

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

DOCKET UE-072300
DOCKET UG-072301
(Consolidated)

MOTION OF COMMISSION
STAFF TO STRIKE PORTIONS OF
THE BRIEFS OF PUBLIC
COUNSEL AND THE
INDUSTRIAL CUSTOMERS OF
NORTHWEST UTILITIES

1 The Staff of the Washington Utilities and Transportation Commission respectfully moves the Commission for an order striking the following paragraphs of the post-hearing briefs of Public Counsel and the Industrial Customers of Northwest Utilities (“ICNU”):

- Brief of Public Counsel at ¶¶41-44
- Brief of ICNU at ¶¶28-29.

These paragraphs address conditions for the Power Cost Only Rate Case (“PCORC”) mechanism that Public Counsel and ICNU offer for the first time in closing briefs. Thus, Staff has had no opportunity to respond. These new conditions are also not part of the evidentiary record and, thus, cannot be properly considered by the Commission.

I. STATEMENT OF FACTS

2 In the most recent PCORC, the Commission ordered a collaborative to consider the scope and timing of the mechanism, and whether the mechanism should continue.¹ The participants in the collaborative were Puget Sound Energy, Inc. (“the Company”), Staff,

¹ *WUTC v. Puget Sound Energy, Inc.*, Docket UE-070565, Order 07 at Appendix A, ¶14 (August 2, 2007).

Public Counsel and ICNU. The participants failed to agree to eliminate or revise the PCORC. Thus, whether to discontinue or modify the PCORC became an issue to be resolved by the Commission in this general rate case.²

3 The continued existence of the PCORC was addressed by all interested parties in written testimony in this proceeding. The Company filed its direct testimony and exhibits on December 3, 2007, arguing in favor of retaining PCORC. Staff, Public Counsel and ICNU responded to the Company through testimony and exhibits filed May 30, 2008. Staff's testimony supported continuation of PCORC, but also proposed several modifications to improve the PCORC process. Public Counsel and ICNU argued to eliminate the PCORC, but did not propose modifications to the mechanism if it were to continue. Public Counsel and ICNU also had the opportunity to file cross-answering testimony to Staff's proposed PCORC revisions on July 3, 2008. That opportunity was not undertaken by Public Counsel or ICNU.

4 The Company responded to the positions of Staff, Public Counsel and ICNU through rebuttal testimony filed July 3, 2008. The Company supported Staff's procedural modifications and contested the position of Public Counsel and ICNU to abandon the PCORC.

5 A hearing was held on September 3, 2008 regarding whether the PCORC should continue and the process that would control the mechanism if it did continue. Neither Public Counsel nor ICNU presented modifications to the PCORC as an alternative to eliminating the mechanism. The evidentiary record in this proceeding was closed on September 12, 2008.³

² *Id.* at Appendix A, ¶15.

³ Tr. 622:23-24.

6 Simultaneous post-hearing briefs were filed on September 26, 2008. In its brief, ICNU offered four conditions it now asks the Commission to adopt if the PCORC is to continue:

- A PCORC can only be filed if the Company is seeking rate recovery for new resources that total at least 150 MWs of capacity;
- The PCORC process should be the same eleven months as a general rate case. In other words, the PCORC would be a single issue rate case for major new resources;
- Any cost update must be filed at least six weeks prior to the due date for Staff and intervenor testimony; and
- No PCORC can be filed prior to April 1, 2009.⁴

None of these conditions were included in ICNU's response testimony or otherwise offered into the evidentiary record in this proceeding.

7 In its brief, Public Counsel also offered four new PCORC conditions that it also had not raised in testimony or at hearing:

- A PCORC filing should only be permitted for new resources of 150 MW or more in size;
- The PCORC should be limited to recovery of costs associated with a new resource (of 150 MW or more);
- The Company should only be permitted to reset the Power Cost Adjustment mechanism baseline in a general rate case; and
- A PCORC filing should not be permitted earlier than 12 months after the effective date of a rate change from a prior rate case.⁵

II. ARGUMENT

8 There are two reasons to grant Staff's motion. First, the new conditions proposed by Public Counsel and ICNU were not offered in response testimony, cross-answering

⁴ Brief of ICNU at ¶¶ 3, 28 and 29.

⁵ Brief of Public Counsel at ¶¶41-44.

testimony or at the hearing on September 3, 2008. Therefore, Staff has had no opportunity to respond to the proposals made by Public Counsel and ICNU for the first time in closing briefs. This is not to say that Staff would only challenge these new conditions. It may be that Staff would support some of the conditions Public Counsel and ICNU propose. However, fairness requires Staff to have a reasonable opportunity to respond to their proposals. That opportunity has not been provided.

9 Second, it is insufficient to offer Staff the opportunity through reply briefs to respond to the new PCORC conditions of Public Counsel and ICNU. This proceeding is an adjudicative proceeding under the Administrative Procedure Act.⁶ As such, the evidentiary record must provide the “exclusive basis” for the Commission’s final order resolving PCORC-related issues.⁷ None of the conditions offered by Public Counsel and ICNU are part of the evidentiary record in this case even though they raise issues of fact and policy. Therefore, they should not be considered by the Commission.

10 Moreover, a settlement agreement of the parties, including Public Counsel and ICNU, has requested issuance of a Commission order in time for rates to go into effect by November 1, 2008.⁸ Reopening the record to allow testimony, response testimony, and briefing on these new conditions is impractical, given that request.

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⁶ RCW 34.05.

⁷ RCW 34.05.476(3).

⁸ Partial Settlement Re: Electric and Natural Gas Revenue Requirements at ¶19 (August 22, 2008)

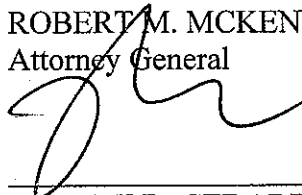
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For the reasons stated above, the Commission should strike the Brief of Public Counsel at ¶¶41-44 and the Brief of ICNU at ¶¶28-29.⁹

DATED this 3rd day of October, 2008.

Respectfully submitted,

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⁹ ICNU's brief also references its proposed new conditions at ¶3, beginning with the sentence "Finally, ICNU suggests four additional conditions." That portion of ¶3 should also be stricken.