

Graciela Etchart
10/30/2000
Re: PSE's comments on 100-076

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09:07:29 PM



Bob Cedarbaum
10/30/00 08:44 AM

To: Dennis Moss/WUTC@WUTC
cc: Fred Ottavelli/WUTC@WUTC, Graciela Etchart/WUTC@WUTC, Jim
Russell/WUTC@WUTC
Subject: Re: PSE's comments on 100-076

1. "Endeavor" v. "all reasonable efforts"- I agree with Dennis that this is a difference in legal standard. My reading is that "all reasonable efforts" is a higher standard for the utility and, therefore, would be a change from the current rule which uses "endeavor". So, you need to decide whether you wish to recommend that more stringent standard to the Commissioners, and why, or do you maintain the existing "endeavor" standard.

2. Liability issue- the case Dennis references is National Union Ins. Co. v Puget, 94 Wn. App. 163 (1999). In it, the court held that a utility cannot be protected from its own negligence, despite a continuity of service tariff provision which purports to absolve the utility from liability for damages relating to loss of service. Consequently, the existing rule or any version of the proposed rule that attempts to absolve the utility from all liability would be overridden by this case, if the utility is negligent.

This would apply to PSE's "customers or others" language. I also don't see how we could write a rule that absolves the utility from liability to "others" who are not customers. That, it seems to me, would be beyond the commission's jurisdiction in any event, so I don't see any benefit to PSE's suggestion.

The bottom line is that I am comfortable with the staff proposal, but it would be ineffective legally if the utility was negligent. That issue would be the subject of a trial in court or, perhaps, a hearing before the commission.

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Dennis Moss

Dennis Moss
10/27/00 04:10 PM

To: Graciela Etchart/WUTC@WUTC
cc: Bob Cedarbaum/WUTC@WUTC, Fred Ottavelli/WUTC@WUTC, Jim
Russell/WUTC@WUTC
Subject: Re: PSE's comments on 100-076

Sorry I got to this late in the day and didn't have time to do a little research. But with the caveat that I'm shooting from the hip, here are my initial thoughts.

PSE's argument that the change in language from "~~make all reasonable effort~~" to "endeavor" is a change in legal standard may have some merit. Since the point is at least arguable, this begs the questions of what standard the Commission wishes to impose and how to best state that standard. I recommend that some additional thought be given to those questions.

If memory serves (and I feel a little shaky on the facts), PSE's second point may relate to a case that was decided sometime during the last couple of years in which the utility (I think it was, in fact, PSE) or the utility's insurance company sought to insulate itself from liability based on an argument that this rule (or one closely similar) relieved it from liability for its failure to bring an idle plant on line to restore service interrupted by a storm event. We can do some research next week to find the case, or Bob Cedarbaum may have a better recollection of the details than I do. In any event, PSE appears to be trying to broaden a phrase that might be used in the fashion I describe. Frankly, I think this language should be carefully reviewed to determine if it says what really is intended. I suspect that the intent is to say the utility doesn't have any "liability" in the sense that we would not find it in violation of our statutes, rules, or orders in the circumstances described. Perhaps we should consider revising the language to say that a bit more precisely. Again, let's consider the underlying intent and how to best express that in the rule.

Graciela Etchart



Graciela Etchart
10/27/00 03:01 PM

To: Bob Cedarbaum/WUTC@WUTC, Dennis Moss/WUTC@WUTC
cc: Jim Russell/WUTC@WUTC, Fred Ottavelli/WUTC@WUTC
Subject: PSE's comments on 100-076

PSE has three comments to this rule. One of them, the exclusion of meters, was suggested by PacifiCorp during the workshops. The other two, changes in red and underlined in the text that follows, were suggested to this third draft. I would like your legal opinion about PSE's comments on both issues, since I cannot see too much of a difference in the language, but I am not a lawyer. About the exclusion of meters, at the end of the rule, I add the messages from Carole Rockney I got today, after she had discussed the issue with Phil Popoff. I also include the second formal draft with both companies' comments.

I hope it is not too confusing!

WAC 480-100-076 Service Responsibility

(1) Customer responsibility - The customer will notify the electric utility, in writing, prior to all changes to the customer's equipment or usage that will materially affect the service to be rendered. The customer will give such notice within a reasonable time so the utility can provide the necessary facilities and acquire additional power supply, if needed. The charge for such necessary facilities, if any, will be in accordance with the utility's filed tariff.

(2) Electric utility responsibility - Electric utilities:

- (a) Will install and maintain equipment within their systems that may be necessary to operate the electric system. The commission may require the utility to provide additional equipment in connection with performing special investigations, if economically feasible;
- (b) Will promptly notify all affected customers of a change to the service that would affect the efficiency of operation or the adjustment of the customer's equipment. If an adjustment to the customer's equipment is necessary, the cost will be recovered in accordance with the utility's tariff, except that, when the customer has been notified of a change in service prior to receiving service or when such that change is required by law, the customer must bear all costs in connection with making changes to the customer's own equipment.

(c) Must maintain its plant in such a condition that will enable it to furnish safe, adequate, and efficient service and meet applicable state and federal standards.

(d) Will ~~make all reasonable effort~~ endeavor to avoid interruptions of service and, when such interruptions occur, will endeavor to reestablish service with the shortest possible delay.

{Comment: The suggested revision above returns the current language to this rule. PSE believes the existing language is fair and reasonable, given the technically complex task of creating and delivering high quality electrical energy at the speed of light across thousands of miles of wires to millions of customers. Because Staff's comment section below does not indicate this has been changed, PSE presumes Staff unintentionally copied language from the gas rule and inserted it here. Please note that the physical differences between gas and electric service as well as the difference in potential consequences of service interruptions justifies the different language in the two sets of rules. Changing the language here to "all reasonable efforts" means electric utilities will be held to some higher, but undefined service standard, without any explanation of why this change should be made. PSE urges Staff to incorporate the existing language, as proposed above.}

When it is necessary for an electric utility to make repairs to or to change its facilities, ~~excluding meters~~, the utility may, without incurring any liability to customers or others, suspend service for such periods as may be reasonably necessary and in such a manner as to minimize the inconvenience to customers. The utility will individually notify police and fire departments affected by such a suspension. All customers affected by a scheduled interruption associated with facilities other than meters, will be given notification through newspapers, radio announcements, or other means at least one day in advance. *{Comment: The first suggestion in this section is for Staff to drop the first reference to meters in this section. As written, utilities would be liable to customers for service interruptions necessary to repair meters; PSE presumes this was not Staff's intention. The second recommended revision in this section inserts the language clarifying that utilities will not incur liability to customers or others. Including "or others" will help clarify that utilities are not liable to third parties affected by service interruptions (such as customers' insurance providers) when service interruptions occur. This revision clarifies the existing intent—it does not expand its scope. Please note the WUTC recently approved a similar language revision in Schedule 80 of PSE electric tariff.}*

(e) Must keep a record of all interruptions of service affecting a substantial number of customers, including in such record the location, the date and time, the duration, and, as accurately as possible, the cause of each interruption. Utilities must submit copies of such records to the commission upon request.

Comments:

- (1) This rule was renumbered and rewritten for clarity.
- (2) Language adapted to reflect RCW 80.28.010 and stakeholders's comments.

Messages from Carole:

- (1) Graciela,
Puget had some questions on our proposed language change to Rule 480-100-076. Our intent was to not have meters included as a "facility" to provide one day advance notice on if interruption was required. Perhaps the

best way to accomplish this would be to leave in our comment "associated with facilities other than meters" in the sentence that talks about 1 day advance notice and delete the added words "excluding meters" in the sentence that discusses liability.

Let me know if you would like to discuss this or if you have any questions. Sorry to cause any confusion. Thanks. Carole

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(2) Thanks... (the language "associated with facilities other than meters" was included in the latest version of rules)

Here is the second draft with PacifiCorp's and PSE's comments. You will see that PSE had not made any of the comments they suggest now.

(d) Will make all reasonable efforts to avoid interruptions of service and, when such interruptions occur, will endeavor to reestablish service with the shortest possible delay.

When it is necessary for an electric utility to make repairs to or change its facilities, the utility may, ; suspend service for such periods as may be reasonably necessary and in such a manner as to minimize the inconvenience to customers. The utility will individually notify police and fire departments affected by such a suspension. All customers affected by a scheduled interruption will be given notification through newspapers, radio announcements, or other means at least one day in advance.

PacifiCorp's comments:

When it is necessary for an electric utility to make repairs to or change its facilities, excluding meters, the utility may, ; suspend service for such periods as may be reasonably necessary and in such a manner as to minimize the inconvenience to customers. The utility will individually notify police and fire departments affected by such a suspension. All customers affected by a scheduled interruption will be given notification through newspapers, radio announcements, or other means at least one day in advance.

* The Company requests that this rule be clarified to exclude meters from "facilities". The Company believes the intent of the rule is to provide notice for planned interruptions for circuits or areas -- not to cover situations where it may be necessary to test or exchange meters necessitating a brief interruption of power.

PSE's comments:

(d) Will make a reasonable effort to avoid interruptions of service and, when such interruptions occur, will endeavor to reestablish service with the shortest possible delay. {COMMENT: Including the word "all" before reasonable creates a tone that really means utilities must do almost anything to avoid interruptions, which is probably not Staff's intent, as the costs could easily exceed the benefits for customers. PSE suggests replacing "all" with "a" will help clarify the requirement and be consistent with Staff's proposed gas rule revision.}

When it is necessary for an electric utility to make repairs to or change its facilities, the utility may, without incurring any liability, suspend service for such periods as may be reasonably necessary and in such a manner as to minimize the inconvenience to customers. The utility will individually notify police and fire departments affected by such a suspension. All customers affected by a scheduled interruption associated with facilities other than meters will be given notification through newspapers, radio announcements, or other means at least one day in advance. {COMMENT: This language is part of the current rule that is important to clarify that utilities are not liable for damages when interruptions are necessary to maintain their systems. As the comment section below does not address this omission, PSE assumes it was unintentional. PSE also suggests clarifying that an electric utility should not have to provide a customer one day notice for meter issues, which typically result in loss of service for a very short duration.}