

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

In the Matter of the Petition of	)	DOCKET NO. UE-031389
	)	
PUGET SOUND ENERGY, INC.	)	ORDER NO. 05
	)	
	)	
For approval of its 2003 Power Cost	)	
Adjustment Mechanism Report	)	ORDER OF CLARIFICATION
	)	
.....	)	

1 **Synopsis:** *The Commission clarifies language in its order No. 04 that does not affect the substance of the decision and corrects a typographical error.*

2 **Proceeding:** Docket No. UE-031389 is a petition by Puget Sound Energy (PSE) for Commission acceptance and approval of its 2003 Report of the effect of its power cost adjustment mechanism (PCA). The Commission approved the PCA in the Company’s rate increase docket UE-011570, and the Commission approved a proposed settlement and a modified 2003 Report in Order No. 05 in this docket on January 15, 2003.

3 **Procedure:** The Participating Parties, whose partial settlement proposal the Commission approved and adopted, seek clarification of the Commission order. They do not ask clarification of any substantive provision of the order, but ask for “clarification” of portions of the general description.

**DISCUSSION**

4 **Background.** In PSE’s most recent general rate case, the Commission authorized a Power Cost Adjustment Mechanism for PSE.<sup>1</sup> The Commission’s Orders

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<sup>1</sup> Twelfth and Fifteenth Supplemental Orders in Consolidated Docket Nos. UE-011570 and UG-011571, June 20, 2002 and May 13, 2003, respectively.

require an annual true-up of PSE's actual power costs (in contrast to the normalized prospective power costs that are generally included in rates) and an accounting of excess costs/benefits to be shared among PSE and ratepayers. To accomplish this true-up and sharing, the Company is required to file annual PCA reports by September 1 of each year.

- 5 PSE filed its first PCA report on August 28, 2003, covering the period July 1, 2002, through June 30, 2003. It petitioned on that date for approval of the report. The Commission docketed the petition for approval and at the request of parties to the docket set it for adjudicative review.
- 6 The Company, Public Counsel, and Commission Staff participated (collectively they are the Participating Parties) in a partial settlement, reserving from the settlement all power cost issues relating to the Tenaska and Encogen generating facilities. They submitted the proposed settlement for approval, along with a proposed amended report, and all other parties to the docket indicated that they did not oppose the proposed settlement.
- 7 The Commission entered its Order No. 04 in this docket on January 15, 2004, approving the proposed settlement and adopting it as the Commission's resolution of the issues addressed therein. The order described the proposed settlement and its effect, based on the parties' submissions to the Commission in this docket.
- 8 The Participating Parties have several questions about the order.

**A. Description of the Power Cost Adjustment Mechanism.**

9 The Commission Order in this docket stated,<sup>2</sup>

Pursuant to the order in Docket No. UE-011570, the Company's PCA mechanism accounts for differences between PSE's modified actual power costs and a power cost baseline. This mechanism is approved through June 30, 2006, and allows a sharing of costs and benefits that are graduated over four levels of power cost variances.

10 The Participating Parties call attention to the language quoted in paragraph 10, next above, and ask for clarification to determine that the Commission does not believe that the power cost adjustment mechanism must terminate on June 30, 2006.

11 We find no implication in the cited language as to termination of the PCA. The language is descriptive, not prescriptive. This docket can make no change in the prior order, as no issue has been raised and presented by the parties that would allow the Commission to make such changes. The language is based directly on descriptive language in the petition, giving rise to this docket and the contextual language in the settlement itself.<sup>3</sup> The language is accurate, and the Commission has no misconceptions about the effect of the PCA or the effect of the Order.

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<sup>2</sup> Order No. 04, at Paragraph 14.

<sup>3</sup> Petition, paragraph 5, quoting the PCA settlement that the Commission approved, reads in part as follows:

The PCA Settlement describes the PCA as a mechanism that would account for differences in PSE's modified actual power costs relative to a power cost baseline. This mechanism would account for a sharing of costs and benefits that are graduated over four levels of power cost variances, with an overall cap of \$40 million (+/-) over the four year period July 1, 2002 through June 30, 2006. If the cap is exceeded, costs and benefits in excess of \$40 million would be shared at a different level of sharing.

PCA Settlement, ¶ 2.

**B. Prudence.**

12 Commission Order No. 4 reads in part as follows<sup>4</sup>:

The Participating Parties were unable to agree in this docket upon a methodology for determining the costs of power for the Tenaska and Encogen generating resources, and they anticipate that those power cost issues will be resolved in pending Docket No. UE-031725.

13 Paragraph 18 of Order No. 04 reads in part as follows:

Adjustments anticipated in UE-011570 include: 1) prudence from UE-921262, disallowance of a portion power costs associated with March Point 2 (3%) and Tenaska (1.2%); \* \* \*

14 Paragraph 19 of Order No. 04 reads in part as follows:

**Accounting for PCA Mechanism activity.** \* \* \* These [fixed, actual variable, and estimated variable] costs are then adjusted for the prudence disallowance for March Point 2 and Tenaska, contract price adjustments as defined in the PCA and any adjustments required for Colstrip availability.

15 Paragraph 27 of Order No. 04 reads in part as follows:

**Prudence.** Issues of prudence could be addressed in this filing. The Order in UE-011570 contemplates that the Commission has the opportunity to review prudence issues related to short-term purchases, or resources or contracts with a term of less than two years, in the evaluation

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<sup>4</sup> Order No. 05, Paragraph No. 9.

of this filing. No party challenged the prudence of any transaction subject to review in this docket.<sup>5</sup>

16 The first two sentences of paragraph 27 are based on the second full unnumbered paragraph of Page 11 of 13 of Appendix 3 to the Proposed Settlement. The third sentence is based on the absence of any record in this docket available to the Commission that any party challenged any element of prudence of any transaction, except as noted in paragraphs 14 and 15 of this order, above.

17 The Participating Parties contend that the last sentence of the cited paragraph may mean that the parties are foreclosed, in their future arguments relating to the Tenaska and Encogen facilities, from raising issues of prudence.

18 The Commission finds it impossible to reach that conclusion, for a number of reasons.

19 As noted above, the descriptive language of Order No. 04 provides a contextual background that is necessary to provide a context for and to describe the reasoning of the Commission's decision to provide sufficient legal support for it and to allow a reader to understand it, consistent with RCW 34.05.461(3)<sup>6</sup>. The narrative descriptions constitute findings of fact made to support the Commission's decision. They are accurate, in that there is no record of any challenge to prudence in this docket. They do not by any reading, however, constitute an order supported by findings of fact and conclusions of law that the parties are foreclosed, in a matter that has specifically been reserved from this docket, from undertaking any issue they please in resolution of that matter.

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<sup>5</sup> The concluding sentence of Paragraph 23 is parallel, reading, "No party challenges the prudence of energy transactions that were subject to review in this docket."

<sup>6</sup> RCW 34.05.461(3) reads in part as follows: "Initial and final orders shall include a statement of findings and conclusions, and the reasons and basis therefore, on all the material issues of fact, law, or discretion presented on the record . . ."

20 The parties provided no discussion and no description of any challenge to prudence, except as noted in the order itself. The commission cannot look beyond the record before it. The statement is an accurate reflection of the Commission's record for decision.

21 It is clear from the language of Order No. 04 quoted above in paragraph 13, above, that the Commission recognizes the absence of those issues from the settlement and from resolution in this docket. The parties intend to pursue the reserved issues in another docket. The Commission clearly in Order No. 04 allowed the parties to do so, and the order in no way resolves any issue of any kind related to the matters reserved.

22 In conclusion, the challenged language of the order accurately reflects the lack of any record statement from a party regarding prudence.<sup>7</sup> It imposes no limitation on the parties' pursuit of matters that by Commission Order No. 04 are reserved from the effect of the order.

**C. Technical correction.**

23 The petitioning parties call attention to paragraph 12 of Order No. 04, where the order describes the effect of the settlement as \$2.89 million. The parties contend that the accurate reference should be \$2.91 million.

24 The Commission agrees, and the order should be deemed corrected. The error—which does not change the effect of the order—resulted from rounding and a typographical error.

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<sup>7</sup> WAC 480-07-740(2), effective January 1, 2004, requires parties to submit a narrative description of any settlement proposal, sufficient to provide the Commission with the information it needs to review the matter. We anticipate that the issues addressed in the parties' motion will be largely resolved in future matters when the parties meet the requirements of the rule.

25 **Conclusion.** The Commission clarifies Order No. 04 in this docket, as set forth above. The Commission corrects a typographical error.

**ORDER**

26 The Commission clarifies its Order No. 04 in this docket, dated January 15, 2004, that the order means exactly and only what it says. The Commission corrects a typographical error in Paragraph 12 of Order No. 04, to change a reference to \$2.89 million to read \$2.91 million. In other regards the order is unchanged.

Dated at Olympia, Washington, and effective this 28th day of January, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner