BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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| In the Matter of the Petition of<br><br>PUGET SOUND ENERGY, INC.<br><br>for an Order Authorizing Deferral of Certain Electric Energy Supply Costs. | ) | DOCKET NO. UE-011170 |
| WASHINGTON UTLITIES AND TRANSPORTATION COMMISSION,<br><br>Complainant,<br><br>v.<br><br>PUGET SOUND ENERGY, INC.,<br><br>Respondent, | ) | DOCKET NO. UE-011163 |

**RESPONSE OF COMMISSION STAFF IN SUPPORT OF MOTION TO DISMISS**

## I. INTRODUCTION

On August 21, 2001, Puget Sound Energy, Inc. (PSE) petitioned the Commission for an order: (1) authorizing the deferral of certain power supply expenses; and (2) approving periodic recovery of the deferred amounts through an electric tariff rider (Schedule 395). The Petition for a power cost adjustment (PCA) mechanism is presented as a request for interim rate relief outside of a general rate case. (Petition at 2, ¶ 3.)

Public Counsel moved to dismiss, or determine summarily, PSE's Petition and tariff rider.[1] Commission Staff supports the motion of Public Counsel. The Petition violates the express terms of the Merger Order, and Commission precedent regarding interim rate relief and PCAs. The Petition also fails to make a *prima facie* case that it would result in rates that are just, fair, reasonable and sufficient.

Should interim rate relief be actually necessary to avoid clear jeopardy to PSE, its ratepayers and shareholders, PSE should request that relief in a general rate case which it is authorized to file at any time. That general rate case is also an avenue for requesting separately a PCA.

## II. ARGUMENT

The Commission may dismiss PSE's Petition if the Petition fails to state a claim upon which relief may be granted. WAC 480-09-426(1). Alternatively, the Petition may be rejected summarily if there is no genuine issue of material fact and Public Counsel is entitled to an order in its favor as a matter of law. WAC 480-09-426(2). These standards have been satisfied in this case.

### A. The Merger Order Prohibits the Interim Rate Relief Requested by PSE

As Public Counsel notes correctly (Motion at 2-3), PSE's authority to increase electric rates through the end of 2001 is controlled expressly by the Rate Plan adopted in the Commission's Fourteenth Supplemental Order Accepting Stipulation Approving Merger (Merger Order), dated February 7, 1997, in Docket Nos. UE-951270 and UE-960195, *In the Matter of the Application of Puget Sound Power & Light Company and Washington Natural Gas for an Order*

*Approving Merger*. Since all of the rate increases allowed by the Rate Plan have already been implemented, PSE's ability to obtain further increases is limited to interim rate relief shown necessary to avoid gross hardship or inequity. The Rate Plan adopted by the Merger Order specifies the requirement for such a demonstration. It also specifies an exclusive process for requesting interim rate relief:

> During the Rate Plan Period, PSE may seek, under appropriate circumstances, interim rate relief. The Commission adopted a six-part standard for interim rate relief in *WUTC v. Pacific Northwest Bell Telephone Company*, Cause No. U-72-30, Second Supplemental Order (October 1972). The *Pacific Northwest Bell* standard has been consistently reaffirmed in several Commission decisions Since 1972. If PSE requests interim rate relief, it will apply under the *Pacific Northwest Bell* standard or whatever Commission standard exists for such relief at the time of PSE's request. *The process for seeking interim relief is as follows (subject to modification by Commission order or rulemaking): PSE would file a general rate case under WAC 480-09-330, but with tariffs supportive only of the amount requested as interim rate relief, PSE would file testimony and other evidence that supports the amount of the requested interim rate relief*, and PSE would propose to spread the requested interim rate relief among customer classes based on an . . . . equal percentage of revenues (electric). (emphasis added.)

Merger Order at Appendix A (Stipulation), page 10-11, Section III.A.6.

PSE's Petition is clearly not, nor was it ever intended to be[2], a request for an amount of interim relief filed as part of a general rate case in accordance with WAC 480-09-330. It is an isolated request for a PCA which violates the Merger Order and should be dismissed as a matter of law.[3]

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[1] The tariff rider was suspended by Commission Complaint and Order, issued August 29, 2001.

[2] PSE's advice letter confirms that intent. It states that the "filing is not a request for a general rate increase." Letter to Carole Washburn, dated August 21, 2001, re: Advice No. 2001-35.

[3] PSE may argue that the process for seeking interim rate relief may be changed by order in this case since the Merger Order states that the requirement for a general rate case filing is "subject to modification by Commission order or rulemaking". Merger Order at Appendix A (Stipulation), page 11, Section III.A.6. Such an interpretation should e rejected because it would allow PSE to unilaterally propose to alter the process upon which it agreed expressly with Staff and Public Counsel. The only fair and reasonable interpretation to place on this language is that modification to the general rate case requirement can occur through an order of general applicability such as a rulemaking, interpretive and policy statement, or notice of inquiry. Perhaps all signatories to the Merger Stipulation

### B. Commission Precedent Prohibits the Interim Rate Relief Requested by PSE

The Petition submitted by PSE requests as interim rate relief a surcharge to recover power supply expenses PSE proposes for deferral. The Petition, therefore, seeks to raise rates outside the context of a general rate case for only one component of PSE's entire cost of service.

The Petition violates a wealth of Commission precedent, in addition to the Merger Order as discussed earlier. No Commission decision of which we are aware considered interim rate relief outside of a general rate case.[4] *WUTC v. Pacific Northwest Bell Co.,* Cause No. U-72-30tr, Second Suppl. Order (October 1972); *WUTC v. Puget Sound Power & Light Co.,* Cause No. U-73-57, Second Suppl. Order (January 1974); *WUTC v. Cascade Natural Gas Co.,* Cause No. U-74-20, Second Suppl. Order (July 1974); *WUTC v. Pacific Northwest Bell Co.,* 11 PUR 4th 166 (1975); *WUTC v. The Washington Water Power Co.,* Cause No. U-77-53, Second Suppl. Order (September 1977); *WUTC v. Puget Sound Power & Light Co.,* Cause No. U-80-10, Second Suppl. Order (June 1980); *WUTC v. The Washington Water Power Co.,* Cause No. U-80-13, Second Suppl. Order (June 1980); *WUTC v. South Bainbridge Water System, Inc.,* Docket Nos. U-87-1355-T and U-83-50, Second Suppl. Order (April 1988); *WUTC v. Richardson Water Cos.*, Docket No. U-88-2294-T, Second Suppl. Order (November 1983) ; *WUC v. Alderton-Mc Millin Water Supply, Inc.*, Docket No. UW-911041, First Suppl. Order (January 1992); *Re:*

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could jointly ask the Commission to amend the Merger Order to eliminate the general rate case requirement. Such a joint request, however, is not presented.

[4] The *PNB* order, *infra,* is cited specifically in the Merger Order, PSE's Petition and all other interim rate cases before this Commission as setting the standards for resolving requests for interim rate relief. It contemplates specifically that interim rate relief should be considered only in the context of a general rate case: "That is not to say that interim rate relief should be granted only after disaster has struck or is imminent, but neither should it be granted in any case where full hearing can be had and the *general case* resolved without clear detriment to the utility." (emphasis added.) *PNB, infra,* at 13, item 5. The requirement for a general rate case allows the Commission to evaluate all evidence related to a company's entire cost of service while allowing immediate rate relief to avoid gross hardship.

*Washington Water Power Co.*, 22 PUR 4th 485 (1977); *WUTC v. Washington Natural Gas Co.*, Docket No. UG-950278, Third Suppl. Order (May 1995).

Nor are we aware of any case where the Commission granted a PCA or other form of deferred accounting as interim rate relief. Even in a general rate case, the Commission has rejected interim relief in the form of a surcharge to recover specific expenditures of a utility. *WUTC v. Washington Natural Gas Co.*, Cause No. U-80-111, Second Suppl. Order at 3 (March 1981) ("A surcharge is not intended to be employed nor will it be considered by this Commission as a stopgap or piecemeal approach to a utility's overall financial requirement, including rate of return, interest and earnings coverages."); *WUTC v. The Washington Water Power Co.*, Cause No. U-83-26, Fourth Suppl. Order (October 1983) (interim surcharge rejected when proposed to recover the cost of the Kettle Falls generation facility before the facility was proven to be prudent).

PSE has failed to address why the Commission should now diverge from its longstanding practice. This failure is especially troublesome given that PSE is poised to file a general rate case and could request interim relief in that case consistent with Commission precedent and sound regulatory principles.

### C. PSE's Petition and Direct Case Fail To Make a *Prima Facie* Case for Just and Reasonable Rates

Public Counsel notes correctly that PSE's Petition fails to meet the conditions the Commission has established for approval of a PCA. Motion at 4-6, citing *WUTC v. Avista Corporation*, Docket Nos. UE-991606 and UG-991607, Third Suppl. Order at ¶¶ 167-185 (2000). No exemption from those conditions has been granted for a PCA that is proposed as

interim rate relief, whether or not in a general rate case. Nor has PSE attempted to show that such an exemption now should be granted.

There is also no exemption for a PCA (even an interim PCA) from the statutory requirements that *all* charges established by the Commission and assessed by a utility must be just, fair, reasonable, and sufficient. RCW 80.28.010(1). RCW 80.28.020. Nor is PSE exempt from the statutory obligation it alone possesses to prove that any rate increases that would result from the proposed PCA are just and reasonable. RCW 80.04.130(2). No presumption exists in PSE's favor that the costs it seeks to recover through its PCA are reasonable. *WUTC v. Puget Sound Power & Light Co.,* Docket Nos. UE-921262, *et. al.,* Eleventh Suppl. Order at 19 (September 1993).

None of these obligations mandated by statute have been satisfied in this case. PSE proposes to defer and flow through to ratepayers the difference between certain tracked power costs and comparable power costs used currently to establish rates. (Petition at 9, ¶22.) PSE, however, has submitted no evidence to prove that these embedded power costs are a reasonable basis for deferred accounting and flow-through to rates. Indeed, PSE refuses expressly to provide such evidence despite Staff's willingness to review it, and other evidence of alleged financial hardship which PSE also refuses to provide, as expeditiously as possible (Tr. 36; Letter from Mark Quehrn to Robert Wallis at 1, dated September 7, 2001: "PSE stated [at the prehearing conference] that the issues of concern to Commission Staff and Public Counsel would and could be appropriately considered in a general rate case, but they were beyond the scope of a request for interim rate relief").

Moreover, the costs of power supply that are recovered through current rates were established in a rate case decided finally by the Commission seven years ago in 1994 (the

"Prudence Review"). *WUTC v. Puget Sound Power & Light Co.*, Docket Nos. UE-921262, *et. al.*, Nineteenth Suppl. Order (September 1994). And, since 1994, Puget Sound Power & Light Company, the utility authorized to recover those power costs, has undergone a significant transformation. It merged with Washington Natural Gas Company and it has operated over most of a five-year Rate Plan that was designed specifically to impact PSE's financial results through the achievement of savings in several major areas including power supply ("power stretch" savings). Merger Order at 21 and Appendix A (Stipulation) at 4: 5-11. Finally, all of the rate increases that were allowed and already implemented during the Rate Plan period were based expressly upon a forecast of power costs for 1997-2001. Merger Order, Appendix D.[5] There has been no review of PSE's power costs to support any additional rate increases during the Rate Plan period, including the increases that would result from the proposed PCA.

In short, PSE has failed to make a *prima facie* case that its PCA will result in rates that are just, fair, reasonable and sufficient despite circumstances that would likely suggest otherwise. As a matter of law, therefore, the PCA proposed by PSE violates RCW 80.04.130(2) and RCW 80.28.010(1), and should be dismissed. Any other result would impede the Commission in fulfilling its statutory responsibility under RCW 80.28.020 to set just and reasonable rates.

## III. CONCLUSION

For the reasons set forth above and in the Motion of Public Counsel, the filings of PSE in these dockets should be dismissed. If PSE faces financial hardship that justifies interim rate relief under the *PNB* standards, it should submit the requisite evidence in a general rate case.

[5] *See also,* Merger Order, Appendix A (Stipulation) at 7: 7-9: "The rate plan is based upon recovery of the power cost components for 1997-2001 as set forth in Exhibit D attached hereto as Exhibit No. 240."

Nothing prevents that filing to be made today, and to be reviewed and decided as expeditiously as possible.

DATED This 12th day of September 2001.

Respectfully submitted,

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Senior Counsel