

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AIR LIQUIDE AMERICA CORPORATION;
AIR PRODUCTS AND CHEMICALS, INC.;
THE BOEING COMPANY; CNC
CONTAINERS, EQUILON ENTERPRISES,
LLC; GEORGIA-PACIFIC WEST, INC.;
TESORO NORTHWEST CO.; and THE CITY
OF ANACORTES, WASHINGTON,

Complainants,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET NO. UE-001952
(consolidated)

In re: Petition of Puget Sound Energy, Inc. for
an Order Reallocating Lost Revenues Related
to any Reduction in the Schedule 48 or G-P
Special Contract Rates

DOCKET NO. UE-001959
(consolidated)

**RESPONSE OF COMMISSION STAFF TO EXPEDITED REQUEST FOR
CONTINUANCE OF FILING DATE AND HEARING**

On January 24, 2000, Puget Sound Energy, Inc. (PSE) requested the following from the Commission: (a) at least a one-week continuance to February 2, 2001, of the deadline for the Staff “soft-cap” filing to initiate Phase II of these proceedings (now set on January 26, 2001); and (b) at least a two week continuance to February 12, 2001, of the initial Phase II hearing (now set on January 29, 2001). The original dates were established by the Commission in its Sixth Supplemental Order (Order) issued in this proceeding on January 22, 2001. Order at ¶ 93.

Commission Staff does not oppose a continuance of the January 29th hearing, but only upon the following specific conditions. First, as stated below, Staff is prepared to file tomorrow the details of the soft-cap mechanism, as well as answers to specific questions posed by the Commission, all as directed by the Commission's Order at ¶ 93. That filing should go forward as currently planned.

Second, while the hearing now scheduled for January 29, 2001 would be continued, a technical conference would still be convened on that date among the parties to discuss the materials Staff will file on January 26, 2001. The Administrative Law Judge would also participate at the technical conference to the extent that a schedule would be established for the filing of the Company's Production Cost System Model (PCS Model), other parties review and response to the PCS Model, and the convening of a hearing necessary to effect the soft-cap remedy that the Commission's Order adopted. This schedule would be established for an expeditious resolution of the matters that is fair to all concerned.

Third, the Company must agree in writing that implementation of the soft-cap adopted by the Commission must be made retroactive to the date the soft-cap would otherwise have been implemented absent a continuance. Presumably, that would be sometime during the week of January 29, 2001.

Finally, the Commission's Order is clear in concluding that the soft-cap proposal results in rates that are just, fair, reasonable and sufficient, in accordance with RCW 80.28.010. Order at ¶ 89. The filing of the Company's PCS Model evidence must not be allowed to challenge that essential conclusion. Any such allowance would only serve to relitigate an issue already decided by the Commission, and will, as a practical matter, interfere with the prompt and timely

resolution of other related matters now before the Commission concerning Schedule 448 (Docket No. UE-010038) and the review of current Schedule 48 (Docket No. UE-010046).

Should these conditions not be acceptable to the Commission or PSE, the Commission Staff opposes the continuance requested by PSE for the following reasons. First, PSE alleges that without a continuance it “will be severely prejudiced if its tariff is unilaterally revised, without first providing PSE an adequate opportunity to analyze and respond to the soft-cap proposal.” Motion at 4: 9-10. The Company likewise claims that without a continuance it will be afforded “no opportunity whatsoever for discovery into the [soft-cap] proposal.” *Id.* at 4: 6-7. The Staff/Public Counsel soft-cap proposal, however, was filed with the Commission on January 4, 2001, as part of the Staff Prehearing Brief in this proceeding. The mechanics of the proposal and its underlying assumptions were also fully outlined. Staff Prehearing Brief, Attachments A and B. Therefore, since at least January 4, 2001, PSE has had the opportunity to review the proposal, conduct discovery on the proposal, cross-examine Staff and Public Counsel witnesses on the proposal at hearing (which it did on January 12, 2001), and present direct and/or rebuttal testimony on the proposal at hearing (which it chose not to do on January 15, 2001). In sum, the Company has had adequate opportunity to analyze and respond to the soft-cap proposal. PSE will not be prejudiced, let alone “severely prejudiced”, if the soft-cap proposal is brought to hearing on January 29, 2001.¹

¹We should add that, as directed by the Commission in its Order at ¶ 93, Staff met with the parties on Wednesday, January 24, 2001, in anticipation of its filing on Friday, January 26, 2001. Company representatives attended that meeting, at which time Staff provided full details of the soft-cap proposal, including answers to the specific questions asked by the Commission in its Order at ¶¶ 90-92. As the Company learned at the meeting, the soft-cap proposal is the same as was filed on January 4, 2001 in the Staff Prehearing Brief.

Second, PSE claims that the record is inadequate to design an interim soft-cap proposal because the proposal is not based on “rate-case” quality data and information.² Motion at 4: 19-25. Therefore, according to PSE, time should be given for it to run and present its PCS Model. The Company ignores, however, that rate-case quality data and information is typically lacking in cases where, as here, the Commission seeks to grant temporary rate relief. Tr. 1774: 3-13. Moreover, it is difficult, taking into account the substantial record accumulated in this case, to conclude that the evidence is insufficient to implement the soft-cap proposal, especially when the Staff and Public Counsel proposal seeks only to remove the extreme spikes in Mid-C pricing that no one can seriously dispute are unjust and unreasonable in magnitude.

Third, the Company asserts a continuance is needed so it can run and present its PCS Model in order to allow the soft-cap proposal to be “tested and better understood” and held up against the legal requirement of sufficiency. Motion at 5: 1-11. The Commission, however, has already concluded in its Order at ¶ 89 that:

We find that a cap mechanism that operates as the Staff and Public Counsel have proposed satisfies our statutory duty to establish just and reasonable rates for customers, while continuing to provide sufficient rates for PSE. . . . The soft cap proposal provides PSE with assurance that if Mid-Columbia prices exceed the soft-cap, the energy rate can be severed from the cap and based instead on prudently incurred costs. Thus, PSE will recover its prudently incurred costs and will have an opportunity to earn a reasonable margin.

Absent our proposed conditions set forth above, the continuance requested by PSE would, therefore, do nothing more than allow the Company to relitigate the Commission’s conclusion on these very points even though, as stated above, the Company did not take advantage of its previous opportunity to test and understand the soft-cap proposal.

²The Company accuses Staff and Public Counsel of basing the soft-cap proposal on “eye-balling” of certain information. Motion at 4: 21-23. That particular characterization is attributable, however, only to Public Counsel. Tr. 1370. Staff witness Buckley stated specifically that his input into the proposal was based on his review of data and information provided by PSE since the initiation of this case. Tr. 1333.

Finally, the Commission should be aware that Staff has acted in accordance with the Commission's directive. Order at ¶ 93. Staff has consulted with Public Counsel, Complainants, and the Company, and it is in the process of preparing for filing tomorrow the require tariff pages, along with an "advice letter" to implement the tariff and a written explanation addressing the specific questions posed by the Commission's Order at ¶¶ 90-92. Staff expects that Public Counsel and the Complainants will join in that filing, and Staff has invited the Company to join as well. In other words, Staff is fully ready, willing, and able to proceed to hearing on January 29, 2001.

In conclusion, the Company's motion for continuance can be granted, but only in accordance with the conditions stated earlier. Absent such conditions, the continuance should be denied.

DATED this 25th day of January, 2001.

Respectfully submitted,

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