

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of
PUGET SOUND ENERGY, INC.

For a Declaratory Order on the Meaning of
Conservation in Chapter 19.285 RCW

DOCKET NO. U-121165

PUBLIC COUNSEL STATEMENT
OF FACT AND LAW

1 In accordance with the Notice issued in this docket on July 12, 2012, the Public Counsel Division of the Washington State Attorney General’s Office (Public Counsel) hereby submits a statement of fact and law in response to the issues raised by Puget Sound Energy, Inc.’s (PSE) Petition for Declaratory Order (Petition). Public Counsel agrees that a qualifying utility’s capital investments in electric power production equipment that increase the amount of power generated for the energy input do not fall within the definition of “conservation” in RCW 19.285.030(4).

2 While Public Counsel agrees with PSE’s statutory analysis on the specific definitional question, there is one matter of concern raised by PSE’s argument. PSE assumes, as part of its argument, that if production efficiencies were to be defined as conservation under the Energy Independence Act (EIA), “they would be passed through to customers under the conservation rider, as allowed for in Docket No. UE-970686.”¹ However, the issue of whether a particular conservation expenditure is to be passed through and collected from customers under PSE’s conservation rider, Schedule 120, is separate and distinct from the definitional issue presented to

¹ PSE Petition, ¶ 28. As PSE notes, such costs are historically recovered in general rates. *Id.* Public Counsel agrees that these costs should be recovered through general rates, but that question is independent of whether production efficiencies constitute “conservation.”

the Commission by the PSE Petition.²

3 The classification of an energy efficiency activity as “conservation” under the EIA does not automatically determine whether expenditures for that activity are to be recovered through the conservation rider. As PSE, Commission Staff, and other parties are aware, there is disagreement about whether PSE’s distribution and production efficiency costs are properly recoverable through Schedule 120. It is Public Counsel’s position that the Commission’s Order in Docket No. UE-970686³ does not authorize recovery of these type of expenses through Schedule 120. In Docket No. UE-111860, addressing, inter alia, “Company-Owned or Operated Production or Distribution Facilities” (Schedule 292), the Staff Open Meeting Memorandum stated that “[b]ecause generation and distribution is part of the company’s duty to provide facilities to deliver electricity that is ‘safe, adequate, and efficient’ (80.28.010(2) RCW) this new conservation schedule activities will not be funding through the conservation tariff rider, schedule 120 [sic].”⁴

4 It is Public Counsel’s understanding that PSE does not necessarily concur with Staff and Public Counsel on this point, but the issue has yet to be presented to the Commission for

² The distinction is illustrated in the Commission’s order approving PacifiCorp’s 2012 I-937 conservation targets. The order adopts the following condition:

“Recovery of costs associated with Distribution and Production Efficiency initiatives are not funded through the SBC because these programs are not customer conservation initiatives; these are company infrastructure conservation programs. As such, these costs are recovered in the general rate making process over time and may be requested through a general rate case, a deferred accounting petition or other allowed mechanism.”

In the Matter of PACIFIC POWER & LIGHT COMPANY 2012-2021 Ten-Year Achievable Conservation Potential and 2012-2013 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010, Docket No. UE-111880, Order 01, Condition No 11(d).

³ *Petition of Puget Sound Energy for an Order (1) Authorizing Deferral of Electricity Conservation Expenditures and (2) Approving a Tariff Rider, Docket No. UE-970686, Order, May 16, 1997.*

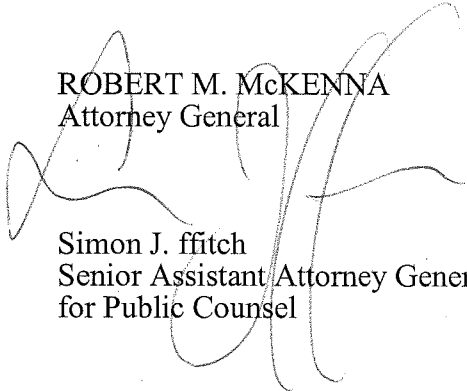
⁴ Docket Nos. UE-111860 and UG-111861, UTC Staff Open Meeting Memorandum, p. 2, December 29, 2011.

resolution. Public Counsel does not seek to argue this question here. Rather, Public Counsel's concern is that the Commission not inadvertently or prematurely rule on the cost recovery issue at this time, when it is not squarely raised by this Petition. Certainly, PSE may bring this issue forward for resolution. However, if the Company wishes to do so, it should raise the issue directly and separately from the definitional issues associated with conservation and production efficiencies. This will insure that all parties and the Commission are on notice that the cost-recovery question is at issue, and are able to fully address the merits.

5 Public Counsel, therefore, respectfully requests that the Commission expressly limit its decision to the determination specifically requested in the PSE Petition, i.e., that (1) capital investments in production efficiencies do not meet the definition of "conservation" under RCW 80.19.285.020(4); and (2) that the obligation under RCW 19.285.040(1) to pursue all cost-effective, reliable, and feasible conservation does not require PSE to include capital investment in production efficiencies as "conservation."⁵

6 Dated this 25th day of July, 2012.

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⁵ PSE Petition, ¶ 1, ¶ 10, ¶ 35.