

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,)	DOCKET NOS. UE-111048
)	and UG-111049 (<i>Consolidated</i>)
)	
Complainant,)	
)	
vs.)	
)	
PUGET SOUND ENERGY, INC.,)	
)	
Respondent.)	
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REPLY BRIEF OF
NW ENERGY COALITION

March 26, 2012

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INTRODUCTION

1. The NW Energy Coalition (“Coalition”) has proposed a full decoupling mechanism that removes structural barriers to increased energy efficiency while leaving intact consumer incentives to save energy and allowing Puget Sound Energy (“PSE”) the opportunity to earn its authorized rate of return. The Coalition’s proposal is the only real response in this case to the Commission’s invitation to explore full decoupling. PSE’s Conservation Savings Adjustment (“CSA”) and equivalent proposals by other parties all ultimately fail to remove disincentives for energy efficiency, either by leaving in place the throughput incentive or by sending consumers a price signal that conservation will not materially lower their bills.
2. PSE offers meager opposition to the Coalition’s proposal, arguing only that it did not itself request decoupling and that decoupling does not address all its financial concerns. The other parties primarily engage in a critique of PSE’s CSA. Those critiques highlight the benefits of the Coalition’s full decoupling proposal over other half measures. *See, e.g.*, Staff Br. at 62, 64 (arguing in part that the CSA fails to take into account actual customer behavior and will result in annual, automatic rate increases); NWIGU Br. at 1-11.
3. From an energy efficiency perspective, one aspect of full decoupling should be underscored: the mandatory conservation targets in Washington’s Energy Independence Act (I-937) are not dispositive for purposes of determining whether revenue decoupling is needed to meet the policy goals of the Commission and Washington State. Were they, the Commission would never have issued its 2010 Decoupling Policy Statement; nor would the Commission have actively engaged in this issue in this case. Even with the statutory language requiring pursuit of “all cost effective conservation,” fundamental regulatory barriers to energy conservation remain. Full decoupling will help remove these barriers by restructuring the regulatory system in a way that balances conservation, costs to consumers, and the financial health of utilities like PSE. It is

not enough for any of us to rest on our laurels, as the Northwest Power Planning Council's Sixth Plan confirms.

4. The Coalition respectfully asks the Commission to approve the Coalition's decoupling proposal, and the Coalition reiterates the Sierra Club's request for examination of the true costs of Colstrip operation in a separate docket that precedes and informs the integrated resources plan ("IRP"). This reply brief addresses both those issues. The Coalition continues to support PSE's investment in the Lower Snake River wind project as a reasonable early acquisition of renewable energy sources, and the Coalition supports The Energy Project's low-income rate assistance proposal. On those issues, the Coalition relies on its initial post-hearing brief.

ARGUMENT

I. THE COMMISSION SHOULD ADOPT THE COALITION'S DECOUPLING PROPOSAL.

A. PSE Advances Tepid and Irrelevant Objections.

5. PSE advances two arguments against adoption of the Coalition's decoupling proposal: that the company itself did not request the mechanism and that decoupling does not address all of PSE's "needs." PSE Br. at 62. The first of these arguments is irrelevant, and the second misses the point. Indeed, the most notable aspect of PSE's argument against decoupling is how little of it there is.
6. First, PSE renews its objection to Bench Request No. 3. As Staff pointed out months ago, however, PSE has proposed its own, albeit inadequate, limited decoupling proposal in the CSA. Other parties surely would have critiqued that proposal with reference to the Commission's Decoupling Policy Statement even without the Bench Request. Moreover, when the Coalition intervened in this case, it stated as one of its primary concerns rate design modifications affecting energy efficiency and low-income consumers, specifically calling out

PSE's CSA as a particular interest. With or without the Bench Request, PSE would be facing filings that propose decoupling mechanisms other than its CSA and that compare those mechanisms to the Commission's Policy Statement. The company's objections to the Bench Request are beside the point.

7. PSE also states, as part of its objection, that it would not be "fair, just and reasonable" for the Commission to consider an alternative to its CSA. PSE Br. at 62. This argument is simply wrong. The Coalition and other parties are entitled to respond to PSE's initial filings with proposals that PSE did not itself request, whether those proposals be reductions in requested rate increases, adjustments on tax issues, or a full decoupling mechanism. The Coalition is confident that the Commission will fairly evaluate its decoupling proposal, PSE's CSA, and Staff's attrition/yearly rate case mechanism, and not simply reject the Coalition's proposal because PSE did not join it.

8. Second, PSE asks the Commission to reject the Coalition's decoupling proposal because it doesn't meet all the company's needs, *i.e.*, it doesn't provide a remedy for the company's attrition-related concerns. While the Coalition acknowledges the company's attrition concerns, the company's argument is irrelevant because decoupling is not intended to solve all the Company's financial problems. Just as I-937 was not intended to address all barriers to acquisition of energy efficiency, decoupling is not intended as a cure-all for every financial issue. Instead, decoupling breaks the link between increased electricity sales and a company's financial health; decoupling removes the structural disincentive against increased energy conservation. Mr. Cavanagh agreed that decoupling does not address PSE's cost recovery issue. Testimony of Ralph C. Cavanagh, TR. 449:20-450:11 ("Mr. Chairman, we are not solving the attrition problem that Puget has brought to you. If you believe that's a problem that needs to be solved, raise the

per customer revenue requirement to grant Puget more cost recovery. That is the solution if you believe them on attrition.”).

B. Staff’s Objections to Decoupling Mischaracterize the Coalition’s Proposal.

9. Staff begins its discussion of decoupling by chiding the Coalition for presenting no evidence of cost of capital impacts from decoupling. Staff Br. at 59. This is flatly incorrect. In both written and oral testimony, Mr. Cavanagh testified that the Coalition’s proposal would not materially affect costs of capital, based on the very small average magnitude of decoupling true-ups compared to total revenues. Prefiled Direct Testimony of Ralph C. Cavanagh, Exh. RCC-1T at 19-20; Cavanagh, TR. 437:13-16. Mr. Cavanagh also pointed out that he was aware of no evidence that revenue decoupling had reduced any utility’s cost of capital, which is not the same as saying that the Coalition failed to present evidence on this issue. Staff notably fails to explain why the Coalition’s revenue decoupling proposal would introduce any material change in that balance of risks. The Regulatory Assistance Project report, *Revenue Regulation and Decoupling: A Guide to Theory and Application* (June 2011), Exh. RCC-7 at 37-39, explicitly recognizes that the market may not immediately recognize the value of risk mitigation provided by decoupling mechanisms; accordingly, it is entirely appropriate to wait until any such value is actually realized and then pass it through to customers.

10. Staff also contends that the Coalition’s proposal does not address found margins. Staff Br. at 60. To the contrary, the Coalition’s proposal fully addresses found margins in the specific context of non-production costs. Cavanagh, Exh. RCC-1T at 9-10. Under the Coalition’s proposal, PSE would rebate to its customers all non-production costs per customer recovered in excess of the amount authorized by the Commission. The Coalition’s proposal does not address found margins associated with production costs because the Commission has adopted a power cost adjustment with deadbands reflecting the Commission’s judgment on a reasonable balance

of risks between customers and shareholders with regard to wholesale power transactions. Staff provides no explanation for its apparent disagreement with the Coalition's recommendation not to reopen or second-guess those issues. *See* Prefiled Cross-Answering Testimony of Ralph C. Cavanagh, Exh. RCC-6T at 4-5.

11. Staff summarizes (at 65) the Coalition's reasoning for excluding a small number of very large electricity users from the proposed decoupling mechanism, yet omits the observation that those users contribute, through their variable charges, less than a third as much per kWh of sales to the company's recovery of nonproduction costs as the system average customer. Cavanagh, Exh. RCC-1T at 13; ICNU Br. at 58-59 ("Because industrial customers create only 4.5% of PSE's fixed costs, but account for 14% of its sales, industrial customers would end up subsidizing other classes in a decoupling mechanism."); *id.* (explaining difference for retail wheeling customers); Prefiled Cross-Answering Testimony of Michael C. Deen, Exh. MCD-5T at 4-5.

12. Finally, Staff criticizes the "extreme complexity" of the Coalition's proposal without a single word of explanation or illustration. Staff Br. at 66. Unlike PSE, the Coalition does not propose "a complex separate mechanism ... to address conservation impacts on customer load," *id.* at 67; instead, the Coalition's proposal simply ensures that PSE's adjudicated nonproduction costs per customer are neither over- nor under-recovered as a result of fluctuations in sales, whatever the cause.

C. Public Counsel Misunderstands the Coalition's Analysis of and Advocacy for Consumer Interests.

13. Public Counsel paints the Coalition as an organization with fealty to shareholders, not consumers. PC Br. at 54, 56. Features of the Coalition's actual decoupling proposal that Public Counsel fails to address undermine this contention. Specifically, the Coalition's proposed 3%

cap on rate increases, no cap on rate reductions, and a full pass-through to customers of any and all reductions in capital costs associated with changes in the utility's capital structure, in keeping with the recommendations of the recent Regulatory Assistance Project report, all protect consumers.

14. Both Public Counsel and The Energy Project express concern about potential underrepresentation of low-income customers in energy efficiency programs, PC Br. at 55; The Energy Project Br. at 7-11. The Coalition shares these concerns. Cavanagh, TR. 466:8-19; Cavanagh, Exh. RCC-1T at 18-19. However, an admitted lack of information as to how low-income customers respond to conservation programs (as compared to other residential customers) should not be a reason to reject a decoupling mechanism that includes methods to measure—and respond to if necessary—impacts on low-income consumers. Without data, Washington, like other states, will be either simply guessing about these impacts or stymied by a lack of information. The Energy Project Br. at 9 (hypothesizing potential disproportionate costs to low-income consumers if program participation is lower); *see also id.* at 11 (noting lack of data on impact of conservation programs on customers of any particular income level).

15. The Coalition's decoupling proposal contains a requirement for detailed analysis of any positive and/or negative impacts of the decoupling mechanism on low-income customers in PSE's service territory, including whether, for the duration of the mechanism, PSE's conservation programs provide benefits to low-income ratepayers that are roughly comparable to other ratepayers, as set forth in the Commission's Decoupling Policy Statement and whether customer classes included in the mechanism receive the substantial majority of the net economic benefits (the difference between the benefits of the measure and its cost) of PSE's energy efficiency investments. Cavanagh, Exh. RCC-1T at 18-19.

D. Kroger's Reliance on Commission Actions in Michigan and Arizona Is Misplaced.

16. Kroger objects to the Coalition's decoupling proposal on the grounds that it is an inappropriate rate design for large commercial and industrial customers. Kroger Br. at 9-11. In support of this claim, Kroger asserts that two other utilities—one in Michigan and one in Arizona—have also taken the position that full revenue decoupling poses challenges for the largest industrial customer classes. *Id.* Kroger's suggestion to the contrary notwithstanding, any challenges that exist in applying full decoupling to industrial customer classes are far from insurmountable. Indeed, in the very Detroit Edison case on which Kroger relies, the Michigan Public Service Commission rejected Detroit Edison's request to abandon revenue decoupling following a pilot project and instead held that, with the inclusion of the modifications to the pilot mechanism recommended by Commission Staff, a full revenue decoupling mechanism would be "just and reasonable" and would serve the purpose of removing the utility's disincentive to promote energy efficiency. *See* Michigan Public Service Commission, Case No. U-16472 & U-16489, Order at 85, *available at* <http://efile.mpsc.state.mi.us/efile/docs/16472/0374.pdf>.

17. In Arizona, on the other hand, the Arizona Corporation Commission has not yet had the opportunity to rule on whether full revenue decoupling should be implemented for the Arizona Public Service Company. The utility in that case originally proposed full revenue decoupling, with support from energy efficiency advocates (including Mr. Cavanagh, as a witness for the Natural Resources Defense Council). Then, as part of a larger multi-party settlement proposal that included a number of provisions the utility found financially attractive, the utility agreed to modify its request and instead request a lost margin recovery mechanism in the settlement agreement. *See* Arizona Corporation Commission, Case No. E-01345A-11-0224, Joint Initial Post-Hearing Brief of Parties Supporting Settlement (Except Commission Staff) (filed Feb. 29,

2012). Parties including the Natural Resources Defense Council and the Southwest Energy Efficiency Project have filed objections to the multi-party settlement and have pointed out the many shortcomings with lost margin recovery mechanisms, including many of the same shortcomings identified by this Commission in its Decoupling Policy Statement. *See* Arizona Corporation Commission, Case No. E-01345A-11-0224, Initial Post-Hearing Brief of NRDC (filed Mar. 1, 2012). The Arizona Corporation Commission has yet to rule on the settlement and objections, and the simple fact that Kroger and other industrial customers opposed decoupling in Arizona, as they do here, provides little evidence that decoupling is inappropriate in either that case or this one.

II. THE COMMISSION SHOULD OPEN A NEW DOCKET TO FULLY EXPLORE THE TRUE COSTS OF OPERATING COLSTRIP.

18. The Coalition and Sierra Club have both offered testimony and argument demonstrating the need for PSE to conduct a comprehensive, forward-looking study on the continued costs of operating Colstrip in light of the financial risk posed by the cost of compliance with multiple new and proposed federal regulations. *See* Coalition Br. at 22-24; Sierra Club Br. at 1-14. As the Coalition and Sierra Club have explained, this study should take place under a separate docket to allow the protections of discovery and confidentiality for the study, and it should precede the IRP process so the results of that study can inform the IRP process. *See* Coalition Br. at 23. In response, PSE vaguely asserts that the IRP process is sufficient, without making any attempt to address the need for discovery of confidential information that makes the IRP process inadequate for the Colstrip study. PSE Br. at 24. No other party engages this issue at all.

19. PSE also asserts that a comprehensive study of the continued costs of operating Colstrip would be outside the scope of issues addressed by the Commission because the Commission is a

body of economic regulators, not environmental regulators. *See id.* PSE conveniently overlooks the fact that these environmental regulations will require substantial expenditures—and such expenditures surely are within the purview of the Commission, as the Commission itself has recognized. *See* UTC Commission Comments on PSE’s 2011 IRP, Docket Nos. UE-100961/UG-100960, Exh. No. JHS-35 CX at 6 (“PSE should conduct a broad examination of the cost of continuing the operation of Colstrip over the 20-year planning horizon, including a range of anticipated costs associated with federal EPA regulations on coal-fired generation.”); *see also* Testimony of Ezra Hausman, TR. 495:23-496:15 (“costs of complying with environmental regulations is very much in [the Commission’s] purview”).

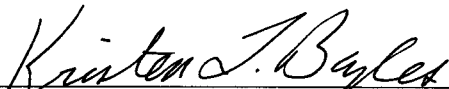
20. PSE’s cursory treatment of Sierra Club’s proposed study, and every other party’s complete silence on this issue, highlights the need for the Commission to order the study Sierra Club has proposed. No party has provided any compelling reason not to conduct such a study, under a separate docket to address confidentiality issues, and no party has offered any evidence that the IRP process or any other proceeding will provide a forum to thoroughly address these issues. Accordingly, the Commission should order PSE to conduct the study of Colstrip in a separate docket and should establish a time line for that docket that will allow the final study to inform the IRP process, as Sierra Club and the Coalition have requested.

CONCLUSION

21. For the reasons set forth above, in its initial post-hearing brief, and in the evidence before the Commission, NW Energy Coalition respectfully asks the Commission to order full electric decoupling, as described in the submitted expert testimony, and to require PSE to submit a compliance filing that takes into account the final revenue requirement approved in this case. The Coalition supports PSE’s investment in the Lower Snake River wind project as a reasonable early acquisition of renewable energy sources, and the Coalition supports the Sierra Club’s

proposal for examination of the true costs of Colstrip operation in a separate docket that precedes and informs the IRP. Finally, the Coalition supports The Energy Project's low-income rate assistance proposal.

Respectfully submitted this 26th day of March, 2012.


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