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**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,  
  
Complainant,  
  
v.  
  
PUGET SOUND ENERGY, INC.,  
  
Respondent.

Docket No. UE-031725  
  
PUGET SOUND ENERGY, INC.'S  
RESPONSE TO JOINT MOTION FOR  
CONTINUANCE

In the November 12, 2003 Prehearing Conference Order (Order No. 03), the Presiding Judge established a four-month procedural schedule that is consistent with the Commission-approved settlement regarding a power cost adjustment mechanism in Puget Sound Energy, Inc.'s ("PSE") last general rate case (Docket Nos. UE-011570/UG-011571). The schedule provides exactly what PSE, Commission Staff, Public Counsel, and other parties to the rate case agreed – an expedited process to complete review of PSE's filing to adjust its Power Cost Rate. With this process in place, PSE will be able to close the Frederickson 1 acquisition on a timely basis, which in turn will permit PSE's customers to benefit from the acquisition sooner rather than later.<sup>1</sup>

Now ICNU and Microsoft (collectively "Intervenors") want to undo this schedule – just one month after it was established – because they assert they will not have "the time that is necessary to comprehensively review the voluminous materials

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<sup>1</sup> See generally Puget Sound Energy, Inc.'s Motion for Expedited Procedural Schedule Consistent With Settlement Stipulation, dated October 24, 2003, at 3-4. For the sake of efficiency, PSE incorporates its previous motion and the reasons PSE sought an expedited schedule rather than restating them in this document.

1 filed and provided in discovery by [PSE].”<sup>2</sup> PSE strongly opposes the Joint Motion for  
2 Continuance because there is no good cause for continuing the schedule and because  
3 PSE will be prejudiced by the delay sought by Intervenors.

4 **I. ARGUMENT**

5 **A. The Nature and Scope of This Proceeding Do Not Justify Continuing the**  
6 **Procedural Schedule.**

7 Much of the Joint Motion for Continuance boils down to claims that, variously,  
8 the “huge amount of data,” “complexity of this proceeding,” and “scope of the issues”  
9 all make the current schedule “untenable.”<sup>3</sup> These claims have no merit and do not  
10 amount to good cause for a continuance.

11 Despite what Intervenors say,<sup>4</sup> PSE has never billed this proceeding as limited to  
12 the Frederickson 1 acquisition. As contemplated in the settlement of PSE’s last general  
13 rate case, PSE’s filing represents a request to true up its Power Cost Rate, based upon  
14 the recent changes to PSE’s supply portfolio that include, but are not limited to, the  
15 Frederickson 1 acquisition. (Indeed, PSE may not even be allowed to file a PCORC  
16 limited to a single power cost item without simultaneously updating other power costs.)  
17 Any issues that relate to the portfolio changes (*see, e.g.*, Joint Motion for Continuance,  
18 at 9-10) should come as no surprise to Intervenors who participated in the global  
19 settlement of, and hearings on, PSE’s last general rate case. The existence of issues  
20 contemplated in June 2002 does not warrant a scheduling continuance today.

21 Nor should Mr. Schoenbeck’s alleged inability to review PSE’s filing and  
22 discovery responses dictate the procedural schedule. As PSE understands Intervenors’  
23 argument, if a party’s consultant happens to be traveling (as was Mr. Schoenbeck; *see*  
24 Joint Motion for Continuance, at 8) and, for that reason, does not have time to review  
25 case documents, then the Commission should revise an established hearing schedule.

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27 <sup>2</sup> Joint Motion for Continuance, at 1.

28 <sup>3</sup>*Id.* at 2, 5, and 6.

<sup>4</sup> *Id.* at 9 (“this case was billed as a case to add a new resource”).

1 Applying Intervenors' theory, the party with the busiest consultant will always dictate  
2 the scheduling process.

3 PSE does not believe that the Commission should accept Intervenors' argument.  
4 In an expedited proceeding such as this one, with a multitude of time and other  
5 constraints imposed upon all parties, it is unrealistic to expect that the existing schedule  
6 will please or be convenient for everybody – including the parties' consultants. Thus,  
7 if Intervenors want to use and rely upon Mr. Schoenbeck, then they and he should be  
8 prepared to work within the constraints that the Presiding Judge imposed. Neither a  
9 busy consulting practice nor a busy travel schedule justifies a change to deadlines and  
10 hearing dates that have been discussed, vetted, and established.

11 In a similar vein, Intervenors complain that the alleged volume of highly  
12 confidential documents – in PSE's filing and in its discovery responses – somehow  
13 constrains Mr. Schoenbeck in his review of the filing. As Intervenors concede, though,  
14 PSE has accommodated Mr. Schoenbeck since the filing was made, by permitting  
15 another consultant who works with him to review certain highly confidential material.<sup>5</sup>  
16 If difficulties still exist, then PSE is amenable to working with Intervenors and Mr.  
17 Schoenbeck to reach a solution. Such difficulties are not, however, good cause for  
18 discarding the established procedural schedule.

19 It appears that Intervenors want to penalize PSE for providing a large quantity of  
20 information in its initial filing and in its discovery responses. PSE should not,  
21 however, be penalized for being forthcoming in the filing and in discovery. It would be  
22 a perverse result if PSE were to lose its expedited schedule because, in the interest of  
23 being forthcoming, it provided the parties with the necessary information and  
24 documents to show that PSE acted appropriately with respect to the Frederickson 1  
25 acquisition and the other components of PSE's supply portfolio.

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<sup>5</sup> *Id.* at 8 n. 1.

1 For all of the above reasons, the nature of this proceeding does not justify  
2 continuing the schedule that the Presiding Judge established in the Prehearing  
3 Conference Order. Since Intervenors have not shown good cause for such a  
4 continuance, the Commission should retain the existing schedule.

5  
6 **B. PSE Has Responded Timely and Completely to the Parties' Data Requests.**

7 Intervenors also argue that alleged discovery delays in the last month justify a  
8 continuance. But in fact, the only real delays so far have been caused by Intervenors.  
9 For its part, PSE has responded timely and completely to the parties' data requests –  
10 including the data requests submitted by Intervenors – and has accommodated  
11 Intervenors and the other parties every step of the way during the discovery process.

12 The majority of discovery to date in this proceeding has been conducted not by  
13 Intervenors, but by Commission Staff. Commission Staff began formal discovery on  
14 the very day that the Presiding Judge issued the Prehearing Conference Order  
15 (November 12, 2003). From that date through December 11, 2003 (when Intervenors  
16 filed their Motion), PSE received a total of 67 discovery requests from Commission  
17 Staff. Pursuant to agreement reached with Commission Staff, PSE responded to these  
18 requests by sending complete electronic responses via e-mail on the due date, and by  
19 serving hard copies of the same information via overnight delivery. All but one of  
20 PSE's responses were delivered by the original due date – on an expedited 5-day  
21 turnaround basis required in the Prehearing Conference Order. (The one response that  
22 took more time was completed by the extended deadline that PSE and Commission  
23 Staff agreed to in advance.)

24 It is against this backdrop that the Commission should evaluate the Joint Motion  
25 for Continuance:

- 26 • Unlike Commission Staff, Intervenors did not begin discovery when the  
27 Prehearing Conference Order was issued. Instead, ICNU waited until  
28 November 20, 2003 to submit its First Set of Data Requests – which

1 contained a single “me-too” request that asked for nothing more than PSE’s  
2 responses to the other parties’ data requests.<sup>6</sup>

- 3 • Although Intervenor’s argue that “every day counts,”<sup>7</sup> ICNU delayed in  
4 submitting its First Set of Data Requests. ICNU could have sent PSE a  
5 single “me-too” data request as early as November 12, 2003, when the  
6 Presiding Judge issued the Prehearing Conference Order. If it had submitted  
7 the data request on November 12, ICNU would not have been  
8 inconvenienced by the Thanksgiving holiday weekend.<sup>8</sup> But ICNU did not  
9 do so. The Joint Motion for Continuance does not explain ICNU’s failure to  
10 promptly begin discovery.<sup>9</sup>
- 11 • ICNU suggests that PSE responded to the First Set of Data Requests “one  
12 day late.”<sup>10</sup> But PSE served those responses on December 1, 2003 – the day  
13 they were due. The responses were too voluminous to send via e-mail since  
14 they represented all of the discovery responses in this proceeding through  
15 December 1. Therefore, and since ICNU had not previously requested  
16 another form of delivery, PSE sent the responses via overnight delivery to

17  
18 <sup>6</sup> Notably, although Intervenor’s claim that they have avoided requesting a continuance  
19 by “initiating discovery in a timely fashion” (*see* Joint Motion for Continuance at 10),  
20 Microsoft has not submitted **any** discovery to date – not even a single “me-too” data request.

21 <sup>7</sup> Joint Motion for Continuance, at 6.

22 <sup>8</sup> *Id.* at 8.

23 <sup>9</sup> Intervenor’s are also intervenor’s in Docket No. UE-031389 (PSE’s Annual PCA  
24 Report), which has common issues regarding fuel costs for Tenaska and Encogen that will be  
25 considered in this docket. Commission Staff propounded data requests in Docket No. UE-  
26 031389 on the Tenaska/Encogen issues, to which PSE responded on October 31, 2003.  
27 Microsoft waited until November 7, 2003 to request copies of PSE’s responses to Staff’s data  
28 requests (which PSE provided on November 11, 2003) and ICNU has never requested copies  
of any data request responses in Docket No. UE-031389. Staff, Public Counsel, Microsoft and  
ICNU have all had since at least October 31, 2003 to review and analyze PSE’s data request  
responses on Tenaska and Encogen, issue additional discovery, and prepare testimony on these  
issues. There is no reason why the agreement to litigate Tenaska/Encogen fuel cost issues in  
one docket, UE-031725, rather than two, should require or result in a delay of the existing  
schedule for UE-031725, as PSE has repeatedly stated both on and off the record in Docket  
No. UE-031389.

<sup>10</sup> Joint Motion for Continuance, at 4.

1 counsel's and Mr. Schoenbeck's offices in Portland, Oregon and Vancouver,  
2 Washington, respectively. This was explained to Mr. Perkins (counsel for  
3 ICNU), and he raised no objection. Hence, the responses were not served  
4 "late" under these circumstances.

- 5 • The Joint Motion for Continuance and the accompanying timeline now imply  
6 that e-mail delivery of responses to data requests on the due date, followed  
7 by overnight delivery of hard copies, is somehow improper. But PSE is  
8 responding to ICNU under the same procedures as it is responding to data  
9 requests from Commission Staff. PSE heard no complaints about the  
10 discovery process until the Joint Motion for Continuance was filed. Further,  
11 the timeline corroborates that PSE responded timely to ICNU's Second Set  
12 of Data Requests. It also shows that when an occasional error or omission  
13 has occurred, PSE has corrected the mistake quickly.<sup>11</sup>
- 14 • Lastly, Intervenor claim that PSE delayed in sending CD-ROMs to ICNU's  
15 counsel (as part of the responses to the First Set of Data Requests).<sup>12</sup> Here  
16 again, Intervenor omit key facts:
  - 17 ○ On November 26, 2003, Mr. Glass sent Messrs. Van Cleve and  
18 Schoenbeck a Licensing Agreement with PSE's consultant, Navigant  
19 Consulting, which individuals must sign before they can receive and  
20 review certain of the CD-ROMs. Mr. Schoenbeck signed and  
21

22  
23 <sup>11</sup> In an expedited proceeding with an accelerated turn-around for discovery responses, it  
24 is possible that a party can inadvertently omit a few documents or electronic files from a large  
25 discovery response. This happened when PSE responded to ICNU's First Set of Data  
26 Requests. *See* Joint Motion for Continuance at 4. In that case, however, PSE caught the  
27 omission and provided ICNU with the relevant documents the day after the problem was  
28 discovered – and just a couple of days after the documents were originally due. Such a  
mistake, while regrettable, does not equate to good cause for a continuance under WAC 480-  
09-440.

<sup>12</sup> *Id.*

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returned the Navigant Licensing Agreement – but Mr. Van Cleve did not until December 12, 2003.

- On December 1, 2003, Mr. Glass called Mr. Van Cleve to confirm that Mr. Van Cleve wanted the first set of CDs to be sent to Mr. Schoenbeck; to advise that another set would be ready for Mr. Van Cleve the following day; and to remind him to return the signed Navigant Licensing Agreement. Mr. Schoenbeck received his CD-ROMs the next day (December 2), but Mr. Van Cleve failed to sign and return the Licensing Agreement.
- Thinking that the signed Licensing Agreement would soon be forthcoming, and as a courtesy to ICNU, PSE decided to send the remaining CD-ROMs to Mr. Van Cleve on December 4, 2003, via overnight delivery. But Mr. Van Cleve did not return the signed Licensing Agreement until December 12, 2003 – one week after he received the CD-ROMs, and the day after Intervenors filed the Joint Motion for Continuance.

In sum, PSE has complied fully with its discovery obligations under the circumstances presented by an expedited proceeding. In order to keep to the expedited procedural schedule, PSE has objected to very few data requests; when it has objected, PSE has provided responsive information to the extent possible. There have been no discovery disputes. In fact, with the objective of facilitating discovery, PSE has held meetings with industrial customers and Commission Staff to explain the PCORC filing and to answer questions.

Therefore, the Commission should find that nothing in the discovery process to date amounts to “good cause” under WAC 480-09-440, such that the Commission should undo the existing schedule.

1 **C. Intervenor’s Bifurcation Proposal Should Not be Adopted Because it is**  
2 **Prejudicial to PSE and Unworkable.**

3 The Joint Motion for Continuance concludes by suggesting that, “to the extent  
4 PSE believes it is prejudiced, it could propose alternatives such as bifurcating the issues  
5 regarding the Frederickson plant.”<sup>13</sup> By claiming that PSE should “propose alternatives  
6 [to the existing schedule],” Intervenor’s display a fundamental misreading of WAC 480-  
7 09-440. It is not PSE’s burden to propose an alternative to a schedule that the  
8 Presiding Judge has already established. Rather, it is **Intervenor’s** burden to show  
9 good cause for undoing that schedule. Since they have failed to carry that burden, the  
10 existence or non-existence of any alternatives to the schedule is irrelevant.

11 If and to the extent that the Commission considers bifurcating the proceeding  
12 and/or the impact of such bifurcation upon PSE, the proposal that Intervenor’s advance  
13 is totally unworkable and should not be adopted. This is the case for several reasons.

14 **First**, the two stages of the proceeding would necessarily overlap. Under  
15 Intervenor’s proposal, and for issues other than the Frederickson 1 facility, the due date  
16 for responsive testimony would be extended by one month -- until February 9, 2004.  
17 However, February 9 is the same day that the hearing is scheduled to begin to consider  
18 PSE’s filing and the parties’ responsive positions. Thus, if the Commission bifurcates  
19 the proceeding as proposed, and if the hearing goes forward for “phase one” on  
20 February 9, then PSE will have to put on its witnesses in the “phase one” hearing **at the**  
21 **exact same time** it must review responsive testimony, begin discovery, and prepare  
22 rebuttal testimony for “phase two.” The proposed bifurcated schedule is patently  
23 prejudicial to PSE – the party that has the most witnesses and bears the greatest  
24 evidentiary burden in this matter.

25 **Second**, the issues in this proceeding cannot be divided neatly in two, as  
26 Intervenor’s suggest. The Frederickson 1 acquisition has several integral and

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28 <sup>13</sup> *Id.* at 2, 10.



1 interwoven costs that make up the Power Cost Rate. Undoubtedly, questions will come  
2 up in “phase one” that cannot be answered until “phase two.” Thus, the Commission  
3 will have less than a full evidentiary record upon which to reach a decision after “phase  
4 one.”

5 **Third**, a bifurcated proceeding will result in wasted effort. Instead of a single  
6 procedural schedule with hearings beginning on February 9, the Commission and the  
7 parties will have to make room for duplicate discovery deadlines, filing deadlines, and  
8 briefing deadlines, not to mention at least two rounds of hearings. Witnesses will have  
9 to appear twice instead of once. Such a process would run counter to administrative  
10 efficiency.

11 **Fourth**, the settlement that the Commission approved in PSE’s last rate case did  
12 not contemplate a bifurcated proceeding, where (as here) PSE desires to update its  
13 Power Cost Rate to reflect a resource acquisition and other changes in its supply  
14 portfolio.

15 **Finally**, and most fundamentally, the parties to the settlement of PSE’s last rate  
16 case (Docket Nos. UE-011570/UG-011571) agreed to something very important to  
17 PSE: an expedited, four-month review of its power cost only rate cases. While the  
18 parties to the present power cost only rate case may now prefer to have more time, the  
19 Commission should insist that the parties honor their commitments in the rate case  
20 settlement.

## 21 **II. CONCLUSION**

22 Intervenor’s Joint Motion for Continuance does not provide good cause for  
23 delaying the resolution of this proceeding. The nature and scope of this proceeding do  
24 not justify continuing the procedural schedule. PSE has responded timely and  
25 completely to the parties’ data requests, including the data requests that Intervenor  
26 submitted. Finally, Intervenor’s bifurcation proposal is prejudicial and unworkable and  
27 should not be adopted.

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For these reasons, PSE respectfully requests that the Commission retain the procedural schedule that the Presiding Judge established in the Prehearing Conference Order.

DATED: December 18, 2003

Respectfully Submitted,

  
\_\_\_\_\_  
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\_\_\_\_\_  
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