

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	DOCKET NOS. UE-011570 and
)	UG-011571 (Consolidated)
v.)	
)	
PUGET SOUND ENERGY, INC.,)	
)	
Respondent.)	
.....)	

**RESPONSE OF COMMISSION STAFF
RECOMMENDING APPROVAL OF APPLICATION FOR EARLY
TERMINATION OF TIME OF USE RATES AND NOT
OBJECTING TO REFUND PROPOSAL**

INTRODUCTION

1 On November 6, 2002, Puget Sound Energy, Inc. (PSE) filed an Application for Amendment of Rate Case Order Provisions Regarding Time-Of-Use (TOU) Rates and Approving Refund (Application). PSE asks the Commission to amend its Twelfth Supplemental Order in this proceeding to allow the residential and small commercial customer TOU program to end prior to the currently authorized termination date of September 30, 2003.¹ PSE also seeks Commission approval to refund the \$1.00 per month charge that TOU customers have paid since July 1, 2002, under PSE's current tariff.

¹ The TOU program for larger customers ended on its own terms on October 1, 2002.

2 The proposal for early termination of small customer TOU rates would be implemented through tariff revisions PSE filed under Advice No. 2002-26 concurrently with the Application.² PSE asks that these tariff revisions become effective on November 18, 2002 on less than statutory notice (LSN). PSE also asks that the Commission waive the provisions of WAC 480-100-194 that require advance notice to customers of proposed tariff revisions. PSE proposes to provide notice to customers of the termination of TOU rates through billing inserts sent after Commission approval of the Application.

3 Commission Staff recommends approval of the Application with respect to early termination of the TOU schedules. Staff also supports the requests for LSN treatment and waiver of the requirement for advance customer notice, given PSE's commitment to notify customers individually through billing inserts following Commission approval of the Application. All of these recommendations are addressed in the attached Staff memorandum.

4 PSE's refund proposal, however, violates RCW 80.28.080. Nevertheless, the principles underlying RCW 80.28.080 are not offended by the refund proposal, especially given facts and circumstances unique to this proceeding. The Commission, therefore, may be convinced to exercise its discretion not to enforce RCW 80.28.080 against PSE, which will allow PSE to refund the \$1.00 monthly charge paid by TOU customers since July 1, 2002.

5 Staff does not object to such a result. The remainder of this memorandum elaborates on Staff's position regarding PSE's refund proposal.

² Advice No. 2002-26 has been docketed under Docket No. UE-021447. The proposed revisions are to Schedules 307, 308, 309 and 324.

ANALYSIS

6 The statute relevant to the refund proposal is RCW 80.28.080, which states as follows:

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

7 PSE's proposal to refund TOU monthly charges clearly violates the express provisions of this statute. We have found no instance where waiver of this or any similar provision has been approved by a court or commission.

8 The Commission, however, has discretion not to enforce RCW 80.28.080 against a company it regulates. The Commission may decide that PSE's refund proposal and other facts and circumstances particular to this case warrant the exercise of that discretion.

9 First, RCW 80.28.080 essentially codifies the "Filed Rate" doctrine to insure that regulated utilities charge only those rates that are approved by the Commission and on file with the Commission. The underlying principles of the Filed Rate doctrine are to safeguard customers against rate discrimination, *Tenore v. AT&T Wireless Services*, 136 Wn.2d 322, 332, 962 P.2d 104 (1998), and to protect regulated companies from claims for refunds. *Puget Sound Navigation Co. v. Department of Public Works*, 157 Wash. 557, 561 (1930), *aff'd*, 160 Wash. 703 (1931).

10 Neither of these principles is offended by PSE's proposal to return to customers the \$1.00 per month TOU charge. No rate discrimination would occur under PSE's

proposal because *all* customers that paid the monthly TOU charges will be refunded those charges. Nor will any customers --whether or not they were on TOU schedules-- be required to reimburse PSE for refunds paid. PSE agrees not to seek recovery of the refunds in future rates. (*Application at ¶ 18.*)

11 Moreover, no party seeks a Commission order requiring PSE to pay refunds against its will. Nor is the Commission unilaterally imposing such a requirement on PSE. Rather, PSE has proposed voluntarily and knowingly to return to ratepayers funds PSE would otherwise be entitled lawfully to keep under RCW 80.28.080. Other commissions have allowed refunds voluntarily agreed to by the utility that would have been unlawful without the utility's agreement:

Although the Commission lacks the authority to order the refunds provided in the Stipulation [between U S West and Montana Consumer Counsel], it finds that [U S West] may voluntarily refund the funds in the amount and manner provided therein, and hereby encourages [U S West] to do so in order to complete compliance and performance of its agreement with [Montana Consumer Counsel].

Re U S West Communications, 138 PUR4th 429, 457 (Mont. PSC 1992); See also, *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) (“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”).

12 Fairness may also convince the Commission not to enforce the provisions of RCW 80.28.080. As PSE points out (*Application at ¶ 9*), ninety-four percent of customers that remained on TOU schedules paid higher electric bills than they would have paid if they had taken service under the equivalent non-TOU schedule. These

customers paid, on average, 80 cents more per month than they would have paid if they had opted out of the TOU program.

13 PSE does not propose to rebill TOU customers as if they had received service under non-TOU tariffs. However, PSE's proposal to refund the \$1.00 per month TOU charge does assist in correcting the unfairness apparent to those customers that remained on TOU schedules and paid a higher bill as a result.

14 Finally, the \$1.00 per month TOU charge was paid by customers under a pilot program over which the Commission has maintained a great deal of scrutiny and close review. The Twelfth Supplemental Order carefully established a TOU collaborative that was required to provide regular progress reports to the Commission so that detailed information could be gathered to determine whether the pilot should be continued, revised or terminated.³ (*Order at ¶ 34*). PSE's proposal to refund monthly TOU charges is consistent with the experimental nature of the TOU pilot program itself.

15 In sum, it is a fundamental tenet of ratemaking, codified in RCW 80.28.080, that a utility must charge only those rates contained in its tariffs on file and in effect with the Commission. Refunds of those charges are prohibited.

16 In this case, however, PSE has not just consented to refunds, it has voluntarily relinquished any claims that refunds would be unlawful by initiating a refund proposal on

³ PSE's Application asks the Commission to amend the Twelfth Supplemental Order to eliminate the collaborative progress reports that would otherwise be required in the future. PSE proposes that the collaborative meet in order to complete its examination of existing data and to provide that data to the Commission for its review. (*Application at ¶¶ 14 and 20B.*)

Staff does not object to this amendment to the Twelfth Supplemental Order as requested by PSE. However, the TOU collaborative filed a Study Design on November 1, 2002 that described a "Threshold Analysis" to be completed in November 2002 and presented to the Commission by December 15, 2002. As discussed in the attached Staff Memorandum, the Threshold Analysis will provide important information particularly with respect to the evaluation of avoided costs. Staff, therefore, recommends that the Commission clarify that the collaborative complete and submit the Threshold Analysis as proposed by the collaborative even though all other reports would be unnecessary.

its own free will. That proposal also does not harm any customers and results in all similarly situated customers being treated without discrimination.

17 Therefore, while the Commission can neither order nor approve refunds, the Commission may exercise its discretion not to enforce the statute against PSE which would then be free to implement the refund proposal PSE has elected. Staff does not object to that result.

DATED This 13th day of November, 2002.

Respectfully submitted,

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