SERVICE DATE

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PETITION OF PUGET SOUND POWER & LIGHT COMPANY FOR AN ORDER REGARDING THE ACCOUNTING TREATMENT OF RESIDENTIAL EXCHANGE BENEFITS	DOCKET NO. UE-920433
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND POWER & LIGHT COMPANY, Respondent.	DOCKET NO. UE-920499
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND POWER & LIGHT COMPANY, Respondent.	DOCKET NO. UE-921262
	TWENTIETH SUPPLEMENTAL ORDER ON RECONSIDERATION AND CLARIFICATION

NATURE OF PROCEEDING: In this portion of these consolidated proceedings the Commission reviewed a Puget filing in which Puget sought to demonstrate the prudence of nine purchase power contracts and its four-year energy sale to the Bonneville Power Administration.

PROCEDURAL STATUS: The Commission entered its Nineteenth Supplemental Order on September 27, 1994. On October 7, 1994, Puget filed a Petition for Reconsideration and Clarification of that Order. Answers to the Petition were filed by the Commission Staff and Public Counsel on October 28, 1994. Accompanying the Commission Staff Answer was a motion to admit an exhibit. Puget was asked to reply to the answers; its reply was filed on November 9, 1994. Accompanying its reply was a motion to strike certain portions of the Commission Staff and Public Counsel answers. On November 14, 1994, the Commission Staff answered Puget's motion, and sought permission to respond to Puget's reply. On November 23, 1994, the Commission Staff and Public Counsel responded to Puget's reply.

COMMISSION: The Commission determines that, overall, the Nineteenth Supplemental Order achieves the results the Commission intended. The Commission will grant the motion of the Commission Staff to enter a portion of a Puget response to a subject-to-check question as an exhibit; the Commission will deny Puget's motion to strike portions of the Commission Staff and Public Counsel Answers to its Petition for Reconsideration. The Commission acknowledges an error in a Public Counsel spreadsheet and an offsetting error in failing to update a gas cost estimate. It will leave the disallowance amount unchanged. The remainder of the issues raised by Puget were decided against it in the order; the Commission concludes that it correctly decided those issues. The Commission instructs Puget that it is not authorized to defer any of its costs from this prudence investigation portion of these proceedings.

PARTIES: Puget Sound Power & Light Company ("Puget" or "company") was represented by James M. Van Nostrand and Sherilyn Peterson, attorneys, Bellevue. The Staff of the Washington Utilities and Transportation Commission ("Commission Staff") was represented by Robert D. Cedarbaum, assistant attorney general, Olympia. Robert F. Manifold, assistant attorney general, Seattle, appeared as Public Counsel.

MEMORANDUM

This is a rate proceeding initiated by a request of Puget for a general increase in rates. Consolidated with the rate increase request were a proceeding on rate design, and an accounting petition regarding residential exchange benefits provided by the Bonneville Power Administration. The Commission heard the evidence and entered the Ninth Supplemental Order on Rate Design Issues, a final order, on August 17, 1993. The Commission heard the evidence and entered a final order disposing of the remaining issues in the Eleventh Supplemental Order, on September 21, 1993. In that Order the Commission found that Puget had not proven the prudence of its decisions to acquire eight power supply contracts and to sell power in a four year contract to the Bonneville Power Administration.

In its Eleventh Supplemental Order the Commission ordered Puget to file by November 1, 1993, a power supply case which demonstrated the prudence of its resource acquisitions since its previous general rate proceeding. By its Eighteenth Supplemental Order, entered April 20, 1994, the Commission granted a joint motion of Public Counsel and the Commission Staff to expand the issues to consider also the prudence of Puget's contract with Tenaska. The Commission heard the evidence and entered a final order disposing of the power supply/prudence issues in the Nineteenth Supplemental Order on September 27, 1994.

On October 7, 1994, Puget filed a Petition for Reconsideration and Clarification of the Nineteenth Supplemental Order. Answers to the Petition were filed by the Commission Staff and Public Counsel on October 28, 1994. Accompanying the Commission Staff Answer was a motion to admit an exhibit. Puget was asked to reply to the answers; its reply was filed on November 9, 1994. Accompanying its reply was a motion to strike certain portions of the Commission Staff and Public Counsel answers. On November 14, 1994, the Commission Staff answered Puget's motion, and sought permission to respond to Puget's reply. On November 23, 1994, the Commission Staff and Public Counsel responded to Puget's reply.

This order will rule on the motion to admit additional evidence, and on the motion to strike portions of the Commission Staff and Public Counsel answers. It will identify the issues presented in the petition for Reconsideration and Clarification, will identify arguments presented for and against them, and will decide them. Finally, this order will make certain technical corrections to the Nineteenth Supplemental Order.

I. Preliminary Matters

A. Commission Staff Motion to Admit Additional Evidence.

The Commission Staff included within its answer to Puget's motion for reconsideration a motion to admit BPA Rate Schedule NR-93 into evidence. A copy of the document was provided as attachment 1 to their answer. The motion indicated that Puget witness Mr. Lauckhart had been asked to accept, subject to check, certain BPA NR rate energy charges, and that by letters dated August 19 and 22, 1994, Mr. Lauckhart indicated that he could not accept those values, attaching BPA NR Rate Schedule NR-93. The question to Mr. Lauckhart is reflected at page 6395 of the transcript. The Commission Staff argued that entry of the document will ensure both the Commission's ability to rely upon it and the accuracy of the transcript itself.

Puget, by footnote four of its motion to strike and footnote eleven of its reply to the Commission Staff answer to its Petition, opposes the entry of the document. Puget notes that the document is not part of the record, but does not contest its accuracy nor disagree with the fact that Puget itself provided the document in response to a subject-to-check question.

In its answer to Puget's motion to strike Attachment 1, the Commission Staff notes that the document was provided in support of a negative response to a subject-to-check question, that the question was asked on the last day of hearing, that the record will be inaccurate if the document is not admitted, and

that the Commission Staff had no other opportunity to introduce the document. It notes, further, that if Mr. Lauckhart had been able to answer the question on the stand, Staff Counsel would have been able to ask him the basis for his response, and the BPA schedule could then have been offered without objection.

Commission Decision: On August 2, the administrative law judge ruled that the responses to "subject to check" questions received by that time would be included in the record. The document in question, however, was attached to a subject-to-check response submitted after the record closed, and is not subject to that ruling. The Commission routinely admits responses to questions asked "subject to check" unless a party, other than the one providing the response, makes a well-grounded objection. Puget has raised no ground for its objection, other than that its response was sent after the record closed. The Commission will admit the document.

B. Puget Motion to Strike Portions of Commission Staff and Public Counsel Answers.

Puget moved to strike portions of the Commission Staff and Public Counsel answers as follows: Commission Staff pages 2, 8-10, 18 and Attachment 2, Public Counsel pages 3-6 and Attachments A through E. Both Commission Staff and Public Counsel have argued that, if the Commission decides to correct "computational errors", the Commission should correct all computational errors. Both argue that the 15 mill variable gas cost sponsored by Puget witness Mr. Litchfield was a 1989-90 figure which should be updated to a 1993 value if it is to be used in Dr. Blackmon's formula. Puget argues that this is a new challenge to the Commission's order which is untimely, because the time for seeking reconsideration has passed. Puget further argues that the relief sought by the Commission Staff and Public Counsel is based on argument and exhibits that are not matters of record, and that the Commission's findings of fact, conclusions and reasons must be based on record evidence, citing RCW 34.05.461(3) and (4).

The Commission Staff answer to Puget's Motion to Strike Argument and Exhibits argues that the Commission is now aware of a potential flaw in its calculation of the disallowance, and that it has the authority to revise the order on its own motion if it agrees that the flaw exists. It contends that Puget has "fundamentally mischaracterized" the Commission Staff and Public Counsel answers. By the Commission Staff's reasoning, one element of the company petition was a specific request for the Commission to correct computational errors. The proposal to correct computational errors was, therefore, the company's, and there is nothing new or untimely in responding to Puget's

proposal. Commission Staff argues that its proposed correction completed the process and was a proper response to Puget's proposal to make piecemeal corrections. It also disputes Puget's claim that it is offering new evidence, noting: "Each and every amount on Attachment 2, however, is fully explained and tied into existing evidence."

The Public Counsel Reply to the Puget Power Response also challenges the company claim that there is "no record evidence supporting Staff and Public Counsel's position that the 15 mill number should be adjusted by some general inflation index to reflect accurate 1993 values." Puget Answer, page 5; quoted in Public Counsel Reply, page 2.

Commission Decision: The Commission believes that it is appropriate in a response to a Petition seeking to correct "computational mistakes" for opposing parties to describe and argue that offsetting "mistakes" were made. The Commission allows parties answering petitions for administrative review to raise additional concerns with an initial order. Order M. V. No. 130795, In re Amalgamated Services, Inc., App. No. P-66826 (October 1984).[1] In Amalgamated an applicant challenged an initial order denying its application. In their reply to the exceptions the protestants challenged a finding of fact in the initial order. The Commission noted:

> Applicant's suggested approach would require parties to a proceeding, in order to preserve their positions, to file exceptions to any finding in a proposed order with which they did not agree, even though they were fully satisfied with the results. This approach would result in a proliferation of paperwork, largely irrelevant to the results of a proceeding, multiplying the need for Commission action. **The better rule** is that upon a challenge to a proposed order, the elements of the challenge are subject to argument of the parties and to Commission review. Here the applicant challenged the legal treatment of "good faith operations"; this opens to review the underlying question of the existence of good faith operations. [Emphasis supplied] Page 2.

The same "better rule" should apply to motions for reconsideration in cases where the Commission rules directly. The Commission Staff and Public Counsel were satisfied with the result of the Nineteenth Supplemental Order. When, however, Puget challenged the computation of the disallowance, this opened to question the entire computation. All elements of the computation are subject to argument by the parties and to Commission review.

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[1] See also, RAP 5.2(f) which, after a party files a notice of appeal, allows other parties to file cross appeals.

In addition, the Commission may consider issues on its own motion that have been raised in a deficient pleading. See, Order M. v. No. 138131, In re Punctual Transportation, Inc., App. No. P-71023 (August 1988); Order M. V. No. 127318, In re Amalgamated Services, Inc., App. No. P-66973 (March 1983). Fundamental fairness to the Commission and all parties requires that, once a computation is challenged, all alleged mistakes in the computation be reviewed together. The Commission agrees with the Commission Staff and Public Counsel that their answers rely on record evidence which may properly be considered. The Motion to Strike is denied.

II. Puget's Motion for Reconsideration and Clarification

Puget's petition states: "This petition will focus on certain issues which are raised for the first time in the Order itself, rather than issues which have been argued throughout the proceeding." (page 1) Public Counsel disputes this statement, noting that of the six issues raised, "five were in evidence or actively discussed during the proceeding." The Commission agrees with Public Counsel that in main part Puget's petition seeks to reargue issues that it previously had lost, rather than focus on new issues.

A. THE "COMPUTATIONAL" ISSUES

Puget requests reconsideration to make three "computational" changes. Commission Staff and Public Counsel respond that an additional "computational" error should also be corrected, if any changes are to be made. They also reject two of the company's proposed changes.

1. SHOULD THE COMMISSION ADJUST THE BLACKMON FORMULA TO CORRECT A MATHEMATICAL ERROR?

Puget alleges that the Commission used data from a spreadsheet of Dr. Blackmon's which contains an error. The order properly calculates the results based on Dr. Blackmon's exhibits, which were not contested on this point, but the company points out an inconsistency within his exhibits. What they say is that Dr. Blackmon picked up the wrong figure from a column of figures in his preparation of a portion of the spread sheet. Substituting a 2.1 mills/kWh value for the 1.0 value used would reduce the March Point Phase II disallowance percentage from 3.0% to 1.1%. It would reduce the overall disallowance from $16.8 million to $12.7 million.

Commission Staff notes that Puget did not depose or cross-examine Dr. Blackmon to confirm that he had made a mistake, nor did Puget brief this issue or submit rebuttal testimony. Commission Staff defers to Public Counsel on this item.

Public Counsel acknowledges that the exhibit contains the error now cited by Puget. It argues that what the Commission should do at this point is a separate question. The spreadsheet in question was prefiled on May 4, 1994. Public Counsel argues that Puget failed to raise this issue at an appropriate time and that the record is now closed. It argues that the ultimate issue is whether the result is reasonable based upon the evidence in the case, noting that the result is much smaller than other results the Commission found to be reasonable. Public Counsel then argues that if the Commission decides to reconsider its decision, it should also consider mistakes which increase the disallowance. See, section A.4 following.

Commission Decision: Puget is correct in its claim that Dr. Blackmon picked up an incorrect figure in preparing one of his exhibits. The exhibit including the incorrect figure is one that the Commission relied upon in its calculation of an appropriate disallowance. The exhibit was not challenged on the record, and the record is closed. If the Commission were to reopen the record it would correct both this error and the error discussed in the following section of this order. This would increase the disallowance; such an increase is not in the best interests of Puget. For the reasons given in our order, after finding that Puget was imprudent, the Commission sought a measure of "damages" which would not unduly burden Puget or its shareholders. We continue to believe the "damages" we found are at the low end of a reasonable range of damages and, thus, we will not disturb the result of the Nineteenth Supplemental Order.

2. SHOULD THE COMMISSION HAVE INCREASED THE 15 MILL COLUMN IN DR. BLACKMON'S EXHIBIT TO UPDATE MR. LITCHFIELD'S 1989-90 GAS COST ESTIMATE TO A 1993 FIGURE?

The Commission Staff argues that Puget seeks to have the Commission amend its calculation on a piecemeal basis. It claims that the Commission should only revisit its computation if it corrects all computational errors. Such "corrections" would increase the estimated disallowance form $16.8 million to $39.5 million. The basis for the Commission Staff's proposed correction is the fact that Mr. Litchfield's 15 mill/kWh gas cost estimate is stated in 1989-90 dollars, while Dr. Blackmon's study is stated in 1993 dollars. The Commission Staff alleges that the 15 mill figure should be converted from 1990 to 1993 dollars using the inflation factor from Exhibit C-2209, increasing the variable gas cost estimate to 16.85 mills/kWh. The Commission Staff argues that the resulting disallowance is still far less than all of the other methods the Commission considered, and found justifiable. The Commission Staff suggests that the Commission may wish to acknowledge the first computational error, and this error, and make no change in the order's disallowance.

In its response to Puget's reply, the Commission Staff argues that its and Public Counsel's adjustment to the 15 mill figure is supported by record evidence. It also alleges that Mr. Litchfield suggested that the 15 mill figure would be different for 1993. First, it notes that the methodology adopted by the Commission was based upon Dr. Blackmon's Exhibit C-2209, stated in 1993 dollars, and that Mr. Litchfield's 15 mill figure is stated in 1989-90 dollars. Second, Mr. Litchfield testified that a reasonable estimate of the variable cost of a Combined Cycle Combustion Turbine ("CCCT") as of 1989-90 was 15 mill/kWh levelized real, or roughly 30 mills/kWh, levelized nominal. Exhibit T-2247, page 9. Implicit in this statement is a recognition that the 15 mill amount will increase over time. Third, Mr. Litchfield calculated his 15 year dispatchability value using an inflation rate of 5%, which is higher than the inflation rate used by the Commission Staff and Public Counsel. Transcript page 6345. Fourth, Puget's calculation of levelized avoided costs assumed escalating variable firm costs throughout the lives of each power supply contract and the company's avoided cost schedules also assumed that variable firm costs would escalate at the estimated rate of inflation, as do its Integrated Resource Plans, and as do the power supply contracts specifically at issue in this docket.

Public Counsel notes that the Commission arrived at its numerical disallowance by using the analysis of Dr. Blackmon, but substituting an input value of 15 mills selected by the Commission. In support of the 15 mill figure, the order notes that Puget witness Mr. Litchfield testified to the 15 mill figure. Public Counsel argues that Mr. Litchfield's 15 mills was in 1989-90 dollars and, that, using the inflation rate which was used in Mr. Blackmon's exhibit, the 15 mills in 1989-90 dollars becomes 17.2 mills in 1993 dollars. If both the mistake identified by Puget (See, A.1 above) and the "15 mill mistake" were corrected it would result in a total present value disallowance of $44.9 million rather than $16.8 million. Public Counsel argues that while this is a relatively large change viewed in absolute dollars, it would only increase the disallowance from 0.7% of the cost of the nine contracts to 1.8% of that cost. Public Counsel concludes that if the Commission decides to change the outcome in order to correct computations, it should make both of the above corrections. It recommends that the Commission note these offsetting errors and leave the disallowance amount in the order unchanged.

In its response to Puget's reply, Public Counsel argues that record evidence supporting adjusting the 15 mill number to reflect accurate 1993 values is provided in the testimony and exhibits of Dr. Blackmon, referencing specifically Exhibit 2218. It argues that the importance of using values expressed in dollars specific to the proper year is further shown in Dr.

Blackmon's Exhibit C-2209. In his testimony reflected at page 6156 of the transcript Dr. Blackmon noted that a levelized real price in 1988 dollars would have to be adjusted to 1993 dollars. Public Counsel explains that the difference between the Public Counsel and Commission Staff disallowances of $44.9 million and $39.5 million present value is a result of Public Counsel adjusting for 3.5 years of inflation, while the Commission Staff adjusted for 3 years.

Public Counsel also argues that Puget's argument to use actual 1993 gas prices violates the principle of using information available at the time of the decision, and that use of that figure would result in a disallowance far greater than any witness recommended.

In Puget's reply to the Commission Staff and Public Counsel answers to Puget's petition, it claims that there is no record evidence to support the Commission Staff and Public Counsel claim that gas prices should be inflated. It claims that Mr. Litchfield's 15 mill figure would be accurate for both 1990 and 1993, and that there is no suggestion in Mr. Litchfield's testimony that this figure would be different for 1993. It argues that Exhibit 2252 shows that there was no net increase in gas prices between 1990 and 1993. Exhibit 2252 provides a historical record of the spot prices of gas. Puget argues that the Commission Staff and Public Counsel submit new exhibits that were not part of the record, nor based exclusively on record evidence. It argues that it has not had any opportunity to test the assumptions through cross-examination or to admit its own evidence on this newly raised claim.

Commission Decision: The Commission Staff and Public Counsel are correct in their claims that Mr. Litchfield's 15 mill gas cost estimate should, when used with Dr. Blackmon's study, be updated to a 1993 levelized real avoided cost. The Commission calculated damages in this proceeding by determining what an appropriate dispatchability study by Puget, in 1991, would have revealed as the cost to Puget to build the avoided resources that March Point Phase II and Tenaska replaced. Because Puget did not make an appropriate study before it purchased those power contracts, the Commission had to use a proxy study. The proxy study which the Commission found was most like the study Puget should have done was the 1993 BPA study sponsored by Dr. Blackmon. That study was based on information available to Puget in 1991.

In Dr. Blackmon's study, he first restated levelized nominal cost estimates to levelized real dollars, then inflated those amounts to 1993 dollars. See, Exhibit 2218. Mr. Litchfield's gas cost estimate was already stated at a levelized real level; it should have been inflated to a 1993 figure.

Puget's arguments to the contrary are not germane. Puget is familiar with avoided cost and other estimating studies. Several of them are present in its exhibits. See, Exhibits 2006, 2038 and 2039. The company's own calculation of levelized avoided costs assumed escalating variable firm costs throughout the lives of each power supply contract, including March Point Phase II and Tenaska. Exhibit 2259. The question before us is what estimate of gas cost Puget should have made in 1991, and what the levelized real figure for that gas cost would be in 1993.

The question is not what were the historical spot prices of gas in 1991 and 1993. Puget's argument to use actual 1993 gas prices violates the principle of using information available at the time of the decision in 1991. Puget also has not thought through to the reasonable result of using an actual gas cost: use of that figure would result in a disallowance far greater than any witness recommended, to Puget's detriment.

Although the Commission Staff and Public Counsel argue that, if any computational corrections are made, all should be made, they do not recommend that the Commission increase the disallowance. Rather, they recommend that the Commission acknowledge both errors and their offsetting nature, and leave the disallowance amount in the order unchanged. We agree that this is the proper resolution.

3. SHOULD THE COMMISSION TREAT THE TENASKA CONTRACT AS IF IT WERE FULLY DISPATCHABLE, RATHER THAN DISPATCHABLE FOR EIGHTY DAYS PER YEAR?

Puget alleges that the Commission erred in agreeing with Public Counsel that the Tenaska contract is only economically dispatchable for eighty days per year. It states: "the Commission will be pleased to know that the dispatchability of Tenaska is significantly more flexible than it assumed." It argues that the values shown in Mr. Lauckhart's exhibit 2258, page 16, should be used, and that use of those values would eliminate the disallowance for Tenaska.

In its reply to the Commission Staff answer, Puget disputes that it used the eighty day limit for "planning purposes," noting that the letter reflecting the eighty days was written more than two years after the contract was signed.

The Commission Staff argues that the eighty day limitation is an appropriate assumption. It claims that this was Puget's own planning assumption, and notes that Puget presented no evidence which contradicts that assumption.

Public Counsel answers: "The point is not whether the project is displaceable but at what price. Puget did not present any evidence that shows a better price than that used by Dr. Blackmon." Answer of Public Counsel, page 6.

Commission Decision: Although Puget alleges that this issue is raised for the first time by the order itself, the issue was disputed in the hearing, and the order reflects the Commission's agreement with Public Counsel that the evidence shows that the contract is only economically dispatchable for eighty days per year.

The issue centers on Exhibit C-2220. That document states that "additional displacement above this quantity [eighty days per year] triggers additional steam host penalties and natural gas supply charges." Puget alleged on rebuttal that Tenaska was dispatchable for more than eighty days; it did not provide any information regarding the cost of that dispatch. It did not quantify that any dispatch of more than eighty days would be economic. The Commission did not find its claim credible. The order considered the disputed evidence and found Public Counsel witness Dr. Blackmon's testimony that the project was only economically dispatchable for eighty days per year persuasive. The Commission has revised Finding of Fact No. 8 to make this finding explicit. It is set out below.

4. DID THE COMMISSION CORRECTLY APPLY DR. BLACKMON'S STUDY, OR DOES THE FACT THAT A CCCT IS ONLY A PROXY RESOURCE AFTER 1996 MEAN THAT NO ADJUSTMENT SHOULD HAVE BEEN APPLIED DURING THE 1993-1995 TIME PERIOD?

Puget alleges that the fact that the Commission made an adjustment for resources whose avoided resource was a CCCT means that the Commission should only apply its adjustment during the time that the avoided resource would have been in operation. It argues that the avoided cost forecast that formed the basis of the avoided cost calculations in Dr. Blackmons's exhibits used BPA NR purchases as the proxy resource from 1993-95, and that the avoided resource during that period is not a CCCT. Puget then argues that Dr.Blackmon's dispatchability adjustments to the levelized costs for March Point Phase II and Tenaska are based on a CCCT from 1993 to 1995 when the avoided proxy resource is not a CCCT. Puget claims that the calculation needs to be corrected, which results in reductions in the dispatchability adjustment shown in Dr. Blackmon's Exhibit 2205.

Puget claims that the BPA NR-93 Rate Schedule does not show dispatchability values and does not support the Commission Staff's claim that dispatchability values are about 50%. Puget argues that the only evidence on this point is Mr. Lauckhart's

testimony that there would be no dispatchability value, and notes that Mr. Lauckhart also testified that BPA could change the NR tariff at any time to eliminate dispatch altogether.

Commission Staff argues that the language in the order "the adjustment should only be applied to resources whose proxy is a CCCT" (page 31) does not refer to the specific years, but rather to the specific resources that were evaluated using the CCCT as a proxy. It also argues that Puget's assumption that the BPA NR rate has no dispatchability benefits is wrong. Commission Staff attaches a copy of the BPA NR rate provided by Mr. Lauckhart in response to a subject-to-check question. Based on the document, Commission Staff argues that the variable component of the BPA NR rate is about 50%, and that it may increase the disallowance to use that information in the place of the CCCT data used by Dr. Blackmon.

In its response to the company reply the Commission Staff alleges that the company contention that the BPA NR-93 Rate Schedule has no dispatchability benefits is "blatantly untrue." The Commission Staff analyzes the schedule and concludes: "55% of the bill in winter months and 43% in summer months is based on actual energy taken. Those benefits are not illusory. They are real savings resulting from economic dispatch." Reply, Page 6. The Commission Staff calls Puget's argument that BPA could change the NR tariff at any time pure speculation.

Public Counsel notes that this issue was addressed in Puget's cross-examination of Dr. Blackmon, in Puget's rebuttal testimony, and in Public Counsel's brief. It argues that "The Commission consistently applied Dr. Blackmon's analysis to contracts as to which the avoided resource included a CCCT. The Commission neither stated nor implied that a CCCT was the avoided resource in all years." Public Counsel Answer, page 7. It alleges that the Commission correctly applied Dr. Blackmon's analysis to include 1993-95. Public Counsel goes on to note that the BPA NR rate contains a fixed and variable component. It argues that the values Puget suggests result from its change are not based on an identified source, and it has been unable to replicate the results of those calculations. Id.

Commission Decision: Most "avoided cost" studies use as an avoided resource some kind of power plant, with some source of interim power during the years before that plant can be brought on line. The Commission chose to adjust two contracts whose avoided resource was a CCCT. The avoided cost study contemplates purchases at the BPA NR rate in the years before the CCCTs would come on line.

Puget argues that the language in the order: "the adjustment should only be applied to resources whose avoided proxy resource is a CCCT" (page 31) means that the adjustment should only be applied to the years in the avoided cost study based on a CCCT **after** the CCCT is built. This is not what was intended. The Commission agrees with the manner in which Dr. Blackmon applied his study to include 1993-95, and the order properly reflects his analysis.

Alternatively, the Commission agrees with the Commission Staff and Public Counsel that the BPA NR rate contains a fixed and variable component and, thus, that it has a dispatchability value. Mr Lauckhart's testimony that there would be no dispatchability value is not credible.

B. DID THE COMMISSION ERR BY NOT PROVIDING A CREDIT FOR COGENERATION?

Puget alleges that the Commission erred by not "giving credit" to the company for purchasing cogeneration. The company claims it was obligated by federal and state energy policy to favor cogeneration, and that it should be given an offsetting credit for selection of cogeneration projects.

In its Reply, Puget states that credit should be given and, in a footnote, it seeks a specific credit which would "enable the company to make future plans for environmental resources." It does not propose any specific environmental credit.

The Commission Staff argues that Puget is just rehashing an argument it made throughout the proceeding. It also argues that the Commission's selection of a disallowance that minimized the financial impact on the company already gave the company credit. The Commission Staff argues that it is most important to note that nothing in the state or federal statutes cited by Puget authorizes it to pay a <u>premium</u> for cogeneration.

Public Counsel notes that this issue was argued extensively during the hearing, including in Puget's motion for partial summary judgment. It argues that the Public Utility Regulatory Policies Act of 1978 (PURPA)[2] strikes a balance between encouraging cogeneration and reasonable rates, and that no premium should be paid.

Commission Decision: Puget made the same claim in the same general terms during the proceeding. The statute Puget cites in support of its argument is the purpose section of chapter 82.35 RCW, entitled: Cogeneration Facilities--Tax Credits. The remaining portion of that chapter describes the

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[2] 16 USC § 2601, et seq.

manner in which a person or corporation other than an electric utility may seek to obtain a tax credit for installing a cogeneration facility. The chapter does not address the granting of some kind of regulatory credit from this Commission. Nothing in the cited law tells the Commission to order some special relief.

Puget did not quantify a credit for cogeneration at any point in its resource acquisition process. It has not quantified what credit it believes to be appropriate even now. No information in the record describes how such a credit could be calculated. It would be inappropriate, on this record and at this stage of the proceeding, for the Commission to attempt to craft a credit. We will not do so.

The Commission reaffirms its commitment to encouraging conservation, renewable resources, and cogeneration which are cost effective. As discussed at pages 43 and 44 of the Nineteenth Supplemental Order, the Commission strongly encourages a balanced approach to resource acquisition. The Commission by rule allows the developers of small projects (under one megawatt) to contract with Puget at its published avoided cost. See, WAC 480-107-010(3)(b); 480-107-020(1); 480-107-050. It allows the company, when designing its requests for proposals, to consider environmental effects. WAC 480-107-070.[3] If the company wants a credit for cogeneration included in its requests for proposals, it should seek permission and establish the scope of that credit in advance.[4] The company may also wish to address the question of what resources should receive a credit, and at what level, in the notice of inquiry regarding the electric industry which the Commission will issue in December 1994.

C. DID THE COMMISSION RELY ON INADMISSIBLE SPECULATION?

Puget alleges that the following statement at page 16 of the order is inadmissible speculation: "If Puget had bargained more strenuously . . .[it] might well have obtained the resources under these same contracts at lower prices." It claims that this sentence cannot support a finding of fact.

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[3] See, the company's 1992-1993 Integrated Resource Plan, wherein Puget describes "a 10% price credit to conservation and renewable resources" in its then current competitive bid. Exhibit 2006, page 6.

[4] Such a credit would not, however, be applicable to purchases like March Point Phase II and Tenaska, because Puget chose to purchase them outside the bid process.

The Commission Staff argues that the record supports a finding that Puget might well have obtained these contracts at lower prices.

Public Counsel notes that no finding of fact relies on this sentence.

Commission Decision: Puget does not ask for any change in the order as a result of its complaint. It infers that any change in the contract prices it paid would have been obtained at the cost of some other positive term of the contracts. It complains that these valuable contract features were not used in the order to offset the assumed dispatchability benefits. Again, it does not establish how it quantified these benefits at the time the contracts were entered into, nor does it offer any quantification now.

The Commission did not base its disallowance on an estimated lower price that Puget could have paid for these contracts. Rather, it based the disallowance on the fact that Puget's cost to build, its avoided cost, was lower than the prices it paid. The comment noted merely describes the fact that Puget may not have built; but may have purchased the same resources for lower prices if it had bargained more strenuously from the correct starting assumptions. Thus, the disallowance is a conservative measure. The statement is not necessary to the order; no finding is based on it.

D. DID THE COMMISSION IMPROPERLY ESTABLISH A NEW RULE REQUIRING CONTEMPORANEOUS DOCUMENTATION?

Puget alleges that the order sets forth a new rule requiring contemporaneous documentation which is at odds with the Skagit/Hanford test requiring the use of information known or reasonably available at the time a resource decision was made.

In its Reply, Puget states that it has studied dispatchability benefits, and refers to Exhibit 2257 (JRL-46). Puget describes this as "calculations based on BPA's 1990 study with a 15 mill variable cost." Response to Answers, page 12.

The Commission Staff argues that the requirement for contemporaneous documentation is not new, and is a necessary and logical adjunct to the statute placing the burden of proof on Puget. RCW 80.04.130(2). The Commission Staff notes: "The Commission adopted Dr. Blackmon's study because it most accurately evaluated dispatchability by measuring in-month effects" and that the Commission's adoption of it is consistent with the Commission's prudence test of reviewing information that reasonably should have been known to the company.

Public Counsel argues that Puget creatively confuses "knew or should have known at the time," "contemporaneous documentation," and the 1993 BPA study. It argues that although BPA did the study in 1993, Puget could and should have done the same study in 1991. This is what Dr. Blackmon's testimony established; Dr Blackmon was careful to use information and input values that were or should have been known to Puget at the relevant time.

Public Counsel also argues that while Puget has challenged some of the assumptions in the BPA study, and its applicability to Puget's system, Puget has not contested that the BPA study was based on information that was available to Puget in 1991.

Commission Decision: As discussed extensively beginning at page 19 of the Commission's Eleventh Supplemental Order, the Commission defined the test to measure prudence in a Puget general rate proceeding wherein the Commission disallowed expenses related to the Skagit/Hanford nuclear power plant.[5] In the Skagit case, the Commission found that Puget should have studied the continued viability of its nuclear investment after the Three Mile Island accident. It further found that, if such a study had been performed, Puget would have stopped spending on the project much sooner than it did. It established a cut-off date, and disallowed return on amounts spent after that date. Because no contemporaneous study had been performed, the Commission had to rely on studies performed during the rate proceeding that used information which Puget knew or reasonably should have known at the time when the study should have been made.

In this proceeding, the Commission determined that Puget should have made a specific study comparing its adjusted avoided cost to the contract resources at the time it contracted to purchase power from March Point Phase II and Tenaska. Because Puget did not perform adequate studies, the Commission relied on the study performed by Dr. Blackmon in this proceeding. The 1993 BPA study he used in his study was selected as the best proxy offered for the kind of study Puget should have performed at the time. The Commission agreed with Dr. Blackmon that data needed to perform such a study were reasonably available at the time Puget agreed to purchase March Point Phase II and Tenaska.

The standard being applied by the Commission is the same as the standard applied in the Skagit/Hanford proceeding.

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[5] See, Fourth Supplemental Order, Cause U-83-54, September 28, 1984.

> "The test this Commission applies to measure prudency is what would a reasonable board of directors and company management have decided given what they knew or **reasonably should have known** to be true at the time they made a decision." [Emphasis supplied] Id., page 32.

The Commission determined that a reasonable board and management would have undertaken a study of the value of dispatch in 1991. Puget did not do so. But if it had, the most credible evidence in this record supports a finding that the board and management would have known that Puget's "build option" was less expensive than the purchase prices it paid for the March Point Phase II and Tenaska contracts. The Commission applied the Skagit/Hanford standard in the same manner in which it was previously applied.

E. DID THE COMMISSION ERR IN APPLYING THE 1993 BPA ESTIMATE TO THE PUGET SYSTEM?

Puget argues that the use of the 1993 BPA study as a proxy for the study it should have performed in 1991 was inappropriate for two reasons: (1) because it was not developed until after the contracts were signed and (2) because the BPA system is so different from Puget's system.

In its reply to the answers of Commission Staff and Public Counsel, Puget continues to argue that it is penalized by applying any disallowance to the cost of replacement power.

The Commission Staff argues that it demonstrated that differences between the BPA system and the Puget system are either irrelevant or actually increase the value of dispatchability for Puget over BPA, citing pages 34-36 of its brief.

Public Counsel argues that Puget made these same arguments in cross-examination, in rebuttal, and on brief. It notes that the Commission discussed Puget's contentions at page 30 of the order. It reaffirms its position that the Commission used the best available study, and that the study used information available to Puget at the appropriate time.

Commission Decision: The Commission agrees with the Commission Staff and Public Counsel. The Commission used the 1993 BPA study because it was the best available study, and because it used information available to Puget in 1991.

Puget also seeks "Clarification" of the following issues:

F. SHOULD THE COMMISSION CLARIFY THE LANGUAGE REGARDING "NET CONTRACT CHARGES"?

Puget alleges that the order, at page 32, describing the "net contract charge" is confusing and should be clarified. This portion of the order describes how the disallowances are to be treated in future ratemaking. The order instructs Puget to deduct certain percentages from the net contract charges to Tenaska and March Point Phase II, or from the payments made for replacement power resulting from economic dispatch. Puget is concerned: "the Order might be interpreted to mean that a disallowance percentage is applied to penalize Puget for any replacement power when the resource is dispatched." Petition, page 12. Puget's interpretation of the disallowance calculation is correct, but there is no intent for it to be a penalty.

The Commission Staff argues that calculating a disallowance on the net contract charge does not penalize Puget for economic dispatch. The Commission Staff states that the definition of "net contract charge" is clear to it, and provides a three part definition. It suggests that we may wish to clarify our order by adopting its definition. The Commission Staff notes that applying the disallowance percentage to the net charge for replacement power results in a smaller disallowance than when no replacement power is purchased (assuming that replacement power costs less) and, thus, that the Commission's definition of "net contract charge" serves as an incentive for economic dispatch.

Public Counsel asserts that the Commission order is correct on this point. Because the analysis of the contracts took into account the value of replacement power in determining the value of the contracts, it argues that it is proper to apply the net charge to replacement power. It further contends that to do otherwise would be inconsistent with the analysis and require a very complicated recalculation.

Commission Decision: The calculation of the disallowance could, theoretically, be derived in many ways. It could be a flat disallowance, not adjusted for actual performance. It could be a percentage of payments made to the specific vendor, but a disallowance of this sort would encourage the company to dispatch even when it was not economically advisable, such as when the savings on the disallowance were greater than the penalty for uneconomic dispatch. Or, as per the order, the disallowance could be calculated as a percentage of the net cost of the contract. This type of disallowance will reward the company for any dispatchability that occurs by reducing the disallowance for the benefits of dispatchability, but only if the dispatch is economical.

The order adopted the method of calculation proposed by Public Counsel. There was little discussion as to how the disallowance should be calculated, on an actual basis, during the proceeding. The approach suggested by the company in its petition, equivalent to the second method in the above paragraph, may motivate the company to be uneconomic. Such a proposal was not made during the proceeding.

The Commission will clarify this portion of the order by adopting the definition of "net contract charge" proposed by the Commission Staff. "Net contract charge" means:

> (1) the amount paid to the contractor for energy actually purchased at the contract rate; (2) the amount paid to the contractor under the contract's displacement provisions; and (3) the amount paid for replacement power when economic dispatch occurs. Commission Staff answer, page 16.

The Commission has revised Finding of Fact No. 8 to include this definition. It is set out below.

G. WHAT SHOULD BE THE FUTURE EFFECT OF THE ORDER?

Puget challenges the order for ruling in advance of a request that Dr. O'Connor's costs shall not be allowed if and when requested in the future. It also questions whether the disallowances should persist for the life of the contracts (a) if the contracts are amended or (b) if future Commissions do not continue to regard a disallowance as appropriate.

The Commission Staff argues that the Commission has discretion to rule on future issues. It agrees with the Commission that Dr. O'Connor's testimony provided no assistance. It argues that the possibility of future contract amendments is a red herring, and notes that if the contracts are amended in the future the company may propose that the ordered disallowance be revisited. The Commission Staff notes that establishing the treatment of a particular item into the future is a common occurrence in ratemaking, analogizing to the amortization of the cost of a generating facility.

Public Counsel argues that the disallowance must be applied prospectively. It notes that if Puget amends the Tenaska or March Point Phase II contracts, it can then present its results and suggested action.

Commission Decision: Puget's petition presents two different issues: (1) the finality of the contract cost disallowance and (2) the disallowance of Dr. O'Connor's costs.

The Commission agrees with the Commission Staff and Public Counsel that it is appropriate to rule finally on the contract cost disallowance. The Commission has made its final decision on the contract disallowance. If Puget amends the contracts, it may later present its results and suggested action.

Puget is correct that no request for recovery of Dr. O'Connor's costs is now before the Commission. The Nineteenth Supplemental Order instructs Puget not to seek recovery of the costs of Dr. O'Connor's study, because it is based on a standard for burden of proof that the Commission had rejected in the Eleventh Supplemental Order, and because, as a result, it was not useful to the Commission. If the company chooses to bring such a request to the Commission, it will be reviewed.

In reviewing the issue of recovery of the costs of this proceeding, and recalling the numerous issues addressed in the Eleventh Supplemental Order regarding deferral of costs by Puget, the Commission has determined that it is appropriate now to make it clear to Puget that it may not defer any of the costs of this prudence proceeding. The Commission will look further at the costs when, and if, a request for recovery is made.

Deferred accounting was a recurring issue in the first stage of this case. Puget had set up several deferred accounts, and sought to recover certain expenses dollar for dollar. The Eleventh Supplemental Order makes it clear that advance Commission approval is necessary before deferring costs. In one case (storm damage), however, the Commission allowed a deferred amount that it had implicitly allowed to be recovered, even though it did not allow continued deferral.

The Commission has the authority to approve deferral; without such approval the company has no authority to defer. The Commission has the right to disallow rate case costs that are not in the ratepayers' interest. This proceeding was necessitated by the company's failure to follow instructions, and to present a prudence case in the first phase of the proceeding. The company's legal tactics in this proceeding failed to follow Commission direction, resulting in duplicative costs being incurred by other parties.

The costs of this proceeding may include substantial portions which were imprudently incurred. While other costs may have been reasonable for the company to incur, the legal strategy which caused other parties, who are reimbursed by the ratepayers, to incur additional costs was inappropriate. These redundant costs of the other parties, and the Commission, may more than offset the legitimate costs of the company.

Because permission to defer may be implied from previous Commission orders, as happened with storm damage, the Commission will specifically indicate that, while the Commission is not making a final ruling on the recovery of these costs, the Commission is not authorizing the company to defer the legal, consulting and other extra costs associated with this prudence proceeding.

III. Technical Corrections

Public Counsel notes certain typographical mistakes in Finding of Fact No. 6 at page 45 of the Nineteenth Supplemental Order. The following language was inadvertently deleted from Finding of Fact No. 6, and should be inserted at the end of line six of that finding: ". . . dispatchability, the Commission has considered. . ." In the ninth sentence of that finding "16 mills" should be changed to "15 mills". The revised finding is set out below.

Public Counsel also notes a typographical error at page 42. The correct citation of the ex parte statute is RCW 34.05.455.

The Commission also notes that Findings of Fact Nos. 7 and 8 are repetitive. It will delete Finding of Fact No. 7.

FINDINGS OF FACT

Finding of Fact No. 6 is revised to read:

6. Puget was imprudent because it failed to analyze the value of dispatchability of a company built resource and factor that value into its evaluation of the purchase price it agreed to pay for its power purchase contracts. Because Puget did not make an adequate, contemporaneous, study of the value of dispatchability, the Commission has considered those sponsored by the parties. The 1993 BPA study sponsored by Public Counsel is the best proxy, because it measures in-month and inter-month dispatch. This study was based on a CCCT, and the Commission will only apply its results to purchase contracts whose avoided resource was a company built CCCT. Public Counsel used a variable cost estimate of 25 mills as the amount of costs which could be avoided when the CCCT was dispatched. The Commission Staff used an estimate of 20 mills. Puget witness Mr. Litchfield used an estimate of 15 mills. These estimates are all within a range of reasonableness. The Commission will use Mr. Litchfield's 15 mill estimate, since it is the most conservative. Exhibit C-2209 shows the application of the 1993 BPA study to the contracts at issue in this proceeding. The exhibit shows the

study results for various levels of avoidable variable costs. The Commission finds the column based on 15 mills to be the appropriate foundation for its adjustment. Applying the study results in adjustments to the March Point Phase II and Tenaska contracts.

Finding of Fact No. 8 is revised to read:

8. As the result of Puget's actions, it has not obtained some resources at a reasonable cost. Because this is Puget's responsibility, ratepayers should not bear the extra costs. For the Tenaska and March Point Phase II contracts, Puget's failure to factor in the value of dispatchability caused Puget to pay too much for the contracts. The Commission finds persuasive Dr. Blackmon's testimony that the Tenaska project was only economically dispatchable for eighty days per year. For ratemaking purposes, the portion of the price the company can recover from ratepayers will be reduced by $1.0 million for the first year, due to dispatchability. Future ratemaking treatment for these contracts should include percentage disallowances to reflect the excess amounts. Those disallowances are: Tenaska 1.2% and March Point Phase II 3.0%. In both cases, the disallowance is calculated as a percentage of the net cost of the contract. The net cost of the contract includes the following three components: (1) the amount paid to the contractor for energy actually purchased at the contract rate; (2) the amount paid to the contractor under the contract's displacement provisions; and (3) the amount paid for replacement power when economic dispatch occurs.

The Commission makes the following additional Findings of Fact:

16. The Commission is concerned that the company did not follow Commission directives requiring a demonstration of prudence in its general rate case. Some portions of the company's rate case costs attributable to this prudence proceeding may, therefore, have been imprudently incurred. A request for recovery of those costs is not now before the Commission. When presented within the context of a rate case, the Commission intends to closely scrutinize their inclusion in the company's cost of doing business. The company is not authorized to defer any costs for any portion of this prudence review proceeding.

17. The Commission should grant the Commission Staff's motion to admit as an exhibit a copy of BPA Rate Schedule NR-93. It should deny Puget's motion to strike the document. Puget attached a copy of BPA Rate Schedule NR-93 rate to its August 19 "responses to subject-to-check". Puget must have expected the materials to be considered as part of the record. Earlier subject-to-check items were included as part of the record by

ruling of August 2,[6] after giving the parties the opportunity to object to the responses. Because Puget itself submitted the document, it could not have expected also to have the opportunity to object to it. No other party objected to its entry. The document is, therefore, entered as Exhibit 2269.

With the corrections and additions noted above, the Commission reaffirms the Findings of Fact and Conclusions of Law in the Nineteenth Supplemental Order, entered September 27, 1994. It also reaffirms the Order, and supplements it as follows.

ORDER

1. The petition for reconsideration of Puget Sound Power & Light Company is denied.

2. The petition for clarification of Puget Sound Power & Light Company is granted; the clarification requested is reflected in revised Finding of Fact No. 8.

3. BPA Rate Schedule NR-93 is entered as Exhibit 2269.

4. Puget may not defer any of the rate case costs of this prudence proceeding.

5. The Commission retains jurisdiction to effectuate the provisions of this order.

DATED at Olympia, Washington, and effective this 16th day of December 1994.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Sharon L. Nelson

SHARON L. NELSON, Chairman

Richard Hemstad

RICHARD HEMSTAD, Commissioner

[6]At transcript page 5964.