

BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of	)	
	)	DOCKET UE-141357
PUGET SOUND ENERGY, INC.	)	
	)	
For a Declaratory Order on the Commitment	)	STATEMENT OF FACTS AND LAW ON
to Accelerate Conservation as Part of PSE’s	)	BEHALF OF THE NW ENERGY
Decoupling Mechanism.	)	COALITION
_____	)	

1. On June 27, 2014, Puget Sound Energy (PSE) filed with the Washington Utilities and Transportation Commission (Commission) a Petition for Declaratory Order (Petition) regarding PSE’s commitment to accelerate its acquisition of energy efficiency in conjunction with the approval of the full decoupling mechanism in Dockets UE-121697 and UG-121705 (consolidated) Order 07, Final Order Granting Petition (June 25, 2013) (“Decoupling Final Order”).

2. On July 1, 2014, the Commission issued notice of receipt of the Petition and requested that all interested parties present a statement of fact and law on the issues raised in the Petition by July 18, 2014.

3. The NW Energy Coalition is an interested party and submits the following statement in response to the Commission’s request.

STATEMENT OF FACTS AND LAW

4. On October 25, 2012, the NW Energy Coalition and PSE jointly filed a Petition for Decoupling Mechanism, which sought an order authorizing PSE to implement a decoupling mechanism.

5. Following workshops and informal discovery, the NW Energy Coalition and PSE filed an amended decoupling petition on March 1, 2013.

6. As part of the initial and amended petitions, PSE proposed to exceed its electric conservation achievement by 5% in excess of its pro-rata share of its ten-year conservation potential.

7. At no point in the development of the initial or amended petitions did the NW Energy Coalition and PSE discuss how PSE's commitment to exceed its electric conservation targets would apply to the 2012-2013 biennium. The question of pro-rating PSE's commitment was not explicitly discussed by the parties, nor did the parties explicitly discuss that PSE's commitment would retroactively apply to time periods before the decoupling mechanism was approved and implemented. The initial and amended petitions likewise do not explicitly address this question.

8. In accordance with the Decoupling Final Order, PSE implemented the decoupling mechanism on July 1, 2013.

9. The Decoupling Final Order is silent on how PSE's increased conservation commitment applies to the 2012-2013 biennium.

10. Neither the Energy Independence Act, Chapter 19.285 RCW, nor the Commission's rules implementing the Act, Chapter 480-109 WAC, speak directly to the question of how PSE's commitment, approved mid-biennium, should change PSE's biennial target.

11. The Energy Independence Act provides for penalties for utilities that fail to meet their biennial targets, *see* RCW 19.285.060, and provides direction on the minimum biennial target that utilities may set, *see* RCW 19.285.040. But it is undisputed that PSE's initially established target met the requirements of RCW 19.285.040 and that PSE met its initially

established target. The provisions of the Act do not speak to how a change that occurs mid-reporting period affects the targets for that period. The Commission's rules implementing the Act likewise do not address this scenario. *See* WAC 480-109-010; WAC 480-109-050.

12. Given that neither the applicable statutes and rules nor the Decoupling Final Order explicitly provide for how a mid-term change affects the biennial conservation target approved by the Commission at the outset of the reporting period, it would be inappropriate to penalize PSE for achieving 104.8% of its 2012-13 biennial target. No statute, rule, order, or other authority put PSE or other parties clearly on notice that PSE's commitment to exceed its conservation targets would apply retroactively to the entire 2012-13 biennium.

13. Declining to apply the change in PSE's biennial target retroactively in the absence of a clear statement in the Energy Independence Act and implementing rules or the Final Decoupling Order is in keeping with the general presumption against retroactivity. *See, e.g., State v. Smith*, 144 Wn.2d 665, 673-74 (2001); *In re Pers. Restraint of Stewart*, 115 Wn. App. 319, 332 (2003).

14. While it would be inappropriate to apply PSE's commitment to exceed its biennial conservation target retroactively in the absence of clear authority, the NW Energy Coalition believes the Commission should require PSE to exceed its biennial conservation target by 5% for the full 2014-15 biennium and the full 2016-17 biennium.

15. It is possible that the decoupling mechanism will only be in effect for a portion of the 2016-17 biennium. However, it is nonetheless appropriate for PSE to meet the heightened conservation target for the full biennium. If the Commission clarifies now that PSE must meet the heightened target for the full 2016-17 biennium, PSE and all parties will be on notice well in advance of the conservation requirement—this future requirement does not pose the same

concerns as the retroactive application of the increased target to the 2012-13 biennium.

16. There is uncertainty as to whether the decoupling mechanism will continue through the full 2016-17 biennium, but the Company should plan for the mechanism to continue and treat its incremental conservation in a similar manner. Ramping down conservation efforts is more confusing for customers and trade allies than ramping up.

17. The Commission has the authority to require PSE to meet the 5% increased target for the full 2016-17 biennium. The Energy Independence Act, RCW 19.285.060(4), gives the Commission broad authority to provide positive incentives for an investor-owned utility to go beyond its targets. Similarly, the Commission's 2010 Decoupling Policy Statement encourages incremental conservation in conjunction with decoupling. Given that the initial and amended decoupling petitions and the Decoupling Final Order do not expressly address how PSE's heightened conservation targets apply to the 2016-17 biennium, it is appropriate for the Commission to clarify that ambiguity now and to require PSE to meet the heightened targets for the full biennium.

Respectfully submitted this 18th day of July, 2014.



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