

**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
PUBLIC COUNSEL'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 Public Counsel's response in support of Commission Staff's ("Staff") Motion for Summary Determination ("Motion"). Because Public Counsel's response misstates the law and misrepresents the terms of PSE's proposed lease service, PSE requests leave to file a reply to Public Counsel'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 22, 2016, Public Counsel filed its response in support of 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. Public Counsel'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 Public Counsel 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 Public Counsel's arguments. A proposed reply is attached to this motion.

Respectfully submitted this 29th day of July, 2016.

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ATTACHMENT

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I. INTRODUCTION

1 Puget Sound Energy (“PSE”) responds to Public Counsel’s response in support of Commission Staff’s (“Staff”) Motion for Summary Determination (“Motion”). Like Staff, Public Counsel’s response fails to cite any controlling authority for the proposition that leasing is not an appropriate service by a regulated utility, and like Staff, Public Counsel fails to address the governing Washington Supreme Court case on the subject. Further, though not binding authority, the factors in the Commission’s 2014 Interpretive Statement all actually favor PSE, further confirming that PSE’s proposed leasing service is appropriate. Finally, PSE has demonstrated that its rates are fair, just, reasonable, and sufficient.

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 Public Counsel’s argument that leasing is not a regulated service fares no better than Staff’s. Like Staff, Public Counsel fails to address (or mention) the Commission and Washington Supreme Court decision in *Cole v. Washington Utilities & Transportation Commission*, 79 Wn.2d 302 (1971), where the Commission and Supreme Court upheld an

equipment leasing program, similar to the service proposed by PSE today.¹ Instead, Public Counsel relies on a case from 1918 addressing whether nineteenth-century taxicabs are common carriers, and a non-binding Commission interpretive statement. Neither overcome *Cole* and the mandate from the Commission and the Supreme Court upholding the appropriateness of leasing as a regulated activity.²

3 Instead of addressing the Washington Supreme Court case that actually analyzed whether a public utility can implement an equipment leasing program (*Cole*), Public Counsel diverts the Commission to *Cushing v. White*, 101 Wash. 172 (1918). In that case, the issue was whether an automobile transportation business (essentially a taxicab) was subject to common carrier laws.³ The Court held that whether the activity constituted a common carrier depended on the “character of the business actually carried on by the carrier, and not by any secret intention or mental reservation it may entertain or assert.”⁴ Nowhere does *Cushing* or any other authority cited by Public Counsel indicate that this test applies to public utilities in the context of the present case. But even if it did, the Commission and Washington Supreme Court have already determined that the character of PSE’s proposal, water heating and HVAC equipment lease services, can appropriately be offered by a regulated utility.⁵

4 Next, given that Commission interpretive statements are not law and are “advisory only,”⁶ Public Counsel’s argument that the factors from 2014 Interpretive Statement⁷ provide determinative authority as whether leasing is a utility service is incorrect since “[t]hey do not

¹ The Commission case is *Cole v. Wash. Natural Gas Co.*, No. U-9621 (1968) (“Commission Proposed Order”).

² Puget Sound Energy’s Response to Staff’s Motion for Summary Determination, ¶¶ 26-50 (“PSE Response”).

³ 101 Wash. at 173.

⁴ *Id.* at 181-82.

⁵ PSE Response, ¶¶ 26-50.

⁶ RCW 34.05.230(1) (“Current interpretive and policy statements are advisory only.”).

⁷ *In the Matter of Amending and Repealing Rules in WAC 480-108 Relating to Electric Companies – Interconnection with Electric Generators*, Docket No. UE-112133, Interpretive Statement Concerning Commission Jurisdiction and Regulation of Third Party Owners of Net Metering Facilities (July 30, 2014).

set forth immutable doctrine.”⁸ Regardless, the factors from the 2014 Interpretive Statement favor PSE and further reinforce the appropriateness of PSE’s proposed leasing service as a regulated activity.

5 First, unlike Staff, who did not even attempt to argue that PSE’s program fails because it is not offered to all of its customers,⁹ Public Counsel makes this argument despite clear evidence to the contrary. As PSE has stated repeatedly, PSE’s leasing service is available to all customers who can overcome a very basic credit check tied to the customer’s bill history with PSE.¹⁰ Unlike other financing options in the marketplace that can require demanding pre-approval and credit worthiness requirements,¹¹ PSE’s service is specifically designed to provide an affordable way for customers to obtain energy efficient water heating and household heating options, with full maintenance and warranty, without significant up-front capital costs and burdensome credit requirements.¹² Virtually any customer who pays their PSE utility bill on time can take advantage of the program.¹³

6 Public Counsel also argues that PSE’s program is not offered to the public because under the program, only homeowners can enter into an equipment lease. But this requirement (which exists for obvious reasons), does not change the fact that the program is available to the public. There is nothing inappropriate with placing basic prerequisites on a public service. Indeed, electric or gas utility service is predicated on the customer paying for the service and failure to do so results in the termination of service. This, of course, does not change the fact

⁸ *In re Petition of PSE and NVEC For an Order Authorizing PSE To Implement Electric and Natural Gas Decoupling Mechanisms and To Record Accounting Entries Associated With the Mechanisms*, Dockets UE-121697 & UG-121705, Order 07, ¶ 95 (June 25, 2013).

⁹ Commission Staff Motion for Summary Determination, ¶ 20 (“Motion”).

¹⁰ Teller, Exh. No. ___ (JET-1T), at 4:4, 10:19-21; Faruqui, Exh. No. ___ (AF4T), at 13:13-14.

¹¹ Faruqui, Exh. No. ___ (AF-4T), at 11:12-12:2.

¹² Teller, Exh. No. ___ (JET-1T), at 10:11-11:6; Norton, Exh. No. ___ (LYN-1T), at 10:13-11:16; Faruqui, Exh. No. ___ (AF-1T), at 14:12-15:9.

¹³ Teller, Exh. No. ___ (JET-1T), at 4:21-5:14, 10:19-21.

that the service is offered to the public. The fact that a customer may choose to rent a home instead of buying one does not change that the service is publicly available. Furthermore, Public Counsel has not provided any authority for the proposition that in order to be a regulated service, all customers must participate in the service. There are numerous examples where PSE and other utilities have offered optional programs that not all customers choose to or qualify to participate in, including but not limited to PSE's optional existing lease service that has been in operation for over fifty years, or its current lighting rental program.¹⁴ PSE's proposed service is available to all customers and this factor favors PSE. Further, to the extent parties disagree about this, this is a factual issue not appropriate for determination on a motion for summary determination.

7 Second, as addressed in PSE's response to Staff's Motion, Public Counsel's argument that PSE's proposed leasing service should not be permitted because PSE does not have a monopoly over equipment sales or financing fails. PSE is not selling or offering financing. PSE is offering a leasing service that is not currently being provided by any party in the marketplace in response to significant customer demand and market interest.¹⁵ Further, market research demonstrates a market gap where customers are using outdated equipment and technologies.¹⁶ PSE's service is specifically tailored to address this gap in response to

¹⁴ PSE Response, ¶ 48. Other examples of PSE programs that are either not offered to all customers or all customers choose not to participate include, but are not limited to, Schedule 150 (Net Metering Services for Customer Generator Systems); Schedule 7A (Master Metered Residential Service); Schedules 35 and 29 (Seasonal Irrigation & Drainage Pumping Service); Schedule 43 (Interruptible Primary Service for Total-Electric Schools); Schedule 93 (Voluntary Load Curtailment Rider); Schedule 194 (Residential and Farm Energy Exchange Benefit); Schedule 195 (Electric Vehicle Charger Incentive); Schedule 136 (Large Volume Green Energy Purchase Rider); Schedule 61 (Special Standby and Auxiliary Heating Service); Schedule 307 (Extension of Distribution Facilities – Pilots); Schedule 54 Optional Gas Compression Service); Schedule 50 (Emergency Compressed Natural Gas Service); Schedule 53 (Propane Service); and Schedule 41 (Large Volume High Load Factor Gas Service).

¹⁵ PSE Response, ¶ 53.

¹⁶ *Id.* ¶ 54.

current market options that are failing to remedy this issue.¹⁷ The types of equipment PSE currently seeks to lease have a direct impact on energy consumption and efficiency. Improving the relationship between the customer and utility through new technologies (e.g., better equipment technologies and Demand Response), and improving system-wide efficiency, is a concern that PSE is uniquely situated to address. Current market participants have no incentive to be concerned about regional energy efficiency on the whole. Since virtually all PSE customers use water heating and HVAC equipment, providing an alternative market option on a household-by-household basis that is not currently available in the market that can achieve the purposes discussed above could have a significant transformational impact on the marketplace.¹⁸ Thus, PSE's role in the marketplace is a unique one that no party aside from PSE can fill. Again, to the extent the parties dispute PSE's role in the marketplace and current market dynamics, this is a factual issue that cannot be determined on summary determination.

8 Finally, given the above, PSE's unique ability to address the market demonstrates that leasing is an appropriate activity by a regulated company. It is entirely appropriate for the Commission to oversee PSE's program to ensure that the stated purposes of the program are being achieved and that customers are protected. PSE also disagrees with Public Counsel's assertion that leasing is not "essential."¹⁹ While leasing may not be as "essential" as having electricity, PSE believes that leasing will be an important mechanism by which PSE can introduce more efficient equipment into the marketplace, provide an affordable way for

¹⁷ *Id.*

¹⁸ See Norton, Exh. No. ____ (LYN-1T), at 3:5-8:14; 14:11-15:2; 28:1-30:8.

¹⁹ Public Counsel Response to Staff's Motion for Summary Determination, ¶ 8 ("Public Counsel Response").

customers to acquire new equipment, diversify PSE’s revenue streams, and provide a platform for introducing additional technologies.²⁰ This last factor also favors PSE.

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

9 In its response to Staff’s motion, PSE has already demonstrated that its proposed rates are fair, just, reasonable, and sufficient.²¹ Public Counsel’s assertion that PSE’s tariff fails to “assign[] cost based . . . on actual products and services that it will offer to customers”²² is simply incorrect. To be clear, PSE’s rates were set using actual equipment and installation costs, provided by actual licensed Washington service providers, for the actual services provided in the tariff.²³ There is nothing inherently wrong with PSE’s use of averages to compute a service rate based on actual costs, particularly for a proposed service not even in operation yet. Nor has Public Counsel demonstrated how the rates themselves are not fair, just, reasonable, or sufficient. Since under PSE’s service, for a given product, all customers will be receiving the same equipment and the same services for the same monthly rate,²⁴ PSE’s pricing model ensures uniformity and fairness across all customers, which demonstrates that PSE’s rates are fair, just, reasonable and sufficient. Moreover, these issues are all factual and cannot be determined on a motion for summary determination.

10 Finally, as stated in its response to Staff’s Motion, PSE’s offer to refresh rates is nothing more than an offer to further confirm rates set in its tariff, but it stands by the rates currently listed in the tariff.²⁵

²⁰ PSE Response, ¶ 11.

²¹ *Id.* ¶¶ 57-66.

²² Public Counsel Response, ¶ 9.

²³ PSE Response, ¶¶ 15, 58.

²⁴ McCulloch, Exh. No. ____ (MBM-7THC), at 9:1-7.

²⁵ PSE Response, ¶ 61.

III. CONCLUSION

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For the reasons set forth above, Public Counsel's arguments do not support dismissal of PSE's case, and Staff's Motion for Summary Determination should be denied.

Respectfully submitted this 29th day of July, 2016.

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