

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.

Respondent.

DOCKET NO. UE-111048 and
DOCKET NO. UG-111049
(consolidated)

INITIAL POST HEARING BRIEF OF THE NORTHWEST INDUSTRIAL GAS USERS

March 16, 2012

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	THE CSA MECHANISM.....	2
	A. Summary of the CSA Mechanism	2
	B. Legal Context for Single-Issue Ratemaking	3
	C. Puget Does Not Face Extraordinary Circumstances With Respect to Potential Lost Revenue from Company-Sponsored Conservation.....	5
	D. The Design of the CSA Mechanism Does Not Achieve Its Stated Purpose	8
III.	RETURN AND CAPITAL STRUCTURE	11
IV.	CONCLUSION	12

I. INTRODUCTION

1. Pursuant to Washington Administrative Code (“WAC”) 480-07-395, the Northwest Industrial Gas Users (“NWIGU”) file this Initial Post Hearing Brief in the above referenced consolidated dockets related to Puget Sound Energy, Inc.’s (“Puget’s” or “Company’s”) general rate case. NWIGU is a party to the Multiparty Settlement Regarding Natural Gas Rate Spread and Natural Gas Rate Design¹ and encourages the Commission to approve that settlement agreement as part of its final order in this matter. In addition to the issues raised in that settlement, NWIGU participated in this matter to oppose Puget’s proposal to establish the Conservation Savings Adjustment (“CSA”) mechanism and to address the Company’s allowed return and capital structure.

2. As discussed in this brief, and as demonstrated by the record in this proceeding, Puget can continue to seek recovery of prudently incurred conservation costs through general rate cases, and the proposed CSA cannot be justified through the single-issue ratemaking mechanism Puget has proposed. The Commission should reject Puget’s CSA mechanism proposal because:

- The CSA mechanism improperly constitutes single-issue ratemaking that isolates one of multiple factors that are increasing and decreasing between rate cases;
- The CSA mechanism does not provide any ascertainable net benefits to its customers related to Puget’s conservation efforts; and
- The CSA mechanism is not properly designed to exclude impacts to gas usage unrelated to Puget-sponsored conservation efforts.

In addition to rejecting the Company’s proposed CSA mechanism, the Commission should also approve an allowed return and capital structure that reflects the recommendations of Commission Staff and the Industrial Customers for Northwest Utilities (“ICNU”).

¹ Exh. No. SPG-2.

3. In this brief, NWIGU addresses: (i) the legal context in which the Commission analyzes requests for single-issue ratemaking mechanisms; (ii) the lack of extraordinary circumstances in the present matter necessary to justify approval of the CSA mechanism; and (iii) the flawed design of the CSA mechanism as it relates to gas customers. This brief also endorses the recommendations of Commission Staff and ICNU with respect to the Company's allowed return and capital structure.
4. With respect to single-issue ratemaking, this Commission has set clear precedent that single-issue ratemaking is appropriate only where a utility's financial circumstances constitute "extraordinary circumstances" such that the utility can clearly demonstrate that it would otherwise be denied a reasonable opportunity to earn its authorized rate of return.² Puget has not satisfied its burden of demonstrating such extraordinary circumstances exist sufficient to justify approval of the CSA mechanism.
5. With respect to the design of the CSA mechanism, the Company attempts to turn the normal rate-making process on its head. First, the CSA mechanism assumes a particular rate is appropriate and uses that rate to calculate a "cost" to the Company that it will recover through the mechanism. In contrast, the ratemaking process in Washington should require the Company to first determine its actual costs, and then develop an appropriate rate that will recover those costs. Second, the CSA mechanism attempts to recover the costs of Company-sponsored conservation programs, but does so without the ability to ensure that all costs recovered by the mechanism are actually the result of Company-sponsored conservation.

II. THE CSA MECHANISM

A. Summary of the CSA Mechanism

6. The proposed CSA mechanism seeks recovery of revenue Puget claims it loses as a result of implementing the Company's conservation programs. For a given calendar year, Puget will first calculate an amount of Company-sponsored conservation savings.³ Puget

² *E.g. WUTC v. PSE*, Docket Nos. UE-060266 and UG-060267 (*consolidated*), Order 08 at ¶¶35-42 (Jan. 5, 2007).

³ Exh. No. JAP-IT at 33:2-4.

will then calculate a “per-unit impact” of those savings “on the utility’s ability to recover costs.”⁴ The conservation savings are then multiplied by the per-unit cost impact to yield an amount to be recovered through the CSA mechanism.⁵ The first 75% of the amount to be recovered will be collected in the first “CSA rate year” following the calendar year in which the savings are attributed, and the remaining 25% will be collected in the subsequent “CSA rate year.”⁶ The ongoing conservation savings from a conservation program would continue to be reflected in the CSA mechanism year after year, in addition to any new conservation savings, until new rates are set.⁷

7. The CSA mechanism seeks to recover lost revenue from all of Puget’s gas conservation programs with the exception of a residential program being implemented as a pilot project.⁸ The CSA mechanism would also apply to all of Puget’s gas customers except those who take gas on a transportation schedule.⁹

B. Legal Context for Single-Issue Ratemaking

8. Puget’s proposed CSA mechanism, if approved, would create a new tracker allowing the Company to recover revenue it would otherwise lose allegedly as a result of the impacts conservation efforts have on the volume of gas sales. Such a mechanism constitutes single-issue ratemaking because it segregates a single component of Puget’s overall revenues, costs and adjustments in the context of the test year. Puget does not dispute that the CSA Mechanism is aimed at only one component of its overall costs and revenues.¹⁰
9. NWIGU does not disagree that, under the right circumstances, the Commission has the authority to pursue single-issue ratemaking. However, the Commission’s consideration of such ratemaking is not without precedent, and the Commission generally

⁴ Exh. No. JAP-IT at 33:5-6.

⁵ Exh. No. JAP-IT at 33:7-8.

⁶ Exh. No. JAP-IT at 33:10-13.

⁷ Piliaris, TR 649:22 to 650:2.

⁸ Stolarski, TR 715:6.

⁹ DeBoer, TR 530:13-17.

¹⁰ See, e.g., Exh. No. JAP-IT at 34:14.

considers single-issue ratemaking to be “poor ratemaking practice.”¹¹ The Commission has made it very clear in prior dockets the standard of review it will apply and the factors it will consider before approving such a request. Puget’s CSA mechanism does not meet the Commission’s established standard.

10. During Puget’s general rate case in 2006, for example, Puget proposed a depreciation tracker to track depreciation expenses for transmission and distribution investments the Company makes between general rate cases (the “Depreciation Tracker”).¹² Through the Depreciation Tracker Puget sought: 1) to impose a surcharge; 2) for the recovery of depreciation expenses “over and above the depreciation expense reflected in existing rates”; 3) with an annual true-up; and 4) allowing for “recovery of” investments in new plant between rate cases but not “recovery on” those investments.¹³ In support of the Depreciation Tracker, Puget asserted in part that the tracker was necessary “to address regulatory lag”¹⁴ and to prevent earnings attrition.¹⁵

11. In considering Puget’s Depreciation Tracker, the Commission first noted that “we disfavor and typically avoid single-issue ratemaking and we are careful to preserve so far as is reasonable the ‘matching principle’ that relies on our consideration of *all* revenues, costs, and adjustments in the context of a test year with a definite ending date.”¹⁶ The Commission then noted that “[i]t requires extraordinary circumstances to support a departure from fundamental principles,” and that the Commission would require “a clear and convincing showing that the Company will be denied any reasonable opportunity to earn its authorized rate of return without extraordinary relief.”¹⁷

12. Accordingly, the “extraordinary circumstances” that justify single-issue ratemaking are “financial circumstances” that prevent a utility from making investments

¹¹ *WUTC v. PacifiCorp*, Docket No. UE-110070, Order 1 (April 27, 2011).

¹² *WUTC v. PSE*, Docket Nos. UE-060266 and UG-060267 (*consolidated*), Order 08 at ¶35.

¹³ *Id.*

¹⁴ *Id.* at ¶36.

¹⁵ *Id.* at ¶38.

¹⁶ *Id.* at ¶37 (emphasis added).

¹⁷ *Id.* at ¶39.

necessary to maintain reliable service.¹⁸ As described in more detail below, such extraordinary circumstances do not exist in the present matter and, therefore, the Commission should decline to approve the CSA mechanism.

C. Puget Does Not Face Extraordinary Circumstances With Respect to Potential Lost Revenue from Company-Sponsored Conservation

13. Puget has failed to clearly and convincingly show that the Company will be denied any reasonable opportunity to earn its authorized rate of return without the CSA mechanism, or that regulatory lag or earnings attrition will prevent it from making investments necessary to maintain reliable service. To the contrary, the evidence in the record clearly demonstrates that the Company is able to safely operate its system and meet its conservation goals and obligations while remaining financially whole.
14. First, Puget witness Mr. DeBoer admits in his initial testimony that “PSE has had a proud history of aggressively pursuing conservation despite the absence of a specific ratemaking provision that addresses the financial burden such conservation places on the Company.”¹⁹ When pressed whether the absence of a CSA mechanism would deny Puget the reasonable opportunity to earn its authorized rate of return, however, Mr. DeBoer responded only that the absence of the CSA creates a “revenue lag that affects our ability to earn our return.”²⁰
15. Regulatory lag is an inherent part of the traditional ratemaking process in Washington.²¹ Because of that inherent part of the process, it is not enough for Puget to merely point to revenue lag related to conservation and claim it merely “affects” Puget’s ability to earn a return without identifying whether that effect actually denies Puget the opportunity to earn its authorized rate of return. Indeed, when asked whether the regulatory lag associated with conservation is any different than the regulatory lag inherent in the

¹⁸ *Id.* at ¶41.

¹⁹ Exh. No. TAD-1T at 3:19 to 4:1.

²⁰ DeBoer, TR 514:18-19.

²¹ *WUTC v. PSE*, Docket Nos. UE-060266 and UG-060267 (*consolidated*), Order 08 at ¶37.

traditional ratemaking process, Puget admitted that it is similar and that the only difference is that it is caused by conservation instead of investment in infrastructure.²² This is a distinction without a difference.

16. Second, Puget has not demonstrated – or even attempted to demonstrate – the actual costs and benefits of the CSA mechanism, which prevents the Commission from evaluating the Company’s financial circumstances and the impact of the CSA mechanism relative to those circumstances. Not only has Puget not performed such an analysis, it believes that such an analysis is not possible to perform.²³ Without such an evaluation, it is impossible for the Commission to determine if the Company’s financial circumstances are extraordinary enough to justify a single-issue ratemaking mechanism.

17. It should also be noted that the Company’s conservation programs on the gas side are driven by a set of factors completely different from the factors that drive the Company’s conservation programs on the electric side. Puget has an obligation to pursue conservation under RCW 19.285. The Company will include all programs that qualify under that statute as part of the CSA mechanism.²⁴ In contrast, the Company’s gas conservation programs are the result of the Company’s Integrated Resource Plan, which requires the Company to pursue least-cost planning.²⁵ It is not clear how declining natural gas prices will impact Puget’s choice to pursue particular conservation programs in the future. If, for example, the Company’s portfolio of conservation programs ceases to be a least-cost option, the Company may nevertheless prioritize a mix of conservation programs in the portfolio not because it is the least-cost option mix and good for its customers, but because a particular mix might render the portfolio barely cost effective and it will guarantee the Company’s investors that revenue associated with those customers will be recovered no matter what.

²² DeBoer, TR 515:9.

²³ Exh. No. TAD-12CX.

²⁴ Exh. No. JAP-41CX at p.1.

²⁵ Stolarski, TR 715:19-24.

18. All of Puget’s claimed benefits of the CSA mechanism are qualitative in nature, except of course the benefits that accrue to the Company’s investors by virtue of being guaranteed the ability to recover lost revenue. For example, Puget makes the argument that customers will be encouraged to conserve even more when they see the “true cost” of their gas usage.²⁶ Under questioning from Commissioner Jones, however, Mr. Piliaris acknowledged this price elasticity argument is a qualitative one unsupported by any quantitative evidence in the record.²⁷ Even that qualitative argument is questionable, as demonstrated by the questions the Commissioners posed at hearing. That is, the surcharge from the CSA mechanism will increase year after year until there is another rate case. As Chairman Goltz’s questions implied, it may be difficult to explain to customers that their rates are actually going up because they conserved more and then expect them to keep conserving even though additional conservation will once again cause rates to rise.²⁸

19. One reason Puget cannot demonstrate extraordinary financial circumstances is that the Company files a rate increase on a near-yearly basis. Even if the Commission accepts that there is a gap between the Company’s costs and revenues as a result of conservation, that gap gets “reset” or “wipes out” every time the Company files a new rate case.²⁹ Some of the testimony Puget sponsored implied that a CSA mechanism would help the Company stay out of a future rate case.³⁰ However, other Company-sponsored testimony makes it clear that the Company’s proposal in no way proposes a delay in future rate case filings,³¹ and the Company has even begun preparations for the next filing.³²

20. Finally, the CSA mechanism does not include any calculation of the Company’s actual costs on which a new rate can be based. Instead, “costs” are calculated by first estimating conservation savings and applying the Company’s existing rates to those savings

²⁶ See Exh. No. JAP-24CT at 24:9-18.

²⁷ Piliaris, TR 672:1-9.

²⁸ Piliaris, TR 652:22-653:3.

²⁹ DeBoer, TR 513:19-24; Piliaris, TR 651:19-21; Stolarski, TR 726:9-15

³⁰ Piliaris, TR 650:6-8.

³¹ Piliaris, TR 683:24 to 684:3.

³² DeBoer, TR 513:3-18.

to determine the “cost” being recovered. The Commission rejected the Depreciation Tracker proposal in part because the Company did not fully analyze actual costs and revenues. If costs like those proposed in the Depreciation Tracker, which were derived by looking at some of the Company’s actual costs, were not sufficient to justify the tracker in that case, it is difficult to fathom how the “costs” included in the CSA mechanism could. If the Company wants to make that case, the Commission should require it to do so through a full review of revenue and actual costs and not through reliance on undefined “qualitative” benefits or retroactively-determined costs.

D. The Design of the CSA Mechanism Does Not Achieve Its Stated Purpose

21. Puget goes to great length in its testimony to leave the impression that the mechanism will recover *only* lost revenue caused by Company-sponsored conservation. Yet, a review of the record reveals that Puget cannot make this claim with any certainty and that the CSA mechanism can capture lost revenue from other causes.
22. The Company does not dispute that lost revenue from conservation is not the largest, or even the second largest, cause of the Company’s overall decline in revenue. Changes in the economy and variations in weather are the largest causes of that decline.³³ The CSA mechanism does not take all of these other factors into account and, therefore, captures more than just the lost revenue relating to conservation.
23. Although Puget takes issue with the word “estimate,” the conservation savings captured by the CSA mechanism are just that – estimates. Of critical importance to large industrial gas users, the CSA mechanism does not take into account economic changes that may have drastic effects on an individual customer’s actual gas usage.
24. Puget relies on its assertion that conservation savings are “verified” by a third party. As demonstrated in the record, however, the verification process is a front-end estimate of the amount of savings a particular program is estimated to generate and not an

³³ DeBoer, TR 537:7-18.

analysis of actual gas savings following the installation of any particular conservation measure. For example, when asked to explain how the CSA mechanism might apply to an industrial gas customer that installs a new high-efficiency boiler, Puget witness Mr. Stolarski explained:

The CSA doesn't look at the total bill use of that particular site. It looks at the energy savings **that would result** from the installation of that high-efficiency boiler, and so the CSA would see only the number from that high-efficiency boiler.³⁴

In other words, when the Company sponsors the installation of a conservation measure, the Company will put some effort into a savings calculation. That calculation involves analyzing the equipment being replaced, the efficiency that equipment was achieving, and the loads that customer serves, and comparing that same information immediately after the installation of the new equipment is complete.³⁵ All of that information, however, relates only to what the Company estimates will happen to that customer's usage and does not account for *unpredictable* long-term changes in a customer's usage:

the intent is to try to show what the energy savings is actually going to happen. If we know something that is going to change at that facility and they share it with us, and obviously we ask a lot of questions about the operation and the loads that a device like that would be serving, if they share that with us, we obviously account for it. If they don't, we don't.³⁶

Thus, if unpredicted changes happen after the equipment is installed, such as a downturn in the economy, there is no mechanism for going back to review the customer's actual gas use to determine how much of a decline in use is attributable to economic factors and how much is attributable to the conservation measure.³⁷ Nor is there even a process in the CSA mechanism whereby a customer can seek such a review.³⁸

³⁴ Stolarski, TR 717:23 to 718:2 (emphasis added).

³⁵ Stolarski, TR 719:16-22.

³⁶ Stolarski, TR 720:6-12.

³⁷ Stolarski, TR 721:11-15.

³⁸ Stolarski, TR 722:4-8.

25. This flaw in the CSA mechanism exists for other customer classes as well. As illustrated by Commissioner Oshie's questions at hearing, the conservation savings calculated for many of the Company's residential programs assume that a house will remain occupied and the conservation savings will be achieved even if the house is in foreclosure and sits vacant for a long period of time.³⁹ These kinds of assumptions may make more sense in the residential context, where customer behavior is more predictable and conservation measures can be analyzed for a large number of customers. Those assumptions do not work for large industrial customers, however, who often implement custom measures, resulting in the need for the consideration of many complex and various factors on a customer-by-customer basis.⁴⁰

26. The fact that the revenue collected through the CSA mechanism is based on estimates of lost revenue instead of a vigorous analysis of actual costs is significant. The methodology Puget uses for "verifying" energy savings under the CSA mechanism is the same methodology it uses for planning purposes when budgeting for conservation programs.⁴¹ As demonstrated by the testimony of Staff witness Ms. Reynolds and Staff's opening brief, the Commission requires *rates* to be based on the "known and measurable" standard, a higher standard than the one used for conservation program planning. NWIGU adopts Staff's reasoning on this matter and believes it serves as an additional basis for rejecting the CSA mechanism as it is designed.

27. Finally,⁴² the design of the Company's CSA mechanism is flawed because it does not include any adjustment to the Company's requested rate of return. As demonstrated by the testimony of ICNU witness Mr. Gorman and ICNU's opening brief, the CSA mechanism

³⁹ Stolarski, TR 731:3 to 734:6.

⁴⁰ See Stolarski, TR 719:5-12.

⁴¹ Exh. No. DJR-1T at 31:10-17.

⁴² NWIGU has also demonstrated that the design of the CSA mechanism is flawed because of the way it groups different rate schedules. DWS-8T at 7:11 to 8:6. Puget apparently agrees that the grouping suggested by NWIGU witness Mr. Schoenbeck reduced inequities within each group and better reflects rate schedules with similar margins because it is willing to accept a version of Mr. Schoenbeck's proposal. Exh. No. JAP-24CT at 40:9. Although NWIGU in no way supports approval of the CSA mechanism, if the Commission approves the mechanism it should do so with the modification suggested by Mr. Schoenbeck.

can impact Puget’s credit rating by reducing its operating risk.⁴³ Puget contests this characterization of reduced risk, arguing that the Company’s authorized return on equity is the result of several factors, and that it is unfair to reduce revenues based on an “unquantified mitigation of risk.”⁴⁴ The irony of this opposition is that it is Puget, not those who oppose the CSA mechanism, that has failed to quantify its risk associated with conservation measures. Moreover, Puget essentially argues that its rate of return must be viewed in light of all of its operations as a whole, yet Puget proposed the CSA mechanism because, it argues, the traditional ratemaking process that looks at *all* of the utility’s operations in the test year is insufficient to determine its actual costs related to conservation. NWIGU adopts the reasoning presented by ICNU with respect to rate of return issues relating to the CSA mechanism and believes that reasoning demonstrates an additional flaw in the design of Puget’s proposal.

III. RETURN AND CAPITAL STRUCTURE

28. The Company initially proposed a return on equity (“ROE”) of 10.8 percent and a capital structure containing 48.0 percent common equity. The Company later revised its requested ROE to 10.75 percent.⁴⁵ Commission Staff has recommended that the Company’s authorized ROE be 9.5 percent with a capital structure containing 46.0 percent common equity.
29. NWIGU recommends that the Commission adopt Staff’s reasoning and the proposed ROE of 9.5 percent and a capital structure containing 46.0 percent common equity. Staff’s recommendations are based on the Company’s relatively low operational risk⁴⁶ and the continued availability of low long-term interest rates.⁴⁷ The Commission recently acknowledged that, because of the “relatively low interest rates in the current economic

⁴³ Exh. No. MPG-1T at 3:19-4:2; *see also* Exh. No. TAD-1T at 24:4-7.

⁴⁴ Exh. No. TAD-1T at 14:3-6.

⁴⁵ Exh. No. DEG-14T, pg.2, Table 1.

⁴⁶ Exh. No. KLE-1T at 10:21 to 11:19.

⁴⁷ Exh. No. KLE-1T at 10:5.

climate, it is fair to assume a general downward trend of ROEs.”⁴⁸ The Commission made that statement as part of the basis for authorizing an ROE of 9.8 percent for PacifiCorp.⁴⁹

IV. CONCLUSION

30. The CSA mechanism is unnecessary and poorly designed to meet the Company’s stated objective. Although the Commission left the door open in its policy statement on decoupling for utilities to propose “other” types of decoupling, the CSA mechanism should be rejected because it would set poor precedent. Specifically, the CSA mechanism is overbroad because it does not discount unpredictable factors in addition to conservation that might cause gas customers to purchase less gas, and it is not based on a rigorous analysis demonstrating the actual costs the Company seeks to recover. Puget simply has not demonstrated that such a novel mechanism is necessary for the Company to recover its authorized rate of return.

31. The Company still has access to low long-term interest rates and has a relatively low risk of operations. Based on those factors, the Company has not justified authorization of an ROE of 10.75 percent or a capital structure containing 48.0 percent common equity. Instead, the Company should be authorized for an ROE of 9.5 percent and a capital structure containing 46.0 percent common equity.

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⁴⁸ *WUTC v. PacifiCorp*, UE-100749, Order 06 at ¶94 (March 25, 2011).

⁴⁹ As noted above, NWIGU also recommends that the ROE be further reduced if the Commission approves the CSA mechanism.

32. For these reasons, the Commission should: (1) approve the Multiparty Settlement Regarding Natural Gas Rate Spread and Natural Gas Rate Design, (2) reject Puget's implementation of the proposed CSA mechanism, and (3) authorize an ROE of 9.5 percent and a capital structure containing 46.0 percent common equity.

Dated in Portland, Oregon, this 16th day of March, 2012.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing document upon all parties of record (listed below) in this proceeding by mailing a copy properly addressed with first class postage prepaid.

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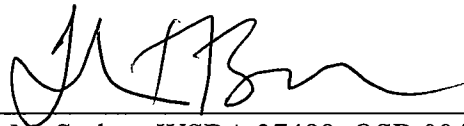
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