

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET NOS. UE-170033
and UG-170034 (*Consolidated*)

POST-HEARING REPLY BRIEF OF
NW ENERGY COALITION, RENEWABLE NORTHWEST,
AND NATURAL RESOURCES DEFENSE COUNCIL

October 27, 2017

TABLE OF CONTENTS

INTRODUCTION 1

ARGUMENT 1

 I. THE COMMISSION SHOULD CONTINUE PSE’S DECOUPLING
 MECHANISM. 1

 II. THE COMMISSION SHOULD REJECT PROPOSALS BY PSE AND
 STAFF TO INCREASE FIXED CHARGES. 3

 III. PSE’S BRIEF PRESENTED NO NEW EVIDENCE TO SUPPORT AN
 INCREASE IN THE 3% CAP FOR THE DECOUPLING MECHANISM. 5

 IV. PSE MISREPRESENTS NVEC’S POSITION ON THREE-TIER
 RATES..... 5

 V. PUBLIC COUNSEL’S OBJECTIONS TO THE COLSTRIP
 PROVISIONS OF THE SETTLEMENT ARE UNFOUNDED AND
 THREATEN TO RECREATE THE CURRENT PROBLEMS
 SURROUNDING COLSTRIP UNITS 1 AND 2. 5

 A. Public Counsel’s Proposed Depreciation Schedule for Colstrip Units 3
 and 4 is Without Foundation and Risks Recreating the Problems
 Faced by Units 1 and 2.6

 B. Public Counsels’ Proposed Treatment of Remediation Costs Has No
 Basis in the Law or Sound Public Policy.....7

CONCLUSION..... 8

INTRODUCTION

1 NW Energy Coalition, Renewable Northwest, and Natural Resources Defense Council
(collectively “NWECC”) respectfully submit this post-hearing reply brief to address four issues
raised by other parties: (1) objections to PSE’s decoupling mechanism; (2) proposals to add line
transformer costs to the monthly basic charge and create a new minimum bill; (3) the need for a
technical meeting to help design a workable three-tier rate structure; and (4) Public Counsel’s
opposition to parts of the settlement agreement.

ARGUMENT

I. THE COMMISSION SHOULD CONTINUE PSE’S DECOUPLING MECHANISM.

2 The Federal Executive Agencies (“FEA”) and Industrial Customers of Northwest Utilities
 (“ICNU”) filed opening briefs that primarily repeat arguments contained in their testimony that
decoupling should end because it violates traditional ratemaking principles.¹ As explained in
NWECC’s initial post-hearing brief, FEA’s and ICNU’s arguments have no merit.²

3 ICNU also advances the new argument that approval of the decoupling mechanism would
exceed the Commission’s authority, which ICNU alleges is limited to setting rates for services
provided by a utility. According to ICNU, because each customer’s decoupling charge is not
related to that customer’s actual energy usage, any decoupling charge is unlawful.³

4 ICNU’s argument rests on case law involving situations that bear no resemblance to the
decoupling mechanism here. ICNU invokes a case striking down a charge to

¹ FEA Br. at 5-6; ICNU Br. at ¶¶ 43-46.

² NWECC Br. at ¶¶ 6-8.

³ ICNU Br. at ¶¶ 47-52.

telecommunications carriers that was “unrelated to service provided by the company.”⁴ To the contrary, here, the decoupling mechanism related to service provided by the company because it is a method for recovering the costs of electricity services PSE provides to customers. Similarly, ICNU misapplies a decision striking down a charge for a utility’s charitable contributions.⁵ ICNU’s attempt to analogize decoupling costs, which stem from the provision of electricity services, to a utility’s charitable contributions, which are not related to electricity services provided to customers, fails.

5 More importantly, there is ample evidence before the Commission that decoupling provides benefits to customers. The third-party audit of the decoupling mechanism found that the growth in PSE’s operating and maintenance costs has declined since decoupling began.⁶ In addition, the audit concluded that removal of the throughput incentive has led PSE to continue to exceed its energy conservation targets, saving customers money.⁷

6 In sum, PSE’s decoupling mechanism has worked; it is a lawful exercise of the Commission’s authority to set rates for the provision of electricity services by PSE; and it follows the Commission’s 2010 Decoupling Policy.⁸ NWEAC asks the Commission to continue PSE’s decoupling mechanism permanently.

⁴ *Id.* at ¶ 50 (citing *Wa. Indep. Telephone Ass’n v. Telecomm. Ratepayers Ass’n for Cost-Based Equitable Rate*, 55 Wn. App. 356 (1994)).

⁵ *Id.* at ¶ 51 (citing *Jewell v. WUTC*, 90 Wn.2d 775 (1978)).

⁶ See Third-Year Report at 114; Piliaris, Exh. JAP-1T at 127:11-14.

⁷ Second-Year Report at 5; see also Third-Year Report at 20, 87-88, 94.

⁸ Docket No. UE-100522, Report and Policy Statement on Regulatory Mechanisms, Including Decoupling, to Encourage Utilities to Meet or Exceed Their Conservation Targets (Nov. 4, 2010) (“2010 Decoupling Policy”).

II. THE COMMISSION SHOULD REJECT PROPOSALS BY PSE AND STAFF TO INCREASE FIXED CHARGES.

7 As NWEAC explained in its initial post-hearing brief, both PSE's and Staff's proposals to increase fixed charges would require the Commission to overturn decades of precedent finding that line transformer costs are not customer-related costs.⁹ In their briefs, PSE and Staff do not dispute that if the Commission adheres to long-standing precedent and continues to exclude line-transformer costs from customer-related costs, there is no basis for increasing the basic charge or imposing a minimum bill.¹⁰

8 PSE supports its proposal to increase the monthly basic charge by reiterating the arguments in the Company's direct and reply testimony.¹¹ Those arguments are adequately rebutted in NWEAC's post-hearing brief. However, Staff's initial post-hearing brief advances new arguments in support of its proposal to increase the monthly basic charge and impose a new minimum bill.¹²

9 Staff asserts that there is no evidence that its proposal will disproportionately impact low-income customers.¹³ Specifically, Staff contends that its proposal is designed to affect only a small percentage of all customers who use less than the monthly amount—35 kWh—that would trigger the minimum bill.¹⁴ But whether Staff's proposal affects 1%, or 100%, of customers using less than 35 kWh per month, any low-income customers forced to pay a minimum bill will face a greater burden than more affluent customers paying a minimum bill.

⁹ NWEAC Br. at ¶¶ 25-31.

¹⁰ *Id.* at ¶¶ 20-34.

¹¹ PSE Br. at ¶¶ 102-08.

¹² Staff Br. at ¶¶ 40-48.

¹³ *Id.* at ¶ 45.

¹⁴ *Id.*

10 Staff also relies on its cross-referencing of billing data with median incomes to conclude that its minimum bill proposal would mostly affect customers who are not low-income.¹⁵ But this position ignores the fact that increasing fixed charges sends the wrong price signal to everyone—not just low-income consumers. As NWEAC and others have explained, the minimum bill proposal discourages everyone subject to the minimum bill from conserving energy, because a minimum bill penalizes customers from reducing energy use below the level that triggers the minimum bill.

11 Staff also makes the unsupported argument that even if an increase in the monthly basic charge reduces the incentive to conserve energy, a minimum bill somehow does not have the same effect.¹⁶ Staff notes that the minimum bill applies only if a customer’s energy usage falls below a certain amount.¹⁷ But that is precisely *why* a minimum bill discourages energy conservation: it penalizes customers who reduce their energy use below a level that Staff deems “too low.” If Staff’s proposal to increase the cost of using too little electricity does not discourage energy conservation, it is unclear what would.

12 Finally, Staff claims that the purported virtues of its seasonal rate structure should somehow cause the Commission to overlook the flaws of its proposed increase in the basic charge and minimum bill.¹⁸ This argument is incoherent, at best. There is no logical or practical relationship between establishing seasonal rates and increasing fixed charges; the Commission could approve seasonal rates but reject Staff’s proposal to increase the basic charge and impose a minimum bill. Even if Staff is correct that its seasonal rate structure would increase energy

¹⁵ *Id.* at ¶ 44-45.

¹⁶ *Id.* at ¶ 47.

¹⁷ *Id.*

¹⁸ *Id.*

conservation, that is no justification for the Commission to approve an increase in fixed charges that would have the opposite effect.

III. PSE'S BRIEF PRESENTED NO NEW EVIDENCE TO SUPPORT AN INCREASE IN THE 3% CAP FOR THE DECOUPLING MECHANISM.

13 The Commission should reject PSE's request to increase the 3% cap for electric customers because there is no evidence that the 3% cap has harmed either the Company or customers.¹⁹ While NWEAC does not oppose increasing the cap to 5% for residential gas customers, the Commission should condition the increase on PSE revising its weather forecasting.²⁰

IV. PSE MISREPRESENTS NWEAC'S POSITION ON THREE-TIER RATES.

14 Contrary to PSE's statements,²¹ NWEAC has not asked the Commission to set three-tier rates for electric residential customers. As NWEAC explained in its initial post-hearing brief, NWEAC requests that the Commission convene a technical conference so that the parties can discuss how best to design a three-tier rate and how to collect the data necessary to do so.²²

V. PUBLIC COUNSEL'S OBJECTIONS TO THE COLSTRIP PROVISIONS OF THE SETTLEMENT ARE UNFOUNDED AND THREATEN TO RECREATE THE CURRENT PROBLEMS SURROUNDING COLSTRIP UNITS 1 AND 2.

15 The multi-party settlement is the product of extensive negotiations between many parties with diverse interests, ranging from low-income and environmental advocates to industrial groups to Staff and the Company. On the Colstrip issues in particular, the parties reached common ground in a way that addresses the various, legitimate interests at stake. Public Counsel

¹⁹ NWEAC Br. at ¶¶ 35-37.

²⁰ *Id.* at ¶¶ 38-39.

²¹ PSE Br. at ¶¶ 111-12.

²² NWEAC Br. at ¶¶ 40-41.

is the only party that opposes portions of the settlement agreement. As several parties have explained,²³ the current Colstrip 1 and 2 depreciation predicament is a direct result of Public Counsel and Staff opposing PSE's proposed depreciation schedule in the 2007 general rate case, where PSE proposed a schedule that would have fully depreciated Units 1 and 2 by 2022. Had Public Counsel not opposed PSE's plan, the retirement of Units 1 and 2 would have aligned with the depreciation schedule.

16 Despite this history, Public Counsel now opposes both the annual depreciation rates for Units 1 and 2 as too high, and the depreciation schedule for Units 3 and 4 as too long.²⁴ Public Counsel's failure to learn from its mistakes should not lead the Commission down the same path that has created the problems faced today for Units 1 and 2.

A. Public Counsel's Proposed Depreciation Schedule for Colstrip Units 3 and 4 Is Without Foundation and Risks Recreating the Problems Faced by Units 1 and 2.

17 Several parties submitted evidence from economists and regulatory experts showing that the depreciation dates for Colstrip Units 3 and 4 should be earlier than 2030 due to a combination of lower-cost natural gas and renewables and environmental rules.²⁵ In her testimony concerning the settlement, Public Counsel witness Ms. Roxie McCullar ignores this evidence. Ms. McCullar simply reviews the parties' proposed depreciation dates in the testimony filed pre-settlement, spanning the years from 2024 to 2035, and concludes that the 2027 date in the settlement falls on the early end of that range.²⁶ Ms. McCullar's "methodology" to support a 2030 depreciation date is no methodology at all: depreciation dates should not be

²³ PSE Br. at ¶ 12; Exh. EDH-1T at 8:6 – 9:13; Exh. TMP-9T at 7:18 – 8:11.

²⁴ Public Counsel Br. at ¶¶ 53-60.

²⁵ See Exh. EDH-1T at 25:3 – 36:10; Exh. TMP-1T at 18:22 – 23:16; Exh. TMP-9T at 19:22 – 20:24.

²⁶ Exh. RMM-12T at 6:12-14.

picked by simply averaging the dates that parties have proposed. Depreciation schedules must be based on evidence and sound argument. As explained by several witnesses, a schedule that fully depreciates Colstrip Units 3 and 4 before 2030 is in the customers' best interests.²⁷ The Commission should not accept Public Counsel's invitation to simply split the difference between estimated depreciation dates.

18 Ms. McCullar also suggests that setting a depreciation schedule based on a 2027 date would be unfair to current ratepayers.²⁸ Yet she fails to address the fact that her proposal, by setting a depreciation schedule that is unrealistically long, will likely burden future ratepayers with the expense of a plant they did not use. That is exactly what happened with Colstrip Units 1 and 2: with an unrealistically long depreciation schedule, customers who no longer receive power from Colstrip Units 1 and 2 may still be paying for them into the future.²⁹

19 In sum, Colstrip Units 3 and 4 are subject to the same economic and regulatory pressures that are leading Units 1 and 2 to close no later than 2022. Economic and regulatory experts, and PSE itself, believe that 2027 is a reasonable end-of-life date to use for depreciation purposes and a reasonable settlement compromise. The settlement agreement's depreciation schedule for Colstrip Units 3 and 4 should be approved.

B. Public Counsels' Proposed Treatment of Remediation Costs Has No Basis in the Law or Sound Public Policy.

20 Public Counsel makes the misguided request that the Commission "require that PSE demonstrate that its decommission and remediation expenses are prudent and eligible for cost

²⁷ See Exh. EDH-1T at 25:3 – 36:10; Exh. TMP-1T at 18:22 – 23:16; Exh. TMP-9T at 19:22 – 20:24; see also PSE Br. at ¶ 12.

²⁸ Exh. RMM-12T at 8:6-8.

²⁹ Exh. TMP-9T at 12:19 – 18:21.

recovery *before* being permitted to apply funds from the account in its order approving the account under RCW 80.84.”³⁰ Under standard ratemaking principles, PSE does not need Commission pre-approval before expending funds, except in limited circumstances not applicable to remediation expenses. Instead of obtaining preapproval, PSE spends funds, and the Commission later reviews whether the costs were prudently incurred.

21 Public Counsel advances no rationale whatsoever for treating remediation costs differently than any other costs PSE incurs. As Dr. Tom Power explained with respect to a separate Staff proposal, “[i]t is unclear why environmental mitigation costs should be treated differently than other utility costs”³¹

22 Moreover, Public Counsel ignores that PSE has legal obligations under state and federal laws to clean up the widespread environmental damage caused by the Colstrip units. And that is to say nothing of the moral obligation PSE has to clean up the contamination PSE caused in and around the Colstrip facility. Public Counsel’s request seems designed to impose obstacles to PSE fulfilling its legal and ethical obligations to clean up the toxic waste generated at the Colstrip plant. Public Counsel’s request should be rejected.

CONCLUSION

23 For the reasons discussed above and in NWECE’s initial post-hearing brief, the Commission should issue an order: (1) making PSE’s decoupling mechanism permanent; (2) rejecting proposals by PSE and Staff to increase the monthly basic customer charge and impose a new minimum bill; (3) rejecting PSE’s request to increase the soft cap for the electric decoupling mechanism from 3% to 5%; (4) requiring PSE to reevaluate the weather forecasting models it

³⁰ Public Counsel Br. at ¶ 62 (emphasis added).

³¹ Exh. TMP-9T at 21:12-15.

uses to forecast gas sales; (5) convening a technical workshop on three-tier rate design for residential electric customers; and (6) approving the settlement agreement in full.

Respectfully submitted this 27th day of October, 2017.



KRISTEN L. BOYLES (WSB # 23806)
AMANDA W. GOODIN (WSB # 41312)
MATTHEW E. GERHART (WSB# 42787)
Earthjustice
705 Second Avenue, Suite 203
Seattle, WA 98104
(206) 343-7340 | Phone
(206) 343-1526 | Fax
kboyles@earthjustice.org
agoodin@earthjustice.org