BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, **Complainant,** **v.** **PUGET SOUND ENERGY, INC.,** **Respondent.**	**DOCKETS UE-111048 and UG-111049 (*consolidated*)**

REPLY BRIEF ON BEHALF OF COMMISSION STAFF

March 26, 2012

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1 Commission Staff's Initial Brief, filed March 16, 2012, anticipated and rebutted the arguments proposed by all other parties on common contested issues. Thus, Staff's Reply Brief to Puget Sound Energy, Inc. ("PSE" or the "Company"), Public Counsel, and the Energy Project is necessarily limited. Staff has no additional remarks on its opposition to the full decoupling proposal of the NW Energy Coalition.

I. REPLY TO THE COMPANY

A. Allegations Involving Staff's Application of the "Pro Forma" Standard for Ratemaking Adjustments

2 PSE accuses Staff of proposing outcome oriented ratemaking adjustments designed intentionally to achieve lower rates at the expense of sound ratemaking and energy policy to the detriment of PSE's owners and, ultimately, its ratepayers.[1] This accusation is nothing more than a broad swipe with no basis in the record.

3 In fact, just the opposite is true: the Company has proposed unprincipled ratemaking adjustments that would increase earnings for PSE's owners out of the pockets of customers. For example, the Conservation Savings Adjustment proposed by PSE is designed only to increase revenues based upon estimates of energy savings from conservation measures (already paid for by ratepayer) that are not "known and measurable." Likewise, PSE proposes adjustments for property taxes using forecasts and a methodology the Commission has already rejected as a violation of sound ratemaking policy.[2]

4 In contrast, Staff has applied consistent and reasonable principles in order to set test period relationships that are appropriate for ratemaking. Staff does acknowledge that PSE has

[1] Company Initial Br. at ¶ 4. PSE also argues that the Commission's application of pro forma adjustments in the 2009 general rate case is overly strict, inconsistent with past Commission decisions, internally inconsistent among adjustments in that case, and a circumstance that exacerbates regulatory lag and PSE's alleged under-earning. Company Initial Br. at ¶ 8. PSE never sought reconsideration or judicial review of the Commission's 2009 rate case order. Its back-door challenge to that order should be rejected by the Commission.

[2] *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-090704 and UG-090705, Order 12 at ¶ 59 (April 2, 2010).

filed rate case after rate case over the past decade. However, as PSE admits, this history is prompted by its ongoing need to replace infrastructure and add new resources.[3] Thus, even if PSE were to prevail on each and every one of its unprincipled adjustments, it would still be necessary to file frequent rate cases. Staff has proposed a mechanism that will allow PSE to capture the impact of those new investments on the Company's costs in an expedited manner that addresses regulatory lag.

B. Allegations Involving the Company's Power Cost Adjustment Mechanism

5 The Company accuses Staff of "gaming" the Power Cost Adjustment ("PCA") mechanism by proposing adjustments that remove certain power costs from the baseline rate. According to PSE, Staff motive is nefarious: "to ensure PSE absorbs an even greater share of the risk of power cost variability."[4]

6 The Company's argument ignores the fact that Staff proposes only one adjustment to the PCA for wind integration costs.[5] There is nothing underhanded about that adjustment given the magnitude of wind in PSE's resource portfolio now that the Lower Snake River Wind Project ("LSR") is operational.

7 Moreover, the Company itself is proposing changes to the PCA. PSE proposes to reclassify the costs of Jackson Prairie storage rental from a fixed cost to a variable cost, allowing PSE to true-up to actual the estimated amount in the power cost rate.[6] PSE also proposes to depart from established PCA treatment by including amortization and deferrals of contract major

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[3] Company Initial Br. at ¶ 4.
[4] Company Initial Br. at ¶¶ 4 and 9-12.
[5] See Staff Initial Br. at ¶¶ 94-98 for Staff's rationale to remove these uncertain and variable wind integration costs from the baseline rate and, instead, run the actual costs and benefits necessary to balance wind and load through the PCA in the same manner as actual variations in fuel costs, market prices and load. A similar approach for mark to market costs associated with hedged gas was withdrawn given falling natural gas prices. Staff Initial Br. at ¶¶ 89-90.
[6] Staff Initial Br. at ¶ 108.

maintenance at test year levels rather than rate year levels.[7] It is disingenuous for PSE to chastise Staff for proposing one change to the PCA given these Company proposals that will further insulate PSE from the risk of power cost variability.

8 PSE accuses Staff of mischaracterizing the PCA by stating that the risk of power cost variation is not being shared between PSE and ratepayers.[8] However, as PSE acknowledges for the PCA, "Fixed costs determined in a GRC are held constant and the actual costs are ignored for the PCA calculation."[9] Accordingly, once an item is classified as a fixed cost in the PCA, recovery of that cost is assured. The PCA classifies as fixed costs over $2 billion of transmission and production rate base alone, as well as other significant expenses, including depreciation.[10] The end result is a "guarantee" to PSE that all of these costs will be recovered *before* any variation in power supply expense is calculated for purposes of applying the sharing bands of the PCA.

9 Finally, PSE criticizes Staff for not responding to the Commission's instruction in the 2009 general rate case to more broadly examine the PCA.[11] However, Staff did not ignore the Commission's instruction. It recommended a separate proceeding to review the PCA mechanism. This is a reasonable approach given the complexity and contentiousness of the existing case.[12] Neither that recommendation nor the Commission's prior instruction should preclude a single revision to the PCA now for wind integration costs. On the other hand, if the Commission chooses to reject Staff's wind integration adjustment solely because it is offered outside a full review of the PCA, the Commission should likewise reject PSE's proposals to revise the PCA for the rental costs of Jackson Prairie storage and for contract major maintenance.

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[7] Staff Initial Br. at ¶¶126-127.
[8] Company Initial Br. at ¶ 12, citing, Schooley, Exh. No. TES-1T at 9:8-12.
[9] Story, Exh. No. JHS-18T at 54:12-13.
[10] Story, Exh. No. 25 at 1.
[11] Company Initial Br. at ¶ 12.
[12] Schooley, Exh. No. TES-1T at 11:3-8.

C. Allegations Involving the Cost of Capital

10 PSE argues that Staff's capital structure proposal does not meet the "Commission's goal" to set the equity ratio at the level the evidence shows is most likely to prevail, on average, over the course of the rate year.[13] The Company's criticism mischaracterizes both Commission precedent and Staff's case implementing that precedent.

11 In fact, the Commission's goal is to set rates using a capital structure that balances safety and economy, regardless of any particular calculation to predict rate year equity.[14] Thus, PSE is wrong to claim that Mr. Elgin recommended a 46 percent equity ratio because it represents the Company's equity ratio for any particular time or period. Rather, he recommended a 46 percent equity ratio precisely because it balances safety and economy by considering the holding company structure in which PSE resides and by supporting the Company's BBB corporate credit rating and A- rating for PSE's secured debt.[15]

12 PSE argues that Mr. Elgin was confused when he testified that his 46 percent equity ratio recommendation is consistent with PSE's most recent financial forecast.[16] However, the evidence upon which Mr. Elgin relies is unequivocal. It shows that PSE bases its cost of debt on the assumption that it will have $3.8 billion of long-term debt in the rate year.[17] Thus, it needs the same dollar amount of equity given its proposed capital structure of 48 percent for both equity and long-term debt. PSE's financial forecast does not show that amount of equity until well after the rate year.[18] PSE's reliance on the 48 percent "regulatory equity" shown in the forecast is irrelevant.

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[13] Company Initial Br. at ¶ 108.
[14] *WUTC v. PacifiCorp, d/b/a Pacific Power & Light Co.*, Docket UE-100749, Order 07 at ¶¶ 8-10 (May 12, 2011).
[15] Elgin, Exh. No. KLE-8CX.
[16] Company Initial Br. at ¶ 110.
[17] Gaines, Exh. No. DEG-15 at 4.
[18] Elgin, Exh. No. KLE-9CX at 103.

D. Allegations Involving PSE's Proposed Conservation Savings Adjustment

13 The Company argues that Staff's opposition to the Conservation Savings Adjustment ("CSA") adopts an "overly rigid approach" because the CSA does not meet the requirements of the Decoupling Policy Statement.[19] The argument mischaracterizes the Staff position. Staff does not oppose the CSA only because the CSA does not meet the Decoupling Policy Statement. Staff opposes the CSA also for the significant reason that the CSA rate relies upon conservation savings estimates that are not known and measurable.[20] Staff's opposition also logically challenges any calculations of the financial impacts of conservation based on those conservation savings estimates, including those cited by PSE.[21]

14 PSE is correct that the Decoupling Policy Statement is non-binding.[22] However, the Decoupling Policy Statement does represent the Commission's current thinking and likely course of action.[23] Thus, Staff's discussion of the CSA in the context of the Decoupling Policy Statement was not overly rigid. It was a reasonable and necessary approach that all parties should have pursued to develop a complete record on their positions. Indeed, PSE's challenge to Staff's approach is odd given PSE's own claim that it presented the CSA in the context of the issues and criteria of the Decoupling Policy Statement.[24]

E. Allegations Involving the New Tax Accounting Method for Repairs Deductions

15 PSE asserts that: "Commission Staff incorrectly claims that the amount of the repairs and retirement method is known and measurable because PSE does not report the repairs method as

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[19] Company Initial Br. at ¶¶ 155 and 157, citing, *In the Matter of the Washington Utilities and Transportation Commission's Investigation into Energy Conservation Incentives*, Docket U-100522, Report and Policy Statement on Regulatory Mechanisms, Including Decoupling, To Encourage Utilities to Meet or Exceed Their Conservation Targets (November 4, 2010) ("Decoupling Policy Statement").
[20] Reynolds, Exh. No. DJR-1T at 30-32.
[21] Company Initial Br. at ¶ 150.
[22] Company Initial Br. at ¶¶ 156 and 158.
[23] RCW 34.05.230(1).
[24] Company Initial Br. at ¶ 158.

an uncertain tax position under FIN 48."[25] This is misleading and misses the key point altogether.

16 The Commission should be able to rely on PSE's audited financial statements and reporting under Generally Accepted Accounting Principles ("GAAP") for ratemaking purposes. The evidence is clear that no portion of PSE's repairs deductions was reported as being uncertain as required by GAAP for any period from the inception of the repairs deductions under the new tax accounting method through the test year.[26]

17 Moreover, in the current rate case PSE is in a similar position vis-à-vis the known and measurable criteria (*i.e.*, having no completed IRS audit yet the repairs deductions clearly affected ADIT within the test year) as was PacifiCorp in Docket UE-100749, Order 06 at ¶¶259-260 (March 25, 2011). Consequently, the result should be the same for PSE as it was for PacifiCorp: the amount of impact on the ADIT balance from repairs deductions is clearly known and measurable for PSE in the current case, just as it was for PacifiCorp in Docket UE-100749 where the Commission reduced rate base to reflect the impact on ADIT.

F. Allegations Involving PSE's Objection to the Bench Request on Decoupling

18 The Company renewed its objection to the Commission's Bench Request on Full Decoupling.[27] Staff's reasons to deny the objection are presented in its response, filed October 12, 2011. One reason given by Staff was that PSE had waived its objection when it agreed at the prehearing conference to a case schedule that specifically contemplated issuance of the Bench Request and responses.

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[25] Company Initial Br. at ¶ 91.
[26] See, e.g., Marcelia, TR. 969:17-970:1; Marcelia, TR. 970:25-971:3; and Marcelia, Exh. No. MRM-23CX.
[27] Company Initial Br. at ¶ 159.

19 PSE's waiver has been repeated twice since then: first, when it did not object to the admission of the Staff response to the Bench Request,[28] and, second, when it did not object to the admission of the full decoupling proposal of the NW Energy Coalition. Surely, the Commission could have asked the parties to respond to Mr. Cavanagh's full decoupling proposal along the same lines required by the Bench Request. The advantage PSE had with the Bench Request being issued much earlier was that it had the opportunity to respond on September 1, 2011 under the agreed case schedule. It chose not to use that opportunity.

20 PSE argues that the Commission exceeded its statutory authority because the Bench Request may result in a regulatory mechanism the Company did not request.[29] No statute is cited for the argument, however.

21 Moreover, PSE does not control the regulatory mechanisms the Commission may order once the Company places its rate, charges and conditions of service at issue in a general rate case. In fact, once, after hearing, the Commission finds that existing rates are unjust or unreasonable, the Commission has the authority to "determine the just, reasonable, or sufficient rate, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order."[30] Such authority is not confined to the mechanisms the Company may propose.

II. REPLY TO PUBLIC COUNSEL

A. Allegations Involving the Lower Snake River Wind Project

22 Public Counsel challenges PSE's acquisition of LSR as not being "used and useful" because, according to Public Counsel, the facility does not provide net benefits until 2016 at the

[28] Piliaris, Exh. No. JAP-40CX.
[29] Company Initial Br. at ¶ 159.
[30] RCW 80.28.020.

earliest.[31] The allegation is factually unproven. That is because Public Counsel relies upon a number of selective model runs comparing the short-term costs of building early wind against a theoretical wind resource built at a later time and, therefore, having no capital costs in the early years. As Staff explained, Public Counsel's analysis should be given no weight because it does not compare fairly the levelized-cost of comparable resources.[32]

23 Moreover, Public Counsel does not contest that LSR is currently in service and providing energy to customers. Nor does Public Counsel challenge analysis showing that LSR is necessary for PSE to meet the renewable resource standard ("RPS") of the Energy Independence Act (RCW 19.285) for 2016.[33] Thus, LSR is "used and useful" under State Supreme Court and Commission precedent.[34] These decisions do not require a renewable resource to be employed immediately to meet the "used and useful" standard as long as the resource is capable of meeting a mandated RPS at a later time. Indeed, the Commission has stated that the "used and useful" statute does not prevent early acquisition of a renewable resource that will meet the RPS at some point in the future.[35]

24 Public Counsel analogizes the acquisition of LSR to court and commission decisions

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[31] Public Counsel Initial Br. at 38-41, citing RCW 80.28.250. The Industrial Customers of Northwest Utilities joins Public Counsel in this argument.
[32] Nightingale, Exh. No. DN-2T at 11:8-12:10.
[33] Garratt, Exh. No. RG-3 at 10, Figures 1-4 and Garratt, Exh. No. RG-16HC at 5. In fact, PSE cannot meet the RPS for 2020 even with LSR. Seelig, Exh. No. AS-3HC at 372.
[34] The State Supreme Court has held that "used" means "employed in accomplishing something" and "useful" means "capable of being put to use: having utility: advantageous; producing or having the power to produce good; serviceable for a beneficial end or object. *Power v. Utils. & Transp. Comm'n*, 430 Wn.2d 452, 430, 679 P.2d 922 (1984). The Commission has held that a resource is "used and useful" because it benefits ratepayers of Washington directly through a flow of power from the resource to customers. *WUTC v. PacifiCorp, d/b/a Pacific Power & Light Co.,* Docket UE-050684, Order 04 at ¶ 50 (April 17, 2006).
[35] *In the Matter of the Washington Utilities and Transportation Commission's Inquiry on Regulatory Treatment for Renewable Energy Resources*, Docket UE-100849, Report and Policy Statement Concerning Acquisition of Renewable Resources by Investor-Owned Utilities at ¶55 (January 3, 2011). This conclusion does not mean that every renewable resource acquired to meet an RPS is recoverable in rates. The resource must still be acquired prudently and at a reasonable cost. Staff's Initial Brief discusses at length why the acquisition of LSR was prudent and cost-effective.

from other states that have addressed the issue of excess capacity.[36] However, these decisions were not issued under statutory regimes like the EIA that mandate utilities to acquire specific levels of renewable resources at particular times, and that penalize utilities for their failure to do so.[37] Thus, the cases Public Counsel cites are not on point.

B. Allegations Involving SQI-9: Disconnection Ratio

25 Public Counsel states that "Staff admits that PSE's customers benefit from the reduction in disconnections that occur with SQI-9 in place."[38] However, Public Counsel fails to note that Mr. Kouchi characterized the issue as a "difficult question" giving him reservations because, while it is beneficial in the short term to customers who are not disconnected, in the longer term reducing disconnections causes uncollectible revenues to increase, which could cause companies to renew their challenge to Commission rules prohibiting a company from refusing service because of a customer's prior obligation.[39] Public Counsel fails to consider this longer-term threat to one of the Commission's most effective consumer protection measures.

III. REPLY TO THE ENERGY PROJECT

26 The Energy Project argues that:

> Mr. Kouchi testified that eliminating SQI-9 will not harm customers because other Commission rules already offer meaningful customer protection. Although the rules to which he cited do provide some protections, none addresses any assistance from disconnection. Thus they do not provide the same type of protection as SQI-9.

The argument overlooks a number of rules that do protect customers threatened with disconnection or have already been disconnected:

- WAC 480-90-123(3)/WAC 480-100-123(3) prohibit a utility from refusing to provide new or additional service to a residential applicant or residential customer who has a prior obligation.

[36] Public Counsel Initial Br. at ¶¶ 83-89.
[37] RCW 19.285.060.
[38] Public Counsel Initial Br. at ¶ 141.
[39] Kouchi, TR. 1094:10-1095:13.

- WAC 480-90-128(5)/WAC 480-100-128(5) require a utility to either postpone or reinstate service for a grace period of five business days after receiving either verbal or written notification of the existence of a medical emergency.

- WAC 480-90-128(6)(j)/WAC 480-100-128(6)(j) prohibit a utility from disconnecting service on Saturdays, Sundays, legal holidays, or on any other day on which the utility cannot reestablish service on the same or the following day.

- WAC 480-90-128(9)/WAC 480-100-128(9) prohibit a utility from disconnecting service while the customer is pursuing any remedy or appeal provided by the commission's rules or while engaged in discussions with the utility's representative or with the commission.

- WAC 480-90-133(1)/WAC 480-100-133(1) require the utility to restore service after disconnection within 24 hours after the customer has paid or at the time the utility has agreed to bill any reconnection charge.

- WAC 480-90-143(1)/WAC 480-100-143(1) prohibit a utility from disconnecting a low-income customer between November 15th and March 15th if they meet the requirements of the winter low-income payment program.

27 The Energy Project also overlooks that SQI-9 is not intended to provide protection from disconnection. It is intended to preclude PSE from over-relying on disconnection as a credit and collection tool when other more preferable tools are available.[40] In fact, PSE's limited resources are already an incentive to work with customers on payment arrangements prior to disconnection.[41] This is the case with SQI-9 already under suspension.

DATED this 26th day of March 2012.

Respectfully submitted,

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[40] Kouchi, TR. 1082:1-11.
[41] Kouchi, TR. 1088:2-1089:8.