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Investigation Report

Puget Sound Energy

U-190748

Jacque Hawkins-Jones
Compliance Investigations

September 2020

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PURPOSE, SCOPE, AND AUTHORITY

Purpose

The purpose of this investigation is to determine whether Puget Sound Energy (PSE or Company) is in compliance with Washington Utilities and Transportation Commission (commission) laws and rules outlined in Revised Code of Washington (RCW) 80.28 and Washington Administrative Code (WAC) 480-110.

Scope

The scope of this investigation focuses on PSE's application of the public utility tax to tribal members living on federally recognized tribal lands.

Authority

Staff undertakes this investigation pursuant to RCW 80.01.040, which directs the commission to regulate electric and gas companies in the public interest. In addition, RCW 80.40.070 grants the commission specific authority to conduct such an investigation.

Staff

Jacque Hawkins-Jones
Compliance Investigator

EXECUTIVE SUMMARY

Staff conducted this investigation to determine whether PSE complied with Washington state laws and rules, along with its commission-approved tariff, regarding the public utility tax. This investigation focused on whether the Company properly applied the public utility tax exemption to Lummi Nation tribal members (Lummi Nation or Tribe) living on tribal lands.

Staff reviewed Company records from Aug. 1, 2018, through Aug. 31, 2019, and the accounts of four PSE customers provided by the Tribe.

Staff finds that the Company's practice of applying the public utility tax exemption for Lummi Nation tribal members or tribal enterprises that live or operate on Lummi tribal lands complies with federal and state law, as well as its commission-approved tariffs.

Staff Recommendations

In reviewing PSE's implementation of its public utility tax exemption process for qualifying members or businesses of the Lummi Nation, staff determined that the Company properly applied public utility tax credits to 261 Lummi Nation members during the period under review.

Staff recommends the commission require the Company:

- Participate in a workgroup with commission Staff, the Dept. of Revenue, the Tribe and other interested stakeholders to establish a process for certifying tax exempt status for PSE customers.
- Provide tribes additional information regarding its public utility tax exemption process for tribal members to certify their status for the tax exemption, including, but not limited to:
 - A designated page on the Company's website with information on its process that includes, at minimum:
 - Information on the process to apply for the tribal tax exemption,
 - a link to the certification form, and
 - a PSE contact for information specific to tribal members.
 - An extra layer of review when handling tribal members' accounts, such as ensuring the public utility tax exemption is transferred, if appropriate, to a customer's new account should the Company close the previous account as a part of its normal business practices.

BACKGROUND

PSE is one of Washington state's largest electric and natural gas utility companies, serving more than 1.1 million electric customers and over 800,000 natural gas customers primarily in Western Washington. The Company had a combined annual revenue of \$3,146,081,593.00 in 2019.

INVESTIGATION

The tribal liaison from the Washington State Department of Revenue (DOR) contacted staff in July 2019 regarding PSE's potentially improper application of the public utility tax¹ to exempt tribal members.²

In August 2019, commission Staff and DOR met with representatives of the Lummi Nation. In September 2019, the Lummi Nation contacted staff regarding PSE's billing practices. Specifically, the Lummi Nation raised concerns about PSE's inclusion of the public utility tax on bills for Lummi Nation tribal members living on federally recognized Lummi Nation tribal lands. The Lummi Nation provided four PSE billing statements, three from individual tribal members and one from a Lummi Nation business enterprise. Each of the four billing statements showed that the customer lived or operated on Lummi Nation tribal lands and was charged the public utility tax.

Tribal Tax Exemption

WAC 458-20-192(1)(a) states, in part, that under federal law the state may not tax Indians or Indian tribes in Indian country. WAC 480-20-192(5) further explains that an Indian tribal member must live on the member's tribal territory in order to qualify for the exemption.

DOR provides a tax exemption form specifically related to the sale of property or services to tribal members on federally recognized lands.³ The tax exemption form outlines what information is required from the tribe or tribal member to be eligible for certain tax exemptions, including a public utility tax exemption. To demonstrate eligibility, a tribal member must provide one of the following:

- Proof of tribal membership – tribal member card, certificate of membership, or treaty fishing identification card.
- Proof of spousal relationship to a tribal member and proof of their spouse's tribal membership.
- Proof of delivery of services or goods in Indian Country, meaning on reservation or on off-reservation trust land.
- Documents that show the Tribe or tribal member is the buyer. Such as:
 - Letter from the tribal government stating the exemption.
 - Payment from the tribe or tribal enterprise (such as a copied check).

¹ Chapter 82.16 RCW refers to the applied exemption as public utility tax exemption.

² PSE refers to the applied exemption of public utility tax as the "state utility tax credit." This term is also present on customer monthly invoices as a line item.

³ See Attachment A for a copy of DOR's tax exemption form, printed March 5, 2020.

- Receive or other proof of a buyer using a tribal credit card.
- Proof of the contractor relationship to the buyer and proof that the buyer is a tribal member, or they meet the definition of a buyer.
- Other documents that show the buyer's exempt status.

In order for tribal members to qualify for the public utility tax exemption, PSE requires tribal members to complete and submit the DOR tax exemption form. PSE reviews the form to ensure the service address is located on the tribal member's tribal land.

Alternatively, in lieu of the tax exemption form, a tribe may also provide the Company a list of all tribal government offices, all tribal enterprises and all tribal members receiving services and living on the Tribe's land that are eligible for the tax exemption.

PSE is required to keep the list or certifications in its files as proof of the tribe or tribal members' eligibility for the tax exemption per WAC 458-20-192(4) Record keeping.

Data Request

On Oct. 10, 2019, staff requested the following records from PSE:⁴

1. Please provide the company policy, if any, regarding how the company implements tax exemptions based on Native American tribal status.
2. Please state whether the company does require, or has ever required, a tribal member to resubmit a state tax exemption certificate – and if so, what are the circumstances that would require resubmission.
3. Please state how long the company retains a tribal member's state tax exemption certificate.
4. Please provide records that reflect the company's understanding of the Lummi Nation service territory, as well as the boundaries of the Lummi Nation. If the boundaries are not the same, please provide both sets of boundaries and explain why the boundaries are not the same. The name, title, telephone number, and e-mail address of the PSE contact person that our staff can work with directly for questions that may arise concerning any details of the data.
5. Please provide a list of all customers who are Lummi Tribal members living within the Lummi Nation that have filed a public utility tax exemption certificate.

On Oct. 20, 2019, PSE provided a response to staff that included a list of Lummi Nation tribal members living on Lummi tribal lands who have filed a tax exemption form with the Company. PSE further explained that it relies on the tax exemption forms to determine whether customers located within the Lummi Nation's tribal land are exempt from the state public utility tax. The four customer accounts provided by the Tribe noted in this investigation were not included on PSE's list as having filed the tax exemption form.

⁴ See Attachment B for a copy of the Oct. 10, 2019, data request.

In PSE’s response, dated Oct. 20, 2019, it provided a list of 262 Lummi tribal members who have filed DOR’s tax exemption form and meets the criteria to receive a public utility tax exemption.

On Oct. 30, 2019, staff asked PSE to provide the monthly billing history for each Lummi tribal member with an exemption certificate on file during the review period of Aug. 1, 2018, through Aug. 31, 2019. On Nov. 15, 2019, in response to staff’s request, the Company provided an Excel spreadsheet that included customer names, service address, service type, the bill to and from dates, the bill line item type, and the amount of the public utility tax credit applied to each customer account during the requested review period.

Based on PSE’s documentation, staff found that once the Company determines that a tribal member is exempt from the public utility tax, it does not remove the tax from the tribal member’s bill, but instead includes a credit on the bill for the value of the tax, which effectively exempts the tribal member from the tax.

Out of the 262 customer accounts, staff found 14 customers who did not have a public utility tax credit reflected on every billing statement during the review period. For example, the table below shows one tribal member’s account history:

Invoice Credit	Date From	Date To	Credit Issued
State Utility Tax Credit	08/01/2018	08/06/2018	-0.23
State Utility Tax Credit	08/07/2018	08/31/2018	-1.03
State Utility Tax Credit	09/01/2018	09/30/2018	-1.24
State Utility Tax Credit	10/01/2018	10/05/2018	-0.20
State Utility Tax Credit	10/06/2018	10/31/2018	-2.06
State Utility Tax Credit	11/01/2018	11/30/2018	-2.38
State Utility Tax Credit	12/01/2018	12/06/2018	-0.47
State Utility Tax Credit	12/07/2018	12/31/2018	-3.51
State Utility Tax Credit	01/01/2019	01/31/2019	-4.36
State Utility Tax Credit	02/01/2019	02/05/2019	-0.70
State Utility Tax Credit	02/06/2019	02/28/2019	-5.08
State Utility Tax Credit	03/01/2019	03/31/2019	-6.85
State Utility Tax Credit	04/01/2019	04/05/2019	-1.10
State Utility Tax Credit	04/06/2019	04/21/2019	-1.13
No Records Provided	N/A	N/A	N/A
No Records Provided	N/A	N/A	N/A
No Records Provided	N/A	N/A	N/A
No Records Provided	N/A	N/A	N/A

Staff requested additional documentation or explanation from PSE to clarify when each of the 14 customers submitted the exemption certificate or why the customers were no longer receiving the public utility tax credit.

The table below shows an overview of the customer accounts during the review period. PSE provided the date when each customer started or stopped receiving the public utility tax credit and provided further explanation, when necessary.

	2018					2019							
	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	March	Apr.	May	Jun.	Jul.	Aug.
Account 1									X	X	X	X	X
Account 2									X	X	X	X	X
Account 3							X	X	X	X	X	X	X
Account 4										X	X	X	X
Account 5										X			
Account 6	X	X	X	X	X	X	X	X	X				
Account 7	X	X	X	X									
Account 8	X												
Account 9	X	X	X	X	X	X	X	X	X				
Account 10	X	X	X	X	X	X	X	X	X	X			
Account 11	X	X	X	X	X	X	X	X	X				
Account 12	X	X	X	X	X	X	X						
Account 13	X	X	X	X	X	X							
Account 14	X	X	X	X	X	X							

In a response e-mail, dated Nov. 15, 2019, PSE stated that six of the 14 customers submitted exemption certificates at a date during the review period, and therefore, did not qualify for the Company’s public utility tax credit for the entire 13-month review period.⁵ PSE stated the other eight customers stopped receiving the public utility tax credit because PSE closed the customers’ accounts for one of the following reasons: the customer was no longer at the service address, the customer no longer wanted to receive PSE service, or the customer’s service was disconnected for non-payment.

As a result of staff’s request, PSE admitted one customer’s service was disconnected for non-payment and did not receive the public utility tax exemption when services were restored. PSE explained, “...due to an internal system error the flag for the tax exemption was removed from her address and she stopped receiving her credits after her disconnection for nonpayment.” PSE stated that it had corrected the billing error on Jan. 21, 2020, and applied \$50.23 owed to the customer’s account.

Tribe-Provided Customer Accounts

Staff requested that the Company provide records for two tribal members and one tribal business enterprise noted in this report. Staff did not request records for the remaining tribal member mentioned above because the Company had records for the tribal member but located at a different service address on tribal land. In its request, staff asked PSE to provide all records of an exemption certificate on file by the customers’ name, or if the Company ever had records of an exemption certificate filed for the service address on the customers’ bill. The Company said its

⁵ See Attachment C for a copy of PSE’s response, dated Nov. 15, 2019.
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records did not show that a public utility tax exemption form has ever been filed under those customer names or for those service addresses.

The Company stated it does not have a separate policy regarding how to implement the public utility tax exemption based on a customer's tribal status. PSE does address the public utility excise tax credit in its electric and gas commission-approved tariffs. The commission-approved tariffs for electric (Schedule 81, Rule 3 – Excise Tax Credit) and natural gas (Schedule 1, Rule 3 – Excise Tax Credit), state:

Eligible Customers are Customers meeting the criteria for exemption from the Washington State public utility excise tax as described in WAC 458-20-192 will be eligible to receive an excise tax credit in the amount of 3.8730% of current charges. To receive the excise tax credit, eligible Customers must be identified by their Tribe and provide the Company with the information that the Company is required to maintain pursuant to WAC 458-20-192 Subsection 4. Upon receipt of the required information by the Company, bills going forward will reflect the credit.⁶

Tribe-Provided List of Tribal Members

Staff and DOR worked with the Tribe to obtain a complete list of service addresses located on tribal land and the name of the tribal member associated with the address. The Tribe provided a list of 929 different addresses, including 226 that listed Lummi Nation, Lummi Commercial Company, or Lummi Housing Authority as the name associated with the address.

On May 5, 2020, staff asked PSE to provide billing statements for 70 service addresses and include the associated customer name for each billing statement during the review period of July 1, 2018, through April 30, 2020. The list included addresses associated with the names “Lummi” and “Lummi Nation.” On May 21, 2020, in response to staff's request, the Company provided PDF copies of billing statements that included customer names, service address, the billing date, line item charges, and the amount of the public utility tax credit applied to each customer account during the requested review period.

The Company stated that during its review, some of the provided addresses resulted in no associated customer records. PSE staff said they searched the Company's billing system to locate the records. They used the street number and street name as search criteria. If this search resulted in no records, they would run an abbreviated search to locate a possible match. According to PSE staff, they would use the street number and the first portion of the street name to search the billing system, in case of misspellings or the street name was broken into multiple words. If the search resulted in a match, the Company included those records in its response.

Staff requested PSE records regarding 16 additional service addresses to supplement the records that were not located in the first request. Overall, out of the 86 addresses provided, the Company provided records for 75 service addresses.

⁶ See Attachment D for a copy of PSE's current tariff, Schedule 81, Rule 3, Excise Tax Credit.

Staff reviewed PSE records and compared them to the list provided by the Tribe, mentioned above. The list provided by the Tribe did not indicate whether the named tribal members had applied for the public utility tax exemption with PSE, only that they were eligible per state rule⁷.

Staff found that none of the 75 service addresses received the tax exemption. Because there was no indication from the Tribe about its members submitting the DOR form to PSE and not receiving the applicable exemption, staff found no violation with the Company's records.

Findings

Staff finds that the Company's practice of using DOR tax exemption forms to track the tax exempt status of Lummi Nation tribal members or tribal enterprises that live or operate on Lummi tribal territory complies with federal and state law, as well as its commission-approved tariffs.

Staff Recommendations

Staff recommends the commission require the Company:

- Participate in a workgroup with commission Staff, the Dept. of Revenue, the Tribe and other interested stakeholders to establish a process for certifying tax exempt status for PSE customers.
- Provide tribes additional information regarding its public utility tax exemption process for tribal members to certify their status for the tax exemption, including, but not limited to:
 - A designated page on the Company's website with information on its process that includes, at minimum:
 - Information on the process to apply for the tribal tax exemption,
 - a link to the certification form, and
 - a PSE contact for information specific to tribal members.
 - An extra layer of review when handling tribal members' accounts, such as ensuring the public utility tax exemption is transferred, if appropriate, to a customer's new account should the Company close the previous account as a part of its normal business practices.

⁷ WAC 480-20-192(5)