

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	DOCKET NOS. UE-011570 and
)	UG-011571 (Consolidated)
v.)	
)	OBJECTION OF COMMISSION
PUEGT SOUND ENERGY, INC.,)	STAFF TO TESTIMONY AND
)	EXHIBITS
Respondent.)	
.....))	

1 The Commission Staff objects¹ to the admission into evidence of the following testimony and exhibits in the interim phase of Docket No. UE-011570.

I. TESTIMONY AND EXHIBITS SUBJECT TO OBJECTION

A. Exhibit 28; Exhibit 25-T, page 16, line 22 – page 17, line 3

2 The Commission Staff objects to Exhibit 28 in its entirety. The Commission Staff also objects to the entry of Exhibit 25-T, the Rebuttal Testimony of Donald E. Gaines, beginning on page 16, line 22 through page 17, line 3.

3 As argued below, this evidence is improper hearsay, which should not be admitted even under the relaxed rules of evidence for administrative hearings. The evidence also is highly prejudicial to parties other than Puget Sound Energy (PSE).

¹ This document is styled as an “objection” to the admissibility of evidence, rather than a “motion to strike.” Motions to strike are directed to evidence that has been admitted into the record of a proceeding. *See, e.g.*, ER 101.

B. Exhibit 207

4 The Commission Staff objects to Exhibit 207, the Direct Testimony and Exhibits of James Heidell in the general rate case phase of this docket, to the extent Exhibit 207 is offered as evidence of PSE's cost-of-service. If the exhibit is being offered for that purpose, it lacks proper foundation, and its admission would deny Staff and other parties the opportunity to cross-examine the witness who sponsors the testimony and exhibits that are contained in Exhibit 207.

C. Exhibit 168

5 The Commission Staff objects to Exhibit 168, the Work Papers of Jim Heidell in the general rate case phase, for the same reasons Staff objects to Exhibit 207.

II. ARGUMENT

A. Exhibit 28 and Related Portions of Exhibit 25-T Are Improper Hearsay and Prejudicial to Parties

6 Exhibit 28 is offered by PSE. It is a letter from A.V. Leness to Donald Gaines. According to Exhibit 28, Mr. Leness is a Managing Director with Merrill Lynch. In the letter, Mr. Leness answers a series of questions regarding the testimony of several witnesses in this docket. His letter is hearsay, and is not the type of hearsay that is ordinarily permitted in administrative hearings.

7 Pursuant to the Administrative Procedure Act (APA), hearsay is admitted in administrative hearings if "it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs." RCW 34.05.452(1). Mr. Leness' letter does not satisfy this requirement and should not be allowed into the record.

8 Mr. Leness is not a disinterested person in this docket. He is employed by Merrill Lynch, which is a security holder and a substantial voting power in PSE. *See FERC Form 1: Annual*

Report of Major Electric Utilities, Licensees and Others, 106 (Dec, 31, 2000) (Attachment A).

Mr. Leness has an interest in the outcome of this proceeding that casts doubt on his objectivity, and therefore the credibility of his hearsay evidence. For this reason, his self-serving letter should not be admitted into the record.

9 In addition to the hearsay nature of Mr. Leness' letter, the letter reads as if Mr. Leness were testifying as an expert witness in this docket. In the letter, Mr. Leness answers questions in an attempt to rebut the testimony of Staff witness Lisa Steel, and Public Counsel witness Stephen Hill. In fact, Mr. Leness appends a statement of his qualifications to the letter, just as an expert witness does when pre-filing testimony.

10 In essence, Mr. Leness is testifying as an expert witness on behalf of PSE, yet he is not subject to cross-examination by the very parties he criticizes. This is prejudicial to Staff and other parties to this docket who are all entitled to an opportunity to cross-examine Mr. Leness on his opinions and the extent of Merrill Lynch's interest in the outcome of this proceeding. That opportunity would be denied unfairly if Exhibit 28 were admitted into evidence.

11 For the same reasons, the portions of Mr. Gaines' testimony that discuss Exhibit 28 also should not be admitted. Mr. Gaines discusses Exhibit 28 at page 16, line 22 through page 17, line 3 of his rebuttal testimony.

B. Exhibit 207 Should Not Be Admitted to the Extent It Is Offered as Evidence of PSE's Cost of Service Through a Witness Who Is Not Sponsoring Exhibit 207

12 The Industrial Customers of Northwest Utilities (ICNU) has submitted Exhibit 207 as a cross-examination exhibit of Ms. Lusier in the interim rate case phase. Exhibit 207 consists of the prefiled Direct Testimony and Exhibits of James A. Heidell on behalf of PSE in the general rate case phase of this docket.

13 Mr. Heidell addresses PSE's cost-of-service, and PSE's rate spread and rate design proposals for its electric operations in the general rate case. Mr. Heidell does not testify to PSE's cost-of-service or rate spread with respect to the Company's interim request. Nor is Mr. Heidell even a witness in the interim phase.

14 To the extent that ICNU wishes to show that PSE's interim rate spread proposal is consistent or inconsistent with PSE's general rate spread proposal, Staff does not object to Exhibit 207 for that limited purpose. Such an offer would have no bearing on, nor would it prejudice, the merits of Mr. Heidell's general rate case testimony and exhibits.

15 However, to the extent that ICNU intends to support its proposed interim rate spread by offering Mr. Heidell's general rate case testimony and exhibits as evidence of PSE's cost-of-service, Staff objects for two reasons. First, ICNU cannot establish the proper foundation for Exhibit 207 through Ms Luscier. Ms. Luscier did not sponsor the materials contained in Exhibit 207 in *any* phase of this case and is not responsible for its preparation. Proper foundation for the exhibit can only be established through Mr. Heidell and, then, only when he testifies in the general rate case phase.

16 Second, if Exhibit 207 is being offered as evidence of PSE's cost of service, Staff and other parties are entitled to cross-examine the witness who sponsors the exhibit on the merits of that witness' testimony. That witness is Mr. Heidell, not Ms. Luscier. Admission of Exhibit 207, therefore, would prejudice Staff and others by unfairly depriving them of that important right and opportunity. Indeed, it is possible that in the general rate case phase Staff or another party may wish to object to the entry of Mr. Heidell's testimony. These parties also may wish to cross-examine Mr. Heidell on the merits of his testimony in such a way as to discredit his proposals. By allowing the admission of the testimony in the interim phase, Staff and other

parties possible efforts in these regards are undermined. The appropriate time to delve into the merits of Mr. Heidell's testimony and exhibits is when the general rate case is presented to the Commission. That time certainly is not during the interim phase, especially under the accelerated schedule of that phase.

C. Exhibit 168 Should Not Be Admitted Into the Record

17 Exhibit 168 is identified as rate design work papers of Jim Heidell. The Commission Staff objects to this exhibit in the interim phase for the same reasons it objects to the entry of Exhibit 207. Staff incorporates by reference its arguments against admitting Exhibit 207.

III. CONCLUSION

18 As set forth above, Exhibits 28, 207, 168 and portions of Exhibit 25-T should not be admitted in the record. Staff has stated several reasons why each disputed piece of evidence should not be admitted. Most importantly, the admission of each piece of evidence would deprive Staff of the opportunity to cross-examine the witness who prepared the evidence. For these reasons, the Commission should sustain Staff's objections.

February 15, 2002.

Respectfully submitted,

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