

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of)	
)	DOCKET NO. UE-011170
PUGET SOUND ENERGY, INC.)	
)	
for an Order Authorizing Deferral of)	
Certain Electric Energy Supply Costs)	
_____)	
)	
WASHINGTON UTILITIES AND)	DOCKET NO. UE-011163
TRANSPORTATION COMMISSION,)	
)	INDUSTRIAL CUSTOMERS OF
Complainant,)	NORTHWEST UTILITIES' RESPONSE TO
)	PUGET SOUND ENERGY'S MOTION TO
v.)	STRIKE
)	
PUGET SOUND ENERGY, INC.,)	
)	
Respondent.)	
_____)	

On September 12, 2001, the Industrial Customers of Northwest Utilities (“ICNU”) properly filed by facsimile a Motion to Dismiss (“Motion”) Puget Sound Energy’s (“PSE”) Petition in this Docket. On the same day, ICNU sent the original and 20 copies of the Motion to the Washington Utilities and Transportation Commission (“Commission” or “WUTC”) by Federal Express. On September 21, 2001, PSE filed a Motion to Strike ICNU’s Motion based on the fact that the original copy of the Motion was not received by the Commission until September 17, 2001.

PSE’s Motion exhibits a petty and callous disregard for the disruption caused by the national tragedy that occurred on September 11, 2001. ICNU properly obtained approval to file its Motion by facsimile; therefore, ICNU’s filing was in compliance with WAC §

480-09-120. Accordingly, PSE's Motion to Strike should be denied.

ARGUMENT

The Commission's rules provide that a filing may be made by facsimile if "the Commission specifically allows or requires filing by telefacsimile in individual instances." WAC § 480-09-120(a)(v). The rules also require, "except as specifically noted", that a party filing by facsimile send "a hardcopy, postmarked on the day of filing, which is received in the normal course of commerce." WAC § 480-09-120(a). ICNU explicitly met these requirements because ICNU: 1) received Commission permission to file via telefacsimile; and 2) sent the original via Federal Express in the normal course of commerce.

On the morning of September 11, 2001, this Country endured one of the greatest tragedies in its history. For the first time, United States airspace was closed to all air traffic for several days. This resulted in an unprecedented disruption in both commerce and transportation throughout the Country. Later on September 11, 2001, ICNU contacted Judge Wallis and requested permission to file its Motion on September 12, 2001 by facsimile, provided that the original copy of the Motion was sent to the Commission by overnight delivery service. Attached as Exhibit A is the Affidavit of Matt McVee, which describes his conversation with Judge Wallis.

On September 12, 2001, ICNU filed its Motion by facsimile and sent the original and 20 copies of the Motion by Federal Express, overnight delivery requested. Attachment A to PSE's Motion indicates that the facsimile of the Motion was received by the Commission on September 12, 2001. Attached to Affidavit of Matt McVee (Exhibit A) is a Federal Express Tracking Log that confirms that the original copy of the Motion was sent on September 12, 2001,

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for overnight delivery, but it arrived in Olympia on Saturday, September 15, 2001, and was delivered to the WUTC on September 17, 2001. The delay in delivery undoubtedly was due to the disruption to the U.S. transportation system and the inability of any airplanes to fly for several days. ICNU complied with Judge Wallis' instructions, but due to events outside of its control delivery was delayed.

On its face, PSE's Motion to Strike is an attempt to exploit the disruptions caused by the events of September 11, 2001, to avoid consideration of ICNU's Motion on its merits. On this basis alone, PSE's Motion should be rejected.

In the event that the Commission finds any technical deficiency in the filing of ICNU's Motion, ICNU requests that Commission waive such deficiency. The following rules support a waiver:

- WAC § 480-09-425(c) – requires the Commission to “disregard errors or defects in the pleadings or proceedings that do not affect the substantial rights of the parties.”
- WAC § 480-09-135 – allows the Commission to “lengthen or shorten the time stated in these rules for actions in its discretion.”
- WAC § 480-09-010 – “The Commission may make exceptions to these rules in individual cases when doing so is just and reasonable.”

Waiving any technical defects or errors in the Motion would be just and reasonable because ICNU should not be penalized for the unprecedented nation-wide disruption to the US transportation system. In addition, PSE does not claim in its Motion to Strike that it

was prejudiced by the fact that delivery of the original copy of the Motion was delayed. The Commission should exercise its discretion and disregard any technical errors or defects that might exist in the filing of ICNU's Motion.

ICNU believes that the Motion was filed in compliance with the Commission's rules. However, if the Commission determines that there is any technical defect in the Motion, ICNU requests that the Commission waive such deficiency. The events of September 11, 2001, constitute good, if not extraordinary, cause for such waiver.

WHEREFORE, ICNU respectfully requests that the Commission deny PSE's Motion to Strike.

Dated this 24th day of September, 2001.

Respectfully submitted,

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