

**BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION
COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

DOCKET NO. UE-090704

and

DOCKET NO. UG-090705
(consolidated)

PUBLIC COUNSEL RESPONSE TO
MOTION TO STRIKE OF PUGET
SOUND ENERGY, INC.,
COMMISSION STAFF, NW
ENERGY COALITION AND THE
ENERGY PROJECT

I. INTRODUCTION

- I.* The Public Counsel Section of the Washington State Attorney General's Office (Public Counsel) files this response to the Motion to Strike of Puget Sound Energy, Inc. (PSE), Commission Staff, NW Energy Coalition, and the Energy Project (Joint Movants). Public Counsel respectfully requests that the Commission deny the Motion and not strike the testimony of Public Counsel witnesses, Scott Norwood and Jim Dittmer, relating to the sale of renewable energy credits (RECs).

II. DISCUSSION

A. REC Revenues are Within the Scope of Issues in the General Rate Case.

2. Joint Movants assert that Public Counsel’s REC testimony is “outside the scope of issues presented in this case.”¹ Joint Movants are not correct. REC revenue issues are directly related to the proper analysis of power costs in this case. As Scott Norwood explains in his testimony, when wind generation costs are included in the power costs sought to be recovered, proper ratemaking principles require that the revenues derived from the related RECs must also be considered.² Moreover, Joint Movants do not explain why it is appropriate to update PSE power costs as was done in the most recent supplemental filing, without updating related revenues. Failure to take these known and measurable revenues into account would be a violation of the matching principle.³ The Commission cannot determine fair, just, reasonable, and sufficient rates in this case without consideration of all test year costs and revenues, which have been properly adjusted for known and measurable changes.⁴

¹ Motion to Strike of Puget Sound Energy, Inc., Commission Staff, NW Energy Coalition and the Energy Project (filed Dec. 16, 2009), ¶1 [hereinafter Motion to Strike]. The Motion provides no further explanation or support beyond this conclusory statement.

² Direct Testimony of Scott Norwood, Exhibit No. SN-1HCT, p. 45 lines 8-24.

³ “[T]he historic test period approach . . . requires the application of certain fundamental ratemaking principles that we and many other regulators endeavor to apply consistently over time. In particular, we . . . are careful to preserve so far as is reasonable the ‘matching principle’ that relies on our consideration of all revenues, costs, and adjustments in the context of a test year with a definite ending date. . . . It requires extraordinary circumstances to support a departure from fundamental ratemaking principles.” *WUTC v. Puget Sound Energy Inc.*, Docket Nos. UE-060266 and UG-060267 (*consolidated*), Order 08, ¶¶37, 39. *See also, WUTC v. PacifiCorp*, Docket Nos. UE-050684 and UE-050483 (*consolidated*), Order 04, ¶194 (stating that the matching principle requires that “all cost-of-service components—revenue, investment, expenses, and cost of capital—must be considered and evaluated at a similar point in time”).

⁴ *See WUTC v. Cascade Natural Gas Corp.*, Docket No. UG-060256, Order 05, ¶74 (“[u]nder the matching principle, revenues and costs are balanced at a common point in time, i.e. a rate case, to determine fair, just, reasonable and sufficient rates”).

A. The REC Accounting Petition Docket does not Offer Equivalent Protection for Ratepayers.

3. The Joint Movants state that not addressing REC revenues in the rate case will not harm ratepayers because the credit proposed in the Accounting Petition⁵ will go into effect at nearly the same time as rates arising from the rate case.⁶ This is not necessarily true, as there is nothing guaranteeing that rates will reflect the outcome of the Accounting Petition at nearly the same time as new rates resulting from them rate case are effective. Indeed, there is nothing in the Accounting Petition stating when, or through what procedural channel, the credit will be flowed back to ratepayers.⁷ Moreover, it is unclear how any credit from the Accounting Petition will actually go into effect; PSE and Staff have expressed differing ideas on this point.⁸

4. In the rate case, Public Counsel is proposing treatment that would provide a more certain immediate benefit to PSE customers.⁹ Specifically, Public Counsel recommends that REC revenues be used to immediately and directly offset power costs during the rate year. In contrast, under the Accounting Petition, 20 percent of initial proceeds (up to \$20 million) are allocated to low income programs, and 40 percent of the remaining revenues (up to \$21 million) are credited to the Company.¹⁰ Any remaining revenues are thereafter returned to customers via a credit to an as yet unspecified regulatory asset. Thus, the treatment proposed in the Accounting Petition

⁵ *In the Matter of the Petition of Puget Sound Energy, Inc., For an Order Authorizing the Use of the Proceeds From the Sale of Renewable Energy Credits and Carbon Financial Credits*, Docket No. UE-070725, TR. 13:7-14:5 [hereinafter *Accounting Petition*].

⁶ Motion to Strike, ¶6.

⁷ Moreover, Judge Moss indicated that the Accounting Petition procedural schedule may be amended to allow additional time for full consideration of the issues. *See* TR. 29:1-4.

⁸ At the Prehearing Conference, PSE counsel stated that “the compliance filing in the rate case could incorporate whatever the Commission decides,” whereas Staff counsel indicated it felt that the accounting order would be implemented through a later, additional tariff filing. *Compare Accounting Petition*, TR. 12:1-5 with TR. 16:3-11.

⁹ *See* Direct Testimony of Scott Norwood, Exhibit No. SN-1HCT, p. 46 lines 15-20.

¹⁰ *Accounting Petition*, Amended Petition, ¶13.

does not provide the near-term, dollar-for-dollar return of revenues as does the approach recommended by Public Counsel.¹¹

5. Ratepayers are not indifferent to these alternative approaches. As noted previously, neither the substantive treatment of REC proceeds in the Accounting Petition (other than the low income program and the litigation reserve already agreed to by the Joint Movants) nor the timing of the allocation of proceeds to benefit ratepayers have been determined at this time.

B. The Prehearing Conference Order in the REC Accounting Petition Docket does not Support Joint Movants' Position.

6. Joint Movants cite the Prehearing Conference Order in the Accounting Petition docket as precluding consideration of REC issues in the rate case.¹² However, the language in the "Nature of Proceeding" section of the Order quoted by the Joint Movants is not a ruling, but simply a recitation of what PSE requested in its Amended Petition.¹³ Nowhere in the Order is it stated that REC revenues may only be addressed in the Accounting Petition docket and not considered outside that docket. Moreover, Judge Moss acknowledged that REC revenues were an issue in the rate case but did not, despite what PSE seeks to imply, specify in the Order that REC revenues could not, or should not be addressed outside the Accounting Petition docket.¹⁴ Finally, at the time of the Prehearing Conference, all parties knew that Public Counsel proposed REC revenue treatment in the rate case, yet no party objected or stated that such recommendations should only be made in the Accounting Petition docket. Joint Movants still

¹¹ Notably, the treatment of REC revenues proposed by Public Counsel in the rate case would not limit the amounts available for the proposals made in the Accounting Petition, should the Commission decide they are proper; there will be adequate REC sales revenues to address both. See Direct Testimony of Scott Norwood, Exhibit No. SN-1HCT, p. 46, lines 10-14.

¹² Motion to Strike, ¶4.

¹³ See *Accounting Petition*, Amended Petition, ¶1.

have not adequately explained why they have waited until now to file this Motion to Strike but were silent about these concerns at the Accounting Petition Prehearing Conference.¹⁵

C. The Fact that the Two Dockets were not Consolidated does not Provide a Basis to Strike Public Counsel’s REC Testimony.

7. The Joint Movants rely on the fact that Public Counsel did not move to consolidate the Accounting Petition with the rate case to support the Motion to Strike.¹⁶ However, at the Accounting Petition Prehearing Conference, parties only expressed concerns that consolidation would create scheduling difficulties. Issue preclusion was not a consideration. As Public Counsel clearly expressed, consolidation was problematic because of the need for additional time for discovery on the Accounting Petition.¹⁷ Public Counsel advocated for a procedural schedule in the Accounting Petition docket that would resolve the Petition well after the conclusion of the rate case.¹⁸ Staff also expressed that it was not feasible to file testimony on the Accounting Petition within the procedural schedule for the rate case, stating that consolidation would create a “burden...in terms of scheduling.”¹⁹

8. In addition, PSE counsel acknowledged that other parties were not seeking consolidation because of the late filing of the Accounting Petition relative to the rate case.²⁰ PSE counsel also stated that the Company would oppose extending the rate case procedural schedule, thereby making consolidation practically impossible for responding parties.²¹ Finally, Judge Moss stated

¹⁴ *Accounting Petition*, TR. 11:15-22.

¹⁵ Public Counsel filed response testimony on November 17, 2009. The Prehearing Conference in the Accounting Petition docket was held two weeks later on December 1, 2009.

¹⁶ Motion to Strike, ¶3.

¹⁷ *Accounting Petition*, TR. 13:7-14:5.

¹⁸ *Id.* at 23:19- 24:5.

¹⁹ *Id.* at 14:23-16:14.

²⁰ *Id.* at 12:17-23.

²¹ *Id.*

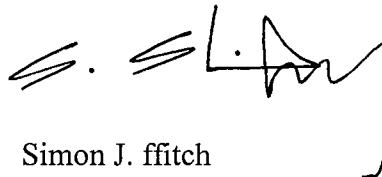
he was “disinclined” to consolidate the cases given Staff and Public Counsel’s concerns regarding adequate time to prepare and file testimony responding to the accounting petition, and made *no* comment regarding the propriety of addressing REC revenues in either or both dockets.²²

III. CONCLUSION

9. For the foregoing reasons, Public Counsel respectfully requests that the Motion to Strike be denied.

Dated this 28th day of December, 2009.

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for: Simon J. ffitch
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Public Counsel

²² *Id.* at 19:15-23.