**BEFORE THE**

# WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

|  |  |  |
| --- | --- | --- |
| In the Matter of the Petition of  PUGET SOUND ENERGY, INC., and  NW ENERGY COALITION  For an Order Authorizing PSE to Implement Electric and Natural Gas Decoupling Mechanisms and to Record Accounting Entries Associated with the Mechanisms | )  )  )  )  )  )  )  )  )  ) | DOCKET NOS. UE-121697/UG-121705  (Consolidated)  and |

|  |  |  |
| --- | --- | --- |
| WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,  Complainant,  v.  PUGET SOUND ENERGY, INC.  Respondent. | )  )  )  )  )  )  )  )  )  ) | DOCKET NOS. UE-130137/UG-130138  (Consolidated)  INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES’ MOTION TO MODIFY ORDER 07 |

**I. INTRODUCTION**

1. Pursuant to RCW § 80.04.210, WAC § 480-07-875, and WAC § 480-07-375, the Industrial Customers of Northwest Utilities (“ICNU”) moves that the Commission modify Order 07, issued in the above-referenced dockets (“Order 07”), to include a finding that sufficient evidence existed in the record to set Puget Sound Energy, Inc.’s (“PSE” or the “Company”) return on equity (“ROE”) at 9.3 percent.

**II. BACKGROUND**

1. On June 25, 2013, the Commission entered Order 07, in which it approved an expedited rate filing, a decoupling mechanism, and a rate plan for PSE.[[1]](#footnote-1)/ In Order 07, the Commission found that “the evidence in this case is simply too spare to support a reduction in PSE’s current authorized ROE to reflect current financial market conditions.”[[2]](#footnote-2)/ Evidence in the record, however, included a complete cost of capital analysis for PSE, performed by ICNU’s witness, Michael Gorman.[[3]](#footnote-3)/ This study was based on three separate discounted cash flow analyses, a risk premium analysis, and a capital asset pricing model analysis.[[4]](#footnote-4)/ In a separate statement attached to Order 07, Commissioner Jones found that Mr. Gorman’s study, along with additional evidence of PSE’s cost of capital submitted by Public Counsel, constituted “sufficient evidence in the record … to adjust the Company’s ROE.”[[5]](#footnote-5)/
2. ICNU and Public Counsel sought judicial review of the Commission’s decision in Order 07 to maintain PSE’s ROE at 9.8% without substantial supporting evidence. On July 25, 2014, the Thurston County Superior Court (the “Court”) entered an order (“Order”) reversing the Commission’s decision to set PSE’s ROE at 9.8% and remanding Order 07 to the Commission “to establish fair, just, reasonable and sufficient rates to be charged under the rate plan, and to order any other appropriate relief.”[[6]](#footnote-6)/ In a letter ruling attached to the Court’s order, the Court found that the “Commission set rates in [Order 07], and by its own admission, it did so without the evidence it deemed necessary and customarily relied on.”[[7]](#footnote-7)/ Thus, the rates currently in effect have been found to be unjust and unreasonable.

**III. ARGUMENT**

1. Under RCW § 80.04.210 and WAC § 480-07-875, the Commission “may at any time … alter or amend any order … issued or promulgated by it ….” While the “Commission has wide discretion to modify its prior orders,”[[8]](#footnote-8)/ the Commission has previously stated that it does “not lightly disturb orders previously entered where no party or person can demonstrate patent error or a prejudicial violation of process.”[[9]](#footnote-9)/ ICNU’s Motion is pursuant to the Court’s Order specifically finding that the Commission committed legal and procedural errors. Accordingly, in response to the Court’s Order reversing the Commission’s findings of fact in Order 07 with respect to PSE’s ROE, it is appropriate for the Commission to modify Order 07 to find that there is sufficient evidence in the record to set PSE’s ROE at 9.3%.
2. The Court’s Order reversing Order 07 holds that “the Commission’s findings of fact with respect to the return on equity component of [PSE’s] cost of capital … are unsupported by substantial evidence ….”[[10]](#footnote-10)/ In Order 07, the Commission found that “[e]vidence of trends in financial markets suggests that PSE’s current authorized rate of return on equity, 9.8 percent, is at the upper end of [what] may be regarded as a reasonable range for such returns.”[[11]](#footnote-11)/ The Commission also found that the “record does not support an adjustment to PSE’s cost of capital ….”[[12]](#footnote-12)/  In light of the Court’s Order, both conclusions are erroneous and should be modified.
3. While there is insufficient evidence to support the Commission’s finding in Order 07 that 9.8% was a reasonable ROE for PSE, there is substantial evidence to support a 9.3% ROE for PSE. Mr. Gorman’s complete cost of capital analysis performed in this case is the type of evidence “necessary and customarily relied on” by the Commission in setting a utility’s ROE.[[13]](#footnote-13)/ Indeed, Mr. Gorman’s cost of capital analysis in the record in this case is substantially similar to his analysis in PSE’s most recent general rate case.[[14]](#footnote-14)/ In setting PSE’s ROE in that case, the Commission found that “Mr. Gorman provides a thorough and broad examination of equity return using three approaches to DCF analysis …. He checks these results for reasonableness using [risk premium] and [capital asset pricing model] analyses …. His analytical approach is thoughtful and well-reasoned. In our view, Mr. Gorman offers the most comprehensive analysis ….”[[15]](#footnote-15)/
4. A similar comprehensive analysis in the record in this case provides the “depth and breadth of data analysis” necessary to support setting PSE’s ROE at 9.3%.[[16]](#footnote-16)/  Moreover, the Commission has previously relied on a single party’s analysis to determine a reasonable return on equity. In WUTC v. American Water Res., Inc., the Commission affirmed the administrative law judge’s determination to set American Water’s ROE at a level based principally on Staff’s DCF analysis, the only ROE analysis performed in the case.[[17]](#footnote-17)/ The Commission in that case noted that the “available facts in this case relative to return on equity include principally those included in Staff’s DCF analysis” and that “there is no evidence to controvert Staff’s DCF result ….”[[18]](#footnote-18)/
5. As noted above, Mr. Gorman’s analysis in this case was substantially more robust than a single DCF analysis. His analysis is further supported by the bond yield analysis performed by Public Counsel’s witness, Mr. Hill. Accordingly, no additional evidence was necessary to establish a reasonable ROE for PSE at the time Order 07 was issued. As Commissioner Jones determined, “PSE’s failure to submit a cost of capital study in these dockets should not prevent us from adjusting the Company’s equity return.”[[19]](#footnote-19)/  Thus, to comply with the Court’s order reversing the Commission’s findings of fact in Order 07 with respect to PSE’s ROE, the Commission should modify Order 07’s determinations that a 9.8% ROE was reasonable for PSE and that the “record does not support an adjustment to PSE’s cost of capital ….”[[20]](#footnote-20)/ The Commission should find that the record does support an adjustment to PSE’s cost of capital in the form of an ROE reduction to 9.3%.

**IV. CONCLUSION**

1. For the foregoing reasons, ICNU respectfully moves that the Commission modify Order 07 to find that substantial evidence exists in the record for a finding that a 9.3% return on equity was reasonable for PSE at the time Order 07 was issued.

Dated in Portland, Oregon, this 30th day of July, 2014.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

*/s/ Melinda J. Davison*

Melinda J. Davison

Tyler C. Pepple

333 S.W. Taylor, Suite 400

Portland, Oregon 97204

(503) 241-7242 telephone

(503) 241-8160 facsimile

mjd@dvclaw.com

tcp@dvclaw.com

Of Attorneys for Industrial Customers

of Northwest Utilities

1. / Order 07 ¶¶ 244-245. [↑](#footnote-ref-1)
2. / Order 07 ¶ 58. [↑](#footnote-ref-2)
3. / ICNU Ex. No. \_\_ (MPG-3). [↑](#footnote-ref-3)
4. / Id. [↑](#footnote-ref-4)
5. / Order 07, Separate Statement of Commissioner Jones ¶ 4. [↑](#footnote-ref-5)
6. / Court Order at 3. The Court’s Order is attached to this Motion for the Commission’s convenience. [↑](#footnote-ref-6)
7. / Court Order, Appendix A at 5. [↑](#footnote-ref-7)
8. / Pub. Counsel v. Utils. & Transp. Comm’n, 128 Wn. App. 818, 826 (2005). [↑](#footnote-ref-8)
9. / Wash. St. Dept. of Transp. v. Cent. Puget Sound Reg’l Transp. Auth., Docket Nos. TR-081229, TR-081230, TR-081231, TR-081232, Order 02 ¶ 18 (Apr. 15, 2010). [↑](#footnote-ref-9)
10. / Court Order at 2. [↑](#footnote-ref-10)
11. / Order 07 ¶ 220. [↑](#footnote-ref-11)
12. / Id. [↑](#footnote-ref-12)
13. / Court Order, Appendix A at 5. [↑](#footnote-ref-13)
14. / PSE v. WUTC, Docket Nos. UE-111048/UG-111049, Order 08 (May 7, 2012). [↑](#footnote-ref-14)
15. / Id. ¶ 88. [↑](#footnote-ref-15)
16. /  Order 07 ¶ 58. [↑](#footnote-ref-16)
17. /  Docket Nos. UW-980072, UW-980258, UW-980265, UW-980076, 1999 Wash. UTC LEXIS 63,

    6th Supp. Order at \*12-\*17 (Jan. 21, 1999). [↑](#footnote-ref-17)
18. /  Id. at \*15-\*16. [↑](#footnote-ref-18)
19. /  Order 07, Separate Statement of Commissioner Jones ¶ 5. [↑](#footnote-ref-19)
20. /  Id. at ¶ 220. [↑](#footnote-ref-20)