

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

)
) DOCKET NO. U-100522
)
) REPLY COMMENTS OF THE
) INDUSTRIAL CUSTOMERS OF
) NORTHWEST UTILITIES
)

I. INTRODUCTION

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The Industrial Customers of Northwest Utilities (“ICNU”) submits the following reply comments to the Washington Utilities and Transportation Commission (“WUTC” or the “Commission”) on the Commission’s Consolidated List of Issues regarding Conservation Incentives. The comments submitted in this proceeding demonstrate that Washington utilities have been successful at acquiring cost-effective conservation, and that the current regulatory and legal environment will continue to support and encourage the acquisition of aggressive levels of conservation resources, especially in light of Washington’s new conservation mandates. The parties’ comments also demonstrate that decoupling is not needed for the utilities to comply with their legal and regulatory obligations to acquire all cost-effective, feasible and available conservation, and that decoupling is a crude regulatory tool that results in unintended consequences, harms ratepayers, promotes mediocrity, and has the primary purpose of increasing the earnings and security of utility shareholders to the detriment of ratepayers.

II. COMMENTS

1. **Decoupling is Not Needed in Washington to Ensure that the Utilities Acquire All Available Cost-Effective Conservation**

2 The main point from all the comments submitted, including the advocates of decoupling, is that the Washington electric utilities have not needed decoupling to become national industry leaders in the acquisition of cost-effective conservation resources. Avista notes that all of “Washington’s investor-owned utilities have ‘over-performed’ in their energy efficiency acquisition under current Commission policy.”^{1/} PacifiCorp states that its “costs associated with conservation programs have historically been recovered in a timely manner” and that its conservation tariff “has worked well, as it has been handled outside of a general rate case.”^{2/} Even the NW Energy Coalition (“NVEC”) admits that the electric utilities are currently investing significant amounts and “have been ramping up their energy efficiency investments.”^{3/}

3 The decoupling proponents cannot point to past failures to acquire conservation that have resulted from any alleged utility disincentive to acquire conservation, but instead argue that the current legal and regulatory framework may need to be reexamined. For example, PacifiCorp suggests that “changing regulations” may create “a potential for certain costs to be recovered in an untimely manner” and Avista states that “[t]imes have changed” and that the magnitude and scale of energy efficiency budgets “brings into question whether current regulatory practices are sufficient to promote energy efficiency.”^{4/} Puget Sound Energy (“PSE”)

^{1/} Avista Comments at 4.

^{2/} PacifiCorp Comments at 1-2.

^{3/} NVEC Comments at 13.

^{4/} PacifiCorp Comments at 1-2; Avista Comments at 4.

also makes the counter intuitive and vague assertion that even if a utility has historically over acquired conservation, “that such a performance level is sustainable into the future.”^{5/}

4 There is no reason to believe that the utilities will suddenly reverse course and stop their successful conservation programs because of new conservation regulations, the increasing size of conservation programs or a small amount of potentially unrecovered fixed costs. The parties have not identified actual utility actions that would have been different because of concerns about potential lost margins. The Commission should rely upon the historic evidence of strong utility conservation programs and recognize that the changed legal environment with conservation mandates and penalties reduces any alleged utility disincentives and provides additional justifications not to adopt decoupling programs.

2. The Purpose of Decoupling is to Increase Utility Earnings—Not Encourage Conservation

5 The electric utilities’ comments make it clear that their support for decoupling has little to do with removing their alleged disincentives to invest in conservation, but instead to increase their earnings. PacifiCorp, for example, claims that it has experienced lost margins associated with conservation programs, but admits that its conservation program has “worked well” and does not allege that these lost margins have had any impact on its conservation programs.^{6/} However, it is unclear how PacifiCorp has allegedly lost margins from conservation programs. PSE’s main concern is that it needs to recover all of its fixed unrecovered costs and

^{5/} PSE Comments at 16.

^{6/} PacifiCorp Comments at 1-2.

PSE believes the Commission’s current usage of historic test periods prevents it from recovering all its costs.^{7/} The Commission’s use of historic test periods is simply an unrelated issue.

6 PSE’s and Avista’s claims that they should recover all lost margins, even those unrelated to utility conservation programs, demonstrates that they are not concerned with promoting conservation, but with expedited cost recovery. Both Avista and PSE contend that all the categories of lost margin identified by the Commission should be eligible for recovery.^{8/} For example, Avista includes energy savings from higher building codes and other standards because “local utility programs can both accelerate the adoption of cost-effective codes and standards as well as increase code compliance.”^{9/} Customer support for conservation programs would surely wane if PSE’s and Avista’s proposals are adopted since customers would be forced to not only pay for the programs but the alleged lost revenues which would greatly inflate the cost of conservation.

7 The utilities and NWEC also argue that there is a significant difference between decoupling programs which are to remove financial “disincentives” and incentive programs which are to “promote” additional conservation programs.^{10/} These distinctions are made to suggest that both decoupling and an incentive program may be necessary. For example, Avista states that incentives are “not a substitute for decoupling, fixed cost recovery, or capitalizing.”^{11/} The utilities’ goal of obtaining full cost recovery (rather than ensuring full acquisition of all cost-effective conservation) is inconsistent with the Commission’s stated view that decoupling is

^{7/} E.g., PSE Comments at 14-15.

^{8/} PSE Comments at 7-8; Avista Comments at 6-8.

^{9/} Avista Comments at 7-8.

^{10/} E.g., Avista Comments at 6; NWEC Comments at 3-4.

^{11/} Avista Comments at 6.

simply “one method of supporting conservation”^{12/} and “is a means to an end, not an end in itself.”^{13/} The only goal should be to ensure the utilities acquire the correct amount of conservation and if there are other effective means to obtain conservation resources then “decoupling is unnecessary to promote conservation.”^{14/}

3. Industrial Customers Should Be Exempt from Decoupling Programs and Certain Conservation Programs

8 PSE and Public Counsel appear to be the only main parties that do not recognize that there are unique problems associated with industrial decoupling, which is ironic for PSE given that most of PSE’s large industrial customers are on direct access and PSE agreed not to propose industrial decoupling for two years following its recent merger.^{15/} Public Counsel and PSE simply state that large customers should be included in decoupling because they use large amounts of electricity and make up a significant portion of the utilities conservation budgets.^{16/} In contrast, Avista correctly notes that for industrial decoupling, “the Company believes that these customers are much more prone to changes in general economic and business climate, and that any decrease in use per customer is often not related to conservation programs and messaging.”^{17/} For other reasons, the NWECC recognizes that industrial customers should be treated differently under decoupling because “reductions in usage should not create lost fixed cost revenues to the utility.”^{18/} Public Counsel’s and PSE’s comments fail to address the

^{12/} WUTC v. Avista, Docket Nos. UE-090134, UG-090135 & UG-060518, Order No. 10 ¶ 309.

^{13/} WUTC v. PSE, Docket Nos. UE-060266 & UG-060267, Order No. 8 ¶ 65 (Jan. 5, 2007).

^{14/} WUTC v. Cascade Natural Gas Corp., Docket No. UG-060256, Order No. 6 ¶ 33 (Aug. 16, 2007).

^{15/} Re Puget Holdings and PSE, Docket No. U-072375, Order No. 8 at ¶ 95 and Appendix A to Stipulation, page 13 (Dec. 30, 2008).

^{16/} Public Counsel Comments at 22-24; PSE Comments at 11.

^{17/} Avista Comments at 9.

^{18/} NWECC Comments at 6.

legitimate reasons provided by ICNU and others regarding why industrial customers are uniquely situated and should be exempt from any decoupling program.

9 Industrial customers should also be exempt from any incentive programs. As ICNU explained in its opening comments, industrial customers are uniquely situated due to their size and their motivation to reduce energy consumption and energy costs. The utilities should not be provided incentives to run these programs that historically have been quite successful.

4. The Commission Should Not Rely Upon Most of the Factual Evidence Presented by the Parties

10 Many parties have provided the Commission with detailed and specific information regarding the utilities' conservation programs, lost margins and other critical issues. For example, there are detailed estimates of the amount of alleged utility "lost margins," claims regarding the impact of new customers on lost margins, and the specific amount of conservation savings associated with certain customer classes.^{19/} While the Commission should not assume that the parties are intentionally providing false or inaccurate information, the Commission should recognize that this is a general rulemaking and neither the parties nor the Commission have the ability to conduct detailed discovery or to vet and review factual claims in an evidentiary hearing. If the Commission decides to allow decoupling or incentive programs, then many issues should be deferred and more appropriately resolved in utility specific adjudications that provide a proper forum to review evidentiary issues, including determining whether found margins associated with new customers have higher incremental costs that offset new margins, and any actual amount of alleged lost margins experienced by any specific utility.

^{19/} E.g., PacifiCorp Comments at 2; Avista Comments at 9; Public Counsel Comments at 22-24; PSE Comments at 4-5.

5. The Costs of Incentive Programs and Decoupling Should Be Included in the Cost-Effectiveness Test

11 Avista, PSE and NWEAC all argue that the costs associated with incentive and decoupling programs should not be included in the evaluation of whether conservation resources are cost effective.^{20/} PSE notes that including these costs in the cost-effectiveness test could reduce the amount of conservation that is found to be cost effective,^{21/} and NWEAC makes the novel argument that the costs of an incentive or decoupling are not actual costs, but simply a reallocation of responsibility for cost recovery.^{22/}

12 From a customer perspective, the costs of decoupling and incentive programs are not simply a reallocation of cost responsibility, but an additional cost of the conservation resource. The full costs to customers must be evaluated when determining whether a resource is cost effective, and the costs associated with incentive payments, risk shifting and higher decoupling rates must be accounted for. It costs ratepayers real money to provide utilities with incentive payments, reduce a utility's risk or accelerate a utility's cost recovery, and those amounts should be reflected in whether the total cost of the conservation resource is justified.

III. CONCLUSION

13 Decoupling is not necessary to encourage Washington's electric utilities to acquire all available and feasible cost-effective conservation. No party has identified any legitimate reason to assume that Washington's electric utilities have or will under-invest in conservation because any alleged financial disincentives. The Commission should assume that

^{20/} Avista Comments at 17; PSE Comments at 18-19; NWEAC Comments at 14-15.

^{21/} PSE Comments at 18-19.

^{22/} NWEAC Comments at 14-15.

the utilities will continue their historic practices of strongly investing in conservation resources and that they will not shirk their legal obligations under Washington's conservation mandates. In addition, any decoupling programs should exclude industrial customers, be narrowly tailored to only address those few clearly identifiable lost margins associated with incremental utility conservation programs and include a cost of capital adjustment in exchange for the utility's reduced risks. Similarly, any incentive programs should be narrowly tailored to achieve certain conservation goals, include appropriate earnings tests, and provide exemptions for industrial customers. Finally, the full costs of any conservation incentives or decoupling should be included in the cost-effectiveness test for conservation resources.

Dated this 18th day of June, 2010.

Respectfully submitted,

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