

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	
)	
PUGET SOUND ENERGY, INC., and)	
NW ENERGY COALITION)	
)	DOCKET NO. UE-121697
For an Order Authorizing PSE to Implement)	DOCKET NO. UG-121705
Electric and Natural Gas Decoupling)	(Consolidated)
Mechanisms and to Record Accounting)	
Entries Associated with the Mechanisms)	
)	

**INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES’ COMMENTS IN
OPPOSITION TO JOINT RESPONSES TO PETITION FOR RECONSIDERATION**

1 The Industrial Customers of Northwest Utilities (“ICNU”) submits these comments in opposition to the two “Joint Responses to Petition for Reconsideration,” filed in the above-referenced dockets on November 1, 2013. A filing for gas customers (“Gas Joint Response”) was made by the Washington Utilities and Transportation Commission (“Commission”) Staff (“Staff”), Puget Sound Energy, Inc. (“PSE”), NW Energy Coalition (“NWECC”), the Northwest Industrial Gas Users, and Nucor Steel Seattle, Inc. A second filing for electric customers (“Electric Joint Response”) was filed in the same dockets by Staff, PSE, NWECC, and The Kroger Co. (“Kroger”) (all parties listed above are herein collectively referred to as the “Settling Parties”). While ICNU does not object to the customers referenced in the Gas and Electric Joint Responses being exempted from decoupling, or provided with a modified decoupling mechanism, ICNU does object that such exemptions and modifications apply to *only* those customers, which results in undue discrimination to the remaining industrial electric customers that are subject to full decoupling.

I. INTRODUCTION

2 The Settling Parties' Gas Joint Response proposes to exempt industrial gas customers taking service on PSE rate schedules 85, 85T, 87, and 87T from the decoupling mechanism, whereas no such exemption for similarly situated industrial electric customers was proposed in the Electric Joint Response. The justifications the Gas Joint Response provides for removing industrial gas customers from decoupling apply equally to industrial electric users. Thus, by exempting all industrial gas users from the current decoupling mechanism while keeping industrial electric customers subject to the same decoupling mechanism, the Gas and Electric Joint Responses discriminate against industrial electric users and grant an unreasonable preference to industrial gas users.

3 Additionally, the Electric Joint Response proposes to modify the decoupling mechanism for electric customers on Schedules 26 and 31. As the Settling Parties admit, this modification results in an increase in rates for other non-residential electric customers for the sole reason that Schedules 26 and 31 customers are arbitrarily relieved of the cost-sharing obligations created by decoupling. Electric Joint Response at ¶ 16. The effect of this will be to further exacerbate cost-subsidization issues endemic to decoupling that industrial electric customers will be required disproportionately to bear and, therefore, is not in the public interest.

4 Accordingly, if the Commission adopts the Gas and Electric Joint Responses' proposals, it also should exempt industrial electric customers on Schedules 40 and 49 from the current decoupling mechanism in order to avoid undue and illegal discrimination. Alternatively, the Commission should reject the Gas and Electric Joint Responses' proposals to avoid impermissible rate discrimination and cost-shifting.

II. BACKGROUND

5 Commission Order 07 in the above-referenced dockets established a decoupling mechanism for substantially all of PSE’s customers. Order 07 at ¶ 136. This mechanism is intended to remove disincentives for PSE to invest in conservation measures by allowing PSE to recover its fixed costs of service regardless of the amount of electricity and gas its customers consume. Although decoupling was applied to residential and non-residential customers, the Commission noted that there is “significant heterogeneity in the non-residential customer class” and that this raises “questions about the suitability of decoupling that relies exclusively on average revenue per customer.” Order 07 ¶ 127. Ultimately, however, the Commission determined that the record was insufficiently developed to exempt non-residential customers from decoupling. Id. ¶ 128. In light of this decision, Kroger and other parties petitioned the Commission for reconsideration. In its petition, Kroger argued that including non-residential customers in decoupling despite the Commission’s own acknowledgment of the potential shortcomings of doing so would remove any incentive PSE would have to negotiate with non-residential customers over alternative rate designs because it already had everything it wanted. Kroger Petition for Reconsideration at 4.

6 The Commission responded to the petitions for reconsideration by determining that “it should establish procedures and a schedule to provide an adequate opportunity for the parties to conduct collaborative sessions to explore alternative approaches to achieving the underlying goals and purposes of decoupling for the non-residential class of customers.” Consolidated Docket Nos. UE-121697/UG-121705 and UE-130137/UG-130138, Notice of Opportunity to File Answer and Establishing Process Pending Reconsideration, July 19, 2013 (“Commission Notice”) at 3. As the Electric and Gas Joint Responses state, a number of parties,

including ICNU, met frequently to discuss alternative proposals. Gas Joint Response at ¶ 6; Electric Joint Response at ¶ 6. ICNU advanced its own proposal to create an alternative decoupling mechanism for electric Schedule 40 customers, which was similar to the proposal adopted for Schedules 26 and 31, but, for reasons that were never articulated, this proposal was rejected.^{1/}

7 Instead, on November 1, 2013, the Settling Parties filed the Electric and Gas Joint Responses. The Electric Joint Response proposes to modify the current decoupling mechanism for Schedule 26 and 31 customers, while the Gas Joint Response proposes to exempt all industrial gas customers from decoupling entirely. Gas Joint Response at ¶ 11; Electric Joint Response at ¶ 14. Additionally, both the Gas and Electric Joint Responses would raise rates for non-residential customers that remain subject to the original decoupling mechanism.^{2/} Gas Joint Response at ¶ 13; Electric Joint Response at ¶ 16. Although the Settling Parties suggest that the Gas and Electric Joint Responses' proposals are superior to the current decoupling mechanism for these customers, they provide no explanation as to why exempting Schedule 26 and 31 electric customers and all industrial gas customers from this decoupling mechanism is appropriate while industrial electric customers remain fully subject to it.

III. ARGUMENT

8 Industrial gas customers and industrial electric customers are no different from each other with regard to the cost impacts decoupling has on them, as well as with regard to their role in effectuating the “underlying purposes and goals of decoupling.” Commission Notice at 3. Thus, exempting one group from decoupling and not the other discriminates against industrial

^{1/} Schedule 40 is for customers with an assumed average load greater than three megawatts and, as such, applies to some of PSE's largest customers.

^{2/} PSE's decoupling mechanism only creates two classes of customers, residential and non-residential, which is one of the shortcomings of this mechanism.

electric customers and grants an undue and unreasonable preference to industrial gas customers, in violation of RCW §§ 80.28.100 and 80.28.090. Additionally, removing only Schedule 26 and 31 electric customers from the current decoupling mechanism is likely to increase rates for other non-residential customers, which will be borne disproportionately and unfairly by industrial electric customers. Thus, Schedule 26 and 31 electric customers also receive an undue and unreasonable preference. Such a consequence is not in the public interest and results in unjust and unreasonable rates, in violation of RCW §§ 80.01.040 and 80.28.020.

A. Approval of the Gas and Electric Joint Responses without also exempting industrial electric customers from decoupling discriminates against industrial electric customers and grants an undue and unreasonable preference to industrial gas customers and Schedule 26 and 31 customers.

1. Washington law prohibits discrimination and unreasonable preferences between similarly situated customers, which should be interpreted inclusively in light of the broad statutory language.

9 RCW § 80.28.100 states that no gas or electric company may:

[D]irectly or indirectly, or by any special rate, rebate, drawback, or other device or method, charge, demand, collect, or receive from any person or corporation a greater or less compensation for ... gas, electricity ... or *for any service rendered or to be rendered*, or in connection therewith, except as authorized in this chapter, than it charges, demands, collects, or receives from any other person or corporation for doing a like or contemporaneous service with respect thereto under the same or *substantially similar circumstances* or conditions.

RCW § 80.28.100 (emphasis added). Given the statute’s broad language, collection of greater or less compensation to satisfy the decoupling revenue requirement fits squarely within its prohibitions. The purpose of decoupling is to promote PSE’s conservation efforts. “Service” is intended to be used in Title 80 “in its broadest and most inclusive sense.” RCW § 80.04.010(25). Because customers effectively pay PSE through the decoupling mechanism to

increase conservation efforts, these conservation efforts should be viewed as a “service rendered” by PSE to its customers.

10 Additionally, RCW § 80.28.090 states that no gas or electric company:

[M]ay make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality, or to any particular description of service *in any respect whatsoever* or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage *in any respect whatsoever*.

RCW § 80.28.090 (emphasis added). Again, this statute’s broad language contemplates prohibiting undue or unreasonable preferences “in any respect whatsoever.”

11 Washington courts have interpreted RCW §§ 80.28.090 and 80.28.100 to prohibit “unreasonable” discrimination or preferences “between similarly situated customers.” Cole v. Wash. Utils. & Transp. Comm’n, 79 Wn. 2d 302, 311 (1971); see also, State ex rel. Model Water & Light Co. v. Dept. of Pub. Serv., 199 Wash. 90 (1939). In Cole, the Washington Natural Gas Company (“Washington Gas”) offered lower rates to new home builders to incentivize the use of gas in areas of new construction. 79 Wn. 2d at 303-04. Cole, a fuel oil dealer, complained, arguing that these lower rates for home builders discriminated against Washington Gas’s residential customers who paid higher rates. Id. at 304. The Washington Supreme Court held that “there is a valid distinction between temporary service to a vacant and perhaps untenable structure and regular service to an occupied residence.” Id. at 310. The Court also found no unreasonable preference because, to the extent a preference existed, “it is patently reasonable in inducing the use of gas service at an earlier date than actual occupancy.” Id. at 311. In this case, however, the Settling Parties provide no justification for treating similarly situated customers so differently.

2. The Gas Joint Response’s proposal to exempt industrial gas customers, without also including similarly situated industrial electric customers, is inconsistent with the law prohibiting discrimination and undue preference.

12 In contrast to the Washington Supreme Court’s decision in Cole, there is no legitimate distinction between industrial gas users and industrial electric users as it relates to the impacts decoupling has on these groups, and there is no reasonable justification for the difference in charges these two groups will experience to effectuate decoupling if the Gas Joint Response is adopted.

13 The Settling Parties’ justification for exempting industrial gas users from decoupling is that “any throughput incentive for gas industrial customers is modest and [] these customers contribute little to PSE’s non-fuel cost recovery.” Exh. No. __ (JPG-1T) at 4:10-12. They also note that industrial gas customers are likely to subsidize other non-residential customers in terms of satisfying the decoupling revenue requirement because decoupling requires cost-sharing among all non-residential customers and industrial gas users’ consumption is projected to decline less than other non-residential customers’ consumption. Id. at 6:16-7:11.

14 These justifications apply with equal relevancy to industrial electric customers. As one of the Settling Parties has itself previously recognized, large industrial electric customers should be exempted from decoupling “because they have so few members ... and account for a relatively small fraction of PSE’s projected revenues from energy charges” Docket Nos. UE-111048/UG-111049, NWEC Exh. No. __ (RCC-1T) at 13:12-15. ICNU also has submitted testimony in this proceeding demonstrating that it is “very easy to quantify any losses associated with large industrial conservation efforts. Lumping these large customers in with commercial customers will likely result in an unfair subsidization by large customers.” Exh. No. __ (MCD-1T) at 36:6-9. Thus, the justifications for removing industrial gas customers from decoupling (i.e., cost subsidization and lack of a throughput incentive) apply equally to industrial electric

customers. Yet, no rationale is provided for exempting *all* gas industrial customers but *no* electric industrial customers from decoupling.^{3/}

15 Additionally, because industrial gas users will be exempted from the cost-sharing endemic to the current decoupling mechanism, these customers will not be subject to the over- or under-charges associated with decoupling. In contrast, such over- or under-charges will apply to industrial electric customers. Both the gas and electric decoupling mechanisms group all non-residential customers together for purposes of making up any under-recovery of PSE's fixed costs. Order 07 at ¶ 91. Thus, this entire class of customers must satisfy the under-recovery without regard to individual consumption patterns. By exempting industrial gas customers from decoupling and not industrial electric customers, PSE will, therefore, collect from industrial electric customers "a greater or less compensation" for a "service rendered" for doing a "like or contemporaneous service ... under the same or substantially similar circumstances." RCW § 80.28.100. Put differently, any conservation efforts incentivized by decoupling will generally impact industrial gas customers in the same manner that they impact industrial electric customers, but only industrial electric customers will be saddled with the costs. No explanation has been advanced for why this discriminatory treatment is appropriate or legal under Washington law.

16 The preference afforded industrial gas customers by exempting them from decoupling and not industrial electric customers is "undue" and "unreasonable" because, as discussed above, there is no meaningful distinction between these two groups that justifies exempting one group from decoupling and not the other. The evidence establishes that neither group has a significant impact on any disincentive PSE has to invest in conservation, and both

^{3/} Schedule 449 customers were exempted in Order 07 because they purchase their electricity from third-party providers.

groups will likely subsidize other non-residential customers if left in the current decoupling mechanism. Exh. No. __ (JPG-1T) at 4:10-12, 6:16-7:11; Exh. No. __ (MCD-1T) at 36:6-9. Further, unlike what the Washington Supreme Court found in Cole, there is no public policy advanced and no ancillary benefit that accrues to anyone as a consequence of this preference. 79 Wn. 2d at 311. Accordingly, the Gas Joint Response discriminates against industrial electric customers and gives industrial gas users an undue and unreasonable preference over their similarly situated electric counterparts.

B. The Electric Joint Response is not in the public interest and will result in unjust and unreasonable rates because it arbitrarily increases rates for industrial electric customers.

17 The Commission is charged with regulating “in the public interest” and setting “just [and] reasonable ... rates.” RCW §§ 80.01.040(3) and 80.28.020. Approval of the Electric Joint Response without also exempting industrial electric users from decoupling is not in the public interest and does not result in rates that are just and reasonable because it arbitrarily raises the rates of industrial electric customers.

18 The Electric Joint Response and testimony supporting it state that “the other non-residential electric schedules in the decoupling mechanism are projected to experience rate increases of 1.29% in 2014. Electric Joint Response at ¶ 16. This compares to the projected rate increase of 1.22% currently forecasted for the non-residential class in 2014 if Schedules 26 and 31 remain in the decoupling mechanism.” Electric Joint Response at ¶ 16; Exh. No. __ (JPE-1T) at 7:18-8:7. This increase occurs because the current decoupling mechanism groups all non-residential electric customers together for purposes of satisfying any under-collection of PSE’s fixed costs of service. If the Electric Joint Response is adopted, Schedule 26 and 31 customers will be removed from this cost-sharing obligation. The Settling Parties argue that Schedule 26

and 31 customers are projected to have a smaller fixed cost recovery shortfall under the current decoupling mechanism than other non-residential customers, so Schedule 26 and 31 customers are essentially subsidizing other non-residential customers. Electric Joint Response at ¶ 16. The same is true for Schedule 40 customers. Yet, all non-residential customers not on Schedules 26 or 31 will see their rates increase above what they otherwise would be as a consequence of the exemption of Schedule 26 and 31 customers from the current decoupling mechanism.

19 The Settling Parties justify this rate increase by arguing that it is fairer to Schedule 26 and 31 customers; however, the reality is that the Electric Joint Response is unfair to industrial electric customers because it will likely lead to even greater cost subsidization of other non-residential customers by industrial electric customers.

20 As the testimony in support of the Electric Joint Response puts it, “[a]ny impact on other non-residential customers would not be the result of cost shifting, but the *unwinding* of potential cost shifting that previously had been introduced by the currently authorized decoupling mechanism.” Exh. No. __ (JPE-1T) at 8:18-20 (emphasis in original). To the contrary, the only “unwinding” of cost shifting proposed in the Electric Joint Response is exclusively related to Schedule 26 and 31 customers. By removing these customers from decoupling, *they* no longer must worry about subsidizing other customers, but, as discussed above, cost shifting and subsidization remains a problem for industrial electric customers that continue to be subject to decoupling. Exh. No. __ (MCD-1T) at 36:6-9. It is noteworthy that the Gas Joint Response offers the exact same justification as the Electric Joint Response for a rate increase to other non-residential customers on the gas side – namely, that gas industrial customers subsidize other non-residential customers under the current decoupling mechanism. Exh. No. __ (JPG-1T) at 6:16-18. Given the similarity between gas and electric industrial customers, there is no rational reason

for the Electric Joint Response to exclude industrial electric customers from its argument that removing Schedule 26 and 31 customers from decoupling results in the “unwinding of potential cost-shifting” when the Settling Parties readily employ this argument to justify exempting similarly situated industrial gas customers from decoupling.

21 By removing only customers served under Schedules 26 and 31, the problem of cost subsidization by large industrial electric customers will only be exacerbated. Thus, the Settling Parties’ statement that “the remaining non-residential customers ... are simply responsible for their own (projected) shortfall in delivery cost recovery” is not accurate. Exh. No. __ (JPE-1T) at 9:6-9. The responsibility for making up this revenue shortfall is still a collective responsibility – shared among all remaining non-residential customers – that does not account for each customer’s particular energy consumption and will be borne even more disproportionately by industrial electric customers if the Electric Joint Response’s proposal is adopted.^{4/} Such a consequence is not in the public interest, it does not result in just and reasonable rates, and it should be rejected or equally applied to Schedule 40 and 49 customers.

C. If the Commission approves the proposals in the Gas and Electric Joint Responses, it should exempt industrial electric customers from the current decoupling mechanism until an alternative arrangement is negotiated with PSE.

22 Kroger states that the Electric Joint Response satisfies its concerns raised in its petition for reconsideration regarding PSE’s willingness to negotiate alternative decoupling mechanisms. Electric Joint Response at ¶ 1. Those concerns, however, remain applicable to customers not on Schedules 26 or 31. If the Commission accepts the Gas and Electric Joint Responses as satisfying the Commission Notice, then PSE will have no incentive to further discuss alternative decoupling arrangements with other non-residential customers. ICNU

^{4/} This is particularly unfair for customers such as those on Schedule 40 whose energy consumption is large enough that it can be known with a good degree of accuracy. Exh. No. __ (MCD-1T) at 36:6-7.

proposed an alternative to decoupling for Schedule 40 during the collaborative sessions, but it was rejected without PSE explaining its disagreement with the proposal or offering a counterproposal. While ICNU is willing to work with PSE and other interested parties in crafting alternatives to decoupling for industrial electric customers, it has no reason to believe that additional efforts will lead to greater success if the status quo is maintained. Thus, if the Commission accepts the Gas and Electric Joint Responses, it should exempt industrial electric customers on Schedules 40 and 49 from the current decoupling mechanism, just as industrial gas customers are exempted, with the goal of incentivizing further collaboration on alternatives to decoupling.

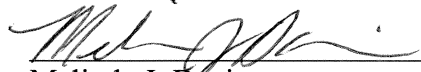
IV. CONCLUSION

23 The alternative decoupling proposals contained in the Gas and Electric Joint Responses discriminate against industrial electric customers and are not in the public interest. With regard to the goals of decoupling and the impact it has on customers, there is no meaningful distinction between industrial gas users and industrial electric users, nor is there a rational basis for increasing industrial electric customers' rates by removing only Schedule 26 and 31 electric customers from the current decoupling mechanism. Accordingly, if the Commission accepts the Gas and Electric Joint Responses, it should also exempt industrial electric customers on Schedules 40 and 49 from the current decoupling mechanism in order to further incentivize collaboration in developing an alternative proposal. Alternatively, the Commission should reject the Gas and Electric Joint Responses and consider a more comprehensive approach that includes industrial electric customers in an alternative decoupling mechanism. Accepting the Gas and Electric Joint Responses without change results in impermissible discrimination.

Dated in Portland, Oregon, this 8th day of November, 2013.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

A handwritten signature in black ink, appearing to read 'Melinda J. Davison', written over a horizontal line.

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