

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	DOCKET NOS.
TRANSPORTATION COMMISSION,)	UE-170033 & UG-170034 (Consolidated)
)	
Complainant,)	NORTHWEST INDUSTRIAL GAS
)	USERS' FINAL POST-HEARING
v.)	BRIEF
)	
PUGET SOUND ENERGY,)	
)	
Respondent.)	
)	

REDACTED VERSION

October 27, 2017

I. INTRODUCTION

1. Pursuant to Administrative Law Judge Moss's ruling in this matter on September 29, 2017, Northwest Industrial Gas Users ("NWIGU") submits this Final Post-hearing Brief.
2. NWIGU remains a party to the multi-party Settlement Stipulation and Agreement ("Settlement") in this docket. As explained in NWIGU's Initial Post-hearing Brief, the Settlement is a fair resolution of the issues presented because it results in a net revenue requirement decrease of approximately 3.8% for gas services compared to existing rates.¹
3. The Settlement, however, does not resolve all of the issues NWIGU litigated during this proceeding. NWIGU submitted its Initial Post-Hearing Brief to address the gas cost of service and rate spread issues that were not resolved as part of the Settlement. This Final Post-Hearing Brief responds to other parties' arguments regarding those same litigated issues.
4. With respect to gas cost of service and rate spread, the parties continue to present the Washington Utilities and Transportation Commission ("Commission") with competing methodologies and outcomes. What is not in dispute, however, is that the Commission should decline to make a decision in this case that sets long-term policies for cost of service and, instead, that the Commission should continue with its investigation into cost of service that involves a larger array of stakeholders and utilities. Until the conclusion of that investigation, NWIGU urges the Commission to not choose any cost of service methodology over the other, and to apply a rate spread on an equal percent of margin basis regardless of the cost of service methodology chosen.
5. With respect to the treatment of the Special Contract class of gas customers, the record in this matter does not support Staff's position that the Commission can or should unilaterally change

¹ Exhibit No. BMG-17T at 3.

the terms of PSE's existing Special Contract. The Initial Brief on Behalf of Commission Staff ("Staff's Brief") attempts to make the case that changes to the Special Contract are warranted based on certain terms within the contract. Those arguments, however, cherry-pick different provisions in the Special Contract and continue to ignore how those provisions must be read in the context of the Commission's rules authorizing special contracts--WAC 480-80-143.

6. Despite Staff's insistence that PSE's existing Special Contract is somehow infirm, Staff has not presented substantial evidence on which the Commission can rely to determine that the Special Contract class revenues are insufficient to yield reasonable compensation for the service rendered.² Moreover, Staff's position continues to misinterpret WAC 480-80-143 as requiring PSE to achieve full cost recovery of all fixed and variable costs based on an embedded cost of service study. To the contrary, the Commission must determine that a Special Contract covers the variable (or incremental) cost to serve the customer, and in addition, makes some contribution to the local distribution company ("LDC's") fixed costs (those costs that exist independently of the Special Contract customer's presence on the system). The "contribution" to fixed costs must be viewed over the entire term of the Special Contract, which the record shows is significant and clearly benefits PSE and its other customers.³ But even if the fixed cost analysis is done on an annual basis, the record supports only one conclusion - that the Special Contract class is recovering all of the variable costs to serve the class and is also providing a significant annual contribution to PSE's fixed costs.⁴ No basis exists, therefore, to make any changes to the terms of the Special Contract.

² RCW 80.28.020

³ Exhibit No. BCC-6T at Table 1.

⁴ Exhibit No. BCC-6T at Table 1.

II. ARGUMENT

A. Gas Cost of Service and Rate Spread.

7. The initial post-hearing briefs of the parties do little to illuminate the parties' positions on gas cost of service issues beyond what is in the filed testimony. Each party that presented a cost of service study believes the methodologies and outcomes of the other parties' studies are flawed. The closest thing to agreement on any cost of service study is Public Counsel's willingness to have the Commission use PSE's cost of service study, despite the fact that its witness is "reluctant to fully endorse the Company's approach to assign mains cost responsibility."⁵
8. What the parties do agree on, however, is that the Commission should not make any decision in this case that will serve as precedent in future cases relating to cost of service methodologies. Instead, the parties that have weighed in on the matter agree that the Commission should continue to rely on the collaborative generic investigation it initiated last year. For example, Staff's Brief reiterates that "the generic proceedings are the best forums for establishing uniform cost of service policies for both gas and electric service."⁶ PSE similarly confirms that the generic cost of service workshop will result in "agreeable solutions that will apply to cases in the future."⁷
9. If the Commission adheres to this approach, an issue still remains over how rate changes in this case should be spread amongst the various customer classes. Because of the disparities in the methodologies and the dispute over the outcome of PSE's cost of service study, which informed

⁵ Initial Post-Hearing Brief of Public Counsel at ¶32.

⁶ Staff's Brief at ¶5.

⁷ Initial Brief of Puget Sound Energy ("PSE's Brief") at ¶121.

the proposed rate spread, the most reasonable approach for the Commission in this case is to maintain the status quo and apply rate changes on an equal percent of margin basis.

10. PSE urges the Commission to adopt the rate spread it proposed in its filing.⁸ While PSE takes issue with NWIGU's primary position regarding rate spread, it agrees that "NWIGU's compromise position of equal percentage increases, in light of the recently-commenced process to consider cost of service issues, is more reasonable."⁹

11. Staff is supportive of the rate spread methodology PSE presents in its filing, but it does not support the outcome of the results. This is because Staff takes issue with PSE's cost of service study, which in turn impacts the rate spread results.¹⁰

12. The dispute between PSE and Staff over cost of service methodology and rate spread illustrates why NWIGU's compromise position of using an equal percent of margin for rate spread is the most reasonable approach. As Staff acknowledges, the "various cost of service proposals each impact the results of the Company's rate spread proposal because the Company's rate spread methodology is linked to the parity percentages produced by the cost of service studies."¹¹ Because there is no consensus on cost of service methodologies, and broad consensus that the Commission should more fully investigate those methodologies, any choice regarding rate spread, other than maintaining the status quo, runs the risk of locking rates into a flawed methodology. NWIGU's proposal, on the other hand, maintains the relative parity among all rate classes and avoids major changes until the collaborative has concluded and the Commission has adopted guidelines for cost of service studies to be used in the future.

⁸ PSE's Brief at ¶131.

⁹ PSE's Brief at ¶132.

¹⁰ Staff's Brief at ¶7.

¹¹ Staff's Brief at ¶7.

C. Treatment of Special Contract Customers.

13. As NWIGU explained in its Initial Post-hearing Brief, the existence of the Special Contract class is a result of WAC 480-80-143. That rule allows a utility, upon Commission approval, to contract for the retail sale of regulated utility services directly with a customer. Most significantly, that rule requires that Special Contracts: “Demonstrate, at a minimum, that the contract charges recover all costs resulting from providing the service during its term, and, in addition, provide a contribution to the gas, electric, or water company’s fixed costs.”¹²
14. The underpinning of Staff’s request to modify the Special Contract is its interpretation that WAC 480-80-143 requires a Special Contract to include “rates that are calculated based on the Company’s fully allocated cost of service, not the incremental cost of serving only the Special Contract Customer.”¹³ In contrast to that interpretation, NWIGU and PSE have each demonstrated why the language of the rule gives LDCs the authority to enter into Special Contracts for discounted rates. Specifically, WAC 480-80-143 refers to two distinct types of costs associated with a Special Contract customer’s cost of service: (1) costs resulting from providing the service during the term of the Special Contract, and (2) the gas company’s fixed costs. The “costs resulting from providing the service” during the term of the Special Contract, known as incremental or variable costs, are those costs directly attributable to the specific Special Contract customer.¹⁴ In other words, variable costs are the cost of adding the Special Contract customer to the system and the ongoing cost to serve the customer; costs the LDC would not incur but for the Special Contract customer being connected to the system.

¹² WAC 480-80-143(5)(c).

¹³ Staff’s Brief at ¶27.

¹⁴ Piliaris, TR 276:15-277:4.

15. Oddly, Staff’s Brief makes no attempt to address the actual language of the rule and, instead, Staff asks the Commission to interpret the rule based on the language of the Special Contract and PSE’s cost of service methodology.¹⁵ As explained below, Staff’s reliance on the Special Contract language and PSE’s cost of service methodology is misplaced. More importantly, Staff has it backwards – it is the rule that must inform the interpretation of the Special Contract and not the other way around.

16. It is undisputed that the purpose of a Special Contract is to address the unique situation where a customer has a competitive alternative to service from a regulated utility. By offering a discount from traditional tariff service, the rule recognizes a public benefit to the LDC and its other customers that results from keeping the special contract customer on the system. This is not a hypothetical scenario. The Special Contract at issue in this proceeding is the result of the Special Contract customer exploring a complete bypass of PSE’s system. As the Company explained in the Statement of Support accompanying the application for the Special Contract:

[REDACTED]

¹⁵ Staff’s Brief at ¶¶23-27.
¹⁶ Exh. JAP-66 HCX at pp.50-52.

[REDACTED]

20. Staff next asserts that the Special Contract establishes a “price floor.”²¹ In support of that assertion, Staff relies on the portion of the contract language that states:

[REDACTED]

Based on this language, Staff concludes “[REDACTED]

[REDACTED]” Staff misses the point of this language.

²⁰ Id. at p.14 (emphasis added).

²¹ Staff’s Brief at ¶17.

21. First, Staff’s conclusion is internally inconsistent. Staff appears to acknowledge that the Special Contract is intended to provide a discount from tariffed rates, but then states [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Accordingly, this language does not support Staff’s argument.

22. Further, Staff’s conclusion ignores the full language of the contract provision it relies on. The language in the contract expressly provides that only [REDACTED]

[REDACTED]

[REDACTED] The “price floor,” therefore, applies only to [REDACTED]

[REDACTED] and not to the overall price charged under the Special Contract. Further, the “price floor” [REDACTED] must be read to apply only to the incremental costs to serve the customer, because Staff’s suggestion that it applies to the full embedded cost of service leads to a ridiculous result. Moreover, Staff has not even attempted to show that the reason the Special Contract Class is below the embedded cost of service is because of [REDACTED]

[REDACTED], which would be necessary under the plain terms of the contract. Here, Staff has again isolated very specific language in the Special Contract and improperly attempted to tie that language to all other provisions in the contract even though there is no basis in the language to do so, and doing so would undermine the primary goal of the contract.

23. Staff next takes issue with PSE’s and NWIGU’s position that the Special Contract should be interpreted to address incremental costs of serving the Special Contract customer.²² Staff is not shy in its position that this “incremental cost” interpretation should be rejected and that the Special Contract must recover PSE’s fully embedded costs.²³ Staff’s rationale in this regard, however, is misguided.

24. First, as NWIGU explained in detail in its Initial Post-hearing Brief, WAC 480-80-143 requires PSE to demonstrate that the Special Contract covers the variable (or incremental) cost to serve the customer, and in addition, makes some contribution to the local distribution company fixed costs (those costs that exist independently of the Special Contract customer’s presence on the system). Staff’s Brief does not attempt to explain the language in the rule and, instead, focuses only on the terms of the Special Contract and PSE’s conduct under the contract.

25. Second, the “incremental cost” interpretation does not contradict the express terms of the contract as Staff suggests.²⁴ Here, Staff relies in part on language in the Company’s Statement in Support of the Special Contract included with the application for Commission approval. As Staff correctly notes, that statement indicated that “

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].”²⁵ Staff’s reliance on this statement has no meaningful effect on the question before the Commission. Staff ignores the fact that the contract does

[REDACTED]

²² Staff’s Brief at ¶19.

²³ Staff’s Brief at ¶20.

²⁴ Staff’s Brief at ¶21.

²⁵ Staff’s Brief at ¶22.

[REDACTED]

[REDACTED] Further, through the use of italics and bold font, Staff attempts to turn the Commission's eye on the phrase [REDACTED]

[REDACTED] and thus, must be informed by the applicable rules, which requires PSE to recover all variable costs - "costs resulting from providing the service during its term" – separate from and in addition to "a contribution to the gas, electric, or water company's fixed costs."

26. More egregiously, Staff also asserts that [REDACTED]

[REDACTED]

[REDACTED]²⁶ Based on this language, Staff makes a huge leap to conclude "the Special Contract plainly address [sic] the fully allocated costs of PSE's gas system."²⁷ What Staff chooses to ignore is that [REDACTED]

[REDACTED]²⁸ [REDACTED]

[REDACTED] appears nowhere else in the contract, much less in any provision that addresses whether PSE is required to recover fully allocated costs based on that definition.

²⁶ Staff's Brief at ¶23.

²⁷ *Id.*

²⁸ Exh. JAP-66 HCX at pp.22-23.

27. Staff next asserts that PSE never produced a cost of service study to support a rate based on the incremental cost of service to a Special Contract customer.²⁹ “Instead, PSE justified the Special Contract based on a [REDACTED] [REDACTED]”³⁰ This argument is nothing more than a straw man for Staff to knock down. There is no requirement in the rules or assertion by any party that PSE has, or is required to, conduct a cost of service study based on incremental cost of service, and Staff identifies no such requirement. The only requirement for approval of a Special Contract is that the Company demonstrate that “the contract charges recover all costs resulting from providing the service during its term, and, in addition, provide a contribution to the gas, electric, or water company’s fixed costs.” This approval criterion was met. Otherwise, the Commission would not have approved the Special Contract in 1995 or renewed it in 2009, each time with Staff’s consent. Staff cannot argue now, years and decades after the fact, that the Commission’s determination that the approval criterion was met should have been based on a specific type of cost of service study rather than the [REDACTED] the Commission did rely on.

28. Finally, Staff builds another straw man and asserts that PSE must recover its fully embedded costs from the Special Contract Class because PSE’s cost of service study includes that class in its results.³¹ Staff, however, fails to explain why inclusion of that class in a cost of service study imports any meaning to the Special Contract itself. Nor would it make sense to exclude any class from a cost of service study, the purpose of which is to identify the costs to serve each class based on an embedded cost of service study. As Staff recognizes in a different

²⁹ Staff’s Brief at ¶24.

³⁰ *Id.*

³¹ Staff’s Brief at ¶25.

portion of Staff's Brief, the outcome of the cost of service study is only one step in the overall ratemaking process and "informs" - rather than dictates - "how to allocate the revenue requirement amongst customer[s]." ³² PSE's costs of service study helps to do that, but the ultimate result of the rates to a Special Contract customer is determined by the Special Contract itself and not by a cost of service study.

III. CONCLUSION

29. NWIGU urges the Commission to approve the Settlement in this docket as a fair resolution of the issues presented.

30. There are three contested cost of service studies in the case presented by PSE, Staff and NWIGU. NWIGU urges the Commission to not adopt any specific cost of service methodology in this case and, instead, apply any rate changes in this case on an equal percent of margin basis. This approach will allow all parties the opportunity to continue participating in the generic proceeding the Commission opened last year to develop clearer guiding principles for cost of service studies to be used in future rate cases.

The Commission should reject Staff's recommendation that PSE absorb imputed revenue to bring the Special Contract class to full cost of service, or, in the alternative, to increase Special Contract revenues by 58.83%, because such action is inappropriate for this proceeding. Staff simply has not presented substantial evidence on which the Commission can rely to determine that the Special Contract class revenues are insufficient to yield reasonable compensation for the service rendered. Moreover, Staff's position misinterprets WAC 480-80-143 as requiring PSE to demonstrate that the Special Contracts must result in full cost recovery of all fixed and variable

³² Staff's Brief at ¶4.

costs based on an embedded cost of service study. The Special Contracts meet and exceed the minimum requirements of WAC 480-80-143 and no changes to the rates for that customer class are warranted.

Dated: October 27, 2017

Respectfully submitted,

/s/ Chad M. Stokes

Chad M. Stokes, WSB 37499, OSB 004007
Tommy A. Brooks, WSB 40237, OSB 076071
Cable Huston LLP
1001 SW Fifth Avenue, Suite 2000
Portland, OR 97204-1136
Telephone: (503) 224-3092
Facsimile: (503) 224-3176
E-mail: cstokes@cablehuston.com
tbrooks@cablehuston.com

Of Attorneys for
Northwest Industrial Gas Users