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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
.....
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.
PUGET SOUND ENERGY, INC.,

Respondent.

No. UE-011170

No. UE-011163

CITIES' OPPOSITION TO PUGET
SOUND ENERGY, INC.'S
PETITION FOR
RECONSIDERATION

The Cities of Tukwila, Des Moines, Federal Way, Kent, and SeaTac (“Cities”) oppose the Petition for Reconsideration (“Petition”) filed by Puget Sound Energy, Inc. (“PSE”) for the reasons set forth below. The Commission’s Sixth Supplemental Order (“Order”) denying PSE’s request for interim relief was properly grounded in the law and the facts, and PSE’s Petition should be denied.

CITIES' OPPOSITION TO PSE'S PETITION FOR
RECONSIDERATION - 1

1 No subsequent events justify reconsideration of the Order. The Affidavit of
2 Donald E. Gaines (“Gaines Aff.”) and attached exhibits do not demonstrate that PSE’s
3 previous projections of “dire financial consequences” are coming true as a result of the
4 Commission’s dismissal of PSE’s request for interim relief.¹ First, the exhibits to Mr.
5 Gaines’ affidavit reflect the reaction of only four analysts to the Commission’s dismissal
6 of its request for interim relief. According to PSE’s web site, eleven analysts follow
7 PSE’s financial performance. *See* Attachment A. PSE fails to advise the Commission
8 what reaction – if any – the other seven analysts expressed. Petition at 16.

10 Second, the reactions of the four analysts cited do not support PSE’s claims of
11 “dire financial consequences” resulting from the Commission’s Order dismissing PSE’s
12 request for immediate relief. D.A. Davidson simply rates PSE “neutral.” *Id.* at
13 (unnumbered) p. 8. Moody’s has not changed PSE’s Baa3 issuer rating as a result of the
14 Commission’s dismissal, and its on-going review of PSE’s financial condition involves
15 many factors, including PSE’s “upcoming general rate proceeding.” Gaines Aff.,
16 Attachment 1, (unnumbered) p. 4. Standard & Poor’s (“S&P”) lowered PSE’s ratings
17 somewhat – but not to the “junk bond” status claimed by PSE (Petition at 2) – also based
18 on a variety of factors, including the slowing regional economy, job layoffs, and a
19 weakening economy. Gaines Aff., Attachment 1, (unnumbered) p. 2. S&P, however,
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22
23 ¹ PSE’s version of the facts must be taken as true for purposes of the parties’
24 Motions to Dismiss. However, it should be noted that the rating agencies issued their
25 revised statements about the need for regulatory support may have actually been inspired
by PSE following the “lengthy” telephone conference call hosted by PSE. Gaines Aff.
Attachment 1, (unnumbered) pp. 5, 6, 8.

1 noted offsetting factors, including PSE’s moderately low-risk distribution and utility
2 services, minimal industrial load exposure, efficiency measures, and cost-containment
3 efforts. Significantly for purposes of PSE’s request for interim relief in the form of a
4 power tracker, S&P optimistically noted: “The utility continues to consider ways to
5 reduce or renegotiate its historically high-priced purchase power contracts.” *Id.* While
6 opining that regulatory relief is needed, Merrill Lynch notes that a “full blown rate
7 review” is expected to begin on November 6. Gaines Aff., Attachment 1, (unnumbered)
8 p. 4-6.

10 The Commission’s dismissal of PSE’s request for interim relief thus has not
11 resulted in “dire financial consequences” from the perspective of the rating agencies. PSE
12 can renew its request for rate relief, including interim relief, when it files its general rate
13 case in November. At that time, the Commission will have a full record upon which to
14 base any necessary adjustments in PSE’s rates. Thus, there is no basis for revisiting the
15 Commission’s decision now, and PSE’s Petition should be denied.

18 **I. The Sixth Supplemental Order Is Consistent With State Law And Public**
19 **Policy Relating To The Financial Stability Of Utilities.**

20 In dismissing PSE’s request, the Commission properly applied the CR 50 standard
21 for dismissal of a proceeding at the conclusion of the plaintiff’s case. The Washington
22 Supreme Court very recently reaffirmed that a court, taking the evidence in the light most
23 favorable to the nonmoving party, may as a matter of law dismiss a complaint upon a
24 finding that there is “no substantial evidence or reasonable inference to sustain a verdict
25

1 for the nonmoving party." *Guijosa v. Wal-Mart Stores, Inc.*, 2001 LEXIS 630 (Wash.
2 2001). Similarly, the Commission may properly dismiss PSE's request upon reviewing
3 PSE's case-in-chief in the light most favorable to the Company. *See* WAC 480-09-
4 426(1).

5 PSE does not appear to disagree with the Commission's authority to dismiss its
6 request on these grounds, but rather complains that the Sixth Supplemental Order "fails to
7 recognize the gravity of the situation it addresses." Petition at 2. The statutory
8 requirement for "sufficient" rates does not guarantee PSE interim relief. *See* RCW
9 80.28.010(1). As discussed below, the facts before the Commission – even when taken in
10 the light most favorable to PSE – do not meet the standard for interim relief.

11 PSE's Petition is particularly unmeritorious since PSE has assured the
12 Commission that the Company will file a general rate case by November. (Merrill Lynch
13 notes that the general rate case is expected to commence on November 6.) At that time, if
14 PSE decides to renew its application for interim relief, the Commission will have a full
15 record of the Company's financial condition as well a power cost study upon which to
16 base its consideration. The Commission properly found PSE's current request for interim
17 relief was insufficient on its face, and PSE's Petition should be denied.

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21 **II. The Sixth Supplemental Order Applied The Correct Standard For Interim**
22 **Relief.**

23 PSE argues that the Commission misconstrued the standard for interim relief set
24 out in *WUTC v. Pacific Northwest Bell Telephone Co.*, Cause No. U-72-30, Second
25

1 Supplemental Order (Oct. 1972) (“*Pacific Northwest Bell*”). Petition at 10-13.² To the
2 contrary, the Order does not pose some “new evidentiary threshold” (Petition at 11), but
3 rather adheres closely to the *Pacific Northwest Bell* standard. *Pacific Northwest Bell*
4 permits the Commission to give appropriate weight to all “salient factors,” including (1)
5 whether an actual emergency exists or whether interim rates are needed to prevent gross
6 hardship or gross inequity; (2) the failure of the currently realized rate of return to equal
7 that approved (although this factor is not sufficient standing alone to justify interim relief);
8 (3) the company's financial indices; and (4) whether denial would cause clear jeopardy to
9 the utility and detriment to its ratepayers and stockholders. *Pacific Northwest Bell* teaches
10 further that interim rate relief is an “extraordinary remedy” and should not be granted in
11 any case where a full hearing can be had and the general rate increase case can be resolved
12 without clear detriment to the utility.
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15 In the Order, the Commission appropriately reviewed the “salient factors” and
16 concluded that PSE’s testimony failed to demonstrate the “urgency” of its petition. Order
17 at 7. The Commission found that PSE did not allege it had taken extraordinary steps to
18 preserve its financial integrity, that there was a specific major construction project for
19 which it was unable to obtain funding, that it would lose access to capital markets, or that
20 its return on equity would be below its authorized level. Order at 7-8.
21

22 These circumstances stand in sharp contrast to the facts of *WUTC v. Puget Sound*
23 *Power & Light Co.* 1980 Wash. UTC LEXIS 5 (1980) (“*Puget Sound Power*”), a case
24

25 ² Ironically, PSE does not argue for a strict application of the *Pacific Northwest Bell*
standards, but rather argues that *Pacific Northwest Bell* must be construed “broadly” to

1 upon which PSE mistakenly relies. In *Puget Sound Power*, the Company sought interim
2 relief as part of a general rate case. The Commission was able to review test-year data
3 with pro forma and restating adjustments. *Id.* at * 5. The Company demonstrated that
4 even with interim rates, its return on common equity would be eroded from the allowed
5 rate of 13 per cent down to about six per cent. *Id.* at *8. Most significantly, the
6 Company presented evidence that (1) \$20 million has been eliminated from the
7 Company’s annual construction program; (2) construction financing required first-
8 mortgage bonds, a common stock issue, or short-term borrowings; and (3) these forms of
9 financing would be adversely affected or impossible without additional revenues before
10 the general rate case. *Id.* at *5 – *6.

11
12 None of these circumstances are alleged by PSE in its present request for interim
13 relief. The Commission appropriately considered the relevant factors set out in *Pacific*
14 *Northwest Bell*, and PSE Petition should therefore be denied.

15
16 **III. The Sixth Supplemental Order Appropriately Distinguished The *Avista***
17 **Decision.**

18 PSE argues that it was deprived of an opportunity to respond to evidence referred
19 to in the Order relating to Sixth Supplemental Order, *In re Avista Corporation, d/b/a/*
20 *Avista Utilities*, Docket UE-010395 (September 24, 2001) (“*Avista*”). Petition at 13-14.
21 To the contrary, the Commission did not consider “evidence not in the record” (Petition at
22 13), but rather properly compared the allegations set forth in PSE’s filing – all of which
23 were taken as true – to the facts justifying relief in *Avista*. The Commission is entitled to
24

25 permit “greater flexibility” in light of today’s wholesale markets. Petition at 10.

1 distinguish prior decisions in the same way courts distinguish cases on the facts.
2 Differentiating PSE's request for interim relief based on the facts set out in *Avista* does
3 not place any new "evidence" in the record, but simply permits the Commission to
4 preserve consistency in its decisions.

5
6 **IV. The Commission Properly Rejected PSE's Petition For A "Power Cost Tracker."**

7 PSE complains that the Commission rejected its proposed power cost adjustment
8 mechanism without affording an alternative remedy. Petition at 14-15. PSE, however,
9 elected to stand by its petition for a tracker, declining the opportunity to seek other relief.
10 Based on the record before it, the Commission appropriately determined that a tracker
11 could not be supported in the absence of a power cost study. Order at 11.
12

13 PSE bears the burden of demonstrating the need for rate relief. *U S West*
14 *Communications, Inc. v. WUTC*, 143 Wn.2d 74 (1997). PSE failed to submit evidence to
15 support a tracker or any other type of interim rate relief. The Commission, therefore,
16 properly denied its request for a tracker, and PSE's Petition should be denied.

17 DATED this 19th day of October, 2001.

18 PRESTON GATES & ELLIS LLP

19
20
21 By _____
22 Carol S. Arnold, WSBA # 18474
23 Attorneys for Intervenors
24 City of Des Moines, City of Federal
25 Way, City of Kent, City of SeaTac, and
City of Tukwila

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the Cities' Opposition to Puget Sound Energy, Inc.'s Petition for Reconsideration upon all parties of record in this proceeding, as follows via U.S. mail:

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DATED: October _____, 2001.

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