

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	
)	
PUGET SOUND ENERGY, INC., and)	
NW ENERGY COALITION)	DOCKET NOS. UE-121697/UG-121705
)	(Consolidated)
For an Order Authorizing PSE to Implement)	
Electric and Natural Gas Decoupling)	and
Mechanisms and to Record Accounting)	
Entries Associated with the Mechanisms)	
)	
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WASHINGTON UTILITIES AND)	DOCKET NOS. UE-130137/UG-130138
TRANSPORTATION COMMISSION,)	(Consolidated)
)	
Complainant,)	
)	
v.)	INDUSTRIAL CUSTOMERS OF
)	NORTHWEST UTILITIES' REQUEST
PUGET SOUND ENERGY, INC.)	FOR CLARIFICATION OF ORDER 10
)	
Respondent.)	
)	
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I. INTRODUCTION

1 Pursuant to WAC §§ 480-07-430 and 480-07-810, the Industrial Customers of Northwest Utilities (“ICNU”) petitions for review to request clarification of the Washington Utilities and Transportation Commission’s (“Commission”) Order 10 establishing a procedural schedule in the above-referenced dockets due to the Thurston County Superior Court’s (“Court”) remand of Order 07. Interlocutory review of Order 10 is necessary to save the Commission and the parties substantial effort and expense and to clarify the Commission’s evidentiary requirements in the remand proceeding. ICNU further requests a slight change to the procedural schedule in this docket.

II. BACKGROUND

2 In Order 07, the Commission authorized an expedited rate filing (“ERF”),
decoupling mechanism, and multi-year rate plan for Puget Sound Energy, Inc. (“PSE” or the
“Company”) while maintaining PSE’s return on equity (“ROE”) at 9.8 percent, the level the
Commission had authorized in the Company’s last general rate case.^{1/} On judicial review of
Order 07, the Court found that the Commission set PSE’s ROE at 9.8 percent without substantial
evidence in the record and by shifting the burden of proof away from the Company.^{2/} The Court
remanded Order 07 to the Commission.^{3/}

3 On September 30, 2014, the Commission held a prehearing conference to
determine how to proceed with the Court’s remand.^{4/} Order 10 memorializes this prehearing
conference.^{5/} It establishes a schedule and seeks to define the parameters for parties’ testimony
and evidence in the proceeding.^{6/}

III. ARGUMENT

4 WAC § 480-07-810 allows for administrative review of interlocutory orders
within the Commission’s discretion. Interlocutory review is appropriate when, among other
things, a “review could save the commission and the parties substantial effort or expense, or
some other factor is present that outweighs the costs in time and delay of exercising review.”^{7/}
Order 10 appears to provide the parties with discretion in their presentation of evidence and

^{1/} WUTC v. PSE, Docket Nos. UE-121697/UG-121705, UE-130137/UG-130138, Order 07 (June 25, 2013).

^{2/} Docket Nos. UE-121697/UG-121705, UE-130137/UG-130138, Letter from Staff Counsel re Order of
Judge Carol Murphy, App. A at 5.

^{3/} Id., Court Order at 3.

^{4/} Docket Nos. UE-121697/UG-121705, UE-130137/UG-130138, Notice of Hearing (Sept. 4, 2014).

^{5/} Docket Nos. UE-121697/UG-121705, UE-130137/UG-130138, Order 10 (Oct. 8, 2014).

^{6/} Id. ¶¶ 22-25, 27.

^{7/} WAC § 480-07-810(2)(c).

testimony on PSE’s ROE during the remand proceeding. Nevertheless, the Commission has reserved its ability to reject such evidence later as irrelevant. It would be far more economical and fair to the parties for them to have clear guidance from the Commission as to what issues will be considered and what is outside this review. Additionally, Order 10 makes certain representations about the Court’s remand order that should be clarified to ensure a fair process.

A. The Commission Should More Clearly Define What Evidence Is Admissible

5 The Commission states in Order 10 that it does “not wish to prescribe narrow boundaries that would limit the parties’ ability to present evidence.”^{8/} It also states, however, that if there are objections to the evidence parties present during the proceeding, “the Commission will hear argument and make appropriate rulings” and that the “Commission may also propose to exclude evidence on its own motion”^{9/} The uncertainty embodied in these statements regarding what evidence may ultimately be received into the record presents parties with the possibility that they will waste valuable time and resources during this process. Accordingly, ICNU requests that the Commission provide additional guidance to the parties.

6 First, it is important to have clear direction as to whether the Commission will admit evidence on whether PSE-specific mechanisms, such as decoupling and the rate plan, that may reduce the Company’s risk profile, should impact the ROE.^{10/} Order 10 is not definitive on this issue, but ICNU submits that this evidence is relevant and should be considered by the

^{8/} Order 10 ¶ 23.

^{9/} Id. ¶ 24.

^{10/} ICNU is certainly not the only party that would benefit from clear direction on this issue. The Northwest Energy Coalition (“NWECC”) has indicated that it will not participate in the remand proceeding at all unless decoupling is considered. Although ICNU does not speak for NWECC, it would seem to be particularly unfair to practically require NWECC’s involvement in the remand proceeding by leaving unresolved the question of whether decoupling is at issue, only to reject as irrelevant later any testimony the organization submits.

Commission. To the extent such mechanisms reduce PSE’s risk profile, this has a direct bearing on what level of ROE is appropriate.^{11/} The Commission should clarify that it will consider such evidence in this proceeding.

7 Second, the Commission states that it “expects the parties to provide focused and detailed analyses such as would have informed a determination of return on equity in early 2013.”^{12/} It also, however, indicates hesitation with limiting the evidence to what existed at that time.^{13/} Order 10, therefore, does not make explicit whether actual events subsequent to early 2013 will be considered. If it is the Commission’s intention to receive and consider evidence of actual market conditions over the past year, ICNU urges the Commission to make this clear so that, again, parties do not waste resources developing testimony that will later be deemed inadmissible.

8 Finally, the Commission states in Order 10 that the issue on remand is PSE’s ROE.^{14/} However, it also indicates its intention to allow the parties to develop a record “that includes the full body of evidence the Commission typically considers when determining a regulated utility’s return on equity.”^{15/} ICNU interprets this statement to indicate that the Commission is requesting the parties to develop full cost of capital analyses, which would include PSE’s capital structure and debt. ICNU requests that the Commission either confirm or clarify this understanding.

^{11/} WUTC v. PacifiCorp, Docket No. UE-130043 ¶ 43, Order 05 (Dec. 4, 2013) (utility’s equity cost “must be estimated by analyses of investor’s expectations for companies of *comparable risk* and other factors observable in financial markets”) (emphasis added).

^{12/} Order 10 ¶ 24.

^{13/} Id. ¶ 19.

^{14/} Id. ¶ 4.

^{15/} Id.

B. The Commission Should Clarify its Interpretation of the Court’s Order

9 In rejecting ICNU’s motion to modify Order 07, the Commission states that it cannot cure the deficiencies the Court found in Order 07 “by simply relying on the existing record that the Court has determined is inadequate to the task.”^{16/} The Court’s opinion supporting its remand order, however, does not find that the existing record is inadequate to establish PSE’s ROE, just that it is inadequate to establish PSE’s ROE at 9.8 percent.^{17/}

10 This is a crucial distinction because it goes to the weight the Commission will give to the evidence submitted by other parties in this remand proceeding. The Commission appears to determine that the full cost of capital study ICNU previously submitted into the record of this docket is not “sufficient evidence” to establish a reasonable ROE for PSE at 9.3 percent.^{18/} Yet, this is precisely the type of evidence the Commission has relied on in the past to set utility ROEs. In PSE’s 2011 rate case, for instance, the Commission found that a substantially similar cost of capital study performed by ICNU’s witness, Mr. Gorman, was “the most comprehensive analysis” and adopted a 9.8 percent ROE based largely on his discounted cash flow analyses.^{19/} By stating that the complete cost of capital study ICNU previously submitted into the record of this proceeding is “inadequate to the task” of establishing a reasonable ROE for PSE, the Commission appears to be diverging from past precedent in which it did rely on such evidence to set a utility’s ROE. The Commission should clarify Order 10 to recognize that the Court’s opinion speaks solely to the impropriety of the Commission establishing a 9.8 percent ROE for PSE without record support, not that there was no record

^{16/} Id.

^{17/} Court Order, App. A at 5.

^{18/} Order 10 ¶ 4.

^{19/} WUTC v. PSE, Docket Nos. UE-111048/UG-111049, Order 08 ¶¶ 88-89 (May 7, 2012).

support to establish any level of ROE for PSE. This will ensure all parties that the Commission's usual evidentiary burdens will apply in this proceeding.

C. The Commission Should Modify the Procedural Schedule

11 Under the current procedural schedule, rebuttal and cross-answering testimony is due 16 days after Staff and intervenor response testimony.^{20/} Given the level of uncertainty as to what evidence the Company and other parties will include in their respective testimonies, which the Commission acknowledges in Order 10,^{21/} rebuttal and cross-answering testimony is likely to assume enhanced importance and complexity in this case. Accordingly, ICNU requests that the Commission extend the deadline for filing rebuttal and cross-answering testimony by four days, to December 23rd, to allow additional time for discovery and preparation of the testimony. All deadlines following rebuttal and cross-answering testimony could be similarly extended.

IV. CONCLUSION

12 For the foregoing reasons, ICNU respectfully petitions for review of Order 10 to request that the Commission clarify this order's requirements and conclusions, and that the Commission modify the procedural schedule.

^{20/} Order 10 at 13.

^{21/} Id., ¶¶ 14-21.

Dated in Portland, Oregon, this 20th day of October, 2014.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

A handwritten signature in black ink, appearing to read 'Melinda J. Davison', is written over a horizontal line.

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