190991, and UG-190992 (*Consolidated*)

Dear Mark Johnson:

The Public Counsel Unit of the Washington Attorney General's Office ("Public Counsel") submits this letter pursuant to the Washington Utilities and Transportation Commission's ("Commission") August 10, 2021, Notice of Opportunity to File Written Response ("Notice").

Puget Sound Energy (PSE) disagreed with how the Commission addressed Excess Deferred Income Tax (EDIT) in its 2019 general rate case and sought a private letter ruling from the Internal Revenue Service. PSE sought judicial review of the Commission's final order from the rate case, but withdrew its request through a stipulated dismissal.¹ The stipulation, which Public Counsel joined, was based on the agreement the Commission would open a proceeding to "revisit what the Commission ordered with respect to the treatment of excess deferred income taxes in the Final Order and the order Modifying the Final order" in the rate case once PSE obtained a private letter ruling.² While the stipulation does not specifically state the Commission would reopen the general rate case dockets, it would be an efficient and transparent way to address the issue.

PSE obtained a private letter ruling from the Internal Revenue Service dated July 30, 2021. The private letter ruling determined that the Commission's order was inconsistent with normalization rules and accepted PSE's proposed corrective action. The private letter ruling appears to be based on information provided to the Internal Revenue Service solely by PSE. Public Counsel

¹ *Puget Sound Energy v. Wash. Utils. and Transp. Comm'n*, King Cnty. Super. Ct. No. 20-2-12279-3 SEA, Order for Voluntary Dismissal; Stipulation (Oct. 7, 2020).

² *Id.*

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has not reviewed the information provided by PSE to obtain the private letter ruling. The private letter ruling characterized PSE's proposed corrective action as follows:

Taxpayer anticipates that any correction will involve two elements. The first element is a new tariff rate that will comply with the Service's ruling, which will be a new base tariff. That rate would continue in effect until Taxpayer's next rate-setting event, which is expected to be a GRC. The second element is a temporary tariff rate to bring the EDIT balance back into alignment with a normalization method of accounting. This second component would have the effect of reversing the amounts that were tracked in the PLR Tracker Accounts. The recovery of these balances would likely occur over a relatively short period.³

In its Notice, the Commission asks parties to comment on PSE's calculation or provide their own calculations regarding the protected EDIT as of August 1, 2021. Public Counsel does not take a position regarding PSE's calculation and does not have a separate calculation to provide for consideration. It may be appropriate for the Commission to engage a more robust proceeding to review its prior order in light of the private letter ruling. This would ensure that the conclusions reached in the private letter ruling are applied appropriately.

The Commission also asks parties to discuss whether the Commission should require PSE to propose recovery of the cumulative deferral balance in its next general rate case. Based on the private letter ruling, Public Counsel believes that reopening the 2019 general rate case dockets to revisit the Commission's order in light of the private letter ruling is appropriate. It is not necessary to open a separate proceeding or to wait until the next general rate case. Further, waiting until PSE's next general rate case may be inconsistent with the private letter ruling. The private letter ruling states, "Taxpayer will not be considered in violation of the normalization rules if it follows the corrective actions described in its letter."⁴ That corrective action includes a tariff modifying rates prior to the next general rate case. The Commission should evaluate, though, whether additional or different action is required to address the EDIT issues. The private letter ruling does not prescribe the corrective actions, nor does it preclude other action from being taken. As a result, the Commission should take a comprehensive approach to determining what action should be taken in light of the private letter ruling.

Public Counsel recommends that the Commission address the issue in Dockets UE-190529 and Docket UG-190530. Doing so will be administratively efficient and will provide transparency because the resolution will be in the same docket as the underlying controversy.

³ PSE Cover Letter, Attachment, IRS Private Letter Ruling 101961-21 at 5-6 (Aug. 24, 2021).

⁴ *Id.* at 6.

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Please direct questions about this letter to Lisa W. Gafken at Lisa.Gafken@ATG.WA.GOV or (206) 464-6595.

Sincerely,

/s/ *Lisa W. Gafken*

LISA W. GAFKEN, WSBA No. 31549
Assistant Attorney General,
Public Counsel Unit Chief

LWG/BCH

cc: Service List (via E-mail)