BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of PUGET SOUND ENERGY, INC., For an Order Authorizing Deferral of Certain Electric Energy Supply Costs, _____________________________________	DOCKET NO. UE-011170
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND ENERGY, INC., Respondent.	DOCKET NO. UE-011163 PUBLIC COUNSEL REPLY TO PUGET SOUND ENERGY ANSWER TO MOTION TO DISMISS

I. INTRODUCTION

1. Pursuant to WAC 480-09-425 (3) (b) and the Third Supplemental Order in this docket, Public Counsel files this reply to the Answer of Puget Sound Energy, Inc. (PSE), to Motions to Dismiss, filed September 21, 2001 (PSE Answer).

2. PSE's Answer makes a variety of arguments with which Public Counsel strongly differs and cites many authorities that do not, in actuality, support the company's position. In keeping with Third Supplemental Order's limitation as to scope of reply, however, this pleading will address only a few specific new issues. By doing so, Public Counsel does not indicate agreement with any portion of the PSE Answer not addressed.

II. ARGUMENT

A. The Requirements Of The Merger Order Are Not Merely Procedural And Are Not Satisfied By PSE's Filing.

3. Any examination of the issue presented by Public Counsel's Motion to Dismiss must begin with a recognition of a basic fact: PSE's interim relief filing in this case unabashedly flouts the plain and express requirements of the Merger Order.[1] It is not that PSE attempted to comply, or explained why it should not have to comply, or why it was not able not comply. Its filing simply ignored an important provision of perhaps the most significant Commission order in the company's recent history. Only when challenged by the motions to dismiss does PSE acknowledge the requirement. In an effort to explain away its clear violation of the Merger Order, PSE's Answer now characterizes Public Counsel's motion as raising solely "procedural" issues with regard to the Merger Order. PSE Answer, ¶3 A. PSE further asserts that its actions are consistent with, or have in effect, in effect, substantially complied with the order requirements. None of these arguments have merit.

4. The Merger Order provision has important substantive value. It is a part of the Rate Plan agreed to by the parties and adopted by the Commission as a condition of merger approval. The Rate Plan was specifically designed to provide "rate certainty" to PSE's customers. The Merger Order and Rate Plan contains a number of interrelated components, including merger savings, power supply stretch goals, and pre-approved rate increases every year for PSE customers. *See e.g,* Merger Order, p. 26. All of these components were part of the balance of benefits and risks allocated by the parties' stipulation and the Commission's Merger Order. Rate certainty was only to be disturbed under the carefully negotiated and balanced provisions of the merger agreement. PSE's last general rate case ended approximately three years before the Merger Order and is now seven years in the past. The requirement that any interim relief be in the context of a general rate filing thus also reflects the need for the Commission and PSE customers

[1] *In the Matter of the Application of Puget Sound Power & Light Co. and Washington Natural Gas Company for an Order Authorizing the Merger*, Docket Nos. UE-951270, UE 960195, Fourteenth Supplemental Order Accepting Stipulation, Approving Merger (February 5, 1997) (Merger Order).

to be able to more fully and accurately evaluate the interim relief request in the context of up-to-date information that would reflect the developments at PSE since the merger was approved.

5. To allow PSE to proceed with this request in clear violation of the Merger Order has another substantive impact. Its emergency rate request increases an average residential customer's bill by 18 percent per month (17 percent for commercial customers). If allowed to take effect as originally requested on November 1, 2001, PSE would collect these substantial additional revenues from its ratepayers during the Rate Plan Period, a period for which the Merger Order had established rate certainty. An 18 percent increase in payments by Washington ratepayers to PSE is not merely a "procedural" issue. PSE's assertion that there is no harm to consumers that can result from this violation of the Merger Order is thus patently untrue. PSE Answer ¶ 15.

6. In the PSE Answer ¶¶ 25, 26, the company makes the strained and disingenuous argument that the *PNB*[2] standard somehow modifies the rate case filing requirement. Assertedly the problem is one of the delay which would ensue if the Merger Order were complied with. The *PNB* case itself, however, hardly supports this proposition since it involved an interim relief request filed with a general rate case. [3] Beyond that, PSE ignores, and asks the Commission to ignore, the fact that PSE signed an agreement which both acknowledged the application of the *PNB* standard and expressly established a general rate case filing requirement as part of any interim request. That agreement, of course, was fully approved and adopted as the basis for approval of PSE's merger. By now arguing that it should not have to comply because it takes time to prepare a general rate case, PSE is asking the Commission to ratify a unilateral breach of the stipulation and the Merger Order.

7. What is at stake is not a procedural nicety, it is regulatory stability and reasonable certainty, an issue of considerable substantive importance to consumers. If a company is allowed

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[2] *WUTC v. PNB,* Cause No. U-72-30, Second Supplemental Order (October 1972)(*PNB* order)

[3] PSE's argument also conveniently disregards the fact that every single request for interim relief ever filed with the WUTC by a utility company has been coupled with a general rate filing, including, as noted, the request in the *PNB* case. *See* Response of Commission Staff Motion In Support of Motion to Dismiss, pp. 4-5 (Commission authorities listed). Apparently the burden described by PSE is not insurmountable.

to disregard a Commission order which embodies a freely and voluntarily negotiated settlement, the regulatory certainty which customers rely on is severely undermined. The provisions of the Merger Order cannot and should not lightly be thrown aside as PSE requests here. The stipulating parties, and the Merger Order, anticipated the very scenario that now presents itself, i.e., that the company might wish to seek emergency or interim rate relief. The merging companies, Public Counsel, and the Commission Staff carefully crafted and agreed to rules to deal with that eventuality. The Commission approved the agreement. It must now be enforced.

B. The Decades-Long Consideration Of Interim Relief As Part Of A General Rate Case Filing Is Not A Mere Procedural Requirement.

8. Entirely apart from the Merger Order requirements, Public Counsel's motion also points out that PSE has departed from longstanding Commission precedent[4] by requesting interim relief without benefit of a full general rate case filing. The reasons for this approach are not merely procedural, as PSE suggests. PSE Answer ¶ 3 B. A filing for interim relief filed with a general rate filing provides a context or reality check by giving the Commission initial basic information about the company's financial situation, including a statement of results of operations and other financial information.

9. The timing of the filings is also significant. Ratemaking occurs on a full record after a general rate case. The narrow exception is for interim relief, which is intended for interim and emergency situations. By its very nature, it occurs without benefit of a full review of all issues and information and is very unlikely to result in any more than a rough approximation of the appropriate level of rates. Any delay in the general rate case only further delays the time when the rates are ultimately properly set. Ratepayers suffer the disadvantage of this regulatory lag, while for every month of delay, the company collects revenues. Again, this is goes beyond mere procedural impact.

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[4] *See* Public Counsel Motion to Dismiss, p .3. See also, footnote 3 above (additional Commission authorities).

C. PSE's Answer Fails To Address Important Flaws In Its PCA Request.

10. Most noteworthy in PSE's discussion of the PCA issue is its continuing failure to address the fact that the Commission has clear and recently reaffirmed standards for adoption of a PCA. *WUTC v. Avista Corporation*, Docket Nos. UE-991606, UG-991607, Third Supplemental Order, ¶¶ 167-185. PSE apparently suggests that the Commission can take any sort of regulatory action it chooses if the requesting company asks for the remedy under the heading of interim relief. PSE Answer, ¶ 43. The relief is apparently to be allowed without reference to other standards or requirements that would ordinarily apply. Taken to its extreme, this would mean that a company could ask for approval of transfer of assets (e.g. sale of utility plant); mergers; "AFOR" plans; or any other regulatory action as part of interim relief, but that the Commission could not measure the request against any standard except the *PNB* test.

11. It is revealing that PSE from the outset of the case has never responded to the indisputable substantive shortcomings of its filing, but has instead sought refuge in the "flexible relief" argument described above. This is undoubtedly because, on its face, the PSE filing does not come close to meeting the Commission's requirements and the company has no alternative but make other arguments. The ultimate question, however, is inescapable. Why should the Commission ever approve a PCA that does not meet its requirements, whether on an interim basis or at any other time? Moreover, why should the Commission devote its time and resources and those of stakeholders to consideration of a facially defective petition?

12. Surprisingly, PSE provides a number of authorities in support of the proposition that the PCA mechanism "has no connection with interim rate relief." PSE Answer, ¶ 44. It also makes the inverted argument that "none of these cases hold that the Commission may not consider a PCA in an interim rate case." Id. PSE does not cite any actual precedent for the existence of an interim PCA as opposed to a "general PCA, " PSE Answer, ¶ 44, much less for the approval of any PCA in an interim relief context.

13. This is precisely the point, and precisely the fatal flaw in PSE's filing. The Commission has never approved or even considered a PCA in the context of a request for interim rate relief

and it should not do so now. PSE's request, if granted, would shift to its ratepayers all power cost risks including those associated with California and western wholesale market price fluctuations, all risks arising from FERC mismanagement of the western energy situation, all risks arising from hydro conditions, and all risks arising from PSE's decisions regarding operation of its thermal resources. What risk remains for PSE?

III. CONCLUSION

14. PSE's problems with this filing are of its own making. It has had the opportunity since February of this year to prepare and make a general rate filing in anticipation of the end of the merger Rate Plan. Instead, it now seeks interim relief, during the Rate Plan Period, in a manner clearly inconsistent with and in violation of the terms of the Merger Order and the agreement upon which that order was based. In the face of motions to dismiss, which should not have been unexpected, PSE insists on declining to follow the order rather than remedying the violation, and seeks Commission approval of this "scofflaw" approach. Moreover, by seeking to shoehorn the complex and contentious PCA issues into an emergency rate relief context, without adequate support, and without any showing that existing PCA requirements are met, PSE has added even more barriers to its request. The Commission should not countenance this cavalier approach to these important regulatory issues.

15. For the foregoing reasons Public Counsel Motion to Dismiss should be granted.

DATED this 25th day of September, 2001.

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