

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

In the Matter of the Application of	)	
	)	DOCKET NO. UE-010410
PUGET SOUND ENERGY	)	
	)	
For Authorization Regarding the	)	ORDER DENYING PETITION
Deferral of the Net Impact of the	)	TO AMEND ACCOUNTING
Conservation Incentive Credit Program,	)	ORDER
Schedule 125, and Subsequent	)	
Recovery Thereof Through	)	
Schedule 120, Conservation Rider	)	
.....	)	

**BACKGROUND**

- 1 On April 25, 2001, the Commission approved Puget Sound Energy's (PSE or Company) Conservation Incentive Credit (CIC) of \$.05 per kilowatt-hour (kWh) for every kWh a customer saved beyond a 10% threshold. The Conservation Incentive Credit, Schedule 125, was filed and approved to run from May 1, 2001, through December 31, 2001. This program was filed and approved in conjunction with PSE's Time-of-Day pilot program in Docket No. UE-010409. In the companion Docket No. UE-010410, an accounting petition, PSE's request to book the CIC payment as a reduction to revenues was granted by Commission Order entered April 25, 2001.
  
- 2 On September 4, 2001, PSE filed a Petition to Amend Order in Docket No. UE-010410 that proposes to unwind, from May 1, 2001, the accounting treatment of the CIC from a reduction of revenues to a method where the CIC payments and lost revenues are netted against wholesale power cost revenue/savings and re-accounted for as a regulatory asset (deferred cost). PSE also seeks in its petition to surcharge customers the deferred balance through Schedule 120, Conservation Rider, at the conclusion of the CIC program.

3 On October 24, 2001, PSE filed with the Commission revisions to its currently effective Tariff WN U-60, designated as First Revised Sheet No. 125-a and First Revised Sheet No. 125-b. The filing was docketed as Docket No. UE-011442. The purpose of the filing was to reduce the CIC from \$.05 per kWh to \$.02 per kWh. On November 6, 2001, PSE filed substitute tariff sheets reducing the CIC to zero.

4 Because the proposed tariff revisions appeared to be fair, just, and reasonable, and waiver of statutory notice was consistent with the public interest, the Commission granted the waiver PSE requested with an effective date of November 8, 2001.

5 Commission Staff estimates that, by ending the CIC pilot program at this time, the relative benefits and burdens of the program are in approximate parity, and that the program to date has not resulted in significant financial gains or losses to PSE. In addition, Staff noted the following problems with PSE's proposal: (1) lost revenues are not measurable and the inclusion of them in the deferral raises significant policy implications, (2) PSE uses the Mid-Columbia index price as a surrogate for its own actual costs, (3) curtailment is classified as conservation, and (4) recovery of non-cost-effective "conservation" and lost revenues would violate the terms of Schedule 120.

6 At the program's inception, Public Counsel and Industrial Customers of Northwest Utilities (ICNU) urged the Company to implement a sharing mechanism for purposes of sharing the benefits of the CIC and Time-of-Day program. Both Public Counsel and ICNU appeared at the November 7, 2001, open meeting to oppose PSE's petition to amend the accounting order in Docket No. UE-010410.

7 The Commission determines that it is legally barred from granting PSE's petition to amend the accounting order in Docket No. UE-010410 under the doctrine of retroactive ratemaking. "The retroactive ratemaking doctrine prohibits the Commission from authorizing or requiring a utility to adjust current rates to make up for past errors in projections." *Town of Norwood, Mass. v. FERC*, 53 F.3d 377, 381 (D.C. Cir. 1995). With few exceptions (not applicable here), under RCW 80.28.020 the Commission is charged with setting rates on a *prospective* basis. Under RCW 80.28.050, every electrical company is required to file with the Commission tariffs showing the rates charged for service. Under RCW 80.28.080, no electrical company is permitted to charge a rate for service that deviates from its tariffed rate. Here, PSE proposes to reach back in time to alter the tariffed CIC rate.

[Retroactive rate making involves] surcharges or ordered refunds applied to rates which had been previously 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.

*WUTC v. U S WEST Communications, Inc.*, Docket No. UT-970010, Second Supp. Order at 10 (Nov. 7, 1997).

- 8 PSE's petition, if approved, would result in unlawful retroactive ratemaking. The \$.05 credit rate is an unconditional tariffed rate under Schedule 125. From May 1, 2001, to present, the tariff has been implemented as written, and as approved and made effective by the Commission on May 1, 2001. Revenues have been credited to customers at the Schedule 125 credit rate of \$.05. PSE now proposes to retroactively change that rate by deferring amounts paid to customers under Schedule 125 and charging those amounts back to customers through the Schedule 120 Conservation Rider. Those who have received a credit of \$.05 per kWh would now stand to lose a portion of that credit, since they would be members of the class of ratepayers paying the deferred expense. The collective pool of all ratepayers would pay back the full \$.05 plus the net of lost revenues and power cost savings priced at the Mid-Columbia Index. Approval of PSE's petition would constitute unlawful retroactive ratemaking because the petition seeks to change the past effect of a tariffed rate, contrary to the terms of the tariff in effect at the time, and the corresponding accounting order in effect at the time. PSE's petition should be denied.
- 9 In addition, the Commission has carefully reviewed the substantive and policy issues raised by this filing. When the Commission initially approved both the CIC and Time-of-Day rates, there was substantial discussion concerning the benefits and risks of the program, and how they might be divided between the Company and its ratepayers. In light of that discussion, it is not credible to claim, as PSE now does, that "no one could have anticipated" the drop in wholesale market prices from extraordinarily high levels to more normal levels (but still high by historical standards). While PSE may not have predicted the market drop, the possibility that it *could* drop was expressly discussed. It was clear at that time that the Company accepted not only the benefits of the program but also the risk that the program would fail. Had power prices remained high, under the program, the Company would have kept all benefits flowing from that program. Once prices fell, and the anticipated benefits dwindled, the Company requested that its general body of ratepayers bear all of the losses associated with the program. Significantly, those ratepayers were not put on notice that, under any circumstances, they would be saddled with those risks. It is not in the public interest for the Commission now, after the fact, to burden PSE's customers with risks the Company assumed at the outset.

### FINDINGS OF FACT

10 Having discussed above all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the ultimate decision of the Commission are incorporated by this reference:

11 (1) After careful examination of Puget Sound Energy's September 4, 2001, Petition to Amend in which Puget Sound Energy requests authorization to defer the cumulative net impact of the CIC pilot program and requests authorization to recover from or return to customers amounts so deferred through Schedule 120, Puget Sound Energy's Conservation Tariff Rider, after the conclusion of the pilot program, and giving consideration to all relevant matters and for good cause shown, the Commission finds that the petition to amend should be denied.

### CONCLUSIONS OF LAW

12 Having discussed above all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

13 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter and the parties.

14 (2) The Commission legally is barred from granting Puget Sound Energy's petition to amend the accounting order in Docket No. UE-010410 under the doctrine of retroactive ratemaking.

15 (3) The Commission retains jurisdiction to effectuate the provisions of this Order.

16 This matter was brought before the Commission at a continued open meeting on November 7, 2001. The Commissioners having determined this Order to be consistent with the public interest, enter the following Order.

**ORDER**

17 THE COMMISSION DENIES the petition of Puget Sound Energy to amend the accounting order in Docket No. UE-010410.

DATED at Olympia, Washington, and effective this 9th day of November, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner