

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKETS UE-151871 and
UG-151872 (*Consolidated*)

**POST-HEARING BRIEF OF WASHINGTON STATE HEATING, VENTILATION AND
AIR CONDITIONING CONTRACTORS ASSOCIATION**

August 30, 2016

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I. INTRODUCTION

1. Puget Sound Energy (PSE or the Company) seeks the approval of the Utilities and Transportation Commission (UTC or Commission) to initiate a leasing platform that would begin by offering to PSE’s customers, and customers of other utilities, several types of furnaces and water heaters, and which would lead to a larger leasing program including other HVAC appliances and water heaters, solar equipment, batteries, and electric vehicle charging equipment.
2. PSE did not evaluate operating this leasing program as an unregulated service in competition with other providers of these services, although such an option is possible. Instead, PSE seeks to operate this program as a regulated utility service under the public service laws, instead of an unregulated service subject to the Consumer Protection Act and other laws

regulating the competitive free market, seeking Commission approval of the program, Commission approval of prices, and Commission oversight.

3. On September 18, 2015, PSE filed proposed tariff sheets, absent any rates¹, to launch the first phase of this new leasing program, offering to lease a selection of furnaces and water heaters. A cover letter that broadly described the proposal accompanied the sheets. No other substantiation of the proposed leasing service was provided at the time of filing.
4. On November 8, 2015, amended sheets were filed, with an accompanying cover letter that provided some substantiation of the proposal.²
5. At the November 13, 2015 Open Meeting, the tariff was characterized as a deficient “naked tariff” because it lacked rates.³ The Commission issued a complaint and an order suspending the tariff.⁴

II. ARGUMENT

A. A “SOLUTION” IN SEARCH OF A PROBLEM

6. On May 5, 2014, staff of Puget Sound Energy presented an executive update that indicated that the PSE Leasing Design Phase had completed its first month.⁵ The first customer survey regarding HVAC and water heaters was conducted between May 2 and May 9, 2014.⁶ The Cocker-Fennesy survey was conducted from January 30 to February 4, 2016⁷, and Dr.

¹ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Dockets, UE-151871 & UG-151872, Advice No. 2015-23 (Sept. 18, 2015).*

² *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Dockets, UE-151871 & UG-151872, Advice No. 2015-23 (Nov. 6, 2015).*

³ *Wash. Utils. & Transp. Comm’n Nov. 13, 2015 Open Meeting recording.*

⁴ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Dockets, UE-151871 & UG-151872, Order 01 (Nov. 13, 2015).*

⁵ Exh. No. MBM-61, page 6

⁶ Exh. No. MBM-18, page 1

⁷ Exh. No. MBM-4, page 1

Faruqui's analysis was conducted in February 2016⁸ – both after the tariff filing was suspended and the adjudication process began. The first use of the charts purporting to demonstrate the existence of a gap in the market was in the November 6, 2015 cover letter for amended sheets to PSE's proposal.⁹ All of the evidence of a "problem" to which the PSE Appliance Leasing Proposal was the "solution" was developed after PSE had decided to pursue this "solution"- most after PSE filed its proposal as a tariff revision on September 18, 2015.

7. By the filing of rebuttal testimony on July 1, 2016, PSE was offering "a pathway to the utility of the future" as justification for its proposal¹⁰. This flexibility on the part of the Company in substantiating its appliance leasing proposal¹¹ leads to questioning whether a true problem was ever defined or a true rationale for the proposal was ever presented to the Commission.

B. THERE IS NO GAP IN THE MARKET

8. Puget Sound Energy has sought to justify its appliance leasing program by claiming that there is a "gap in the market"- actually, two different gaps. The first is a supposed forty percent of appliances beyond useful life.¹² The second is the absence of a residential appliance leasing program.¹³ Neither exists as a gap in the market.

⁸ Exh. No. AF-3

⁹ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets, UE-151871 & UG-151872, Advice No. 2015-23 (Nov. 6, 2015).

¹⁰ Norton, Exh. No. LYN-1T 3:11-22.

¹¹ Norton, Exh. No. LYN-1T 3:11-22.

¹² *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets, UE-151871 & UG-151872, Advice No. 2015-23 (Nov. 6, 2015).

¹³ Teller, Exh. No. JET-1T p11.

9. To prove the existence of the first gap, Puget Sound Energy prepared a chart¹⁴, based on PSE selected data points from Northwest Energy Efficiency Alliance’s 2011 Residential Building Stock Assessment¹⁵, and attributed the chart to the NEEA.¹⁶ The chart created by PSE labeled all appliances over ten years of age as “beyond useful life” in order to develop the forty percent claim.¹⁷
10. There is no evidence that NEEA or any entity other than PSE vetted or approved the selection of data, the chart, or the conclusions drawn from the chart.¹⁸ The HVAC industry does not recognize such a gap.¹⁹
11. Other charts drawn from the PSE-selected data, arguably show a different story- trend lines demonstrating continued success of the market in placing energy efficient appliances in residences.²⁰
12. To “prove” the existence of the second gap, Puget Sound Energy argues that the lack of a residential HVAC appliance leasing option is proof of a gap.²¹ PSE chooses to discount completely the expert opinion of the HVAC industry²² that there is little or no demand for such a leasing option, ignores the complete lack anywhere in the nation of a utility offering such a

¹⁴ Norton, TR. 159: 15-16.

¹⁵ Norton, TR. 160: 5- 15.

¹⁶ Exh. No. JET-3.

¹⁷ Norton, TR. 162; 1- 10.

¹⁸ Norton, TR.160,: 17- 161:11. Witness Norton “surmised” NEEA’s positions, but could not state them for a fact.

¹⁹ Fluetsch, BF-1T, 5:13

²⁰ Exh. No. MBM-45, pp 3-5..

²¹ Teller, Exh. No. JET-1T, 5:17- 18

²² Norton, LYN-1T 2:5- 7

leasing option²³, and instead relies on its own surveys and analyses that “show” some of its customers “would be interested” in such an option²⁴.

13. Puget Sound Energy’s own consultant, Dr. Faruqui, indicated that he “did not find any documents that discuss lease programs by utilities through his review of the academic and industry literature.”²⁵ Puget Sound Energy has also acknowledged it “is not aware of any current or past programs that offer a comparable service...”²⁶

C. AN ATTEMPT TO CREATE NEW POLICY

14. It appears that, rather than addressing a problem in the market, Puget Sound Energy’s goal with its appliance leasing proposal is some other, unidentified goal. It is hard to believe that a free market failure could be solved by allowing the entry of a regulated monopoly into that market- for as Gary Smith of Independent Business Association noted in his comments to the Commission in this docket,

“I, through IBA, have represented small business in Washington State for over four decades. IBA has appeared before the UTC numerous times in the past and we have watched evolving technologies, evolving markets, and a lot of change. One thing has remained consistent- competitive free markets remain the best provider of technological improvement, implementation, lower prices, and more consumer options. Monopolies have historically failed to deliver on all these fronts, including the utility industry”.

*“One just has to look at the evolution of telecom since the break-up of the Bell System. Could you imagine Pacific Northwest Bell coming to the Commission and requesting regulatory cover to expand into selling personal computers, tablets, software, computer game systems, computer peripherals, etc. as a regulated monopoly in order to diversify the company? That is the equivalent of what Puget Sound Energy is currently requesting of the Commission”.*²⁷

²³ Exh. No. MBM-50.

²⁴ Teller, Exh. No. JET-1T, 5:20- 21

²⁵ Exh. No. AF-6.

²⁶ Exh. No. MBM-50

²⁷ Exh. No. PC-1 Att1

15. The public service laws were created to inhibit monopoly power in those unavoidable situations where it necessarily has to exist. But as was seen with the telecom industry, great benefit flows from the free market moving into previously monopoly territory, not the other way around. If PSE wants to turn the public service laws on their head, that is a much larger policy question than is appropriate in this limited adjudication, with many more necessary stakeholders to be involved.

D. A FAILURE TO UNDERSTAND THE PRODUCTS' REQUIREMENTS

16. Two examples will serve to illustrate the great difficulty PSE appears to have in grasping industry concepts. In his prefiled testimony, witness McCulloch attempted to explain” useful life” while averaging one type of appliance (furnaces) with a very different type of appliance (water heaters)- then extending the fifteen year average back from the current date in evaluating data already five years old.²⁸ Such confusion permeates PSE’s treatment of the concept of “useful life” throughout the record.

17. The second example of an area where PSE has demonstrated a profound lack of understanding is in installation of appliances. The Company repeatedly asserts that the “standard” installation will be sufficient in almost all cases, but the only evidence of this it actually offers up is an e-mail chain from a source it is unwilling to identify to the public or the industry.²⁹ In contrast, the industry has consistently testified that there is no such thing as a “standard” installation, and that PSE is going to either require ratepayers to incur additional costs³⁰ or accept inadequate- even potentially dangerous- installations.³¹

²⁸ McCulloch, Exh. No. MBM-1T, 4:1-10

²⁹ Exh. No. MBM-13HC

³⁰ e.g., McCulloch, TR 333:11- 15

E. QUESTIONABLE ABILITY TO IMPLEMENT

18. In addition to PSE's confusion about the products it proposes to lease, a noticeable lack of interest by potential "service partners" should give the Commission pause in considering approval of PSE's proposal.
19. PSE received, from two RFQs over two years, only fifteen responses.³² Despite hiring a consulting firm to find "consultants" to support the Appliance Leasing Proposal³³, PSE had only one person not employed by or contracted by the Company to publicly testify in favor.³⁴ PSE has so hedged its bets on its ability to implement that it has made it very clear that this service will be optional not only on the part of the ratepayer, but also on the part of the Company.³⁵
20. Given that a single supplier has testified to dealing with over 1400 contractors,³⁶ PSE has demonstrated insignificant interest in PSE's proposal. The Commission should note this, as well as remember that PSE withdrew from the market for new appliance rental customers in 2000 because the Company could not cost-effectively provide these services.³⁷ PSE has yet to address the question of implementation, other than to provide assurances with no documentation.

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³¹ Exh. No. WEP-1T, 4:11

³² McCulloch, Exh. No. MBM-1T, 17:17- 23, and Exh. No. MBM-7T, 4:5- 8

³³ Exh. No. LYN-9

³⁴ Andrew J. Wigger

³⁵ Exh. No. MBM-56

³⁶ van den Heuvel, JvdH-1T, Exh. No. 1T, 3:18- 19

³⁷ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets, UE-151871 & UG-151872, Order 01 (Nov. 13, 2015) at 4

³⁸ McCulloch, TR 336:16- 337:3

F. ENDANGERING THE SAFETY OF RATEPAYERS

Puget Sound Energy's witness Andrew Wiggen testified that HVAC appliances and water heaters near or past useful life are potentially dangerous.³⁹ Puget Sound Energy closed its residential and commercial leasing of natural gas conversion burners and water heaters to new customers in 2000.⁴⁰ Puget Sound Energy's responses to data requests indicate that only a small portion of these appliances have been replaced⁴¹, leaving the overwhelming majority of the 33,000 appliances at least fifteen years old- beyond Puget Sound Energy's definition of useful life.⁴² Whenever asked about plans to replace these appliances, Puget Sound Energy's responses condition changes in its rental program upon approval of its appliance leasing proposal.⁴³

21. The only indication in the record of even a minimal effort to address this pre-existing problem and notification of current renters of the problem was a pilot communication to 252 of the more than 30,000 customers in February of 2015.⁴⁴
22. The Company expressly noted it had no obligation unless notified by the customer⁴⁵ - hardly a hallmark of a "trusted energy partner" and its greater level of knowledge.

CONCLUSION

23. Puget Sound Energy has failed to demonstrate that its Appliance Leasing Proposal is legal, in the public interest, or practicable. In addition, other parties have raised significant concerns about the program and its possible dangers to ratepayers.

³⁹ Wiggen, Exh. No. AJW-1T 3:12- 21

⁴⁰ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Dockets*, UE-151871 & UG-151872, Order 01 (Nov. 13, 2015) at 4

⁴¹ Exh. No. BTC-4

⁴² McCulloch, Exh. No. MBM-1T, 4:1-10

⁴³ E.g., Exh. Nos. MBM-26 and MBM-46

⁴⁴ Exh. No. MBM-29

⁴⁵ *Ibid.*,

24. In addition, PSE's proposal represents a radical new policy departure that, at a minimum, should be the subject of rulemaking- if not deferred to the Legislature. The Washington State Heating, Ventilation and Air Conditioning Contractors Association respectfully requests that the Commission reject the proposal.

DATED this 30th day of August, 2016.

James L. King, Jr.
Representative
Washington State Heating, Ventilation and
Air Conditioning Contractors Association

