ATTACHMENT

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of a Rulemaking to Consider Possible Corrections and Changes in Rules In Chapter 480-07 WAC, Relating to Procedural Rules.	DOCKET NO. A-050802

Second Comments of Public Counsel

Attorney General of Washington

January 17, 2006

I. INTRODUCTION

The Public Counsel Section of the Washington State Attorney General's Office (Public Counsel) files these comments in response to the Washington Utilities and Transportation Commission's (Commission) December 9, 2005 *Notice of Opportunity to Submit Comments*.

The settlement process issues addressed below are critically important. The issues have been extensively discussed and debated in previous Commission adjudications and rulemaking, at the legislature, at the July 2005 Bench-Bar Seminar, in a petition for rulemaking (A-051427), and in the current rulemaking. The issue of notice and participation was first raised by Public Counsel in the Commission's last "procedural rules" rulemaking in 2003. Public Counsel incorporates by reference in these comments its prior statements and comments in Commission rulemakings, adjudications, and workshops on this issue.

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This rulemaking provides the Commission the opportunity to develop its own reasonable resolution of these issues with stakeholder participation. Some parties have suggested that these concerns can be addressed simply through informal changes in case procedures or practices and that rule changes are not necessary. Public Counsel disagrees. The problems and concerns raised are recurring. However effective informal practice changes may be in the short term, they are vulnerable to personnel changes and the pressures of individual cases and circumstances. Adoption of the proposed rule amendments will provide clear guidance and a consistent framework for settlement that will benefit all parties and the Commission.

II. COMMENTS

1. Please comment whether the commission should consider adopting the amendments to WAC 480-07-730 and WAC 480-07-740 proposed by Public Counsel and others. The rule proposals are posted to the commission's website: http://www.wutc.wa.gov/050802.

The Commission should adopt the amendments to the settlement rules proposed by Public Counsel, Industrial Customers of Northwest Utilities (ICNU), WeBTEC, Citizens Utility Alliance (CUA), Northwest Energy Coalition (NWEC), the Energy Project, and A World Institutes for a Sustainable Humanity (A.W.I.S.H.).

Attached to these comments are statements and memoranda developed in connection with HB 1800 which discuss the reasons for adopting these process improvements in detail. In summary, the rule amendments are designed to ensure that (1) all parties have notice and an opportunity to participate in settlement discussions between Commission Staff and the regulated company; and (2) that, in non-unanimous settlements, that opposing parties have the right to present their case and to receive a decision on the merits of material issues raised.

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2. **Please evaluate the settlement process followed in the Avista proceeding (Docket Nos. UT-050482 & UG-050483) and recent Verizon proceedings (Docket Nos. UT-050814 & UT-040788). If you believe flaws existed in the process in those dockets please a) specify what the flaws were and b) whether, why, and what rule amendments are needed to correct them.**

Avista General Rate Case – UE-050482/UG-050483. Public Counsel was a party to this case.

1. Notice and Participation. In general, the settlement conference process itself was satisfactory. The pre-hearing order established a date for settlement conferences, which was later reset at the parties' request. All parties were later notified of the time and place for the conferences. Ultimately, a non-unanimous (multiparty) settlement was reached between Staff, Avista and other parties. Public Counsel and ICNU opposed the settlement.

2. Settlement Consideration. The Avista rate case settlement resulted in a dispute about the proper post-settlement procedure. There were both positive and negative aspects to the procedure ultimately adopted. On the positive side of the ledger, opposing parties were permitted to prefile evidence on all material issues, not just the settlement. The pre-existing case schedule up to and through the hearing was not abbreviated. At the hearing, opposing parties were allowed to cross-examine all witnesses who had filed testimony on all issues.

On the negative side of the ledger, the issue at the hearing was expressly limited, over PC and ICNU objections, to whether the settlement should be rejected, accepted, or conditioned.

The limited scope of review was, in Public Counsel's view, the most serious flaw in the Avista process. Whenever a non-unanimous settlement is presented, it is preferable that the Commission considers and resolves all the material issues presented by the case. The non-unanimous settlement should be treated simply as a joint position of parties. The process adopted places the Commission in the position of having to hold two evidentiary hearings if it

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rejects the settlement, a serious inefficiency. The prospect of having to conduct extensive further proceedings places *de facto* pressure on the Commission to accept the settlement, or impose only limited conditions, simply to avoid the burdens of added process. Even if the settlement is rejected, parties must find additional resources to put on their case a second time. This is most burdensome on intervenors with limited resources. This outcome also provides former settling parties, particularly, the regulated company, a "second bite at the apple." The settlement becomes a sort of trial balloon or roll of the dice. They need not fully commit to or submit supporting evidence for the settlement positions because if they are rejected, the company can simply fall back on its original position.

The draft language submitted would help resolve this issue by requiring findings on all material issues. It may also be useful to make an amendment to WAC 480-07-750 to adopt a clear distinction between the procedures used for review of full settlements and those for multiparty settlements. Public Counsel recommends that multiparty settlements be re-designated "non-unanimous" settlements and that when such a settlement is filed, the scope of hearing not be limited to settlement consideration but instead that all material issues in the case remain at issue in the hearing. Proponents of the multiparty settlement will be permitted to put on evidence in support of their joint position, but the joint position will be reviewed in the same way as all other testimony and evidence tendered by other parties to the case.

Verizon/MCI Merger UT-050814. Public Counsel was a party to the case.

1. Settlement Conference. The case resulted in a non-unanimous settlement opposed by Public Counsel and other parties. The settlement conference process was acceptable. All parties were advised that a settlement conference was being convened and had an opportunity to participate.

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2. Settlement Consideration. The settlement consideration process was reasonable and had some practical advantages over the Avista approach. There was no request from the settling parties to narrow the scope of the hearing. The Commission did not expressly order a narrow scope for the hearing (although it cited the provisions of WAC 480-07-750(2) in the final order). All parties were permitted to offer testimony and to cross-examine on all proposed conditions to be imposed on the merger. The Commission's final order effectively rejected the settlement as written, and adopted some of the proposals of settling parties, and some proposed by opponents of the settlement. The settling parties accepted the alternative framework established by the Commission.

Other Commission cases of note

In addition to the above cases, there are at least three relatively recent major cases which have successfully employed the "notice and opportunity" to participate approach contained in the draft rule proposal. PSE's 2001 general rate case, Docket UE-011571 et al., is the pre-eminent example. PSE deserves particular credit for taking the lead in inviting all parties to participate and in spearheading the organization of the process. The settlement process, involving 32 parties, was carefully organized and extended over several weeks. Separate groups were formed to address issues such as revenue requirement, rate design, PCA, low-income, conservation, and other issues. Parties were free to participate in as many sessions as they chose. A full all party settlement was achieved. The Commission acknowledged the efforts of the parties in its final order. *WUTC v. PSE*, Twelfth Supplemental Order; Rejecting Tariff Filing; Approving and Adopting Settlement Stipulation Subject to Modifications, Clarifications, and Conditions; Authorizing and Requiring Compliance Filing, Docket No. UE-011570 and UG-011571 (consolidated), (June 2002).

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PSE followed the same approach in its 2004 rate case, Docket UE-040641 et al. Again, all parties were invited to participate in settlement. After all party talks failed to resolve all issues, an all party settlement of rate design and rate spread was reached, and the remaining issues went to hearing.

A third example of a successful inclusive process was Verizon's contentious general rate case, Docket UT-040788, which had initially sought the largest telephone rate increase in state history. In that case, again, all parties were notified that settlement was to be discussed and there was inclusive participation in the talks. A full all party settlement of the entire case was reached.

3. Based on your actual experience, please compare and contrast Oregon's rules and practice governing voluntary settlements (OAR 860-014-0085) with the commission's rules and practice. Please identify by company, docket number, and date, any individual proceedings in Oregon in which you have been a participant in the settlement process during the past two or three years.

Public Counsel does not have actual experience with the Oregon procedures. Public Counsel believes that the Oregon experience does provide a useful comparison for the Commission in its deliberations, and disproves some of the concerns raised by opponents as to the unworkability of this approach in Washington.

4. Please state whether the amendment to WAC 480-07-730 proposed by Public Counsel and others, if adopted, should apply only to commission staff or to all parties.

By its terms, the draft proposal specifically requires notice of settlement discussions involving the Staff and the company. This is appropriate for several reasons. First, the rule recognizes the practical reality that the Commission Staff has a unique role among parties to any adjudication. It has significant analytic and legal resources, it has an institutional place within the agency which historically gives its voice special influence, and it views its role as acting as the party that seeks to balance the various interests before the Commission. When the

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Commission Staff has reached an agreement with a regulated company to present a joint position on one or more issues, the agreement inevitably carries substantial weight.

Second, although it has an independent function in adjudications, nevertheless, the Staff is a part of the Commission. Since it is part of the Commission's function to craft and conduct a fair and responsive adjudication process it makes sense that its own Staff would follow procedures that facilitate that goal. A third and related point is that, on the other hand, the Commission has limited authority to restrict communications between other parties and the regulated company.

5. Please describe how the nature of the commission's proceedings differs materially from other civil litigation insofar as settlements and the settlement process is concerned, and how any differences should be reflected in the settlement rules or practice.

A chief difference between settlement proceedings in civil litigation and those at the Commission is the special role of the Commission in approving settlement agreements. The Commission cannot delegate its regulatory authority to the parties. It must make an independent decision, based on the record before it, that the result proposed by the settlement is in the public interest and meets all other applicable statutory requirements. By contrast, with some exceptions as in the antitrust and class action field, civil trial courts can not ordinarily reject settlements presented by litigants and require a case to be tried. When the Commission adopts a settlement, it is not simply acting as a disinterested arbiter of private interests, it is exercising its statutory authority to regulate particular economic activities in the public interest. Accordingly, it is particularly important that its settlement procedures are designed to ensure that it has the best record for decision and that all interested stakeholders have had a fair opportunity to be heard.

Another important difference is that in civil litigation, a subset of parties cannot in effect "freeze out" non-settling parties by presenting a non-unanimous settlement as a final resolution

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of the case. Unless all parties agree to the settlement, the case is not resolved and proceeds to trial, where the burden of proof must be met. The fact that a subset of parties agrees on one or more issues does not limit the procedural rights of parties who have not settled.

Finally, as noted above, the role of the Commission Staff is unique. There is no parallel in civil litigation where a party has such a special relationship to the judge. Because of this special role, it is appropriate for the Commission to adopt guidelines to ensure fairness.

6. Would it be improper under the proposed amendment to WAC 480-07-730 for a settlement judge to caucus with one or more, but not all, parties to resolve issues between two or more parties? Should rules restrict parties' ability to caucus with one or more other parties, but not all, during a scheduled settlement conference?

No, neither of these scenarios would be improper. Both of these occur now in Commission settlement proceedings, without objection. Settlement and ADR processes typically contemplate flexibility to participants to design the process in a mutually agreeable fashion. As noted above, the intent of the rule is to codify the successful practice that has been used in a number of Commission cases and is well understood by the parties. Some opponents of the draft rule have suggested a variety of problems and difficulties which, in reality, have rarely if ever arisen in actual Commission practice.

It is important to note that in none of the specific case settlement proceedings discussed above, where notice and opportunity to participate were afforded all parties, did any undue delay or disruption result. Public Counsel is not aware that any disputes about settlement process issues such as inter-party communications, caucusing, scheduling, notice, or other procedural problems occurred. This is the case even though Commission Administrative Law Judges (ALJ) only assisted as mediators in limited situations. The reality is that the Commission ALJs and bar have repeatedly demonstrated their ability to conduct professional, ethical, fair, efficient, and productive settlement proceedings once the ground rules for notice and inclusive participation have been established in a given case. The purpose of the proposed rule is to simply codify this successful practice so that it is clear to all parties that the Commission's policy is to use this

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approach in every case. There is no need to construct a set of rules to cover every variation of party interaction within a settlement.

7. Concerning the proposed amendments to WAC 480-07-740, do the requirements in RCW 34.05.461(3) meet the concerns of the proponents for an order addressing all material issues of fact or law? If not, please discuss why the statute does not address the concerns.

The proposed rule amendments are intended to incorporate by rule the provision of RCW 34.05.461(3), in particular the requirement that:

> Initial and final orders shall include a statement of findings and conclusions, and the reasons and basis therefore, *on all the material issues of fact, law, or discretion presented on the record....* (emphasis added).

The purpose of the amendment is to clarify that, in cases where there is a non-unanimous settlement, the opponents of a proposed settlement are entitled to an order which addresses material issues of fact or law which they have raised, even though those issues may have not been addressed in the non-unanimous settlement, so long as those issues are material. The current rule does not address this point.

As discussed above, it is Public Counsel's position that, except in the case of a full settlement, that a non-unanimous settlement should be viewed, as the current rule states, as simply "an agreement of some, but not all, parties on one or more issues [that] may be offered as their position in the proceeding along with the evidence they believe supports it." When "opposing parties present evidence in support of their "preferred result," i.e., an alternative to the settlement, as permitted by WAC 480-07-740(2)(c), the proposed rule amendment clarifies that they are entitled to an order which makes findings on the material issues of fact and law which they have raised. The fact that the issues may not have been encompassed within the provisions of the non-unanimous settlement should have no bearing on whether the Commission addresses them in the final order.

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8. Is discovery under the proposed amendment to WAC 480-07-740 intended to be an absolute right? Would an absolute right allow abuse of the process and irrelevant discovery? Why should parties opposing a settlement have discovery rights greater than those afforded under the discovery rules during other stages of a proceeding (*i.e.*, why should the commission's discretion to control discovery, considering the needs of the case be constrained, when a settlement is filed)?

The right to conduct discovery mentioned in the rule amendment is not an absolute right. The purpose of including this provision is to clarify that non-settling parties retain the right to discovery which they have under existing Commission rules. In other words, there is no presumption that non-settling parties lose their ability to conduct discovery merely because other parties have agreed to a joint position on one or more issues (a "multiparty" non-unanimous settlement). The rights preserved and clarified by the rule are no greater than, but no less than, the discovery rights which otherwise apply. They are subject to the same discretionary authority of the Commission and its presiding officers.

9. Should the commission change the description of the "highly confidential" designation in WAC 480-07-423(1)(b)? If so, please explain how and why.

Public Counsel recommends that the rule be amended by removing the words "for example." The words appear to be superfluous, since the sentence describes a category of information, rather than an example.

10. Please identify circumstances that justify use restrictions for persons given access to documents designated confidential or highly confidential.

In general, use restrictions would apply where the basis for imposing confidential or highly confidential protection have been established under the rules. Public Counsel's position is that use restrictions, rather than employment restrictions, should be applied in all circumstances where access to documents needs to be restricted.

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11. Please identify circumstances that justify employment restrictions for persons given access to documents designated confidential or highly confidential.

Public Counsel does not believe that employment restrictions on outside consultants are a justifiable form of restriction on access. Employment restrictions raise both legal issues and practical problems. Particularly problematic has been the use of highly confidential protective orders which require outside expert witnesses to sign an affidavit indicating they will not engage in certain specified activities for an extended period of time, often several years. Such requirements are often difficult for consultants to agree to, especially where wording is broad and time periods are extended. At least one Public Counsel consultant has declined to sign such an affidavit.

During a case in 2003, Public Counsel conducted an informal poll of its consultants regarding their views of affidavits containing employment restrictions for access to highly confidential information. The consultants raised concerns about the breadth of the restrictions in the affidavit and the vagueness of the terminology. We received thoughtful responses from consultants and firms from Boston, Washington D.C., Florida, California, and elsewhere with public and private clientele and extensive experience in other jurisdictions. The consultants made several points:

- the consultants have not encountered a similar affidavit requirement elsewhere
- the language of an affidavit is often too broad and undefined
- the time period of the restriction is too long (for example, three years)
- consultants are comfortable signing protective agreements that limit use of the sensitive information to the particular docket but the affidavit language in this case is seen as burdensome and would pose a problem.

Our conclusion from these responses, and from other direct dealings with witnesses is that employment restrictions make it more difficult for Public Counsel to retain outside experts. *See,*

WUTC v. PSE, Docket No. UE-031725 (2003 Power Cost Only Rate Case), Public Counsel Objection to Order No. 03; Petition for Interlocutory Review, p. 4. The Commission has successfully used highly confidential protective orders with use restrictions without problems, including in Docket UT-033044, a case involving multiple telecommunications competitors and much competitively sensitive information. The outside expert is required simply to sign a certification (usually the so-called "Exhibit C") that they agree to protect the information according to the terms of the order.

Public Counsel recommends that the above approach be standardized by rule, and that affidavits with employment restrictions not be employed. This will provide a practical and effective degree of protection, while avoiding the repetitive case-by-case litigation which has occurred over the wording and scope of affidavits and other forms of employment restriction.

12. Please provide proposed language for WAC 480-07-160 and WAC 480-07-423 describing how confidential or highly confidential information should be marked or identified in a document.

Public Counsel believes the current marking and identification requirements are satisfactory. However, Public Counsel believes it would be helpful to have specific approval in the rule to use "BEGIN CONFIDENTIAL **** END CONFIDENTIAL" marking as an additional option for indicating protected material.

13. Please provide proposed language for WAC 480-07-160 and WAC 480-07-423 describing how confidential or highly confidential documents should be filed with the commission.

Public Counsel believes the current filing requirements are satisfactory.

14. Please comment on Public Counsel's August 26, 2005, proposal to amend WAC 480-07-310(b), concerning ex parte communication.

Public Counsel continues to support its August 26 recommendation on this issue. The rule would simply require that, when regulated companies have had pre-adjudication contacts with Commissioners, the company must make a filing in the adjudication docket, disclosing the nature and content of the communications.

15. Please state your observations or concerns about any of the commission's procedural rules, and propose specific language changes to address your concerns.

Public Counsel incorporates by reference its additional recommendations contained in its August 26 comments in this docket. Public Counsel may wish to make other recommendations as the rulemaking proceeds into other issue areas.

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SERVICE DATE
DEC 9 2005

STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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December 9, 2005

DEC 12 2005
AGO PC DIVISION
SEATTLE

NOTICE OF OPPORTUNITY TO SUBMIT COMMENTS (By January 17, 2006)

RE: Procedural Rules Rulemaking - Chapter 480-07 WAC
Docket No. A-050802

TO ALL INTERESTED PERSONS:

On November 10, 2005, the Washington Utilities and Transportation Commission held a workshop to discuss the procedural rules in chapter 480-07 WAC. The commission seeks written comments from stakeholders by **Tuesday, January 17, 2006,** about the procedural rules, including the following issues and questions raised in the workshop:

1. Please comment whether the commission should consider adopting the amendments to WAC 480-07-730 and WAC 480-07-740 proposed by Public Counsel and others. The rule proposals are posted to the commission's website: http://www.wutc.wa.gov/050802.

2. Please evaluate the settlement process followed in the Avista proceeding (Docket Nos. UT-050482 & UG-050483) and recent Verizon proceedings (Docket Nos. UT-050814 & UT-040788). If you believe flaws existed in the process in those dockets please a) specify what the flaws were and b) whether, why, and what rule amendments are needed to correct them.

3. Based on your actual experience, please compare and contrast Oregon's rules and practice governing voluntary settlements (OAR 860-014-0085) with the commission's rules and practice. Please identify by company, docket number, and date, any individual proceedings in Oregon in which you have been a participant in the settlement process during the past two or three years.

4. Please state whether the amendment to WAC 480-07-730 proposed by Public Counsel and others, if adopted, should apply only to commission staff or to all parties.

5. Please describe how the nature of the commission's proceedings differs materially from other civil litigation insofar as settlements and the settlement process is concerned, and how any differences should be reflected in the settlement rules or practice.

6. Would it be improper under the proposed amendment to WAC 480-07-730 for a settlement judge to caucus with one or more, but not all, parties to resolve issues between two or more parties? Should rules restrict parties' ability to caucus with one or more other parties, but not all, during a scheduled settlement conference?

7. Concerning the proposed amendments to WAC 480-07-740, do the requirements in RCW 34.05.461(3) meet the concerns of the proponents for an order addressing all material issues of fact or law? If not, please discuss why the statute does not address the concerns.

8. Is discovery under the proposed amendment to WAC 480-07-740 intended to be an absolute right? Would an absolute right allow abuse of the process and irrelevant discovery? Why should parties opposing a settlement have discovery rights greater than those afforded under the discovery rules during other stages of a proceeding (*i.e.,* why should the commission's discretion to control discovery, considering the needs of the case be constrained, when a settlement is filed)?

9. Should the commission change the description of the "highly confidential" designation in WAC 480-07-423(1)(b)? If so, please explain how and why.

10. Please identify circumstances that justify use restrictions for persons given access to documents designated confidential or highly confidential.

11. Please identify circumstances that justify employment restrictions for persons given access to documents designated confidential or highly confidential.

12. Please provide proposed language for WAC 480-07-160 and WAC 480-07-423 describing how confidential or highly confidential information should be marked or identified in a document.

13. Please provide proposed language for WAC 480-07-160 and WAC 480-07-423 describing how confidential or highly confidential documents should be filed with the commission.

14. Please comment on Public Counsel's August 26, 2005, proposal to amend WAC 480-07-310(b), concerning ex parte communication.

15. Please state your observations or concerns about any of the commission's procedural rules, and propose specific language changes to address your concerns.

WRITTEN COMMENTS

Written comments and suggestions for correcting, changing, and/or clarifying the commission's procedural rules must be filed with the commission no later than **Tuesday, January 17, 2006.** We request that comments be provided in electronic format to enhance public access, for ease of providing comments, to reduce the need for paper copies, and to facilitate quotations from the

comments. Comments may be submitted as electronic files in Word 97 or later or in Adobe Acrobat (.pdf) via the commission's Web Portal or by electronic mail to the commission's Records Center at <records@wutc.wa.gov>. Please include:

- The docket number of this proceeding (A-050802)
- The commenting party's name
- The title and date of the comment or comments

An alternative method for submitting comments may be by mailing/delivering an electronic copy on a 3 ½ inch, IBM-formatted, high-density disk, in Word 97 or later or in .pdf Adobe Acrobat . Include all of the information requested above. We will post on the commission's web site all comments that are provided in electronic format. The web site is located at http://www.wutc.wa.gov/050802.

If you are unable to file your comments electronically or to submit them on a disk, we will always accept a paper document.

If you have any questions regarding the rulemaking, please contact Dennis Moss at dmoss@wutc.wa.gov or by calling (360) 664-1164.

Sincerely,

CAROLE J. WASHBURN
Executive Secretary

Rob McKenna
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February 22, 2005

STATEMENT OF SIMON FFITCH, PUBLIC COUNSEL, IN SUPPORT OF HB 1800

Public Counsel represents telecommunications, gas, and electric consumers in rate cases and other adjudication cases before the Washington Utilities and Transportation Commission (WUTC).

HB 1800 addresses concerns about private bilateral settlement negotiations between the regulated utility and the Commission Staff which have led to a developing perception of unfairness in quasi-judicial WUTC proceedings. The reality is, once the Commission Staff and the utility company have reached an agreement on their own, the ability of other parties to later affect that agreement or the ultimate outcome of the case is significantly limited. The playing field is no longer level.

This bill proposes two solutions to this problem in the interests of fundamental fairness and in maintaining public confidence in utility regulation in Washington: (1) all parties will receive notice of settlement discussions involving the Commission Staff, and will have an opportunity to participate; and (2) a party who does not agree to the settlement nonetheless retains its right to present its case before the Commission.

This proposal is consistent with the Washington state policy of encouraging negotiated settlement in lieu of litigation reflected in the state Administrative Procedure Act (APA) and the Commission's own procedural rules. Ensuring full participation by all interested parties in what can often be the most critical phase of a regulatory adjudication will improve the quality, fairness, and balance of the final Commission decision.

Public Counsel has raised this concern at the Commission. In 2003, we proposed in formal rulemaking that all parties be included in settlement negotiations, but the proposal was not adopted.

The solutions proposed in the bill are workable. Similar rules have been successfully instituted in New York and Oregon. Here in Washington, Puget Sound Energy's 2001 general rate case settlement was a model for this approach. The settlement talks included approximately 30 different parties negotiating simultaneously on multiple sub-agreements. All parties had notice of all settlement meetings and the option to attend. All issues were ultimately resolved through settlement. Unfortunately, this approach has not been adopted in all cases.

The issues addressed by the bill are real and need to be resolved. The public's confidence in the fairness and impartiality of the Commission's decision making would be significantly improved if HB 1800 were adopted.

HOUSE TECHNOLOGY, ENERGY AND COMMUNICATIONS COMMITTEE
HB 1800: Requiring the UTC's Adjudicative Proceedings Be Open
February 22, 2005

What Is the Background for this Bill?

Consumer representatives appearing before the Washington Utilities and Transportation Commission (WUTC) have had an ongoing problem with the Commission's Staff conducting secret, bilateral negotiations with the regulated utility when the utility is appearing before the Commission in an adjudicatory proceeding, often general rate cases where the utility seeks to raise customer rates. The Commission has been approving these non-unanimous settlements over the objections of consumer representatives. Additionally, non-settling parties have been afforded only limited due process rights, limiting their ability to present a full case on the merits. In 2004 this happened twice in successive rate cases (*WUTC v. PacifiCorp*, UE-032065 and *WUTC v. Avista*, UG-041515).

In the PacifiCorp case, the Commission staff and the utility began discussions to settle a rate case without including other parties. Only after they had reached agreement in principle were others allowed to participate. The excluded parties were Industrial Customers of Northwest Utilities, Natural Resources Defense Council, Citizens' Utility Alliance of Washington, Public Counsel, and the Energy Project.

In the Avista case, the company and the Staff reached an agreement in principle less than a month after the initial filing and before any other party had an opportunity to intervene. They came to the prehearing conference having reached an agreement in principle. The other parties were the Northwest Industrial Gas Users, the Energy Project, and Public Counsel. After the prehearing conference, there were settlement discussions open to others, but no other party had yet conducted discovery. The Commission provisionally approved the settlement agreement, imposed interim rate increases and commenced an expedited procedural schedule, further compromising other parties' due process rights.

Also, last December, in a Qwest "unfiled agreements" case, Docket No. UT-033011, the WUTC issued an order asserting the right to either dismiss an intervenor that did not agree to a settlement negotiated in secret by the Commission Staff and Qwest, or to restrict the intervenor's right of participation so as to deny it a hearing and a decision on the merits. This was done notwithstanding the clear mandate in the state Administrative Procedure Act that no party may be forced to agree to a settlement.

What Does this Bill Do?

HB 1800 addresses these problems by requiring the Commission's staff to notify all parties to a proceeding prior to initiating settlement discussions and to allow all parties to participate fully. The bill also assures non-settling parties a minimum right to due process in a Commission adjudicative proceeding.

Why Not Request the WUTC Promulgate a Rule?

In the summer of 2003 during the Commission's procedural rulemaking (Docket No. A-01648), parties suggested the same all-party settlement requirement specified in HB 1800. This recommendation was resisted by the WUTC staff and rejected by the Commissioners when they approved the final version of the procedural rules. Chp. 480-07 WAC.

Reasons to Support HB 1800

1. The WUTC is tasked with protecting the public interest in its regulation of investor-owned utilities. The interest of the public is served in part through ensuring fair public processes. Fundamental fairness requires that all parties to a case receive notice and have an opportunity to participate in settlement discussions. This is consistent with the encouragement of alternative dispute resolution in the Washington state Administrative Procedure Act (APA) and the WUTC's rules.
2. Notice and an opportunity to participate in settlement discussions as they commence increase the chance of a global agreement, which is preferable to non-unanimous settlements that tend to require a lengthier process.
3. Bilateral settlements between WUTC Staff and the utility leave other parties feeling little practical hope of having their interests addressed.
4. Two recent success stories demonstrate that notifying all parties at the beginning of settlement discussions is feasible, productive and can yield strong agreements. In its 2001 and 2004 general rate cases, Puget Sound Energy notified all parties and encouraged their participation in settlement discussions from day one. The result: a global settlement with 32 parties in the 2001 case and an all-party agreement on a subset of issues in the 2004 case.
5. A non-unanimous settlement is analogous to parties taking a joint position. Parties that do not join a settlement should be allowed their due process rights to present a case on the merits, rather than be limited to simply commenting on the settlement agreement.
6. Adoption of HB 1800 would enhance confidence in the fairness and impartiality of decision-making at the WUTC.

Concerns that Opponents May Raise and Responses to Those Concerns

1. Settlement procedures are addressed in the Commission's administrative rules, the Washington Administrative Procedure Act, and prior Commission orders.

   RESPONSE: The Commission has not required that settlement talks involving WUTC staff begin with notice and an opportunity for all parties to participate. The APA does not specifically address this issue, but it encourages alternative dispute resolution, which calls for notice and inclusion.

2. The bill restricts WUTC staff from having contact with a utility once an adjudicated proceeding has commenced and prior to any potential settlement discussions.

   RESPONSE: HB 1800 focuses on the big picture of guaranteeing parties' due process rights to be notified of and participate in settlement discussions. The bill is not intended to prevent discussions between staff and the utility, as long as those discussions are not aimed at settling issues without other parties being notified and invited to participate.

3. The bill would preclude candid, informal discussions that foster settlements, and would lead to procedural delays.

   RESPONSE: The bill requires initial notice and an opportunity for participation. It does not preclude normal interactions between parties once negotiations have begun, nor does it preclude parties from establishing rules of conduct for discussions among parties. Implementation of the bill would not extent the hearing process. For example, RCW 80.04.130 (1) requires the Commission to make a decision on a rate increase request from a public service company within 10 months – that statutory language does not change. Oregon and New York have administrative rules that require the type of notice provided by HB 1800. According to parties in those states, the rules work well, do not create delays, and lead to sustainable settlement agreements.

4. The provisions in HB 1800 could allow a party to derail a settlement.

   RESPONSE: The bill clarifies parties' due process rights while allowing the Commission discretion to reasonably tailor them to a specific case, thus protecting against potential misuse of the process. Currently, the Commission must make an independent determination, in a written order based on the record, that a settlement is in the public interest. HB 1800 clarifies that in partial settlements, the Commission must address disputed issues raised by non-settling parties, thus improving the Commission's record for decision. This already happens (to differing extents) in contested settlement cases. Settling parties, and ultimately the Commission, should be able to justify every element of a settlement that raises objections.

5. This bill would prohibit the Commission from restricting participation of a non-settling party in a case.

   RESPONSE: To protect parties' due process rights, the Commission's existing discretion would be reduced somewhat. The Commission can still limit the scope of a potential intervenor's involvement in an adjudicatory proceeding at the time the party initially appears and intervenes. Limiting a party's scope of involvement only after a non-unanimous settlement has been filed creates the appearance that the Commission is not seeking the best record upon which to base its decision but rather trying to eliminate dissent. HB 1800 preserves the due process rights of intervening parties while also requiring the Commission specifically address objections raised by parties that do not join a non-unanimous settlement agreement. Several state courts (e.g., in Illinois, Missouri and Kentucky) have declared state commission orders approving non-unanimous settlements to be unlawful if the commission did not hold a full hearing on the issues and did not make findings and conclusions based on substantial evidence.

6. HB 1800 is improperly limited to the WUTC and is in conflict with the APA provision allowing limitation of intervention.

   RESPONSE: The bill is arguably consistent with this APA provision, and furthers the APA goal of ensuring fair administrative proceedings. Several APA provisions already have been modified for or made inapplicable to specific agencies, including the WUTC. Recent experience at the WUTC justifies some reasonable limitation on the agency's ability to limit intervention.

Rob McKenna
ATTORNEY GENERAL OF WASHINGTON
900 Fourth Avenue #2000 • Seattle WA 98164-1012

February 24, 2005

VIA First Class Mail
The Honorable Derek Kilmer
Vice Chair, House Technology, Energy, and Telecommunications
430 John L. O'Brien Building
P.O. Box 40600
Olympia, WA 98504-7802

Dear Representative Kilmer:

I wanted to follow up on my appearance before House TEC on Tuesday in support of HB 1800. You had asked about the Puget Sound Energy (PSE) rate case settlement experience. Both the 2001 and 2004 PSE general rate cases involved successful all-party settlements based on an inclusive process like that proposed in the bill. We believe these recent experiences contradict the assertions that adoption of the bill would be counterproductive to the settlement of WUTC cases.

In the 2001 rate case (Docket UE-011570 et al.) all issues were settled. In the 2004 rate case (Docket UE-040641 et al.) an inclusive process with notice to all parties was also used. Some of the issues were successfully settled, the remainder went to full hearing.

I have attached some excerpts from the Commission order approving the 2001 case settlement (the Twelfth Supplemental Order) which describe the successful settlement procedures used. The full documents are available from the WUTC website. The Commission's order "commend[s] the Company and the parties for their hard work and success in forging an agreement of impressive and unprecedented scope," Order, ¶ 8, and quotes Puget Sound Energy's supporting testimony that "the process will have lasting benefits for the Company and its customers because of the quality of the settlement achieved, the extensive communication that occurred regarding various interests and concerns, and the working relationships that have developed through the process." Order, ¶7.

Paragraphs 14 and 15 of the Order provide a description of the process itself, including the "extensive meetings, formal and informal data exchange, and negotiations, in a good faith effort to resolve the remaining issues." 32 parties signed the agreement, which was unopposed.

The settlement agreement itself (Appendix A to the Commission's Order, excerpt attached) also described the settlement process, which involved 11 different "collaborative" groups negotiating on discrete topic areas and reaching 11 separate stipulations on those issues which were incorporated in the full settlement. The settlement agreement noted that: "Parties have all had notice regarding when collaborative meetings were scheduled, and have had the option of choosing which meetings to attend." Settlement Stipulation, ¶6.

Since the Committee's hearing on February 22, Verizon Northwest's 2004 general rate case (Docket UT-040788) has also been settled, as to all issues, after a process in which all parties were given notice that settlement discussions were being initiated. All parties had the opportunity to participate. Virtually all did so, and all either signed, or stated they did not oppose the agreement. It is now pending before the Commission for approval.

Clearly, the process proposed in HB 1800 is not only workable, it has shown itself to be highly successful and productive in even the most complex Commission cases. Unfortunately, this approach has not been adopted consistently, with negative impacts on both fundamental fairness and public confidence in utility regulation in Washington. HB 1800 advances the public interest by making the inclusive approach available to parties in all Commission adjudication cases.

Feel free to contact me if you have further questions.

Sincerely,

Simon J. ffitch
Assistant Attorney General
Public Counsel
(206) 389-2055

SJf:cjw
Enclosures

SERVICE DATE

JUN 2 0 2002

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKET NO. UE-011570 and UG-011571 (consolidated)
Complainant,	)	TWELFTH SUPPLEMENTAL ORDER: REJECTING TARIFF FILING; APPROVING AND ADOPTING SETTLEMENT STIPULATION SUBJECT TO MODIFICATIONS, CLARIFICATIONS, AND CONDITIONS; AUTHORIZING AND REQUIRING COMPLIANCE FILING
v.	)	
PUGET SOUND ENERGY, INC.,	)	
Respondent.	)	

SYNOPSIS: The Commission approves and adopts an unopposed Settlement Stipulation as a reasonable resolution of Puget Sound Energy, Inc.'s request for a general increase in electric rates and other relief, and as a partial resolution of the Company's request for a general increase in gas rates. The Commission approves an overall 4.6 percent electric rate increase. The Commission also approves a power cost adjustment mechanism to enhance the Company's financial stability. Other provisions of the approved and adopted Settlement Stipulation include a one-year extension, through September 2003, of PSE's time-of-use (TOU) electricity pricing program, establishment of a new program to assist low-income PSE customers, increased commitment by PSE to electric and natural gas conservation, continuation and expansion of service quality performance standards, revision of PSE's tariff schedules that govern underground conversion of distribution facilities, and revisions to PSE's line extension and backup distribution services tariff schedules.

PROCEEDINGS. On November 26, 2001, Puget Sound Energy, Inc. ("PSE" or the "Company") filed tariff revisions designed to effectuate a general rate increase for electric and gas services. On December 3, 2001, PSE filed a request for an interim electric rate increase. These proceedings were consolidated under Docket Nos. UE-011570 and UG-011571. The Commission established procedural schedules for an interim phase (electric) hearing and general rate phase (electric and gas) hearing.

2 The Commission approved and adopted an unopposed Settlement Stipulation on March 28, 2002, to resolve the interim phase of these proceedings.[1] The interim settlement agreement included commitments by the parties to conduct further settlement negotiations via a series of collaboratives and stipulations among the parties to certain facts pertinent to the determination of final rates.

3 On April 19, 2002, PSE filed on behalf of itself and one other party, King County, a proposed "Stipulation of Settlement for King County." PSE and King County filed a revised Stipulation later on May 6, 2002, which the Commission approved.[2]

4 On June 6, 2002, PSE filed on behalf of itself and other parties a "Settlement Stipulation for Electric and Common Issues and Application for Commission Approval of Settlement" ("Settlement Stipulation"). The proposed Settlement Stipulation is unopposed by any party.

5 **PARTIES.** Markham Quehrn and Kirstin Dodge, Perkins Coie LLP, Bellevue, Washington, represent Puget Sound Energy, Inc. John A. Cameron and Traci Kirkpatrick, Davis Wright Tremaine, represent AT&T Wireless and the Seattle Times Company. Danielle Dixon, Policy Associate, Northwest Energy Coalition, represents that organization and the Natural Resources Defense Council. Carol S. Arnold, Preston Gates Ellis, Seattle, Washington, represents Cost Management Services, Inc., and the cities of Auburn, Des Moines, Federal Way, Redmond, Renton, SeaTac, Tukwila, Bellevue, Maple Valley, and Burien ("Auburn, *et al.*"). Ron Roseman, attorney at law, Seattle, Washington, represents the Multi-Service Center, the Opportunity Council, and the Energy Project; Charles M. Eberdt, Manager, Energy Project also entered his appearance for the Energy Project; Dini Duclos, CEO, Multi-Service Center, also entered an appearance for that organization. Angela L. Olsen, Assistant City Attorney, McGavick Graves, Tacoma, Washington, represents the City of Bremerton. Donald C. Woodworth, Deputy Prosecuting Attorney, Seattle, Washington, represents King County. Melinda Davison and S. Bradley Van Cleve, Davison Van Cleve, P.C., Portland, Oregon, represent Industrial Customers of

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[1] *WUTC v. PSE, Docket Nos. UE-011570/UG-011571 (consolidated), Ninth Supplemental Order (March 28, 2002).*

[2] *WUTC v. PSE, Docket Nos. UE-011570/UG-011571 (consolidated), Eleventh Supplemental Order (May 6, 2002).*

Northwest Utilities. Elaine L. Spencer and Michael Tobiason, Graham & Dunn, Seattle, Washington, represent Seattle Steam Company. Edward A. Finklea, Energy Advocates, LLP, represents the Northwest Industrial Gas Users. Donald Brookhyser, Alcantar & Kahl, Portland, Oregon, represents the Cogeneration Coalition of Washington. Michael L. Charneski, Attorney at Law, Woodinville, Washington, represents the City of Kent. Norman J. Furuta, Associate Counsel, Department of the Navy, represents the Federal Executive Agencies ("FEA"). Michael L. Kurtz, Boehm, Kurtz & Lowry, Cincinnati, Ohio, represents Kroger Company. Kirk H. Gibson and Lisa F. Rackner, Ater Wynne LLP, Portland, Oregon, represent WorldCom, Inc. Elizabeth Thomas, Preston Gates Ellis LLP, Seattle, Washington, represents Sound Transit. Harvard M. Spigal and Heather L. Grossman, Preston Gates and Ellis LLP, Portland, Oregon, represent Microsoft Corporation. Simon ffitch, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section, Office of Attorney General. Robert D. Cedarbaum, Senior Assistant Attorney General, and Shannon Smith, Assistant Attorney General, Olympia, Washington, represent the Commission's regulatory staff (Staff). [3]

6 **COMMISSION:** The Commission approves and adopts the unopposed Settlement Stipulation, with certain modifications, clarifications, and conditions, as a full and final resolution of the remaining issues in Docket No. UE-011570 and of certain issues in Docket No. UG-011571. The Commission incorporates the Settlement Stipulation by reference and makes it a part of this Order. *Appendix A, infra.* The Commission authorizes and requires PSE to make any compliance filings required to effectuate the terms of the Settlement Stipulation and this Order.

MEMORANDUM

I. Introduction.

7 This Order marks the culmination of significant efforts by the parties, and by the Commission, to help restore the financial integrity of one of Washington State's major electric utilities, and to help ensure that PSE's customers continue to receive

[3] In formal proceedings, such as this case, the Commission's regulatory staff (Staff) functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an "*ex parte* wall" separating the Commissioners, the presiding ALJ, and the Commissioners' policy and accounting advisors from all parties, including Staff. *RCW 34.05.455.*

reliable electric service at reasonable rates. Ms. Kimberly Harris, PSE's Vice-President of Regulatory Affairs, testified that:

> The parties' ability to reach agreement is a significant accomplishment that required an extraordinary commitment on behalf of the parties and their representatives, that in many respects required more effort than would be required for resolution of a rate case through litigation. I believe that the process will have lasting benefits to the Company and its customers because of the quality of the settlement achieved, the extensive communication that occurred regarding various interests and concerns, and the working relationships that have developed through this process. The Company looks forward to continuing to work collaboratively with its customers on many more issues into the future.

Exhibit No. 530 at 2.

8 As we stated in our Ninth Supplemental Order in this proceeding, the Commission is encouraged by the approach of the Company's new management in meeting its public service obligation, which includes the obligation to improve PSE's financial condition and restore the Company's financial vitality. Steps taken or to be taken by PSE both as a result of the terms of settlement, and independently, demonstrate the Company's commitment to building and maintaining greater financial strength on a prospective basis. We commend the Company and the parties for their hard work and success in forging an agreement of impressive and unprecedented scope. Both the Company and its customers will benefit from the agreement we approve today and from continuing constructive collaborative efforts.

II. Background and Procedural History.

9 PSE filed a general rate case on November 26, 2002. The Company sought by its filing permanent increases in both electric and gas rates in the amounts of $228.3 million per year and $85.9 million per year, respectively, for an aggregate amount of $314.2 million. On December 3, 2001, PSE filed both a Petition for Interim Rate Relief and an Electric Tariff Filing in Advice No. 2001-51. The Company sought by that filing to implement a temporary rate increase, subject to refund, to obtain immediate rate relief in the amount of $170.7 million. PSE requested the Commission to approve Tariff Schedule 128, which would implement an Electric Energy Cost Surcharge rate of $1.4568¢ per kWh.

10 Both the interim and general rate filings were docketed as Nos. UE-011570 and UG-011571.[4] The Commission convened a prehearing conference in these proceedings on December 20, 2001, in Olympia, Washington, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, Commissioner Patrick J. Oshie, and Administrative Law Judge Dennis J. Moss. The dockets were consolidated by the Commission's Second Supplemental Order: Prehearing Conference, entered on December 28, 2001. A procedural schedule for both the interim and general phases of these proceedings was set by the Second Supplemental Order, as later amended by the Commission's Fifth and Seventh Supplemental Orders.

11 The Commission conducted evidentiary hearings on the interim rate issues in Olympia from February 18, 2002, through February 22, 2002. The Commission heard public testimony in Olympia on the issues related to interim rate relief on February 21, 2002. The parties requested several continuances of the date established for filing briefs (*i.e.*, March 1, 2002) to permit them an opportunity to conduct settlement negotiations with the assistance of Administrative Law Judge C. Robert Wallis as mediator.

12 On March 20, 2002, Puget Sound Energy, Inc., the Commission's regulatory staff, Public Counsel, Industrial Customers of Northwest Utilities, Northwest Industrial Gas Users, Kroger Co., AT&T Wireless, Northwest Energy Coalition, Natural Resources Defense Council, and Seattle Steam Company filed a partial settlement in Docket Nos. UE-011570/UG-011571. These parties requested that the Commission enter an order by March 29, 2002, approving and adopting the settlement agreement as a full and final resolution of the interim rate issues, as a resolution of certain other issues pending in Docket Nos. UE-011570/UG-011571, and as full and final resolution of all issues pending in Docket No. UE-011411.[5] The Commission conducted an evidentiary hearing on the proposed settlement agreement on March 25, 2002, and entered its Ninth Supplemental Order approving and adopting the settlement agreement on March 28, 2002.

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[4] In a related filing, Docketed as No. UE-011600, PSE petitioned for an order authorizing the deferral of a portion of the Company's electric energy supply costs. The Commission entered its Order Granting Accounting Petition on December 28, 2001.

[5] On October 8, 2001, the Public Counsel Section of the Attorney General's Office filed with the Commission a complaint against PSE in Docket No. UE-011411. The complaint alleges that PSE violated the Commission's Fourteenth Supplemental Order in the Puget/WNG Merger proceeding (Docket No. UE-960195) and the Rate Plan in the underlying merger settlement by failing to transfer the prior Bonneville Power Administration residential exchange credit to general rates on July 1, 2001.

13 On April 19, 2002, PSE filed on behalf of itself and King County a proposed Stipulation of Settlement for King County. On April 26, 2002, Commission staff filed comments to which it appended a document captioned "PSE-Staff Stipulation Regarding PSE's King County Settlement." On May 6, 2002, following hearing proceedings, PSE and King County filed and presented for the Commission's consideration a revised Stipulation of Settlement. On May 6, 2002, the Commission, by its Eleventh Supplemental Order, approved and adopted the settlement between PSE and King County and the related Stipulation between PSE and Staff.

14 Pursuant to the settlement agreement we approved by our Ninth Supplemental Order, the parties conducted a series of collaboratives during April and May, 2002. According to the Settlement Stipulation now before us, this involved "extensive meetings, formal and informal data exchange, and negotiations, in a good faith effort to resolve the remaining issues in dispute in the electric General Rate Case and common issues in dispute in the gas General Rate Case." *Stipulation at 3.*

15 On June 6, 2002, PSE filed a "Settlement Stipulation for Electric and Common Issues and Application for Commission Approval of Settlement." On June 7, 2002, several parties filed testimony in support of the Settlement Stipulation. The Settlement Stipulation is signed by 32 of the 34 parties to this proceeding and is unopposed by any party.[6] The Commission conducted prehearing proceedings on the proposed settlement on June 11, 2002, and evidentiary hearing proceedings on June 13, 14, and 17, 2002. The Commission held a public comment hearing on June 13, 2002.

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[6] The so-called Participating Parties include PSE, the Commission's regulatory staff, the Public Counsel Section of the Attorney General's Office ("Public Counsel"), Industrial Customers of Northwest Utilities ("ICNU"), Kroger Company, Northwest Industrial Gas Users ("NWIGU"), AT&T Wireless Services ("AT&T"), Microsoft Corporation, WorldCom, Inc., Seattle Steam Company, Northwest Energy Coalition ("NWEC") jointly with Natural Resources Defense Council ("NRDC"), Multi-Service Center jointly with Opportunity Council and Energy Project, Cost Management Services, Inc., Federal Executive Agencies, Cogeneration Coalition of Washington, King County, Sound Transit, and the Cities of Auburn, Bremerton, Bellevue, Burien, Des Moines, Federal Way, Kent, Maple Valley, Redmond, Renton, SeaTac, and Tukwila. Although Cogeneration Coalition of Washington is listed as a Participating Party, it is not a signatory to the Settlement Stipulation. Seattle Times Company is neither a Participating Party nor a signatory to the Settlement Stipulation, but does not oppose its approval.

Parties that did not execute the Conservation and Low Income Issue Agreements agree not to oppose those Issue Agreements.

II. PROCEDURAL BACKGROUND

4. On November 26, 2001, PSE filed tariff revisions designed to effectuate a general rate increase for electric and gas services (the "General Rate Case"). On December 3, 2001, PSE filed a request for an interim electric rate increase of $170.7 million (the "Interim Rate Case"). These proceedings were consolidated under Docket Nos. UE-011570 and UG-011571.

5. The Interim Rate Case and a number of issues related to the General Rate Case were settled through the Settlement Stipulation and Application for Commission Approval of Settlement dated March 20, 2002 ("March Interim Settlement"), which was filed in the above referenced dockets on that date. On March 28, 2002, the Commission approved the March Interim Settlement in its Ninth Supplemental Order: Rejecting Tariff Filing; Approving and Adopting Settlement Stipulation; Authorizing and Requiring Compliance Filing ("Ninth Supplemental Order").

6. Since late March 2002, the parties that participated in the March Interim Settlement and other parties to the General Rate Case have been engaged in a collaborative process involving extensive meetings, formal and informal data exchange, and negotiations, in a good faith effort to resolve the remaining issues in dispute in the electric General Rate Case and common issues in dispute in the gas General Rate Case. In order to assist the parties in allocating their resources, the collaborative process was divided by topic as follows: Power Cost Adjustment mechanism (PCA); Revenue Requirements; Electric Rate Spread; Electric Rate Design; Time of Use (TOU); Conservation; Low Income; Electric Line Extension; Relocation and Underground Conversions (Cities); Service Quality Index (SQI); and Backup

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Distribution Service (Schedule 459). Parties have all had notice regarding when collaborative meetings were scheduled, and have had the option of choosing which meetings to attend.

7. As agreement was reached among parties participating in a collaborative as to a particular topic, the parties involved in the collaborative memorialized and executed the terms of the agreement as to that topic ("Issue Agreement"). The Issue Agreements are attached to this Settlement Stipulation, as described below, and are incorporated herein by reference.

III. SETTLEMENT AND REQUEST FOR APPROVAL

A. Settlement of Disputed Issues in the General Rate Case and Request for Approval

8. All disputed electric and common issues in the General Rate Case have been settled on the terms set forth in the attached Issue Agreements, as follows:

Exhibit A: Settlement Terms for the Power Cost Adjustment mechanism (PCA);

Exhibit B: Settlement Terms for Electric Revenue Requirements, Common Cost Allocation, and Overall Rate of Return

Exhibit C: Settlement Terms for Electric Rate Spread

Exhibit D: Settlement Terms for Electric Rate Design

Exhibit E: Settlement Terms for Time of Use (TOU)

Exhibit F: Settlement Terms for Conservation

Exhibit G: Settlement Terms for Low Income

Exhibit H: Settlement Terms for Electric Line Extensions

Exhibit I: Settlement Terms for Relocation and Underground Conversions (Cities)

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