

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

PUGET SOUND ENERGY, INC.,  
and NW ENERGY COALITION

For an Order Authorizing PSE To  
Implement Electric and Natural Gas  
Decoupling Mechanisms and To  
Record Accounting Entries  
Associated With the Mechanisms

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WASHINGTON UTILITIES AND  
TRANSPORTATION  
COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

DOCKETS UE-121697 and  
UG-121705

DOCKETS UE-130137 and  
UG-130138

PUBLIC COUNSEL PETITION FOR  
REVIEW OF INTERLOCUTORY  
ORDER; REQUEST FOR  
CLARIFICATION AND  
MODIFICATION OF ORDER 10

**I. INTRODUCTION**

1. Pursuant to WAC 480-07-430 and 480-07-810, Public Counsel respectfully requests clarification and modification on certain specific aspects of Order 10, the Prehearing Conference Order in this matter, entered on October 8, 2014. The purpose of the request is to prevent

substantial prejudice to Public Counsel and other parties, to further the efficiency of the proceeding by saving the Commission and parties' substantial effort and expense, and to obtain additional guidance for the parties on how best to address issues.

2. As a general matter, by its terms Order 10 does not constrain party filings with respect to the issues addressed in the remand process proposals or discussed at the Prehearing Conference. At the same time, as written, the order appears to leave open the possibility that testimony with regard to certain issues could be found to be beyond the scope of the remand, and not received or considered, based on the motion of a party or the Commission at some later point in the case. While Public Counsel appreciates that the Commission has left much discretion to the parties in presenting their cases, Public Counsel respectfully requests that the Commission remedy this uncertainty created by Order 10 in some key areas.

## II. MEMORANDUM

### A. Request for Clarification of Scope of The Issues.

#### 1. Time period.

3. Order 10 states:

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 ...it may be that other relevant evidence will be prefiled for our consideration.

4. It is unclear to Public Counsel from this statement whether the term "expects" means "anticipates" or "requires." Public Counsel respectfully requests that the Commission specifically *require* all parties to file a cost of capital analysis as they would have done in early 2013, based on a time period between January 1 and June 30, 2013. All parties recommended

use of a specific evaluation period during that time frame.<sup>1</sup> There appears to be general consensus among the parties that it would be useful to establish a specific period for all analysts to focus on. However, if the Commission does not establish a specific uniform time period during that window, at a minimum, use of the January to June 2013 period would allow for a reasonably close comparison between recommendations. This will provide a common baseline of information for the Commission's evaluation and for parties to address in cross-answering testimony and at hearing, if necessary. It will also provide certainty to parties that analysis for this period will be received in evidence and considered.

5. Public Counsel also requests clarification on whether the Commission will accept and consider evidence regarding cost of capital based on time periods after July 1, 2013, up to the present time. As stated in the Proposal for Remand, Public Counsel believes it is most appropriate and consistent with the Court's remand order to calculate the cost of capital as of early 2013. However, given the discussion at the Prehearing Conference, it appears there is interest in more recent data. If the Commission wishes to consider such information as within the scope of the issues on remand, Public Counsel has no objection. However, a clear statement would tell parties whether experts should address this more recent data, and whether their testimony will be received in evidence and considered.

**2. The impact of decoupling on cost of capital.**

6. Order 10 is unclear as to whether the impact of decoupling on cost of capital (including return of equity (ROE)) is considered to be within the scope of issues in the case. The order discusses the opposing positions on this question but does not resolve the question.<sup>2</sup> Order 10

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<sup>1</sup> Order 10, ¶¶ 9-11.

<sup>2</sup> Order 10, ¶¶ 21-22.

appears to allow Public Counsel and other parties to file testimony on the issue, but also allows parties to resist discovery, and to move to strike or otherwise object to testimony on decoupling impact as irrelevant because it is beyond the scope of the case. Under the order, the Commission also could on its own motion ultimately determine that this issue is not within the scope of the case.

7. PSE customers will be substantially prejudiced if the impact of decoupling is not considered as part of setting rates for the rate plan pursuant to the remand. Decoupling affects utility company risk, and indeed is expressly designed to reduce financial risk and increase revenue stability. The determination of cost of capital (and ROE specifically) is based at its foundation on a determination of the utility's risk. In turn, this is an essential element in the core task on remand, "to establish fair, just, reasonable and sufficient rates to be charged under the rate plan."<sup>3</sup> Therefore, as Public Counsel has consistently argued in this appeal, determination of cost of capital, including return on equity, in the context of PSE's multiyear rate plan cannot accurately or lawfully be determined unless the impact of decoupling is considered. Updating the 2012 cost of capital used in Order 07 requires consideration of all the changes since the last PSE General Rate Case. This includes not only changes in the market, but another obvious and significant change – the adoption of a multiyear rate plan framework which includes decoupling.

8. In order to ensure that a substantial expenditure of time and resources by all the parties is necessary, Public Counsel respectfully requests that the Commission modify Order 10 to make clear that the impact of decoupling is an issue that is within the scope of this remand case.

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<sup>3</sup> Order Granting in Part and Denying In Part Petitions For Judicial Review, Thurston County Superior Court, Case Nos. 13-2-01576-2 and 13-2-01587-7, Honorable Carol Murphy, July 25, 2014, p. 3.

**3. The consideration of full cost of capital or of ROE only.**

9. Public Counsel requests that the Commission clarify if experts may address all aspects of the cost of capital, or should restrict the testimony to return on equity. While Order 10 does not by its terms preclude a full cost of capital analysis, it would not be efficient for parties' experts to develop and file a traditional full cost of capital analysis if there is a possibility this will later be determined to be beyond the scope of the case.

10. The establishment of fair, just, reasonable, and sufficient rates under RCW 80.28.010(1), requires a determination of the utility's cost of capital. While establishing the return on equity is a key feature of the analysis, and will receive substantial emphasis in this remand case, to remedy the gap in the record requires that parties submit full cost of capital studies, as they would have in the ordinary course, had the Commission required PSE to carry its burden of proof to update the 2012 cost of capital. The Commission would not have permitted parties to update the PSE's 2012 cost of capital by simply filing ROE testimony. It may be that this aspect of the case is not controversial, but the requested clarification will allow the Commission to have a complete record.

**4. The phased proceeding alternative.**

11. For the reasons of efficiency noted above, Public Counsel requests guidance from the Commission on whether parties should file testimony on the revenue requirement impact of their cost of capital recommendations, and the appropriate reflection of that outcome in terms of refunds or other requested relief. There was discussion of that issue at the Prehearing Conference and it was suggested that this might be more appropriate for a "compliance phase"

after a ruling on cost of capital. While Public Counsel is amenable to either approach, Order 10 does not address this point, so some clarification would be helpful to parties.

**B. Discovery.**

12. Order 10 states that “Discovery will continue pursuant to the Commission’s discovery rules, WAC 480-07-400—425.”<sup>4</sup> Public Counsel respectfully requests that the Order 10 language be modified to reflect that discovery was not available to the parties until the entry of Order 10. Public Counsel filed a Motion for Discovery on August 26, in conjunction with the Proposals for Remand filing. PSE responded on September 4, 2014, declining to provide discovery, as it had done in response to a prior informal request in July. Accordingly, no discovery took place in the remand proceeding prior to Order 10.<sup>5</sup>

**C. Schedule Extension Request.**

13. The schedule in Order 10 currently provides for a period of 16 days between the filing of testimony responding the PSE’s direct case and the filing of rebuttal and cross-answering testimony. Public Counsel does not believe this is sufficient time to review and respond to other parties’ responsive testimony in the cross-answering round. Based on the positions taken in earlier phases of this case, it appears likely that some testimony filed on December 3 will be aligned with PSE’s position in the case. It is possible that the testimony will be extensive and it may contain entirely new material. The issues in the case are broader and more complex than those in an ordinary rate case cost of capital analysis, due *inter alia* to the unique reconstructive nature of the remand analysis and the decoupling issue.

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<sup>4</sup> Order 10, ¶ 26.

<sup>5</sup> The Public Counsel motion was not ruled upon and was effectively rendered moot by the Prehearing Conference Order.

14. Public Counsel requests an additional 4 days for filing cross-answering testimony, moving the deadline to December 23, 2014. This would allow 20 days for response, comparable to the 21 days Public Counsel requested in its Proposals for Remand. Public Counsel also requests that the remaining hearing and briefing deadlines be extended by a comparable period. It is particularly important for parties to have adequate time to review rebuttal and cross-answering and conduct any final discovery needed, prior to the evidentiary hearing.

#### IV. CONCLUSION

15. For the foregoing reasons, Public Counsel respectfully requests that the Commission grant this petition.

16. DATED this 20<sup>th</sup> day of October, 2014.

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