

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

PUGET SOUND ENERGY, INC. and NW
ENERGY COALITION

For an Order Authorizing PSE to Implement
Electric and Natural Gas Decoupling
Mechanisms and to Record Accounting
Entries Associated with the Mechanisms

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

DOCKETS UE-121697 and
UG-121705 (*consolidated*)

DOCKETS UE-130137
and UG-130138 (*consolidated*)

COMMISSION STAFF'S PROPOSAL
FOR PROCEDURE ON REMAND

I. INTRODUCTION

1 In keeping with the Commission's Notice Suspending Response Deadlines and Providing Opportunity to File Proposals served August 5, 2014 (Notice), Staff submits the following proposal for the procedure the Commission should consider using on remand. Staff suggests, as an overarching principle in the remand and any related proceedings, that the Commission proceed one step at a time.

II. SCOPE OF REMAND

2 The first step is to establish the scope of the remand. On June 25, 2013, Judge Murphy filed a letter ruling explaining her decision, which encompassed three main issues.

The agreed order entered July 25, 2014, reflects Judge Murphy's ruling: (1) affirming the Commission's decision not to hold a general rate case; (2) affirming the Commission's decision to approve an attrition adjustment; and (3) reversing and remanding a portion of the Commission's decision regarding rates. The substantive language of the order relevant to the reversal reads as follows:

The Commission's determination that the Puget Sound Energy, Inc. rates to be charged during the rate plan approved in the administrative proceeding below are just, fair, reasonable and sufficient is REVERSED because the Commission's findings of fact with respect to the return on equity component of Puget Sound Energy, Inc.'s cost of capital in the context of a multi-year rate plan are unsupported by substantial evidence and the Commission improperly shifted the burden of proof on this issue from Puget Sound Energy, Inc. to the other parties in the proceeding below, contrary to RCW 34.05.461(4) and RCW 80.04.130(4).

Judge Murphy discussed her decision on this issue in Section 2 of her letter ruling. Her decision clearly leaves the determination of the rate of return to the Commission. In her discussion, she never names a particular return on equity number or otherwise states that the return on equity should be reduced or increased. Rather, citing to State Supreme Court precedent that the "Commission has particular expertise in understanding the relevant evidence, determining which evidence and models are credible, and determining what 'fair, reasonable, and sufficient' means in the context of an individual rate case,"¹ Judge Murphy states: "This court does not attempt to override the Commission's expertise on such matters but focuses on the procedural requirements." The errors Judge Murphy identifies are procedural. To correct the errors on remand, the Commission must determine PSE's return on equity based on sufficient evidence developed in the instant record and after putting PSE to its burden of proof with respect to the return on equity.

¹ *ARCO Products Co. v. Utilities & Transp. Com'n*, 125 Wn.2d 805 (1995); *People's Organization for Wash. Energy Resources v. Utilities & Transp. Com'n*, 104 Wn.2d 798 (1985).

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Industrial Customers of Northwest Utilities (ICNU) proposes in its Motion to Modify Order 07 and its Petition for Accounting Order, both filed July 31, 2014, that the Commission rely on the return on equity advocated by ICNU in the Expedited Rate Filing, or “ERF,”² and the Decoupling³ proceedings. ICNU’s proposal, however, conflicts with Judge Murphy’s ruling. Judge Murphy specifically found that the Commission’s decision improperly shifted the burden of proof away from PSE on the issue of the return on equity. Rather than advocating that PSE file a return on equity case to correct this error, ICNU proposes that the Commission simply adopt ICNU’s cost of capital number and, so, perpetuate the error. (Ironically, ICNU argued on appeal that the Commission improperly shifted the burden of proof on return on equity away from PSE. Here, ICNU requests that the Commission permit ICNU to carry that burden.) The issue for remand is not “9.3 versus 9.8 percent” but rather: What is the appropriate ROE?

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Judge Murphy’s decision does not implicate the issue of whether PSE’s return on equity should be reduced due to effects of decoupling.⁴ In Order 07, the Commission discussed return on equity in two contexts, first in the context of whether return on equity should be reduced due to market conditions, and, second, whether PSE’s return on equity should be reduced due to effects of decoupling. Judge Murphy found error with the Commission’s decision in the first context only; that is, that the Commission did not put PSE to its burden of making its case for the appropriate return on equity reflecting current market conditions. The citations to the administrative record that are relevant to the return on equity issue are to the Commission’s discussion of return on equity in the first context.

² Dockets UE-130137 and UG-130138 *consolidated*.

³ Dockets UE-121697 and UG-121705 *consolidated*.

⁴ Public Counsel raised this issue on appeal, but ICNU stated in its briefing to the Court that this is “an issue ICNU does not challenge.” ICNU Reply Brief, p. 2.

Following the discussion containing these citations, Judge Murphy notes, without opining on, the “dissenting opinion on this issue” of Commissioner Jones. Although the subsequent citation is to the whole of Commissioner Jones’s separate statement, the words “on this issue” indicate that the Judge is noting Commissioner Jones’s discussion of his opinion that “current market conditions warrant an adjustment of PSE’s return on equity” rather than on any effects of decoupling. Judge Murphy’s ruling does not contain any apparent discussion on the issue of the effects of decoupling on return on equity and certainly does not contain an opinion concerning the Commission’s decision on this issue. Accordingly, the issue of decoupling’s impact on return on equity is not within the scope of the remand.

5 One more scoping issue is the time period that the Commission should consider in its determination of PSE’s return on equity. Because this proceeding is a remand, return on equity projections should be based on the data available at the time the parties filed their respective testimonies. For example, PSE filed testimony February 1, 2013; accordingly, PSE must file a return on equity case based on the data available up to February 1, 2013.

III. PETITIONS FILED BY ICNU RELATING TO OTHER RATE DECISIONS

6 On August 8, 2014, ICNU filed two additional petitions for accounting, one in Docket UE-141141, and one in Dockets UE-130583, UE-130617, UE-131099, and UE-131230. These petitions should be held in abeyance until the remand proceeding is completed. The rates resulting from these dockets can then be updated, if necessary, through a compliance filing.

IV. PROCEDURE

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Commission Staff proposes the following procedure:

- A. PSE files direct written testimony on return on equity.
- B. All other parties file responsive testimony.
- C. All parties file rebuttal testimony.
- D. Hearing on the issue of determining PSE's return on equity.
- E. One round of simultaneous briefing limited to 10 pages.
- F. Commission issues a decision determining PSE's fair and sufficient return on equity in UE-130137/UG-130138 (the ERF).
 1. If the ROE is a number other than 9.8%: Briefing limited to 10 pages, exclusive of rate illustrations, on the following issues:
 - a. Whether there should be any refunds or surcharges.
 - b. In the event the Commission orders refunds or surcharges, how they should be implemented.

For example: (1) as a bill credit or surcharge; (2) as part of the annual rate plan (K-factor) increase (refunds/surcharges would discount or additionally increase the K-factor rate increase); or (3) as a deferral and then tried up either simultaneously with the decoupling deferrals or separately.
 2. Commission issues a decision on the refunds/surcharges issues.
- G. PSE makes compliance filings reflecting the revised base rate in the ERF dockets, the decoupling dockets, and in any dockets containing decisions on rates served after Order 07.
- H. Commission serves compliance letters in each affected docket.

V. MISCELLANEOUS

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Because the remand implicates only the effect of return on equity on the base rates set in the ERF proceeding, Staff proposes that the remand proceedings be conducted only in the ERF dockets, UE-130137 and UG-130138 (consolidated). Staff further suggests that the

Commission create a new service list comprised of those parties that participated in the ERF and that wish to participate in the remand proceeding.

DATED this 26th day of August 2014.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

A handwritten signature in black ink, appearing to read 'J. Cameron-Rulkowski', written over a horizontal line.

JENNIFER CAMERON-RULKOWSKI
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