

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

DOCKET UE-072300
DOCKET UG-072301
(Consolidated)

DOCKET UG-080064

MOTION OF COMMISSION
STAFF TO REPLY AND REPLY
TO THE JOINT RESPONSE OF
PUBLIC COUNSEL, *ET AL.*

I. STAFF'S MOTION FOR LEAVE TO REPLY

1 Pursuant to WAC 480-07-370(d) and WAC 480-07-375, Commission Staff requests permission to reply to the Joint Response of Public Counsel, the Energy Project and ICNU ("Joint Parties"), which oppose Puget Sound Energy, Inc.'s ("PSE" or "the Company") request to file supplemental direct testimony and exhibits in these proceedings.

2 The Joint Parties present legal arguments beyond the scope of issues that is necessary for the Commission to resolve at this time.¹ Should the Commission nevertheless decide to now resolve the legal arguments raised by the Joint Parties, the Commission will benefit from full briefing from all parties. Good cause, therefore, exists to grant Staff the opportunity to reply to the Joint Parties.

3 Staff's reply follows in the next section below. Staff reserves the opportunity to supplement its reply if the Commission delays briefing on the issue to a later time.

¹ See, Response Of Commission Staff To Puget Sound Energy, Inc. Motion For Leave To File Supplemental Testimony and Exhibits (April 28, 2008). The Company concurs with Staff's assessment. See, PSE's Request For Leave To Reply To Joint Response (April 30, 2008).

II. REPLY TO THE JOINT PARTIES

4 The Company's supplemental testimony and exhibits increase PSE's electric revenue deficiency from \$174.8 million to \$179.7 million. The Company's gas revenue deficiency grows from \$56.8 million to \$58.1 million with the supplemental filing. The Company did not revise its tariff filing to reflect those changes.

5 The Joint Parties contest the Commission's authority to allow a rate increase above the tariff revisions. Staff disagrees with the legal arguments raised by the Joint Parties. The remaining arguments of the Joint Parties are procedural and can be addressed by extending the deadline for responsive testimony to May 30, 2008, as the Joint Parties request.

A. The Commission Has Legal Authority To Grant An Increase In Revenues Above the Filed Tariff Revisions Without Requiring The Company To File New Rates

6 The Joint Parties do not argue that the Commission is prohibited from allowing the Company to supplement its direct case with evidence of a revenue requirement above that proposed by the tariff revisions. Rather, the Joint Parties argue that the Commission is prohibited by RCW 80.04.130(1) and RCW 80.28.060 from granting rate relief above what the tariff revisions would produce, unless PSE files and publishes new tariff revisions that incorporate the higher amount.² Accordingly, the Company's supplemental testimony and exhibits should be rejected by the Commission.

7 The Joint Parties argument is refuted by RCW 80.28.020, which expressly authorizes the Commission to decide just and reasonable rates regardless of the rates contained in proposed tariff revisions:

Whenever the commission shall find, after a hearing had upon its own motion, or upon complaint, that the rates or charges demanded, exacted, charged or collected

² Joint Parties at ¶ 9.

by any gas company, electrical company or water company, for gas, electricity or water, or in connection therewith, or that the rules, regulations, practices or contracts affecting such rates or charges are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order. (Emphasis added.)

RCW 80.28.020 does not restrict the Commission to the proposed tariff revisions that have been filed. The statute allows the Commission to set whatever rates the evidence produced at hearing demonstrates are just, reasonable and sufficient, whether such rates are above or below the tariff revisions that have been filed.³

8 With respect to the requirements of RCW 80.28.060, the Joint Parties are generally correct that gas and electrical companies cannot change their rates and charges except upon notice and publication for thirty days. However, the Joint Parties ignore the language in RCW 80.28.060 stating that:

The commission, for good cause shown, may allow changes without requiring the thirty days' notice by duly filing, in such manner as it may direct, an order specifying the changes so to be made and the time when it shall take effect.⁴

Thus, if the evidence shows a higher revenue need than the proposed tariffs would generate, the Commission can find "good cause" to allow the Company to file for the higher amount

³ The Commission routinely references RCW 80.28.020 in its orders without the limitation argued by the Joint Parties. An example is the Company's most recent general rate case:

PSE's existing rates for natural gas service and electric service provided in Washington State are insufficient to yield reasonable compensation for the service rendered. *RCW 80.28.010; RCW 80.28.020.*

The Commission must determine the fair, just, reasonable, and sufficient rates to be observed and in force under PSE's tariffs that govern its rates, terms, and conditions of service for providing natural gas and electricity to customers in Washington State. *RCW 80.28.020.*

WUTC v. Puget Sound Energy, Inc., Dockets UE-060266 and UG-060267, Order 08 at ¶¶ 182 and 184 (January 5, 2007).

⁴ RCW 80.28.060 further states that the thirty day notice and publication requirement applies "[u]nless the commission otherwise orders, . . .".

on less than thirty days statutory notice. RCW 80.28.060 would even allow that to occur through the Company's compliance filing.

9 The Joint Parties acknowledge that the customer notice agreed to by Public Counsel in this case states that the Commission "has authority to approve rates that are higher or lower than PSE's request depending on the results of the investigation."⁵ The Joint Parties seek to limit that admission to Commission approval of different rates based on rate spread and rate design determinations that do not change the overall revenue requirement in the Company's original proposal.⁶

10 The Joint Parties' position concedes that any number of customer classes could see a rate increase higher than the initial tariff revisions. Such a result is clearly inconsistent with the Joint Parties' public policy argument that customers must have notice of the rates they may be expected to pay before the Commission can act.⁷

11 In sum, once a utility files revisions to its existing tariffs and those revisions are suspended by the Commission and set for hearing, the Commission has legal authority to set just, reasonable and sufficient rates above or below the proposed tariff revisions, even if that means an increase in the proposed overall revenue requirement. The Joint Parties' arguments to the contrary should be rejected.⁸

⁵ Similar language is found in WAC 480-100-194(4)(h).

⁶ Joint Parties at ¶ 9.

⁷ Joint Parties at ¶ 8.

⁸ Staff acknowledges that its position here is inconsistent with its post-hearing briefing in PSE's 2004 general rate case. *See*, Joint Parties at n.9. As the Joint Parties note, however, the issue was never resolved by the Commission because the additional revenues ultimately allowed were less than the Company initially requested. Moreover, further review of the relevant statutory provisions has necessitated a re-evaluation of the Staff position previously taken.

B. Staff Does Not Object To The Joint Parties' Alternative Request To Extend The Deadline For Responsive Testimony

12 In addition to their legal arguments, the Joint Parties argue that the supplemental filing offered by PSE creates a "moving target" that unfairly burdens their discovery efforts and preparation of response testimony.⁹ Therefore, the Joint Parties argue alternatively for a one week delay to May 30, 2008 to file response testimony.

13 In this case at this time, Staff has not encountered the difficulties expressed by the Joint Parties. Nevertheless, Staff is sympathetic to the Joint Parties' procedural concerns and, therefore, does not object to the case schedule modification they request.

14 Staff reserves the right to object on the same basis to any further supplemental testimony or improper rebuttal that PSE may file during the remainder of this case.

DATED this 30th day of April, 2008.

Respectfully submitted,

ROBERT M. MCKENNA
Attorney General



ROBERT D. CEDARBAUM
Senior Counsel
Counsel for Washington Utilities and
Transportation Commission

⁹ Joint Parties at ¶¶ 8 and 13-14.