

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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| In the Matter of the Proposal by |) | |
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| PUGET SOUND POWER & LIGHT |) | |
| COMPANY |) | DOCKET NO. UE-951270 |
| |) | |
| to Transfer Revenues from PRAM Rates |) | |
| to General Rates. |) | |
| |) | |
| In the Matter of the Application of |) | |
| |) | |
| PUGET SOUND POWER & LIGHT |) | |
| COMPANY and WASHINGTON NATURAL |) | DOCKET NO. UE-960195 |
| GAS COMPANY |) | |
| |) | |
| for an Order Authorizing the Merger of |) | |
| WASHINGTON ENERGY COMPANY and |) | TWELFTH SUPPLEMENTAL |
| WASHINGTON NATURAL GAS COMPANY |) | ORDER GRANTING |
| with and into PUGET SOUND POWER & |) | PUBLIC COUNSEL MOTION |
| LIGHT COMPANY, and Authorizing the |) | TO EXCLUDE TESTIMONY; |
| Issuance of Securities, Assumption of |) | GRANTING COMMISSION |
| Obligations, Adoption of Tariffs, and |) | STAFF MOTION TO EXCLUDE |
| Authorizations in Connection Therewith. |) | TESTIMONY, IN PART |
| |) | |

This is a consolidated proceeding. Docket No. UE-951270 is a proposal by Puget Sound Power & Light Company ("Puget") to transfer to Puget's permanent rate schedules, currently-collected revenue of approximately \$165.5 million authorized in the Periodic Rate Adjustment Mechanism ("PRAM") under Schedule 100. Docket No. UE-960195 is the application of Puget and Washington Natural Gas Company ("WNG") (together the "joint applicants") for a Commission order authorizing the merger of Washington Energy Company and WNG with and into Puget, and authorizing the issuance of securities, assumption of obligations, adoption of tariffs, and authorizations in connection therewith.

Puget filed proposed testimony and exhibits in Docket No. UE-951270 with the Commission. The joint applicants filed proposed testimony and exhibits in Docket No. UE-960195 with the Commission. A prehearing conference was held in Olympia, Washington, on Tuesday, April 30, 1996. At the prehearing conference, Puget was asked if it wished to have the materials filed in Docket No. UE-951270 marked for identification as exhibits. Puget indicated that it did not want the exhibits so marked. The materials filed in Docket No. UE-960195 were marked for identification.

A public hearing was held from July 31 to August 6, 1996, for presentation and cross-examination of the joint applicants' case-in-chief. The materials filed in Docket No. UE-951270 were not offered as evidence. The materials filed in Docket UE-960195 were offered and admitted.

The joint applicants filed rebuttal testimony on October 11, 1996.

On October 24, 1996, the staff of the Washington Utilities and Transportation Commission ("Commission Staff") filed with the Commission a motion to exclude portions of the joint applicants' rebuttal testimony and exhibits. The Commission Staff argued that the "rebuttal" presentation is a brand-new case based upon principles and proposals that the joint applicants chose to abandon in their direct case, and that there was no opportunity in the current case schedule for full and fair investigation of the new evidence on new issues. On October 28, 1996, the Commission Staff supplemented its motion with objections to the testimony of an additional witness.

On October 25, 1996, Public Counsel filed with the Commission a motion to exclude certain testimony and exhibits of joint applicants' witness James A. Heidell. The portions Public Counsel seeks to exclude are virtually the same as the portions the Commission Staff seeks to exclude. We will discuss this portion of the two motions together.

The Commission granted other parties an opportunity to respond to the petitions. The City of Tacoma Department of Public Utilities responded in support of the Commission Staff motion. Public Counsel responded in support of the Commission Staff motion. The National Resources Defense Council and the Northwest Conservation Act Coalition responded in support of the Public Counsel motion, and that portion of the Commission Staff motion that sought to exclude portions of Mr. Heidell's testimony and exhibits. The Northwest Industrial Gas Users responded in support of the Public Counsel motion, and that portion of the Commission Staff motion that sought to exclude portions of Mr. Heidell's testimony and exhibits. Seattle Steam responded in support of the Public Counsel motion. The Bonneville Power Administration responded in support of the Public Counsel motion.

The joint applicants responded in opposition to the motions. The joint applicants argued that the motions are based on an incorrect view of the proper scope of rebuttal evidence; that the Commission Staff motion is premised on a mischaracterization of the joint applicants' direct case; that the motions would deny the joint applicants an opportunity to rebut Commission Staff and Public Counsel testimony; and that the motions would deny the Commission an opportunity to receive and evaluate the evidence.

DISCUSSION AND DECISION

In the words of the joint applicants:

This proceeding is entering its final phase, the issues are being narrowed and discovery has drawn to a close.¹

The joint applicants, in their case-in-chief, framed the issues and gave their initial analysis of those issues. The Commission Staff, Public Counsel, and Intervenors identified their disagreements with the joint applicants' case-in-chief and filed their direct testimony, which will be their only opportunity to file testimony under the existing schedule. Only the joint applicants were given the opportunity to file rebuttal testimony. This case has proceeded on a quick time schedule in order to accommodate the request of the joint applicants for an order early in 1997. In order to proceed on this schedule in a way that is fundamentally fair and will result in an adequate record, the scope of rebuttal must be limited to testimony which rebuts and does not attempt to introduce new issues.

1. THE TESTIMONY OF JAMES A. HEIDELL REGARDING PERFORMANCE BASED RATE MAKING

The Joint Applicants' case-in -chief proposes a five-year rate stability plan for the merged company. The other parties also proposed five-year rate plans. The rebuttal testimony of Colleen Lynch indicates that a five-year rate plan continues to be the joint applicants' preferred outcome. Yet, the testimony of Mr. Heidell proposes an alternative shift to a performance based ratemaking methodology. The Commission considers a fully audited rate case a prerequisite to adopting a performance based rate. This is necessary to ensure that the going-in prices are set at the correct level. There is no possible way to adequately address this new issue in the time frame of this proceeding. Mr. Heidell's prefiled testimony Exhibit No. T-____(JAH-1) at page 1, lines, 18-21, and pages 2-9, and his Exhibit No. ____ (JAH-3) will be excluded.

The testimony of Richard R. Sonstelie at page 2, lines 16-17, page 8, lines 18-24, and page 9, lines 1-18; and of William P. Vititoe at page 5, lines 23-24, Page 6, lines 1-11, and page 15, lines 1-2, also will be excluded.

¹ Response of Joint Applicants to Petitions to Intervene of Texaco, Inc. and March Point Cogeneration Company. P. 3.

2. EXHIBIT NO. ___(JHS-15) FROM DOCKET NO. UE-951270 WHICH THE JOINT APPLICANTS CHOSE NOT TO INCLUDE IN THEIR CASES-IN-CHIEF

Exhibit No. ___(JHS-15) is a copy of Exhibit No. ___(JHS-3), Mr. John Story's results of operations exhibit from Docket No. UE-951270. This document was available at the prehearing conference in this proceeding; the joint applicants made an affirmative decision not to include it in their presentation. It consists of 46 pages of detail. Mr. Story's testimony at page 14, lines 9-19, indicates that the purpose for offering this document is to show that this informational filing included adjustments for environmental costs, conservation costs, and property gains/losses. Footnote six to the Commission Staff motion indicates that the Commission Staff is willing to stipulate that these adjustments were included. Exhibit No. ___(JHS-15) itself includes a great deal more information which is unrelated to this showing. The parties to these proceedings were not put on notice that these numbers would be made part of the record, and thus auditing these numbers was not a priority. There is no way these numbers could be investigated in the short time between filing of rebuttal and the conclusion of this case. The Commission will exclude Exhibit No. ___(JHS-15) from the record. The Commission also will exclude the testimony on page 14 of Exhibit No. T- ___(JHS-6) beginning on line 9 after the word "Yes." through line 19. The joint applicants should pursue with the Commission Staff the stipulation offered at footnote six of the Commission Staff motion and the parties should bring appropriate language to the Commission for inclusion in the record.

The testimony of Richard R. Sonstelie at page 4, lines 11-12, and page 5, lines 22-23; and of Colleen E. Lynch at page 13, lines 13-14, will also be excluded.

3. EXHIBITS NO. ___(JHS-10), ___(JHS-11), and ___(JHS-12) and TESTIMONY BASED THEREON

The joint applicants did not present any five-year forecasts (the period of the rate plan) in their cases-in-chief. The Commission Staff asked them for a five-year forecast for the combined company, and the joint applicants chose to provide an "aggressive" forecast of their next five years' performance. This was admitted as Exhibit TS-35. The prefiled testimony and exhibits of Dr. Richard Lurito work off of this exhibit, making adjustments he believes are appropriate. The rebuttal testimony of Mr. Story make the corrections he believes appropriate to Dr. Lurito's work; the results are shown in Exhibit No. ___ (JHS-9). No party has moved to exclude Exhibit No. ___ (JHS-9).

Mr. Story then goes beyond Exhibit No. ___ (JHS-9), and sponsors a new forecast, in Exhibit No. ___(JHS-10), which does not appear to rebut the testimony of any witness. He then makes different adjustments to Exhibit No. ___ (JHS-10), which he sponsors as Exhibits No. ___ (JHS-11) and ___(JHS-12).

Extensive testimony by Mr. James P. Torgerson and Mr. William A. Abrams is then based upon Exhibits Nos. ___(JHS-10), ___(JHS-11), and ___(JHS-12). The Commission Staff seeks to exclude these exhibits and the testimony based upon them. A particularized list for Mr. Torgerson is provided at page three of the Commission Staff motion, and the amendment to the Commission Staff motion seeks to exclude the entirety of Mr. Abrams' rebuttal testimony and exhibits.

The Commission finds itself in a quandary. The kind of information contained in the testimony and exhibits in question appears to be useful to the Commission. However, it should have been included in the joint applicants' case-in-chief in order to give the other parties a full and fair opportunity to investigate the forecasts and in order to produce a complete record. To allow the testimony and exhibits into evidence without allowing the Commission Staff, Public Counsel, and intervenors an opportunity to investigate and comment would raise serious questions as to the weight the Commission should give the evidence.

The Commission will allow the three Story exhibits, the Story testimony based upon them, and the testimony and exhibits of Messrs. Torgerson and Abrams based upon the Story exhibits, into the record on the following conditions. The Commission Staff, Public Counsel, and the intervenors may immediately begin additional discovery on these portions of the rebuttal case. Responses to discovery requests will be due within three calendar days of receipt of the request. The Commission Staff, Public Counsel, and the intervenors may file late-filed testimony and exhibits responding to the three Story exhibits and testimony, and other testimony and exhibits based upon them by November 27, 1996. The joint applicants must waive cross examination of the late-filed surrebuttal testimony and exhibits. Briefs in these matters will continue to be due December 6, 1996.

The joint applicants must advise the Commission at the commencement of the hearing on November 4, 1996, whether they accept these conditions. If the joint applicants do not accept the conditions, Commission Staff's motion to exclude the three Story exhibits and the testimony and other exhibits based thereon, and the testimony and exhibits of Messrs. Torgerson and Abrams will be granted.

4. THE TESTIMONY AND EXHIBIT OF WILLIAM D. STEINMEIER

The Commission Staff argues that the testimony of Mr. Steinmeier is argument which can be presented in a brief, and which does not require a witness. The joint applicants argue that they should be allowed to respond to the testimony by the Commission Staff and Public Counsel witnesses regarding the public interest standard with testimony of their own. The testimony appears to consist primarily of opinion and argument. It probably could be presented in the joint applicants' brief. We will, however, allow the joint applicants to rebut other witnesses' arguments regarding the public interest standard by presenting Mr. Steinmeier.

ORDER

THE COMMISSION ORDERS That the Motion of Commission Staff to Exclude Rebuttal Testimony and the Amendment to Staff Motion to Exclude are granted in part, as provided in the memorandum portion of this order.

THE COMMISSION ORDERS That the Motion of Public Counsel to Exclude Testimony of Applicants' Witness Heidell is granted.

DATED at Olympia, Washington, and effective this 31st day of October 1996.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD HEMSTAD, Commissioner



WILLIAM R. GILLIS, Commissioner