

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UE-230968

INITIAL POST-HEARING BRIEF OF COMMISSION STAFF

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TABLE OF CONTENTS

I. INTRODUCTION1

II. BACKGROUND1

III. DISCUSSION.....2

 A. The Commission should adopt Staff’s proposed framework for
 assessing tracking mechanisms.....2

 B. The Commission has the authority to require a risk sharing mechanism.3

 C. Staff’s proposed adjustments to the risk sharing mechanism is an
 appropriate initial version for this tariff, but Staff is generally not
 opposed the proposals of the other noncompany parties4

 D. The burden is on PSE, not the noncompany parties5

IV. CONCLUSION.....6

TABLE OF AUTHORITIES

Cases

Budget Rent A Car Corp. v. Dep't of Licensing,
100 Wn. App. 381, 997 P.2d 420 (2000)..... 3

Nat'l Labor Relations Bd. v. Bell Aerospace Co.,
416 U.S. 267, 94 S. Ct. 1757 (1974)..... 3

Wash. Ind. Tel. Assoc. v. Utils. & Transp. Comm'n,
148 Wn.2d 887, 64 P.3d 606 (2003) 3

Statutes

RCW 80.01.040(3)..... 1

RCW 80.28.020 1

Administrative Authorities

In the Matter of the Petition of Puget Sound Energy, Inc. and Northwest Energy Coalition for an Order Authorizing PSE to Implement Electric and Natural Gas Decoupling Mechanisms and to Record Accounting Entries Associated with the Mechanisms,
Dockets UE-121697, UG-121705, UE-130137 & UG-130138 (consolidated),
Order 07, (June 25, 2013) 2

In the Matter of the Petition of The Energy Project, Comm'n Staff, and NW Energy Coalition to Compel Puget Sound Energy's Compliance with Order 01
Docket UG-230470, Order 01 2, 4, 6

In re Policy of the Washington Utilities and Transportation Commission Related to Replacing Pipeline Facilities with an Elevated Risk of Failure,
Docket UG-120715, Commission Policy on Accelerated Replacement of Pipeline Facilities with Elevated Risk, 9, ¶ 33 (Dec. 31, 2012)..... 2

In re WUTC Investigation into Energy Conservation Incentives,
Docket U-100522, Report and Policy Statement on Regulatory Mechanisms
(Nov. 4, 2010)..... 2

Pacific Power & Light Co.
Docket UE-050684, Order 04 (April 17, 2006)..... 2

Wash. Utils. & Transp. Comm’n v. Cascade Natural Gas Corp.,
Docket UG-210755, Final Order 09 (Aug. 23, 2022)..... 3

Wash. Utils. & Transp. Comm’n v. PacifiCorp d/b/a Pacific Power & Light,
Docket UE- 130043, Order 05 (2013) 3

Wash. Utils. & Transp. Comm’n v. PacifiCorp d/b/a Pacific Power & Light,
Dockets UE-230172 and UE-210852, Order 08/06 (2024)..... 3

I. INTRODUCTION

1 The Commission should adopt Staff's primary recommendation in this case, temporarily allowing the company to continue Schedule 111 with an appropriate risk sharing mechanism (RSM) until PSE's next rate case filing. The Company's initial filing would include CCA related costs in base rates, but the Company can make the case that Schedule 111 should continue based on meeting the standards outlined in Staff's proposed framework. At that point, the parties will know more information about the CCA allowance market, which will be crucial in determining whether a tracking mechanism is warranted, and if so, what an appropriate RSM would look like. An appropriate RSM is one that creates an incentive for the utility to control costs. Staff is open to the proposals of the other noncompany parties so long as the Commission finds that they accomplish that goal.

II. BACKGROUND

2 Under RCW 80.28.010(3), all rules and regulations issued by any gas company "affecting or pertaining to the sale or distribution of its product or service, must be just and reasonable." Under RCW 80.28.020, if the Commission finds the rules within a company's tariffs to be "unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law," then the Commission "shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order." As always, the Commission is tasked with regulating in the public interest.¹

¹ RCW 80.01.040(3); RCW 80.28.020¶.

III. DISSCUSSION

A. The Commission should adopt Staff's proposed framework for assessing tracking mechanisms.

3 The criteria proposed by Staff is consistent with past commission decisions and it is appropriate to adopt Staff's criteria in this docket to provide guidance for future proposals. Criterion 1² fits in with the Commission's decisions related to conservation efforts.³ It is also consistent with mechanisms the Commission has authorized related to replacement of high-risk natural gas pipe.⁴ Criterion 2⁵ fits with the Commission's decision in the prior docket related to Schedule 111.⁶ The rationale the Commission gave for approving Schedule 111 in that case was the same as Staff's Criterion 2.⁷ Criterion 3⁸ encapsulates the Commission's decisions on power cost adjustment mechanisms. These mechanisms are intended to create incentives for the utility even under circumstances where there is high variance risk.⁹ Past commission decisions have rejected tracking mechanism proposals where the utility did not

² McGuire, Exh. CRM-1T at 20:16-17 ("Criterion 1: For a specified set of costs, does the utility cost control incentive interfere with progress toward meeting an important public policy objective?").

³ *In the Matter of the Petition of Puget Sound Energy, Inc. and Northwest Energy Coalition for an Order Authorizing PSE to Implement Electric and Natural Gas Decoupling Mechanisms and to Record Accounting Entries Associated with the Mechanisms*, Dockets UE-121697, UG-121705, UE-130137 & UG-130138 (consolidated), Order 07, 38, ¶ 85; 51, ¶ 112 (June 25, 2013). *See In re WUTC Investigation into Energy Conservation Incentives*, Docket U-100522, Report and Policy Statement on Regulatory Mechanisms, including Decoupling, to Encourage Utilities to Meet or Exceed Their Conservation Targets (Nov. 4, 2010) (Decoupling Policy Statement).

⁴ *In re Policy of the Washington Utilities and Transportation Commission Related to Replacing Pipeline Facilities with an Elevated Risk of Failure*, Docket UG-120715, Commission Policy on Accelerated Replacement of Pipeline Facilities with Elevated Risk, 9, ¶ 33 (Dec. 31, 2012).

⁵ McGuire, Exh. CRM-1T at 21:3-6 ("Criterion 2: For a specified set of costs for which the Commission has authorized deferred accounting treatment, is allowing the deferral balance to continue to accumulate through the utility's next GRC likely to create severe intergenerational inequities?")

⁶ *See* Docket UG-230470, Order 01, at 5, ¶ 17 ("We agree with the Company that the tariff revisions are necessary to allow the Company to begin to recover the costs of implementing the CCA, which will mitigate the impact of a ballooning future rate impact to customers.")

⁷ *Id.*

⁸ McGuire, Exh. CRM-1T at 21:18-20 ("Criterion 3: For a specified set of costs, is the variance risk so high that cost increases outside of the utility's ability to control are reasonably likely to have a substantial impact on the utility's earnings?")

⁹ *See* Docket UE-050684, Order 04 at 37, ¶ 96 (April 17, 2006) ("Deadbands and sharing bands are useful mechanisms, not only to allocate risk, but to motivate management to effectively manage or even reduce power costs.") Emphasis added.

establish that the variance risk is high enough to have a substantial impact on earnings, as required by Criterion 3.¹⁰ The Commission reaffirmed its stance that RSMs are an important part of power cost mechanisms less than 6 months ago in the 2023 PacifiCorp GRC order.¹¹

4 Calls to establish a policy docket related to Staff’s proposed framework on tracking mechanisms are merely a delay tactic. It is blackletter law that an agency has the authority to set policy either through adjudication or rulemaking.¹² The Commission has established policy guidance in adjudications many times in its history, including recently.¹³ As noted by Staff at the evidentiary hearing, and demonstrated above, Staff’s proposed framework is really a summary of how the Commission currently assesses tracking mechanism proposals. Any concern about a lack of notice or opportunity to be heard is therefore misplaced.

B. The Commission has the authority to require a risk sharing mechanism.

5 The Commission has the authority to require a risk sharing mechanism for Schedule 111. At the evidentiary hearing, the Company admitted that the Commission has this authority,¹⁴ and no other party has questioned the Commission’s authority to order a risk

¹⁰ *Wash. Utils. & Transp. Comm’n v. PacifiCorp d/b/a Pacific Power & Light*, Docket UE- 130043, Order 05: Final Order, ¶ 9 (“We reject PacifiCorp’s proposed Power Cost Adjustment Mechanism (PCAM). The Company failed to demonstrate sufficient power cost variability to warrant approval of such a mechanism. Moreover, the Company’s proposal fails to include design elements the Commission previously has directed PacifiCorp to include in any PCAM proposal.”) Emphasis added.

¹¹ *Wash. Utils. & Transp. Comm’n v. PacifiCorp d/b/a Pacific Power & Light*, Dockets UE-230172 and UE-210852, Order 08/06, p. 123, ¶ 390. (“Without the guardrails of deadbands and sharing bands, the utility no longer has an economic stake in a major resource decision. As a result, the utility is more likely to ignore fossil fuel price volatility because it knows, regardless of price fluctuations, that it will be made whole by ratepayers. This approach creates a circumstance that one witness termed a ‘moral hazard’ where one party is willing to engage in risky behavior or not act in good faith because it knows the other party, in this case the ratepayer, will bear the economic consequences.”) (citations omitted).

¹² See, e.g., *Nat’l Labor Relations Bd. v. Bell Aerospace Co.*, 416 U.S. 267, 291–95, 94 S. Ct. 1757, 40 L. Ed. 2d 134 (1974) (change in interpretation of statute developed through adjudication); *Budget Rent A Car Corp. v. Dep’t of Licensing*, 100 Wn. App. 381, 895–98 (2000); *Wash. Ind. Tel. Assoc. v. Utils. & Transp. Comm’n*, 148 Wn.2d 887, 901–02, 64 P.3d 606 (2003)

¹³ See e.g., *Wash. Utils. & Transp. Comm’n v. Cascade Natural Gas Corp.*, Docket UG-210755, Final Order 09, pp. 16-17, ¶ 52 (Aug. 23, 2022) (Cascade GRC Order).

¹⁴ Steuerwalt, TR 76:1-2.

sharing mechanism. Staff therefore considers this issue uncontested unless raised again in initial post hearing briefs.

C. Staff’s proposed adjustments to the risk sharing mechanism is an appropriate initial version for this tariff, but Staff is generally not opposed the proposals of the other noncompany parties.

6 Staff’s goal in this proceeding was to provide the Commission with an analysis of PSE’s risk sharing mechanism proposal. To that end, Staff’s focus was primarily on identifying aspects of PSE’s proposal that required amendment. Staff found that the earnings test proposed by PSE would clearly dampen, if not effectively cancel, any incentives created by the RSM. This is why Staff proposed an alternative earnings test. Given the level of uncertainty around the volatility of the CCA allowance market in the future, Staff believes that this risk sharing mechanism will require refinement and reevaluation in future cases.

7 With that context in mind, Staff does not necessarily disagree with the criticisms that the Joint Environmental Advocates (JEA) and Public Counsel raised about PSE’s proposal. Staff’s primary concern in this case was upholding the basic principle that if tracking mechanisms like this one are approved, they should include a RSM that creates proper incentives for the utility.¹⁵ Should the Commission find that the JEA’s proposal is more effective at creating those incentives, Staff would not be opposed to adopting that proposal. Similarly, while Public Counsel did not offer a full RSM proposal, Staff finds that the basic concept outlined by Public Counsel witness Earle¹⁶ is worth exploring in a future case.

¹⁵ McConnell, Exh. KM-1T at 5:3-4 (“An effective CCA RSM will work to ensure that the Company is incentivized to operate with maximal compliance efficiency.”) *see also*, Docket UG-230470, Order 01 at 6, ¶ 22 (“We recognize, however, that the proposed tariff inappropriately places all the risks associated with CCA compliance through allowances on PSE’s natural gas customers. Accordingly, we require PSE to work with parties to develop a proposal for a risk sharing mechanism that appropriately balances the compliance risk between the Company and its natural gas customers. The CCA is meant to serve as a price signal to both utilities and their customers, encouraging both to modify their behavior to reduce carbon emissions. The mechanism should share risk such that all parties are encouraged to reduce their emissions, and, in turn, the costs required for CCA compliance.”) (Aug. 3, 2023).

¹⁶ Earle, Exh. RLE-1CT at 25-26.

However, Staff does oppose Public Counsel’s recommendation that “Staff and PSE should be directed to refine their proposals for an RSM to measure performance against the market, either in this Docket, or in the CCA policy docket.” The Commission has already directed the parties to work informally to reach consensus on a RSM for Schedule 111, and those efforts were unsuccessful. Asking the parties to do so again would be unlikely to yield a different result and would extend the period in which Schedule 111 exists as a pure pass-through mechanism. Staff believes that the better course in this case is for the Commission to choose among the current RSM proposals and resolve to improve this RSM in the next GRC when more information is available.

8 Once more information is available regarding the CCA allowance market, in future cases the parties can propose revisions to the tracker and the RSM. That is one reason behind Staff’s primary recommendation, which would allow for a total re-evaluation of both the tracker and the RSM considering the new information we will have about the CCA allowance market at that point. Staff also believes that this would allow the parties time to develop proposal such as the general ideas raised by Public Counsel witness Earle.

D. The burden is on PSE, not the noncompany parties.

9 Although Staff and the other noncompany parties have offered alternative proposals, the burden in this case remains on PSE. If the Commission is not convinced that any of the proposals appropriately balance compliance risk between the Company and its natural gas customers, then the default decision should be to wind down the entire tracking mechanism and embed these costs into base rates. Including costs in base rates is the default assumption absent a demonstration that a proposed tracking or adjustment mechanism is in the public interest.

IV. CONCLUSION

10 Pure pass-through mechanisms shift variance risk from regulated utilities onto ratepayers. As the Commission noted over a year ago,¹⁷ this is inappropriate in instances where a tracking mechanism is established to address variance risk that is both largely outside of a utility's control and high enough to have a substantial impact on earnings. The Commission should adopt Staff's proposed framework and primary recommendation in this case. Adopting Staff's proposed framework will provide all parties with analytical clarity to assess Schedule 111 again in PSE's next filed rate case.

Respectfully submitted, this 7th day of November 2024.

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¹⁷ Docket UG-230470, Order 01 at 6, ¶ 22.