

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	DOCKET UE-120277
TRANSPORTATION COMMISSION,	)	
	)	ORDER 02
Complainant,	)	
	)	
v.	)	ORDER GRANTING SUMMARY
	)	DETERMINATION TO PUGET
PUGET SOUND ENERGY, INC.,	)	SOUND ENERGY, INC., AND
	)	AUTHORIZING TARIFF FILING
Respondent.	)	
	)	
.....	)	

**SUMMARY**

<sup>1</sup> **PROCEEDING:** On February 29, 2012, Puget Sound Energy, Inc. (PSE or Company), filed with the Washington Utilities and Transportation Commission (Commission) proposed tariff revisions to its electric service Schedule 95A-Federal Incentive Tracker to become effective April 1, 2012.<sup>1</sup> The purpose of the filing is to pass-through \$2.4 million in interest on the unamortized balance of United States Treasury Department grant under Section 1603 of the American Recovery and Reinvestment Act of 2009, as amended (ARRA).<sup>2</sup> PSE calculates the amount of interest based on the unamortized balance as of January 1, 2012, and calculates interest prospectively from then, through December 31, 2012.<sup>3</sup> This time-frame is

<sup>1</sup> PSE filed revised tariff sheets on March 29, 2012, bearing effective dates of June 1, 2012, to afford the Commission additional time to consider the Company’s filing. These were suspended, as discussed below.

<sup>2</sup> American Recovery and Reinvestment Act of 2009, Pub. L. No. 111–5, Div. B, tit. I, § 1603, 123 Stat. 115, 364 (February 17, 2009).

<sup>3</sup> The proposed increase represents \$2,405,683 of interest based on the average unamortized balance of the Treasury Grant for the period January 1 through December 31, 2012, multiplied by 6.9 percent, which is the net of tax overall rate of return from the Company’s 2009 general rate case, Docket UE-090704 grossed up for income taxes and revenue sensitive items. See Stipulated Facts ¶ 18.

based on the date when Congress amended the ARRA to remove a normalization requirement for the treatment of these funds previously imposed under the Department of Treasury's interpretation of the ARRA's provisions. Normalization prevented PSE from passing through any interest to customers.

- 2 Commission regulatory Staff disagrees with PSE's interest calculation. Staff, supported by the Industrial Customers of Northwest Utilities (ICNU) and Public Counsel, argues it should be based on the date PSE received the Treasury Grant, February 23, 2010. Staff's approach would require PSE to pass through \$8.0 million in interest, which is more than three times the amount included in the Company's filing.<sup>4</sup>
- 3 The Commission considered Staff's recommendation to suspend the tariff filing at its open meeting on March 29, 2012. After discussion with PSE, Staff and ICNU during the open meeting, the Commission elected not to follow Staff's recommendation. Instead, the Commission established a process to give PSE, Commission Staff and other interested persons opportunities to file briefs presenting argument concerning the legal and policy issues raised by PSE's filing and Staff's opposition to it. PSE agreed to extend the effective date of its tariff filing and subsequently filed replacement tariff sheets bearing an effective date of June 1, 2012, thus allowing sufficient time for this process to occur.
- 4 PSE, Staff and ICNU filed briefs in accordance with the schedule established by the Commission. The Commission then heard oral argument during a subsequent open meeting on May 24, 2012. At the conclusion of the argument, and following discussion with the parties and their attorneys, the Commission suspended operation of the as-filed tariffs sheets.<sup>5</sup>

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<sup>4</sup> Staff's calculation of interest is \$7,994,310, based on the average unamortized balance of the Treasury Grant for the period February 23, 2010 through December 31, 2012, multiplied by the net of tax overall rates of return from the Company's 2009 general rate case (6.9 percent) and 2007 general rate case (7.0 percent), grossed up for income taxes and revenue sensitive items. Stipulated Facts ¶ 19.

<sup>5</sup> *WUTC v. Puget Sound Energy, Inc.*, Docket UE-120277, Order 01 Complaint and Order Suspending Tariff Revisions (May 24, 2012). The parties concurred in this result.

- 5 **PARTY REPRESENTATIVES:** Sheree Strom Carson, Perkins Coie, Bellevue, Washington, represent PSE. Simon J. ffitich and Lisa W. Gafken, Assistant Attorneys General, Seattle, Washington, represent the Public Counsel Section of the Washington Office of Attorney General (Public Counsel). Robert D. Cedarbaum, Senior Assistant Attorney General Olympia, Washington, represents the Commission's regulatory staff (Commission Staff or Staff).<sup>6</sup> S. Bradley Van Cleve and Irion A. Sanger, Davison Van Cleve, Portland, Oregon, represent the Industrial Customers of Northwest Utilities (ICNU).
- 6 **COMMISSION DETERMINATIONS:** The Commission exercises its discretion in this matter and, based on considerations of both law and equity, determines that PSE's revised Tariff Schedule 95A should become effective as filed with a new effective date.

### MEMORANDUM

- 7 **BACKGROUND AND PROCEDURAL HISTORY.** Section 1603 of the ARRA authorizes the Department of Treasury to provide a nontaxable cash grant (Treasury Grant) equal to 30 percent of a qualifying renewable energy investment to cover a portion of the expense of building such a facility.<sup>7</sup> PSE's Wild Horse Expansion Project is a qualifying renewable resource under the ARRA.
- 8 On September 30, 2009, before the project began commercial operations and before PSE applied for a Treasury Grant, PSE filed a petition for an accounting order in Docket UE-091570. PSE's petition reflected the requirements of Section 1603(f) of the ARRA, as effective when PSE received this Treasury Grant. The law expressly

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<sup>6</sup> In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or nay other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

<sup>7</sup> American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, Div. B, tit. I, § 1603, 123 Stat. 115, 364 (February 17, 2009).

required the Secretary of the Treasury to apply to the Treasury Grants “rules similar to the rules” of section 50 of the Internal Revenue Code (IRC). Subsection 50(d)(2) of the IRC, in turn, requires the application of “rules similar to the rules” of section 46(f) of the IRC. Section 46(f) is the Investment Tax Credit (ITC) normalization requirement in the IRC. Generally, the ITC normalization provisions restrict the ratemaking treatment of the unamortized balance of the ITC by allowing an offset to rate base or a ratable amortization of the ITC balance, but not both.<sup>8</sup>

9 PSE, considering these requirements, requested authority to track in an appropriate fashion the Treasury Grant funds the Company anticipated it could receive for the Project.<sup>9</sup> The petition detailed the normalization treatment required under ARRA and the ten-year amortization that would be applied to Treasury Grant funds received for the Project.<sup>10</sup> Commission Staff supported PSE’s petition and recommended its approval.<sup>11</sup> The Commission approved the proposed accounting and normalization treatment in Order 01 in Docket UE-091570, entered on December 10, 2009.<sup>12</sup>

10 The Wild Horse Expansion Project began commercial operations on November 9, 2009.<sup>13</sup> On December 22, 2009, after the Commission’s approval PSE’s proposed accounting and normalization treatment, PSE applied for the Treasury Grant.<sup>14</sup> As part of its application to the Department of Treasury, PSE submitted the Commission’s order granting PSE’s accounting and normalization treatment, thus establishing that PSE had regulatory approval to apply that normalization methodology for the Treasury Grant.<sup>15</sup> The Treasury approved PSE’s grant

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<sup>8</sup> Stipulated Facts ¶ 5, Att. A 72:7-10.

<sup>9</sup> Stipulated Facts ¶ 11.

<sup>10</sup> Stipulated Facts ¶ 12; PSE’s Petition for Accounting Order, Docket UE-091570, filed September 30, 2009, ¶¶ 9-10.

<sup>11</sup> Stipulated Facts ¶ 13.

<sup>12</sup> Stipulated Facts ¶ 14.

<sup>13</sup> Stipulated Facts ¶ 8.

<sup>14</sup> Stipulated Facts ¶ 9.

<sup>15</sup> Stipulated Facts ¶ 15.

application on February 19, 2010. PSE received a \$28,674,664 million Treasury Grant for the Wild Horse Expansion Project on February 23, 2010.<sup>16</sup>

- 11 Normalization under section 46(f) allowed PSE to provide customers with either an offset to rate base for the unamortized balance of the Treasury Grant or the amortization of the Treasury Grant as a reduction to cost of service. Normalization only allows one or the other, not both. PSE elected to provide customers with the benefit of amortization of the Treasury Grant as part of cost of service.<sup>17</sup> This is consistent with the treatment PSE had elected for Investment Tax Credits (ITC) during the 1970's. Mr. Marcelia stated during the recessed open meeting that this earlier decision regarding the treatment of ITC arguably controlled PSE's election concerning the treatment of the Treasury Grant funds.<sup>18</sup>
- 12 On October 29, 2010, PSE filed a revision to Schedule 95A in order to pass-through \$5,750,205 of the Treasury Grant as a bill credit in 2011.<sup>19</sup> This represented 23 months (*i.e.*, February 23, 2010 to December 31, 2011) of amortization to be passed through to customers over the 12 months of 2011. The Wild Horse Expansion Project Treasury Grant was the only item in Schedule 95A, since the pass-through of

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<sup>16</sup> Stipulated Facts ¶ 10. PSE, in accord with the Commission's accounting order, recorded the Treasury Grant funds as a liability in Account 228.4, Accumulated Miscellaneous Operating Provisions, and provided for normalization. PSE initiated amortization treatment over ten years through Account 242, Miscellaneous Current and Accrued Liabilities. Consistent with this accounting treatment, PSE treated the grant funds as cash and the cash was available to fund operations, as Mr. Story related at the recessed open meeting. Colloquy between Commissioner Oshie and Mr. Story per digital recording of May 24, 2012, recessed open meeting, beginning at 21 minutes, 35 seconds.

<sup>17</sup> Stipulated Facts ¶ 5.

<sup>18</sup> Mr. Marcelia related that PSE sought guidance from the IRS on the question whether its earlier election controlled. The IRS did not provide a definitive answer. Both because the earlier election arguably controlled, and the Company determined that returning the funds to customers using the amortization approach had more value for customers, PSE decided to continue with the Treasury Grant funds the treatment earlier afforded ITC. Colloquy between Chairman Goltz and Mr. Marcelia per digital recording of May 24, 2012, recessed open meeting, beginning at 41 minutes, 12 seconds.

<sup>19</sup> The tariff filing included a change in the title of the tariff from Production Tax Credit Tracker to Federal Incentive Tracker to reflect the inclusion of Treasury Grants.

Production Tax Credits was set to a zero rate effective July 1, 2010. The tariff was not disputed, and it went into effect on January 1, 2011.<sup>20</sup>

13 On October 31, 2011, PSE filed a revised Schedule 95A tariff for 2012, seeking to pass-through \$4,620,963, on a normalized basis, of the Wild Horse Expansion Project Treasury Grant as a bill credit over the 12 months in 2012. Again, the tariff was not disputed, and it went into effect on January 1, 2012.<sup>21</sup>

14 In the meantime, PSE engaged in lobbying efforts in Washington, D.C., for nearly three years, urging Congress to amend the ARRA to eliminate the normalization requirement for these Treasury Grants. In May 2011, an amendment to section 1603 of ARRA to eliminate the normalization requirement was included in the National Defense Authorization Act for Fiscal Year 2012 (NDAA), which passed and was signed into law effective December 31, 2011.<sup>22</sup> The amendment states:

- (a) In General.—The first sentence of section 1603(f) of the American Recovery and Reinvestment Tax Act of 2009 is amended by inserting “other than subsection (d)(2) thereof” after “section 50 of the internal Revenue Code of 1986”.
- (b) Effective Date.—The amendment made by this section shall take effect as if included in section 1603 of the American Recovery and Reinvestment Tax Act of 2009.<sup>23</sup>

This amendment removed the normalization requirement previously imposed by the Department of Treasury.

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<sup>20</sup> Stipulated Facts ¶ 16.

<sup>21</sup> Stipulated Facts ¶ 17.

<sup>22</sup> Section 1096 of the National Defense Act for Fiscal Year 2012, H.R. 1540, 112th Congress, 1st Session Stipulated Facts ¶ 6, Att. A 73:11-15.

<sup>23</sup> Section 1096 of the National Defense Act for Fiscal Year 2012, H.R. 1540, 112th Congress, 1st Session; Stipulated Facts ¶ 6.

- 15 **CROSS-MOTIONS FOR SUMMARY DETERMINATION.** The process followed in this docket allows for its expeditious resolution by treating the parties' respective briefs as cross-motions for summary determination.<sup>24</sup> No one contends, and the Commission determines, that there are no contested material issues of fact.
- 16 PSE argues that the NDAA amendment to section 1603 of ARRA allows it to pass through interest on the unamortized balance of the Treasury Grant starting January 1, 2012, but not before that date. PSE argues that, "[p]rior to that date such a pass through was prohibited."<sup>25</sup> According to PSE, the retroactive effective date language in the NDAA, albeit ambiguous, was intended only to remove mandatory normalization from grants received prior to the date of the amendment. PSE argues the amendment "does not *require* unwinding of normalization for the past period; it simply removes the normalization mandate that previously existed."<sup>26</sup>
- 17 Staff and ICNU, in their respective briefs, argue the NDAA amendment to section 1603 of the ARRA is not ambiguous and can only be read to mean that Congress intended to "cure" the Secretary of Treasury's imposition of normalization as a required treatment for Treasury Grants. In Staff's view, this means the ARRA, as amended, "[a]llows the Commission to calculate interest on the Treasury Grant beginning February 23, 2010."<sup>27</sup> Staff counsel clarified this point at the Commission's recessed open meeting on May 24, 2012, stating that the result it recommends is "not compelled by the law; it's just something permitted by the law."<sup>28</sup>

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<sup>24</sup> The briefing process was to inform the Commission in an open public meeting setting. Public Counsel appeared in this matter following suspension of the tariff, when it was noticed for prehearing and, hence, became an adjudicatory proceeding under RCW Chapter 34.05. While Public Counsel informed the Commission at the prehearing conference that it supports Staff's interpretation and advocacy in this matter, Public Counsel acknowledged that the briefs previously filed fully present the arguments necessary for the Commission to determine the issues summarily.

<sup>25</sup> PSE Initial Brief ¶ 17.

<sup>26</sup> PSE Reply Brief ¶ 2.

<sup>27</sup> Staff Response Brief, header II.A. preceding ¶ 7 (emphasis added).

<sup>28</sup> Digital recording of May 24, 2012, recessed open meeting, beginning at 4 minutes, 40 seconds.

- 18 ICNU goes further than Staff, arguing that, “Federal law *requires* a retroactive adjustment that will credit ratepayers for interest on Treasury grants related to the Project held by the Company.”<sup>29</sup> ICNU’s contention that the result Staff recommends is mandatory apparently depends on its argument that Congress “required retroactive application of the Amendment to correct the Treasury’s misapplication of section 1603 of the ARRA.”<sup>30</sup> Stating the same point differently, ICNU argues that, “Congress requires that [the amendment] be given retroactive effect to correct the undesirable past effects of the Treasury’s misinterpretation of congressional intent.”<sup>31</sup>
- 19 PSE, relying on its view that the “Effective Date” language in the NDAA amendment to the ARRA is ambiguous, contends that “Congress’ failure to expressly state that it intended to unwind the financial consequences of utilities’ previous accounting and ratemaking treatment” makes PSE’s interpretation of the retroactive language more reasonable than Staff’s interpretation.<sup>32</sup> PSE states its full rationale as follows:

PSE’s interpretation of the amendment is the only interpretation that complies with both Washington law and federal law and makes sense from a public policy perspective. PSE’s interpretation of the ambiguous statute aligns with the Filed Rate Doctrine and the rule against retroactive ratemaking because it does not change the credit that was paid to customers in 2011 in compliance with the tariff then on file with the Commission. PSE’s interpretation comports with the general process by which utilities manage changes in accounting and ratemaking procedures over time, as discussed in more detail below.

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<sup>29</sup> ICNU Response Brief ¶ 5 (emphasis added).

<sup>30</sup> *Id.* ¶ 13.

<sup>31</sup> *Id.* Although there does not appear to be any legislative history or other evidence on point resolving the question definitively, it appears most likely that Congress did not intend to simply clarify the ARRA to correct a misinterpretation of the law by the Department of Treasury. Rather, Congress intended to change the ARRA to remove the normalization requirement that followed from the language in the ARRA requiring the Department of Treasury to apply rules for Treasury Grants similar to those applied under the ITC program. That is, it does not appear that the Department of Treasury misinterpreted Congressional intent under the ARRA as originally passed into law.

<sup>32</sup> PSE Reply Brief ¶ 5.



PSE's interpretation is consistent with the purpose of the American Recovery and Reinvestment Act—to stimulate business reinvestment<sup>33</sup>—while also providing significant benefits to customers. Under PSE's interpretation, customers benefit from an additional \$2.4 million beyond what they otherwise would have been credited for the Treasury Grant in 2012, and they will continue to receive additional benefits each year that are greater than would have been allowed if the normalization requirement remained. At the same time, PSE's interpretation balances the interests of utilities and their customers by not unfairly penalizing utilities for complying with the required normalization of the Treasury Grant prior to the amendment.<sup>34</sup>

PSE also points out that the Company worked with members of Congress for nearly three years to effect a change in the law to eliminate the normalization requirement for Treasury Grants, thereby maximizing the benefit that Treasury Grants provide to PSE's customers.<sup>35</sup>

20 The parties present various legal arguments concerning the filed rate doctrine, the rule against retroactive ratemaking and federal preemption. We do not summarize these arguments because, as discussed below, the outcome of this dispute turns not on law, but on balancing equitable considerations in the Commission's exercise of its discretion.

21 **COMMISSION DISCUSSION AND DECISION.** The starting point of our analysis is consideration of the meaning and scope of the NDAA amendment to section 1603 of the ARRA. The language concerning the effective date of the

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<sup>33</sup> American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 § 3 (2009) (stating that purposes of ARRA include "[t]o preserve and create jobs and promote economic recovery" and "[t]o invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits"). (Footnote in original).

<sup>34</sup> PSE Reply Brief ¶ 6.

<sup>35</sup> PSE Initial Brief ¶ 16 (PSE's federal legislative team worked with a bipartisan coalition of Washington State elected officials to support this change. Various members of Congress supported PSE's position and introduced the amendment into twelve separate pieces of legislation. It required 33 months and numerous attempts, but these efforts by PSE, among others, ultimately succeeded).

amendment is not facially ambiguous. The parties do not dispute that Congress intended it to have retroactive effect. Congress clearly intended give utilities such as PSE the opportunity to pass through any *return on* a Treasury Grant authorized by a state commission, in addition to the *return of* the grant funds, regardless of when the Treasury Grant was received by the company.

- 22 Neither the ARRA nor the NDAA amendment, however, address the questions of what accounting and rate treatment a state regulatory commission should, or must, allow following elimination of the normalization requirement that applied under Treasury's interpretation of the ARRA prior to its amendment. Regardless whether Treasury correctly interpreted the ARRA in the first instance by requiring normalization, Congress' unequivocal elimination of the requirement did no more than remove a constraint vis-à-vis the Commission's discretion to authorize particular accounting and rate treatment of Treasury Grant funds.<sup>36</sup>
- 23 Putting to one side any concerns we might have under state law about retroactive ratemaking and the filed rate doctrine, we determine that the ARRA, as amended, leaves us as a matter of Federal law with the discretion to require PSE to calculate interest from the date the Company received the Wild Horse Expansion Treasury Grant (*i.e.*, February 23, 2010) and return it to ratepayers.<sup>37</sup> The amendment, however, does not mandate such treatment.
- 24 We turn, then, to the balance of equities and weigh them so as to determine how we should exercise our discretion in the public interest. Albeit not controlling, it is relevant in this connection that PSE expended shareholder resources in its lobbying efforts for nearly three years to bring about this amendment that increased the benefit

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<sup>36</sup> There is a good argument that the Treasury correctly interpreted the ARRA by allowing customers to get either an offset to rate base or amortization of the grant to reduce the cost of service, but not both. This would be consistent with the apparent overall purpose of this portion of the ARRA, which was to create incentives to install wind plants. Tax treatment that would share the benefit between ratepayers and companies would seem to effect that purpose. However, given the paucity of legislative history, and given that we need not decide whether Treasury's interpretation was correct to decide this case, we decline to opine on this legal issue.

<sup>37</sup> We emphasize that our analysis of the issues in this Order does not reach the questions whether we could require this accounting and rate treatment without running afoul of the filed rate doctrine or the rule against retroactive ratemaking.

of Treasury Grants to ratepayers.<sup>38</sup> The NDAA amendment to the ARRA for which PSE actively lobbied means that interest on the principle balance of the Treasury Grant funds can be passed through to ratepayers along with the amortized portion of the principle that is being returned over ten years.<sup>39</sup> This is the treatment PSE proposes in its tariff filing in this docket.

- 25 In other words, ratepayers gain additional benefit from the Treasury Grant federal tax dollars without cost or risk. PSE, on the other hand, realizes no benefit from the authorized return on the funds because it is credited back to ratepayers via Schedule 95A. Had PSE and others not successfully lobbied for the amendment of the ARRA to eliminate the normalization requirement, PSE would retain for the benefit of its shareholders the return it is authorized to earn on the unamortized balance of the Treasury Grant. To this extent, we must regard PSE's legislative efforts, conducted at shareholder expense for the exclusive benefit of rate payers, as weighing in the equitable balance in PSE's favor.
- 26 Weighing in favor of Staff's recommendation, supported by ICNU and Public Counsel, is that the Commission allows the full costs of the Wild Horse Expansion to

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<sup>38</sup> PSE, like other jurisdictional utilities, is not allowed to recover its lobbying costs from ratepayers. *See e.g., WUTC v. Washington Natural Gas*, Docket UG-931405, Fourth Supplemental Order at 177 (May 27, 1994) (acknowledging activities to influence state and federal legislation must be booked below the line).

<sup>39</sup> On September 30, 2009 PSE filed a petition for an accounting order in Docket UE-091570 requesting authorization of the appropriate tracking of Treasury Grants received under ARRA associated with the Wild Horse Expansion Project. PSE proposed that the Treasury Grant would be recorded, once received, as a liability in Account 228.4, Accumulated Miscellaneous Operating Provisions. The accounting petition provided for normalization, and PSE requested that the grant be amortized over ten years through Account 242, Miscellaneous Current and Accrued Liabilities. The amortized amount would be credited to customers through Schedule 95A. Stipulated Facts ¶¶ 11-12. This accounting treatment allowed the Company to treat the funds as cash available for operating expenses and established a basis for the Commission to treat these funds in rates as working capital. PSE proposed, and the Commission allowed, such treatment in PSE's latest general rate case. *WUTC v. PSE*, Dockets UE-111048 and UG-111049, Order 08 (May 7, 2012); *see also* Stipulated Facts ¶ 24. This means that the Wild Horse Expansion Treasury Grant now is expressly recognized as rate base on which PSE is authorized to earn a return.

be included in rate base on which the ratepayers pay a return.<sup>40</sup> PSE's opponents argue that it is not equitable for PSE to retain both the return it earns on the full costs of the Wild Horse Expansion and the return it is authorized to earn on the Treasury Grant because the grant is awarded, in part, to offset a portion of these costs. Thus, they argue that equity balances in favor of reaching back to capture the return from February 23, 2010, when PSE received the Treasury Grant, through December 31, 2011, when the NDAA amendment took effect.

27 While there is some merit in this perspective, several points serve to limit the weight it should be afforded in our evaluation. First, imposition of the normalization requirement was consistent with what was done in the Investment Tax Credit (ITC) process that the Treasury Grant program was intended to replace. That is, requiring normalization of Treasury Grant funds did no more than continue the policy initially established under the ITC process, which it appeared to Treasury was Congress' intent under the ARRA. As previously noted, this does indeed seem to have been Congress' intent considering the ARRA language requiring the Department of Treasury to apply "rules similar to the rules" of section 50 of the IRC that, in turn, require the application of "rules similar to the rules" of section 46(f) of the IRC. As discussed earlier, Section 46(f) is the Investment Tax Credit (ITC) normalization requirement in the IRC. The ITC policy was to provide a benefit to both ratepayers and utility companies, giving them an incentive to develop wind resources, thus creating jobs, which was the primary goal of the ARRA. PSE arguably should not now have to transfer to ratepayers the portion of the Treasury Grant's benefits that normalization was intended to confer during the period when it was required.<sup>41</sup>

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<sup>40</sup> We recognize that PSE does not entirely agree with this observation, citing historical ratemaking and the pro forma adjustments in PSE's 2009 general rate case that PSE contends had a \$1.2 million impact on revenue requirement because the Commission declined to include plant balance closed to in-service in December 2009. PSE Reply Brief ¶ 37 (citing *WUTC v. PSE*, Dockets UE-111048 and UG-111049 (consolidated), Order 08 ¶ 305 n.411 (May 7, 2012)). This point, whatever its merits, is not significant in the context here.

<sup>41</sup> It is important to keep in mind that the Treasury Grant is a boon from the perspectives of both the Company and its customers. These are federal tax dollars. In a very real sense they represent a net transfer of wealth from states where wind farm development is not taking place to utilities and their customers in states where such development is occurring. It is certainly not inequitable that the utility, as well as its customers, should enjoy some of the benefits resulting from this use of federal tax revenues.

28 In addition, the accounting treatment the Commission authorized for the treatment of the Treasury Grant did not treat these funds as a regulatory liability in a deferral account where any allowed return would accumulate for later treatment in rates. Instead, PSE was authorized to treat these funds as cash available for operating expenses. There is no account on PSE's books that includes a pool of ratepayer dollars representing any return PSE may have been authorized to earn on the Treasury Grant.<sup>42</sup> Thus, to now unwind the accounting treatment the Commission previously authorized by requiring PSE to credit customers with return for the period when normalization remained in effect means that PSE would be required to reach into its shareholders' pockets. This, to us, simply seems unfair.

29 Finally, PSE would be authorized to earn a return of, and a return on, the full costs of the Wild Horse Expansion even had the Company not received the Treasury Grant. Under Schedule 95A, proposed for revision in this case, PSE's customers have already received for two periods the amortized portions of the principle amount of the Treasury Grant. They will receive prospectively a return of, and return on, the unamortized balance of the Treasury Grant. Any benefit PSE might be seen to have enjoyed as a result of normalization during the 23 months prior to January 1, 2012, is relatively modest when measured against the return of, and return on, the Treasury Grant customers will receive over ten years. Equity does not require that PSE fund additional payments to ratepayers on top of the more significant amounts they already are in line to receive. Indeed, returning to an earlier point, it seems inequitable to require PSE to disgorge any benefits it arguably retained under normalization when it is largely as a result of the voluntary efforts by the Company to eliminate normalization that ratepayers will receive enhanced benefits from the Treasury Grant going forward.

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<sup>42</sup> Mr. Story elaborated on these matters during our recessed open meeting discussions. Colloquy between Commissioner Oshie and Mr. Story per digital recording of May 24, 2012, recessed open meeting, beginning at 21 minutes, 35 seconds.

- 30 Put colloquially, the ratepayers' glass was more than half-full from February 23, 2010, until December 31, 2011. Since then it has been, and will continue to be, full.<sup>43</sup> This is a fair result. We see no need to unwind, at PSE's expense, the treatment of the Wild Horse Expansion Treasury Grant we authorized during periods when normalization was required. The balance of equities argues persuasively against such a result.
- 31 We conclude, then, that PSE should be authorized and required to put into effect rate credits under Schedule 95A determined in a manner consistent with the methodology and calculations that resulted in its tariff filings on February 29, 2012 and March 29, 2012. The rate credits will vary from those in the previously filed tariff sheets given that they will be returned to ratepayers over a different period, thus requiring a compliance filing of yet a third set of revised tariff sheets.

### **ORDER**

#### THE COMMISSION ORDERS THAT:

- 32 (1) The proposed tariff revisions PSE filed on February 29, 2012, with stated effective dates of April 1, 2012, as subsequently revised by filing on March 29, 2012, with stated effective dates of June 1, 2012, which were suspended by prior Commission order, are determined to be based on methods and calculations that produce rates that are fair, just, reasonable and sufficient.
- 33 (2) PSE is authorized and required to file tariff sheets that are necessary and sufficient to effectuate the terms of this Order, placing into effect rates based on the same methods and forms of calculation used to determine the previously filed rates. PSE's revised tariff sheets filed in compliance with this

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<sup>43</sup> We note, extending this metaphor, that under Staff's arguments concerning the prospective nature of the result it recommends, the ratepayers' glass would be positively overflowing were we now to pour into Schedule 95A credits the return on the Treasury Grant arguably retained by PSE during the normalization period and thus not included as a credit to customers under Schedule 95A as then effective.

Order should bear effective dates that allow at least three business days for review by Staff and others, and approval by the Commission.

- 34 (3) The Commission Secretary is authorized to accept by letter, with copies to all parties to this proceeding, a filing that complies with the requirements of this Order.
- 35 (4) The Commission retains jurisdiction to enforce the terms of this Order.

Dated at Olympia, Washington, and effective June 26, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

**NOTICE TO PARTIES: This is a Commission Final Order. 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 and WAC 480-07-870.**