

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	DOCKETS UE-121697
	)	and UG-121705 ( <i>consolidated</i> )
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.	)	
_____	)	
	)	DOCKETS UE-130137
WASHINGTON UTILITIES AND	)	and UG-130138 ( <i>consolidated</i> )
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	
	)	PUGET SOUND ENERGY, INC.'S
v.	)	PROPOSAL FOR THE APPROPRIATE
	)	PROCEDURE ON REMAND
PUGET SOUND ENERGY, INC.,	)	
	)	
Respondent.	)	
_____	)	

**I. INTRODUCTION**

1 Puget Sound Energy, Inc. ("PSE") submits this proposal in response to the Notice Suspending Response Deadlines and Providing Opportunity To File Proposals ("Notice"), issued by the Washington Utilities and Transportation Commission ("the Commission") on August 5, 2014. The Commission issued its Notice in response to the Thurston County Superior Court's order dated July 25, 2014, in which the court affirmed in part and reversed in part the Commission's Order 07 in the above-referenced dockets ("Decoupling Order"), and in response to a motion and accounting petition filed by the Industrial Customers of Northwest Utilities

(“ICNU”) in which ICNU argued that the Commission should order refunds based on the court’s order. In its Notice the Commission suspended the deadline for filing responses to ICNU’s motion and accounting petition and asked the parties to submit proposals on the appropriate procedure for resolving the issues on remand.

2 As discussed in more detail below, the issue reversed by the court is narrow. On remand, the Commission should hold a proceeding to determine the return on equity component of rates for the rate plan. The return on equity analysis should be focused on the multi-year rate plan period, consistent with the court’s order and letter decision. The Commission is not required to reconsider its determination not to prospectively adjust return on equity based on decoupling; rather in PSE’s next general rate case the Commission should evaluate what effect, if any, decoupling has on PSE’s cost of capital. Finally, the issue of refunds is not ripe. The Commission may determine that the return on equity should remain at 9.8 percent, or it may authorize a higher or lower return on equity. Until the Commission makes that decision, it is inappropriate to consider refunds.

## **II. THE COMMISSION SHOULD UNDERTAKE A RETURN ON EQUITY ANALYSIS WITH RESPECT TO THE MULTI-YEAR RATE PLAN**

### **A. Summary of Court’s Letter Decision and Order on Remand**

3 The court held that the Commission followed improper procedure<sup>1</sup> and reversed the rates set in the rate plan “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

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<sup>1</sup> Letter Decision at 5.

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).”<sup>2</sup> In its letter decision, the court specifically noted that the Commission set rates “without the evidence it deemed necessary and customarily relied on.”<sup>3</sup> The court did not determine, however, that the return on equity or cost of capital currently in place was set at the wrong rate. Rather, the court stated that “[t]he Commission has particular expertise in understanding the relevant evidence, determining which evidence and models are credible, and determining what ‘fair, reasonable, and sufficient’ means.”<sup>4</sup> The court expressly stated that it “does not attempt to override the Commission’s expertise on such matters, but focuses on the procedural requirements.”<sup>5</sup> The court expressed concern that the Commission did not require PSE to present a sophisticated model or complex presentation or evidence regarding its current situation and from that determine its cost of capital for the multi-year rate plan.<sup>6</sup> Consistent with the court’s limited function on judicial review, the court did not predecide how the Commission should remedy procedural errors or what the substantive outcome on of the remand proceeding should be. *See* RCW 34.05.574(1). The court remanded the case to the Commission to take action consistent with the court’s order.

**B. The Commission Should Direct PSE and Other Interested Parties To File a Cost of Capital Study**

4 To comply with the court’s order, the Commission should hold a cost of capital proceeding in which PSE and other interested parties may provide the Commission evidence on which the Commission can determine the appropriate return on equity to be in place throughout

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<sup>2</sup> Thurston County Superior Court Order p. 2.

<sup>3</sup> Letter Decision p. 5.

<sup>4</sup> *Id.* p. 4.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

the multi-year rate plan. The Commission should consider the appropriate return on equity for the time period July 1, 2013 through the end of the rate plan, based on information available in early 2013 when the Commission originally considered the rate plan. PSE should file direct testimony supporting the return on equity. Other parties may file responsive testimony. PSE should file rebuttal testimony. The Commission should hold a hearing and allow briefing. The Commission should set a return on equity after considering this supplemental evidence and briefing in order to determine whether the return on equity should be the same, lower, or higher than the return on equity established in the Commission's Decoupling Order. If the Commission sets a return on equity that is different than the 9.8 return on equity, additional process – testimony and briefing – may be needed to address implementation issues.

**C. The Commission Is Not Required To Accept ICNU's Return on Equity**

5 The Commission is not required to accept the return on equity proposed by ICNU in the original proceeding; to do so would be inconsistent with the court's order. The court held that the Commission did not follow proper procedure because it failed to require PSE to undertake a cost of capital analysis when setting rates for the PSE multi-year rate plan. According to the court, the Commission set rates without the evidence it deemed necessary and customarily relied on, without the depth and breadth of data analysis, and the diversity of expert evaluation on which the Commission customarily relies in setting return on equity.<sup>7</sup> The court remanded the case to the Commission to take action consistent with its order and did not predecide the Commission's actions on remand. Thus, the Commission should not modify the Decoupling Order to simply accept ICNU's cost of capital recommendation. Rather, the Commission should require PSE and permit other parties to undertake a cost of capital analysis, so that the Commission may have the depth and breadth of data analysis and the diversity of expert

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<sup>7</sup> *Id.* p. 5.

evaluation and opinion on which the Commission customarily relies in setting return on equity. The Commission should determine the appropriate return on equity for PSE after full consideration of the cost of capital analyses provided by the parties.

**D. The Court's Order Does Not Require the Commission To Reconsider Its Decision To Wait Until PSE's Next General Rate Case To Determine the Effect, if Any, Decoupling Has On PSE's Cost of Capital**

6 On remand, the Commission should not prospectively address the effect of decoupling on PSE's return on equity. As the Commission previously determined, it is appropriate to wait and consider evidence in PSE's next general rate case as to whether decoupling actually reduced PSE's cost of capital:

Even if PSE's bond ratings improve in response to our approval of decoupling and reduce the Company's cost of debt, this effect will occur only prospectively. Experience going forward with decoupling in place for PSE as various of its debt instruments mature over the next several years will provide valuable information to the Commission. This information may support a reduced cost of capital, or adjustments to PSE's capital structure, at the time of the Company's next general rate case.”<sup>8</sup>

7 The Commission made this determination after considering evidence presented by PSE and NWECA that the vast majority of jurisdictions have not made prospective adjustments to return on equity when approving decoupling mechanisms.<sup>9</sup> The court's order does not require the Commission to change its approach with respect to the timing of determining decoupling's effect on PSE's cost of capital. The Commission should make such determination after

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<sup>8</sup> Decoupling Order ¶ 105.

<sup>9</sup> *Id.* ¶ 102.

decoupling has been in place for the rate plan period, and the Commission can see what effect, if any, decoupling has on PSE's return on equity.

**E. A Decision on Potential Refunds Is Not Ripe or Appropriate at this Time**

8 It is premature and inappropriate for the Commission to address or consider refunds, surcharges, or other types of rate adjustments at this time. The court did not rule that an 9.8 return on equity was wrong. The court ruled that the Commission needs to authorize a return on equity based on substantial evidence in the record. Thus, the Commission must determine the return on equity for the period of the rate plan. If the evidence on remand demonstrates that a return on equity of 9.8 is within a zone of reasonableness, there is no need to consider refunds, surcharges, adjustments to Treasury Grant deferrals, adjustments to PCORC rates, or the myriad potential adjustments that have been suggested by ICNU or that could be raised by PSE and other parties.

9 If the Commission determines that the 9.8 percent return on equity is outside the zone of reasonableness and sets a different return on equity, there are a number of ways the commission could choose to adjust rates or to determine whether the rates previously charged were just, fair reasonable and sufficient. For example, this could be accomplished by reducing deferred surcharges to customers or could be accomplished through modifications to the earnings sharing mechanism or some other yet to be determined method. Such methodology can be addressed at a later time, only if and when the Commission makes a determination that the 9.8 percent return on equity is outside the zone of reasonableness.

10 Further, the Commission should hold in abeyance the accounting petitions filed by ICNU on August 8, 2014 in PSE's 2013 PCORC docket<sup>10</sup> and the 2014 PCORC proceeding<sup>11</sup> until the remand proceeding is completed. The rates resulting from these dockets can then be updated, if necessary, through a compliance filing or in whatever manner the Commission may order, after the Commission issues an order on remand.

### III. CONCLUSION

11 PSE appreciates the opportunity to provide input on the procedure to take place in this case. Consistent with the court's order, PSE respectfully requests that the Commission provide an opportunity for PSE to submit a return on equity analysis in the manner set forth above.

Respectfully Submitted,

**PERKINS COIE LLP**

**DATED:** August 26, 2014



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<sup>10</sup> Dockets UE-130583, UE-130617, UE-13 1099, and UE-13 1230.

<sup>11</sup> Docket UE-141141.