

June 13, 2000

Carole J. Washburn, Secretary
Washington Utilities and
Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

Re: Docket No. U-991928 (Review of WAC 480-80-335)

Dear Ms. Washburn:

Puget Sound Energy (“PSE”) appreciates the opportunity to comment regarding this review of the Commission’s special contract rule, WAC 480-80-335. PSE generally supports retention of this rule as consistent and compliant with Executive Order No. 97-02. As described below, the availability of special contracts is beneficial to utility customers, and their use should continue to be accommodated.

Three issues are addressed in the comments below, two of which have been addressed by PSE previously. The third issue addresses whether there should be a modifier before the word “discrimination” in this rule, a matter about which comment was requested in the Commission’s May 12 notice.

Modifier Before “Discrimination”

PSE offers two ideas for the Commission’s consideration regarding whether a term should modify “discrimination” in paragraph 5 of this rule. In PSE’s view, it is important that the rule reflect not just RCW 80.28.100 “Rate discrimination prohibited—Exception,” but also to consider RCW 80.28.090 “Unreasonable preference prohibited,” and RCW 80.28.020 “Commission to fix just, reasonable, and compensatory rates” as well.

Price discrimination between similarly situated customers receiving like and contemporaneous service is prohibited under RCW 80.28.100. In PSE’s January 14, 2000, comments, the Company discussed this issue at length. Once the Commission finds a special contract customer is in some way uniquely situated, utilities may legally provide different rates for like services. Additionally, a utility may charge different rates to similarly situated customers if the Commission finds the special contract provides service that is not like and contemporaneous with other customers—which would include providing service under different terms and conditions. If the Commission finds a special

contract customer is “a class of one” or the special contract service is different from service to other similarly situated customers, no discrimination exists. Thus, it may not be necessary to have a modifier on “discrimination,” because special contracts typically meet both standards by providing different service to uniquely situated customers.

Paragraph (5)(b) of the proposed draft rule appears to focus exclusively on language in RCW 80.28.100 without consideration of other relevant statutes—a bias included in the current rule. This paragraph could be revised to incorporate language from RCW 80.28.020 and -090, and thus provide a more complete implementation of the entire set of statutes. The following is a suggested revision in legislative format relative to the existing rule:

(5) Each contract filed for commission approval shall be accompanied by such documentation as may be necessary to show that the contract does not provide the customer with an undue or unreasonable preference and does not result in unjust discrimination between customers receiving like and contemporaneous service under substantially similar circumstances and provides for the recovery of all costs associated with the provision of the service. In addition, the utility shall file the following information in conjunction with each contract submitted for commission approval:

The proposed language above better balances the concepts found in all the relevant statutes. A requirement to demonstrate the contract does not provide the customer with an undue or unreasonable preference is language from RCW 80.28.090. Modifying discrimination by the word “unjust” is language from RCW 80.28.020. Finally, leaving the clarifying language pertaining to like customers and similar services reflects RCW 80.28.100. PSE suggests this modification may result in a rule that better reflects the underlying statutes as well as address the issue of how to modify “discrimination.”

Concerns Regarding Impacts to Core Customers of Information Disclosure

PSE continues to have concerns regarding the adverse impacts on core customers that may result from disclosing special contract information. This topic was addressed in PSE’s previous written and oral comments, which are incorporated herein by this reference. Please refer to those documents for additional discussion of this issue. In short, disclosing information that makes it easier for the “next” special contract customer to negotiate a better deal may result in shifting recovery of fixed, common costs to captive core customers. If the Commission determines the public interest is best served by disclosure, PSE would urge the Commission to remain mindful of this possible negative consequence as the rule is applied in practice.

Concerns Regarding Legal Protections Afforded by Public Disclosure Act

PSE continues to be concerned with the provision of this rule in paragraph (7) that would administratively reject a filing if confidential treatment is requested for any of the essential terms and conditions listed in the rule. RCW 80.040.095 specifically defines a process for the handling of "...valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information,...." The rule should not be revised in a manner that would deny customers their legal right to seek protection of their energy costs and valuable commercial information and or that would deny utilities the right to seek protection of confidential marketing initiatives (pricing to uniquely situated customers). The draft rule in its current form, by not accommodating the situation where an "essential term" falls within the scope of information that may lawfully be protected by RCW 80.04.095, is contrary to that statute and, for that reason, may not survive judicial scrutiny if the rule is challenged. The proposed rule, in its current form, effectively takes away a right which is conferred by law under RCW 80.04.095 to protect certain types of information from disclosure. While parties may believe that the circumstances under which "essential terms" could qualify for such protection may be extremely rare, the Commission should not, by rule, decide that such circumstances will never exist. PSE suggests the following language to cure this defect:

(7) Filings under this section may be submitted with portions designated "confidential" pursuant to WAC 480-09-015. However, unless the commission waives this requirement for good cause shown, any filing that designates the essential terms and conditions of the contract as "confidential" shall be rejected by the commission as not in compliance with the public inspection requirements of RCW 80.28.050. Essential terms and conditions are:

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)

Good cause is shown for waiving the disclosure requirements if it is demonstrated that the information requested to be treated confidentially is protected under Chapter 42.17 RCW or RCW 80.04.095.

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Conclusion

PSE appreciates the opportunity to submit these comments and hopes the Commission finds them helpful. If the Commission or its staff has any questions regarding PSE's comments or if we can be of any assistance, please contact me at 425-456-2797.

Sincerely,

PUGET SOUND ENERGY, INC.

By _____
Karl R. Karzmar
Manager, Revenue Requirements

Enclosure (Electronic Disk)