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BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of

PUGET SOUND ENERGY, INC.

For an Order Amending Provisions of the Twelfth
Supplemental Order in Docket Nos. UE-011570
and UG-011571 Regarding Time-of-Use Rates
and Approving Refund

DOCKET NO. _____

APPLICATION FOR AMENDMENT
OF RATE CASE ORDER PROVISIONS
REGARDING TIME-OF-USE (TOU)
RATES AND APPROVING REFUND

INTRODUCTION

1. Puget Sound Energy, Inc. ("PSE" or "the Company") hereby requests that the Commission issue an order amending its Twelfth Supplemental Order: Rejecting Tariff Filing; Approving and Adopting Settlement Stipulation in Docket Nos. UE-011570 and UG-011571 dated June 20, 2002 ("Order") to permit changes to be made to PSE's Time-of-Use (TOU) rates approved in the Order. Specifically, although the Order provides for continuation of the small consumer (residential and Schedule 24 customers) TOU program to September 30, 2003, PSE seeks through this Application and proposed tariff sheet revisions filed herewith to accelerate the date for returning customers remaining on the TOU program to the

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equivalent non-TOU tariff schedule applicable to them and to end the TOU program. As part of this Application, PSE also seeks the Commission's approval to refund to customers the \$1.00/month they have paid to continue participating in the TOU program since July 1, 2002.

2. This Application brings into issue RCW 80.04.210, 80.28.080, 80.28.060, WAC 480-09-815, 480-80-122, 480-100-008, 480-100-194 and Schedules 307, 308, 309 and 324 of PSE's Electric Tariff G.

BACKGROUND

A. Treatment of TOU Rates in the Rate Case Order

3. On June 20, 2002, the Commission approved the multi-party settlement stipulation of disputed electric and common issues in PSE's pending general rate case, Docket Nos. UE-011570 and UG-011571 in its Twelfth Supplemental Order: Rejecting Tariff Filing; Approving and Adopting Settlement Stipulation dated June 20, 2002 ("Order"). Order at ¶ 21. The Order approved and incorporated by reference Exhibit E, Settlement Terms for Time of Use (TOU).

4. Exhibit E provided that PSE's current pilot time of use (TOU) program for small consumers (residential and Schedule 24) shall be extended to September 30, 2003, to permit creation of a collaborative and to conduct a thorough evaluation of the program.

Order, Ex. E, § B.2.¹ Customers were permitted to opt out of the TOU program, but customers remaining on the program were required to pay an additional \$1.00 per month beginning July 1, 2002 to help pay for the incremental meter reading and data handling costs of the program. An

¹ The pilot program for large customers (Schedules 25, 26, 31) ended on October 1, 2002. See Order, Ex. E, § H.14.

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additional \$0.16/customer/month was to be recovered through higher kwh charges in the TOU rate schedules. *Id.* at §§ D.4.-5. The TOU rate differential was also adjusted. *Id.* at § E.8.

5. The Order required PSE to notify continuing participants in the program if their participation in the program was not cost effective for one or more months in a given quarter. Such notice was to provide a comparison of the customer's bill under TOU to what the customer's bill would have been under the applicable flat rate for all months during the quarter. The first quarterly information was to measure the third quarter of 2002, with notice sent to customers beginning no later than thirty days after October 1, 2002. Order, Ex. E, § F.9.

6. The Order further provides that at the end of the extended TOU pilot program, no later than September 30, 2003, customers are to default to service under the equivalent non-TOU tariff schedule applicable to them "[u]nless the customer requests to remain on the TOU rate schedule regardless of the personal economic consequences." Order, Ex. E, § G.13.

7. Exhibit E of the Order also approved a TOU collaborative process to explore issues including the cost-effectiveness and conservation impact of TOU programs. Order, Ex. E, § I.15. The Commission's Order further required that the TOU collaborative present it with four progress reports regarding the collaborative's work, beginning on November 1, 2002, and ending with a Final Report and Recommendation by July 1, 2003. Order at ¶ 34.

B. Subsequent TOU Events

8. The TOU collaborative has begun its work pursuant to the Order. On November 1, 2002, PSE filed the required Study Design report. Collaborative participants have raised serious questions about the cost-effectiveness of TOU rates as currently configured.

9. PSE has also recently provided the requisite notice regarding the bill impacts of the program for individual customers. In the course of conducting its analysis for such notice, PSE determined that only six percent (6%)

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of customers remaining on the TOU program were paying less for their electric power than if they were taking service under the equivalent non-TOU tariff schedule. PSE determined that ninety-four percent (94%) of customers remaining on the TOU program were paying higher electric bills than they would have paid if they had opted out of the program. On average, customers paid \$0.80 more per month than they would have if they were not on the TOU program, although some customers paid several dollars more because of their continued participation in the program.

DISCUSSION

A. Termination of the Current TOU Program

10. Because nearly all of its current TOU customers are paying more under the program than they would if they were not on the program, PSE seeks through this Application and the proposed revised tariff sheets filed herewith to end the TOU pilot program early, and to move remaining TOU customers to the equivalent non-TOU tariff schedule applicable to them.

11. To accomplish this change, PSE proposes that the expiration date for TOU rates that is set forth in the Order, Exhibit E, Sections B.2., E.8, and G.13 be amended from September 30, 2003 to November 18, 2002 (or as soon thereafter as the Commission's consideration of this Application permits), and that PSE be ordered to default current TOU customers to the equivalent non-TOU tariff schedule applicable to them as of the termination of the TOU tariff schedules.

12. The Commission has authority to amend its Order as requested pursuant to RCW 80.04.210 and WAC 480-09-815. PSE has provided notice of this Application to the parties who executed the Settlement Terms for Time of Use (TOU), Exhibit E to the Order, and to all parties to the general rate case, Docket Nos. UE-011570 and UG-011571.

13. The Commission also has authority to approve the requested termination date, which provides for less than thirty-day notice, pursuant to RCW

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80.28.060 and 480-80-122. PSE requests that the Commission approve the earlier termination date because doing so will reduce the bills of most of the customers who are currently taking service under the TOU tariff schedules. PSE also requests that the Commission exempt the proposed revision of the TOU tariff schedules from the notice requirements of WAC 480-100-194, pursuant to WAC 480-100-008, because such exemption is consistent with the public interest, the purposes of the underlying regulation, and applicable statutes. PSE proposes to provide notice to customers of the termination of the TOU schedules through billing inserts sent out after the Commission's approval of the termination.

14. If this Application is granted, the Commission should also amend the text of the Order regarding TOU collaborative reports, Order at ¶ 34. PSE anticipates that the TOU collaborative will meet for purposes of wrapping up its examination of existing data and providing such data to the Commission for its review.

B. Customer Refunds

15. Although PSE has no obligation to refund amounts associated with the current TOU program, PSE wishes to provide TOU customers with a small refund (funded by shareholders, not other ratepayers) as a matter of good will, and as a form of compensation for the additional data regarding TOU use that customers continuing on the pilot program have provided regarding the program and their electric power usage that will likely continue to be useful for future analysis. Specifically, PSE proposes to refund to customers the extra \$1.00 charge that they have paid since July 1, 2002, for continued participation in the TOU program.

16. The Commission should approve PSE's proposed refund notwithstanding the provisions of RCW 80.28.080, which provides:

No gas company, electrical company or water company shall charge, demand,

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collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such service as specified in its schedule filed and in effect at the time, nor shall any such company directly or indirectly refund or remit in any manner or by any device any portion of the rates or charges so specified....

RCW 80.28.080.

17. The fundamental policy underlying RCW 80.28.080 is to prevent "rate discrimination and preferences." *Housing Authority of King County v. Northeast Lake Washington Sewer & Water District*, 56 Wn. App. 589, 592, 784 P.2d 1284 (1990). It also essentially codifies into Washington's statutes the doctrine against retroactive ratemaking. In discussing the statute, Washington courts have noted that its purpose is to protect utilities from refund claims. *See Puget Sound Navigation Co. v. Department of Public Works*, 157 Wash. 557, 561 (1930), *aff'd*, 160 Wash. 703 (1931). It also protects customers from taking service at one rate and later being charged additional sums based on a new rate unilaterally fixed by a utility. *See Hearde v. City of Seattle*, 26 Wn. App. 219, 222 (1980). As this Commission has stated, "[t]he evil in retroactive rate making...is that the consumer has no opportunity prior to receiving or consuming the service to learn what the rate is or to participate in a proceeding by which the rate is set." *WUTC v. U S WEST Communications, Inc.*, UT-970010, 1997 Wash. UTC LEXIS 72 at *21 (Nov. 7, 1997) (quoting *WUTC v. Puget Sound Power and Light Company*, Docket No. U-81-41, Sixth Supplemental Order at 17-18 (Dec. 19, 1988)).

18. In the present case, there would be no discrimination between similarly situated customers because PSE will refund to each customer who continued on the TOU program after July 1, 2002 the \$1.00 monthly charge paid by that customer. PSE is not seeking any return of funds from the few customers who benefited from the TOU program through lower electric bills. And

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ratepayers as a whole are not harmed because the refund will be paid by shareholder funds, and not recovered in future rates.

19. Although PSE is entitled to keep the revenues it collected through the TOU rates since July 1, 2002, and could not be forced to return such funds against its will, PSE is willing in this unique case to waive the protections of the retroactive ratemaking doctrine with respect to the \$1.00 per month that it returns to customers. At least one public service commission has approved of refunds voluntarily agreed to by a utility that would have constituted retroactive ratemaking in the absence of the utility's consent:

Because [the utility] voluntarily entered into the settlement, it consented in advance to any refunds that may arise from the settlement's operation, and gave up potential claims of illegal retroactive ratemaking.

In re Application of Consumers Power Co. Requesting the Commission to Review and Approve a Settlement, Case No. U-10037, 1992 Mich. PSC LEXIS 94 at *14 (Mich. PSC 1992).

REQUESTED ACTION

20. For the reasons set forth above, PSE respectfully requests that the Commission issue an order:

A. Amending the Twelfth Supplemental Order: Rejecting Tariff Filing; Approving and Adopting Settlement Stipulation in Docket Nos. UE-011570 and UG-011571 dated June 20, 2002 ("Order"), Exhibit E, as follows:

- Sections B.2., E.8, and G.13: Change the termination date of the current TOU program from September 30, 2003 to November 18, 2002 (or as soon thereafter as the Commission's consideration of this Application permits); and

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- Section G.13: Order PSE to default current TOU customers on Schedules 307, 308, 309 and 324 to the equivalent non-TOU tariff schedule applicable to them upon the termination of the current TOU program;
- B. Amending Paragraph 34 of the Order to reflect that the TOU collaborative will provide the data collected to date to the Commission; and
- C. Approving a refund by PSE to customers who remained on Schedules 307, 308, 309 and 324 after July 1, 2002, of the \$1.00 monthly charge paid by such customers to continue on the TOU program.

DATED: November ___, 2002.

PERKINS COIE LLP

By _____
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STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

KIMBERLY HARRIS, being first duly sworn, deposes and says that she is the Vice President of Regulatory Affairs for Puget Sound Energy, Inc.; that she has read the foregoing Application and knows the contents thereof; that the facts set forth therein are true of her own knowledge, except as to matters which are therein stated on information or belief, and as to those matters, she believes them to be true.

Kimberly Harris

SUBSCRIBED and SWORN to before me this ____ day of _____, 2002, by
KIMBERLY HARRIS.

Print Name: _____
Notary Public in and for the State of Washington,
residing at _____
My commission expires: _____

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