

UE-001952

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December 11, 2000

RECEIVED  
REGISTRATION DIVISION  
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STATE OF WASH.  
UTIL. AND TRANSP.  
COMMISSION

*Via Facsimile and Federal Express*

Marilyn Showalter, Chairwoman  
Richard Hemstad, Commissioner  
William R. Gillis, Commissioner  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
1300 S. Evergreen Park Drive, S.W.  
Olympia, WA 98504-7250

Re: Unjust and Unreasonable Rates For Customers Priced at the Dow Jones  
Mid-Columbia Indices

Dear Commissioners:

The Industrial Customers of Northwest Utilities ("ICNU") appreciates the Commission's informal discussion during its Saturday, December 9, 2000 public meeting regarding the rate issues raised by ICNU's December 8, 2000 letter to the Commission. ICNU requests that the Commission implement on an emergency basis a price cap for all Puget Sound Energy ("PSE") customers who receive their electric service at prices based on the Dow Jones Mid-Columbia indices; or alternatively, ICNU requests that the Commission allow these customers to return to Schedule 49 pricing (subject to a surcharge, if necessary). The industrial customers wish to resolve the problems with pricing based on the Mid-Columbia indices without negatively impacting other PSE customers who are on cost of service pricing.

Approximately 11 customers<sup>1/</sup> are directly impacted by Mid-Columbia Index pricing, and they are paying among the highest, if not, the highest prices for electricity of any retail customer in the entire United States. The Dow Jones Mid-Columbia Firm Index price for Friday, December 8, 2000, for on-peak power was 781.79 mills. The non-firm index price is currently unreported for Friday. The price for

<sup>1/</sup> ICNU is aware of the following customers who are taking electric service based on the Mid-Columbia Index pricing: Air Liquide, Air Products, The Boeing Company, Equilon Enterprises, CNC Containers, Tesoro, Georgia-Pacific, Bellingham Cold Storage, BP Amoco, King County, the Port of Seattle (wholesale customer) and Intel.

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electricity today is expected to be much higher. As a point of comparison, on December 8, 1999, the on-peak Mid-Columbia Firm Index price was 28.79 mills.

The Commission has three general procedural options to address whether pricing based on the Mid-Columbia indices is just and reasonable:

1. The Commission can initiate an emergency adjudicative proceeding pursuant to RCW 34.05.479 and WAC 480-09-510;
2. The Commission can initiate a brief adjudicative proceeding pursuant to RCW 34.05.482 and WAC 480-09-500; or
3. The Commission can initiate a proceeding to set just and reasonable rates pursuant to RCW 80.28.020.

Regardless of which procedure the Commission adopts, it may waive notice requirements and hold an expedited hearing. WAC 480-09-700 (1) (a). Alternatively, the Commission may consider these issues in response to a customer-initiated complaint under the emergency adjudicatory statute. RCW 34.05.479 and WAC 480-09-510.

This matter is best handled, procedurally, through the use of the Commission's emergency adjudicatory proceeding statute, RCW 34.05.479. Under this statute the Commission may hold an emergency adjudicative hearing:

[I]n a situation involving an immediate danger to the public health, safety, or welfare requiring immediate agency action. (2) The agency may take only such action as is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare that justifies use of emergency adjudication.

The Commission has granted or initiated by its own motion emergency adjudicative proceedings. In Re US West Communications, a new area code was needed in western Washington because of the exhaustion of available numbers in Area 206. Re US West Communications, Inc., Docket No. UT-950446 (April 28, 1995). The Commission by its own motion held that public health, safety and welfare required the emergency adjudication.

In addition to an emergency adjudicative proceeding, in the alternative, the Commission may initiate a proceeding, based on its own motion, pursuant to RCW 80.04.110 and WAC 480-80-335 to determine whether retail power rates based on the Dow Jones Mid-Columbia indices continue to be just and reasonable in light of the highly volatile and significant price increases experienced since May 12, 2000.

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Regardless of the type of proceeding that is initiated, an expedited hearing is necessary because none of these customers can maintain their operations over any extended period of time at these price levels. ICNU, on behalf of the individual customers of PSE, is requesting immediate emergency action by the Commission to avoid the social and severe financial distress for PSE's index based customers, their employees, suppliers and the purchasers of the customers' products, and to avoid windfall profits to PSE at the expense of the stability of the economy of the state of Washington. As we stated in our letter on Friday, and during our informal discussion on Saturday, at these price levels, the Dow Jones Mid-Columbia indices do not produce just and reasonable rates.

These customers cannot cure this problem by simply purchasing a financial hedge. It is not clear at this time whether anyone would offer such a product in today's market. In addition, financial products do not provide a rate discount, they simply smooth the current and projected future prices over a period of time. To secure a "reasonable" financial hedge, it would require a very long-term commitment. The Schedule 48 customers' contracts expire in November 2001 and the G-P contract expires in May 2001. Therefore, a financial hedge, if available, would not provide an adequate solution.

Several customers, Georgia-Pacific Bellingham, Air Liquide, Air Products and CNC Containers have already ceased operations, at least temporarily, perhaps longer, due to these exorbitant power prices. Others, including the oil refineries, may be forced to reduce or curtail operations as well. The potential closure of many of the industrial facilities in PSE's service territory threatens the welfare of the Puget Sound area. Public health may be impaired if oxygen is in short supply to hospitals due to the potential curtailment of the air separation operations. Other direct public impacts will occur if the refineries are forced to curtail operations.

The forward price projections for the Mid-Columbia indices for this week are over 1,000 mills. We believe that the facts justify the Commission initiating an emergency proceeding to determine whether the Mid-Columbia Index pricing is just and reasonable. PSE, not the customers, have the data to show whether these rate levels are justified based on the price they have paid to provide power to these industrial customers. If the Commission is unwilling to initiate a proceeding based on its own motion, then the customers will initiate its own complaint against PSE. We appreciate the Commission's consideration of these issues of critical importance to these customers.

Sincerely yours,

  
Melinda J. Davison

cc: Steve McKeon  
Dixie Linnenbrink