BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of PUGET SOUND ENERGY, INC., For an Order Authorizing Deferral of Certain Electric Energy Supply Costs,	DOCKET NO. UE-011170
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND ENERGY, INC., Respondent.	DOCKET NO. UE-011163 PUBLIC COUNSEL ANSWER TO PUGET SOUND ENERGY'S PETITION FOR RECONSIDERATION AND REHEARING

Pursuant to the Commission's Notices of October 12 and 15, 2001, Public Counsel files this Answer in opposition to Puget Sound Energy's (PSE) Petition for Reconsideration and Rehearing.

I. ARGUMENT

A. PSE Does Not State An Adequate Basis For Reconsideration.

In general, PSE's petition is simply a restatement and reargument of its positions and allegations already presented to, and rejected by, the Commission. This is not the purpose of the reconsideration rule. PSE asks, in effect, that the Commission consider new evidence, presented by way of affidavit, in connection with the petition. PSE has cited no authority which permits it to offer such new "evidence." Other parties are disadvantaged if such evidence is considered, since there is no opportunity to rebut the evidence. WAC 480-09-810(3) requires parties seeking reconsideration to make citations to the relevant portions of the record. It makes no reference to

submitting new evidence. The information about rate increases for other companies contained in Exhibit B to the Gaines affidavit was available prior to the time the company's testimony was prepared. It should not now be considered.

In any event, PSE's new submittals do not provide a basis for reconsideration or rehearing. The rating agency reports are simply third-party reactions to the Commission's order.[1] There is no additional analysis of the information before the WUTC or of the applicable standard in Washington for determining whether interim relief is warranted. The rating agency reports recognize that PSE has the option of filing a full rate case with a concurrent request for interim relief as a means to address the alleged financial difficulties.

The additional information submitted regarding rate increases for other utilities is not relevant. First, as a general proposition, utility rates are set on the basis of specific evidence regarding an individual utility's costs, revenues, and financing needs, not on a group basis where all regional utilities raise their rates in synchronized fashion. The fact that Skamania County PUD, for example, increased its rates this year has nothing to do with whether PSE is entitled to interim rate relief. Second, PSE was likely differently situated with respect to the wholesale market than many of the listed utilities. This rate increase information is, therefore, neither useful nor persuasive.

B. PSE Has Not Shown A Basis For The Commission To Reconsider Its Conclusion That PSE Is Not In Need Of "Dire, Or Emergency, Or Extraordinary" Relief.

Its significant to note that, at the same time that it asserts financial distress, PSE continues to maintain its current dividend.[2] Apparently, therefore, PSE intends to place all responsibility for addressing its asserted financial problems upon the ratepayers. Public Counsel would submit that this information is relevant to evaluating the current claims of financial distress. While PSE has submitted rating agency reports and lists of other company rate increases, it has done nothing to strengthen the showing made in its initial testimony. The state

[1] The rating agency material submitted appears to be based largely on a telephone conference hosted by PSE for agencies on October 8, 2001. *See, e.g.*, Gaines Affidavit, Attachment 1, Merrill Lynch Flash Note, p. 1.

[2] Id., Merrill Lynch, Comment, p. 1 ("PSD is committed to paying the current dividend.")

of the record remains as the Commission summarized it in the Sixth Supplemental Order: (1) PSE failed to provide detailed documentation of specific indicators which would demonstrate the urgency of its need;[3] (2) PSE does not point to any extraordinary steps to preserve its financial integrity. As noted, it has to date not reduced its dividend;[4] (3) With regard to financing difficulty, PSE asserts only that it *might* be unable to obtain certain types of financing at what it terms "reasonable rates;" (4) PSE has not asserted that it will lose access to capital markets; and (5) PSE's own confidential forecasts do not establish that the company's present or forecasted financial condition requires an expedited proceeding. *See*, Sixth Supplemental Order, ¶ 20. PSE has presented nothing in its petition that casts doubt on any of these points or on the fundamental conclusion that no persuasive case for emergency or interim relief has been presented.

C. PSE's Fourth Error of Law Is Without Merit.

PSE's "Fourth Error of Law" relates to the "power cost tracker" (PCA) issue. PSE's arguments are without merit. The company simply reasserts an argument already rejected by the Commission. Public Counsel will not repeat the arguments made in its motion to dismiss, except to say that PSE's PCA proposal fails to comport with the clear guidance the Commission has provided in earlier orders to companies proposing power cost adjustment mechanisms. PSE has provided no supporting cost study. Adoption of such a significant proposal in the context of an expedited emergency proceeding remains unjustified.

D. There Is No Basis For Rehearing.

As a threshold matter, Public Counsel again points out, as it did in its Motion to Dismiss that PSE is expressly precluded by the terms of the Merger Order from obtaining rate relief on an interim basis prior to December 31, 2001, without concurrently filing a general rate case. The

[3] PSE's stock is currently selling at a price in excess of book value. *See, e.g.*, Gaines Affidavit, Attachment 1, Davidson Report, p. 1 (Book value per share $16.76, market price $21.38). Return on equity for Puget Energy, Inc., is shown as 12 percent. Id.

[4] PSE appears to be continuing a payout ratio exceeding 100 percent relative to its allowed rate of return. A more "normal" utility payout ratio of 60-75 percent would result in enough retention to improve the company's capital structure.

effect of the Sixth Supplemental Order is to require PSE to take this approach. PSE's request for rehearing, if designed to obtain relief effective in this calendar year without a general rate filing, violates the Merger Order and should be rejected on that ground alone.

PSE cites RCW 80.04.200 and WAC 480-09-820(1) as its basis for requesting rehearing. The statute generally suggests that requests for rehearing by utility companies are most appropriate only after the expiration of two years from the date of the original order. While the Commission is allowed discretion to allow rehearing sooner, Public Counsel submits that such discretion should be exercised only where there is a compelling justification. Here, PSE has simply offered third party statements in reaction to the Commission's decision, together with some information about rate increases for other companies. There is no assertion that PSE has anything fundamentally new to add to its initial testimony which the Commission has already found wanting. If PSE believes that it is entitled to rate relief, the Commission has laid out a clear path for the company -- it can file a general rate case and a concurrent request for interim rate relief.

If rehearing were to be allowed, an outcome strongly opposed by Public Counsel, it would be imperative for the Commission to establish an adequate procedural process. By the time the Commission has an opportunity to rule on the PSE petition, over two weeks will have elapsed since the dismissal order. Parties have no longer been engaged in discovery or testimony preparation in anticipation of an emergency relief hearing. Any grant of rehearing should entail reinstituting a full opportunity to complete discovery and prepare and file testimony. Public Counsel has previously raised concerns about the adequacy of the schedule for the previously set hearing. Any new hearing should certainly allow no less time for discovery, testimony, and hearing than that built into the prior schedule.

Again, however, such an approach would seem to be a serious misapplication of the Commission's and the parties' resources. If PSE believes it can establish a basis for rate relief,

and wishes to implement a PCA, it should proceed to make a comprehensive general filing in support of its claims.

II. CONCLUSION

For the foregoing reasons, PSE's Petition for Reconsideration and Rehearing should be denied.

DATED this 19th day of October, 2001.

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