

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.

Respondent.

DOCKET UE-050870

MOTION TO MODIFY ORDER 04

**I. RELIEF REQUESTED**

1 Pursuant to WAC 480-07-375, Puget Sound Energy, Inc. ("PSE") moves for an order modifying Appendix B to Order 04, entered October 20, 2005, in the above-captioned docket to reflect changes to the manner in which Production Tax Credits ("PTCs") and other federal incentives are passed through to customers through Schedule 95A. Concurrent with the filing of this motion, PSE is filing a tariff revision for Schedule 95A, a copy of which is attached hereto.

2 PSE requests that the Washington Utilities and Transportation Commission ("Commission") modify one paragraph of Appendix B to Order 04 in this docket, which describes the methodology by which PTCs are passed through to customers. PSE requests that the Commission modify page 5 of Appendix B to Order No. 04<sup>1</sup> as follows:

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<sup>1</sup> Although the pages of Appendix B are not numbered, the paragraph at issue appears on the fifth page of the appendix.

To properly flow these tax credits through to the customer, the Company proposal is to create a PTC tracker ("Schedule 95A") that will pass through to the customer the actual realized production tax credits and other federal incentives. Production tax credits and similar credits are realized when utilized by the Company on its annual tax return rather than when generated. Other federal incentives may also become available to the Company as defined in Schedule 95A. Schedule 95A describes the timing of filings to pass through the credits and incentives to the customer, as they are generated and ~~†~~ The tracker would not be subject to the sharing bands in the PCA. ~~This pass through will be adjusted by the carrying costs for the deferred tax account for the PTCs that have been generated but have not been used for the current years tax credit. As the customer is receiving the benefit of the tax credits as they are generated and the Company does not receive a credit from the IRS until the tax credits are utilized the Company is reimbursed its carrying costs for funds through this calculation.~~ This tracker would initially be used for the Hopkins Ridge Project, but would also be available for the PTCs and other federal incentives that may be associated with other wind generating facilities that the Company may acquire in the future.

3 RCW 80.04.210 and WAC 480-07-875 authorize the Commission to amend an order after providing notice to the affected public service company and to all parties in the underlying proceeding. PSE is providing formal notice to all parties in Docket UE-050870 by serving this motion on all parties to the docket.

## II. STATEMENT OF FACTS

### A. Establishment of the Production Tax Credit Tracker, Schedule 95A

4 In Docket UE-050870, the parties to the settlement of PSE's 2005 Power Cost Only Rate Case agreed, as part of the settlement, to ask the Commission to approve a Production Tax Credit Tracker, Schedule 95A, relating to a subsidy provided by the U.S. Government for generating electricity from wind.<sup>2</sup> The settlement provided for the PTC Tracker to pass through to the customers the actual PTCs as they are *generated*.<sup>3</sup> Because the customer

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<sup>2</sup> *Washington Utilities & Transp. Comm'n v. PSE*, Docket UE-050870: Approving and Adopting Settlement Agreement, Authorizing and Requiring Compliance Filing, and Granting Other Relief, ¶¶ 13, 14, App. B at 5 (October 20, 2005).

<sup>3</sup> *Id.* at App. B.

would receive the benefits of the tax credits as they were generated, but the Company would not receive a credit from the Internal Revenue Service until the tax credits were utilized, the settlement provided that the Company would be reimbursed its carrying costs for funds through this calculation.<sup>4</sup> In Order 04, the Commission approved the settlement, Schedule 95A, and the accounting treatment for Schedule 95A. The accounting treatment is set forth in Appendix B to Order 04.

**B. Current Status of the Production Tax Credit Tracker**

5 In 2008, the U.S. Government adopted tax changes that provided PSE additional deductions for tax purposes. These changes, plus tax deductions that PSE was allowed for adding new resources, severely limited the amount of PTCs that the Company could use against any tax liability. The balance of the deferred tax account grew from \$6.3 million, in December 2007, to \$61 million, as of June 2010.<sup>5</sup>

6 In two recent orders the Commission has recognized and responded to these tax changes by the U.S. government that have limited PSE's ability to use PTCs against any tax liability.<sup>6</sup> In Docket UE-091703, the Commission approved a tariff revision filed by PSE that revised the PTC Tracker rates to zero. In its order the Commission stated:

PSE has been unable to realize in recent federal income tax filings the production tax credits (PTCs) that it has been and is currently passing through the Tracker. The revision of the Tracker rates to zero, which is a departure from the original tracker mechanism approved by the Commission, will cease greater accumulation of interest-bearing cash balance advanced by PSE to the customer. To address the existing balance and to craft a workable mechanism to pass realized PTCs and Treasury grant benefits to the customers, PSE commits to work with Commission staff and other

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<sup>4</sup> *Id.*

<sup>5</sup> *In the Matter of the Amended Petition of Puget Sound Energy, Inc. For an Order Authorizing the Use of the Proceeds from the Sale of Renewable Energy Credits and Carbon Financial Instruments*; Docket UE-070725 and UE-101581 (Consolidated) Order 06: Granting Joint Petition for Approval of Joint Proposal and Request for Amendment of Order 03; Consolidating Proceedings and Granting Accounting Petition, at ¶12 (October 26, 2010).

<sup>6</sup> *Id.*; *Washington Utilities & Transp. Comm'n v. PSE*, Docket UE-091703 Order 02: Order Dismissing the Complaint and Order Suspending Tariff Revisions and Allowing Tariff Revisions, at ¶3 (June 24, 2010).

interested parties to undertake necessary modifications of the pass-through mechanism.<sup>7</sup>

7 In Docket UE-070725, the Commission approved a Joint Proposal submitted by PSE, Commission Staff and the Industrial Customers of Northwest Utilities ("ICNU") allowing PSE to use a portion of the REC proceeds it received from December 2009 through December 2011 to offset the balance in the PTC Tracker that had accumulated as a result of PTCs that had been passed through to customers but had not been used by the Company on its tax return.<sup>8</sup>

**C. PSE's Proposed Revised Schedule 95A**

8 In response to the Commission's instruction in Docket UE-091703 that PSE should undertake modifications to the pass-through mechanism and craft a workable mechanism to pass realized PTCs and Treasury grant benefits to customers, PSE is filing a revised Schedule 95A concurrent with the filing of this motion. The revised tariff implements changes to pass through an amount the Company has received from a U.S. Treasury grant as approved by the Commission's Order 01 in Docket No. UE-091570. Further, the Company is proposing changes to the tracker so that production tax credits will only be passed through to customers following their use, rather than in the same year when they are generated. To the extent that this change requires modification or amendment to Order 04, the Company respectfully requests that the order be modified to allow this change.

**III. ARGUMENT**

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<sup>7</sup> *Washington Utilities & Transp. Comm'n v. PSE*, Docket UE-091703 Order 02: Order Dismissing the Complaint and Order Suspending Tariff Revisions and Allowing Tariff Revisions, at ¶3 (June 24, 2010).

<sup>8</sup> *In the Matter of the Amended Petition of Puget Sound Energy, Inc. For an Order Authorizing the Use of the Proceeds from the Sale of Renewable Energy Credits and Carbon Financial Instruments*; Docket UE-070725 and UE-101581 (Consolidated) Order 06: Granting Joint Petition for Approval of Joint Proposal and Request for Amendment of Order 03; Consolidating Proceedings and Granting Accounting Petition, at ¶¶14-15 (October 26, 2010).

9           The Commission has authority to alter or amend its prior orders.<sup>9</sup> When considering a motion such as this one, the Commission may refer to the Washington superior court rules for civil proceedings as guidelines.<sup>10</sup> Civil Rule 60(b)(6) provides that a court may amend a final judgment if “it is no longer equitable that the judgment should have prospective application.” That is the case here.

10           In this case, the Commission has instructed PSE to modify the PTC pass through mechanism to craft a workable mechanism to pass through realized PTCs and Treasury grants to customers. PSE has proposed revisions to Schedule 95A to achieve this objective. However, because Order 04 in Docket UE-050870, which established Schedule 95A, provided that customers would receive the benefit of tax credits as they are generated, the Commission should amend Appendix B to Order 04 to reflect that the PTCs will be passed through as they are used, and to include the pass through to customers of other federal incentives such as Treasury grants and manufacturing tax benefits. This modification to Appendix B to Order 04 will minimize the likelihood of confusion in the future regarding the appropriate method of passing through to customers federal incentives such as PTCs and Treasury grants.

#### IV. CONCLUSION

11           For the reasons set forth above, PSE respectfully requests the Commission modify Appendix B to Order 04 in Docket No. UE-050870 as set forth in paragraph 2 above.

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<sup>9</sup> RCW 80.04.210; *see* WAC 480-07-875(1).

<sup>10</sup> WAC 480-07-375(2).

DATED this 5 day of November 2010.

PERKINS COIE LLP



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