

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

No. UE-151871 and UG-151872
(Consolidated)

**PUGET SOUND ENERGY'S MOTION
FOR LEAVE TO FILE A REPLY TO
THE SHEET METAL AND AIR
CONDITIONING CONTRACTORS
NATIONAL ASSOCIATION,
WESTERN WASHINGTON'S
RESPONSE IN SUPPORT OF
COMMISSION STAFF'S MOTION
FOR SUMMARY DETERMINATION**

1 Pursuant to WAC 480-07-370(d) and WAC 480-07-375, Puget Sound Energy ("PSE") respectfully requests leave to file a reply to Intervenor Sheet Metal and Air Conditioning Contractors National Association, Western Washington's ("SMACNA") response in support of Commission Staff's ("Staff") Motion for Summary Determination ("Motion"). Because SMACNA's response misstates the law and misrepresents the terms of PSE's proposed lease service, PSE requests leave to file a reply to SMACNA's response. PSE provides its proposed reply with this motion.

2 On July 13, 2016, Staff filed its Motion. On July 14, 2016, the Commission ordered that the parties may file a response to Staff's Motion by July 22, 2016. On July 20, 2016, SMACNA filed its response to Staff's Motion. On July 25, 2016, the Commission issued notice that it would likely not rule on Staff's Motion in advance of the hearing scheduled on August 1, 2016.

3 Good cause supports leave for PSE to file a reply. SMACNA's response supported Staff's Motion and contained additional arguments in support of Staff's Motion, including the citation of new alleged authorities. In effect, it amounted to a second motion for summary

determination against PSE. Given that Staff's Motion is a dispositive motion, it would be inequitable for PSE to not have the opportunity to respond to additional arguments advanced in support of Staff's Motion. This is particularly true since PSE believes that SMACNA has misstated the law and misrepresented the terms of PSE's proposed lease service.

4 For the reasons set forth above, PSE respectfully requests leave to file a reply in response to SMACNA's arguments. A proposed reply is attached to this motion.

Respectfully submitted this 27th day of July, 2016.

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ATTACHMENT

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I. INTRODUCTION

1 Puget Sound Energy ("PSE") responds to Intervenor Sheet Metal and Air Conditioning Contractors National Association, Western Washington's ("SMACNA") response in support of Commission Staff's ("Staff") Motion for Summary Determination ("Motion"), which in effect, also seeks summary determination of PSE's tariff schedules filed in the above-referenced dockets. Because SMACNA's response misstates the law and misrepresents the terms of PSE's proposed lease service, PSE responds accordingly. SMACNA's response provides no additional support for Staff's Motion and Staff's Motion should be denied.

II. ARGUMENT

A. The Commission And The Washington Supreme Court Have Already Determined That Leasing Is A Public Service Within The Jurisdiction Of A Public Utility

2 SMACNA's argument that leasing water heaters and furnaces is not a utility service suffers from similar flaws as Staff's Motion. SMACNA misinterprets RCW 80.04.010, particularly in light of the Commission and Washington Supreme Court decision in *Cole v.*

*Washington Utilities & Transportation Commission*¹ and other controlling statutes, and its reliance on WAC 480-100-223 is misplaced.

3 First, contrary to SMACNA's suggestion, RCW 80.04.010 actually *provides* that gas and/or electric plant "fixtures and personal property . . . owned, leased, controlled, used or to be used for or *in connection* with . . . the sale or furnishing of electricity for light, heat, or power,"² include water heaters and HVAC equipment. As discussed in PSE's response to Staff's Motion, in *Cole*, the Commission interpreted nearly identical language in the context of RCW 80.28.010, .020, .100, and determined that it includes water heating and HVAC equipment.³ The Commission stated that it has jurisdiction over "[a]ll charges . . . by any gas company, electrical company . . . for gas, electricity . . . or for any service rendered or to be rendered *in connection therewith*."⁴ The Commission explained further that it "has, by statute, been given jurisdiction and power to regulate rates, charges, rentals for the sale of gas, *or any service connected therewith*. Certainly, the furnishing of rented conversion burners or other appliances using gas *is a service directly connected with the sale of gas*."⁵ Thus, the Commission has already determined that it has jurisdiction over appliances connected to gas and electric service, which expressly include water heaters and HVAC equipment. The

¹ *Cole v. Wash. Utilities & Transp. Commission*, 79 Wn.2d 302, 485 P.2d 71 (1971) (en banc); *Cole v. Wash. Natural Gas Co.*, No. U-9621 (1968) ("Commission Proposed Order").

² RCW 80.04.010(11) (emphasis added). The gas equivalent is RCW 80.04.010(15).

³ Puget Sound Energy's Response to Staff's Motion for Summary Determination, ¶¶ 44-50 ("PSE Response").

⁴ PSE Response, ¶ 45; Commission Proposed Order at 15 (emphasis added); RCW 80.28.010(1).

⁵ PSE Response, ¶ 45; Commission Proposed Order at 15 (emphasis added); RCW 80.28.020, .100. As stated further by the Commission: "The Commission has statutory jurisdiction and general powers and the duty to regulate utility practices including and specifically rental charges and any service rendered in connection with gas sales. . . . The Commission is given jurisdiction to regulate rates and charges for supply gas or for any service in connection therewith, including the service of renting gas appliances and rates and charges therefore. Therefore, the terms of the rental contract would fall within the Commission jurisdiction and responsibilities." PSE Response, ¶ 45; Commission Proposed Order at 15, 20; RCW 80.28.020, .100.

Washington Supreme Court upheld this ruling, including the Commission’s determination that it has authority over “leasing of appliances.”⁶

4 Second, in its response to Staff’s Motion, PSE has already sufficiently addressed the argument that unless a utility engages in load building, leasing is impermissible.⁷ In short, load building has never been cited as a prerequisite to leasing by any Commission decision, court, or statute, and leasing has been upheld in a variety of contexts where load building was not the motivation.⁸ The Supreme Court in *Cole* upheld leasing as an appropriate activity by a regulated utility and certainly did not hold that load-building is a requirement for a utility to engage in leasing as SMACNA suggests.⁹

5 Third, SMACNA seems to be arguing that WAC 480-100-223, which concerns *expenses* for promotional activities, somehow bears on whether a public utility can offer a leasing service. Importantly, WAC 480-100-223 does not restrict or prohibit promotional activities, but rather simply limits the expenses a utility can recover associated with various “promotional or political advertising.”¹⁰ To the extent SMACNA is suggesting that this regulation prohibits leasing or somehow bears on the Supreme Court’s decision in *Cole*, SMACNA grossly overstates the regulation as it contains no such prohibition. And notably, the provision does not exclude advertising “which informs customers how to conserve energy or how to reduce peak demand for energy,”¹¹ “which promotes the use of energy efficient appliances, equipment, or services,”¹² or “[a]nnouncements or explanations of existing or

⁶ *Cole*, 79 Wn.2d at 309.

⁷ PSE Response, ¶¶ 39, 42, 49.

⁸ *Id.*

⁹ *Cole*, 79 Wn.2d at 308-09.

¹⁰ WAC 480-100-223(1).

¹¹ WAC 480-100-223(2)(a).

¹² WAC 480-100-223(2)(e).

proposed tariffs or rate schedules.”¹³ Thus, SMACNA impermissibly stretches both the purpose and bounds of what WAC 480-100-223 is intended to proscribe.

6 Finally, SMACNA argues that the Commission must articulate a specific policy before a public utility may engage in leasing (and presumably any other activity). Neither the statutes that list leasing as a utility activity regulated by the Commission, nor the Washington Supreme Court’s decision in *Cole*, requires the Commission to articulate a specific policy before a public utility engages in leasing. But even if the leasing service must support an articulated policy, both the Legislature and the Commission have stated the important policy of encouraging the efficient use of natural gas and electricity, which the leasing program will do. Specifically, the Legislature has authorized the Commission to adopt policies to encourage utility investment in programs that improve the energy efficiency of end-use equipment.¹⁴ Further, the Commission recently encouraged “incumbent utilities to develop a strategy and business plan to compete more fully in the distributed energy resources market.”¹⁵ PSE’s leasing proposal is a direct response to the Commission’s directive.¹⁶ Given that PSE’s proposed service is designed to address a significant market gap of too many inefficient appliances currently in use, provide an affordable way for customers to transition to energy efficient equipment, provide a platform for PSE to offer and test additional energy efficient

¹³ WAC 480-100-223(2)(f).

¹⁴ RCW 80.28.260(2) (“The Commission shall consider and may adopt a policy allowing an incentive rate of return on investment in additional programs *to improve the efficiency of energy end use or other incentive policies to encourage utility investment in such programs.*”) (emphasis added); *see also* *WUTC v. PSE*, Docket UE-060266 & UG-060267, Order 08, ¶¶ 53-69 (Jan. 5, 2007) (recognizing the important policy of conservation and noting that decoupling is just one regulatory tool in a larger toolbox of devices the Commission might use to promote conservation).

¹⁵ *In re Amending and Repealing Rules in WAC 480-108 Relating to Electric Companies-Interconnection With Electric Generators*, Docket UE-112133, Interpretive Statement Concerning Commission Jurisdiction and Regulation of Third-Party Owners of Net Metering Facilities, p. 33-34 n. 100 (July 30, 2014).

¹⁶ Norton, Exh. No. ___ (LYN-1T), at 5:3-11.

products and services in the future, while further diversifying PSE's revenue streams,¹⁷ the proposed service contains numerous indisputably valid policy justifications and purposes. To suggest that PSE needs a new express legislative or Commission directive before it can engage in a service requested by customers, much less an already statutorily-approved utility service (where PSE has leased similar equipment to customers for over fifty years), is inconsistent with utility practice and finds no support in the law.

B. PSE Has Demonstrated That The Proposed Rates Are Fair, Just, Reasonable, and, Sufficient

7 As stated in its response to Staff's Motion, PSE's rates were prepared using actual costs for the services offered in PSE's tariff by actual licensed Washington contractors.¹⁸ Further, PSE's methodology and process for preparing and setting rates have been fully set forth and have been available for review by all parties for months. Contrary to SMACNA's suggestion, PSE is not attempting to meet its burden of proof after the proceeding is over. Rather, the terms and provisions of the proposed service are contained in PSE's tariff and PSE fully stands by those terms. Any additional commitments would simply go above and beyond what is required for the rates and terms of the tariff to be just, fair, reasonable and sufficient.

III. CONCLUSION

8 SMACNA's response to Staff's Motion for Summary Determination provides no added authority in support of Staff's Motion and suffers from several of the same flaws. PSE respectfully requests that the Commission deny Staff's Motion for Summary Determination.

¹⁷ PSE Response, ¶¶ 11, 42.

¹⁸ *Id.* ¶¶ 15, 58, 61, 64.

Respectfully submitted this 27th day of July, 2016.

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