

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	DOCKETS UE-121697
TRANSPORTATION COMMISSION,	)	and UG-121705 (<i>consolidated</i>)
)	
Complainant,)	
	)	ORDER 10
v.)	
)	
PUGET SOUND ENERGY,	)	PREHEARING CONFERENCE
	)	ORDER; ORDER DENYING
Respondent.	)	MOTION TO MODIFY ORDER 07
)	
.....)	
WASHINGTON UTILITIES AND	)	DOCKETS UE-130137
TRANSPORTATION COMMISSION,	)	and UG-130138 (<i>consolidated</i>)
)	
Complainant,)	
	)	ORDER 10
v.)	
)	
PUGET SOUND ENERGY,	)	PREHEARING CONFERENCE
	)	ORDER
Respondent.)	
)	
.....)	

PROCEEDINGS. The Commission entered Order 07, its Final Order in these proceedings, on June 25, 2013. Order 07 approved several innovative ratemaking mechanisms to address the Commission’s policy goal of breaking the pattern of almost continuous rate cases for Puget Sound Energy (PSE). These mechanisms included:

- An update to PSE’s rates established in the Company’s 2011/2012 GRC following a so-called Expedited Rate Filing (ERF) process that was intentionally very limited in scope and that resulted in a relatively modest 1.6 percent increase in electric rates and a slight, 0.1 percent decrease in natural gas rates.

- Approval of a joint petition by PSE and the Northwest Energy Coalition seeking authority to implement full decoupling of electric and natural gas rates.
- Approval of a rate plan that allows for modest annual increases in PSE's rates while requiring that the Company not file a general rate increase before April 1, 2015 at the earliest. Under the rate plan, however, PSE must file a GRC by April 1, 2016, at the latest.

Judicial Review

- 1 The Attorney General's Office of Public Counsel (Public Counsel) and the Industrial Customers of Northwest Utilities (ICNU) filed petitions for judicial review with the Superior Court in Thurston County on July 24, 2013. On July 25, 2014, the Court affirmed in part and reversed in part the Commission's Order 07. The Court expressly affirmed the Commission's decisions not to hold a general rate case and to use an attrition adjustment or K-factor to adjust rates during the rate plan period. The Court, however, did not fully endorse the Expedited Rate Filing process as an alternative to a general rate case in the context of approving a multi-year rate plan.
- 2 The Court reversed "the Commission's determination that the Puget Sound Energy's rates to be charged during the rate plan approved in the administrative proceeding below are just, fair, reasonable and sufficient . . . because the Commission's findings of fact with respect to the return on equity component of Puget Sound Energy, Inc.'s cost of capital in the context of a multi-year rate plan are unsupported by substantial evidence and the Commission improperly shifted the burden of proof on this issue from Puget Sound Energy, Inc. to the other parties in the proceeding below, contrary to RCW 34.05.461(4) and RCW 80.04.130(4)." The Court states specifically in its Order that it remanded the proceeding to the Commission for "further adjudication . . . to establish fair, just, reasonable and sufficient rates to be charged under the rate plan, and to order any other appropriate relief."
- 3 The Court said, in effect, that while the Commission need not in every instance hold a general rate case to adjust rates, with all the special requirements for such cases established by Subpart B of the Commission's procedural rules, the Commission

cannot adjust rates in the context of considering a multi-year rate plan without undertaking a thoroughgoing analysis of return on equity with the Company bearing the burden of proof, as is typically required, if at all, only in general rate proceedings.

ICNU's Motion and Petition

4 On July 30, 2014, ICNU filed its Motion to Modify Order 07 and a Petition for Accounting Order. ICNU, in effect, argues in its motion that the Commission should ignore the Superior Court's direction to conduct "further adjudication, consistent with this Court's Order and attached Ruling" and simply amend Order 07 by entering a finding that ICNU's witness's testimony in the 2013 Commission's evidentiary hearing in these proceedings is substantial evidence that supports a 9.3 percent return on equity (ROE) for PSE. ICNU argues that Mr. Gorman's testimony and exhibits are sufficient evidence for ICNU to be deemed to have carried the burden of proof on this issue. ICNU's petition, however, ignores the Court's direction to the Commission to conduct additional process to develop a record that includes the full body of evidence the Commission typically considers when determining a regulated utility's return on equity to be effective during the rate period. Indeed, the Court specifically criticized the Commission's determination of rates in Order 07 because "it did not base these rates on a sophisticated model or complex presentation of evidence *by PSE* regarding its current situation." (emphasis added). The Court observes in addition that:

The Commission expressed frustration about the lack of evidence in the record regarding rates, and specifically the return on equity component in rate-setting analysis. The Commission stated that "[t]he record on his issue in this case lacks the depth and breadth of data analysis, and the diversity of expert evaluation and opinion on which the Commission customarily relies in setting return on equity."

It is abundantly clear from these references and from other passages in the Court's Order that the Court expects these observed deficiencies in our record to this point to be cured with respect to the issue of return on equity. We cannot do so by simply relying on the existing record that the Court has determined is inadequate to the task. It is essential that we conduct additional process to allow PSE and the other parties the opportunity to develop and present such evidence on the issue as they believe will

provide the Commission with an adequate record, as they would do, for example, in the context of a general rate case.

- 5 For these reasons, we deny ICNU’s Motion to Modify Order 07. We will carry ICNU’s Petition for an Accounting Order with the case and rule on it at an appropriate time following our determination of the issue of what rate of return on equity should be applied for purposes of establishing baseline rates for the rate plan.

Commission Request for Proposals and Notice of Prehearing Conference

- 6 On August 5, 2014, with respect to ICNU’s motion and petition discussed above, the Commission issued a Notice Suspending Response Deadlines and Providing Opportunity to File Proposals suggesting appropriate process considering the Court’s Order. The Commission simultaneously gave notice it would conduct a prehearing conference to discuss the proposals. ICNU, Public Counsel, Staff, the Northwest Energy Coalition (NVEC), and PSE each filed in response to the Commission’s request for proposals.
- 7 ICNU argued, in accordance with its then-pending motion and petition, that the Commission should simply modify Order 07 by adopting witness Gorman’s proposed ROE in the earlier phase of these proceedings. We now have formally rejected this proposal, for the reasons discussed. ICNU suggests as an alternative that the Commission “hold a general rate case for PSE so that a full picture of its rates can be developed.” On the other hand, ICNU says it will participate fully in whatever process the Commission determines is appropriate.
- 8 Public Counsel recommends that the parties be given an opportunity to develop and present evidence on the questions of return on equity and other aspects of the broader question of cost of capital, such as capital structure, following generally the process approach the Commission customarily uses in general rate cases (*i.e.*, pre-filed direct testimony by the Company, response testimony from other parties, rebuttal by the Company, a hearing, and briefing). Public Counsel argues, in addition, that the Court’s Order requires the Commission to consider explicitly the issue whether implementation of decoupling via Order 07 should require a reduction in PSE’s return on equity otherwise determined to be reasonable. Public Counsel states that “it would

be legal error for the 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.”

- 9 Public Counsel suggests 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. As an alternative, Public Counsel suggests a reasonable time period would be that used by ICNU's witness, Mr. 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). Public Counsel, however, does not have a position on whether the existing record, including Mr. Gorman's earlier testimony, should be incorporated in the remand phase.
- 10 Staff, like Public Counsel, proposes that the Commission receive evidence from the parties concerning return on equity projections based on the data available in early 2013. Staff, however, is a bit more prescriptive in suggesting this would be “at the time the parties filed their respective testimonies. For example, PSE filed testimony February 1, 2013; accordingly, PSE must file a return on equity case based on the data available up to February 1, 2013.” Staff proposes that the remand proceedings be conducted only in the ERF dockets, UE-130137 and UG-130138 (consolidated), and disagrees with Public Counsel concerning whether the Court's decision implicates the issue of a possible reduction to PSE's return on equity due to the effects of decoupling.
- 11 PSE suggests that the Commission receive and consider evidence concerning “the appropriate return on equity for the time period July 1, 2013, through the end of the rate plan, based on information available in early 2013 when the Commission originally considered the rate plan.” PSE, in agreement with Staff, argues that the Commission is not required to reconsider its determination not to prospectively adjust return on equity based on decoupling. PSE argues this can be considered in PSE's next GRC based on results achieved during the rate plan, as contemplated by Order 07.

12 PSE also proposes a more or less standard process approach for our remand proceedings: direct testimony, response, rebuttal, hearing, and briefing limited to determination of the ROE. PSE says that the issue of refunds is not ripe because the outcome may be to leave ROE at 9.8 percent, lower it, or raise it. This suggests a phased proceeding, if the Commission changes the ROE from 9.8 percent.

13 **PREHEARING CONFERENCE/PRESIDING OFFICERS.** The Commission convened a prehearing conference in this proceeding at Olympia, Washington, on September 20, 2014, before the Commissioners, assisted by Administrative Law Judge Dennis J. Moss, whom the Commission retains as presiding officer in these proceedings. This was a joint prehearing conference in Dockets UE-121697 and UG-121705 (*consolidated*), and Dockets UE-130137 and UG-130138 (*consolidated*).

Discussion with Parties Concerning Scope of the Court's Remand Order

14 The Commission discussed at length with the parties their somewhat divergent proposals for how exactly we should define and conduct our process on remand. These discussions were useful in helping the Commission understand just how challenging a task it may be to satisfy the Court's direction on remand. However, it was not possible at the time of the conference to establish a definitive course for going forward.

15 Putting to one side ICNU's suggestion that we simply rely on the current record and consider only witness Gorman's earlier testimony, and perhaps that of Public Counsel witness Hill, there seems to be general agreement among the parties that they should have an opportunity to develop a record for our consideration focused on the period January through June 2013. We do not lightly dismiss, however, the concerns ICNU raised that it might be difficult or impossible for cost of capital expert witnesses to analyze meaningfully return on equity for a period more than a year ago. ICNU's concerns are grounded in an affidavit from its cost of capital expert witness in this proceeding, Mr. Gorman. His affidavit accompanied ICNU's Motion to Amend Order 07, discussed earlier.

16 Mr. Gorman discusses in detail his specific concerns that the availability of data essential to rate of return analyses may be limited and inadequate to the task of

meaningful evaluation using standard analytical models such as discounted cash flow and capital asset pricing. Mr. Gorman states that:

The potential lack of necessary information, coupled with the significant possibility that parties will use incompatible data and assumptions in their models, is likely to make it difficult, if not impossible, for parties to evaluate and challenge the validity of other parties' results, and for the Commission to compare these results on an apples-to-apples basis.

- 17 Responding to questions from the Bench, PSE, Public Counsel, and Staff each said they had discussed these concerns raised by Mr. Gorman with their own expert witnesses. Although these parties offered no details concerning their discussions, they each stated that their respective experts believe the obstacles can be overcome.
- 18 Mr. Gorman's affidavit identifies another problem we face in this remand proceeding. He states that "there are likely to be discrepancies between market projections at the time Order 7 was issued and how markets actually performed since that time." We inquired of the parties at prehearing whether the Commission should turn a blind eye to any such discrepancies and not consider them even if they demonstrate that projections made based on data available in the first half of 2013 diverge from subsequent, but now historic or contemporaneous, reality in one direction or another.
- 19 The parties' answers were to the effect that we should ignore data from periods subsequent to June 2013. Indeed, to varying degrees, PSE, Public Counsel, and Staff urge us to be prescriptive in setting a time-frame for the data that experts may consider in analyzing the rate of return issue on remand. Their remarks seem to endorse Public Counsel's suggestion that "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. They offered us, however, no completely satisfactory rationale for doing so in the specific context of determining rate of return on equity in response to the Court's Order. It is an easy matter to foresee that one party or another, dissatisfied with whatever return on equity determination we might make exclusively on the basis of data available prior to July 2013, would appeal and argue that had we not excluded data after that date it would have shown the assumptions underlying the expert testimony upon which we base our

decision were unreasonable. Were the Court to agree, we would face yet another remand.

20 Further complicating the picture, the parties take different, perhaps irreconcilable, positions on the question whether the Court's Order requires us to consider the possible impact of decoupling on rate of return. PSE and Staff argue the Court directs us only to inquire into what rate of return on equity should be used to determine baseline rates via the Expedited Rate Filing process, without consideration of the potential effect of decoupling during the rate plan period. Indeed, Staff argues the Court remanded Order 07 only as it concerns Dockets UE-130137 and UG-130138, and that we should limit our proceedings on remand to these dockets. NWECC filed a statement supporting this viewpoint but says in the alternative that if "the Commission intends to revisit the question of whether a prospective reduction in PSE's return on equity due to the decoupling mechanism is appropriate, the NW Energy Coalition would participate in the remand proceedings to address only this limited question."

21 Public Counsel and ICNU, on the other hand, support further examination of whether there should be an explicit, or perhaps implicit, adjustment to return on equity to reflect the mechanism's impact on the allocation of risk between PSE and its customers. As noted earlier, Public Counsel goes so far as to argue that "it would be legal error for the 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." Public Counsel, however, does not reconcile this statement with its contention that "[t]he 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." Our decision in Order 07 to use PSE's rate of return on equity as approved in its most recent general rate case preceding the ERF proceeding did not include consideration of the possible effects of decoupling, among other reasons, because for purposes of updating rates established in that general rate case decoupling was not an "existing rate mechanism." Order 07 separately considers whether a prospective adjustment to return on equity should be made considering the Commission's approval of decoupling mechanisms in the Order. Unfortunately, it is not entirely clear from the Court's Order whether it remanded this issue, or only the issue whether an adjustment based on market data

and familiar return on equity analytical models, such as that proposed by ICNU witness Mr. Gorman, is implicated on remand.

Commission's Scoping Determinations

- 22 The Commission does not undertake in general rate proceedings to prescribe the nature or extent of evidence parties present on the question of return on equity. As with respect to other issues in rate proceedings, we leave it to the parties to govern themselves when deciding what testimony and documentary evidence is sufficient to carry their respective burdens of going forward and, in the case of the Company, the burden of proof. We see no good reason to deviate from this well-established practice here.
- 23 Were we to respond to what are in effect motions *in limine* concerning time frames and factors that may be relevant to our ultimate determination, we potentially would leave the Commission open to a second round of appeal on grounds similar to what led the Court to remand this proceeding. The Court reversed the Commission for having made decisions setting baseline rates for purposes of continuing application during the rate plan period on the basis of a record that did not include evidence from the Company and other evidence on which the Commission customarily relies when determining return on equity. Under these circumstances we do not wish to prescribe narrow boundaries that would limit the parties' ability to present evidence. It would be particularly inappropriate to set such limits here given the unusual, perhaps unique, posture of this proceeding.
- 24 While the Commission expects the parties to provide focused and detailed analyses such as would have informed a determination of return on equity in early 2013 for purposes of updating PSE's rates from the 2012 general rate case and for continued application through the rate plan period, it may be that other relevant evidence will be prefiled for our consideration. We cannot anticipate what this evidence might be or determine in advance of its presentation whether it will be found relevant and otherwise admissible. As in any case, parties may object to the admission of testimony and exhibits at hearing. If there are objections, the Commission will hear argument and make appropriate rulings informed by the proffered evidence and argument. The Commission may also propose to exclude evidence on its own motion

and, again, will provide an opportunity for argument before any final determination of relevance.

- 25 In the final analysis, we leave it to the resourcefulness of the parties to overcome the challenges we discuss above by presenting such evidence and making such argument as they individually decide will be sufficient to persuade us of one outcome or another. As in the context of a contested general rate proceeding, the Commission will consider all relevant evidence admitted on the question of return on equity, weigh the evidence, determine a range of reasonable returns, and set a return on equity that falls within that range.
- 26 **DISCOVERY.** Discovery will continue pursuant to the Commission's discovery rules, WAC 480-07-400 – 425. Following the filing of PSE's direct case, the response time for data requests will be five business days. In addition, to expedite the exchange of potentially relevant information, parties are required to provide all work papers, including model runs and source documents, at the time they prefile testimony and exhibits. The Commission urges the parties to work cooperatively together to avoid having to bring discovery matters forward for formal resolution.
- 27 **PROCEDURAL SCHEDULE.** The Commission establishes the procedural schedule set forth in Appendix A to this Order.
- 28 While this schedule is workable and does not cause prejudice to any party, all parties will be required to exhibit cooperation and diligent effort to ensure that a full and adequate record is developed. The Commission will provide notice of any change in this schedule, in the event this is necessary to protect due process concerns or for other reasons.
- 29 **NOTICE OF HEARING.** The Commission will hold evidentiary hearings in this matter beginning **January 7, 2015, at 9:30 a.m.**, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. Hearings will continue from day to day until completed. The Commission may alter this schedule by subsequent notice.

30 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file the **original plus 11 copies** of the unredacted versions of all pleadings, motions, briefs, and other prefiled materials. Parties must also file the original and one copy of any redacted version(s). These materials must conform to the format and publication guidelines in WAC 480-07-395 and WAC 480-07-460. The Commission prefers that materials be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.

31 All filings must be mailed or delivered to the Executive Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.

32 An electronic copy of all filings must be provided through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by e-mail delivery to (records@utc.wa.gov). Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette, CD or USB flash drive including the filed document(s). Parties *must furnish* electronic copies in MS Word 6.0 (or later) supplemented by a separate file in .pdf (Adobe Acrobat) format. Parties must follow WAC 480-07-140(5) in organizing and identifying electronic files.

33 **ELECTRONIC SUBMISSION OF DOCUMENTS.** The Commission grants a one-day extension of the paper-filing requirement under WAC 480-07-145(6), allowing electronic submission of documents with the Commission on the deadlines established by the procedural schedule. Parties must submit documents through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by e-mail to (records@utc.wa.gov), and file an original, plus **eleven** paper copies, of the documents with the Commission by the following business day. Parties must provide courtesy copies of their electronic submissions to the presiding administrative law judge and the parties to the proceeding.

34 The Commission requires parties to submit documents in adjudicative proceedings no later than 2:00 p.m. on the deadline date to give Records Center personnel adequate time to post and distribute them.

- 35 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters. Parties are encouraged to consider means of informally resolving disputes.
- 36 **NOTICE TO PARTIES:** A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of the order in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.

Dated at Olympia, Washington, and effective October 8, 2014.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge

**APPENDIX A
PROCEDURAL SCHEDULE
DOCKETS UE-121697/UG-121705,
and
DOCKETS UE-130137/UG-130138**

<u>EVENT</u>	<u>DATE</u>
Company Direct Testimony and Exhibits	November 5, 2014
Response Testimony	December 3, 2014
Rebuttal and Cross- Answering Testimony	December 19, 2014
Cross Examination Exhibits	January 5, 2015
Hearing	January 7, 2015
Post-Hearing Briefs	January 23, 2015
Reply Briefs	February 4, 2015