

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

WASHINGTON UTILITIES AND	)	DOCKETS UE-090704
TRANSPORTATION COMMISSION,	)	and UG-090705 ( <i>consolidated</i> )
	)	
Complainant,	)	
	)	ORDER 13
v.	)	
	)	
PUGET SOUND ENERGY, INC.,	)	DENYING PETITIONS FOR
	)	RECONSIDERATION OF
Respondent.	)	ORDER 11
	)	
.....	)	

**MEMORANDUM**

- 1 **PROCEEDINGS:** On May 8, 2009, Puget Sound Energy, Inc. (PSE or the Company), filed with the Washington Utilities and Transportation Commission (Commission) certain tariff revisions designed to increase its general rates for electric service (Docket UE-090704) and gas service (Docket UG-090705) to customers in Washington. The Commission suspended operation of the tariffs and consolidated these dockets. Following evidentiary hearings on January 19 – 21, 2010, and public comment hearings on December 7 and 10, 2010, and January 19, 2010, the parties filed briefs and reply briefs on February 19, 2010, and March 2, 2010, respectively.
  
- 2 On April 2, 2010, the Commission entered Order 11 – Rejecting Tariff Sheets; Authorizing and Requiring Compliance Filing. This was the Commission’s Final Order including its decisions on all contested issues in the proceeding. On April 8, 2010, the Commission entered Order 12 – Granting [PSE’s] Motion for Clarification of Order 11 and, by letter from the Secretary, approved the Company’s compliance filing.

- 3 **PSE'S PETITION FOR RECONSIDERATION:** On April 8, 2010, PSE filed a Petition for Reconsideration. PSE requests by its petition that the Commission reconsider Order 11 and approve the Company's proposal to increase residential and gas low income bill assistance funding for the next program year.
- 4 PSE states that it requested in its initial filing that the Commission approve an increase in the annual level of low-income electric and natural gas bill assistance funding by amounts that correspond to whatever percentage increase the Commission approved in this proceeding for the residential class of customers.<sup>1</sup> PSE did not file any revised tariff sheets to effect such change in funding based on the increase rates it proposed. Apparently, the only mention of PSE's recommendation came in the form of a two-sentence response to a single question in Mr. Markell's direct testimony. Mr. Markell stated that the Company proposed to add this percentage increase to the low income tariff in the Company's next program year.<sup>2</sup> No other party addressed PSE's low income program funding in testimony or initial briefs.
- 5 PSE restated the Company's low income proposal in its Initial Brief.<sup>3</sup> In its Reply Brief, Commission Staff pointed out that PSE did not propose in its initial filing any change to the low income tariff (*i.e.*, Schedule 129). Because Schedule 129 was not under suspension, Staff recommended that the Commission delay consideration of the proposed increase until PSE files its next low income tariff.<sup>4</sup>
- 6 PSE states in its petition that Staff's reply brief was the first indication of any opposition to its proposal. The Company argues that Staff raised an entirely new argument against PSE's proposal in its reply brief and, hence, PSE had no opportunity to respond to Commission's Staff's argument.

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<sup>1</sup> PSE Motion ¶ 4 (citing PSE Initial Brief ¶ 146).

<sup>2</sup> *Id.* (citing Exhibit EMM-1TC (Markell) at 38:9-11).

<sup>3</sup> PSE Initial Brief ¶ 146.

<sup>4</sup> Commission Staff's Reply Brief ¶ 25.

7 PSE argues:

Chapter 80.28.068 RCW authorizes the Commission to approve the increase in low income bill assistance, specifically referring to proposals such as PSE's in the context of a general rate proceeding. Further, nothing in Chapter 80.28.060 RCW, which governs tariff changes, precludes an order granting PSE's proposal. *PSE did not request to increase its current low income tariff; rather, PSE requested that the Commission approve an increase so that PSE could apply such increase to its new low income tariff at the next program year.* Accordingly, it is irrelevant whether PSE's low income tariff was suspended during this proceeding. The Commission should reject Commission Staff's untimely objection to PSE's proposal.<sup>5</sup>

8 **REPLIES TO PSE'S PETITION:** The Commission allowed parties to reply to PSE's petition. On April 16, 2010, Staff, Public Counsel and the Northwest Energy Coalition filed their respective answers. Public Counsel states it does not oppose the petition, finding the request reasonable considering these difficult economic times. NWECC supports PSE's petition, arguing that:

It is essential that PSE provide funding and other services in order to mitigate the impacts of electric and gas rates on low-income customers. For this assistance to be meaningful, though, the funding and services must at least keep pace with the company's rates.

9 Opposing PSE's petition, Staff points out, as it did in its Reply Brief,<sup>6</sup> that PSE did not file in this proceeding any proposed revisions to Schedule 129 to increase the surcharges in the tariff that funds the low income program. Staff accordingly recommends that the Commission deny PSE petition and delay consideration of the proposal until the Company files revisions to Schedule 129 for the next program year. This, Staff argues, would allow all issues related to the Company's proposal to be addressed at that time without prejudice. Staff argues further that the outcome should not be predetermined in this proceeding.

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<sup>5</sup> PSE Motion ¶¶ 6 (emphasis added).

<sup>6</sup> Staff Reply Brief ¶¶ 24-25.

10 **COMMISSION DISCUSSION AND DETERMINATION:** There was no need for the Commission to address in Order 11 PSE's proposal to increase low income funding because, as Staff argues, the matter was not ripe for determination. As PSE acknowledges in its petition:

PSE did not request to increase its current low income tariff; rather, PSE requested that the Commission approve an increase so that PSE could apply such increase to its new low income tariff at the next program year.

The Commission does not pre-approve tariff changes; it should not do so here. While we acknowledge the importance of low income programs, it is necessary and important to ensure that all potentially interested persons are on notice and given an opportunity to participate when the subject of their funding is an issue. PSE did not file any proposed revisions to Schedule 129 and, therefore, the Commission's suspension order and notice of hearing cannot be considered to have given due and proper notice that it might make a determination in this proceeding that would lead to a change in that tariff schedule either now or in the future.

11 We determine for these reasons that PSE's Petition for Reconsideration should be denied.

12 **COMMISSION STAFF'S PETITION FOR RECONSIDERATION:** On April 12, 2010, Commission Staff filed its Petition for Reconsideration. Staff's petition asks the Commission to reconsider its determination of 6.70 percent as the cost of PSE's long-term debt and argues for application of the 6.48 percent cost of long-term debt recommended by Staff.

13 PSE's original filing included a 6.82 percent average cost of long-term debt using the yield to maturity, maturity date, net proceeds to PSE, and coupon- rate for each existing debt issue as well as for the incremental contribution to debt cost of issuing three new debt issues to replace six debt issues that will mature before the end of the rate year.<sup>7</sup> In testimony filed on September 28, 2009, Mr. Gaines revised the average

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<sup>7</sup>Exhibit DEG-1T (Gaines) at 24:3 – 26:10.

cost of long-term debt downward to 6.70 percent to reflect the effect of \$350 million Senior Secured Note issued at 5.75 percent on September 11, 2009.<sup>8</sup>

14 Mr. Parcell testified for Staff that the three future issues expected during the rate year should carry an imputed price equal to the 5.75 percent rate the Company secured in September 2009. Staff contended that the 5.75 percent rate is the most appropriate to impute to the Company's expected rate year debt issuances because that rate is what the Company actually experienced in the capital markets.<sup>9</sup>

15 In Order 11, we rejected Staff's proposal on the basis of undisputed evidence that the rate the Company achieved in September 2009 was unprecedented. Staff argues in its petition that:

The rate the Company paid for the September 2009 debt issue is not unprecedented. On March 2, 2010, the Company filed notice of its intent to issue \$325 million in senior secured notes (Docket UE-100365). The notice indicated that the Company expected a range of coupon rates for 10-year or 30-year senior notes consistent with the rate Staff assumed for the March 2010 and September 2010 issues, and well below the rate the Company assumed for those same issues.<sup>10</sup>

Staff asks the Commission to take official notice of the contents of the file in Docket UE-100365 pursuant to WAC 480-07-495(2). This would include the final terms and conditions of the transaction described in the earlier notice, which the Company filed in Docket UE-100365 on March 9, 2010. These final terms and conditions show that the Company priced the March 2010 long-term debt issue at an all-in price of 5.857 percent.

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<sup>8</sup> Exhibit DEG-9T (Gaines) at 12:4-14:11.

<sup>9</sup> Staff Reply Brief ¶ 15.

<sup>10</sup> Staff Petition ¶ 4 (citing Confidential Attachment 1 at Attachment A ("Indicative Terms & Pricing")). We note that events occurring in March 2010 cannot be said to implicate in any manner the Commission's determination that events occurring six months earlier were at that time "unprecedented."

Staff criticizes PSE for not bringing these facts to the Commission's attention in the Company's Reply Brief or during the compliance phase of this proceeding.

- 16 **COMMISSION DISCUSSION AND DETERMINATION:** Staff's petition is at odds with the general principles of utility ratemaking we discussed in considerable detail in Order 11 and in our final order entered at the conclusion of Avista Corporation's most recent general rate case proceeding.<sup>11</sup> With limited exceptions, as discussed in these prior orders, the Commission relies on information available at a point in time during or shortly after the historic test year when setting rates. It is neither practical nor good practice to continuously update data during a rate proceeding. Only in the most exigent circumstances would we rely on data that first became available after the record is closed, as Staff proposes we do here.
- 17 Moreover, Staff's petition depends on an untimely request that we reopen the record in this proceeding to receive new evidence by official notice. While Staff criticizes the Company for not bringing forward the information on which Staff's petition relies either via its reply brief or its compliance filing, we note that Staff also had knowledge of these facts by early March, given that PSE disclosed the terms in filings in Docket UE-100365 on March 2 and March 9, 2010. The Commission did not enter Order 11 until April 2, 2010, affording Staff an opportunity to request us to reopen the record during a period when the Company and other parties could respond without requesting leave and the Commission could consider the request prior to making its determinations.
- 18 We determine for these reasons that Staff's Petition for Reconsideration should be denied.

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<sup>11</sup> See Order 11 ¶¶ 22 – 35; see also WUTC v. Avista, Dockets UE-090134 and UG-090135, Order 10 ¶¶ 40-50 (December 22, 2009).

**ORDER**

THE COMMISSION ORDERS THAT:

- 19 (1) PSE's Petition for Reconsideration is denied.
- 20 (2) Staff's Petition for Reconsideration is denied.
- 21 (3) The Commission retains jurisdiction to effect the terms of this Order and its prior orders entered in this proceeding.

Dated at Olympia, Washington, and effective April 29, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner