

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Petition of)	DOCKET U-121165
)	
PUGET SOUND ENERGY, INC.,)	ORDER 01
)	
for a Declaratory Order on the Meaning)	
of "Conservation" in Chapter 19.285)	ORDER GRANTING PETITION FOR
RCW)	DECLARATORY ORDER
)	
.....)	

MEMORANDUM

- 1 On July 6, 2012, Puget Sound Energy, Inc. (PSE) filed with the Washington Utilities and Transportation Commission (Commission) a Petition for a Declaratory Order (Petition). PSE asks the Commission to clarify the definition of "conservation" in the Energy Independence Act, Chapter 19.285 RCW (EIA). The Commission gave notice of PSE's Petition to all persons required by law to receive such notice and to such other persons as deemed appropriate. The Commission invited interested persons to submit a statement of fact and law on the issues raised by the Petition. On July 13, 2012, Commission regulatory Staff (Commission Staff or Staff) submitted its statement supporting PSE's Petition.
- 2 Avista Corporation filed on July 18, 2012, a letter requesting to be placed on the Commission's service list "in the event of further proceedings." The Industrial Customers of Northwest Utilities filed a petition to intervene and notice of appearance. Neither of these interested persons filed a statement of fact and law.
- 3 On July 25, 2012, PacifiCorp, d/b/a Pacific Power & Light Company (PacifiCorp) and the Public Counsel Division of the Washington State Attorney General's Office (Public Counsel) submitted their respective statements of fact and law. Both statements support PSE's Petition on the substantive legal question it presents.¹

¹ Public Counsel does not agree with PSE's argument that the costs of production efficiencies, if deemed to be "conservation" within the meaning of RCW 19.285.030(4), would be recovered via

4 The Northwest Energy Coalition (NVEC) filed on July 25, 2012, its statement opposing PSE's Petition. NVEC urges the Commission to adopt NVEC's interpretation of the term conservation, as it is used in the EIA.

I. Background

5 The genesis of this matter is reflected in the Commission's Order 01 in Docket UE-111881 by which the Commission approved PSE's 2012-2021 achievable conservation potential and 2012 conservation target, subject to conditions. As related in the order, RCW 19.285.040(1)(a) and (b), require that:

- (1) Each qualifying utility shall pursue all available conservation that is cost-effective, reliable, and feasible.
 - (a) By January 1, 2010, using methodologies consistent with those used by the Pacific Northwest Electric Power and Conservation Planning Council in its most recently published regional power plan, each qualifying utility shall identify its achievable cost-effective conservation potential through 2019. At least every two years thereafter, the qualifying utility shall review and update this assessment for the subsequent ten-year period.
 - (b) Beginning January 2010, each qualifying utility shall establish and make publicly available a biennial acquisition target for cost-effective conservation consistent with its identification of achievable opportunities in (a) of this subsection, and meet that target during the subsequent two-year period. At a minimum, each biennial target must be no lower than the qualifying utility's pro-rata share for that two-year period of its cost-effective conservation potential for the subsequent ten-year period.

6 Under RCW 19.285.040(1)(e), the Commission has authority to "rely on its standard practice for review and approval of investor-owned utility conservation targets."

the Company's conservation tariff rider, Schedule 120. NVEC argues similarly. It is not necessary to our determination here to express an opinion about this question.

WAC 480-109-010, guides investor-owned utilities' compliance with RCW 19.285.040(1). WAC 480-109-010(1) requires each utility, by January 1, 2010, and every two years thereafter, to project its cumulative ten-year conservation potential. WAC 480-109-010(3) directs that: "On or before January 31, 2010, and every two years thereafter, each utility must file with the commission a report identifying its ten-year achievable conservation potential and its biennial conservation target." Under WAC 480-109-010(4)(c), following review, "the Commission will determine whether to approve, approve with conditions, or reject the utility's ten-year achievable conservation potential and biennial conservation target."

7 On October 28, 2011, PSE filed its "2012-2013 Biennial Conservation Plan," identifying its 2012-2021 ten-year achievable conservation potential and its 2012-2013 biennial conservation target.² On November 4, 2011, the Commission issued a Notice of Opportunity to Comment on PSE's Biennial Conservation Plan by December 7, 2011, and a notice that the Commission would consider the matter at its Open Meeting on December 15, 2011. During the comment period, the Commission received written comments from Public Counsel, NWEAC, and Commission Staff. The Commission heard additional oral comments from the same entities and from PSE during its December 15, 2011, Open Meeting.

8 All commenters stated that they supported or did not oppose the 2012-2021 ten year achievable conservation potential and 2012-2013 biennial conservation target that PSE identified in its 2012-2013 Biennial Conservation Plan. NWEAC, however, expressed concern about PSE's analysis of production efficiencies, noting that PSE had not included out-of-state facilities or opportunities for production output efficiency improvements. NWEAC said it was not asking the Commission to require PSE to redo its analysis for 2012-2013, but urged the Commission to direct PSE to include in future analyses the elements NWEAC said were missing.

9 Responses to questions from the Commissioners revealed that PSE and NWEAC disagree about the required scope of production efficiency analysis under the Energy Independence Act. PSE and NWEAC, with the concurrence of PSE's Conservation

² In a separate filing on October 27, 2011, in Docket UE-111860, PSE filed revised tariffs for its electric conservation programs. The Commission considered the revised program tariffs during its December 29, 2011, Open Meeting, and allowed them to go into effect by operation of law under RCW 80.28.060.

Resources Advisory Group (CRAG), agreed on a process to resolve this dispute before PSE develops its 2014-2015 biennial conservation target. Specifically, NWEAC and PSE agreed that PSE would file the Petition for declaratory order now pending in this docket.³ This agreement, among others, was memorialized in a proposed form of order drafted by Commission Staff, the interested parties and PSE as the Commission requested during its December 15, 2011, Open Meeting. The Commission said it would consider whether to adopt the draft order at a subsequent Open Meeting.

- 10 On June 14, 2012, the Commission approved PSE's 2012-2013 Biennial Conservation Plan, as filed on October 28, 2011, subject to conditions, including condition 12(a) in which PSE committed to:

File a petition for a declaratory order with the Commission by July 6, 2012 concerning whether capital investments in electric power production turbines that increase the efficiency of electric power production are considered part of the requirement in RCW 19.285.040(1), which states: "Each qualifying utility shall pursue all available conservation that is cost-effective, reliable and feasible." If the Commission determines that such capital investments in electric power production turbines fall within the requirements of RCW 19.285.040(1), then Puget Sound Energy will analyze whether such conservation is feasible, achievable, and cost-effective prior to filing its 2014-2015 biennial conservation target. Nothing in this Order limits the Commission's discretion or legal authority to issue a declaratory order in accordance with its interpretation of RCW 19.285.⁴

- 11 PSE filed the Petition pending here in satisfaction of its obligation. The Petition proposes a procedural schedule with comments to be filed on August 24, 2012, replies to be filed by September 12, 2012, and a mid-November target date for a Commission Order. The Commission, however, gave notice that: "All comments must be filed

³ NWEAC and PSE also agreed that PSE will review and consider the feasibility of pursuing cost-effective conservation in the form of reduction in electric power consumption resulting from increases in the efficiency of energy use at electric power production facilities it owns in whole or in part outside the boundaries of Washington State. No one objected to this commitment.

⁴ *In the Matter of Puget Sound Energy 2012-2021 Ten-Year Achievable Conservation Potential and 2012-2013 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010*, Docket UE-111881, Order 01 - Approving Puget Sound Energy's 2012-2021 Achievable Conservation Potential and 2012-2013 Conservation Target Subject to Conditions ¶41 (June 14, 2012).

with the Commission no later than 5:00 p.m., Wednesday, July 25, 2012.” The Commission subsequently issued notice that it would decide the pending matter by August 15, 2012. PSE’s Petition accordingly is currently ready for determination.

II. Petition for Declaratory Order

12 RCW 19.285.030(4) defines “conservation” as follows (emphasis added):

“‘Conservation’ means *any reduction in electric power consumption* resulting from increases in the efficiency of energy use, production, or distribution.”

13 PSE requests Commission determinations that:

(1) A qualified 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) because they do not result in a "reduction in electric power consumption."

(2) The obligation in RCW 19.285.040(1) to pursue all available conservation that is cost-effective, reliable, and feasible—by identifying an achievable ten-year conservation potential, establishing a biennial conservation target, and meeting the targets—does not require a qualified utility to include as “conservation” its capital investments in electric power production equipment, where such capital investments do not reduce electric power consumption.

14 NWEC contends that PSE must count as conservation under the EIA gains in power output from the installation of more efficient turbines even if this does not result in any reduction in electric power consumption. The plain, straightforward language of the statute, however, requires that to qualify as “conservation,” an investment must result in a “reduction in electric power consumption.” There is no dispute that the investments in question do not produce such a result.

15 NWEC advances several arguments, each of which would require us to ignore the plain language in the EIA that defines conservation. Nothing in the context of the EIA considered as a whole suggests that the language does not mean exactly what is

says.⁵ Accepting NWECE's principal argument or, indeed, any of its alternative arguments, would render meaningless the express requirement in the statute that increases in the efficiency of energy use, production, or distribution must result in a reduction in electric power consumption to be considered conservation under RCW 19.285.030(4).

ORDER

16 THE COMMISSION ORDERS THAT Puget Sound Energy's Petition for Declaratory Order is granted and answers specifically the questions posed as follows:

- PSE'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) because they do not result in a reduction in electric power consumption.
- PSE's obligation under RCW 19.285.040(1) to pursue all available conservation that is cost-effective, reliable, and feasible – by identifying an achievable ten-year conservation potential, establishing a biennial conservation target, and meeting the targets – does not require a qualified utility to include as "conservation" its capital investments in electric power production equipment, where such capital investments do not reduce electric power consumption.

DATED at Olympia, Washington, and effective August 15, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

⁵ While nominally arguing for a "plain meaning" interpretation of the statute, NWECE focuses on the plain meaning of the wrong terms in the EIA (*i.e.*, "methodology" and "all"), ignoring entirely the plain meaning of the relevant language. NWECE's main argument actually is closer to urging the principle that a statute must be read as a whole so as to give meaning to all of its provisions in context. We agree with this principle. However, the plain meaning of the EIA definition of conservation in RCW 19.285.030(4) does not conflict with any other provisions of the EIA, including those to which NWECE refers, and the definition harmonizes seamlessly with the provisions NWECE cites.

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.