

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

**INDUSTRIAL CUSTOMERS OF
NORTHWEST UTILITIES,**

For a Declaratory Order Requiring Puget
Sound Energy, Inc. to Provide Access to
the AURORA Model in its 2011 General
Rate Case.

Docket No. _____

**PETITION FOR A DECLARATORY
ORDER**

**EXPEDITED CONSIDERATION
REQUESTED**

I. INTRODUCTION

1 The Industrial Customers of Northwest Utilities (“ICNU”) is an incorporated,
non-profit association of industrial electric customers in the Pacific Northwest; ICNU represents
many of Puget Sound Energy, Inc.’s (“PSE”) industrial customers. The full names and addresses
of ICNU and ICNU’s attorneys are:

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3 The statutes and rules that may be at issue in this proceeding include RCW
34.05.240, WAC 480-07-370, WAC 480-07-400, and WAC 480-07-930.

4 Pursuant to RCW 34.05.240, WAC 480-07-370(1)(b) and WAC 480-07-930, ICNU hereby petitions the Washington Utilities and Transportation Commission (“WUTC” or the “Commission) for a Declaratory Order related to PSE’s proposed usage of the AURORA model for calculation of its net power costs in PSE’s 2011 general rate case (“GRC”). ICNU requests that the Commission issue a Declaratory Order requiring PSE to provide ICNU with access to the AURORA model so that ICNU may fully investigate PSE’s calculations of its net power costs in PSE’s upcoming 2011 GRC without having to pay a prohibitively expensive licensing fee. Because PSE will soon file its 2011 GRC, expedited consideration of this Petition is requested.

II. BACKGROUND AND STATEMENT OF FACTS

5 PSE has indicated that it will file a GRC in early June 2011. Affidavit of Donald W. Schoenbeck in Support of ICNU’s Petition for a Declaratory Order (“Schoenbeck Affidavit”) at ¶3. PSE has also indicated that it plans to use the AURORA model to calculate its power costs. Id. The AURORA model is a proprietary model owned by EPIS, Inc. (“EPIS”). Id. at ¶4. Access to AURORA requires the user to purchase a license from EPIS; an annual license costs approximately \$51,500. Id.

6 Power costs will most certainly be a key issue in PSE’s 2011 GRC. Full participation in PSE’s 2011 GRC and full analysis of PSE’s power cost calculations require that ICNU has access to the model that PSE will use to calculate its power costs. Id. at ¶5. Accordingly, PSE knew or should have known that the Commission and intervenors such as ICNU would require access to the AURORA model to fully analyze the power cost data included in PSE’s 2011 GRC.

7 PacifiCorp and Portland General Electric Company both provide access to their

power cost models at no cost. Id. at ¶6. Avista Corporation (“Avista”) has made reasonable accommodations to provide ICNU with access to AURORA under their license with EPIS. It is entirely unreasonable to require an intervenor party such as ICNU to bear the expense of obtaining an annual license to use AURORA for the sole purpose of reviewing PSE’s power cost calculations. Id. at ¶10. If ICNU is required to pay the full licensing fee, ICNU will simply not be able to provide expert testimony on power cost issues which involve the AURORA model.

8 ICNU recently raised the issue of access to AURORA with Avista. Avista arranged under their license with EPIS to provide ICNU with access to AURORA for the Avista 2011 GRC. Id. at ¶7. Specifically, ICNU will be able to connect via a virtual private network (“VPN”) protocol to a dedicated Avista computer for AURORA access; thus, ICNU will have access to the AURORA model through Avista’s license. Id. The model will be available 24 hours per day, 7 days per week during Avista’s 2011 GRC, and ICNU will not be assessed any licensing fees. Id. ICNU appreciates Avista’s accommodation.

9 Although the rate case has not yet been filed and therefore discovery is not yet available, ICNU has made efforts to resolve this matter informally consistent with WAC 480-07-425. Id. at ¶8. ICNU has requested that PSE make a similar arrangement to that which was provided by Avista, and PSE has, to date, refused to accommodate ICNU’s request. Id. at ¶8. Intervenors should not have to pay \$51,500 to verify the inputs and calculations used to determine PSE’s power costs. Id. at ¶4.

10 PSE’s choice to use a proprietary model for its power cost modeling and PSE’s failure to obtain additional licensing and access permissions for intervenors is contrary to the public interest. Ratepayers are already paying for the cost of the model in rates, and should not have to pay again to participate in rate cases. Without access to the AURORA model, it will be

extremely difficult, if not impossible, for an ICNU expert to review and propose adjustments to PSE's power costs. Id. at ¶5.

III. DISCUSSION

1. PSE's Failure to Provide Access to the AURORA Model Limits intervenors' Ability to Participate in its 2011 GRC

11 It is essential that intervening parties have full access to power cost models to conduct effective review of utility rate case filings. Unless PSE makes efforts to provide ICNU and other intervenors with access to the AURORA model, intervenors will not be able to understand the assumptions used, review or analyze the effects of different inputs and outputs, or modify or model different inputs and assumptions. These steps are crucial to a thorough review of the issues and to propose adjustments to PSE's power costs.

12 When a party introduces a cost model, its accuracy is relevant to the proceeding, and "other parties must be entitled to obtain information necessary to validate the accuracy of the model." Re Review of Unbundled Loop and Switching Rates, WUTC Docket No. UT-023003, Fourteenth Suppl. Order at 6 (Oct. 14, 2003). Stressing that cost models should be "transparent and readily capable of verification," the Commission ruled that discovery must be "sufficient to permit the incumbents an opportunity to explore how the . . . inputs operate." Id. at 7.

13 By including the conclusions of the AURORA model in its 2011 GRC, PSE puts at issue the model and the calculations derived thereby. Intervenors must be afforded an adequate opportunity to review the accuracy of the model and the calculations and data produced by the model.

2. Cost Models and the Data Produced Should Be Open to Review By Intervenors

14 The Commission has articulated its policy on reviewability of cost models, declaring: "openness of all aspects of supporting cost models is important," and "an open model

is in the public interest in that it provides all parties with an opportunity to fully explore the advantages and limitations of the different cost models.” Re Review of Unbundled Loop and Switching Rates, WUTC Docket No. UT-023003, Twenty-Fourth Suppl. Order at 77, 69 (Feb. 9, 2005). The Commission has defined an open model as one that:

[A]llow[s] parties to proceedings involving cost models to have the ability to understand assumptions used, to review and analyze the effect of inputs and outputs, and to modify and model different inputs and assumptions.

Id. at 69.

15 PSE proposes to use a proprietary model, AURORA, to model its power costs, and PSE has made no effort to secure access to the model for intervenors without paying the licensing fee. Without access to AURORA, intervenors are left completely in the dark regarding PSE’s inputs and assumptions – or as the Commission has previously characterized such a circumstance, PSE will have created a “totally unacceptable ‘black hole’ with respect to evaluating” critical information. Re Determining Costs for Universal Service, WUTC Docket No. UT-980311(a), Seventh Suppl. Order at 3 (Aug. 26, 1998). PSE’s proposed usage of the AURORA model and concomitant failure to obtain access to AURORA for intervenors is contrary to the Commission’s clearly articulated policy regarding openness and reviewability of cost models. Accordingly, PSE should be required to provide access to the model it chose to use for its 2011 GRC.

16 Further, ICNU participates in many general rate cases in Washington and Oregon. PacifiCorp, Portland General Electric Company, and now Avista all provide ICNU access to their power cost models without requiring the payment of a licensing fee.

3. Requiring Intervenors to Pay Licensing Fees is Harmful to the Public Process

17 Because PSE should reasonably expect that intervenors will require access to its

power cost model, PSE should have negotiated access to AURORA for intervenors. PSE's failure to do so is contrary to the public interest.

18 In addition to the above-discussed disputes regarding access to data and models that have come before the WUTC, access to proprietary data and models has also been addressed by the Oregon Public Utility Commission ("OPUC"). The OPUC was especially critical of a utility's failure to provide access to critical information when the utility "knew or should have known" that information essential to the operation of its model would be subject to discovery, and found that the utility could have and should have anticipated the need for discovery by other parties. Re Qwest Corporation, OPUC Docket No. UM 1025, Order No. 03-533 at 5-6 (Aug. 28, 2003).

19 The OPUC expressed grave policy concerns regarding the expense of discovery for intervenors, finding that that:

It is unreasonable to require parties and/or the Commission to pay for discovery. Not only does such a policy seriously disadvantage opposing parties, it also limits the Commission's fact finding ability. Both are clearly unacceptable from a public interest standpoint.

Id. at 6. Just as in the case before the Oregon Commission, PSE knows that its calculations of net power costs will be a significant issue in its 2011 GRC, and it knows that ICNU will seek access to the model used to calculate power costs.

20 In partially granting a motion to compel, the OPUC concluded that:

[The utilities] cannot prevent discovery of relevant information central to the outcome of this proceeding simply because they chose to have the data developed by a third party. Second, we find that it is contrary to the public interest to require parties to Commission proceedings (and potentially the Commission itself) to pay for discovery.

Id. at 9-10. PSE has chosen to use a proprietary model that ICNU has requested access to without the payment of an expensive licensing fee; this reasonable request is necessary to

conduct a thorough review of PSE's filing. PSE should not be allowed to frustrate full review of its power costs through its choice to use a prohibitively expensive model, and PSE should be required to provide a mechanism through which intervenors may access the model.

IV. APPROPRIATENESS OF DECLARATORY ORDER

21 By authority of WAC 480-07-930 and RCW 34.05.240(1), the Commission may enter a declaratory order upon a showing:

- (a) That uncertainty necessitating resolution exists;
- (b) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion;
- (c) That the uncertainty adversely affects the petitioner;
- (d) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested; and
- (e) That the petition complies with any additional requirements established by the agency under subsection (2) of [RCW 34.05.240].

RCW 34.05.240(1).

22 The declaratory order requested by ICNU meets these requirements, as set forth below.

1. Uncertainty Necessitating Resolution Exists

23 The uncertainty to be resolved by an Order on this Petition is primarily a policy question for the Commission: May a utility choose to use a proprietary model with prohibitively expensive licensing fees and subsequently decline to make reasonable accommodations to provide intervenors with access to the model?

2. The Declaratory Order Will Not Be An Advisory Opinion

24 The question framed above represents an existing controversy between PSE and

ICNU. A declaratory order would conclusively resolve this issue in the upcoming PSE 2011 GRC, and thus, an Order resolving this Petition will resolve a live controversy. Additionally, an Order resolving this Petition may have the secondary benefit of encouraging other utilities to anticipate future disputes related to proprietary data and models, and may encourage those utilities to negotiate licensing agreements that will provide access to the models for intervening parties.

3. The Uncertainty Adversely Affects the Petitioner

25 The uncertainty regarding access to AURORA adversely affects ICNU because it may result in a significant limitation of ICNU's ability to effectively participate in PSE's 2011 GRC and to protect the interests of industrial customers who will undoubtedly be facing a proposed rate increase.

4. The Adverse Effect of Uncertainty on the Petitioner Outweighs Any Adverse Effects on Others That May Likely Arise from the Order Requested

26 Resolution of this Petition in ICNU's favor will not result in any harm to others or the general public. The only "harm" that may come of a favorable resolution of this Petition would be a minimal additional administrative burden or additional cost to PSE to obtain the access requested by ICNU. However, the accommodations made by Avista demonstrate that this should not be a significant burden. Moreover, the benefit to ICNU and other intervenors of having access to AURORA, and in this manner being afforded the opportunity for meaningful participation in PSE's 2011 GRC, significantly outweighs any potential adverse effects on PSE.

V. RELIEF REQUESTED

27 For the foregoing reasons, ICNU respectfully requests that the Commission issue an order on an expedited basis declaring that:

1. PSE must make accommodations similar to those provided by Avista for ICNU

to access to the AURORA model or provide ICNU direct access to the AURORA model without ICNU having to pay the license fee.

DATED this 6th day of June, 2011.

Respectfully submitted,

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