

[Service date July 28, 2014]



STATE OF WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION  
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July 28, 2014

**NOTICE THAT THE COMMISSION  
WILL NOT ENTER A DECLARATORY ORDER**

RE: *In the Matter of the Petition of Puget Sound Energy For a Declaratory Order on the Commitment to Accelerate Conservation as Part of PSE's Decoupling Mechanism*, Docket UE-141357

TO ALL PARTIES AND INTERESTED PERSONS:

On June 27, 2014, Puget Sound Energy (PSE or Company) filed with the Washington Utilities and Transportation Commission (Commission) a Petition for Declaratory Order (Petition) requesting a Commission determination that: (1) PSE's commitment to accelerate its acquisition of energy efficiency commenced with the implementation of the decoupling mechanism in July 2013; (2) it is appropriate to prorate the commitment over the biennium to reflect only the period when the decoupling mechanism is in effect; and (3) PSE has not violated its commitment to accelerate its acquisition of energy efficiency by achieving 104.8 percent of its conservation target in the 2012-2013 biennium.

PSE, in effect, seeks a declaratory order that would add detailed provisions to the Commission's order approving the Company's decoupling mechanisms.<sup>1</sup> PSE's purpose is to insulate the Company from the possibility of a Commission enforcement action alleging that PSE did not meet its commitment to accelerate its conservation achievement

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<sup>1</sup> *In re Petition of Puget Sound Energy, Inc. and Northwest Energy Coalition For an Order Authorizing PSE To Implement Electric and Natural Gas Decoupling Mechanisms and To Record Accounting Entries Associated With the Mechanisms*, Dockets UE- 121697 and UG-121705, Order 07, Final Order Granting Petition (*Decoupling Order*).

during the 2012-2013 biennium as part of the agreement among some of the parties for approval of decoupling.

The Commission gave notice of PSE's Petition as required by RCW 34.05.240 and WAC 480-07-930, and invited interested persons to submit a statement of fact and law on the issues raised by the Petition. On July 18, 2014, the Northwest Energy Coalition (NVEC) and the Commission's regulatory staff (Staff) individually filed comments.

RCW 34.05.240 and WAC 480-07-930 require the Commission, within thirty days of receiving PSE's Petition, to take one of the following actions; (1) enter a declaratory order, (2) notify PSE that no order will be entered, (3) set a date by which the Commission will enter an order, or (4) set a date and time for a hearing.

The Commission may enter a declaratory order upon a showing:

- (a) That uncertainty necessitating resolution exists.
- (b) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion.
- (c) That the uncertainty adversely affects the petitioner.
- (d) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested.<sup>2</sup>

PSE states in its Petition that "the uncertainty to be resolved by this petition is whether PSE is in compliance with its commitment to accelerate conservation, approved by the Commission in the Decoupling Final Order." PSE states further that:

WUTC Staff disagrees with PSE's interpretation of its commitment--that the obligation to accelerate decoupling began with the implementation of the decoupling mechanism. WUTC Staff and other stakeholders are questioning whether PSE has complied with its decoupling commitment to accelerate conservation. They have suggested that PSE may be subject to penalties for its failure to comply with its decoupling commitment. There is an actual controversy between PSE and these stakeholders. A Commission order will not be merely an advisory opinion but will resolve this controversy.

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<sup>2</sup> RCW 34.05.240.

Staff confirms via its comments filed on July 18, 2014, that it disagrees with PSE's interpretation of the Company's commitment that would have it apply on a pro rata basis for the period following the Commission's approval of decoupling (*i.e.*, one-quarter of the 2012-13 biennium). However, Staff also states that "[n]either the *Multiparty Settlement* nor the *Decoupling Order* provide specific guidance on PSE's conservation commitment during this initial period."<sup>3</sup>

NWEC emphasizes that the subject PSE's raises through its Petition simply never came up as NWEC and the Company prepared the decoupling filing and as they and Staff ultimately settled the matter. NWEC opines that it would be unfair to apply PSE's commitment to periods predating Commission approval of decoupling because nothing in the record makes clear that the commitment was meant to apply during such time. NWEC says, however, that:

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.<sup>4</sup>

Staff supports NWEC's proposal that the Commission treat PSE's last biennium as a full biennium whether or not PSE's decoupling program remains in effect during the entire period.<sup>5</sup> Staff describes this as "an alternative" to resolving the question raised by PSE's Petition.<sup>6</sup>

We decline to enter the requested declaratory order. The uncertainty described in PSE's Petition and the responses does not give rise to an actual controversy that can, or should, be resolved by means of a declaratory order. Such a controversy would only arise if Staff, or the Commission on its own motion, initiates a complaint against PSE for failing to satisfy its commitments. This scenario is speculative, and therefore any adverse

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<sup>3</sup> Staff Response to Petition ¶ 6. Staff, NWEC, and PSE were all parties to a multiparty settlement by which they proposed decoupling be approved. While the Commission rejected the settlement, it ultimately approved PSE and NWEC's joint petition, supported by Staff, seeking such authority.

<sup>4</sup> NWEC Response to Petition ¶ 14.

<sup>5</sup> Staff Response to Petition ¶ 16.

<sup>6</sup> *Id.*

impact on PSE from the uncertainty is speculative and does not warrant Commission interpretation or clarification of PSE's commitments through a declaratory order.

The Commission nevertheless has an interest in resolving ambiguity and promoting clarity to prevent future conflict. We do not wish to find ourselves presented with the same question two years from now regarding the application of PSE's commitment to exceed its biennial conservation target to the entire 2014-15 biennium. Accordingly, by separate notice in Docket UE-132043 we will initiate a review of Order 01 in that docket to receive party comments and determine PSE's obligation for the 2014-2015 biennium.

**THE COMMISSION GIVES NOTICE that it finds PSE's Petition does not satisfy the requirements for declaratory orders under RCW 34.05.240 and WAC 480-07-930 and that there are other, more suitable processes available to resolve any future controversy, should an actual controversy arise. The Commission here notifies PSE and all other interested persons that it will not enter a declaratory order in response to PSE's Petition.**

Dated at Olympia, Washington, and effective July 28, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

JEFFREY D. GOLTZ, Commissioner