BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Docket Nos. UE-011570 and UG-011571
Puget Sound Energy, Inc.'s General Rate Case
To Recover Increased Electric and Gas Costs

King County Responses to Commission's Bench Requests

Commission Bench Request No. 1.

Section 3.3 of the Stipulation establishes a Service Revision Date as the date the King County Settlement Agreement was filed with the Commission (*i.e.*, April 19, 2002).

1.1. If the Commission approves this settlement, would this provision effect a change to the rate PSE charges King County prior to the date of the Commission order?

Response:

Yes, the settlement would certainly change the amount paid by King County. Although the settlement takes the form of a change from service under the Special Contract to service under Schedule 49, it effectively resolves a claim by King County against PSE.

1.2. If there would be an impact on the rates and charges, what would be the dollar impact on the rates and charges to King County relative to what King County would be required to pay for the same service under the existing Special Contract?

Response:

King County estimates the dollar impact of this change to be between $400 and $500 per day. In the case of last month, March 2002, we understand the impact would be approximately $14,400. The impact would vary in large part according to the amount of rainfall.

1.3. In your opinion, does this have implications in terms of any prohibition against setting or charging retroactive rates, or granting "an unlawful rebate in violation of RCW 80.28.080," as asserted by Staff in its comments?

Response:

King County does not view the settlement as having such implications. The April 19, 2002 Service Revision Date and resulting reduction in the amount to be paid by King County do not result in "an *unlawful rebate* in violation of RCW 80.20.080." Rather they represent a *lawful* termination of the Special Contract rates to settle the County's claim

that the Special Contract rates are themselves unlawful. It is the County's position that these Special Contract rates resulted in thousands of dollars of overpayments to PSE. In addition, the reduction in the amount paid by King County will settle King County's claim against PSE on account of Schedule 48 rates, rates which the Commission has already found to be unlawful. The Commission has expressly preserved King County's claim against PSE for overpayments under Schedule 48. Finally, because this settlement must be approved by the Commission, we believe it is in compliance with RCW 80.20.080.

In its Motion to Intervene, King County intervened in PSE's proposals for new rates and, in addition, raised two other rate issues: 1) whether the "rates paid by King County under its current Special Contract" are fair, just and reasonable, and 2) whether the previous rates charged of it "pursuant to Schedule 48" were fair, just, reasonable."

King County had first raised the Schedule 48 claim by intervening in the *Air Liquide, et al. v. PSE*, Docket #UE-001952 and UE-001959 (consolidated)("*Air Liquide*"), on February 15, 2001. The Commission had already found in that case that Schedule 48 "retail rates that are pegged to Western wholesale power markets that are volatile and exceedingly high, are not fair just and reasonable because customers do not have effective options to achieve price stability and reasonable rates. . . ." *Air Liquide, Sixth Supplemental Order*, ¶74. The Schedule 48 customers, including King County, claimed that they had made substantial overpayments to PSE. That matter was settled as to most Schedule 48 customers, a settlement that included a substantial cash payment by PSE. See the confidential *Testimony of Lisa A. Steel*, page 37, line 10 (January 30, 2002). Although PSE and King County did not settle at that time, the Commission preserved King County's right to file a complaint under Schedule 48 in its *Eleventh Supplemental Order*, ¶¶ 40 - 46, and 93.

With respect to King County's claims under the Special Contract, the Commission has found it appropriate to place at issue in this docket "whether the Company's existing tariffs produce rates, terms and conditions for electricity service that are fair just and reasonable and sufficient." *Complaint and Order Suspending Tariff Revisions and Initiating Discovery*, ¶ 11 (December 12, 2001). See also, RCW 80.04.360

The Service Revision Date of April 19, 2002, along with the other provisions of the King County Settlement, were negotiated in settlement of King County's rate claims under Schedule 48 and the special Contract. *King County Settlement Stipulation*, ¶ 1.4,5.2, 5.4, 5.5. King County's claims were raised in the present proceeding in its Petition to Intervene, which was filed on December 20, 2001. It is well settled in Washington that when a rate is challenged, the challenge may affect the rate from the date of the filing of the complaint. *State ex re. Model Water & Light Co. v. Dept. of Public Service of Washington*, 199 Wash. 24, 33 (1939). Since King County raised its rate claims well before April 19, 2002, the Commission may approve the settlement.

Commission Bench Request No. 2.

Section 4.2 of the Stipulation refers to "the application of environmental laws, energy facilities siting requirements, OATT provisions regarding system upgrades, or applicable regulatory requirements." Environmental laws, energy facilities siting requirements, and OATT provisions regarding system upgrades appear to be matters wholly outside the Commission's jurisdiction. The phrase "applicable regulatory requirements" is inherently vague, and may or may not be intended to refer to matters within the Commission's jurisdiction. What is the meaning and purpose of this provision in Section 4.2 of the Stipulation?

Response:

King County has insufficient information to respond to this request and defers to Puget Sound Energy, Inc.

Commission Bench Request No. 3.

Section 4.3 of the Stipulation includes the statement that "[t]his commitment does not shift any greater cost responsibility to PSE for any expenses of supporting King County's self-generation than set forth in Schedule 80."

3.1. Please explain the meaning and relevance of this statement.

Response:

King County has insufficient information to respond to this request and defers to Puget Sound Energy, Inc.

3.2. Does the commitment shift any cost responsibility to PSE's other customers?

Response:

King County has insufficient information to respond to this request and defers to Puget Sound Energy, Inc.

3.2. If the commitment shifts any cost responsibility to PSE's other customers, please state the amount.

Response:

King County has insufficient information to respond to this request and defers to Puget Sound Energy, Inc.

3.4. Does any provision of the Stipulation potentially shift cost to PSE or to any other PSE customers?

Response:

King County has insufficient information to respond to this request and defers to Puget Sound Energy, Inc.

3.5. If the answer to subsection 3.4, above, is yes, state the amount.

Response:

King County has insufficient information to respond to this request and defers to Puget Sound Energy, Inc.

Commission Bench Request No. 4.

What are the immediate and prospective rate and revenue effects, or implications for future rates and revenues, of the proposed return of King County to Schedule 49, vis-à-vis other customers served under Schedule 49 or under other schedules?

Response:

King County has insufficient information to respond to this request and defers to Puget Sound Energy, Inc.

Commission Bench Request No. 5.

The anticipation that King County will self-generate appears to be a central justification for the change in service from the currently effective Special Contract to Schedule 49.

5.1. Why does this expectation justify a return to core service when self-generation means that King County will again leave core service under another Special Contract? (Section 4.3, lines 12-13)?

Response:

Self-generation is an important principle to King County, but it is not the central justification for the change in service from the currently effective Special Contract to Schedule 49. The central justification is that the Special Contract agreed upon by the parties and approved by the Commission expressly permits the County to return to a core rate upon the Special Contract's termination. Specifically, Paragraph 8 of the Special Contract provides as follows:

> **8. Return to Core Status**. The Special Contract will conclude on the Termination Date unless earlier terminated as provided in Section 11 below. **The County may thereafter elect to purchase electric service from PSE based on the applicable core electric service tariff appropriate for the electric load characteristics of the County at the time of termination. This may include existing core industrial tariffs or other core tariffs approved by the Commission. If the County so elects and complies with the then-existing requirements for service under the tariff chosen by the County, then PSE shall provide service to the County under the rates and terms of such tariff, and the County will become a core customer of PSE.** Until such time, Customer will retain its non-core status. If the County receives core service as provided in this Section 8, then the County assumes all of the rights, risks, and responsibilities as any other customer on rate schedules applicable to similar core industrial customers, including stranded cost risks, if any. The County's prior service under Schedule 48 or this Special Contract shall not be a basis for denying service under rate schedules applicable to similar core industrial customers or otherwise discriminating against the County. (Emphasis added.)

As this provision makes clear, the County has the option of electing to purchase electric service from PSE as a core customer upon the termination of the Special Contract. As part of an overall settlement and pursuant to the terms of the Stipulation, the County and the Company have agreed that it is no longer appropriate for the County to continue to receive electric service under the Special Contract. The Stipulation of Settlement simply implements the rate option previously agreed upon.

The second justification for the change in service from the Special Contract to Schedule 49, in King County's view, is that the rates charged pursuant to the Special Contract are not fair, just, and reasonable, and that service pursuant to the Special Contract is therefore unlawful.

5.2. Conversely, if self-generation is a central justification for King County's return to core service, how is this condition met if King County never implements the anticipated self-generation?

Response:

The Stipulation does not require the County to self-generate as a condition to returning to core service. If at the end of the transition period the County is not successful in implementing its plans for self-generation, it may still remain a core customer. It may also continue to achieve its self-generation objectives. However, the billing demand provisions in Section 4.3 would cease to apply.

Commission Bench Request No. 6.

Section 4.4 of the Stipulation appears to set a ceiling on March to October billing demand of 10 MVa initially, with a potential adjustment to 9 MVa in the future.

6.1. Please state whether this is, in fact, the parties' intent.

Response:

It is not the intent of the Stipulation to set a ceiling on the March to October billing demand. It is however the intent of the Stipulation to set a ceiling on the application on the billing demand ratchet for the period of March through October. For example, if actual peak demand during the month of March was registered at 12 MVA, the billing demand would be 12 MVA. However, if the actual registered demand for the month were 8 MVA, the billed demand would be 10 MVA.

The adjustment to 9 MVA recognizes the contribution of the digester gas-fired fuel cell to base load energy production. The fuel cell is scheduled for operation in the first quarter of 2003.

6.2. What was King County's actual highest 30-minute demand recorded between 8:00 a.m. and 12:00 noon and between 5:00 p.m. and 8:00 p.m. during the peak seasons, November through February, for 2001, 2000, 1999, 1998, and 1997?

Response:

King County has insufficient information to respond to this request and defers to Puget Sound Energy, Inc.

6.3. If King County had been a Schedule 49 customer during any of the years 1998 through 2002, would its March through October Billing Demand have been determined on the basis of King County's actual highest 30-minute demand recorded between 8:00 a.m. and 12:00 noon and between 5:00 p.m. and 8:00 p.m. during the peak seasons, November through February for the preceding year?

Response:

King County has insufficient information to respond to this request and defers to Puget Sound Energy, Inc.

6.4. If the response to subsection 6.3, above, is "no" for any of the years in question, what would have been the basis under Schedule 49 for determining King County's March through October Billing Demand and what would King County's Billing Demand have been using the applicable criterion under Schedule 49?

Response:

King County has insufficient information to respond to this request and defers to Puget Sound Energy, Inc.

6.5. What, in your view, are the implications of this provision of Section 4.4 of the Stipulation vis-à-vis the requirements of RCW 80.28.080?

Response:

Contrary to the assumption made in Commission Bench Request No. 6, Section 4.4 of the Stipulation does *not* set a ceiling on March to October billing demand. King County will pay billing demand charges on the full amount of its actual demand if that demand exceeds 10 Mva. Section 4.4 of the Stipulation does, however, limit the ratchet effect on King County of peak demands recorded in the previous season. Although the ratchet effect will be applied to King County in a manner different from its application to some other Schedule 49 customers, we do not believe this difference violates RCW 80.28.080. Because of the unique demand profile of the South Treatment Plant, No other Schedule 49 customers are "under like circumstances." As described above, strict application of the ratchet to King County would result in rates well in excess of the cost of serving King County. Such rates would not be fair, just, and reasonable. Because King County's load characteristics are unique, however, a modification of Schedule 49, necessitating a challenge to the proposed settlement of PSE's rate case, would be an inefficient approach to correcting this problem. For this reason, King County supports the approach set forth in Section 4.4 of the Stipulation to resolving the issue of King County's ratchet demand.

6.6. Explain the purpose of the Billing Demand alternatives under Schedule 49.

Response:

King County does not believe that that the current billing demand ratchet provisions for the period of March through October of each year are applicable to King County's load characteristics. It is King County's understanding of the ratchet requirement that PSE requires cost recovery of capital infrastructure and power costs that coincide with its annual system peak. Data has been provided by both King County and PSE to WUTC Staff that illustrates the load characteristics of the Renton Wastewater Treatment Plant.

It has been shown that plant effluent flow decreases as temperatures decrease in King County. Consequently, as PSE reaches an annual system peak, the Renton treatment plant electrical load is diminishing. Annual peak plant load occurs during several days of torrential rains in East King County. During periods of extreme rain, PSE has not experienced annual system peaks and there is an abundance of wholesale energy available in the marketplace.

It has also been demonstrated to WUTC Staff that the daily load characteristics of the Renton Wastewater Treatment Plant do not coincide, nor contribute to PSE daily peak occurrences. The daily plant load is actually the lowest during the morning peak and generally reaches its highest daily demand at midnight.

Based upon the aforementioned understanding of King County's load characteristics and the application of the billing demand ratchet within Schedule 49, the county believes that its payments to PSE, as proposed in the tariff, would be exceeding its actual cost of service for the Renton plant.

6.7. With reference to your response to subsection 6.6, above, how is that purpose satisfied by the proposed cap on King County's Billing Demand?

Response:

There is not a "cap" being proposed for the billing demand. There is limit being proposed on the demand ratchet being applied to the county's Renton plant. In all instances, the county will pay PSE for the actual monthly demand placed on their electrical system. As proposed, the county will actually pay more than their actual demand, from March through October when the actual demand is less than 10 (9) MVA.

The application of the "ratchet" provision within Schedules 31 and 49 are very applicable for a "ski hill" type operation that places a large load on PSE's system during the peak months and then ceases to contribute to the cost of supplying that energy the rest of the year. In contrast, the wastewater treatment plant represents a constant, high load factor end user.

Commission Bench Request No. 7.

Provide a list of all Schedule 49 customers and state their respective March through October Billing Demands for each of the years 1998 through 2002. State the basis upon which each Billing Demand amount was established under Schedule 49.

Response:

King County has insufficient information to respond to this request and defers to Puget Sound Energy, Inc.