

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

PUGET SOUND ENERGY, INC.

For a Declaratory Order on the Commitment To  
Accelerate Conservation as Part of PSE's  
Decoupling Mechanism

NO. \_\_\_\_\_

PETITION FOR  
DECLARATORY ORDER

**I. INTRODUCTION**

1. In accordance with RCW 34.05.240, WAC 480-07-370, WAC 480-07-930 and Order 07 in Docket UE-121697,<sup>1</sup> Puget Sound Energy, Inc. ("PSE") hereby petitions the Washington Utilities and Transportation Commission ("Commission" or "WUTC") for a declaratory order with respect to the commencement date of PSE's commitment to accelerate conservation in conjunction with PSE's decoupling mechanism.

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<sup>1</sup> *In re Petition of Puget Sound Energy, Inc. and Northwest Energy Coalition For an Order Authorizing PSE To Implement Electric and Natural Gas Decoupling Mechanisms and To Record Accounting Entries Associated With the Mechanisms*, Dockets UE-121697 and UG-121705 (consolidated) Order 07, Final Order Granting Petition (June 25, 2013) ("Decoupling Final Order").

PETITION FOR  
DECLARATORY ORDER - 1

07771-0100/LEGAL24023001.1

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2. As discussed in more detail below, as part of its proposal to implement decoupling mechanisms, PSE committed to exceed its biennial conservation targets mandated by the Energy Independence Act, Chapter 19.285 RCW, during the time the decoupling mechanisms were in effect. PSE complied with this commitment and in fact exceeded this commitment in the 2012-2013 biennium. Although the decoupling mechanism became effective only in the last quarter of the biennium, PSE exceeded its 2012-2013 biennial target by 4.8 percent. Yet, despite this achievement, some stakeholders, including WUTC Staff, are uncertain whether PSE has complied with its commitment; have expressed a view that PSE should have exceeded the 2012-2013 target by five percent--even though the decoupling mechanism did not commence until the last quarter of the biennium; and have proposed that PSE be fined \$58,000.

3. In light of this controversy, PSE requests a Commission determination that: (i) PSE's commitment to accelerate its acquisition of energy efficiency commenced with the implementation of the decoupling mechanism in July 2013; (ii) it is appropriate to prorate the commitment over the biennium to reflect only the period when the decoupling mechanism is in effect; and (iii) PSE has not violated its commitment to accelerate its acquisition of energy efficiency by achieving 104.8 percent of its conservation target in the 2012-2013 biennium.

4. PSE is engaged in the business of providing electric and gas service within the State of Washington as a public service company and is subject to the regulatory authority of the Commission as to its retail rates, service, facilities and practices. Its full name and mailing address are

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Attn: Ken Johnson  
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PSE's representatives for purposes of this proceeding are:

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5. The following rules or statutes may be brought into issue by this Petition:

RCW 80.01.040, RCW 34.05.240, WAC 480-07-370, WAC 480-07-930.

## II. BACKGROUND AND FACTS

### A. The Decoupling Proceeding and PSE's Commitment To Accelerate Conservation

6. On October 25, 2012, PSE and the NW Energy Coalition filed a Petition for Decoupling Mechanism, which sought an order authorizing PSE to implement a decoupling mechanism. As part of the petition, PSE proposed to accelerate its electric conservation achievement while the decoupling mechanism was in place. Specifically, PSE and the NW Energy Coalition stated in the decoupling petition:

#### N. Conservation Achievement

39. The Company and the Coalition recognize that the Commission expects utilities with revenue decoupling mechanisms to meet or exceed their conservation targets. To that end, *as an integrated part of the proposal*, PSE proposes to achieve electric conservation in excess of the biennial conservation target set by the

Commission. Specifically, *while the electric decoupling mechanism is in place*, PSE will agree to achieve electric conservation five percent above the pro rata share of its ten-year conservation potential (i.e., 21 percent of the ten-year potential rather than 20 percent), which is equivalent to setting a pace for achieving its ten-year conservation potential over a period of roughly 9.5 years. . . .<sup>2</sup>

7. PSE and NWECC filed testimony supporting the decoupling petition. Jon Piliaris testified on behalf of PSE that the accelerated conservation achievement was an integrated part of the decoupling proposal:

One noteworthy improvement in the decoupling proposal made here over the one made by the Coalition in the 2011 GRC is the Company's commitment to achieve electric conservation that exceeds, by five percent, the Commission-approved biennial conservation target (i.e., 21 percent of the ten year conservation potential rather than 20 percent). PSE commits to continue achieving electric conservation at this accelerated pace *as long as the electric decoupling deferrals proposed in this filing remains in effect and unchanged*. Another improvement in this proposal is PSE's commitment to propose to increase funding of its low-income electric conservation programs by as much as twenty (20) percent over levels currently budgeted for 2013.

. . . .

The Joint Parties recognize that the Commission expects utilities *with revenue decoupling mechanisms to meet or exceed their conservation targets*. *To that end, as an integrated part of this proposal, PSE will commit to achieve conservation five (5.0) percent above the levels approved by the Commission for PSE's biennial conservation target and submit itself to penalties equivalent to those outlined in RCW 19.285 for failure to achieve these incremental savings*. In other

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<sup>2</sup> Dockets UE-121697 and UG-121705, Petition For Decoupling Mechanism, ¶ 39 (emphasis added).

words, PSE will agree to achieve twenty-one (21) percent of its ten-year conservation potential, which sets a pace for achieving its ten-year conservation potential over a period of roughly nine and one-half (9.5) years. It is important to note that PSE has historically accelerated the achievement of conservation in its integrated resource planning to achieve twenty (20) years of potential conservation over the first ten (10) years of the planning horizon. This proposal would serve to further accelerate PSE's achievement of cost-effective conservation.<sup>3</sup>

8. PSE filed an amended decoupling petition on March 1, 2013. In the amended petition, PSE reiterated its commitment to achieve conservation in excess of the conservation target mandated by the Energy Independence Act, Chapter 19.285 RCW while the proposed decoupling mechanism was in place:

#### **G. Conservation Achievement**

31. The Company and the Coalition recognize that *the Commission expects utilities with revenue decoupling mechanisms to meet or exceed their conservation targets. To that end, as an integrated part of the proposal, PSE proposes to achieve electric conservation in excess of the biennial conservation target set by the Commission. Specifically, while the electric decoupling mechanism is in place, PSE will agree to achieve electric conservation five percent above the biennial targets set by the Commission, and PSE will agree*

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<sup>3</sup> Dockets UE-121697 and UG-121705, Piliaris, Exh. No. JAP-1T, 4:15-5:6; 36:12-37:11 (internal footnotes omitted)(emphasis added). NW Energy Coalition witness Ralph Cavanagh also testified, “[t]he petition includes a specific commitment by PSE to voluntarily achieve electricity conservation that exceeds its statutorily-required I-937 targets by five percent, which is equivalent to setting a pace for achieving its ten-year conservation potential over a period of roughly 9.5 years . . . .” Dockets UE-121697 and UG-121705, Cavanagh, Exh. No. RCC-1T, 6:4-8.

to voluntarily submit to financial penalties for failing to meet this higher level of conservation achievement. . . .<sup>4</sup>

Thus, the amended decoupling petition contains the controlling language identifying the official metric by which compliance with PSE's commitment can be measured--that metric is electric conservation five percent above the biennial targets, *while the decoupling mechanism is in place.*

9. In the Decoupling Final Order, the Commission discussed PSE's commitment to accelerate its conservation achievement and stated that the decoupling proposal complied with the guidance in the Commission's Decoupling Policy Statement:

In any event, PSE and NWEAC do, in fact, respond to the Commission's guidance on the question of conservation target achievement with the commitments outlined above. That ICNU finds these commitments unsatisfactory is no reason to reject the Amended Decoupling Petition. Insofar as the Commission's statement in its 2011/2012 PSE GRC Order concerning its underlying purpose of the Decoupling Policy Statement, there is no doubt that decoupling on a revenue per customer basis removes entirely the so-called throughput incentive. *With these decoupling mechanisms in place, PSE will be truly indifferent to volumetric sales on which its recovery of fixed costs will no longer depend. Rather, with the disincentive to conservation removed, PSE and NWEAC anticipate greater efforts by the Company to increase energy efficiency in its operations.*<sup>5</sup>

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<sup>4</sup> Dockets UE-121697 and UG-121705, Amended Petition For Decoupling Mechanism, ¶ 31 (emphasis added). The testimony of Mr. Piliaris supporting the amended decoupling petition reiterated that PSE's commitment to accelerate its conservation achievement was essentially unchanged from the original decoupling petition. *See id.*, Piliaris, Exh. No. JAP-8T (citing Exh. No. JAP-1T 36:10-37:11).

<sup>5</sup> Decoupling Final Order, ¶ 112 (June 25, 2013)(emphasis added).

The Decoupling Final Order did not include any reference to accelerated conservation by PSE in the Findings of Fact, Conclusions of Law, or Order.

10. The Commission approved the decoupling mechanism on June 25, 2013, and after filing a compliance filing, PSE implemented its electric decoupling mechanism on July 1, 2013--the last quarter of the 2012-2013 biennium for purposes of the Energy Independence Act conservation target reporting.

## **B. The Controversy Requiring Resolution By the Commission**

11. PSE filed its 2012-2013 Biennial Electric Conservation Achievement Report on May 29, 2014.<sup>6</sup> The Biennial Conservation Report demonstrates that PSE achieved 104.8 percent of its conservation target for the 2012-2013 biennium, as stated in the report:

### ***Decoupling Commitment***

Although not a part of the EIA biennial Target, it is important to consider the effect of the decoupling agreement on conservation savings. Decoupling became effective on July 1, 2013, (Docket Nos. UE-121697 and UG-121705, Order 07) with one-quarter (25 percent) of the 2012-2013 biennium remaining. PSE is required to achieve 5 percent over its Commission-approved savings Target each biennium per the terms of the decoupling order. Thus, PSE is committed to achieve electric savings 1.25 percent above the Target. (25% of 5% = 1.25%).

By completing the biennium 4.8 percent above the Target, the final total electric biennial savings of 698,137 MWh topped this threshold.<sup>7</sup>

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<sup>6</sup> See Docket UE-111881, Puget Sound Energy's 2012-2013 Biennial Electric Conservation Achievement (May 29, 2014).

<sup>7</sup>*Id.* at 6.

12. WUTC Staff has conveyed the position that PSE was required to achieve the additional five percent conservation in the 2012-2013 biennium, rather than pro-rating this commitment to become effective at the point in time when PSE's decoupling mechanism commenced. WUTC Staff has suggested that even though PSE achieved 104.8 percent of its target for the biennium when decoupling was in effect for only one-quarter of the biennium, PSE should be penalized for not achieving the full additional five percent accelerated conservation during the biennium. It is not clear whether other shareholders share WUTC Staff's view.

13. It is PSE's position that the commitment to accelerate conservation commenced when the decoupling mechanism took effect, and will last as long as the decoupling mechanism is in effect. Decoupling is intended to remove barriers to allow achievement of incremental conservation; PSE's commitment reflects the accelerated conservation that decoupling facilitates. The accelerated conservation should be coincident with the implementation of the decoupling mechanism. The Commission should not penalize PSE for achieving 104.8 percent of its biennial conservation target during a time period when decoupling was in effect for 25 percent of the biennium.

14. This dispute over the interpretation and commencement date of PSE's commitment to achieve accelerated conservation is appropriate for determination by the Commission. PSE respectfully requests that the Commission issue an order confirming that: (i) PSE's commitment to accelerate its acquisition of energy efficiency commenced with the implementation of the decoupling mechanism in July 2013; (ii) it is appropriate to prorate the commitment over the biennium to reflect only the period when the decoupling mechanism is in effect; and (iii) PSE has not violated its commitment to accelerate its acquisition of energy efficiency by achieving 104.8 percent of its conservation target in the 2012-2013 biennium.



15. The Commission has primary jurisdiction over the subject matter of this proceeding. The Commission may issue a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency. In the Decoupling Final Order, the Commission authorized the decoupling mechanisms proposed by PSE, including PSE's commitment to accelerate conservation, which was an integral part of the proposal. This Decoupling Final Order is enforceable by the Commission. Therefore, the Commission has authority to order the declaratory relief requested.

### III. ARGUMENT

#### A. The Language of the Commitment To Accelerate Conservation and the Commission Policy Statement Support PSE's Interpretation

16. PSE committed to accelerate its conservation achievement *while the decoupling mechanisms are in place*. This is evidenced by language cited above in the testimony of Jon Piliaris and in the decoupling petition and amended petition. The decoupling petition states that "while the electric decoupling mechanism is in place"<sup>8</sup> PSE will agree to achieve accelerated conservation.

17. Further, PSE committed to accelerate conservation as an *integrated* part of the proposal.<sup>9</sup> In other words, the commitment to accelerate conservation does not arise on its own or stand on its own; it is inextricably linked to the decoupling mechanism. When the decoupling mechanism commenced, the commitment to accelerate conservation achievement

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<sup>8</sup> Dockets UE-121697 and UG-121705, Amended Petition For Decoupling Mechanism, ¶ 31.

<sup>9</sup> Dockets UE-121697 and UG-121705, Amended Petition For Decoupling Mechanism, ¶ 31.

commenced. When the mechanism is no longer in effect, the commitment to achieve accelerated conservation is no longer in effect.

18. PSE's interpretation is consistent with the very purpose for such a commitment. In the 2010 Decoupling Policy Statement the Commission "set forth policy guidance on *selected regulatory mechanisms designed either to remove barriers to utilities acquiring all cost-effective conservation or to encourage utilities to acquire all cost-effective conservation*."<sup>10</sup> One of these mechanisms identified by the Commission was full decoupling. Because the purpose of decoupling is to remove barriers to conservation, the Commission stated its expectation that a full decoupling mechanism would include "evidence describing any incremental conservation the company intends to pursue *in conjunction with the mechanism*."<sup>11</sup> It was in keeping with this Commission guidance that PSE made a commitment, as part of its decoupling proposal, to accelerate conservation. The theory is that decoupling will make PSE indifferent to selling more energy,<sup>12</sup> and as such, PSE will be able to more aggressively and creatively pursue cost-effective conservation. That accelerated pursuit of conservation occurs when decoupling is in place and barriers to conservation are removed. Accordingly it is appropriate that the commitment to accelerate decoupling begins when the decoupling mechanism begins and ends when the decoupling mechanism ends.

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<sup>10</sup> *In the Matter of the WUTC's Investigation into Energy Conservation Incentives*, Docket U-100522, Report and Policy Statement on Regulatory Mechanisms, Including Decoupling, To Encourage Utilities To Meet or Exceed Their Conservation Targets, ¶ 12 (Nov. 4, 2010) ("Decoupling Policy Statement") (emphasis added).

<sup>11</sup> Decoupling Policy Statement, p. 18 (emphasis added).

<sup>12</sup> Dockets UE-121697 and UG-121705, Schooley, Exh. No. TES-4T, 11:16-18.

19. Some stakeholders have pointed to the reference to “targets” in the plural,<sup>13</sup> as indicating that PSE must achieve 105 percent of its conservation target during the 2012-13 biennium as well as the 2014-15 biennium. However, the reference to “targets” in the plural simply recognizes that the proposed decoupling mechanism will span more than one biennium, and that for the time period when the decoupling mechanism is in place, PSE will accelerate conservation and exceed its conservation targets for those biennia. Thus, for the 2012-13 biennium, decoupling was in place for half of a year, or one-quarter of the biennium, and during that one-quarter of the biennium, PSE committed to accelerate its conservation at a rate five percent greater than what otherwise would be required in that portion of the biennium. For the 2014-15 biennium, the decoupling mechanism is expected to be in place for the entirety of the biennium and thus PSE commits to a five percent accelerated pace for the entire biennium. For the 2016-17 biennium, the decoupling mechanism may be in place for a part of the biennium. Again, PSE’s commitment is to accelerate conservation at a rate five percent greater than what would otherwise be required in that portion of the biennium when decoupling remains in effect. In sum, the reference to “targets” in the plural is not inconsistent with PSE’s interpretation of its commitment to accelerate conservation target during the time the decoupling mechanism is in place.

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<sup>13</sup> See, e.g., Decoupling Final Order, ¶ 108 (discussing PSE’s commitment to achieve accelerated conservation and stating that “[t]he Company will accelerate its acquisition of cost-effective electric efficiency resources to achieve 105 percent of the targets set by the Commission.”).

**B. Issuance of a Declaratory Order Is Appropriate.**

20. By authority of WAC 480-07-930 and RCW 34.05.240(1), the Commission may enter a declaratory order upon a showing:

- (a) That uncertainty necessitating resolution exists;
- (b) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion;
- (c) That the uncertainty adversely affects the petitioner;
- (d) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested; and
- (e) That the petition complies with any additional requirements established by the agency under subsection (2) of this section<sup>14</sup>

21. The declaratory order requested by PSE meets these requirements, as set forth below.

**1. Uncertainty Necessitating Resolution Exists**

22. The uncertainty to be resolved by this petition is whether PSE is in compliance with its commitment to accelerate conservation, approved by the Commission in the Decoupling Final Order.

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<sup>14</sup> The Commission has not established additional requirements under RCW 34.05.240(1)(e), but rather requires that petitions for declaratory order comply with the remaining four subsections of RCW 34.05.240(1). *See* RCW 34.05.240(2).

**2. There Is an Actual Controversy Arising From the Uncertainty Such That a Declaratory Order Will Not Be Merely an Advisory Opinion**

23. WUTC Staff disagrees with PSE's interpretation of its commitment--that the obligation to accelerate decoupling began with the implementation of the decoupling mechanism. WUTC Staff and other stakeholders are questioning whether PSE has complied with its decoupling commitment to accelerate conservation. They have suggested that PSE may be subject to penalties for its failure to comply with its decoupling commitment. There is an actual controversy between PSE and these stakeholders. A Commission order will not be merely an advisory opinion but will resolve this controversy.

**3. The Uncertainty Adversely Affects PSE**

24. PSE is adversely affected by the uncertainty. PSE has agreed to voluntarily subject itself to penalties for failure to meet its accelerated conservation goals. PSE disagrees with WUTC Staff's and other stakeholders' suggestion that PSE has failed to meet its commitment and should be subject to penalties. Imposition of penalties on PSE, when it exceeded its target by 4.8 percent, would adversely affect PSE both monetarily and reputationally.

**4. The Adverse Effect of Uncertainty on the Petitioner Outweighs Any Adverse Effects on Others or on the General Public That May Likely Arise From the Order Requested**

25. Resolution of the questions raised in this petition will not result in any adverse effect to others or the general public. PSE, its customers, and interested stakeholders all benefit from the certainty that a declaratory order will provide.

#### IV. RELIEF REQUESTED

26. PSE has complied with the commitment made in conjunction with its decoupling proposal. Once the decoupling mechanisms were implemented in July 2013, PSE exceeded its conservation target, by more than five percent for the time period when decoupling was in effect. PSE's conservation achievement complies with both the letter and the intent of the commitment. Yet, despite PSE's high level of conservation achievement, WUTC Staff is claiming PSE failed to meet its commitment. This dispute requires resolution by the Commission in a declaratory order.

27. PSE respectfully requests that the Commission enter an order declaring that: (i) PSE's commitment to accelerate its acquisition of energy efficiency commenced with the implementation of the decoupling mechanism in July 2013; (ii) it is appropriate to prorate the commitment over the biennium to reflect only the period when the decoupling mechanism is in effect; and (iii) PSE has not violated its commitment to accelerate its acquisition of energy efficiency by achieving 104.8 percent of its conservation target in the 2012-2013 biennium.

Respectfully submitted this 27th day of June, 2014.

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