

KI RSTI N S. DODGE
Direct: (425) 453- 7326
I nternet: dodgi@perkinscoie. com

November 7, 2001

VIA HAND DELIVERY AND EMAIL

Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation
Commission
1300 S. Evergreen Park Drive S.W.
Olympia, WA 98504-7250

**Re: Docket No. UE-010410,
Puget Sound Energy, Inc.'s Conservation Incentive Credit
Retroactive Ratemaking Issue**

Dear Ms. Washburn:

Puget Sound Energy, Inc. ("PSE") has requested that we respond to the legal opinions expressed by Public Counsel and Staff that PSE's petition for an accounting order and Schedule 120 pass-through in this docket would result in retroactive ratemaking.

Commission approval of PSE's filing would not violate the doctrine against retroactive ratemaking. As the Commission has observed,

[Retroactive rate making involves] surcharges or ordered refunds *applied to rates which had previously been paid*, constituting an additional charge applied after the service was provided or consumed. The evil in retroactive rate making as thus understood is that *the consumer has no opportunity prior to receiving or consuming the service to learn what the rate is or to participate in a proceeding by which the rate is set*. The Commission agrees that retroactive rate making, as thus understood, is extremely poor public policy and is illegal under the statutes of Washington State as *a rate applied to a service without prior notice and review*.

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WUTC v. U S WEST Communications, Inc., UT-970010, Second Supplemental Order, 1997 Wash. UTC LEXIS 72 at *21 (Nov. 7, 1997) (quoting WUTC v. Puget Sound Power and Light Company, Docket No. U-81-41, Sixth Supplemental Order at 17-18, 1988 Wash. UTC LEXIS 146 (Dec. 19, 1988)) (emphasis added).

Public Counsel's argument that "customers received no information from the company that they might be liable to repay the credit" misstates the effect of PSE's filing, if approved. PSE's proposed future pass-through of net Conservation Incentive Credit ("CIC") costs through the Schedule 120 Conservation Rider is not retroactive ratemaking. PSE is proposing a future adjustment to Schedule 120 that will affect the rates paid by a broad range of customers for power they consume in the future. PSE is not proposing to go back and undo the CIC schedule approved on April 25, 2001. Customers who have "earned" the CIC credit will receive it, and not have to repay any prior amounts received.

Thus, customers who made use of the CIC credit will have received exactly what the CIC tariff schedule provided. Customers who take service in the future will also have notice, through Schedule 120, of the rate that will be applied to that service, including the conservation rider amounts for each schedule. Future Schedule 120 customers are also receiving notice and prior review of the CIC cost pass-through by virtue of the petition that the Commission is considering in this docket.

Even if the Commission were to conclude that the retroactive ratemaking doctrine were somehow implicated with respect to the future Schedule 120 pass-through, PSE's customers have long had notice through Schedules 83 and 120 that PSE may defer and pass through to its customers expenses associated with energy conservation programs. See, e.g., Petition of Puget Sound Energy for an Order (1) Authorizing Deferral of Electricity Conservation Expenditures and (2) Approving a Tariff Rider for Concurrent Recovery in Electric Rates of Such Deferred Electricity Conservation Expenditures, UE-970686, Order (May 16, 1997) (approving recovery of projected conservation expenditures subject to true-up during a subsequent twelve-month period based on actual conservation expenditures); Petition of Puget Sound Energy for an Order (1) Authorizing Deferral of Expenditures Incurred Under Schedule 150, Net Metering Services for Renewable Energy Systems, and (2) Authorizing Recovery in Electric Rates of Such Deferred Expenditures in Accordance with Schedule 120, Electricity Conservation Tariff Rider, UE-990016, Order (February 10, 1999) (observing that Schedule 120 "provides for concurrent recovery in rates of deferred electricity conservation expenditures" and approving, without hearing, recovery of Net

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Metering Program expenditures in Schedule 120 "as any other electric conservation program expenditure").

Commission Staff seems to suggest in its memo that it believes that approval of an accounting deferral would also violate the doctrine against retroactive ratemaking because PSE seeks to include in the deferred account costs that have already been incurred. However, accounting deferrals are not ratemaking at all, but rather provide a mechanism for tracking costs or revenues. The question of how the Commission treats such costs or revenues with respect to rates is an entirely different matter.

The Commission has regularly approved deferral accounts where the deferral period begins prior to the Commission's accounting order, and even prior to the filing of the petition for an accounting order. For example, in Petition of Avista Corp. for an Order Regarding the Accounting Treatment of Certain Wholesale Power Costs to Serve Firm Load Obligations, UE-000972, 2000 Wash. UTC LEXIS 324, Order Granting Deferral of Power Cost Expenses Pending Demonstration of Prudence (Aug. 9, 2000), the Commission issued an accounting order on August 9, 2000, authorizing deferral of certain power supply costs beginning July 1, 2000.

On December 21, 2000, Avista filed a petition in the same docket asking that the Commission amend its August 9, 2000 order to approve deferral of additional amounts. Avista proposed that the amendment be made effective December 1, 2000. On January 24, 2001, the Commission granted that request, and issued an amended accounting order with an effective date of December 1, 2000. See Petition of Avista Corp. for an Order Regarding the Accounting Treatment of Certain Wholesale Power Costs to Serve Firm Load Obligations, UE-000972, 2001 Wash. UTC LEXIS 214, Order Granting Request to Modify Power Cost Deferral Mechanism (Jan. 24, 2000).

In sum, the Commission's approval of PSE's petition for an accounting order and pass-through of net Conservation Incentive Credit costs in the Schedule 120 Conservation Rider would not violate the doctrine against retroactive ratemaking.

Very truly yours,

Kirstin S. Dodge

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cc: (via facsimile)
Matt Steuerwalt
James M. Russell
Joelle Steward
Merton Lott
Thomas Schooley
Yohannes Mariam