

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)
) DOCKET NOS. UE-121697/UG-121705
PUGET SOUND ENERGY, INC., and) (*Consolidated*)
NW ENERGY COALITION)
) INDUSTRIAL CUSTOMERS OF
For an Order Authorizing PSE to Implement) NORTHWEST UTILITIES' RESPONSE
Electric and Natural Gas Decoupling) TO NW ENERGY COALITION'S
Mechanisms and to Record Accounting) MOTION TO LIMIT PARTICIPATION
Entries Associated with the Mechanisms)
_____)

I. INTRODUCTION

1 Pursuant to WAC § 480-07-375(4), the Industrial Customers of Northwest
Utilities (“ICNU”) files this response in opposition to the NW Energy Coalition’s (“NVEC”) October 22, 2014 Motion to Limit Participation as an Intervenor (“Motion”).

II. BACKGROUND

2 Order 07, issued in the above-referenced dockets as well as Docket Nos. UE-130137/UG-130138, is currently on remand to the Washington Utilities and Transportation Commission (“Commission”) following an order from the Thurston County Superior Court finding that the Commission set Puget Sound Energy, Inc.’s (“PSE” or the “Company”) return on equity without substantial evidence in the record and by shifting the burden of proof away from PSE.^{1/} As the caption to this filing indicates, NVEC was a co-petitioner with PSE in these

^{1/} WUTC v. PSE, Docket Nos. UE-121697/UG-121705, UE-130137/UG-130138, Order 10 ¶¶ 1-3 (Oct. 8, 2014).

dockets to establish a decoupling mechanism for the Company.^{2/} NWECC sponsored a witness, Ralph Cavanaugh, who testified on, among other things, decoupling's impact on a utility's return on equity.^{3/} Mr. Cavanaugh was cross-examined on the stand on this issue by parties to this docket as well as the Commission.^{4/}

3 In its Motion, NWECC voluntarily requests that the Commission limit its participation in the remand proceeding "for the limited purpose of allowing the Commission and opposing parties to cross-examine [Mr. Cavanaugh] on the testimony and evidence [NWECC] has already presented in [the above-referenced dockets]."^{5/} NWECC argues that this is warranted because it is a "resource-constrained organization."^{6/}

III. ARGUMENT

4 NWECC relies on RCW § 34.05.443(2) as the basis for its motion to limit its participation in the remand proceeding. That statute allows the Commission to impose conditions on an intervenor's participation in a case, including limiting the intervenor's use of discovery, cross-examination, and other procedures.^{7/}

5 NWECC's reliance on this statute as the basis for its motion is unusual, if not unprecedented. NWECC is not an intervenor in this case, it is a petitioner.^{8/} ICNU is unaware of any situation in which a petitioner has requested that its participation in the very case its petition

^{2/} In re Petition of PSE & NWECC for an Order Authorizing PSE to Implement Electric and Natural Gas Decoupling Mechanisms, Docket Nos. UE-121697 and UG-121705, PSE & NWECC Amended Pet. for Decoupling Mechanisms (Mar. 1, 2013).

^{3/} Id. NWECC Ex. No. __ (RCC-4T) at 5:9-7:5 (May 8, 2013).

^{4/} E.g., Tr. 166:10-169:18

^{5/} NWECC Motion ¶ 9.

^{6/} Id. ¶ 10.

^{7/} RCW § 34.05.443(2)(b).

^{8/} See WAC § 480-07-355 (defining intervenor as any person "other than the original parties to any proceeding before the commission ...").

has instigated be limited. Given the statute's reference to "intervention," ICNU questions whether this law even applies to limit a petitioner's participation in its own case.

6 In any event, NWECE's motion would prejudice the other parties. The purpose of limiting an intervenor's participation is to ensure the "orderly and prompt conduct of the proceedings."^{9/} NWECE's proposal to submit Mr. Cavanaugh to cross-examination on testimony he has already filed and on which he has already been cross-examined would have the opposite effect. If NWECE is comfortable relying on the testimony it has already submitted in this case, then there is no reason to repeat a process that has already occurred. On the other hand, the potential for prejudice to other parties if the Commission grants NWECE's Motion is substantial. The only practical reason to have Mr. Cavanaugh take the stand again is to have him respond to additional evidence on decoupling's impact on the ROE other parties produce in this remand proceeding. Such a last-minute response, without the benefit of discovery, puts other parties, who have prefiled their testimony weeks beforehand, at a clear disadvantage.

7 ICNU sympathizes with the fact that NWECE is a resource-constrained organization – the same can be said for many parties to Commission proceedings. That, alone, however, is insufficiently compelling to give NWECE special treatment, particularly in a manner that could be prejudicial to other parties. It appears that NWECE is satisfied with its contribution to the record in this case related to decoupling's impact on PSE's ROE. If that is the case, then nothing compels it to participate further. If it wishes to supplement the record, it is free to participate as a party to this case like all others. Special treatment is unwarranted and would set a precedent that would harm parties who fully participate in a case.

^{9/} RCW § 34.05.443(1).

IV. CONCLUSION

8

For the foregoing reasons, ICNU requests that the Commission deny NWECS's

Motion.

Dated in Portland, Oregon, this 29th day of October, 2014.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.



Melinda J. Davison

Tyler C. Pepple

333 S.W. Taylor, Suite 400

Portland, Oregon 97204

(503) 241-7242 telephone

(503) 241-8160 facsimile

mjd@dvclaw.com

tcp@dvclaw.com

Of Attorneys for Industrial Customers
of Northwest Utilities