BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

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

3 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

4 PSE filed the instant 2014 PCORC on May 23, 2014, initially proposing a total rate decrease of $9,556,193.[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/] 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/]

5 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/] Included within this overall finding, the Commission approved the: 1) lowering of the power cost baseline rate; 2) prudence

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1/ WUTC v. PSE, Docket No. UE-141141, Exh. No.__(KJB-1T) at 2 (May 23, 2014).
2/ Id. at 1.
3/ WUTC v. PSE, Docket No. UE-141141, Exh. No.__(KJB-9T) at 1-3 (Aug. 1, 2014).
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").

of various resource acquisitions and upgrades; and 3) effectual offsets to fixed production rate base in the form of Treasury Grants.[5/] New rates reflecting the Commission's findings in the 2013 PCORC Order became effective on November 1, 2013.[6/]

6 The Commission approved PCORC filings and a power cost adjustment mechanism ("PCA") in 2002.[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/] The Commission affirmed that the "power cost baseline" established in the settlement stipulation would be "embedded in PSE's rates."[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/] and 2) "Baseline Power Costs" as "the Power Cost Baseline rate times actual delivered load in the PCA period."[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/]

7 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

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5/ Id. at ¶¶ 19, 28.
6/ Id. at ¶ 19; 2013 PCORC, Commission Compliance Letter (Oct. 25, 2013).
7/ WUTC v. PSE, Docket Nos. UE-011570/UG-011571, 12th Suppl. Order (June 20, 2002).
8/ Id. at ¶¶ 6, 21.
9/ Id. at ¶ 22.
10/ Id. at Appendix A, Exh. A ¶ 12.
11/ Id. at Appendix A, Exh. A ¶ 13.
12/ Id. at Appendix A, Exh. A at 4, "Total Revenue Requirement Table."

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/]

B. PSE Rate Appeal

8 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/] The Commission set PSE's rates using the Company's previously authorized ROE of 9.8%,[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/] ICNU and Public Counsel challenged this decision in Thurston County Superior Court (the "Court").[17/]

9 On July 25, 2014, the Court entered an order affirming in part and reversing in part ERF Order 07 ("Court Order").[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/] 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/]

13/ WUTC v. PSE, Docket Nos. UE-111048/UG-111049, Order 08 at ¶ 33 (May 7, 2012).
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").
15/ Id. at ¶ 220.
16/ Id. at ¶ 51; ERF cases, ICNU Ex. No. __ (MPG-3).
17/ ERF cases, ICNU and Public Counsel Petitions for Judicial Review of Final Agency Action (July 24, 2013).
18/ The Court Order is attached to this Petition for the Commission's convenience.
19/ Court Order, Appendix A at 4-5.
20/ Court Order at 3.

10 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/] 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/] 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/]

III. GROUNDS FOR THE PETITION AND RELIEF REQUESTED

11 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.

21/ ERF cases, ICNU Petition for Accounting Order (July 30, 2014).

22/ ERF cases, Notice Suspending Response Deadlines and Providing Opportunity to File Proposals and Notice of Prehearing Conference (Aug. 5, 2014).

23/ Id.

12 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/] "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/]

13 PSE has operated with unlawfully high rates since July 1, 2013, the date the tariff approved by ERF Order 07 became effective,[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/] 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/] This is "sufficient evidence in the record … to adjust the Company's ROE."[29/]

14 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

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24/ RCW § 80.28.010(1).
25/ Bluefield Water Works & Imp. Co. v. Pub. Serv. Comm'n, 262 U.S. 679, 693 (1923).
26/ ERF cases, Commission Compliance Letter (June 28, 2013).
27/ 2013 PCORC, Commission Compliance Letter (Oct. 25, 2013).
28/ ERF cases, ICNU Ex. No.__(MPG-3).
29/ ERF Order 07, Separate Statement of Commissioner Jones at ¶ 4.

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.

15 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/] 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

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

30/ RCW § 80.28.010(1).

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

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

Melinda J. Davison
Jesse E. Cowell
333 S.W. Taylor, Suite 400
Portland, Oregon 97204
(503) 241-7242 telephone
(503) 241-8160 facsimile
mjd@dvclaw.com
jec@dvclaw.com
Of Attorneys for Industrial Customers
of Northwest Utilities

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2014 JUL 25 AM 9:11

BETTY J. GOULD, CLERK

☐ EXPEDITE
☐ No Hearing Set
☑ Hearing is Set:
Date: Presented Ex Parte
Time:
THE HONORABLE CAROL MURPHY

STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, Petitioner, v. WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Respondent.	CASE NOS. 13-2-01576-2 and 13-2-01582-7 (*consolidated*) [~~PROPOSED~~] ORDER GRANTING IN PART AND DENYING IN PART PETITIONS FOR JUDICIAL REVIEW
WASHINGTON STATE ATTORNEY GENERAL'S OFFICE, PUBLIC COUNSEL DIVISION, Petitioner, v. WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Respondent.	

ATTORNEY GENERAL OF WASHINGTON
Public Counsel Division
800 5th Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

THIS MATTER came before the Court pursuant to RCW 34.05.570 on the Petitions for Judicial Review of the Industrial Customers of Northwest Utilities and the Public Counsel Division of the Washington State Attorney General's Office. After considering the Petitions for Judicial Review, the administrative record, briefing and oral argument from the parties, and for the reasons set forth in the Court's written ruling, entered June 25, 2014, and attached to this Order as Appendix A ("Ruling") and incorporated herein by this reference, it is hereby ORDERED, ADJUDGED AND DECREED that:

1. The Washington Utilities and Transportation Commission's ("Commission") decision not to hold a general rate case in the administrative proceeding below is AFFIRMED;

2. The Commission's use of an attrition adjustment in the administrative proceeding below is AFFIRMED; and

3. The Commission's determination that the Puget Sound Energy, Inc. rates to be charged during the rate plan approved in the administrative proceeding below are just, fair, reasonable and sufficient is REVERSED because the Commission's findings of fact with respect to the return on equity component of Puget Sound Energy, Inc.'s cost of capital in the context of a multi-year rate plan are unsupported by substantial evidence and the Commission improperly shifted the burden of proof on this issue from Puget Sound Energy, Inc. to the other parties in the proceeding below, contrary to RCW 34.05.461(4) and RCW 80.04.130(4).

ATTORNEY GENERAL OF WASHINGTON
Public Counsel Division
800 5th Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

IT IS FURTHER ORDERED, this case is REMANDED to the Commission for further adjudication, consistent with this Court's Order and attached Ruling, to establish fair, just, reasonable and sufficient rates to be charged under the rate plan, and to order any other appropriate relief.

Dated this 25th day of July, 2014.

Carol Murphy

The Honorable Carol Murphy
Thurston County Superior Court

ATTORNEY GENERAL OF WASHINGTON
Public Counsel Division
800 5th Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

DATED this 24th day of July, 2014.

PRESENTED BY:

ROBERT W. FERGUSON
ATTORNEY GENERAL

By: Simon J. ffitch
WSBA #25977
Senior Assistant Attorney General
800 5th Ave., Ste. 2000
Seattle, WA 98104
Attorney for Petitioner, Public Counsel

APPROVED AS TO FORM/NOTICE OF PRESENTMENT WAIVED:

ROBERT W. FERGUSON
ATTORNEY GENERAL

FOR

By: Jennifer Cameron-Rulkowski per email authorization
WSBA #33734
Assistant Attorney General
1400 S. Evergreen Park Dr. S.W.
Olympia, WA 98504-0128
Attorney for Respondent, Washington Utilities and Transportation Commission

APPROVED AS TO FORM/NOTICE OF PRESENTMENT WAIVED:

PERKINS COIE, LLP

FOR

Sheree Strom Carson per email authorization
WSBA# 25349
Perkins Coie LLP
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Attorney for Intervenor, Puget Sound Energy, Inc.

APPROVED AS TO FORM/NOTICE OF PRESENTMENT WAIVED:

DAVISON VAN CLEVE, PC

FOR

By: Melinda J. Davison per email authorization
WSBA #31182
Davison Van Cleve, P.C
333 SW Taylor, Ste. 400
Portland, Oregon 97209
Attorney for Petitioner, Industrial Customers of Northwest Utilities

APPROVED AS TO FORM/NOTICE OF PRESENTMENT WAIVED:

EARTHJUSTICE

FOR

Amanda Goodin per email authorization
WSBA# 41312
Earth Justice
705 2nd Ave., Suite 203
Seattle, WA 98104
Attorney for Intervenor, NW Energy Coalition

APPROVED AS TO FORM/NOTICE OF PRESENTMENT WAIVED:

CABLE HUSTON, LLP

FOR

Chad Stokes per email authorization
WSBA # 37499
1001 SW Fifth Ave, Suite 2000
Portland, OR 97204
Attorney for Intervenor, Northwest Industrial Gas Users

ATTORNEY GENERAL OF WASHINGTON
Public Counsel Division
800 5th Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

APPENDIX A

Superior Court of the State of Washington
For Thurston County

2000 Lakeridge Drive SW • Building No. Two • Olympia WA 98502
Telephone (360) 786-5560 • Fax (360) 754-4060

June 4, 2014

Melinda Davison
Attorney at Law
333 SW Taylor St Ste 400
Portland OR 97204

Sheree Carson
Attorney at Law
10885 NE 4th St Ste 700
Bellevue WA 98004

Jennifer Cameron-Rulkowski
Attorney at Law
PO Box 40128
Olympia WA 98504

Simon ffitch
Attorney at Law
800 5th Ave Ste 2000
Seattle WA 98104

Amanda Goodin
Attorney at Law
705 2nd Ave Suite 203
Seattle WA 98104

Chad Stokes
Attorney at Law
1001 SW 5th Ave Suite 2000
Portland OR 97204

Re: INDUSTRIAL CUSTOMERS OF NW UTILITIES V. WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION and WASHINGTON STATE ATTORNEY GENERAL'S OFFICE, PUBLIC COUNSEL DIVISION V. WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,

Thurston County Cause Nos.:13-2-01576-2, 13-2-01582-7 (Consolidated)

Dear Counsel:

On May 9, 2014, this court heard oral argument for these two consolidated administrative appeals. The petitioners are Industrial Customers of Northwest Utilities (ICNU) and the Public Counsel Division of the State Attorney General's Office. The court also allowed intervention by Puget Sound Energy (PSE), Northwest Energy Coalition, and Northwest Industrial Gas Users.

There are three primary arguments for reversal in this case. First, Public Counsel argues that the Commission should have conducted this adjudication as a general rate case. Second, both Public Counsel and ICNU challenge the rate

plan. Third, Public Counsel appeals the attrition adjustment. The court affirms the procedural nature of this case, in which the Commission declined to conduct a general rate case. The court reverses the rate plan because it is not based on substantial evidence in the record and because the Commission shifted the burden of proof away from PSE. Finally, the court affirms the attrition adjustment.

1. Was a General Rate Proceeding Required?

The Commission used this case to experiment with a new process, called an expedited rate filing, as well as a decoupling plan[1] and attrition analysis. This expedited rate filing process was not the product of rulemaking, but instead the result of discussions among Commission staff and stakeholders. While the Court finds it unusual that an administrative change of this magnitude was made outside of the rulemaking process, no party has appealed the expedited rate filing process itself. The issue of whether that is an appropriate process for setting utility rates, in a general sense, is not before the court.

Public Counsel does, however, argue that this particular action should have been adjudicated as a general rate proceeding. This Court disagrees, holding that the Commission acted within its discretion to dispense with a general rate proceeding.

Typically, general rate proceedings are required under certain circumstances. Such proceedings have heightened evidentiary requirements. *See* Chapter 480-07 WAC. Public Counsel asserts that such a proceeding was required because "gross revenue provided by any customer class would increase by three percent or more." WAC 480-07-505(1)(b). The Respondent asserts that the increase was not over three percent, and the Commission specifically capped annual rate increases at three percent. While Public Counsel asserts that the increase is actually over nine percent when considering the three-year period in which this order will be in effect, it is not readily clear whether the standard should be based on annual impact or multi-year impact. The Court need not resolve these issues because the Commission acted within its discretion to waive the general rate proceeding.

"The commission may grant an exemption from or modify the application of its rules in individual cases if consistent with the public interest, the purposes underlying regulation, and applicable statutes." WAC 480-07-110. Here, the Commission articulated why it followed this process:

> [The] pattern of one general rate case filing following quickly after the resolution of another is overtaxing the resources of all participants and is

[1] Briefly, decoupling is the separation of a utility company's profit from its total sales of energy. This is considered desirable in order to encourage energy efficiency. Decoupling is not at issue in this appeal.

> wearying to the ratepayers who are confronted with increase after increase. This situation does not well serve the public interest and we encourage the development of thoughtful solutions.
>
> The solutions we approve here include an update to PSE's rates established in the 2011/2012 GRC in an Expedited Rate Filing (ERF) that is limited in scope and results in a relatively modest increase (1.6 percent) in electric rates and a slight decrease (0.1 percent) in natural gas rates.
>
> . . .
>
> The third initiative the Commission approves in this Order is a rate plan that will allow modest annual increases in PSE's rates while requiring that the Company not file a general rate increase before March 2016 at the earliest. This holds the promise of customers paying rates that are lower than might be the case under traditional approaches to ratemaking. The rate plan is designed to give an incentive to PSE to become more efficient and to implement cost-cutting measures that will promote its ability to earn its authorized overall rate of return. The rate plan includes important protections for customers, including an earnings test that requires PSE to share with customers on an equal basis any earnings that exceed its authorized return during the term of the plan. Annual rate increases also are capped at 3.0 percent.

AR 960-61.

This Court holds that the Commission acted within its discretion when it dispensed with a general rate filing case. The Commission considered the public interest when it articulated that participants' resources were being overtaxed, constant increases have been "wearying to the ratepayers," and the public interest has not been served well by the status quo of serial general rate cases. The Commission also soundly articulated that this approach is best for customers because the rates will ultimately be lower than for general rate filing cases, and that PSE will be given an incentive to become more efficient, another benefit to the public.

These reasons are consistent with the purposes of the underlying regulations and with applicable statutes, which articulate a general policy of making natural gas and electric services affordable to customers, advance efficiency, ensure that prices are reasonable, and permit flexible pricing. RCW 80.28.074. The Commission holds special expertise in advancing these goals, and this Court finds no basis to reverse the decision to dispense with a general rate filing in this case.

2. Did the Commission Err When it Set the Rate Plan?

Public Counsel and ICNU urge this court to reverse the rate plan, arguing that it was not based on substantial evidence and that the burden was improperly shifted. This Court agrees.

A core principal of public utilities law is that:

> All charges made, demanded or received by any gas company, electrical company, wastewater company, or water company for gas, electricity or water, or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient.

RCWA 80.28.010(1). The analysis of whether a rate is "just, fair, reasonable, and sufficient" is complex, and generally is determined through sophisticated models. The Commission has particular expertise in understanding the relevant evidence, determining which evidence and models are credible, and determining what "fair, reasonable, and sufficient" means in the context of an individual rate case. *See ARCO Products Co. v. Utilities & Transp. Com'n*, 125 Wn.2d 805 (1995); *People's Organization for Wash. Energy Resources v. Utilities & Transp. Com'n*, 104 Wn.2d 798 (1985). This court does not attempt to override the Commission's expertise on such matters, but focuses on the procedural requirements.

The Legislature requires that:

> At any hearing involving any change in any schedule, classification, rule, or regulation the effect of which is to increase any rate, charge, rental, or toll theretofore charged, the burden of proof to show that such increase is just and reasonable shall be upon the public service company.

RCWA 80.04.130(4). Further, as the Commission stated, rates must be "based solely on the record developed in [the utility rate] proceeding."[2] All findings and orders in an adjudication must be limited to the record developed for that adjudication.[3]

In this case, the Commission increased electricity rates beyond the rate that was approved in the previous order. Moreover, it extended annual electric and gas

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[2] AR 975 (Order 07, at ¶ 28) (citing *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944), *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of W. Va*, 262 U.S. 679 (1923)).

[3] RCW 34.05.476(3) ("Except to the extent that this chapter or another statute provides otherwise, the agency record constitutes the exclusive basis for agency action in adjudicative proceedings under this chapter and for judicial review of adjudicative proceedings."); RCW 34.05.461(4) ("Findings of fact shall be based exclusively on the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding."; WAC 480-07-820(1)(b) (contested issues are resolved "on the basis of the official record in a proceeding.").

rate increases for a three-year period. It did not base these rates on a sophisticated model or complex presentation of evidence by PSE regarding its current situation. Instead, it based this rate on (1) rejection of the expert testimony that PSE's opponents offered, (2) reliance on a settlement agreement by another company, Avista, (3) generic evidence about other energy companies, not PSE, and, most strongly, (4) the Commission's determination of the proper rate in a separate, 2011 PSE general rate case.

The Commission expressed frustration about the lack of evidence in the record regarding rates, and specifically the return on equity component in rate-setting analysis. The Commission stated that "[t]he record on this issue in this case lacks the depth and breadth of data analysis, and the diversity of expert evaluation and opinion on which the Commission customarily relies in setting return on equity." AR 989. Commissioner Jones issued a dissenting opinion on this issue, asserting that the evidence was insufficient to warrant an adjustment to the return on equity and that PSE had not met its burden of proof. AR 1060-63.

Instead of requiring more evidence, however, the majority of the Commission purported to keep the status quo of 2011 rates. In fact, however, the 2011 rate was not adjudicated to continue for multiple years until the Commission issued this order. The Commission set rates in this Order, and by its own admission, it did so without the evidence it deemed necessary and customarily relied on. Instead, the evidence that it relied on was from a previous PSE adjudication, a settlement agreement by Avista, and generic information that was not specific to PSE. This does not satisfy the requirement of substantial evidence in the record. *See* RCW 34.05.570(3)(e); *U.S. West Communications v. Wash. Utilities & Transp. Com'n*, 134 Wn.2d 48 (1997).

Additionally, the Commission did not hold PSE to its burden of proof. Rather than putting on its own evidence, PSE merely attempted to rebut the respondents' evidence. AR 987. The Commission held that "on balance . . . the evidence in this case is simply too spare to support a reduction in PSE's current authorized [return on equity] to reflect current financial market conditions." AR 989. This demonstrates that the majority of the Commission did not hold PSE to the burden of proving that the rate increases are justified. Commissioner Jones dissented on this issue of burden of proof, and this Court holds that the majority followed improper procedure. For these reasons, the Court reverses the rate plan and remands for further adjudication consistent with this opinion.

3. Did the Commission Err When it Established the Attrition Adjustment?

Finally, Public Counsel takes issue with the attrition adjustment, escalating elements collectively referred to as the K-Factor. Public Counsel argues that the Commission departed from prior precedent by granting an attrition adjustment

without a finding of extraordinary circumstances and without an attrition study, and it failed in its duty to explain its departure from prior precedent.

This Court is sympathetic to Public Counsel's plea for consistency in adjudications. Litigants want to forecast what evidence will be persuasive to the adjudicators and want to be able to predict how a future case will likely be resolved. Public Counsel presents a historical analysis of attrition adjustments, and shows that they were greatly disfavored in the past. It appears that the Commission may be changing course and granting attrition adjustments more liberally now. The Commission disagrees that there has been a change.

This is certainly an appropriate topic for policy discussions and perhaps rulemaking. However, Public Counsel presents no mandatory authority to show that any change constitutes arbitrary and capricious agency action.[4] This Court is required to grant great deference to the Commission and may not reverse merely based on a dispute in the evidence or a departure from the expected course of action. *See ARCO Products Co.*, 125 Wn.2d 805; *People's Organization for Wash. Energy Resources*, 104 Wn.2d 798. The Court therefore affirms the attrition adjustment.

The Court will enter an order consistent with this ruling ex parte with all parties' counsel's signatures, or upon presentment with notice to all parties properly noted on a Friday civil motion calendar.

Sincerely,

Carol Murphy

Carol Murphy, Judge
Thurston County Superior Court

CM: emv

cc: Court File

[4] The cases that Public Counsel cite are not clearly applicable to Washington administrative cases, and even if applicable, they merely state that the agency must provide a reasonable explanation from its departure from the previous course. *See Atchison, T. & S. F. Ry. Co. v. Wichita Bd. of Trade*, 412 U.S. 800, 808 (1973); *Greater Boston Television Corp. v. F.C.C.*, 444 F.2d 841, 852 (D.C. Cir. 1970).