BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND ENERGY, INC., Respondent.	**Docket No. UE-072300** **Docket No. UG-072301** ***(consolidated)*** PUGET SOUND ENERGY, INC'S MOTION TO STRIKE PORTIONS OF THE BRIEFS OF PUBLIC COUNSEL AND ICNU

1. Puget Sound Energy, Inc. ("PSE" or "the Company") respectfully moves this Commission for an order striking portions of the briefs of the Washington Attorney General's Office, Public Counsel Section ("Public Counsel") and Industrial Customers of Northwest Utilities ("ICNU"). Specifically, PSE moves the Commission to strike those portions of the briefs of Public Counsel and ICNU that propose new terms and conditions for the PCORC that were not raised in the evidentiary record, were raised for the first time in briefs and to which PSE has not had an opportunity to respond.

2. This motion brings into issue the following rules or statutes: RCW 34.05; WAC 480-07-375; and WAC 480-07-495.

I. STATEMENT OF FACTS

3. PSE filed its direct testimony and exhibits on December 3, 2007. After the time to respond to PSE's direct evidence had been extended,[1] ICNU and Public Counsel filed response testimony on May 30, 2008. PSE filed rebuttal testimony on July 3, 2008, which responded to the issues raised in response testimony—including the issues and proposals raised by Public Counsel and ICNU in their response testimony.

4. Subsequent to filing testimony, all parties in this proceeding either signed or did not object to five (5) settlement stipulations resolving all but one issue in this proceeding.[2] A hearing was held on September 3, 2008 regarding the settlement stipulations and the sole remaining issue--whether the Power Cost Only Rate Case ("PCORC") should continue to be available to PSE as a mechanism for adjusting the Company's power costs and bringing in new resources. Simultaneous post-hearing briefs were filed on September 26, 2008.

5. In its brief, ICNU introduced four (4) "additional" conditions that it proposes should be adopted if the PCORC is to continue.[3] These additional conditions were not included in ICNU's response testimony and have never been raised on the record in this proceeding. Specifically, in paragraphs 28 and 29 of its brief,[4] ICNU proposes that the Commission restrict the PCORC process as follows:

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[1] *See* Order No. 8 Granting Motion for Leave to File Supplemental Testimony (May 5, 2008).

[2] *See* Brief of PSE at ¶ 2.

[3] *See* Brief of ICNU at ¶¶ 3, 28 and 29.

[4] ICNU summarized these conditions in the last five sentences of paragraph 3 of its brief.

1. a PCORC can only be filed if PSE is seeking rate recovery for new resources that total at least 150 MWs of capacity;

2. 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;

3. any cost update must be filed at least six weeks prior to the due date for Staff and intervenor testimony; and

4. no PCORC can be filed prior to April 1, 2009.

6. Public Counsel makes similar new proposals in paragraphs 40 through 44 of its brief. Specifically, Public Counsel, for the first time, proposes that

1. a PCORC filing should only be permitted for new resources of 150 MW or more in size;

2. the PCORC should be limited to recovery of costs associated with a new resource (of 150 MW or more);

3. PSE should only be permitted to reset the PCA baseline in a GRC; and

4. a PCORC filing should not be permitted earlier than 12 months after the effective date of a rate change from a prior rate case.

II. ARGUMENT

7. The Commission should strike paragraphs 40 through 44 of Public Counsel's brief and paragraphs 3 (last five sentences), 28 and 29 of ICNU's brief because they propose limitations to the PCORC process that were not raised in testimony or at hearing and appear for the first time in simultaneous post-hearing briefs. This general rate case is an adjudicative

proceeding under the Administrative Procedure Act.[5] A final order in an adjudicative proceeding resolves contested issues based on the official record.[6] The official record in this proceeding was closed on September 12, 2008.[7]

8. Not only are these new proposals from ICNU and Public Counsel devoid of evidentiary support, several of ICNU's proposals directly contradict evidence that ICNU placed into the evidentiary record. For example, ICNU witness Donald W. Schoenbeck testified that there are no modifications that can be made to the PCORC to address ICNU's issues and concerns.[8] Now, on brief, without further evidentiary support, ICNU has proposed four new modifications for the PCORC.

9. Additionally, ICNU offered testimony and evidence that a PCORC should be limited to new resources only. Now, on brief, without further evidentiary support, ICNU is proposing that the PCORC be limited to new resources of at least 150 MW in capacity.

10. ICNU's proposal to prohibit PSE from filing a PCORC prior to April 1, 2009, is also inconsistent with the evidence in the record. As part of the global settlement stipulation, executed by ICNU and offered into evidence as Exhibit No. B-5, the parties expressly agreed that no *general rate case* should be filed before April 1, 2009.[9] All of the parties to this settlement agreement were aware that PSE has the ability to file a PCORC as

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[5] *See* Notice of Prehearing Conference at ¶ 3.

[6] *See* WAC 480-07-820(b).

[7] *See* TR. 622:23-24.

[8] *See* Schoenbeck, Exh. No. DWS-1T at 7:23-8:2 (responding "No" to the question "Can PSE's PCORC Mechanism be modified to take into account all of the ICNU concerns and issues?").

well as a general rate case. The agreement did not prohibit the Company from filing a PCORC prior to April 1, 2009; it only prohibited the filing of a general rate case. Now, in effect, ICNU seeks to unilaterally revise the terms of the negotiated settlement stipulation by prohibiting not only the filing of a general rate case prior to April 1, 2009, but also the filing of a PCORC. ICNU's new proposal is inconsistent with the evidence submitted by the parties, is not supported by evidence in the record, and should be stricken.

11. Not only are these proposals inappropriate because they are raised for the first time on brief, they also are unworkable. Public Counsel does not even attempt to explain how there can be cost recovery of a new resource of 150 MW or more in size in a PCORC, without resetting the baseline rate in a PCORC.[10]

12. Additionally, Public Counsel's statement in paragraph 42 that "[r]ecovery of power costs unrelated to the new resource should be required to be treated under the PCA.

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[9] *See* Exh. No. B-5, Partial Settlement Re: Electric and Natural Gas Revenue Requirement at ¶ 12.

[10] Under one interpretation, these two new Public Counsel proposals would result in new higher customer rates after an acquisition of 150 MW, but the true up under the PCA would be based on the lower baseline rate (without the new resource) making it look as if the Company was under recovering. This phenomenon would occur in the PCA true up. If all else is equal, when the actual power costs, including the new resource costs, are compared to the old baseline rate (without the resource) multiplied times the load in a future PCA period ("the allowed power costs"), the actual power costs would appear to be greater than the allowed power costs.

Under another interpretation of Public Counsel's two new proposals, the Commission could ignore the new resource costs in the PCA true-up. If that occurs then the PCA true-up would make it appear that the Company was over earning because the baseline rate would include market power purchases that are no longer required due to having the new resource. If all else is equal, the actual power costs would no longer have these market purchases and the PCA true-up comparison would show the allowed power costs being higher than the actual monthly power costs that do not include the costs of the new resource. There are many variations on these two examples. The point is that Public Counsel's contradictory new proposals create a disconnect that PSE could have addressed in rebuttal testimony.

This will allow the PCA to work as intended" directly contradicts the language of paragraph 8 of the 2001 Settlement Stipulation establishing the PCA Mechanism and PCORC which states as follows:

> In addition to the yearly adjustment for power cost variances, there would be a periodic proceeding specific to power costs that would true up the Power Cost Rate to *all power costs* identified in the Power Cost Rate. The Company can also initiate a power cost only proceeding to add new resources to the Power Cost Rate.

(Emphasis in original). This provision of the 2001 Settlement Stipulation also addresses the issue raised in the preceding paragraph.

13. Regarding ICNU's new proposal to require any power cost updates to be made at least six (6) weeks prior to the date intervenor testimony is due, such proposal is also new and contradicts the Commission's own preference that "power costs determined in general rate proceedings and in PCORC proceedings should be set as closely as possible to costs that are reasonably expected to be actually incurred during short and intermediate periods following the conclusion of such proceedings."[11]

14. ICNU and Public Counsel rely on matters that are not part of the record as a basis for requesting modifications to a Commission-approved PCORC proceeding. ICNU and Public Counsel did not give PSE notice of their new proposals so that PSE could respond to them in rebuttal testimony or even at hearing. Because this proceeding calls for simultaneous, rather than initial and response briefs, there is no opportunity for PSE to respond with

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[11] *WUTC v. PSE*, Docket No. UE-040641, Order No. 06 (Feb. 18, 2005).

argument to ICNU's proposals. Even if PSE were given such an opportunity now to consider these new proposals, there is not adequate time to consider and respond to ICNU's and Public Counsel's proposals before the statutory suspension deadline in this proceeding expires. It would be improper for the Commission to consider ICNU's or Public Counsel's proposals, which were introduced for the first time on brief, after the evidentiary record was closed. The Commission's rules for adjudicative proceedings allow the Commission to exclude evidence that is inadmissible. *See* WAC 480-07-495(1). Therefore, the appropriate remedy is for the Commission to issue an order striking from ICNU's brief the last five sentences of paragraph 3 and paragraphs 28 and 29 in their entirety. Also, the Commission should strike paragraphs 40 through 44 of Public Counsel's post-hearing brief.

III. CONCLUSION

15. Based on the foregoing, PSE respectfully requests that the Commission strike the new proposed terms and conditions regarding the PCORC, as set forth above, that ICNU and Public Counsel raised for the first time on brief, and to which PSE did not have the opportunity to respond.

Respectfully submitted this 3rd day of October, 2008.

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