**BEFORE THE**

# WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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| WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant,v.PUGET SOUND ENERGY,  Respondent. | ))))))))))) | DOCKET NO. UE-141141PETITION FOR ACCOUNTING ORDER OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES |

**I. INTRODUCTION**

1. Pursuant to WAC § 480-07-370(1)(b), the Industrial Customers of Northwest Utilities (“ICNU”) petitions the Washington Utilities and Transportation Commission (“Commission”) for an accounting order requiring Puget Sound Energy, Inc. (“PSE” or the “Company”) to defer any amounts the Company will collect in rates approved in this proceeding which are in excess of fair, just, reasonable and sufficient rates. As explained in detail below, ICNU requests that the deferral cover any potential period between the date that rates become effective through final order in this power cost only rate case (“PCORC”) docket, and the date on which the Commission issues an order establishing legal rates in Docket Nos. UE-121697/UG-121705 and UE-130137/UG-130138, in response to the Thurston County Superior Court’s partial reversal of the Commission’s final order in those cases.
2. ICNU is an incorporated, non-profit association of large industrial customers in the Pacific Northwest. Many members of ICNU purchase power distribution and transmission services from PSE. The contact information for ICNU’s attorneys in this matter is included at the end of this Petition. ICNU’s contact information is:

Industrial Customers of Northwest Utilities

818 S.W. Third Ave, #266

Portland, OR 97204

1. The rules and statutes relevant to this Petition are: WAC § 480-07-370, RCW § 80.28.010, and RCW § 80.01.040.

**II. FACTUAL BACKGROUND**

**A. PCORC Proceedings**

1. PSE filed the instant 2014 PCORC on May 23, 2014, initially proposing a total rate decrease of $9,556,193.[[1]](#footnote-1)/ The 2014 PCORC includes “adjustments for changes in PSE’s power supply costs that are included in the proposed Power Cost Baseline Rate (“Baseline Rate”), including the rate impact of” new resources, updates to hydroelectric redevelopment projects, and Treasury Grants for capital upgrades.[[2]](#footnote-2)/ On August 1, 2014, the Company filed supplemental testimony revising PSE’s revenue surplus to $5,463,695, including exhibits updating “costs included in determining the Power Cost Baseline Rate, which is then used to calculate the required increase or decrease” of proposed adjustments.[[3]](#footnote-3)/
2. Concurrent with the filing of this Petition, ICNU is also filing a Petition for Accounting Order in the 2013 PCORC, seeking both a refund and deferral of unlawfully high amounts collected through tariffs authorized in the 2013 PCORC. The Commission issued a Final Order in the 2013 PCORC on October 23, 2013, approving and adopting an all-party settlement agreement and finding that a $10,481,843 reduction to PSE’s revenue requirement would “result in rates that are fair, just, reasonable, and sufficient.”[[4]](#footnote-4)/ Included within this overall finding, the Commission approved the: 1) lowering of the power cost baseline rate; 2) prudence of various resource acquisitions and upgrades; and 3) effectual offsets to fixed production rate base in the form of Treasury Grants.[[5]](#footnote-5)/ New rates reflecting the Commission’s findings in the 2013 PCORC Order became effective on November 1, 2013.[[6]](#footnote-6)/
3. The Commission approved PCORC filings and a power cost adjustment mechanism (“PCA”) in 2002.[[7]](#footnote-7)/ In so doing, the Commission approved and adopted an unopposed settlement stipulation detailing PCORC parameters, and incorporated the settlement stipulation into the order as an appendix.[[8]](#footnote-8)/ The Commission affirmed that the “power cost baseline” established in the settlement stipulation would be “embedded in PSE’s rates.”[[9]](#footnote-9)/ The stipulation defined: 1) the “power cost baseline rate” as “the sum of the Fixed Rate Components and Variable Rate Components divided by the test year delivered load (MWh)”;[[10]](#footnote-10)/ and 2) “Baseline Power Costs” as “the Power Cost Baseline rate times actual delivered load in the PCA period.”[[11]](#footnote-11)/ Finally, the settlement provided that the power cost rate would be composed of two components: 1) a fixed rate component, including production plant and transmission return on ratebase; and 2) a variable rate component, including production regulatory assets amortization and return.[[12]](#footnote-12)/
4. In sum, the power cost baseline is embedded within PSE rates subject to review in any PCORC proceeding, including the 2014 PCORC, and this baseline rate is a product of calculations factoring in the Company’s rate of return. The rate of return is itself derived from the Company’s return on equity (“ROE”). As the Commission explains, a company’s “overall rate of return … is determined by taking the sum of the products of each component cost (*i.e.*, equity, long-term debt and short-term debt).”[[13]](#footnote-13)/

**B. PSE Rate Appeal**

1. On June 25, 2013, the Commission entered a Final Order in PSE’s consolidated expedited rate filing (“ERF”), rate plan, and decoupling cases (collectively, the “ERF cases”), in which it approved the ERF, rate plan, and a decoupling mechanism for PSE.[[14]](#footnote-14)/ The Commission set PSE’s rates using the Company’s previously authorized ROE of 9.8%,[[15]](#footnote-15)/ despite the fact that the record evidence demonstrated that a reasonable ROE for the Company at the time that ERF Order 07 was issued was 9.3%.[[16]](#footnote-16)/ ICNU and Public Counsel challenged this decision in Thurston County Superior Court (the “Court”).[[17]](#footnote-17)/
2. On July 25, 2014, the Court entered an order affirming in part and reversing in part ERF Order 07 (“Court Order”).[[18]](#footnote-18)/ In a letter ruling expressly incorporated into the Court Order via attachment, the Court found that the Commission’s decision to set the Company’s ROE at 9.8% was not based on substantial evidence in the record, and improperly shifted the burden of proof away from PSE and onto other parties.[[19]](#footnote-19)/ The Court remanded ERF Order 07 to the Commission “to establish fair, just, reasonable and sufficient rates to be charged under the rate plan, and to order any other appropriate relief.”[[20]](#footnote-20)/
3. ICNU filed a Petition for Accounting in the ERF cases on July 30, 2014, seeking both a refund and deferral of rate amounts determined to be illegal by the Court.[[21]](#footnote-21)/ On August 5, 2014, the Commission issued two Notices in the ERF cases: 1) suspending deadlines for responses to ICNU’s ERF cases Petition and providing parties with an opportunity to file proposals regarding the procedure the Commission should use on remand to comply with the Court Order; and 2) noticing a prehearing conference to address the appropriate procedure on remand and to establish a procedural schedule.[[22]](#footnote-22)/ In the body of these Notices, the Commission explicitly acknowledged the Court’s conclusions regarding the illegality of the Commission’s findings of fact with respect to ROE in the Company’s rate plan.[[23]](#footnote-23)/

**III. GROUNDS FOR THE PETITION AND RELIEF REQUESTED**

1. ICNU’s Petition seeks to effectuate the Court Order. Specifically, should the Commission approve new rates in the 2014 PCORC *before* a new order is issued in the ERF cases establishing a lawful ROE, ICNU proposes to capture the difference between what PSE will collect, in rates found to be unlawful, and the amount that is “just, fair, reasonable and sufficient,” as required by RCW § 80.28.010(1) and the Court Order. If this sequence of events unfolds, until such time as the Commission complies with the Court Order and formally revises the illegal rates of return established by ERF Order 07, the rates authorized in the 2014 PCORC would still be based upon the illegal ROE established in the ERF cases, making deferral appropriate.
2. The Commission’s accounting order should defer to customers amounts, with interest, that PSE will collect that are in excess of “just, fair, reasonable and sufficient” rates.[[24]](#footnote-24)/ “Just, fair, reasonable, and sufficient” rates are those that are “reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.”[[25]](#footnote-25)/
3. PSE has operated with unlawfully high rates since July 1, 2013, the date the tariff approved by ERF Order 07 became effective,[[26]](#footnote-26)/ and since November 1, 2013, the date its tariffs approved by the 2013 PCORC Order, which incorporated the illegal ROE approved in ERF Order 07, became effective.[[27]](#footnote-27)/ The amount PSE has over-collected since both these dates is known. The record in the ERF cases establishes that a 9.3% ROE would have assured confidence in the Company’s financial soundness, and thus met the statutory requirements, at the time ERF Order 07 was issued. ICNU’s witness in the ERF cases, Michael Gorman, performed a full cost of capital study, including three versions of a discounted cash flow analysis, a risk premium analysis, and a capital asset pricing model analysis, which collectively supported this level of ROE as adequate and sufficient for PSE.[[28]](#footnote-28)/ This is “sufficient evidence in the record … to adjust the Company’s ROE.”[[29]](#footnote-29)/
4. As noted, rate changes authorized in PCORC orders are calculated based on embedded power cost calculations which incorporate the Company’s rate of return, itself a derivation from the ROE. Because the ROE used in those calculations has been found illegal by the Court, any rates approved in the 2014 PCORC based on that ROE amount would also be illegal. Likewise, any other applications of return rates which may be approved in the 2014 PCORC—including specific findings associated with new resources, updates to hydroelectric redevelopment projects, and Treasury Grants for capital upgrades—would result in illegal rate effects. Accordingly, PSE should be required to defer, for later reduction to rates, the amount it will over-collect from customers over the period beginning on the date in which rates authorized by final order in the 2014 PCORC become effective, until such time as the Commission establishes a legal ROE in the ERF cases and orders a recalculation of any rates authorized in the 2014 PCORC.
5. ICNU requests that the Commission’s accounting order require PSE to establish a deferred account to track, for later inclusion in rates, the amount PSE will continue to over-collect in excess of “just, fair, reasonable and sufficient” rates.[[30]](#footnote-30)/  Because the Commission established rates in the ERF cases to be in effect for the term of the rate plan, ICNU supports using an ROE of 9.3%, as supported by record evidence in the ERF cases, to calculate PSE’s 2014 PCORC deferrals, since the rate plan is scheduled to continue into the period in which 2014 PCORC rates would be in effect. Under ICNU’s proposal for an accounting order, PSE would defer, for later refund through rates, plus interest, the difference between the amount the Company is currently collecting from customers based on calculations using a 9.8% ROE and the amount the Company would be collecting based on calculations using a 9.3% ROE.

**IV. CONCLUSION**

1. For the foregoing reasons, ICNU respectfully requests that the Commission enter an accounting order granting the relief requested in this Petition.

Dated in Portland, Oregon, this 8th day of August, 2014.

 Respectfully submitted,

DAVISON VAN CLEVE, P.C.

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1. / WUTC v. PSE, Docket No. UE-141141, Exh. No.\_\_(KJB-1T) at 2 (May 23, 2014). [↑](#footnote-ref-1)
2. / Id. at 1. [↑](#footnote-ref-2)
3. / WUTC v. PSE, Docket No. UE-141141, Exh. No.\_\_(KJB-9T) at 1-3 (Aug. 1, 2014). [↑](#footnote-ref-3)
4. / WUTC v. PSE, Docket Nos. UE-130617, UE-130583, UE-131099, and UE-131230 (*consolidated*) (collectively, the “2013 PCORC”), Order 06/02 at ¶ 11 (Oct. 23, 2013) (“2013 PCORC Order”). [↑](#footnote-ref-4)
5. / Id. at ¶¶ 19, 28. [↑](#footnote-ref-5)
6. / Id. at ¶ 19; 2013 PCORC, Commission Compliance Letter (Oct. 25, 2013). [↑](#footnote-ref-6)
7. /  WUTC v. PSE, Docket Nos. UE-011570/UG-011571, 12th Suppl. Order (June 20, 2002). [↑](#footnote-ref-7)
8. / Id. at ¶¶ 6, 21. [↑](#footnote-ref-8)
9. / Id. at ¶ 22. [↑](#footnote-ref-9)
10. / Id. at Appendix A, Exh. A ¶ 12. [↑](#footnote-ref-10)
11. / Id. at Appendix A, Exh. A ¶ 13. [↑](#footnote-ref-11)
12. / Id. at Appendix A, Exh. A at 4, “Total Revenue Requirement Table.” [↑](#footnote-ref-12)
13. /  WUTC v. PSE, Docket Nos. UE-111048/UG-111049, Order 08 at ¶ 33 (May 7, 2012). [↑](#footnote-ref-13)
14. /  WUTC v. PSE, Docket Nos. UE-121697/UG-121705 and UE-130137/UG-130138, Order 07 at ¶¶ 244-245 (June 25, 2013) (“ERF Order 07”). [↑](#footnote-ref-14)
15. / Id. at ¶ 220. [↑](#footnote-ref-15)
16. / Id. at ¶ 51; ERF cases, ICNU Ex. No. \_\_ (MPG-3). [↑](#footnote-ref-16)
17. / ERF cases, ICNU and Public Counsel Petitions for Judicial Review of Final Agency Action (July 24, 2013). [↑](#footnote-ref-17)
18. / The Court Order is attached to this Petition for the Commission’s convenience. [↑](#footnote-ref-18)
19. / Court Order, Appendix A at 4-5. [↑](#footnote-ref-19)
20. / Court Order at 3. [↑](#footnote-ref-20)
21. /  ERF cases, ICNU Petition for Accounting Order (July 30, 2014). [↑](#footnote-ref-21)
22. /  ERF cases, Notice Suspending Response Deadlines and Providing Opportunity to File Proposals and Notice of Prehearing Conference (Aug. 5, 2014). [↑](#footnote-ref-22)
23. / Id. [↑](#footnote-ref-23)
24. / RCW § 80.28.010(1). [↑](#footnote-ref-24)
25. / Bluefield Water Works & Imp. Co. v. Pub. Serv. Comm’n, 262 U.S. 679, 693 (1923). [↑](#footnote-ref-25)
26. / ERF cases, Commission Compliance Letter (June 28, 2013). [↑](#footnote-ref-26)
27. / 2013 PCORC, Commission Compliance Letter (Oct. 25, 2013). [↑](#footnote-ref-27)
28. / ERF cases, ICNU Ex. No.\_\_(MPG-3). [↑](#footnote-ref-28)
29. /  ERF Order 07, Separate Statement of Commissioner Jones at ¶ 4. [↑](#footnote-ref-29)
30. / RCW § 80.28.010(1). [↑](#footnote-ref-30)