

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	DOCKET NO. UE-141141
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	
)	REPLY OF THE INDUSTRIAL
v.)	CUSTOMERS OF NORTHWEST
)	UTILITIES TO ANSWER OF PUGET
PUGET SOUND ENERGY,)	SOUND ENERGY, INC.
)	
Respondent.)	
_____)	

I. INTRODUCTION

1 Pursuant to WAC 480-07-370(1)(d)(ii), the Industrial Customers of Northwest Utilities (“ICNU”) submits this reply (“Reply”) with the Washington Utilities and Transportation Commission (“Commission”) to the “Answer of Puget Sound Energy, Inc. to Petition for Accounting Order of The Industrial Customers of Northwest Utilities” (“Answer”), filed by Puget Sound Energy, Inc. (“PSE” or the Company”) on August 28, 2014.

II. REPLY

A. The Company’s Relief Arguments Confuse and Fail to Address Relevant Issues Concerning the Deferral Proposal in the Petition

2 The Company concludes that the Commission should reject ICNU’s deferral proposal, essentially arguing that the Thurston County Superior Court (“Court”) did not pre-decide how the Commission would conduct the remand or remedy its error on the actual level of ROE which is legally appropriate in the consolidated expedited rate filing (“ERF”), rate plan, and decoupling dockets (“ERF cases”).^{1/} ICNU continues to maintain that the only valid and

^{1/} Answer at ¶ 17.

supported ROE level in the ERF cases record was the 9.3% ROE proposed by ICNU.^{2/} Further exposition on this point is contained within ICNU’s proposal responsive to the ERF case Notices,^{3/} in which ICNU explains the acute difficulties in attempting to reconstitute the record in the ERF cases to include new ROE analysis and data.^{4/}

3 In any event, PSE’s newly raised arguments against a deferral miss the point and confuse both the Petition proposal and the consideration now before the Commission. That is, the deferral proposed in the Petition provides contingent relief which is not mutually exclusive to the Company’s position. The Petition “requests that the deferral cover any *potential* period between the date that rates become effective [in the 2014 PCORC] and the date on which the Commission issues an order establishing legal rates in [the ERF cases].”^{5/} Likewise, the Petition states that, if this “sequence of events unfolds,” the proposed deferral would capture any collection amounts found to be unlawful “should the Commission approve new rates in the 2014 PCORC *before* a new order is issued in the ERF cases.”^{6/}

4 The Petition acknowledges the remand proceeding and anticipates a Commission determination in the ERF cases in the very shape of the deferral proposal. For this reason, the Company’s argument against deferral *on the basis of* the ongoing remand proceeding is without merit. The Company states: “The court remanded the case to the Commission to take action

^{2/} Petition for Accounting Order at ¶ 8 (Aug. 8, 2014) (“Petition”); see also ERF cases, Order 07 at ¶ 56 (June 25, 2013) (“ERF Order 07”) (indicating that no other party had submitted a full cost of capital analysis into the record in the ERF cases).

^{3/} ERF cases, Notice Suspending Response Deadlines and Providing Opportunity to File Proposals and Notice of Prehearing Conference (Aug. 5, 2014) (“Notices”).

^{4/} ERF cases, ICNU Proposal for Procedure on Remand (Aug. 26, 2014). The Commission may take official notice of ICNU’s Proposal filing. See WUTC v. Washington Natural Gas Co., Docket Nos. UG-940034 and UG-940814, Fifth Suppl. Order at p. 31 (Apr. 11, 1995) (taking official notice of a party filing in a separate docket).

^{5/} Petition at ¶ 1 (emphasis added).

^{6/} Id. at ¶ 11.

consistent with the court’s order.”^{7/} But this fact perfectly coincides with the Petition’s proposal for deferral, rather than militating against the proposal. Nor should a deferral be denied on the Company’s warning against a “piecemeal deferral.”^{8/} The Commission can and does approve deferred accounting even when further determination on allowable amounts is required.^{9/} Notwithstanding, even if the Commission were to decide against ordering an immediate approval of ICNU’s deferral request, the prudent course would not be an absolute denial of a future deferral. Instead, the Commission should suspend ICNU’s petition request, pending final determination in the ERF cases remand. Such an alternative would be fully in keeping with the Company’s own anticipation of future Commission “action consistent with the court’s order.”^{10/} That is, if on remand the Commission finds that a 9.3% ROE was and is the appropriate level of equity return “consistent with the court’s order,” an deferral order in keeping with the Petition would be appropriate at that time.

B. The Answer Misinterprets the Petition and Misrepresents Key Facts Relevant to the Commission’s Consideration

5 Many of the denials and statements made by PSE in the Answer do not accurately interpret the Petition or fail to properly characterize pertinent facts. Accordingly, the following paragraphs provide clarification and shed additional light on allegations contained in the Answer.

6 According to PSE, paragraph 10 of the Petition mischaracterizes the Notices.^{11/} This allegation does not bear scrutiny. The final sentence of the paragraph states: “In the body of these Notices, the Commission explicitly acknowledged the Court’s conclusions regarding the

^{7/} Answer at ¶ 17.
^{8/} *Id.* at ¶ 18.
^{9/} See *WUTC v. Pacific Power & Light Co.*, Docket Nos. UE-140762/UE-140617, Order 03/01 at ¶10 (May 29, 2014) (authorizing deferral but requiring “a more complete and fully developed record before we can issue a decision on the eligibility of these amounts for inclusion in rates,” and making “no finding as to whether the amount ... is prudent but leave that issue for [future] determination”).
^{10/} Answer at ¶ 17.
^{11/} *Id.* at ¶ 11.

illegality of the Commission’s findings of fact with respect to ROE in the Company’s rate plan.”^{12/} This is a perfectly accurate characterization, given that the Commission directly quoted the Court’s conclusion that “the Commission’s findings of fact with respect to the return on equity ... in the context of a multi-year rate plan are unsupported by evidence and the Commission improperly shifted the burden of proof ... contrary to RCW 34.05.461(4) and RCW 80.04.130(4).”^{13/}

7 The fact that the Commission quoted the Court’s conclusion adjudging that the Commission’s findings of fact were contrary to two specific statutes means “the Commission explicitly acknowledged the Court’s conclusions regarding the *illegality* of the Commission’s findings of fact.”^{14/} Finding that an action is “contrary to” statute means that it is illegal, period. The Commission should not allow PSE to flout common and ordinary use of the English language by casually throwing out allegations of “mischaracterization.”

8 Similarly, in regard to rates established in the ERF cases, PSE “denies that the rates are illegal as ICNU alleges.”^{15/} Again, “PSE denies that the return on equity used in the PCORC has been found illegal by the Court.”^{16/} At best, these are gross mischaracterizations on the Company’s part. Since the Commission acknowledges that the Court concluded that its ROE findings were contrary to statute, the Company cannot reasonably maintain the legality of rates (or the ROE used to derive them) established *contrary* to law. This is true whether the error is procedural or substantive, and regardless of whether the Commission later makes a determination establishing the exact same ROE and rates in full accordance with all statutory

^{12/} Petition at ¶ 10.

^{13/} Notices (*quoting* Petition Att., ICNU v. WUTC, Court Case No. 13-2-01576-2, Order, p.2 (July 25, 2014) (“Court Order”)).

^{14/} Petition at ¶ 10 (emphasis added).

^{15/} Answer at ¶ 12.

^{16/} Id. at ¶ 15.

requirements. In other words, if the Commissioners were summarily to declare that certain rates were in effect without receiving or considering a shred of evidence, those rates would be illegal until all procedural and substantive requirements prescribed by the legislature were first satisfied, independent of the ultimate correlation between the particular figures derived under legal and illegal processes.

9 The Company also denies the statement in Petition paragraph 8 that, in the ERF cases, “the record evidence demonstrated that a reasonable ROE for the Company at the time that ERF Order 07 was issued was 9.3%.”^{17/} In support of this statement, ICNU cited to paragraph 51 of ERF Order 07, in which the Commission recounted the analysis and recommendation of ICNU expert Michael Gorman in support of a 9.3% ROE. No other party had submitted a full cost of capital analysis into the record in the ERF cases.^{18/} Thus, as ICNU’s 9.3% ROE recommendation comprised the *only* complete cost of capital evidence in the record, ICNU’s statement in Petition paragraph 8 is well supported by the factual record.

10 In response to Petition paragraph 11, PSE “denies that ICNU’s Petition will effectuate the court order.”^{19/} Paragraph 11 of the Petition explains that ICNU seeks to effectuate the Court Order and that its proposed deferral will accomplish this end “should the Commission approve new rates in the 2014 PCORC *before* a new order is issued in the ERF cases.” ICNU submits that this is an accurate assessment, specifically if and when the Commission issues an order in the ERF cases determining that the 9.8% ROE was improper, and this order follows the final order in the 2014 PCORC. Conversely, if the 2014 PCORC order follows the remand order, the Commission will be able to simply apply its determination in the

^{17/} Id. at ¶ 9.

^{18/} See ERF Order 07 at ¶ 56.

^{19/} Answer at ¶ 12.

ERF cases. But if not, accepting PSE's denial and rejecting ICNU's deferral request would put ratepayers in completely unnecessary jeopardy.

11 The Company's denial that the proposed deferral would effectuate the Court Order sheds light on PSE's allegation that, in paragraph 14 of the Petition, "ICNU misreads the language of the court's order."^{20/} There, ICNU states that the ROE being "used in [PCORC] calculations has been found illegal by the Court."^{21/} But PSE does not attempt to explain how ICNU misreads the language of the Court Order, and with good reason—the Court plainly ordered, adjudged and decreed that the Commission's findings of fact on the rate plan ROE were "contrary to" statute.^{22/} Accordingly, the Commission should regard such patently falsifiable allegations by the Company as meriting no ultimate weight in consideration of the Answer.

III. CONCLUSION

12 ICNU requests that the Commission approve the Petition and reject the relief requested in the Answer. In the alternative, ICNU requests that the Commission either approve deferral for later determination on allowable amounts, or suspend ICNU's Petition, pending the outcome of the remand proceedings in the ERF cases.

^{20/} Id. at ¶ 15.

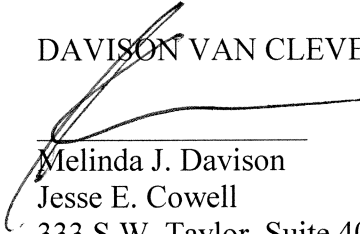
^{21/} Petition at ¶ 14.

^{22/} Court Order, p. 2.

Dated in Portland, Oregon, this 5th day of September, 2014.

Respectfully submitted,

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