

**Exhibit No. AR-1T
Dockets UE-151871/UG-151872
Witness: Andrew Roberts**

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKETS UE-151871/UG-151872

TESTIMONY OF

Andrew Roberts

**STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

*Testimony in Opposition to Puget Sound Energy's
Proposed Leasing Program*

June 7, 2016

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1 **I. INTRODUCTION**

2

3 **Q. Please state your name and business address.**

4 A. My name is Andrew Roberts. My business address is 1300 S. Evergreen Park Drive
5 S.W., P.O. Box 47250, Olympia, WA 98504.

6

7 **Q. By whom are you employed and in what capacity?**

8 A. I am employed by the Washington Utilities and Transportation Commission
9 (Commission) as a Regulatory Analyst in the Consumer Protection section.

10

11 **Q. How long have you been employed by the Commission?**

12 A. I have been working at the Commission since February 2014.

13

14 **Q. Would you please state your educational and professional background?**

15 A. I have a Bachelor of Arts degree in Political Economy and a Bachelor of Arts degree
16 in Urban Studies, both from the University of Washington. I have investigated over
17 300 consumer complaints against regulated utility companies. I have completed
18 Consumer Affairs training from Regulatory Partners, LLC. The training was
19 developed and presented in partnership with the NARUC Subcommittee on
20 Consumer Affairs. I also have completed the Western NARUC Utility Rate School.

21

22 **Q. Have you previously submitted testimony to this Commission?**

23 A. No.

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II. SCOPE AND SUMMARY OF TESTIMONY

Q. Please describe the scope of your testimony.

A. My testimony covers the consumer protection issues raised by PSE’s proposed optional appliance leasing program. The purpose of my testimony is to raise not resolve such issues. My testimony is not inclusive, nor is it intended to be so. As discussed in detail by Mr. Cebulko and Ms. O’Connell, PSE’s optional leasing program exposes ratepayers to numerous risks, including the very real possibility that a participating customer’s rates will not reflect the actual cost of the appliance provided by the program, and how non-participating customers are likely to subsidize what is in reality a non-utility appliance leasing and financing business. I will address the contractual relationship between PSE and participating customers, and whether PSE will adequately protect its customers from abuse, fraud and misrepresentation by PSE’s contractors.

Q. Do you agree that PSE’s leasing program offers “extensive customer protections?”

A. No. That is a gross overstatement. PSE devotes three short paragraphs of its testimony to consumer protection issues.¹ PSE testifies that it will disclose to its customers four elements: (1) the lease term, (2) its total cost, (3) an equipment maintenance schedule, and (4) the warranty.

¹ Englert, Exh. No. EEE-1T (revised) at 10.

1

2 **Q. Please describe the relationship between PSE and program participants.**

3 A. It is not clear to me that PSE would actually be engaging with customers to deliver
4 the optional leasing services included in the program. As noted by Ms. O’Connell,
5 PSE intends to manage customer acquisition, financing and program administration
6 activities but use third-party “service partners” to distribute equipment and perform
7 in-home fulfillment tasks.

8 It appears to me that once PSE “acquires” a customer, it intends to turn
9 implementation and fulfillment of its contract obligations over to some third party.
10 Staff finds it surprising that PSE is asking the Commission to sanction behavior that
11 would be difficult both for the Company to control and for the Consumer Protection
12 Staff to appropriately monitor.

13

14 **Q. What ratepayer risks are presented by PSE’s sales and fulfillment strategies?**

15 A. I believe that PSE’s sales and fulfillment strategies impose risks to ratepayers that do
16 not exist today. For example, let’s start with sales.

17 PSE plans to engage with its captive customer base to “sell” its leasing
18 products. I believe PSE describes its intent as “building” on the existing relationship
19 with its customers. However, some customers may well consider the purpose of
20 PSE’s actions as exploiting its knowledge of utility customers to extract profits for
21 its investors. To protect ratepayers from such exploitation, PSE must tightly control
22 its sales force. However, I am not aware of any PSE commitment to avoid third-party

1 marketers or the use of similar marketing techniques. Nor has PSE provided the rules
2 that would govern such marketing efforts and protect customers.

3 Without such protection, PSE's ratepayers would likely be exposed to
4 pressure sales, upselling from the product desired by the customer, or other
5 techniques commonly used to make or enhance a sale. In the end, unhappy customers
6 will turn to the Commission for assistance, with customers expecting the
7 Commission to act as a go-between them and PSE. Staff cannot be expected to
8 resolve complaints or otherwise effectively deal with PSE's surrogates that install,
9 maintain and service the leased appliances.

10
11 **Q. Does PSE have a plan to deal with customer disputes?**

12 A. Not to my knowledge. PSE's filing is silent as to the particulars of how customer
13 disputes would be handled. Without a concrete program to deal with customer
14 disputes, this program should not be allowed to go forward. PSE should be required
15 to provide concrete and effective strategies on how to deal with customer complaints.
16 The Company should not shift this responsibility to the Commission post hoc. In
17 Staff's opinion, the Commission may be required to engage in a comprehensive
18 rulemaking just to deal with appliance sales techniques—perhaps mirroring the
19 consumer protection laws for other, unregulated companies. Without such a
20 rulemaking, Consumer Protection Staff would not have the tools to deal directly with
21 predatory sales strategies.

1 **Q. What other ratepayer risks are presented by PSE’s sales fulfillment strategy?**

2 A. Staff is concerned that customers would not fully understand the *ten different cost*
3 *components* that are included in PSE’s tariff or the many obligations the “lease”
4 imposes on customers. For example, under PSE’s proposal, customers are obligated
5 to change the furnace filter four times per year. What if a customer fails to do so?
6 Will the lease be terminated or will the customer be liable to the Company for
7 damages or penalties? Further, customers are required to give PSE notice of a home
8 sale in order to transfer or purchase leased equipment. What if this does not occur or
9 PSE fails to file a property lien identifying the lease appliance? Will the customer be
10 held responsible by PSE for an appliance “sold” upon closing? Will the homeowner
11 be responsible to hire legal counsel to defend against a defective lien? These
12 questions are largely unanswered and the Commission should not be responsible for
13 creating the contract mechanisms that provide such answers.

14
15 **Q. Are you able to highlight a representative sample of consumer protection issues**
16 **raised by PSE’s proposed tariff?**

17 Yes. PSE’s tariff language raises many questions. Below, I highlight a number of
18 them.

- 19 • **Costs** - Staff is concerned that customers would not fully understand the ten
20 different cost components that are included in PSE’s tariff.
- 21 • **Liens** - Customers may not understand the many obligations the “lease” imposes
22 on them. For example, PSE requires customers to give notice of a home sale in
23 order to transfer or purchase leased equipment. PSE states that it would be

1 allowed to file a fixture lien on properties in the county where the equipment is
2 installed.² The tariff states: “If the [home] Buyer does not so qualify, the
3 Customer must exercise its Option to purchase the Equipment prior to the
4 transfer or sale of the Premises.”³ It appears to Staff that the Company is forcing
5 the consumer to purchase equipment, when it does not approve of the potential
6 new owner. RCW 80.04.270 prohibits the sale of utility equipment by PSE. The
7 tariff provides that, in the event a customer fails to inform PSE of a premise sale,
8 PSE intends to terminate the agreement and declare all remaining obligations
9 immediately due and payable.⁴ Staff does not believe this obligation should be
10 imposed on the customer. As it would place an undue burden on the customer
11 and could significantly impact a customer’s ability to complete sale of a home.

12 • **Late Fees** - PSE states that there will be a late fee assessed on late payments, but
13 it makes no provision as to how those payments will be collected or applied.

14 • **Application of Lease Payments** - PSE indicates that the leased equipment
15 charge will be present on regular monthly bills.⁵ However, PSE does not address
16 and the Commission does not have rules to guide what happens if the customer
17 makes a partial payment. This could lead to issues and potential conflicts of
18 interest when the Company has to decide what service(s) a partial payment
19 should apply to. The Company has not detailed what service it would apply
20 payment to first, or if it would split the payment. Without tariff provisions that
21 detail what would happen if a consumer makes an incomplete payment, PSE

² [Proposed] Schedule 75, Tariff Sheet 75-G, Paragraph 4(b).

³ *Id.* at Tariff Sheet 75-S, Paragraph 10(a).

⁴ *Id.* at Tariff Sheet 75-S, Paragraph 10(b).

⁵ *Id.* at Tariff 75, Sheet 75-F, Paragraph 3.

1 could assign the payment as it sees fit. PSE could go so far as to disconnect
2 service. Staff is aware that the Commission’s telecom rule on disconnection
3 directs companies to first apply payments to regulated services and to oldest
4 balances first. Without similar rules, PSE’s program could put PSE’s lease
5 participants at risk.

- 6 • **Moving the leased equipment** - PSE prohibits a customer from moving the
7 installed equipment such as during a remodel.⁶ To move equipment, a consumer
8 must first contact PSE and allow PSE to arrange relocation of the equipment.
9 However, PSE has failed to provide any specific response guidelines or
10 requirements for equipment relocation. Without response time requirements,
11 Staff would not have rules to enforce if and when a Company/customer dispute
12 arose. PSE has also indicated that the customer would be charged for moving the
13 equipment. According to the Company’s response to Staff data request 41 the
14 cost would be classified as a non-standard installation cost which may in and of
15 itself be determined by not PSE, but rather a contractor.
- 16 • **Maintenance and Repair** – As to PSE’s proposed response timeframe, the tariff
17 reads “PSE will schedule a repair as soon as is commercially reasonable”⁷ and the
18 Company’s testimony highlights the importance of prompt repair to consumers.⁸
19 Despite this sentiment, PSE does not guarantee a repair time that is convenient for
20 the customer nor define what is “commercially reasonable.” In fact, it does not
21 even provide for a timeframe in which the customer can expect repair. It is more

⁶ *Id.* at Tariff Sheet 75-H, Paragraph 4(c).

⁷ *Id.* at Tariff Sheet 75-O Paragraph 7(c).

⁸ McCulloch, Exh. No. MBM-1T at 7.

1 likely that the time selected will be convenient for the Company and its service
2 partners.

3 • **Customer Recourse** – In the case of equipment failure, after 48 hours of
4 inoperable service, PSE will provide customers a bill credit worth 1/30th of the
5 monthly lease payment per day.⁹ For a standard vent natural gas water heater,
6 this equals to approximately \$0.60 per day, or just under \$2 per day for a two
7 stage natural gas furnace.¹⁰ Staff finds the offered remediation to be completely
8 insufficient.

9 • **Method of Termination** - PSE’s tariff states “the Customer may terminate this
10 Agreement upon delivery of written notice to PSE without further liability.”¹¹ It
11 is Staff’s opinion that this clause is overly burdensome to the customer. A very
12 small minority of consumers currently choose to write and send written
13 correspondence to utility providers. Therefore, other means of communication
14 must be allowed to terminate the agreement. It is unclear to Staff why the
15 Company would impose this restriction especially considering PSE
16 representatives already keep records of each phone call and the efficiency and
17 record keeping ability of electronic communications.

⁹ [Proposed] Schedule 75, Sheet 75-P (“If Equipment is inoperable, and PSE is unable to provide the required service on or the replacement of such Equipment within the first forty-eight (48) hours after the Customer’s notification to PSE, the Customer will receive a credit equal to 1/30th of the monthly lease payment for each twenty-four (24) hour period or portion thereof after the initial 48 hour period that the Equipment remains inoperable.”).

¹⁰ See [Proposed] Schedule 75, Sheets 75-A & 75-B (Standard Vent .62 efficiency natural gas water heater costs \$17.95 per month. $17.95/30 = \$0.598$ per day; 80 percent efficient natural gas furnace costs \$58.19 per month. $58.19/30 = \$1.973$ per day).

¹¹ Tariff Sheet 75-Q, Paragraph 8(a).

- 1 • **Payments** - PSE states that it will consider the customer in default if the
2 “Consumer fails to pay the monthly lease payment for the Equipment within
3 thirty (30) days after such charges become due and payable.”¹² This language is
4 not consistent with language provided in WAC 480-100-178(2) which measures
5 minimum time before payment is due beginning the day after the statement
6 mailing date. The wording of the rule is important because it holds a billing
7 utility responsible for sending a statement to the consumer. It also keeps the
8 utility accountable for mailing the statement in a timely manner. The language in
9 the proposed leasing tariff does not hold the Company to the same accountability.
- 10 • **Default** – Tariff sheet 75-T and U discuss remedies in the case of a customer
11 default. PSE does not place restrictions on what it can do in the case of a
12 customer default. This is illustrated by the statement that it will reserve itself all
13 remedies: “PSE will be entitled, at its option, and in addition to and without
14 prejudice to any other remedies.”¹³ The Company holds the option to accelerate
15 the lease payments.¹⁴ But it does not define or limit what is meant by accelerated
16 payments. This could be anything from making payments due one month early to
17 making the entirety of the remaining payments due and payable.
- 18 • **Service Partners** - PSE’s proposal relies heavily on third-party providers that it
19 refers to as service partners. However, PSE fails to provide a framework for
20 customer/service partner dispute resolution. There is no mention given to
21 customer choice in which service partner enters the customer’s home. This

¹² *Id.* at Tariff Sheet 75-T(11)(a).

¹³ *Id.* at Tariff Sheet 75-T(11)(b).

¹⁴ *Id.* at Tariff Sheet 75-T(11)(b)(ii).

1 method is very troublesome from a consumer protection perspective. If this
2 program were to go into effect as proposed, the Commission would have no
3 regulatory authority over PSE's service partners. While the Commission would
4 have regulatory authority over the rates charged by PSE, it may not have any say
5 over the rates charged or actions taken by PSE service partners.

6

7 **Q. Will customers face significant upfront costs under the proposed program?**

8 A. Possibly. A large number of customers may face significant upfront costs because
9 any non-standard installation costs must be borne by the customer. PSE's tariff does
10 include a rate for non-standard installation. Therefore, it appears that such costs
11 would be determined by PSE's contractors and separately charged to the customer. It
12 will be exceedingly difficult for Consumer Protection Staff to monitor whether these
13 non-tariffed costs are fair and just or consistently applied.

14

15 **Q. Do you have any final comments on PSE's optional lease program?**

16 A. Yes. My testimony attempts to point out very serious consumer protection issues
17 raised by PSE's leasing program. This program should not go forward.

18

19 **Q. Does this conclude your testimony?**

20 A. Yes.

21

22