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 INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES' ANSWER

Pursuant to WAC § 480-09-810(4) and Administrative Law Judge Wallis' Notice Regarding Shortening Time to File Answer, the Industrial Customers of Northwest Utilities ("ICNU") files this Answer to Puget Sound Energy's ("PSE" or the "Company") Petition for Reconsideration and Rehearing in Docket Nos. UE-011170 and UE-011163 ("Petition"). The Washington Utilities and Transportation Commission ("WUTC" or "Commission") should deny the Petition because it fails to meet the requirements for reconsideration or for rehearing specified in WAC § 480-09-810 and RCW § 80.04.200. Instead, PSE uses the Petition to re-argue issues that the Commission has already adequately considered and properly rejected.

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I. BACKGROUND

On August 21, 2001, PSE filed a Petition and Advice Letter requesting deferral of expenditures for certain electric energy supply costs and for approval of an electric tariff rider for recovery in electric rates of certain electric energy supply costs ("PSE Filing"). On September 4, 2001, Public Counsel filed a Motion to Dismiss. ICNU filed its own Motion to Dismiss on September 12, 2001. WUTC Staff also filed in support of Public Counsel's motion. On October 4, 2001, the Commission issued its Sixth Supplemental Order dismissing PSE's Filing. Re PSE, Docket No. UE-011163, Sixth Supp. Order (Oct. 4, 2001)("PSE Order").

II. ARGUMENT

PSE's Petition fails to make the requisite showing under Washington law to warrant reconsideration or rehearing. PSE improperly seeks to re-litigate factual and legal issues that the Commission has already rejected. The facts presented in the Company's Petition and Filing do not meet the Commission's standard for granting extraordinary rate relief despite PSE's exaggeration of its financial condition. In addition, the Commission made no errors of law in the PSE Order. Therefore, the Commission should deny reconsideration or rehearing of the PSE Order.

1. Legal Standard for Rehearing and Reconsideration

Washington law provides that "[w]ithin ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested." RCW § 34.05.470. The Commission may grant reconsideration if an order is: 1) clearly erroneous; or 2) incomplete. WAC § 480-09-810(3). In addition, the Commission may grant a rehearing if a party can prove that the Commission's order produced "a result injuriously

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affecting the petitioner which was not considered or anticipated at the former hearing." RCW § 80.04.200. PSE has failed to establish that the PSE Order is erroneous, incomplete, or harms the Company in a manner that was not considered or anticipated.

2. PSE Has Not Stated Adequate Grounds for Rehearing or Reconsideration

The primary basis that PSE asserts for rehearing and in its first and second alleged errors of law is that the Company's credit rating has been driven to "'junk' or 'near junk' corporate bond status." Petition at 2, 16. PSE further claims that it is "approaching insolvency—just like California [utilities]." Petition at 2. However, there is no evidence in either PSE's Filing or the Petition demonstrating that the Company is approaching insolvency or experiencing a financial emergency.

PSE's actions in recent months do not resemble those of a business on the brink of financial disaster. PSE has not taken steps to improve its financial condition, such as cutting management salaries and reducing operating expenses. These were the types of actions the Commission relied upon to grant Avista's "extraordinary" rate relief. Re Avista, Docket No. UE-010395, Sixth Supp. Order at 30 (Sept. 24, 2001)("Avista Order"). For example, PSE's executive salaries remain robust, including approximately $1,371,000 for CEO Weaver, $729,000 for V.P. McKeon and $711,000 for V.P. Hawley. Attachment A. In addition, on October 9, 2001, the same day the Company filed the Petition, PSE declared a 46 cents per share common stock dividend. Attachment B. This evidence demonstrates that PSE's claims are grossly overstated.

PSE requests reconsideration of the Commission's Order based solely on ratings agency descriptions of the Company's financial position. The Commission establishes rates

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based on the utility's prudently incurred cost of service, not ratings agency press releases. The ratings agency reports are irrelevant because they are based primarily on information provided to the agencies by PSE and represent little more than the Company's attempt to manufacture a basis upon which to request reconsideration.

Furthermore, the ratings agency reports do not demonstrate that the Company is in a financial emergency that warrants immediate rate relief. The two principle rating agencies for utility debt are Moody's and Standard and Poor's ("S&P"). Moody's has put PSE on credit watch, but has not downgraded the Company's debt. Petition at 16-17. While S&P lowered PSE's senior secured debt rating, but only from A- to BBB+. Petition at Attachment 1. PSE's senior secured debt could be downgraded by two rating categories and still be considered investment grade. Thus, PSE's claim that the Commission's recent orders have driven PSE debt rating down to "junk" or "near junk" status are misleading. PSE was not injuriously affected by the Order in a manner not considered by the Commission. As a result, the Commission should find that PSE has not met the standard for reconsideration or rehearing in RCW §§ 34.05.470 and 80.04.200. In addition, the ratings agencies are not neutral parties and have an interest in increasing PSE's rates.

PSE's reference to other utility rate increases also is irrelevant. The proper basis for determining whether the PSE is experiencing a financial emergency is evidence regarding the Company's actual financial condition, and the Commission has already determined that PSE has not presented evidence that warrants extraordinary rate relief.

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3. The Commission Does Not Guarantee PSE Financial Success

PSE's disagreement with the Commission's standard for granting extraordinary rate relief does not constitute an error of law. The Commission's decision to deny PSE's request for immediate rate relief was based on its interpretation of the evidence presented in PSE's application. The Commission properly exercised its discretion in concluding that the evidence did not support PSE's request. Therefore, the Commission should reject PSE's first and second alleged errors of law and request for rehearing.

Prior to the Commission's September 24, 2001 decision regarding Avista's interim rate request, the Commission had never granted immediate rate relief outside of the context of a general rate case. Avista Order at 11. In both the Avista and PSE Orders, the Commission created a new method by which Washington utilities could seek immediate rate relief. Traditional interim rate relief must still accompany a general rate case and is designed to avoid some of the consequences of regulatory lag during the Commission's consideration of the general rate case. Id. In contrast, the extraordinary rate relief sought by PSE must be designed to provide the utility with the minimum level of financial support to continue to serve the public and avoid financial ruin. PSE Order at 9; Avista Order at 3. The focus of extraordinary rate relief is not the adequacy of the utility's earnings, but whether the utility can survive until the time when it files a general rate case. Immediate rate relief departs from traditional ratemaking and common law principles that a party cannot obtain relief prior to the conclusion of a contested legal proceeding. Based on this departure, the Commission has imposed significant restrictions on both forms of relief, and grants such relief in limited circumstances.

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The standard for granting extraordinary rate relief enunciated in the Avista and PSE Orders do not establish confiscatory or insufficient rates as contended by PSE. In Avista, the Commission applied a modified interim relief standard to grant "extraordinary" rate relief. The Commission granted extraordinary relief when Avista faced a liquidity crisis due to an inability to meet any of the financial indicators listed under the interim rate relief criteria. *See* Avista Order at 10, 15-20. The Commission required: 1) a negative rate of return; 2) a credit rating at the last level above non-investment grade status; 3) difficulty or impossibility of issuing common stock; 4) inability to finance ongoing construction; 5) refusal of lenders to lend money; 6) inability to meet loan covenants; and 7) the need for a signal from the Commission to the financial community as to the financial health of the utility. Avista Order at 15-20. If a utility demonstrates a liquidity crisis based on a failure to meet any of these indicators, the Commission will grant, subject to refund, the minimum relief "immediately necessary for the Company to preserve its ability to fulfill its service obligations to the public." Avista Order at 3. Thus, while interim relief provides relief for some of the "regulatory lag" associated with a general rate case, the "extraordinary" standard provides the minimal relief necessary to continue to serve the public and creates a "bridge to a longer-term, comprehensive resolution of [a utility's] financial requirements." Avista Order at 10-11.

In PSE's case, the Commission correctly determined that the Company did not meet this standard. PSE's credit rating is above investment grade, and the Commission concluded that the Company's current rates are adequate to allow it to meet its public service obligations. The factual evidence demonstrates that PSE is not experiencing a true financial

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emergency that warrants extraordinary relief. Furthermore, none of PSE's actions (or inactions) support its claims.

4. The Commission Did Not Rely Upon "Facts Not in Evidence"

PSE's third error of law is based on the absurd claim that the PSE Order "relies on facts not in evidence in this proceeding." Petition at 13. In the PSE Order, the Commission applied the facts in PSE's direct filing to the legal standard for granting extraordinary rate relief. This legal standard does not exist in the abstract, but must be compared to the facts in each particular case. In comparing PSE's direct filing to the Avista case, the Commission compared facts insufficient for extraordinary rate relief (PSE) with those it considered sufficient for rate relief (Avista). Therefore, the Commission did not commit an error of law when it compared PSE's situation to that of Avista.

5. PSE's Filing Did Not Meet the Commission Standards for Power Cost Adjustment Mechanisms

PSE's fourth error of law claim appears to be that the Commission was allegedly incorrect when it recognized that PSE had not asserted proper facts sufficient to approve a power cost adjustment mechanism ("PCA"). PSE states that, "[s]hould the Commission decide to hear this case, PSE requests" that the Commission either consider its power cost tracker proposal or a fixed surcharge. Petition at 15. First, PSE's fourth error of law claim is moot. The Commission does not need to address how to increase PSE's rates because the Company failed to meet the standard for receiving a rate increase. Second, the Commission should deny PSE's request for reconsideration because the Company has not met the established standards for a PCA. PSE Order at 10-11.

6. Emergency Relief Can Be Dealt With in a General Rate Case

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If the Commission grants reconsideration, it will be required to establish a schedule allowing for discovery, testimony and evidentiary hearings. The Commission will be required to review both the merits of whether PSE is actually experiencing a financial emergency and whether PSE's PCA is an appropriate form of interim rate relief. However, PSE has already committed to file a general rate case in November 2001. Thus, PSE's alleged need for immediate rate relief should be dealt with in the more appropriate context of a general rate case, applying the traditional interim rate relief standards. If the Commission grants the Petition and allows reconsideration, the result will be a procedural quagmire, in which a questionable request for immediate rate relief will be proceeding at the same time as a general rate case.

III. CONCLUSION

PSE has not established that the PSE Order contains any errors of fact or law, and the Company merely attempts to reargue issues that the Commission has already resolved. The Commission did not improperly exercise its discretion when it refused to grant PSE's request for immediate rate increases. PSE's rating agency reports are insufficient to support the Company's request for immediate relief, and PSE has not submitted any credible evidence regarding the Company's actual financial condition. The reactions of financial analysts and rating agencies do not alter the Commission's conclusion that PSE does not warrant extraordinary rate relief.

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WHEREFORE, ICNU respectfully requests that the Commission deny PSE's Petition to reconsider and rehear arguments regarding the Commission Sixth Supplemental Order in Docket Nos. UE-011170 and UE-011163.

Dated this 19th day of October, 2001.

Respectfully submitted,

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