

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

DOCKET NO. UG-110723

DOCKET NOS. UE-111048 and UG-
111049 (Consolidated)

PUGET SOUND ENERGY, INC.'S
RESPONSE TO JOINT MOTION TO
CONSOLIDATE

I. INTRODUCTION

- 1.* Puget Sound Energy, Inc. ("PSE") respectfully submits to the Washington Utilities and Transportation Commission ("WUTC" or "the Commission") this response opposing the Joint Motion to Consolidate of WUTC Staff, Public Counsel and the Northwest Industrial Gas Users ("Joint Parties") filed August 18, 2011. The Joint Parties move to consolidate PSE's general rate case and the Pipeline Integrity Program tariff proceeding ("PIP"). The Commission should deny the Motion because there is minimal overlap of factual and legal issues between the cases. Consolidation of the PIP and PSE's general rate case would unnecessarily delay and complicate the Commission's review of, and decision on, the PIP—a decision that does not rely primarily upon factual issues, but is instead a policy decision that is best addressed as a stand-alone issue.

II. MEMORANDUM

A. Applicable Legal Standard For Consolidation

2. The Commission has substantial discretion whether or not to consolidate the PIP and general rate case proceedings. The Commission is not required to consolidate cases, but *may* do so, where the facts and issues or principles of law are related. *See* WAC 480-07-320. The Commission has refused to consolidate cases in the past, where there were insufficient common issues of fact and law to warrant consolidation.¹ Further, the Commission will not exercise such discretion if consolidation would not produce a meaningful increase in administrative efficiency or judicial economy and would unacceptably delay entering a final order in a proceeding.²
3. The Joint Parties point to PSE's burden of proof on the substantive issues in the PIP, and argue, erroneously, that PSE has failed to meet its burden to show an "urgent need for an expedited decision in this matter"³ and thus the PIP should be consolidated with PSE's general rate case. This logic is flawed for several reasons. First, the Joint Parties' statement assumes that any proceeding shorter than an 11-month, general rate case schedule results in an "expedited decision." This is patently incorrect, as is evidenced by the recent gas tariff increase filing and

¹ *See, e.g., In the Matter of the Joint Application of Puget Holdings LLC and Puget Sound Energy, Inc., for an Order Authorizing Proposed Transaction*, Docket No. U-072375, Order 01, ¶¶ 10-11 (December 30, 2008).

² *See Qwest Corp. v. Level 3 Comm., LLC*, Docket No. UT-063038, Order Declining to Consolidate Dockets, Order 09, ¶ 22 (Feb. 15, 2008).

³ Joint Motion to Consolidate, p. 6 ("PSE has the burden of proof and has not shown any urgent need for an expedited decision in this matter. PSE has shown no urgent need to receive a decision on the Pipeline Tracker on a shorter timeline than the Rate Case.").

the Power Cost Only Rate Case ("PCORC") proceedings, all of which involved significantly more issues than this proceeding, but were set on five- or six-month tracks. There is no statute or rule requiring a limited tariff filing such as the PIP to follow the full procedural schedule applied to a general rate case. PSE is not asking for an expedited review of the PIP but instead requests a reasonable procedural schedule, taking into consideration the limited scope of the filing and the fact that the tariff was filed four months ago. The Commission set such a schedule in the Order on Prehearing Conference entered in this proceeding.

4. Second, the Joint Parties compound their flawed logic with a vacuous legal basis by imposing an "urgent need" standard to PSE's tariff filing.⁴ PSE knows of no statute, rule, or case law applying such a standard to a tariff filing, and the Joint Parties fail to point to a legal authority supporting such a standard. PSE is not required to show an "urgent need" in order to avoid consolidation of the PIP and the general rate case.

5. Third, there is no requirement for PSE to propose its PIP tariff in a general rate case. The Joint Parties seem to suggest that PSE stumbled procedurally by filing the PIP outside of a rate case.⁵ Again, this has no basis in the Commission rules. PSE is not required to file the PIP as part of the general rate case, nor was PSE required to file testimony with its tariff filing in April.

⁴ Joint Motion to Consolidate, ¶ 15 ("Nor has PSE argued that there is an urgent or exigent need for the Pipeline Tracker to be approved by any particular date.").

⁵ Joint Motion to Consolidate, pp. 6-7 ("PSE could have, but has expressly chosen not to present this matter as part of its Rate Case with supporting testimony and evidence. . . . Rather, it has voluntarily chosen a procedural path that has created delay in consideration of the Pipeline Tracker and cannot now be heard to argue that consolidation would interfere with expedited review.").

6. Fourth, the Joint Parties improperly extrapolate PSE's substantive burden of proof in the PIP proceeding to a procedural burden to prove that the PIP should not be consolidated with the general rate case. It is the Joint Parties who seek consolidation. Accordingly, they bear the burden of convincing the Commission to exercise its discretion to consolidate the PIP with the general rate case and to disregard the procedural schedule that has already been set in this docket.

B. The PIP Is a Discrete, Limited Tracker That Benefits Customers, Stakeholders and PSE

7. The PIP is a limited scope tariff tracker, but one which will benefit customers, stakeholders, the Commission and PSE. The PIP allows for accelerated replacement of portions of PSE's natural gas pipeline infrastructure in response to nationwide concern over aging natural gas infrastructure. Pipeline integrity management has gained heightened awareness with the recent catastrophic natural gas explosions in California and Pennsylvania. The PIP is a reasoned response to such occurrences that gives all stakeholders confidence that pipeline integrity management is being addressed in a proactive manner. The PIP enhances safety by allowing for the accelerated replacement of pipe that needs to be replaced. It provides more flexibility as to which pipes are replaced, and it provides for a proactive versus reactive approach to integrity improvements that allows all interested stakeholders to participate. To the extent there are overlapping issues of law and fact between the PIP and the general rate case, they are outweighed by the benefit that will result to all parties by a prompt review of the PIP filing.

C. The General Rate Case and Pipeline Integrity Program Proceeding Have Few Common Issues of Fact and Law and Should Not Be Consolidated

8. Contrary to the Joint Parties' argument, there is not sufficient overlap of facts and law between the PIP proceeding and the general rate case to warrant consolidation. The key issue to be decided in this proceeding is whether a tracker that enhances pipeline integrity by removing barriers to accelerated replacement of pipe in need of replacement should be adopted. There are minimal factual issues in dispute in the PIP tariff proceeding. The pipeline safety programs included in the PIP are programs that PSE has worked with the WUTC Pipeline Safety Staff to develop. PSE has been gradually replacing the wrapped steel mains, services, and plastic pipe that comprise the proposed PIP tariff. The need to replace such pipe has not been challenged in past cases by WUTC Pipeline Safety Staff or any other party.
9. Although PSE proffered testimony in the general rate case addressing gas and electric infrastructure replacement, this does not warrant consolidation of the two proceedings. Pipeline safety issues, including the nature of pipes to be replaced and the speed of replacement, have traditionally been addressed outside the general rate case setting, with the ongoing collaboration of PSE's staff and the WUTC Pipeline Safety Staff. The testimony in the general rate case expressly acknowledges the separate tariff that has been filed to address replacement of wrapped steel and plastic pipe, and acknowledges that those issues will be addressed in the PIP proceeding.
10. The Joint Parties stretch too far in their argument that rate of return is a common issue simply because the PIP allows recovery of the authorized rate of return as part of the revenue requirement. The mere use of the previously authorized rate return in the PIP is a very simple

issue, separate and distinct from the extensive analysis of the appropriate rate of return that takes place in the general rate case.

11. The Joint Parties argue for consolidation based on the legal issue of "whether [the tracker] constitutes impermissible single-issue or piecemeal ratemaking."⁶ This is a policy issue that the Commission can address separate from the pending general rate case. The Joint Parties have pointed to no Commission rule or statute that requires a pipeline integrity tracker such as the PIP to be proposed and considered in a general rate case.⁷ In fact, the Commission does allow for adjustments to rate base, in certain circumstances, outside of a general rate case proceeding.⁸

12. Moreover, the Commission has recognized that single issue rate making is primarily a concern when a company is *not* coming in for frequent rate cases.⁹ The Commission has allowed single issue rate making mechanisms when companies are filing frequent rate cases. One

⁶ Joint Motion to Consolidate, ¶ 10.

⁷ The Final Order in PSE's 2006 general rate case, cited by the Joint Parties is inapposite for several reasons. First, it does not address whether a pipeline safety infrastructure tracker—or any tracker mechanism—can be approved by the Commission outside of a general rate case setting. Second, the case addresses a proposal for a broad infrastructure tracker designed to address attrition, which is distinguishable from the limited, discrete pipeline integrity program designed to accelerate current pipeline replacement programs. See *WUTC v. PSE*, Docket Nos. UE-060266 and UG-060267 (consolidated), Order 08, ¶¶ 35-42 (Jan. 5, 2007).

⁸ See, e.g., *WUTC v. PSE*, Docket Nos. UE-060266 and UG-060267 (consolidated), Order 08, ¶ 51 (Jan. 5, 2007) (allowing for PSE to seek additions to rate base between rate cases so long as the amounts are not so large as to trigger a general rate case).

⁹ See, e.g., *id.*, ¶ 51 (allowing PSE to seek additions to rate base between general rate cases and noting important considerations for granting such relief are "whether there has been a very recent general rate proceeding or the Company commits to making a general rate filing soon after the additions are allowed."); *id.*, ¶ 27 (noting an important consideration for waiver of requirement to file general rate case within three months after PCORC is whether a general rate case had recently been filed).

example of such mechanism is the PCORC. Here, PSE has a general rate case ongoing, filed a gas only rate case less than a year ago, has filed regular rate cases for the past ten years, and expects to file rate cases regularly in the future. The Commission has recognized this mitigates the matching principle concerns that otherwise may arise with single issue rate making. The bottom line is that whether the PIP is an appropriate tracker goes to policy issues that can be addressed by the Commission in this proceeding; it does not require consolidation.

C. Procedural and Judicial Efficiency Benefits Militate Against Consolidation

13. The Joint Parties call for consolidation in the name of administrative convenience. But as the Joint Parties admit, "The concern that consolidation can bury an important issue amongst many rate case issues is a legitimate one if care is not taken."¹⁰ Rather than enhancing judicial efficiency, consolidation would strain the administrative resources in the general rate case and burden the many parties who are parties to the general rate case but have no interest in the PIP proceeding. PSE's general rate case was initiated more than two months ago and currently has eleven parties, plus one potential party whose Petition to Intervene is pending. Discovery has been ongoing in PSE's general rate case for two months, with over 400 data requests having already been issued. There are numerous complicated issues involved in the general rate case, both electric and natural gas, and the Joint Parties acknowledge the risk of diluting the PIP safety issue in the mountain of issues already teed up in the general rate case. In *Qwest Corp. v. Level*

¹⁰ Joint Motion to Consolidate, ¶ 13.

3 Comm., LLC,¹¹ the Commission weighed the benefits and costs of consolidation, finding consolidation would unacceptably delay entering a final order in one proceeding without meaningfully increasing efficiency or judicial economy. Here, when balancing these considerations, the result is the same. Because the evidentiary hearing in the PIP proceeding is already scheduled for November 2011, consolidation would delay an outcome in the PIP proceeding while burdening, not streamlining, the general rate case.

14. The current procedural schedule set forth in the PIP Order on Prehearing Conference provides the Joint Parties the opportunity for an evidentiary hearing and development of a full record, after an adequate opportunity to gather and present evidence, as they requested in their motion.¹² The PIP proceeding was initiated in April 2011, and parties have already spent significant time and effort reviewing and providing substantive comments on PSE's proposal. Parties have had ample time to review the tariff, they have met with PSE to discuss the program, and PSE has responded to numerous informal data requests, which responses have been shared with all the parties to the PIP. Additionally, PSE anticipates filing limited testimony in this docket from two or three witnesses, the substance of which should already be familiar to parties based on the tariff filed, the responses to data requests provided to parties, and the discussions with parties—which resulted in PSE revising its tariff to address concerns expressed by the Joint Parties.

¹¹ *Qwest Corp. v. Level 3 Comm., LLC*, Docket No. UT-063038, Order Declining to Consolidate Dockets, Order 09, ¶ 22 (Feb. 15, 2008).

¹² Joint Motion to Consolidate, ¶ 11. Whether the "extraordinary circumstances" standard proposed by the Joint Parties is the appropriate standard for this case is another legal issue that can be addressed in briefing in this docket.

15. Given the broad scope of the general rate case, and the narrow focus of the PIP, consolidation is unnecessary and is likely to hinder the Commission's review of the important pipeline safety initiatives comprising the PIP.

III. CONCLUSION

16. Consolidation is not necessary or beneficial. Rather than enhance judicial efficiency, consolidation would complicate the administration of both cases. For these reasons and the reasons set forth above, PSE respectfully requests that the Commission deny the Joint Motion to Consolidate.

DATED: August 29, 2011

Respectfully Submitted,

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