

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of
PUGET SOUND ENERGY, INC.
For a Declaratory Order on the Commitment
To Accelerate Conservation as Part of PSE's
Decoupling Mechanism

DOCKET UE-141357
COMMISSION STAFF RESPONSE
TO PETITION FOR
DECLARATORY ORDER

I. INTRODUCTION

1 On June 27, 2014 Puget Sound Energy, Inc. ("PSE" or the "Company") filed a
Petition for Declaratory Order ("Petition") on its commitment to accelerate conservation
performance as a condition related to its decoupling mechanism.¹ By notice dated July 1,
2014, the Washington Utilities and Transportation Commission ("Commission") invited
interested persons to submit a statement of fact and law on the issues raised by the PSE's
Petition. Commission Staff submits this response in accordance with that invitation.

II. SUMMARY OF ISSUES PRESENTED

2 PSE seeks a Commission order finding that its commitment to increase electric
conservation to a level representing 105 percent of its biennial target (referred to hereafter as
its "conservation commitment") does not apply to the entire 2012-13 Biennium.
Specifically, PSE asks the Commission to find that its *Decoupling Order* did not obligate
PSE to meet its conservation commitment until the decoupling program began in July 2013.

¹ *In re Petition of Puget Sound Energy, Inc. and Northwest Energy Coalition 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 and UG-121705, Order 07, Final Order Granting Petition (hereinafter *Decoupling Order*).

Consistent with this relief, it then seeks to prorate the conservation commitment over the months in the biennial period in which the decoupling program has been in effect (“decoupling period”). Finally, it seeks judgment on the ultimate question – whether its performance during the decoupling period satisfies its conservation commitment.²

III. LEGAL ISSUES

3 The Company’s Petition is filed under RCW 34.05.240.³ The primary legal issue, therefore, is whether the Petition meets the requirements of the statute, allowing the Commission to enter a declaratory order. Staff concludes that the Petition meets the statutory requirements with regard to those issues directly pertaining to the Commission’s interpretation of its *Decoupling Order*. However, PSE’s request for a finding of compliance with the *Decoupling Order* should be decided in PSE’s existing conservation docket⁴, if such a proceeding is necessary.⁵

4 The pivotal issue presented in the PSE Petition is whether the *Decoupling Order* intended to apply PSE’s conservation performance obligation to the entire 2012-13 biennial period or only upon the decoupling period. Staff sees no legal issue with the Commission resolving the intent question in this proceeding. That said, Staff disagrees with PSE’s interpretation of the *Decoupling Order*, and its reasons are set forth herein.

² See e.g., *Petition for Declaratory Order* at ¶¶ 3, 14, and 27.

³ For the Commission to enter a declaratory order, the petitioner must show that:

- (1) Uncertainty necessitating resolution exists;
- (2) There is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion;
- (3) The uncertainty adversely affects the petitioner; and
- (4) The adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested.

⁴ *In the Matter of Puget Sound Energy 2012-2021 Ten-Year Achievable Conservation Potential and 2012-2013 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010*, Docket UE-111881.

⁵ Staff’s position assumes that the Commission will clarify PSE’s compliance obligations in this docket. Staff can determine whether or not a compliance action is warranted after and if the Commission rules on PSE’s Petition.

If the Commission agrees with Staff's interpretation of the *Decoupling Order*, it would have no need to address PSE's second issue - whether it can pro rate program results in the 2012-13 biennium. On the other hand, if the Commission finds that PSE's interpretation of the *Decoupling Order* is reasonable, then Staff believes the Company's *actual* performance for the decoupling period should be evaluated.⁶ But, this evaluation should not be conducted in this proceeding. The proper place for such an evaluation would be Docket UE- 111881, which contains the existing record of PSE's conservation portfolio performance over the 2012-13 biennium.

5 Finally, the ultimate question as to whether PSE satisfied its conservation commitment during the decoupling period cannot be resolved with the record herein this docket. As noted above, the facts that could support PSE's assertion of compliance are not in this record. The Petition does not address this problem. The proper place for a compliance proceeding should be the relevant docket containing evidence sufficient to make such a finding.

III. DISCUSSION

A. **Should PSE's Conservation Commitment for the 2012-2013 Be Limited to the Decoupling Period?**

6 Seeking to avoid a penalty, PSE asks the Commission to decide whether its conservation commitment applies to the entire 2012-13 biennium or only to the decoupling period. PSE would limit its commitment to the biennium's final quarter. Staff believes that it

⁶ To effectively resolve this question, PSE would have to disaggregate its conservation program performance for the 2012-13 biennium into two periods - the decoupling period and the pre-decoupling period. Once its performance in the decoupling period is known, it could then demonstrate that its conservation program performance for the decoupling period effectively produced the equivalent of 105 percent of the biennial target.

applies to the entire biennium. Neither the *Multiparty Settlement*⁷ nor the *Decoupling Order* provides specific guidance on PSE's conservation commitment during this initial period.

7 PSE cites to statements contained in pleadings filed in Dockets UE-121697 and UG-121705⁸, and the testimony of Mr. Jon Piliaris⁹ to make the point that PSE's conservation commitment began on July 1, 2013 – the commencement of its decoupling mechanism. However, the start date for decoupling does not prove that the measuring period for its accelerated performance target was intended to be the final quarter of the 2012-13 biennium.

8 PSE's often-repeated commitment was to achieve electric conservation five percent above the pro rata share of its ten-year conservation potential if decoupling were approved. This commitment to deliver based on its ten-year potential, which is reflected in the biennial target, was one of the centerpieces of PSE's proposed decoupling program and should be read as a promise to accelerate its performance over the entire biennium not just a part of it. There is no dispute that PSE's biennial conservation target represents one-fifth of its ten-year potential. Nor is there any question that the parties participating in the decoupling proceeding understood what PSE was promising to accomplish.

9 In its amended decoupling filing, PSE sought an effective approval date of May 1, 2013 – approximately three quarters of the way through the biennium.¹⁰ If PSE intended to limit its accelerated conservation performance in this biennium, it had many opportunities to express its intent do so. But, it did not. Nor did it ask the Commission to pro rate its obligation over the months left in the biennium. PSE proposed its accelerated conservation commitment and used this proposal as an enticement for approval of its decoupling program.

⁷ See Dockets UE-121697 and UG-121705.

⁸ See *Amended Petition For Decoupling Mechanisms* at ¶ 31.

⁹ See *Petition For Declaratory Order* at ¶¶ 7 and 8.

¹⁰ See *Amended Petition for Decoupling Mechanisms* at ¶21.

It was incumbent upon PSE to clearly express its intentions with regard to it. If PSE intended to modify its conservation commitment to exclude the majority of the 2012-13 biennium, it should have notified the Commission and parties.¹¹ It did not do so, and has now has received the benefit of the bargain. From Staff's perspective, PSE promised to "achieve electric conservation five percent above the biennial targets set by the Commission" so long its decoupling program is in place.¹² It is in place now and PSE should perform. The other parties should receive the benefit of their bargain - accelerated conservation five percent above PSE's biennial targets – not a portion of it.

B. Should the Commission Pro Rate PSE's Conservation Performance in 2012-13 Biennium?

10 As noted, there is no need to address this issue if the Commission agrees with Staff's interpretation of the *Decoupling Order*, and finds that PSE's conservation commitment covers the entire 2012-13 biennium. However, if the Commission concludes that PSE's conservation obligation should be limited to the final quarter (six months) in the biennium, then it would also be reasonable to decide how to calculate PSE's conservation performance over this shortened period.

11 PSE recommends pro rating its conservation results over the biennium's final quarter, and offers its conservation results from the entire biennium as evidence of its performance.¹³ To come up with a target for the period, PSE submits that it "committed to achieve electric savings 1.25% above" its savings target for the quarter.¹⁴ It gets there by dividing its 5% incremental performance target by 4, reflecting its argument that the

¹¹ Staff notes that "dangling" biennium quarters could be an issue in the future should PSE end its decoupling program before the end of a biennium.

¹² See *Amended Petition for Decoupling Mechanisms* at ¶31.

¹³ See Docket UE-111881.

¹⁴ See *Petition for Declaratory Order*, at ¶11.

conservation commitment extended only to the final quarter of the biennium. The Company then asserts that since its performance over the entire biennium exceeded the conservation target by 4.8%, it has successfully achieved its conservation obligation during the decoupling period.¹⁵ In other words, 4.8% is greater than 1.25%. PSE's calculation ignores two important details – its *actual* performance during the decoupling period and any *actual* target for the period, which should include its 5% incremental conservation commitment.

12 In Staff's view, PSE must calculate its *actual* performance over the final quarter to demonstrate compliance. Simply applying out-of-period results to the final quarter does not answer whether PSE actually achieved sufficient fourth quarter results to avoid a compliance penalty. PSE's proposed calculation is akin to using Service Quality Index (SQI) results from the first three quarters of the year to determine whether the company met its SQI obligations for the full year. The Commission would not permit this to happen. Nor should it be allowed here.

13 In matters dealing with compliance, the Commission is best served by facts material to the question at hand. A finding of compliance cannot be based on hypothetical conclusions or assertions. If as PSE argues, the final quarter is the only relevant period to consider when judging its compliance, then its actual conservation results from the final quarter are the only relevant facts needed. To produce this evidence, PSE should be required to disaggregate its electric conservation portfolio performance over the biennium's four quarters, and present its final quarter's results to demonstrate compliance.

14 PSE asserts that its target for the quarter is not 5% but 1.25%, which is derived from taking its conservation commitment of 5% and dividing it by 4.¹⁶ Other than the results of

¹⁵ Id.

¹⁶ Even if Staff accepted PSE's target calculation, the Company's portfolio performance of 4.8% above target

simple division, the Company offers no rationale for its interpretation of the correct target. To Staff, the *Decoupling Order* is clear – PSE must demonstrate its conservation portfolio performed 5% better than its target or face a penalty. This is the Company’s obligation whether applied to the full biennium or a portion of it.

15 Staff understands that disaggregating programs and performance over the biennium could be difficult, but it is not impossible. To accomplish this task, PSE must consider its entire program and the uneven distribution of individual program results over the biennium.¹⁷ Once the distribution of program results is known, it can then determine its final quarter performance. In Staff’s opinion, this is the only accurate way to determine the Company’s compliance with the *Decoupling Order* when evaluating a partial biennia.

16 As an alternative, Staff recommends setting aside this compliance question for the 2012-13 biennium in favor of examining PSE’s compliance in the whole biennial periods that follow and during which the decoupling mechanism is in effect - with one important exception. Staff recommends treating PSE’s last biennium as a full biennium whether or not PSE’s decoupling program remains in effect during the entire period. To Staff, this would be a fair result that avoids the complications inherent in disaggregating program performance into partial biennia for the purpose of making a compliance finding. In short, Staff is willing to compromise now in exchange for assurance on PSE’s commitment when the decoupling program ends or no longer requires an accelerated performance requirement.

for the biennium would only equate to 1.2% above the target in the final quarter. Again, it misses the target.

¹⁷ Conservation resource acquisition varies with changes in programs offered, and generally peaks in the winter months.

C. Should the Commission Make a Compliance Filing in this Docket?

17 PSE seeks a determination that it complied with the *Decoupling Order's* requirement to accelerate its conservation performance during the 2012-13 biennium. Staff recommends against such a finding.

18 First and as pointed out above, the Company has failed to demonstrate a factual basis for making a finding of compliance. Simply stated, the evidence supporting such a finding is not in this record. PSE has not shown its actual conservation results, nor identified an effective target for the final quarter of the biennium. Until these issues are resolved, PSE is not entitled to a finding of compliance.

19 Further, the relevant docket to determine PSE's conservation performance is Docket UE- 111881, which contains the existing record of PSE's conservation portfolio over the 2012-13 biennium. PSE will need to do further analysis that is based on this record to demonstrate compliance should the Commission conclude that Staff's position on partial biennia performance is correct. This work should be performed in Docket UE-111881, and not in this proceeding.

20 Finally, Staff is reluctant to use declaratory order proceedings to determine a company's compliance with Commission orders. Declaratory order proceedings are allowed when a party seeks an interpretation of an order, rule or statute enforceable by the Commission.¹⁸ Here, PSE asks the Commission to interpret its *Decoupling Order*. This request is consistent with Staff's view of the purpose of declaratory order proceedings. However, PSE also requests the Commission to make a compliance finding in this docket. While within the purview of the Commission's authority, Staff does not want to see declaratory order petitions becoming the preferred vehicle for determining company

¹⁸ See RCW 34.05.240(1) and WAC 480-07-930(1).

compliance. If used for this purpose, it should be reserved for unique circumstances, and this is not one of them. Docket UE-111881 is the proper place for any remaining work required to be done on the issues presented here.¹⁹


IV. CONCLUSION

21 For the reasons set forth herein, Staff recommends that the Commission find PSE's decoupling commitment applies to the entire 2012-13 biennium. In the alternative, Staff recommends that any factual findings required to determine compliance with the *Decoupling Order* be decided in Docket UE-111881.

Dated this 18th day of July, 2014.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General



PATRICK J. OSHIE
Assistant Attorney General
Counsel for Washington Utilities and
Transportation Commission Staff

¹⁹ Again, this is assuming that the Commission would rule that 1) PSE's conservation obligation extends only to the final quarter of the biennium and 2) that it must use actual results to demonstrate compliance.