

[Service Date October 13, 2010]  
**BEFORE THE WASHINGTON STATE  
 UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKETS UE-011570, UG-011571, and UE-100177
	)	
Complainant,	)	
v.	)	<b>(AMENDED)</b>
	)	ORDER 05
PUGET SOUND ENERGY, INC.,	)	<b>(underlining denotes amendments)</b>
	)	
Respondent.	)	
.....	)	

**FINAL ORDER CONSOLIDATING DOCKETS FOR LIMITED PURPOSE;  
 APPROVING AND ADOPTING SETTLEMENT AGREEMENT;  
 APPROVING PSE’S REVISED REPORT IDENTIFYING ITS TEN-YEAR  
 CONSERVATION POTENTIAL AND BIENNIAL TARGET, SUBJECT TO  
 CONDITIONS; AND GRANTING JOINT MOTION TO MODIFY TWELFTH  
 SUPPLEMENTAL ORDER IN DOCKETS UE-011570 AND UG-011571**

- 1     **NATURE OF PROCEEDING.** Docket UE-100177 involves the ten-year achievable conservation potential and biennial conservation target report (Report) originally filed by Puget Sound Energy, Inc. (PSE) with the Washington Utilities and Transportation Commission (Commission) on January 29, 2010, and re-filed on June 18, 2010.
- 2     **APPEARANCES.** Sheree Strom Carson, Perkins Coie, Bellevue, Washington, represents PSE. Fronda Woods, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (Commission Staff or Staff).<sup>1</sup> Simon

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<sup>1</sup> In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do

ffitch, Senior Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section of the Washington Office of the Attorney General (Public Counsel). Danielle Dixon, Senior Policy Associate, Seattle, Washington, represents NW Energy Coalition (NWECC). Irion Sanger, Davison Van Cleve, P.C., Portland, Oregon, represents Industrial Customers of Northwest Utilities (ICNU).

3 **PROCEDURAL HISTORY.** In 2006, Washington voters passed Initiative Measure No. 937, codified at RCW Chapter 19.285 and entitled the Energy Independence Act (EIA). The EIA “require[s] investor-owned and consumer-owned utilities with 25,000 or more customers to meet designated targets for energy conservation, including cogeneration as defined, and use of eligible renewable energy resources .... Utilities not meeting conservation and renewable energy resource targets [shall pay] penalties to the state, to be used for purchase of renewable energy credits or certain energy conservation purposes.”<sup>2</sup> The EIA mandates that qualifying utilities, like PSE, file a report every two years beginning January 31, 2010, containing the utility’s ten-year achievable conservation potential and biennial conservation targets.<sup>3</sup> The Commission has been given the task of determining whether an investor-owned utility has complied with the provisions of the EIA and imposing monetary penalties for noncompliance.<sup>4</sup>

4 On December 31, 2009, Staff filed an e-mail that PSE had sent to members of the Conservation Resource Advisory Group. That e-mail stated the company’s projected cumulative conservation potential and biennial conservation target.<sup>5</sup> PSE’s ten-year conservation potential was projected to be 427.9 average megawatts (aMW) at the

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not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See RCW 34.05.455.*

<sup>2</sup> Office of the Secretary of State, Proposed Initiatives to the People - 2006, <http://www.sos.wa.gov/elections/initiatives/people.aspx?y=2006>.

<sup>3</sup> RCW 19.285.040(1)(a)-(b); WAC 480-109-010(3).

<sup>4</sup> RCW 19.285.060(6).

<sup>5</sup> That e-mail is available at <http://www.utc.wa.gov/rms2.nsf/vw2005OpenDocket/859DCF80A5B1A712882576A2005CC235>.

customer level, and its biennial target was calculated at a range of 69.4 aMW to 90.3 aMW at the customer meter level.<sup>6</sup> PSE stated in the e-mail that these numbers were derived from the company's 2009 Integrated Resource Plan (IRP) plus generation facility efficiency improvements.<sup>7</sup>

5 On January 29, 2010, PSE filed its report required by WAC 480-109-010(2), which included the following: 1) PSE's ten-year achievable conservation potential; 2) its biennial conservation target; 3) an explanation of the participation of Staff and the public in the development of the conservation metrics; 4) a statement indicating that PSE used the Council's Fifth Power Plan as the basis for the ten-year achievable conservation potential; and 5) an explanation of how PSE prorated the ten-year projection to create its biennial conservation target. PSE's report stated the Company's ten-year achievable conservation potential at 213.7 aMW and its biennial conservation target at 42.2 aMW.<sup>8</sup>

6 At the open meeting on March 11, 2010, the Commission discussed PSE's Report and voted to accept Staff's recommendation to set the matter for hearing based on the company's failure to provide sufficient information to enable the Commission to determine whether to approve the ten-year potential and biennial target.<sup>9</sup>

7 PSE, Staff, Public Counsel, and NWECA each filed motions for summary determination on April 6, 2010.

8 On June 4, 2010, the Commission entered Order 04. The Commission granted the motions filed by Staff, Public Counsel, and NWECA, finding that PSE's Report lacked

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<sup>6</sup> *Id.* Pursuant to RCW 19.285.040(1)(a) and WAC 480.109.010(1), qualifying utilities are only required to identify their ten-year conservation potential by January 1, not their biennial target.

<sup>7</sup> *Id.*

<sup>8</sup> PSE's Response to the Motions for Summary Determination of Commission Staff, Public Counsel, and NW Energy Coalition, ¶ 16.

<sup>9</sup> *See, Washington Utilities and Transportation Commission v. Puget Sound Energy, Inc.*, Docket UE-100177, Order 01, Setting 10-Year Achievable Conservation Potential and Biennial Conservation Target Report for Hearing (March 11, 2010).

sufficient public participation in its development and that the Report substantially differed from PSE's December 31, 2009, projection.<sup>10</sup> The order directed PSE to re-file its Report and correct these deficiencies.<sup>11</sup>

9 On June 18, 2010, PSE re-filed its Report (Revised Report). NWEC, Public Counsel, and Staff each filed comments with the Commission stating their position that the Revised Report complies with the requirements set forth in Order 04. However, each commenter also suggested that the Commission only approve the Revised Report subject to conditions. The commenters did not specify what conditions the Commission should impose, and instead recommended that we allow the parties to collaborate in the formulation of the conditions.

10 On September 3, 2010, Staff, Public Counsel, NWEC, PSE, and ICNU filed an all-party settlement agreement (EIA Settlement). The EIA Settlement and accompanying Joint Narrative Supporting Settlement Agreement Regarding Conditions for Approval under WAC 480-109-010(4)(c) (Joint Narrative) ask that we approve PSE's Revised Report, subject to conditions, including the modification of the Commission's Twelfth Supplemental Order in Dockets UE-011570 and UG-011571.<sup>12</sup>

11 The parties also filed a Joint Motion to Modify Twelfth Supplemental Order (Joint Motion) in consolidated Dockets UE-011570 and UE-011571 on September 17, 2010. The Commission provided notice to the parties in Dockets UE-011570 and UG-011571 of the Joint Motion and the EIA Settlement. The Commission has not received any objections from the parties in those dockets to the Joint Motion or the EIA Settlement.

### MEMORANDUM

12 The parties to the EIA Settlement state that it "is intended to replace the [conservation settlement agreement in Dockets UE-011570 and UE-011571] as to electric

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<sup>10</sup> Order 04, ¶ 134.

<sup>11</sup> *Id.* ¶ 142.

<sup>12</sup> *See* EIA Settlement, Section A(3) and Joint Narrative, ¶ 16.

conservation.”<sup>13</sup> The conservation settlement agreement resolved PSE’s request for electric and natural gas rate increases in Dockets UE-011570 and UG-011571 (Conservation Settlement).<sup>14</sup> The Conservation Settlement, *inter alia*, established a penalty scheme for the company’s failure to meet its annual conservation savings targets<sup>15</sup> and provided a conservation avoided cost methodology for PSE.<sup>16</sup> The parties assert that the EIA Settlement eliminates the Conservation Settlement’s penalty scheme since the penalty mechanism has already been superseded by that established in RCW Chapter 19.285.<sup>17</sup> The parties represent that the EIA Settlement requires PSE’s conservation avoided cost calculation methodology be consistent with the Council’s methodology and the EIA.<sup>18</sup> The EIA Settlement also proposes to delete certain portions of the Conservation Settlement on the grounds that those provisions are now obsolete.<sup>19</sup>

- 13 Because the Commission approved and adopted the Conservation Settlement in the Twelfth Supplemental Order in Dockets UE-011570 and UG-011571, the parties ask that the Commission modify that order. Specifically, the Joint Motion requests that the Commission revise Paragraph 63 of the order as follows (proposed additional language underlined):

THE COMMISSION ORDERS FURTHER That, except as provided below, the Settlement Stipulation filed by the parties on June 6, 2002, which is attached to this Order as Appendix A and incorporated by reference as if set forth in full in the body of this Order, is approved and adopted as a full and final resolution of this

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<sup>13</sup> Joint Narrative, ¶ 16. The EIA Settlement does not address the natural gas provisions of the conservation settlement agreement in the consolidated dockets. *Id.*

<sup>14</sup> Joint Motion, ¶ 3.

<sup>15</sup> See Joint Narrative, ¶ 22 and Conservation Settlement, Exhibit F, Section M(43).

<sup>16</sup> *Id.* ¶ 23 and Section F(15)-(18).

<sup>17</sup> Joint Narrative, ¶ 22.

<sup>18</sup> *Id.* ¶ 23.

<sup>19</sup> *Id.* ¶ 21.

general rate proceeding, subject to the clarifications, modifications, and conditions stated in the body of this Order. Exhibit F to the Settlement Stipulation, “Settlement Terms for Conservation” shall no longer be effective in Docket UE-011570 and is vacated. In its place, the “Agreed Modifications to Electric Settlement Terms for Conservation in Docket No. UE-011570” filed by the parties on September 3, 2010, is approved, adopted, and incorporated by reference as if set forth in full in the body of this Order. The “Settlement Terms for Conservation” that the parties filed on June 6, 2002, as Exhibit F to the Settlement Stipulation shall continue in effect in Docket UG-011571.<sup>20</sup>

- 14 The Commission provided notice to the parties to Dockets UE-011570 and UG-011571 of the Joint Motion and the EIA Settlement. None of the parties objected to the proposal outlined in both documents.
- 15 **Discussion.** The provisions of the EIA Settlement substantially overlap and affect the Conservation Settlement. Pursuant to WAC 480-07-320, we find that the facts and principles of law in these matters are sufficiently related so as to warrant consolidating Dockets UE-011570, UG-011571, and UE-100177 for the purpose of addressing the Twelfth Supplemental Order. Accordingly, we consolidate these dockets as part of this order.
- 16 With respect to the EIA Settlement, the Commission “may accept the proposed settlement, with or without conditions, or may reject it.”<sup>21</sup> The Commission must “determine whether a proposed settlement meets all pertinent legal and policy standards.”<sup>22</sup> The Commission may approve settlements “when doing so is lawful, when the settlement terms are supported by an appropriate record, and when the result

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<sup>20</sup> Joint Motion, ¶ 1.

<sup>21</sup> WAC 480-07-750(2).

<sup>22</sup> WAC 480-07-740.

is consistent with the public interest in light of all the information available to the commission.”<sup>23</sup>

- 17 The Commission supports parties’ informal efforts to resolve disputes without hearings.<sup>24</sup> The EIA Settlement resolves all disputes among the settling parties associated with PSE’s Revised Report and updates the Conservation Settlement so that its provisions are current and consistent with the EIA.
- 18 While there was no hearing in this proceeding, the parties provided detailed written support for the EIA Settlement in the form of their Joint Narrative. The record is sufficient to support PSE’s Revised Report, subject to the conditions in the EIA Settlement. In addition, no party to the Conservation Settlement indicated that it is opposed to the proposed revision.
- 19 Thus, we find that the EIA Settlement should be approved and adopted and that PSE’s Revised Report should be approved, subject to the conditions in the EIA Settlement. Accordingly, we conclude that the parties’ Joint Motion should be granted, and that the Twelfth Supplemental Order in Dockets UE-011570 and UG-011571 approving and adopting the Conservation Settlement should be modified as set forth in Paragraph 44 13, above.

### **FINDINGS OF FACT**

- 20 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary findings of fact, incorporating by reference pertinent portions of the preceding detailed findings:

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<sup>23</sup> WAC 480-07-750(1).

<sup>24</sup> WAC 480-07-700.

- 21 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including electrical companies.
- 22 (2) Puget Sound Energy, Inc., (PSE) is a “public service company” and an “electrical company” as those terms are defined in RCW 80.04.010 and as those terms otherwise are used in Title 80 RCW. PSE supplies utility services and commodities to the public for compensation in the state of Washington.
- 23 (3) On June 4, 2010, the Commission entered Order 04 which found that PSE’s Report Identifying PSE’s Ten-Year Achievable Conservation Potential and Biennial Conservation Target (Report) was insufficient, and directed PSE to re-file its Report using figures derived from its Integrated Resource Plan.
- 24 (4) On June 18, 2010, PSE re-filed its Report (Revised Report), identifying a ten-year achievable conservation potential of 3,748,773 megawatt-hours at the customer meter level, and a 2010-2011 biennial conservation target of 622,000 megawatt-hours at the customer meter level.<sup>25</sup>
- 25 (5) The NW Energy Coalition (NVEC), the Commission’s regulatory staff (Staff), and the Public Counsel Section of the Washington Attorney General’s Office (Public Counsel) filed comments stating that PSE’s Revised Report complies with Order 04 and recommending that the Commission approve the filing subject to conditions.
- 26 (6) On September 3, 2010, NVEC, Staff, Public Counsel, PSE, and the Industrial Customers of Northwest Utilities filed a settlement agreement (EIA Settlement) resolving all of the disputed issues in Docket UE-100177. The EIA Settlement requests that the Commission approve PSE’s Revised Report, subject to conditions, by finding that the Revised Report complies with the Energy Independence Act (EIA).

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<sup>25</sup> *Id.* at 2.



- 27 (7) The EIA Settlement would replace the electric avoided cost calculation methodology and eliminate the electric penalty mechanism established in the conservation settlement agreement (Conservation Settlement) in Dockets UE-011570 and UG-011571. With respect to electric conservation, the EIA Settlement would also delete certain portions of the Conservation Settlement as obsolete.<sup>26</sup>
- 28 (8) On September 17, 2010, signatories to the EIA Settlement filed a Joint Motion to Modify the Twelfth Supplemental Order (Joint Motion) in Docket UE-011570 and UE-011571 in which the Commission approved and adopted the Conservation Settlement.
- 29 (9) Following notice to all of the signatories to the Conservation Settlement and parties to Dockets UE-011570 and UG-011571, the Commission did not receive any objections to either the Joint Motion or the proposed revisions to the Conservation Settlement

### **CONCLUSIONS OF LAW**

- 30 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law incorporating by reference pertinent portions of the preceding detailed conclusions:
- 31 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.
- 32 (2) Pursuant to WAC 480-07-320, the Commission will consolidate dockets where warranted by related facts and principles of law. Dockets UE-011570, UG-011571, and UE-100177 are sufficiently related, due to the overlapping provisions within the Conservation Settlement and the EIA Settlement, so as to warrant consolidation.

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<sup>26</sup> *Id.*

- 33 (3) Pursuant to WAC 480-07-750(1), the Commission will approve settlements  
when doing so is lawful, when the settlement terms are supported by an  
appropriate record, and when the result is consistent with the public interest in  
light of all the information available to the Commission.
- 34 (4) PSE's Revised Report, subject to the conditions contained in the EIA  
Settlement, complies with the Commission's directive in Order 04 and the  
EIA.
- 35 (5) The terms of the EIA Settlement are supported by an appropriate record.
- 36 (6) Approval and adoption of the EIA Settlement is in the public interest in light  
of all the information available to the Commission.
- 37 (7) The EIA Settlement should be approved and adopted.
- 38 (8) The Joint Motion is in the public interest and should be granted.
- 39 (9) The Twelfth Supplemental Order in Dockets UE-011570 and UG-011571  
should be modified in accordance with Paragraph 44 13, above.

**ORDER**

**THE COMMISSION ORDERS THAT:**

- 40 (1) Dockets UE-011570, UG-011571, and UE-100177 are consolidated for  
purposes of this order.
- 41 (2) The Agreed Conditions for Approval of Puget Sound Energy, Inc.'s 2010-  
2011 Biennial Electric Conservation Targets Under RCW 19.285 (EIA  
Settlement), filed on September 3, 2010, is approved and adopted.
- 42 (3) Puget Sound Energy, Inc.'s (PSE's) Ten-Year Achievable Conservation  
Potential and Biennial Conservation Target, as identified in PSE's Revised

Report filed on June 18, 2010, are approved subject to the conditions in the EIA Settlement.

- 43 (4) The Joint Motion to Modify the Twelfth Supplemental Order in Dockets UE-011570 and UG-011571, filed by the NW Energy Coalition, the Commission's regulatory staff, the Public Counsel Section of the Washington Attorney General's Office, PSE, and the Industrial Customers of Northwest Utilities on September 17, 2010, is granted.
- 44 (5) The Twelfth Supplemental Order in Dockets UE-011570 and UG-011571 is modified consistent with Paragraph 13, above.

Dated at Olympia, Washington, and effective October 13, 2010.

**WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION**

**JEFFREY D. GOLTZ, Chairman**

**PATRICK J. OSHIE, Commissioner**

**PHILIP B. JONES, Commissioner**

**NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.**