

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

DOCKET UE-070725

**THE ENERGY PROJECT
ANSWER TO COMMISSION
STAFF’S PETITION FOR
RECONSIDERATION**

INTRODUCTION

1. The Energy Project submits this Answer in response to the Commission Staff’s Petition for Reconsideration dated June 1, 2010 (“Staff Petition”) pursuant to WAC 480-07-375(1)(b) and WAC 480-07-850.
2. The Staff Petition should be denied for several reasons. First, the allocation of funding as set forth in the Commission’s decision does not represent “undue” preference, and Staff’s Petition adds nothing to the analysis in the Commission’s order.
3. In addition, Staff’s assertion that the Energy Project and PSE failed to disclose material facts – a very serious allegation – is baseless and is wrong. The Joint Parties’ Proposal was a multi-year proposal. As filed, it would have allowed shaping of the funding to accommodate other funding sources, including the ability to defer REC funds to a subsequent year if they could not be used. Even with the Enron funding, there is still an overall decrease in the funding available for repairs or health and safety measures needed to implement conservation in many of the low-income homes assessed for energy efficiency measures. The one-time, short-term injection of the Enron funds, as useful as they are, does not materially affect the basic situation which the original petition is intended to address.

Thus the material facts are already in the record and support the Commission’s decision to allocate \$4.57 million to low-income conservation.

ARGUMENT

No Undue Preference

4. Staff concedes that the Commission has broad discretion to regulate in the public interest, and effectively concedes that the Commission has the authority to grant preferences so long as they are not “undue”. Staff Petition at ¶ 4; RCW 80.28.090.

5. Staff’s argument on reconsideration simply reiterates its position on brief and fails to identify any error in the Commission’s decision. Even if it were not “necessary” to allocate funds to low-income conservation in order for PSE to meet its obligation under RCW 19.85.050(1) to acquire “all available cost-effective, reliable and feasible conservation,” the Commission nevertheless has the discretion to determine that it is appropriate to do so in order to serve the public interest.

6. The legislature has determined that the public interest is served by acquiring conservation resources. As the Commission itself has recognized in the past,

Promoting energy conservation is a goal that we strongly support, and provides a highly appealing rationale for decoupling on its face. Our state’s laws and policies encourage us to look with favor upon incentives to stimulate increased energy conservation as well.¹ [Docket UG-060518, Order No. 4 (February 1, 2007) at ¶ 10; footnotes in original]

7. Likewise, the legislature has determined that the public interest is served by addressing the unique needs of low-income electric customers. *See, e.g.*, RCW 80.28.068 (“the commission may approve rates, charges, services, and/or physical facilities at a discount for low-income senior customers and low-income customers”) and RCW 80.28.260 (priority to low-income customers in efficiency incentive programs). Because promoting

¹ *See* RCW 80.28.024, RCW 80.28.025, and RCW 80.28.260.

conservation and supporting low-income customers both serve the public interest, the Commission may exercise its discretion in support of these goals.

8. Importantly, the value received from the expenditure of funds as proposed by the allocation of RECs will cover its costs. *See Cole v. WUTC*, 79 Wn. 2d 302, 485 P.2nd 71 (1971) (rejecting a claim of undue preference and rate discrimination, in part because a service covered its costs, where the utility offered new home "dry-out" gas service to home builders at a lower rate than that which it normally charged its residential customers). As the Joint Parties' testimony reflects, and the Commission found, the proposed allocation of REC funding to low-income conservation, including repairs, is cost-effective, with a total resource cost (TRC) of .94. Order 03 at ¶ 61 and testimony cited therein.

9. Likewise, use of the funds for low-income customers is appropriate because they are recognized as a distinct customer class. *See In the Matter of PacifiCorp and Scottish Power PLLC*, Docket No. UE-981627, 5th Supp. Order at page 12 (no undue preference where special contract customers were excluded from a merger credit because they were not situated similarly to other customers).

10. Staff concedes that PSE is obligated to acquire all cost-effective conservation and suggests "there are appropriate means to fund that effort" (Staff Petition at ¶ 5), but nowhere says how PSE can bridge the funding gap when repairs not covered by PSE's tariff are a prerequisite to the installation of cost-effective conservation. Under Staff's approach, housing needing repairs would never get conservation measures, and PSE's ratepayers as a whole would lose the conservation resources available from such homes. In the Commission's words, these cost-effective resources would be "stranded due to the need for

repairs.” Order at ¶ 60. In other words, PSE’s efforts to fulfill its mandate would be thwarted.

11. In the Avista decoupling case, Docket UG-060518, Public Counsel argued that cross subsidy or possible undue preference may exist because the conservation tariff rider applies to all customers, but all customers may not equally share in the conservation acquired through the rider. The Commission said it did not agree with the argument. “The tariff rider creates a public benefit by providing a pool of funds to acquire the most conservation at the least cost, wherever that may occur.” Order 04 at ¶ 29.

12. Staff argues that there are appropriate means to fund the low –income energy efficiency efforts to include repairs but PSE’s Electricity Conservation Schedule 83 does not permit energy-related repairs. Joint Testimony at pages 16:11-20 – 17:1-6.

PSE and the Energy Project Disclosed All Material Facts

13. The Joint Parties made clear from the outset that low-income conservation is funded through a variety of sources that change over time and that allowance to use funds from the RECs sales should not preclude their ability to continue doing so. Joint Testimony at pages 8:10-16; *see also* Joint Testimony at pages 15:11-13 (regarding the Energy Matchmaker) and – 16:5-10 (regarding American Recovery and Reinvestment Act and Department of Energy Weatherization Assistance Program DOE WAP funding).

14. Staff apparently did not think that these other sources of funding were material as Staff never did any discovery on or asked any cross-examination questions about the other sources of funding.

15. Likewise, the Energy Project viewed the Enron funding as just one more source of funds to be pieced together with other funding sources to address unmet needs in light of the Joint Parties' multi-year proposal. Declaration of Charles Eberdt in Support of the Energy Project's Answer to Staff's Petition for Reconsideration ("Eberdt Decl.") at ¶¶ 3-6. The Joint Proposal did not determine when exactly when the REC's funds would be used), but emphasized multiple years to enhance their utility and the agencies' abilities to use them. Joint Testimony, at page 13 lines 17-19 and page 14 lines 1-6. The Enron funds only being available through December 31, 2010 will have been used first. Eberdt Decl. at ¶ 5.

Staff's "New" Information Does Not Alter the Material Facts

16. The facts upon which the Commission rendered its decision remain true. The Energy Project's Director, Charles Eberdt, has explained why the assertions set forth in the Staff Petition at ¶ 7 are incorrect, and the facts upon which the Commission rendered its decision remain true. Eberdt Decl. at ¶ 7.

17. Even with the Enron funding, evidence of record and Eberdt's Declaration indicates that low-income programs are underfunded, and extra money for low-income energy efficiency measures will benefit more low-income customers. During the hearing, Commissioner Oshie inquired, "Wouldn't you agree that the low-income programs are underfunded with regard to energy efficiency you want to reach the eligible customer base?" Mr. Eberdt indicated that he agreed. Commissioner Oshie further inquired, "And so if there were extra moneys available to provide these energy resources or energy efficiency resources, isn't that going to benefit more low-income customers?" Mr. Eberdt responded, "Yes." TR 0099:20 – 100:3.

18. Staff insinuates that the Energy Project was being less than candid in asserting that the agencies providing energy efficiency have a great need for funds that can be used in conjunction with energy efficiency dollars while not acknowledging the unexpected development of the Enron settlement funds. This is hardly the case.

19. First of all, funding comes from multiple, changing and unpredictable sources that are beyond agencies' control. The DOE Weatherization Assistance Program (WAP), the Low-income Home Energy Assistance Program (LIHEAP), and the HUD Home Repair and Rehabilitation Program (HRRP) all depend on the will of Congress and the President. The Energy Matchmaker program relies on the support of the state legislature.

20. The American Recovery and Reinvestment Act ("ARRA") created a short-term increase but at the same time the July 2010-June 2011 "regular" DOE WAP budget was cut 40%. The Energy Matchmaker funding by itself has run as high as \$13 million a biennium. Currently, what corresponds to the Energy Matchmaker and HRRP budgets together make up about \$4.5 million/year, reduced from \$8.5 million in the previous biennium. For this biennium the legislature, however, did not appropriate any funds for the Energy Matchmaker program.

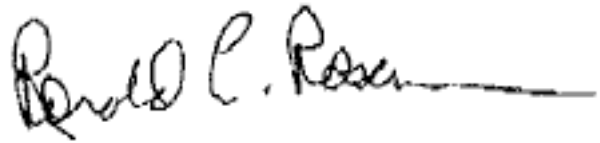
21. The addition of unexpected funding like the Enron monies falls within the scope of the statement in our Joint Testimony that the use of the *REC's* funds "*would not supplant any existing program funds or preclude future additional funding* for low-income programs from other sources." Joint Testimony at page 8:11-13 (emphasis added). Agencies are experienced with the roller coaster ride that government funding creates. That is to say, the numbers are fluid and change frequently in our experience, yet the situation remains the

same. Regardless of the addition of the Enron funds, the long-term need far surpasses available funding.

22. The fact that the need is ongoing and sizeable is the reason the Energy Project has requested reconsideration and extension of the time limit for spending the RECs allocation. The Enron funding became relevant because the Commission's order did not accept the Joint Parties' request for multi-year funding. Accordingly, the Energy Project has been wholly forthcoming in this proceeding and strenuously objects to Staff's suggestion to the contrary.

23. For the reasons set forth above, the Energy Project respectfully requests that the Commission deny the Staff Petition.

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Ronald L. Roseman", followed by a horizontal line.

Ronald L. Roseman
Attorney for the Energy Project

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