BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION Complainant, v. PUGET SOUND ENERGY, INC., Respondent, ...	)	DOCKET NO. UE-011163
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 SEVENTH SUPPLEMENTAL ORDER ORDER DENYING RECONSIDERATION OR REHEARING

1 **Synopsis**: The Commission denies a motion by Puget Sound Energy (PSE) to reconsider the dismissal or to grant rehearing of two consolidated dockets in which PSE sought expedited rate relief. The Commission encourages the Company, if it sees a need for relief, to bring evidence of its need to the Commission for review in a general rate proceeding, in an interim proceeding in conjunction with a general rate filing, or in an extraordinary rate proceeding.

2 **Procedural history:** PSE filed Docket No. UE-011170 on August 21, 2001. It is a petition for an accounting order allowing the Company to track its actual power costs in a way that would enable it, upon Commission approval, to pass to customers the increases or reductions in its cost of acquiring the power it sells to its customers. Docket No. UE-011163 is a tariff rider, filed on the same day but to become effective on November 1, 2001. It would pass on to customers the estimated prospective power costs tracked in the accounting mechanism requested in Docket No. UE-011170. The proposed increase is approximately 18%, or approximately $84 million annually.

3 The Commission convened prehearing conferences in this matter on September 4, 2001, and September 18, 2001. Public Counsel moved to dismiss the dockets on September 4, 2001. Parties agreed at the conference on a procedural schedule to consider the motion. The Commission entered its Sixth Supplemental Order on October 4, 2001, dismissing the dockets for lack of a showing of need in the Company's filing and supporting materials but inviting the Company to return when it could show a need for the requested relief.

4 The Company on October 12, 2001, petitioned for reconsideration or rehearing of the order of dismissal. Other parties answered on October 19, 2001.

5 **Participation:** The following parties participated in the petition for reconsideration or the answers: Puget Sound Energy, by Markham A. Quehrn and Kirstin Dodge, attorneys, Bellevue; Industrial Customers of Northwest Utilities (ICNU), by Bradley Van Cleve, attorney, Portland, Oregon; the City of Tukwila, et al., by Carol S. Arnold, attorney, Seattle; King County, by Donald Woodworth, deputy prosecuting attorney, Seattle; Public Counsel, by Simon ffitch, assistant attorney general, Seattle; and the Commission Staff, by Shannon Smith and Robert D. Cedarbaum, assistant attorneys general, Olympia.

6 **Summary:** The Commission denies PSE's motion for reconsideration or rehearing. The dismissals are without prejudice to refiling, and the Commission repeats the invitation to the Company that when it believes that it meets the standards for the relief it seeks, and can present evidence demonstrating its need, it bring the matter to the Commission for review.

MEMORANDUM

7 The matter at issue here is a petition by Puget Sound Energy for reconsideration or rehearing of the Sixth Supplemental Order, dismissing these dockets for lack of a sufficient showing in the pleadings and supporting materials that the Company was entitled to the relief that it sought.

8 The Company poses several challenges to our Order. We will address each of the challenges. We begin, however, by emphasizing three points.

9 First, the only reason for our dismissals of PSE's dockets was that it failed to allege in its pleadings or to support in its filed evidence any set of facts that could conceivably entitle it to the relief that it requested. It was pointless under those circumstances to put the Company, the Commission, and the other parties, to the expense and the delay of an oral hearing that would have led to the same result.

10 Second, the Commission repeatedly in the Sixth Supplemental Order stated its willingness to take up the matter again, when the Company believes that it meets the

tests for the relief it seeks and when its evidence supports that need. The Commission repeats that willingness.

11 Third, it is painfully clear in the Company's petition for reconsideration or rehearing and in the accompanying reviews of institutional evaluators that the Company selectively and inaccurately read the clear language of the order, that it misinterpreted the order's effect. It failed to see the clear indications in the procedural aspects of these proceedings and in the order that the Commission is and remains willing to consider – and to grant, where appropriate – relief, when the requesting company demonstrates that its actual circumstances meet the appropriate test for that relief.

12 The Company alleges in introducing its petition for reconsideration or rehearing that the order fails to recognize the gravity of PSE's situation and that the Commission has left it and another regional electricity supplier facing insolvency.

13 Public Counsel opposed the motion for reconsideration or rehearing. Public Counsel contends that PSE has not met the tests for achieving reconsideration or rehearing, that it merely reargues points that it raised earlier without success, and that it therefore provides no basis for the relief it requests. Public Counsel adds that to the extent that rehearing is discretionary, PSE's petition fails to provide the Commission with a reason to exercise that discretion. King County also answered the petition, supporting the responses of other parties in opposition to the Company's motion.

14 The Commission Staff responds that the petition insults the Commission's firm resolve, disregards PSE's obligation to demonstrate need for rate relief, and ignores the repeated and substantial efforts that the Commission did make to accommodate PSE's contention. Commission Staff points out that the Commission set an accelerated procedural schedule over other parties' objections, despite the controversy that PSE provoked through its request for a PCA without meeting the standards required for one; that the Commission allowed the matter to proceed despite contrary provisions of the merger order and precedent; and that the Commission dismissed the proceeding without prejudice to its refiling with sufficient evidence to meet the pertinent tests. PSE, states the Staff, has ignored all of the accommodations and options that the Commission has offered and has chosen to blame the Commission for its own failures.

15 The Commission observes that PSE's petition inaccurately construes and inaccurately describes the Commission's actions and the Commission's statements in the Sixth Supplemental Order. As skillfully analyzed by Commission staff, in more than a dozen instances PSE draws logical fallacies from the words of our order, then relies on these fallacies to support its petition. PSE supplied *no* evidence that any level of rates is necessary to avert any pressing or immediate harm to the Company. If PSE had such information, it failed to present it with its request for interim relief. PSE's financial indicators, PSE's actions, and the *actions* of ratings analysts (as opposed to

their rhetoric) that are described in its petition for reconsideration do not depict a company on the verge of insolvency. The exact evidence that PSE presented to the Commission is protected by its claim of confidentiality, so the Commission cannot recite it. If the Company has given different information to the ratings agencies to support their comments, it should share that information with the Commission in an appropriate procedural context to support the relief that it seeks. We are concerned that PSE's inaccurate representations of the Commission's order and its allegations of regulatory mistreatment have the potential to endanger not only the Company's own financial situation but also that of other companies in the state.

16 We repeat what we stated in the Sixth Supplemental Order. We *are* concerned about the volatility of the environment in which Washington's electric utilities must operate. If the Company is experiencing hardship to the degree that it requires extraordinary relief, it should approach the Commission and demonstrate its need. Our orders in this docket make no finding about PSE's financial condition or its need for rate relief. We find only that PSE has failed to present information that it meets *any* established test for extraordinary relief. The Company is free to approach the Commission with a request for interim relief in a future general rate proceeding, and it is free to file a request for extraordinary relief outside of a general rate filing. But if PSE expects to succeed, it must present evidence that demonstrates that its actual condition meets the standards for the relief that it requests.[1]

Petition for Reconsideration.

17 The Company asks both for reconsideration and for rehearing. We begin the discussion of reconsideration by noting the statutory and regulatory bases for the motion.

18 Reconsideration is allowed by RCW 34.05.470. The test stated in Commission rule for reconsideration is whether the challenged order is either erroneous or incomplete. WAC 480-09-810(3).

Ground No. 1 - The Order Is Contrary to Law and Public Policy.

19 PSE begins its challenge to the order by contending that it does not conform with state law or policy regarding regulatory treatment. It contends that the Commission has acknowledged that drought and wholesale market volatility are beyond the utilities' control and result in unprecedented financial needs. PSE argues that the

[1] As we noted in the Sixth Supplemental Order, the Company has committed on the record in this docket and in other venues that it will file a general rate increase request during November of this year. Regardless of the nature of its filing, if PSE wishes to pursue a power cost adjustment as a remedy for its current circumstances, it needs to support its position with evidence tantamount to that required to support a general rate case.

order concludes that PSE's needs are not critical and PSE says that the Commission refuses to grant relief until after a crisis has occurred. PSE argues that the order errs in an assumption that putting the burden of power costs exclusively on PSE protects customers; PSE states that the result would cause them to bear higher capital costs and is inconsistent with the requirements for a financially sound utility. PSE states that the Commission must balance the interests of investors and ratepayers, and contends that no one benefits when financial crises increase costs of service and reduce quality of service. PSE argues that its financial stability is threatened by the result of poor hydro and volatile wholesale energy markets. PSE argues that Federal regulation has adversely affected the energy market and has driven Pacific Gas & Electric into bankruptcy. The Company urges that the Commission should make every effort to provide its regulated companies the financial support they need. PSE states that the order requires that utilities suffer great financial harm before relief is granted.

20 The Commission Staff responds that the order is lawful, proper, and consistent with sound public policy. Staff argues that the Commission properly applied pertinent standards, but that PSE failed to prove that it is entitled to relief under pertinent statutes and standards. Staff contends that PSE is urging the Commission, upon a company's mere allegation that it faces poor hydro conditions and volatile power costs, to disregard its statutory obligation to set just and reasonable rates. The true standard, Staff continues, is that a company must demonstrate need for relief, and it did not do so here. The Company failed to offer enough information for the Commission to determine whether *any* level of rates would be fair, just, or reasonable.

21 Commission Staff points out that PSE's statement that the order requires utilities to suffer great harm before entitlement to relief is wrong: the order clearly states that prior harm is not required, and the order applies the proper standards – clear jeopardy, detriment to ratepayers, shown in circumstances proved imminent or foreseeable with certainty. Staff notes that PSE, in stating that a company must show critical need or dire circumstances, and that PSE's citation to the order is both incomplete and misleading. The Commission did not raise the standard. It merely pointed out that Avista exceeded the standard in its recent request for extraordinary relief[2], while PSE fell short of it.

22 Public Counsel, the Cities, and ICNU speak in support of the order, arguing that PSE has failed to meet its burden of demonstrating a basis for reconsideration.

23 The Commission finds that PSE has not demonstrated grounds to reconsider the order. PSE does not show error in the order and does not show that the order is

[2] Docket No. UE-010395, *In re Avista Corporation Request for Recovery of Power Costs Through a Deferral Mechanism*, Sixth Supplemental Order.

incomplete. PSE does mis-state the order, however. The order does not conclude that PSE's needs are not critical. The order says only that PSE *did not establish* that its needs are critical, which accurately reflects the information that PSE provided to the Commission. In short, PSE cites to nothing that supports its claim that the order is contrary to law or public policy.

Ground No. 2 – The Order Erroneously Applies the PNB Standard.

24 PSE alleges that the Sixth Supplemental Order misinterprets the standard for relief established in a 1972 Commission order[3] in a matter involving Pacific Northwest Bell Telephone Company, the predecessor in Washington State of Qwest Communications. The Commission cited and reviewed six standards described in that order as tests for determining whether or not to grant interim rate relief while a rate case is pending. PSE relied heavily on the PNB order and the standards it sets out to support its petition for extraordinary relief. PSE argues that instead of following the PNB standards, the Sixth Supplemental Order erroneously established a higher standard for application to PSE. PSE charges that the new standard requires a showing that a utility can't get financing at any cost; that a utility must take extraordinary steps to preserve its financial integrity; that a utility must be at the point of losing access to its financial markets; and that a utility must have a negative rate of return, in order to qualify for interim rate relief.

25 The Commission Staff takes issue with the Company's contentions. It states that the Company is wrong when it contends that the Commission misapplied the standards. Commission Staff points out that the Sixth Supplemental Order addresses in detail each of the PNB standards. It points out that interim relief is highly unusual under the PNB standards and is to be granted only when necessary to avoid gross hardship or gross inequity. Commission Staff urges that the Commission must not apply the standards so loosely that it diminishes the extraordinary and unusual nature of the interim rate relief remedy. Staff points out that PSE defines the PNB criteria selectively and omits language in a way to create a new criterion, which would require emergency relief whenever a company faces uncertain power supply costs associated with wholesale market restructuring.

26 Commission Staff points out that PSE is wrong when it contends that the order requires a utility to show that it cannot obtain financing at any cost as a prerequisite for emergency relief. Instead, the Commission said only that PSE's mere contention that it would be unable to obtain financing in the future at unspecified "reasonable" rates was insufficient to demonstrate need for extraordinary relief. Staff points out that the order did not say, as PSE argues it did, that a utility must take extraordinary steps to preserve its financial integrity before it may receive extraordinary relief.

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[3] *WUTC v. Pacific Northwest Bell Telephone Company, Cause No. U-72-30, Second Supplemental Order (October 1972).*

Rather, the order merely noted steps that Avista took that lent credibility to Avista's claim of need. Neither did the Commission order require that a company face loss of access to capital markets before it becomes eligible for extraordinary relief. Merely because Avista demonstrated that circumstance does not make it a requirement for all companies. Staff points out that, contrary to PSE's contention, the order did not require a demonstration of a negative rate of return, but only noted that Avista demonstrated that dire circumstance. PSE supports its request for extraordinary relief merely with the contention that, without it, the company may not meet its authorized rate of return. The Commission did not disregard that concern, but noted that it is of a type that may be addressed in a general rate case. Commission Staff concludes that the Commission properly applied the PNB standards to PSE and properly held that the company did not satisfy the criteria.

27 The Cities and ICNU support the order, and they contend that the Commission cited to the proper standards and that it applied them properly.

28 The Commission first observes that the Company's request is not one for interim relief. By definition, "interim" relief is confined to the interim period between the filing of a general rate case and the resolution of that filing. In addressing Avista's request for urgent relief outside a general rate proceeding, we termed it to be "extraordinary relief." As we explained in the Sixth Supplemental Order, the test for extraordinary relief is not necessarily higher, but it is different in its surrounding circumstances. Extraordinary relief is sought outside of the broad spectrum of information that a company would present in support of a general rate filing. Consequently, a request for extraordinary relief will not always be accompanied by information about company operations that might be available to support an interim filing. A grant of interim relief is also made within a statutory deadline for ultimate Commission resolution of the underlying rate case.[4] Nonetheless, the Commission stated that the PNB criteria are useful factors to consider when reviewing a request for extraordinary relief outside a rate case.

29 The Commission found that the Company met none of the six tests for interim relief stated in the PNB order, and the references to Avista were to illustrate, not to define those tests. PSE cannot merely allege "unreasonable expense" but must demonstrate what the expense is, why it is unreasonable, what its consequences are and when they will be suffered, and why the requested relief is appropriate under pertinent tests. The Sixth Supplemental Order simply determined that the quality and the quantity of information PSE produced in support of its request failed to show that PSE met any of the six PNB tests.

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[4] We stated in the Sixth Supplemental Order that a request for extraordinary relief must provide a clear showing of the adverse consequences that will reasonably flow from the lack of the relief requested, and must demonstrate why relief in a general rate case, or in an interim request associated with a general rate case, would be inadequate to protect the company and its ratepayers from severe financial consequences.

Ground No. 3 – The Order Relied on Facts Outside the Record.

30 The Company argues that the Sixth Supplemental Order is procedurally in error because it relies on facts not in evidence in the proceeding, by considering evidence presented by Avista to the Commission in another docket.

31 ICNU responds that this contention is absurd. Both ICNU and the Cities state that the references are proper and note that the references to Avista were merely to contrast PSE's presentation with that of a company that recently demonstrated need for relief of the sort requested, to distinguish the facts of the two proceedings.

32 Commission Staff observes that PSE's contentions that the Commission relied on evidence outside the record are simply and completely wrong. Staff, too, points out that the Sixth Supplemental Order merely compared PSE's contentions of need with information presented in a recent proceeding in which the Commission granted the kind of relief PSE requested, and distinguished the two requests on factual grounds. Staff contends that this is a practice undertaken every day, which is clearly lawful, violates no party's rights, and is a practice that PSE itself used in this docket.

33 The Commission rejects PSE's contention. The Commission did not use the circumstances described in the Avista order as facts to support its PSE decision. Instead it used the information to contrast PSE's circumstances, as reflected in its pleadings and supporting information, with circumstances in which the Commission in another docket found relief to be necessary. When describing what is "not enough" evidence, it helps to point out what *is* "enough" evidence to meet a particular legal standard. The comparison does not mean, however, that the Commission relied on Avista's facts or that Puget must show those very same facts in order to get relief. Avista's direct filing was received into evidence in the Avista docket and was referenced in the Avista order. The Avista discussion does not put any new facts in the record about *PSE's* need or *PSE's* lack of need for relief.

Ground No. 4 -- The Order Misconstrues the Scope of the Commission's Authority to Provide Appropriate Immediate Relief.

34 PSE argues in support of its fourth stated ground for reconsideration that the Commission can grant an immediate fixed surcharge while it considers need for a power cost adjustment. PSE argues that these are still options in the alternative to dismissal without a hearing. PSE argues that it wrote to the ALJ suggesting a two-stage process.

35 Commission Staff responds that the Company chose a PCA as its approach to emergency rate relief, and the Company refused to provide supporting information for that approach, contending that it need not do so under its view of applicable

standards. The Staff and others opposed the Company's suggestion. The Company produced almost no information to support its proposal, and did nothing to cure the problems inherent in the case that it did present. Commission staff argues that the Commission made it clear that the Company can re-file for extraordinary or interim relief, and therefore the current insufficient proposal should be rejected in any form.

36 The Commission denies reconsideration on this ground. The Commission did not misconstrue anything. PSE merely argues here that there may be other ways in which PSE could have prosecuted a proposal. That is true, but it does nothing to establish Commission error. The Company failed to present evidence of need for a fixed surcharge. While the company suggested the possibility of a fixed rate surcharge in correspondence offered for the purpose of resolving scheduling disputes, it did not make any revision to its filing, did not demonstrate the need for a level of rates, did not pursue this proposal in later scheduling discussions, and continued actively to pursue its inconsistent contention that because it was seeking a power cost adjustment to quell its emergency it need not prove need for a specific level of rates. The Commission did not commit error in failing to impose an alternative theory or an alternative schedule.

Petition for Rehearing: A Claim of Subsequent Injury.

37 Rehearing is provided for in RCW 80.04.200. The tests include whether the order produced a result injuriously affecting the petitioner that was not considered or anticipated at the former hearing, whether conditions have changed, or whether there is any good and sufficient cause for rehearing that for any reason was not considered and determined in the prior hearing.

38 PSE argues that its share value has fallen by almost $220 million since the date of the order. It contends that rating agencies have expressed grave concerns as to PSE's financial condition as a result of the order, and it presents public statements of four analysts in support of this contention. PSE states that it warned the Commission that without rate relief, its securities would be reviewed and might be downgraded.

39 Commission Staff opposes rehearing. It argues that there is no evidence that the four cited rating analysts relied on anything other than the Company's representations about the order. There is no indication that the agencies understood that the problem was Puget's failure to present supporting evidence. Instead, Staff contends, there are unfounded accusations of a hostile regulatory environment. Staff argues that the rating publications do not support the request for rehearing. Rather, these publications demonstrate that the Company is paying all of its current dividend, thus placing all risk of market volatility upon ratepayers. The rating agencies are no substitute for an actual analysis of real financial information provided by PSE. Staff concludes that there is no demonstration of grounds for rehearing.

40 Public Counsel opposes the Company's motion for rehearing. While Public counsel acknowledges that RCW 80.04.200 allows rehearing at any time in the agency's discretion, the two-year standard stated in the statute should deter the Commission from granting rehearing within two years following entry of an order unless the grounds for taking action are very clear. Public Counsel contends that PSE has made no such showing in this matter. Public Counsel also urges that granting rehearing would waste the Commission's and the parties' time and resources.

41 The Cities state that the information PSE offers related to financial ratings is misleading, in that it covers only four of the eleven analysts who follow the company. Apart from the rhetoric, three ratings include no change and the fourth cites a wide range of relevant factors in support of the limited change that was made.

42 ICNU states that there is no evidence at all in PSE's prefiled materials or in its petition for reconsideration and rehearing that it is experiencing any financial emergency. ICNU argues that the request for rehearing is based solely on rating agency descriptions of the company's financial position, which are based in turn on information that the Company itself provided. Further, the financial indicators in the rating agency reports themselves do not reflect that the company is in an emergency situation. PSE's reference to other utility company rates is irrelevant – the way to judge PSE's need is by evidence of its actual financial condition.

43 The Commission rejects PSE's request for rehearing. We do not know what information the financial community used to support statements such as a reference to impending insolvency, but we agree with ICNU that the picture painted in the financial information accompanying the analysts' statements is not that of a company being forced to the brink by a hostile Commission. PSE alleges that it is threatened, but it provides insufficient company information of how the threat is manifested – what financial indicators are affected, how they are affected, and what that means to the company's operations. If PSE has presented financial information to the ratings agencies that would support its position, we invite PSE to share that information with the Commission in a new filing so that we may consider it. PSE presented no such information to the Commission in these dockets.

44 In any event, the judgments of the analysts are but one consideration in Commission deliberations. The analysts' statements do not overcome the Company's failure to demonstrate current or short-term future financial circumstances that warrant extraordinary rate relief. We are concerned that PSE's inaccurate representations of the Commission's order, as reflected in its petition, and unfounded allegations of regulatory mistreatment, have the potential to affect adversely and unnecessarily investors' views of PSE's condition and its environment, perhaps to the point of affecting its own financial stability.

45 The Commission denies PSE's petition for rehearing.

CONCLUSION

46 We deny PSE's petition for reconsideration or rehearing, but in the same breath we repeat that our decision to dismiss its request for extraordinary rate relief is based *solely* on PSE's failure to provide sufficient evidence showing that its actual financial condition warrants any kind of rate relief, let alone a power cost adjustment applied on an extraordinary basis. We reaffirm the decision set out in the Sixth Supplemental Order. We also repeat that the Company remains free to return to the Commission with information about its actual condition that demonstrates that it warrants rate relief. We believe that the Commission showed in the management of this proceeding that it will take allegations of emergency need seriously and that it will do its best, consistent with the Commission's need for an adequate record and with the requirements of law regarding others' rights to participate, to resolve such contentions quickly.

ORDER

47 The Commission denies Puget Sound Energy's petition for reconsideration or for rehearing.

DATED at Olympia, Washington, and effective this 24th day of October, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner