

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

WASHINGTON UTILITIES AND)	DOCKETS UE-090704
TRANSPORTATION COMMISSION,)	and UG-090705 (<i>consolidated</i>)
Complainant,)	
)	ORDER 08
v.)	
)	GRANTING LEAVE TO FILE
PUGET SOUND ENERGY, INC.,)	SUPPLEMENTAL AND REVISED
)	TESTIMONY AND EXHIBITS;
Respondent.)	SHORTENING RESPONSE TIME
)	FOR DISCOVERY
.....)	

MEMORANDUM

- 1 On May 8, 2009, Puget Sound Energy, Inc. (PSE), filed with the Washington Utilities and Transportation Commission (Commission) to increase its rates for electric service (Docket UE-090704) and gas service (Docket UG-090705) to customers in Washington. The Commission suspended operation of the tariffs, consolidated these dockets, and convened a prehearing conference at Olympia, Washington on June 22, 2009.

- 2 PSE included its direct testimony and exhibits as part of its initial filing, as required by the Commission’s procedural rules. On September 28, 2009, PSE filed its third Motion for Leave to File Supplemental Testimony.¹ PSE’s motion states:

This supplemental testimony updates PSE's power cost projections for the rate year, updates PSE's load forecast to reflect the significant change in economic data since PSE prepared its prior load forecast during the fall of 2008, revises the cost of long-term debt and rate of return to reflect a recently completed bond issuance, corrects certain pro forma and restating adjustments from the original filing, and updates various adjustments based on more recent data than the information PSE had available to it when it prepared its original filing.

¹ PSE’s first request, which Public Counsel contested, was granted in Order 06, entered on August 12, 2009. PSE’s second request, which was not contested, was granted in Order 07, entered on September 10, 2009.

More specifically, PSE seeks permission to file the supplemental direct testimony and exhibits of John H. Story, David E. Mills, Donald E. Gaines, David W. Hoff, Louis E. Odom, and R. Clay Riding. PSE states that the supplemental testimony:

- Updates its power cost projections for the rate year.
- Updates its load forecast to reflect changes in economic data since PSE last prepared a load forecast in the fall of 2008.
- Revises the cost of long-term debt and rate of return to reflect a recently completed bond issuance.
- Corrects certain pro forma and restating adjustments.
- Updates various adjustments based on more recent data than was available when PSE prepared its original filing.

3 PSE argues its supplemental evidence will more accurately reflect the company's projected power costs, load and electric revenue deficiency. PSE asserts that by allowing it to supplement its evidence now, the burden on other parties will be reduced because they will not need to update or correct PSE's original filing themselves based on information made available to them in data request responses. Moreover, PSE argues, submission of supplemental testimony at this time provides the other parties an opportunity to address the updated information in their response testimonies, which are due November 17, 2009. PSE observes that this would not be possible if PSE first provided this information in its rebuttal testimony.

4 Staff responded to PSE's motion on October 5, 2009, stating that it does not oppose the motion subject to the parties' reservation of rights to contest it on the merits, object to its admissibility when offered at hearing and to argue any question that may be presented concerning recovery of the increased revenue requirement it purports to demonstrate.

5 Public Counsel responded the same day as Staff, stating its opposition to PSE's motion. Public Counsel reiterates the arguments it made in opposition to PSE's first motion to supplement its evidence, incorporating them by reference and providing brief elaboration. These arguments go largely to the questions whether PSE can

legally seek and the Commission can lawfully approve a revenue requirement that is greater than what PSE sought via its original filing.

- 6 In a separate line of argument, Public Counsel describes various elements of the proposed supplemental testimony and argues it is neither routine or nor the result of “mechanical” changes to prior testimony. Public Counsel argues:

Analysis of the econometric data relied upon, and its use by PSE in this case, is a complex and resource intensive effort. The existing schedule does not allow adequate time for Public Counsel to conduct discovery and analyze PSE’s modified load forecast for accuracy. Again on this issue, by not filing new tariffs and hence reducing the time provided by law for review of new revenue requests, PSE’s supplemental filing prejudices and disadvantages Public Counsel in this case.

- 7 On October 7, 2009, PSE sought leave to file, and filed, its Reply to Public Counsel’s Answer to PSE’s Motion for Leave to File Supplemental Testimony. Much of PSE’s reply is devoted to rehashing and elaborating on earlier arguments that address the issues Public Counsel raised concerning whether PSE can legally seek and the Commission can lawfully approve a revenue requirement that is greater than what PSE sought via its original filing. The Commission does not need to reach that issue here. It can be argued and decided, if necessary, at the conclusion of this case.

- 8 As to Public Counsel’s arguments that it is prejudiced due to a shortness of time for discovery and analysis, PSE states it “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).” PSE argues that this is “sufficiently early in this proceeding to provide ample opportunity for all participates to review and respond to PSE’s supplemental evidence.”

- 9 The opportunity to file supplemental testimony is granted or denied as a matter of Commission discretion considering a balance of interests. Not the least of these interests is potential prejudice to parties who are conducting discovery, undertaking analysis and preparing response testimony. The Commission considers here, with some concern, Public Counsel’s arguments that it may not have sufficient time for these activities given that PSE here seeks to revise more than just a few discrete aspects of its case via adjustments that are essentially mechanical and which the parties can anticipate in light of previous practice. However, absent a definitive showing of prejudice by Public Counsel or another party—and none has been made—

it appears that the seven weeks between the time PSE sought leave to file, and filed, this supplemental testimony and the due date for response testimony is adequate to preserve the benefits of an orderly hearing process. To help ensure this time is adequate, the Commission here shortens the response period for data requests to five days, effective on the date of this Order.

10 We determine that the Commission's and the parties' best interests are served by granting PSE leave to file its supplemental testimony and exhibits at this time subject to several caveats. Staff identifies two of these in its response to PSE's motion, as follows:

First, the issue now presented is only whether the Commission should grant PSE leave to file supplemental testimony and exhibits.

Therefore, granting PSE's motion does not waive any party's right to contest the merits of the supplemental testimony and exhibits through their response case. Nor does it waive any party's right to contest the admissibility of the supplemental materials when they are offered at hearing.

Second, the supplemental testimony and exhibits reflect higher electricity and natural gas revenue requirements than the amounts produced by the tariffs under suspension.²

Therefore, the Commission's legal authority to allow a rate increase above the suspended tariffs may be implicated. Allowing PSE to file its supplemental testimony and exhibits does not waive any party's right to address that issue in post-hearing briefs after all evidence is admitted.

To these two caveats, the Commission adds a third. There comes a point in every proceeding when the evidence upon which a party wishes to rely must be fixed and certain, at least in its principal parts. We are at that point insofar as PSE's direct case is concerned. Any further requests for leave to file supplemental testimony will be considered with a very skeptical eye. Furthermore, the Commission expects PSE to be diligent in responding promptly and completely to any discovery directed to this

² The supplemental testimony and exhibits increase the electricity revenue requirement from \$148.4 million to \$153.9 million. Exhibit (JHS-9T) at 4:11. The supplemental testimony and exhibits increase PSE's natural gas revenue requirement from \$27.2 million to \$29.5 million. Exhibit (JHS-9T) at 5:10-12. (This is actually a \$.9 million decrease from supplemental testimony filed August 3, 2009, but is still above the amount the suspended tariffs produce.)

supplemental filing so that all parties will be able to develop fully, within the time-frame of the current procedural schedule, whatever response testimony and exhibits they believe are appropriate.

ORDER

- 11 THE COMMISSION ORDERS That PSE's Motion for Leave to File Supplemental Testimony is granted.
- 12 THE COMMISSION ORDERS FURTHER That the time for responses to data requests is reduced to five business days, effective as of the date of this Order.

Dated at Olympia, Washington, and effective October 20, 2009.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge