

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

BELLINGHAM COLD STORAGE
COMPANY and GEORGIA-PACIFIC WEST,
INC.,

Complainants,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

DOCKET NO. UE-001014

RESPONSE OF ATLANTIC RICHFIELD
COMPANY, INTERVENER, TO PUGET
SOUND ENERGY, INC.'S REQUEST FOR
CONTINUANCE AND EXTENSION OF
TIME

I. INTRODUCTION

Last Wednesday, July 19, 2000, Atlantic Richfield Company (“ARCO”) appeared at a Pre-Hearing Conference, and sought leave to intervene in this proceeding. Intervention was granted. At the Pre-Hearing Conference, counsel for ARCO said that ARCO did not intend, by its intervention, to either impede or speed the progress of the matter.

At the hearing, there was some discussion on the part of counsel for Puget Sound Energy about intention to file a “dispositive motion” at an early date, which presumably would raise the question as to whether any relief were available at all to complainants in this matter. Presumably, from Puget’s point of view, if such a dispositive motion were granted, this whole

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inconvenient dispute would go away.

The complainants made it clear at the July 19 hearing that they were seeking an early decision, and proposed a schedule, which would have had a final hearing on August 17. The Administrative Law Judge directed the parties to meet and confer on Thursday morning, July 20 to come up with a workable schedule, which would be discussed in a telephone bridge conference on Thursday afternoon. Those discussions were held, and a Pre- Hearing Conference Order was issued on July 21st, setting a deadline for dispositive motions of July 31st, with answers due 4 days later.

There was also some discussion at the July 19 hearing of the WUTC's ability to grant retrospective relief. It was clear that the complainants were pressing for as early a resolution as possible, because they claimed they were suffering immediate, ongoing damage.

II. POSITION RE CONTINUANCE

ARCO's counsel received Complainant's Emergency

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Motion for Continuation and its supporting documents on July 24; on the same day, counsel received the Notice of Oral Argument on Motion setting argument for July 28.

On July 25, ARCO's counsel received a telephonic request from counsel for Puget saying that Puget was asking for a continuance of the hearing (without specifying the date sought for continuance). Puget's counsel asked for ARCO's

position on Puget's request for continuance. Puget's counsel was advised that ARCO was "neutral" on the point and that any continuance would have to be resolved with counsel for complainants.

Approximately two hours after the telephonic request was received, ARCO received a facsimile copy of Puget's Request for Continuance and Extension of Time, asking for a response time of August 14, with oral hearing to follow at some later date after August 14. Had ARCO's counsel been advised that Puget was seeking an extension of time to respond until August 14, Puget's counsel would have been told that ARCO emphatically opposed such an extension.

The affidavits submitted by complainants in support of their Emergency Motion make it clear that complainants are suffering immediate great economic harm under their current contracts. Surely Puget, the complainants, and the WUTC are on notice that the price of electricity has increased in the last few months. ARCO is certainly aware that its electricity costs under its contract have significantly increased in the months of June and July. Since Puget bills ARCO, and the complainants, and the Schedule 48 Interveners, for the power it sells to them, Puget

knows just exactly how much that increase is.

It seems the single critical issue at hand is whether the complainants have a contractual remedy under their special contracts. Since ARCO is not privy to those special contracts, it's impossible for ARCO to take a position on the merits. However the complaint and complainants' moving papers strenuously assert that they have such a remedy, and Puget strenuously asserts they do not.

Puget's request for continuance asserts that (a) they were "surprised" by complainant's emergency motion, and that they had no reason to suspect one would be filed; and (b) that a substantial body of evidence would have to be generated, considered, and factored into Puget's response to the motion; and (c) that failure to mention the emergency motion on Thursday (the day before it was filed) is somehow offensive to basic notions of due process and fair play. Puget's requested relief for all this is that they be given 20 days to file a response to the complainant's motion.

Puget's response and request is disingenuous to say the least. Certainly complainant's counsel made it crystal clear that their clients were seeking immediate, quick relief. Puget's

counsel raised the question of dispositive motions, which would make the case “go away”, and believed it appropriate that complainants be given as little as four days to answer those motions. Puget, now faced with “dispositive motions” from complainants, believes it must be given at least 20 days to respond. Puget can’t have it both ways. Complainants assert that their harm is immediate, and if the WUTC were unable to grant retrospective relief, then delay in decision would simply mean that complainants have suffered harm for which there is no remedy.

ARCO has now been a party to two of these special contracts with Puget. ARCO supports the idea and the goal of electric industry deregulation and open access. The transition process will take a period of time and many difficult steps. Certainly, the negotiation of ARCO’s special contracts was not easy. Puget’s contract negotiating teams were both tough and tenacious. Negotiations were extended and detailed. Specific remedies and options were spelled out in those ARCO special contracts. Presumptively, the complainants and Puget went through a similar negotiating process on their special contracts.

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ARCO firmly believes that both parties to any such contract should honor their respective obligations.

A perusal of the complaints and Puget's response suggests that the major issue here is a narrow one. Do the complainants' special contracts provide a particular remedy? The contracts are before the Commission. The contents of those contracts have been known to complainants and to Puget for more than four years. From an intervener's perspective, it's difficult to see how much factual evidence would have to be gathered to determine whether a particular contractual remedy is available. Complainants' "Emergency Motion" simply seems to be the reverse of the coin of Puget's "Dispositive Motion". If Puget can expect complainants to answer its "Dispositive Motion" in four days, why should it not answer complainants' "Emergency Motion" in a similar period of time?

Respectfully submitted this 26th day of July 2000.

MICHAEL MYERS, ESQ.

By: _____

Michael J. Myers
Attorney for Atlantic

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Richfield Company

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Petition of Atlantic Richfield Company for Leave to Intervene upon the parties in the official service list in this proceeding by sending the same via facsimile to the official service list and depositing same in the United States Mail at Glendale, California, postage prepaid.

DATED this 26th day of July, 2000

Michael J. Myers, Esq.

By:

Michael J. Myers

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