

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

WASHINGTON UTILITIES AND)	DOCKETS UE-090704
TRANSPORTATION COMMISSION,)	and UG-090705 (<i>consolidated</i>)
)	
Complainant,)	
)	ORDER 10
v.)	
)	
PUGET SOUND ENERGY, INC.,)	GRANTING MOTION TO STRIKE
)	TESTIMONY
Respondent.)	
)	
.....)	

MEMORANDUM

- 1 On May 8, 2009, Puget Sound Energy, Inc. (PSE), filed with the Washington Utilities and Transportation Commission (Commission) to increase its rates for electric service (Docket UE-090704) and gas service (Docket UG-090705) to customers in Washington. The Commission suspended operation of the tariffs by Order 01 entered in these dockets following the May 28, 2009, open meeting. The Commission consolidated these dockets by Order 02, entered on June 8, 2009, and convened a prehearing conference at Olympia, Washington on June 22, 2009.

- 2 PSE included its direct testimony and exhibits as part of its initial filing on May 8, 2009, as required by the Commission’s procedural rules. On November 17, 2009, Commission Staff, Public Counsel and several intervenors filed response testimony and exhibits. PSE filed its rebuttal testimony and Staff filed cross-answering testimony on December 17, 2009.

- 3 On December 16, 2009, the Commission accepted for filing the “Motion to Strike of Puget Sound Energy, Inc., Commission Staff, NW Energy Coalition, and the Energy

Project.”¹ Joint Movants ask the Commission to strike those portions of the response testimony and exhibits of Public Counsel and the Kroger Co. that relate to the sales of renewable energy credits (RECs) by PSE, as follows:

- Mr. Norwood, testifying for Public Counsel, discusses RECs in his "Introduction" and "Summary of Testimony" sections and more specifically on page 42, line 15 through page 47, line 10 of Exhibit No. SN-1HCT.
- Mr. Dittmer, also testifying for Public Counsel, references Mr. Norwood's testimony on page 105, lines 18-20 of Exhibit No. JRD-1CT and on page 39 (Schedule C-25) of Exhibit No. JRD-2C.
- Mr. Higgins, testifying for Kroger, generally discusses RECs in his "Overview and Recommendations" section and more specifically on pages 5-6 of Exhibit No. KCH-2T.

4 The Joint Movants argue that the cited testimony and exhibits are outside the scope of issues presented in this case, considering that the accounting and rate treatment of RECs is pending determination in Docket UE-070725, in which PSE filed an amended petition and testimony on October 8, 2009.²

5 The Commission conducted a prehearing conference in Docket UE-070725 on December 1, 2009, at which the presiding judge raised the question whether the Commission should consolidate it with the general rate case dockets in light of the apparent presence of common issues (*i.e.*, the accounting and rate treatment of REC

¹ This Oder refers collectively to the moving parties as “Joint Movants.”

² PSE’s Amended Petition requests that the Commission issue an order authorizing PSE to defer the net revenues from the sale of certain RECs and Carbon Financial Instruments (CFIs) (collectively, “REC Proceeds”) and to use these revenues as follows:

- (1) Provide funding for low income energy efficiency and renewable energy services.
- (2) Credit a portion of the REC Proceeds to sums owed to PSE by several California utilities since 2001. This sum, the “California Receivable,” reflects unpaid amounts owed to the Company from California utilities for power PSE sold into California during the 2000-2001 energy crisis.
- (3) Provide a credit to customers by offsetting the REC Proceeds against a regulatory asset.

revenue). Public Counsel and Staff opposed to the idea of consolidation.³ Their opposition was grounded in arguments that the parties need additional time to conduct discovery and prepare evidence concerning the question of proper accounting and rate treatment of RECs. Public Counsel, for example, stated: “We would request that sufficient time be given for discovery and preparation of a response so that the issues in this case can be properly vetted.”⁴ Following off-the-record discussions among the parties, Public Counsel advocated a procedural schedule in Docket UE-070725 that was longer than that to which the other parties were agreeable, including a briefing date that coincided with the suspension date in the general rate case. Public Counsel stated: “There are definitely unique issues in this docket that we are still trying to figure out how complex they are going to be. We just don't know at this point, so it seems more appropriate to err on the side of caution to give time to fully consider what might be precedential issues in this case.”⁵

- 6 Albeit advocating a shorter procedural schedule than Public Counsel, the conclusion of which would be before the suspension date in the general rate proceeding, counsel for Staff stated:

Staff is in a similar position as Public Counsel with respect to putting its response case on the accounting filing on a track that could then coincide with hearings in the rate case. We have had discussions of scheduling with the Company and even through e-mail copies to all other parties, and from Staff's perspective, we were looking at a filing date in late January and developing a schedule from there that would get briefs to the Commission by the latter part of March, so I don't know if it's out of the question to make the order time for the rate case under that schedule or not, but just purely from a timing perspective, it's not doable, quite frankly, for Staff to file its testimony in the REC proceeding to coincide now with the hearings in the rate case.⁶

³ Counsel for PSE stated the Company had no objection to consolidation so long as it did not delay the general rate case proceeding. Counsel for PSE also stated the Company's preference that the two matters be on similar tracks for decision by April 2010.

⁴ TR. 14:3-5.

⁵ TR. 24:20-21:1.

⁶ TR. 14:24-15:13.

- 7 Rejecting Public Counsel's proposed schedule as too attenuated, the presiding Judge set March 17, 2009, as the date for closing briefs in the REC Proceeding, as proposed by other parties. Reply Briefs in the general rate case are due March 2, 2009, and the suspension date in the general rate case is April 8, 2009. Joint Movants argue in their motion to strike that:

This [schedule] will allow the Commission the ability to reflect in rates the results of the REC proceeding at approximately the same time as rates take effect in the general rate case. Thus, ratepayers are not harmed if the testimony and exhibits of Public Counsel and Kroger addressing REC Proceeds are stricken [from the GRC] and all issues related to revenues from the sale of RECs are addressed solely in the REC Proceeding.

Public Counsel argues in opposition to the motion that:

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. 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. 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.⁷

- 8 While there may be merit in Public Counsel's argument considered in isolation, it is not persuasive when considered in the context of these two separate proceedings. Indeed, Public Counsel's argument in Docket UE-070725 that more discovery and more time is necessary to fully develop a record upon which to decide how to treat REC funds cannot be reconciled with its argument in the GRC that we should go ahead and resolve that question with respect to the \$50+ million in REC funds Public Counsel contends PSE has already received. The issue of how to treat REC proceeds

⁷ Public Counsel Response to Motion To Strike at ¶ 2 (internal footnotes and citations omitted).

is one of first impression and any decisions by the Commission are likely to have some precedential value, as Public Counsel recognized in advocating a more extended procedural schedule in Docket UE-070725.⁸

9 Kroger narrowly focuses its opposition to the joint motion on the point that it “is not supported by any assertion that Mr. Higgins' testimony relating to the sale of RECs is irrelevant, repetitive, or otherwise inadmissible pursuant to WAC 480-07-495(1) or Rule 402” of the Washington Rules of Evidence. Kroger continues with its argument that:

Even if the Commission agrees with the Joint Parties that testimony regarding the sale of RECs is *“more appropriately”* addressed in Docket UE-070725, that alone would not give rise to a sustainable Motion to Strike. The Movant must show that the evidence at issue is *“irrelevant, repetitive or inadmissible.”* The Motion to Strike did not even address this standard.

10 This argument is misplaced. Based on the parties’ opposition to the idea of consolidating Docket UE-070725 with the general rate case, it appears they generally agree it is appropriate to develop a full record in a separate docket, and order an accounting and rate treatment for REC revenue at the end of the separate proceeding. It follows logically that these issues should not be decided in the general rate case with respect to any part of the REC revenues. Evidence concerning the appropriate accounting and rate treatment of REC proceeds is, therefore, irrelevant in the general rate case. Thus, the standard for granting the Motion To Strike is satisfied even though Joint Movants did not expressly develop the point in their motion.

11 In sum, the Commission should grant the joint Motion To Strike for two reasons. First, the Commission’s determination of what accounting and rate treatments are appropriate for REC funds should be made on the basis of a fully developed record on the issues, which we expect to have in Docket UE-070725, but not in Dockets UE-090704/UG-090705. Second, the timing of the two proceedings is such that any result in the REC proceeding impacting rates to customers can be ordered into effect either simultaneously with, or shortly following, the conclusion of the general rate case. Thus, customers will not be harmed by removing the REC issues from Dockets UE-090704 &UG-090705.

⁸ See, *supra.*, quote at fn. 5.

ORDER

- 12 THE COMMISSION ORDERS That the Motion to Strike of Puget Sound Energy, Inc. (PSE), Commission Staff, NW Energy Coalition, and the Energy Project is granted.

Dated at Olympia, Washington, and effective January 8, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge