

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES &
TRANSPORTATION
COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.

Respondent.

DOCKET UE-072300

DOCKET UG-072301

JOINT RESPONSE OF PUBLIC
COUNSEL, THE ENERGY
PROJECT AND ICNU TO PSE
MOTION FOR LEAVE TO
SUPPLEMENT TESTIMONY

I. INTRODUCTION

1. Public Counsel, The Energy Project, and the Industrial Customers of Northwest Utilities (ICNU) (Joint Parties) file this answer in opposition to Puget Sound Energy's (PSE or Company) request for leave to supplement its prefiled evidence in this proceeding. The Joint Parties request that the motion be denied.

II. ARGUMENT

2. On December 3, 2007, PSE filed with the Commission proposed tariffs to increase its electric revenues by \$174.5 million and its natural gas revenues by \$56.8 million. The tariffs were suspended and set for hearing.¹ PSE has posted the tariff sheets for public inspection.² Individual notices have recently been sent to all PSE customers providing detailed descriptions of the Company's request.³

¹ Complaint and Order Suspending Tariff Revisions and Order of Consolidation, Order 01 (Suspension Order).

² PSE Advice Letter, Advice No. 2007-34, p. 6 (Advice Letter).

³ See Public Counsel Status Report Letter, filed March 12, 2008.

3. On April 14, 2008, PSE filed a motion for leave to file supplemental testimony in the case. The Company’s new testimony increases the amount of the revenue requested by \$5.8 million (\$4.5 million electric, \$1.3 million gas) over the request in its proposed tariffs. PSE has not filed revisions to its initial proposed tariffs⁴ to reflect this increase, nor has it provided notice to its customers of the increased amount.

4. PSE’s ability to receive payment in rates and charges for the utility services it renders, and to change or increase those rates and charges, is strictly prescribed by statute in Washington. RCW 80.28.050 (Tariff schedules to be filed with Commission—Public schedules) requires electric and gas companies to file with the Commission schedules showing all their rates and charges. RCW 80.28.080 provides that electric and gas companies may only collect for their services in accordance with the rates and charges specified in the schedules that have been filed and are in effect at the time the service is rendered.

5. RCW 80.28.060 contains the statutory requirements that must be met in order for a company to change its tariffed rates. The statute provides, in pertinent part:

Unless the Commission otherwise orders, no change shall be made in any rate or charge...which shall have been *filed and published* by a gas company, electrical company or water company in compliance with the requirements of RCW 80.28.050 except after thirty days notice to the Commission *and publication* for thirty days, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect and *all proposed changes shall be shown by printing, filing and publishing new schedules*, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. (Emphasis added).⁵

⁴ WAC 480-80-111 allows substitute tariff filings within a pending tariff filing only, *inter alia*, if there is no material change and the change does not increase the rates contained in the pending tariff sheet.

⁵ See, *State ex rel. Model Water & Light Co. v. Department of Public Service of Washington*, 199 Wn. 2d 243, 33, 90 P.2d 243 (1939) (predecessor statute “prohibits any change in rate” except on prescribed notice and publication or order of the Commission.)

6. Once proposed revised tariffs have been filed, they are then subject to suspension and hearing, pursuant to RCW 80.04.130. RCW 80.04.130 provides, in pertinent part:

Whenever any public service company shall file with the commission any schedule...the effect of which is to change any rate, charge, rental or toll theretofore charged, the commission shall have power...to enter upon a hearing concerning the proposed change and the reasonableness and justness thereof, and pending such hearing and the decision thereon the commission may suspend the operation of such rate,... for a period not exceeding ten months from the time the same would otherwise go into effect, and after a full hearing the commission may make such order in reference thereto as would be provided in a hearing initiated after the same had become effective. (Emphasis added).

7. The express terms of the statute quoted above make it clear that the suspension, hearing, and order are limited to the “proposed change” in the schedule which has been filed with the Commission.⁶ In summary, Title 80 neither contemplates nor permits the filing by PSE of an initial proposed tariff increase which is simply a placeholder, subject to later upward revision at the Company’s option without following the statutory requirements. PSE is limited to seeking changes in rates that it has filed with the Commission in the form of proposed tariffs and of which it has provided the statutorily required notice.

8. The purpose of the statutory scheme is to avoid “moving target” ratemaking and to provide the Commission and the public with fair notice of the proposed increase in rates at issue. The statute also provides the Commission with a statutory period of ten months within which to review a proposed increase. If a company is permitted to file an upward revision in its initial revenue request without filing new tariffs, it can effectively circumvent the ten month review period, significantly reducing the amount of time available to the Commission and other parties

⁶ The Suspension Order is closely and expressly tied to the initial tariffs filed, both as to suspension and to the investigation of the “proposed increases.” Order 01, ¶3. The order provides that “PSE must not change or alter the tariffs filed in this docket during the suspension period, unless authorized by the Commission.” ¶ 17.

to review the request. In this case, if the supplemental testimony is allowed, the ten month period for review of the Company's request will be reduced by at least three and one half months with respect to the new request, a significant proportion of the full time permitted.

9. The Joint Parties acknowledge that the notice in the case states that the UTC "has the authority to approve rates that are higher or lower than PSE's request depending on the results of the investigation"⁷ as required by WAC 480-90-194(4)(h), 480-100-194(4)(h). The WAC notice provisions must be interpreted in a manner consistent with the provisions of Title 80 discussed herein, however, and cannot enlarge the scope of the statutory scheme. The notice provisions must also be read consistently with the WAC 480-80 rules specifically governing tariff filings. Accordingly, the WAC notice provisions are best interpreted as permitting the Commission to approve different rates based on rate spread and rate design determinations under the original request.
10. RCW 80.04.130 provides that the Commission "may prescribe a different rate to be effective...in its final order after its investigation, if it concludes based on the record that the originally filed and effective rate is unjust, unfair, or unreasonable." The statutory provision must be read together with the other statutory provisions of Title 80, however. It cannot be read in such a way as to nullify all the remaining tariff filing and notice requirements. RCW 80.04.130 can be read as permitting different lower rates, when the Commission finds that the proposed rate is "unjust, unfair, and unreasonable," or different rates based on different rate spread determinations. It seems unlikely that the statute means that the Commission can approve a higher rate because the Company's proposed rate was unjustly, unfairly, and

⁷ Public Counsel Status Report Letter, Attachment, March 12, 2008.

unreasonably low. Further, a distinction can be made between a statutory recognition of the Commission's discretion to decide the case based on the record before it and a requirement that a Company's rate request must comply with the tariff filing and notice requirements.

11. PSE has not complied with the statutory requirements for seeking a different and higher revenue request than it initially filed. PSE is not prohibited from increasing the amount of its revenue increase request, however, it must do so in accordance with Title 80. It cannot satisfy these requirements by simply advising, as it did in its initial filing, that it might revise its case at a later time.⁸ The Company must file and publish new proposed tariffs which incorporate the increased amount, effectively initiating a new rate case. If the Commission suspends the new tariffs, the current statutory deadline in the case would be extended accordingly.

12. It may be argued that Commission need not resolve this issue at this time but could do so in the final order in the case. If the Commission ultimately determines that the revenue requirement is below the initial request, the question arguably would be moot.⁹ However, the Joint Parties believe it is appropriate to raise the issue now. Addressing the issue at this stage allows PSE to file new tariffs now if it wishes, instead of learning only in the final order that its increased request is denied on statutory grounds. Judicial economy is also served by resolving the motion to supplement at this stage. If the statutory issue is taken under advisement, all parties and the Commission itself must assume the newly filed evidence will be part of the

⁸ Advice Letter, pp. 1-2.

⁹ This was the case in PSE's 2004 rate case, in which PSE sought to increase the size of its electric revenue request with new evidence submitted in rebuttal testimony. In that case, Public Counsel supported Staff's briefing in opposition to the Company's increased request. The issue was not decided because the revenue ordered was lower than the initial request. *WUTC v. PSE*, UE-060641, UG-060640, Initial Post-Hearing Brief of Commission Staff, ¶¶ 197-202, Initial Brief of Public Counsel, ¶ 124.

record, and must litigate the case at the new higher level. It would be preferable for the parties to know at this stage whether the supplemental evidence will be considered.

13. PSE may argue that it is not precluded from offering evidence of a higher revenue requirement, even if it is limited to its initial tariffed request, in order to show that the initial filing is conservative. The Joint Parties would oppose allowing the testimony on those grounds. First, the supplemental testimony is of limited relevance since the Commission could not allow the higher amount. Second, allowing PSE's supplemental testimony is burdensome for Joint Parties, because it creates the need for additional discovery and possibly testimony in response.

14. PSE filed extensive supplemental testimony, exhibits and work papers. In total, these documents include seventeen items of new evidence covering five witnesses (John H. Story, Karl R. Karzmar, David E. Mills, David W. Hoff and Janet K. Phelps). PSE's motion argues that the timing of the supplementation is designed help the parties to incorporate changes in advance of their testimony. In fact, the volume of materials offered by PSE places a major new burden on the Joint Parties and their expert witnesses precisely at a time when initial discovery is coming to completion and testimony is being drafted on the case as initially filed. As appropriate under the rules of discovery, counsel for PSE has advised that responses to data requests have been or will be revised to reflect the supplemental testimony. While the Joint Parties appreciate this effort by the Company, as a practical matter, it merely places additional burdens on parties to track and respond to all changes in data request responses that may be of relevance to the testimony to be filed.

15. Accordingly, the Joint Parties request that the Commission deny the motion to supplement the testimony to increase the revenue request. In the alternative if the Commission

grants the PSE motion, the Joint Parties request that the Commission extend the deadline for Staff, Public Counsel, and intervenors to file testimony for one week, to May 30, 2008. This will reduce PSE's time for rebuttal testimony, however, the change is reasonable, in light of the additional burden placed on other parties.

III. CONCLUSION

16. For the foregoing reasons, Public Counsel, ICNU, and the Energy Project respectfully request that the Commission deny PSE's motion for leave to supplement its testimony. In the alternative, if the motion is granted, the Joint Parties respectfully request that all parties be allowed an additional week, to May 30, 2008, to file their direct testimony.
17. DATED this 28th day of April, 2008.

Respectfully Submitted,

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Respectfully Submitted,

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