

**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

.....
WASHINGTON UTILITIES AND
TRANSPORTATION
COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

DOCKETS UE-121697 and
UG-121705

DOCKETS UE-130137 and
UG-130138

PUBLIC COUNSEL PROPOSALS
FOR REMAND

I. INTRODUCTION

1. Public Counsel makes the following recommendations in response to the Commission's Notice Suspending Response Deadlines and Providing Opportunity To File Proposals (August 5, 2014)(Notice). Public Counsel may have additional recommendations or comments in response

to the proposals of other parties, or as a result of discussions at the September 19, 2014, Prehearing Conference.

II. BACKGROUND AND SCOPE OF THE PROCEEDING

2. As the Commission's Notice notes, this matter comes before the Commission on remand from a decision of the Thurston County Superior Court,¹ requiring the Commission "to establish fair, just, reasonable, and sufficient rates to be charged under the Rate Plan, and to order any other appropriate relief." Notice at 2. As a general matter, "[w]hen the appellate process results in a remand to an agency, the agency must begin again....The agency must provide the same procedural safeguards required in the original action." *St. Joseph Hospital and Health Care Center v. Dept. of Health*, 125 Wn.2d 733, 744.
3. As Public Counsel has argued both at the Commission and on appeal, establishing the correct cost of capital for Puget Sound Energy (PSE) for the Rate Plan is essential to the new rate determination. While this includes the determination of return on equity (ROE), it is appropriate and necessary for the Commission to take evidence from expert witnesses on PSE's overall cost of capital, since that is integral to a determination of just and reasonable rates. This approach is consistent with the Commission's standard practice in rate setting cases, and with the methodology ordinarily employed by cost of capital experts.
4. Once cost of capital is determined, it is relatively straightforward to establish the specific rates properly to be charged under the Rate Plan effective July 1, 2013. This calculation would simply apply the newly determined cost of capital to the components of the Rate Plan. Witnesses for the parties could preset the rate impact of their recommendations, and ultimately,

PSE would calculate the rates, based on the determined cost of capital, subject to review by other parties. If the cost of capital is determined to be lower than that incorporated in current rates, customer refunds or credits would need to be calculated based on rates paid since July 1, 2013.

5. On August 12, 2014, the NW Energy Coalition (NWECC) filed its Position on Remand Proceedings (NWECC Position). NWECC states that it reads the Court's Order as not addressing the impact of decoupling on ROE, but only requiring that "the Commission must consider additional evidence before determining PSE's return on equity in the context of a multi-year Rate Plan." NWECC Position at 2. NWECC's interpretation of the Court's Order is incorrect. The Court has remanded the case to the Commission, broadly to set fair, just, reasonable, and sufficient rates, and specifically, to establish the appropriate ROE. The determination of ROE, by definition requires an assessment of the risk faced by PSE's investors, which in turn requires consideration of PSE's entire financial situation, including its existing rate mechanisms. The Final Order recognized that this is an issue in the case, *see, e.g.*, Final Order, ¶ 57, but stated the evidence was lacking to address the impact of decoupling. Final Order, n.162. The Court Order noted that, as a result, the Commission acted "without the evidence it deemed necessary." Order, Appendix A, p. 5. NWECC's position would merely continue that defect by preventing development of a full record in the impact of decoupling on ROE.

6. NWECC itself notes that the ROE must be determined "in the context of a multi-year Rate Plan," an integral component of which is full decoupling. Public Counsel does not challenge or oppose the approval of decoupling in this case. However, it would be legal error for the

¹ Thurston County Superior Court, Case Nos. 13-2-01576-2, 13-2-01582-7, Order Granting in Part and Denying in Part Petitions for Judicial Review (Order), July 25, 2014.

Commission to preclude analysis and testimony by cost of capital experts of decoupling's impact on ROE, as a component of the multi-year Rate Plan.

III. REMAND PROPOSALS

7. Time Period. Public Counsel requests that the Commission establish at the outset of the remand proceeding guidance as to the relevant time period to be used by parties and their witnesses for preparing a cost of capital analysis. For example, a cost of equity analysis as of January 2013 would produce a different result than a cost of capital analysis targeted at the rate effective date, July 1, 2013. Identifying a specific time period will create a record which is the most complete and the most useful to the Commission, allowing an "apples to apples" comparison of differing recommendations. Without such direction, an individual party runs the risk that its analysis may simply be discounted as addressing the "wrong period." Likewise, the Commission is disadvantaged if it lacks the complete spectrum of comparable party recommendations for the same time period.
8. Public Counsel recommends that the time period for analysis should be the three month period leading up to the effective date of the Rate Plan rates (July 1, 2013), that is April 1, 2013, to June 30, 2013. This period encompasses the time period of the hearing (May 16, 2013), deliberations, and Final Order 07 (June 25, 2013) in the initial proceeding. In addition, this time period will provide the best assessment of the investor-expected cost of capital going forward into the rate year.
9. An alternative time period would be the time period used by ICNU witness Gorman. Mr. Gorman presented an ROE determination as of April 19, 2013, based on data from the prior 13-week period (January 18-April 19). Exhibit No. MPG-3, pp. 11-12. While analyses from that

time period would not provide quite as accurate an estimate for the beginning of the Rate Plan, the Commission already has Mr. Gorman's evidence from this period and could reasonably request that other evidence be provided using the same time period in order that the analyses be comparable.

10. Use of current 2014 capital costs would not be appropriate. While it may be the case that capital costs are actually lower now than they were when the Final Order was issued, the current cost of capital and precise market conditions were not available to the Commission at the time of its decision. Therefore, using "20/20 hindsight" and relying on the current cost of capital, while beneficial from a ratepayer perspective, would not comport with the requirements of the remand.

11. As part of the determination of the time period, the Commission should clarify in its procedural order that evidence after the time period identified (i.e., any time after the time period cut-off) is not relevant, and will not be considered. While somewhat challenging methodologically, the appropriate analysis is to place the Commission in the position it was in early 2013, with a more complete record, rather than to use *post hoc* analysis.

12. Discovery. Consistent with Public Counsel's motion, filed separately today, the Commission should make the discovery rules available immediately to parties so that analysis can be begin promptly. This will aid all parties and the Commission in completing the remand in an expeditious fashion. Delaying discovery until PSE files its recommendation would prejudice Public Counsel's preparation of its analysis. Public Counsel's can proceed with discovery of company-specific information that is independent of any time-specific market data affected by the Commission's decision on the analytic time period.

13. Establishing the Record. Public Counsel believes it is important for the Commission to establish the parameters of the record for the decision on remand. Public Counsel does not have a position on whether the existing record should be incorporated in the remand phase. One approach might be to allow parties to offer identified evidence from the earlier record, subject to a right of objection. In any event, it would be helpful for the Commission to clarify this issue early in the remand process and prior to testimony filing.
14. Settlement. The schedule should include a date for a settlement conference to provide parties an opportunity to explore a negotiated resolution of the case. Preferably this would take place after all parties have filed testimony and have had time to assess the filings,
15. Hearing Format. As an alternative to the standard Commission hearing format, in order to provide for a more efficient proceeding, Public Counsel respectfully requests that the Commission consider a witness panel format in which parties' tender their witnesses for questioning by the Commissioners. All parties would waive cross-examination. Questions would be tendered by the Commission to the panel or to an individual witness, with other witnesses being able to respond. With permission of the bench, counsel would be allowed to ask questions limited to following up, within the scope of the questions from the bench.
16. Proposed Schedule. Public Counsel recommends the following schedule. The schedule is designed to allow any rate changes to be filed by April 1, 2015, and implemented by May 1, 2015, pursuant to the Rate Plan schedule. Final Order, ¶ 9. Parties may discuss schedule prior to the September 19 Prehearing Conference, and Public Counsel reserves the right to refine or

modify its scheduling recommendations if appropriate:

PSE testimony	September 30
Discovery	Shortened response time 7 or 5 business days
Settlement conference	October 15
Staff/Public Counsel/Intervenor	October 30 (or 30 days after Company filing)
Rebuttal/cross answering	November 20, 2014.
Witness panel	Early December
Simultaneous briefs	Early January
Decision	Early February, 2015.

IV. CONCLUSION

17. Public Counsel respectfully submits these comments for consideration and looks forward to participation in the September 19 Prehearing Conference.

18. DATED this 26th day of August, 2014.

ROBERT W. FERGUSON
Attorney General



Simon J. Ffitch
Senior Assistant Attorney General
Public Counsel Division