

Agenda Date: August 9, 2012
Item Numbers: A3 and A5

Dockets: UE-120805 and UG-120806
Company: Puget Sound Energy

Staff: Kendra White, Regulatory Analyst
Chris McGuire, Regulatory Analyst

Recommendation

Issue a Complaint and Order suspending the revised tariff filed in Dockets UE-120805 and UG-120806.

Background

On June 1, 2012, Puget Sound Energy (PSE or the company) filed a petition with the Washington Utilities and Transportation Commission (commission) to revise WN U-60, Tariff G for electric service along with a companion petition to revise WN U-2 for natural gas service. The original language proposals were discussed at the Open Meeting on July 12, 2012. PSE filed substitute pages which extended the effective date to allow for further discussion between staff and the company. On August 3, 2012, the company filed new tariff filings which address all but one concern of staff which relates to retroactive rate making.

The petitions request the approval of the following tariff sheets:

WN U-60, Tariff G for electric service

4 th Revision of Sheet No. 80-a	-General Rules and Provisions (Continued)
87 th Revision of Sheet No. 81	-Tax Adjustment
92 nd Revision of Sheet No. 81-a	-Tax Adjustment (Continued)
14 th Revision of Sheet No. 81-b	-Tax Adjustment (Continued)
8 th Revision of Sheet No. 81-c	-Tax Adjustment (Continued)
Original Sheet No. 81-d	-Tax Adjustment (Continued)

WN U-2 for natural gas service

112 th Revision of Sheet No. 101	-Natural Gas Schedule No. 1, Tax Adjustment
142 nd Revision of Sheet No. 101-A	-Natural Gas Schedule No. 1, Tax Adjustment (Continued)
20 th Revision of Sheet No. 101-B	-Natural Gas Schedule No. 1, Tax Adjustment (Continued)
6 th Revision of Sheet No. 101-C	-Natural Gas Schedule No. 1, Tax Adjustment (Continued)
3 rd Revision of Sheet No. 101-D	-Natural Gas Schedule No. 1, Tax Adjustment (Continued)

All revised tariff sheets have an effective date of August 10, 2012.

Approval of these filings would allow PSE to:

- Pass through tax assessments and other related fees or refunds related to past periods to ratepayers within a listed taxing jurisdiction,

- Propose an “appropriate time period and rate over which to adjust rates to pass through” amounts paid or refunds received from a listed taxing jurisdiction in a tariff filing subject to Commission approval within 75 days of the payment or refund,¹
- Retain “exclusions” on the electric tariff sheet for Schedule 81 which are customer specific, and
- Include clarifying language regarding the availability of the “utility tax credit...to eligible customers who take service within Indian County...from the date of eligibility (when the Company receives the necessary documentation) forward.”²

Discussion

Staff’s primary concern regarding the original tariff filings, submitted on June 1, 2012, was related to retroactive rate making. Retroactive rate making was not discussed at the Open Meeting on July 12, 2012. Staff’s research in consultation with the Attorney General’s Office results in the opinion that the allowance or disallowance of tax assessments or refunds related to past periods of time is at the discretion of the commission.

Staff believes that the primary concern related to retroactive rate making is the lack of notice to customers as expressed in *WUTC v. US WEST Communication, Inc.*:

The evil in retroactive rate making as thus understood is that the consumer has no opportunity prior to receiving or consuming the service to learn what the rate is or to participate in the proceeding by which the rate is set. The Commission agrees that retroactive rate making, as thus understood, is extremely poor public policy.³

Staff believes that the current tariff revisions contain the “evils” of retroactive rate making as they would allow for the collection or pass through of monies related to past periods for which customers were not informed at the time service was rendered. Rather than allowing for complete collection and pass through, the tariff revisions should appropriately balance the need for notice and the consideration of limiting the effect of municipal taxes to only ratepayers of the municipality. This balance can be achieved by limiting the collection of assessments or return of refunds to periods subsequent to June 1, 2012, the original filing date for these tariff revisions. Staff holds that the original filing gave proper notice to customers regarding their liability.

The substitute pages filed August 3, 2012, remedy the other concerns raised by staff at the July 12 Open Meeting. PSE rejected the language staff proposed for a June 1, 2012 cut-off date.

¹ Email from Lynn Logen, Tariff Consultant, Puget Sound Energy, to Kendra White, Regulatory Analyst, Washington Utilities and Transportation Commission (July 25, 2012, 11:53 PST) (on file with recipient).

² Docket UE-120806, June 1, 2012, Cover letter to Mr. David Danner, p. 2.

³ *UTC v. PSE*, Docket UE-010410, Order at 2 (Nov. 9, 2001) which cites *WUTC v. US WEST Communication, Inc.* Docket No. UT-970010, Second Supp. Order at 10 (Nov. 7, 1997).

Issues in Sheet No. 81-c “Timing of Collections” (now titled “Timing of Collections or Refunds”)

The new language addresses three sets of concerns. First, with regard to the transfer of authority, the language now states that the company will propose, rather than determine, a new rate and time period. Any such proposal will be subject to commission review and approval. Second, the proposed timeline of 75 days will ensure the timely pass through of collections and refunds. Third, the proposed language is specific to the taxing jurisdictions listed explicitly on Schedule 81. The company clearly is not allowed to collect assessments related to federal income taxes or other taxes which fall outside the exceptions listed for the indicated jurisdictions.

Breadth of potential application in the original language

The new language sets bounds on language that was previously considered too broad. The possible collection of punitive charges was of particular concern; this concern has been remedied by the new language which states:

“In no event shall the Company be entitled to recover any amounts assessed by the taxing jurisdiction that are punitive in nature.”⁴

Removal of “exclusions” from the tariff sheets

The new language maintains the “exclusions” column on the electric tariff sheet for Schedule 81 for exclusions which are customer specific, thus allowing customers to look at the tariff for qualifying exemptions that will impact their tax burden.

Conclusion

PSE and staff worked through all but one of the issues in the language originally filed. That one issue is the current collection of taxes imposed by taxing authorities for past periods. Staff proposes a clause⁵ in Schedule 81-c that forbids collecting taxes imposed on periods prior to June 1, 2012.

Recommendation

Issue a Complaint and Order suspending the revised tariff filed in Dockets UE-120805 and UG-120806.

Attachment - 1

⁴ Docket UE-120806, August 3, 2012, Eighty-Eighth Revision of Sheet No. 81.

⁵ See Memo Attachment 1 at Paragraph 4A.