

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

PUGET SOUND ENERGY, INC.

For a Declaratory Order on the Extra Credits
for Apprentice Labor Provision of
RCW 19.285.040(2)(h).

NO. U-111663

PSE'S ADDITIONAL STATEMENTS OF
FACT AND LAW IN RESPONSE TO
NOTICE DATED OCTOBER 6, 2011

I. INTRODUCTION

I Puget Sound Energy, Inc. ("PSE") hereby submits comments to the Washington Utilities and Transportation Commission ("Commission" or "WUTC") in response to the Notice Providing An Opportunity To Submit Additional Statements of Fact and Law dated October 6, 2011 ("Notice") in the above-referenced docket. In response to the specific question raised by the Commission in the Notice, and as explained in more detail herein, PSE believes it is not appropriate or advisable from a legal and policy perspective to foreclose future consideration or additional interpretation of the Energy Independence Act, Chapter 19.285 RCW (the "Act") to allow or not allow trading of bifurcated extra credits associated with apprentice labor, as requested by Renewable Northwest Project ("RNP") and NW Energy Coalition ("NVEC") in their Statement of Fact and Law submitted on September 28, 2011. Such a ruling goes beyond the issues raised in the Petition for Declaratory Order filed by PSE ("Petition"). Further, because PSE does not have current plans to trade the bifurcated extra credits, and no other party has indicated such plans, the issue is not ripe for decision by the Commission. Finally, the

Commission should not foreclose the trading of bifurcated extra credits because the law does not expressly or implicitly foreclose such trading and it is in the best interest of customers to allow such trading.

II. ADDITIONAL STATEMENT OF FACT AND LAW

A. The Declaratory Order Should Be Limited To Issues Raised in PSE's Petition

2 There is no legal basis for the Commission to enter a declaratory order that goes beyond the scope of issues raised in PSE's Petition. The Petition does not request that the Commission rule on the issue of whether bifurcated extra credits can be traded intrastate separately from the associated renewable energy credits ("RECs").¹ No other party has filed a petition for declaratory order on this topic pursuant to RCW 34.05.240 and WAC 480-07-930. The Commission's declaratory order must declare the applicability of the statute, rule, or order in question to the *specified circumstances*. See RCW 34.05.240(5)(a) (emphasis added). Because the Petition does not request a ruling on the tradability of bifurcated extra credits, nor on the bifurcation of distributed generation credits, the Commission should decline the invitation of RNP and NWEA to broaden the order beyond the facts and circumstances specified in PSE's Petition.

¹ PSE's Petition also does not request that the Commission rule on the issue of bifurcation of distributed generation credits. This is an entirely separate issue from that raised in PSE's Petition, although PSE did contrast language regarding distributed generation with language regarding extra credits for apprentice labor in its Petition.

B. Neither PSE Nor Any Other Party Has Expressed Current Plans to Trade Extra Credits

3 The tradability of bifurcated extra credits is not an issue ripe for determination at this time because PSE has no current need or intention to sell the bifurcated extra credits, nor has any other party come forward indicating a present intent or desire to sell bifurcated extra credits. PSE's plan, for the foreseeable future, is to use these extra credits for apprentice labor to meet its renewable targets, while generating revenues for customers by selling the associated RECs. While it is possible that there may be an opportunity in the future for PSE to trade these extra credits and generate additional revenues for its customers, this issue was not raised in PSE's Petition because it is not a present uncertainty adversely affecting PSE or necessitating resolution.

4 RCW 34.05.240(1) sets for the requirements for a declaratory order. The Petition must set forth facts and reasons to show:

- (a) That uncertainty necessitating resolution exists;
- (b) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion;
- (c) That the uncertainty adversely affects the petitioner;
- (d) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested; and
- (e) that the petition complies with any additional requirements established by the agency under subsection (2) of this section.

5 PSE's Petition sets forth facts showing that uncertainty and an actual controversy exist as to PSE's ability to use extra credits for apprentice labor to meet its 2012 renewable energy target while selling RECs associated with such extra credits for the benefit of PSE's customers. Moreover, the uncertainty regarding the use of bifurcated extra credits adversely affects PSE. The determination PSE seeks has an impact on the calculation of compliance with renewable energy targets. In order for PSE to comply with the Act with respect to its renewable energy target reporting requirements and upcoming REC sales, the controversy must be resolved. In contrast, as to the request of RNP and NVEC that the Commission rule that bifurcated extra credits cannot be separately traded, there is no "actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion," nor is there uncertainty adversely affecting the petitioner—PSE. PSE has no immediate plans to sell bifurcated extra credits, and no party has expressed plans to sell these bifurcated credits in the near future.

C. The Act Does Not Expressly or Implicitly Foreclose the Trading of Bifurcated Extra Credits for Apprentice Labor, and Allowing Such Trading Benefits Customers

6 The Commission should not foreclose trading of bifurcated extra credits because the Act does not foreclose such trading, systems can be put in place to address tracking concerns, and such trading benefits customers. However, if the Commission elects to rule on the issue of whether bifurcated extra credits for apprentice labor can be traded, it should rule that such trading is permitted because it is consistent with the policy behind the Act and it is beneficial to customers.

7 RNP and NWECC concede that the Act is silent on the issue of bifurcation of extra credits provided that the utility retains, and does not trade, the extra credit. But just as the Act is silent on the issue of bifurcation of apprentice labor extra credits from the RECs associated with those credits, it is also silent on the issue of whether the bifurcated apprentice labor credit can be separately traded.

8 PSE disagrees with the premise that its interpretation of the language allowing bifurcation of the extra credit is self-limiting and necessarily prohibits trading of the bifurcated extra credit.² The requirements for counting an eligible renewable resource at one and two-tenths its base value are that: (A) the eligible renewable resource comes from a facility that commenced operation after December 31, 2005; and (B) the developer of the facility used apprenticeship programs. *See* RCW 19.285.040(2)(h)(i). Thus, for example, PSE acquires eligible renewable resources or RECs that can be counted at one and two-tenths times their base value when it comes into possession and control of power generated by one of its wind plants that commenced operation after December 31, 2005 and for which PSE used apprenticeship programs during facility construction. Once a megawatt-hour of renewable energy is generated from such facility, it can be counted at one and two-tenths its value. The Act does not foreclose, or address in any way, the qualifying utility's ability to sell the one and two-tenths credit—either in total or bifurcated into a separate extra credit and a separate REC. PSE could sell the REC to an out of state utility that may pay a premium price for the REC. To the extent PSE does not need the

² Statement of Facts and Law by Renewable Northwest Project and NW Energy Coalition, p. 4.

remaining two-tenths extra credit to meet its renewable energy target, it should be permitted to sell the extra credit to an in-state party who uses the extra credit to meet its Washington renewable energy target, or to another interested party.

9 Flexibility in the use of the extra credit by the developer of the facility is consistent with the social policy underlying the apprentice labor multiplier credit—to "create high-quality jobs in Washington [and] provide opportunities for training apprentice workers in the renewable energy field."³ As discussed in PSE's Petition, on-the-job training of a highly skilled workforce has a cost and the Act provides the extra apprenticeship credits as an incentive for utilities to make such an investment. There is nothing in the policy of the Act as relates to apprentice labor that would prohibit the trading of these extra credits by a qualified utility that used apprentice labor in the development of a renewable energy facility.

10 Customers benefit if PSE is able to sell excess renewable energy credits and bifurcated extra credits that are not needed to meet PSE's renewable energy target. While it is unclear whether bifurcated credits can be traded out of state, there may be opportunities to trade such credits within the state to utilities that need additional Washington renewable credits to meet their Washington State renewable energy targets. To the extent such markets develop in the future, PSE's customers would benefit from the potential sale of bifurcated extra credits that are not needed to meet the seller's renewable energy target. It is customers who will suffer the loss

³ RCW 19.285.020.

of value if a qualified utility abandons the value of a bifurcated extra credit because the credit is not needed to meet the utility's renewable energy target and the utility is prohibited from selling the bifurcated credit.

11 Although RNP and NWECA argue that adverse effects on the integrity of the Act and the REC market could result from reading the bifurcation concept too broadly, they concede that their most significant policy concerns are mitigated if: (1) the bifurcation of credits disturbs only the purely social, not the environmental, attributes of the REC; and (2) adequate tracking can be established.⁴ The first concern of RNP and NWECA is already addressed, because the separate trading of extra credits involves purely social attributes of the REC. The second concern of RNP and NWECA can be addressed by an appropriate, transparent tracking system to address bifurcated extra credits—whether they are used by the utility that generated the credit or separately traded to another Washington utility that can use the bifurcated credit to meeting its renewable energy target. Such a tracking system can and should be established so that customers can realize the full benefit of the renewable energy credits and the investment utilities make in training a workforce to service and construct renewable resources.

⁴ Although RNP and NWECA argue that trading bifurcated extra credits would undermine a tracking system, PSE disagrees. The Commission should not foreclose trading of bifurcated credits, from which customers stand to benefit, simply because of the potential for tracking challenges.

III. CONCLUSION

12 PSE appreciates the opportunity to submit this additional statement of law and fact. For the reasons set forth herein, and set forth in PSE's Petition, PSE requests that the Commission issue a declaratory order limited to the scope of the request set forth in the Petition filed by PSE, and leave to another day the separate issues raised by RNP and NVEC.

DATED: October 20, 2011

Respectfully Submitted,

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