

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

Docket No. UE-090704

Docket No. UG-090705

**MOTION OF PSE TO REPLY; AND
REPLY TO PUBLIC COUNSEL'S
ANSWER TO PSE MOTION FOR LEAVE
TO FILE SUPPLEMENTAL TESTIMONY
AND EXHIBITS**

I. PSE'S MOTION FOR LEAVE TO REPLY

1 Pursuant to WAC 480-07-370(d) and 480-07-375, Puget Sound Energy, Inc. ("PSE" or "the Company") requests permission to reply to the Public Counsel Answer to PSE's Motion For Leave To File Supplemental Testimony filed on October 5, 2009 ("Public Counsel Answer"). A reply to the Public Counsel Answer is necessary because the Public Counsel Answer relies on an incomplete and incorrect analysis of the statutes and Commission rules relating to the filing of supplemental testimony. Public Counsel wrongly contends that PSE's request to file supplemental testimony is prohibited by Commission statutes and rules. PSE's reply will demonstrate that the statutory and regulatory framework does not prevent a utility in an adjudicative rate proceeding from providing updated, more accurate evidence supporting a higher rate increase than that originally requested. Rather, the statutes and rules expressly authorize the Commission to approve rates that are higher or lower than those rates requested by

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PUBLIC COUNSEL'S ANSWER TO PSE'S MOTION
FOR LEAVE TO FILE SUPPLEMENTAL
TESTIMONY AND EXHIBITS- 1**

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PSE in its initial filing. Moreover, the public notice required by Commission rule advises customers that the Commission may approve rates different than those requested by the Company in its initial filing on May 8, 2009.

II. REPLY TO PUBLIC COUNSEL'S ANSWER

2 In opposing PSE's motion to supplement the record, Public Counsel incorporates by reference arguments regarding statutory tariff and notice requirements set forth in Public Counsel's Answer to PSE Motion for Leave to File Supplemental and Revised Testimony and Exhibits, dated August 10, 2009. Public Counsel Answer at ¶ 4. However, the statutes and administrative rules Public Counsel relies on address tariff filings outside of an adjudicative proceeding. For example, Public Counsel cited RCW 80.28.050, which requires tariff schedules to be filed with the Commission, and RCW 80.28.060, which requires 30 days statutory notice for tariff changes "[u]nless the commission otherwise orders." Public Counsel's analysis of the ratemaking framework ignores RCW 80.28.020—a key statute that addresses the Commission's broad authority to determine rates *in an adjudicative proceeding*. RCW 80.28.020 states as follows:

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 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.)

3 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.

4 The Commission suspended the proposed tariff revisions on May 28, 2009, for investigation and hearing. *See* Complaint and Order Suspending Tariff Revisions, Docket No. UG 090705, Order 01 (“Suspension Order”). At that point, the filing became an adjudicative proceeding, and, as explained above, entirely different statutory provisions and rules apply than the statutes and rules relied on by Public Counsel in its opposition. Once the Commission suspends proposed tariff changes, “[t]he commission may prescribe a different rate . . . after its investigation, if it concludes based on the record that the originally filed and effective rate is unjust, unfair or unreasonable.” RCW 80.04.130(2). Rather than relying on outdated or incorrect information to determine rates, “the Commission’s paramount interest is in having a full record with the best available evidence upon which to base its decisions.” *Wash. Utils. and Trans. Comm’n. v. Puget Sound Energy, Inc.*, Dockets UE-072300 and UG-072301 (*Consolidated*) at ¶ 10.

5 Public Counsel's concern that the public will not have adequate notice of the rate increase is also without merit. The Commission rules regarding public notice of a general rate proceeding specifically require the Company to notify the public that the final rates established by the Commission may be higher than those requested in the Company’s initial filing. WAC 480-100-

197 requires that PSE notify the public of information set forth in WAC 480-100-194(4),

including:

A statement that the commission has the authority to set final rates that may vary from the utility's request, which may be either higher or lower depending on the results of the investigation.

6 The public notice that is being provided to customers includes the language set forth above and expressly notifies the public of the additional revenue requirement described in the supplemental filing.

7 Public Counsel's argument that the change in revenue requirement set forth in PSE's supplemental filing left potential intervenors without notice of the need to intervene should be rejected. Public Counsel has provided no evidence of such potential intervenors, and it is difficult to believe that a potential intervenor would decline to intervene based on an electric revenue requirement deficiency of \$148.4 million (the amount requested in the initial filing), but would have intervened had the revenue requirement deficiency been \$153.9 million (the amount requested in the supplemental filing).

8 Further, Public Counsel ignores the fact that many of the updates in the supplemental filing decrease the revenue requirement deficiency. This is true of the update to the power cost adjustment, which decreases the revenue deficiency by \$14 million; the update to the cost of long term debt and rate of return to reflect a recently completed bond issuance, which decreases the revenue deficiency by \$3.5 million; and the Wild Horse Expansion adjustment, which decreases the revenue deficiency by \$1.6 million. Public Counsel claims that it has inadequate time to analyze the power cost adjustment, apparently preferring the higher power costs as originally filed to the updated, lower power cost adjustment contained in the supplemental testimony.

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9 The Company is filing this updated supplemental evidence more than seven weeks in advance of the date response testimony and exhibits are to be filed (November 17, 2009). The Commission has expressed the importance of filing such evidence as early as possible, specifically in *Wash. Utils. and Trans. Comm'n. v. Avista Corp.*, Order Granting Motion for Leave to File Supplemental Testimony, in Docket Nos. UE-080416 and UG-0080417, Order 04 (August 8, 2008).

Avista submitted its filing well in advance of the deadline for submitting responsive testimony. Submitting this information in advance of the deadline for filing responsive testimony rather than raising the modifications in rebuttal, allows the other parties to address the updated information in responsive testimony. We conclude that it would further the parties' interest in having an adequate amount of time to prepare testimony and exhibits to extend the deadlines for submitting prefiled responsive, rebuttal, and cross-answering testimony.

In the Avista case referenced above, Avista requested permission to file supplemental evidence that raised its revenue requirement from \$36.6 million to \$47.4 million. It filed such request approximately six weeks prior to the date response testimony was due.

10 PSE had notified the Commission and the parties of its intent to file this update, and PSE believes that the parties to this proceeding were generally aware of the substance of the changes made in the supplemental direct testimony, and thus not surprised. Accordingly, there is no prejudice to the parties in this proceeding, and the parties will not be disadvantaged by the Company's supplemental evidence.

III. CONCLUSION

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As a legal matter, the Commission has authority under Washington statutes and regulations both to grant PSE's Motion for Leave to File Supplementary Testimony and Exhibits and to approve the Company's requested rate relief. As a procedural matter, PSE has filed its request sufficiently early in this proceeding to provide ample opportunity for all participants to review and respond to PSE's supplemental evidence.

DATED: October 7, 2009

Respectfully Submitted,

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