BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND ENERGY, Respondent.	)))))))))	DOCKET NOS. UE-170033 and UG-170034 (*Consolidated*)

INITIAL POST-HEARING BRIEF OF

THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

October 18, 2017

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I. INTRODUCTION

1 Pursuant to Order 03 in the above-referenced dockets, as modified at the September 29, 2017 hearing, the Industrial Customers of Northwest Utilities ("ICNU") files this Initial Post-Hearing Brief with the Washington Utilities and Transportation Commission ("Commission").

2 All parties with the exception of Public Counsel have agreed to a Multiparty Stipulation that resolves all issues in this docket except for two: Puget Sound Energy's ("PSE" or the "Company") request for an "Electric Cost Recovery Mechanism" ("ECRM"), and continuation of the Company's decoupling mechanism. ICNU continues to oppose PSE's decoupling mechanism on both legal and policy grounds. However, if the Commission is to retain it, ICNU recommends that it exempt customers on Schedules 46 and 49, as decoupling disproportionately impacts these customers and without an attendant benefit to the Company or its remaining customers. Both Avista Corp. and Pacific Power & Light Co. elected to exempt their largest customers from their respective decoupling mechanisms, and PSE should be no different.

3 Meanwhile, the ECRM would increase rates by over $16 million above what parties agreed to in the Multiparty Stipulation. It would provide financial incentives for the Company to replace aging distribution infrastructure, thereby addressing what the Company complains to be a significant regulatory lag problem. From an overall earnings perspective, however, PSE has no regulatory lag. It has over-earned in each of the past two years. Nor

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should the Company need financial incentives to comply with its utility obligations under the regulatory compact.[1/]

4 The Multiparty Stipulation contains all that is necessary to produce just and reasonable rates for PSE. It reduces the Company's return on equity to a reasonable level of 9.5% and makes provision for the orderly recovery of costs associated with the closure of units 1 and 2 of the Colstrip Generating Station ("Colstrip"). Collectively, the Multiparty Stipulation results in an overall rate increase of approximately 1%. No more is needed. ICNU recommends that the Commission approve the Multiparty Stipulation and reject the ECRM and discontinue PSE's decoupling mechanism, at least with respect to customers on Schedules 46 and 49.

II. BACKGROUND

5 This is PSE's first rate case since 2011. Between then and now, the Commission awarded the Company three "experimental" rate mechanisms – an expedited rate filing ("ERF"), a full, revenue-per-customer, decoupling mechanism, and a multi-year rate plan that included fixed automatic rate increases.[2/] The Commission's stated goals in approving these mechanisms was to reduce the frequency of rate cases and to mitigate regulatory lag.[3/] Judged from this perspective, the mechanisms were successful. The Company has gone six years without a rate case and, in the meantime, has migrated from a position of underearning its authorized return to a position of overearning.[4/] Because the rate mechanisms the Commission awarded the Company were all approved simultaneously, it is impossible to know to what extent each one contributed to the Company's improved financial position.

1/ WUTC v. Pacific Power & Light Co., Docket No. UE-161204, Order 06 ¶ 68 (Oct. 12, 2017).
2/ WUTC v. PSE, Docket Nos. UE-121697/UG-121705 & UE-130137/UG-130138, Order 07 (June 25, 2013).
3/ Id. ¶¶ 21-22.
4/ Exh. DAD-1T at 4 (Table 1).

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6 Despite currently earning more than its authorized return, the Company's application in these dockets sought a net 4.1% rate increase, driven primarily by increased depreciation expense associated with the Colstrip Generating Station ("Colstrip") and higher projected power costs related to compliance with the Department of Ecology's Clean Air Rule ("CAR"). During the course of the proceeding, the vast majority of parties were able to settle most of the issues in the case in a manner that reduced the Company's requested rate increase to approximately 1% overall for electric customers.[5/] The Multiparty Stipulation provides a plan for the orderly decommissioning of units 1 and 2 of Colstrip, eliminates the Company's projected costs of CAR compliance unless and until they become known and measurable, and resolves a number of other outstanding issues. For the reasons described later in this Initial Brief and in the testimony of Bradley G. Mullins, ICNU supports the Multiparty Stipulation.

7 Nevertheless, the issues that remain unresolved are significant. One is the Company's proposed ECRM, which would provide financial incentives for the Company to upgrade aging distribution infrastructure that it has not, on its own, seen fit to replace. The Company continues to request approval of this mechanism despite the fact that the Multiparty Stipulation allows it to file an ERF, which would materially reduce the regulatory lag associated with these investments.[6/] Approval of the ECRM would increase the rate impact on customers from this case by another $16.1 million.[7/] ICNU opposes the ECRM for the reasons discussed below.

[5/] Joint Memorandum in Support of Multiparty Stipulation ¶ 4.
[6/] Multiparty Stipulation ¶ 115.
[7/] Exh. KJB-1T at 76:9-13.

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8 The other issue is the continuation of the Company's decoupling mechanism. PSE requests reauthorization of its full, revenue-per-customer, decoupling mechanism, including its application to the Company's largest customer groups. ICNU also opposes the Company's decoupling mechanism, particularly its application to customers on Schedules 46 and 49, for which there is little justification.

III. ARGUMENT

A. The Commission Should Reject PSE's Electric Cost Recovery Mechanism

9 PSE's ECRM is a new and extraordinary cost recovery scheme designed to circumvent the Commission's customary regulatory treatment of capital projects presented for inclusion in rates. Like much of PSE's advocacy now and in the recent past, it hammers on the Commission's inability to quickly change rates, arguing that the Commission's usual process unfairly impairs the timely recovery of costs and return.[8/] The ECRM would purportedly ameliorate the regulatory lag and attrition afflicting the Company. PSE's advocacy on these issues can be reasonably characterized as opinion or hyperbole based upon the evidence now before the Commission.

10 PSE's recent earnings show that the Company is enjoying the most productive earnings years in its recent history, *without the ECRM*.[9/] This fact sufficiently rebuts PSE's

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8/ See id. at 1 and 69; Exh. DAD-1T at 3 and 5; Exh. DAD-7T at 10 and 16. ("If left unaddressed, regulatory lag and attrition will remain alive and well in the rate year and beyond."). See also, WUTC v. PSE, Dockets UE-111048 and UG-111049 (consolidated), Order 08 ¶ 454 (May 7, 2012) ("It appears that PSE wants more than decoupling has to offer, namely the freedom to recover incremental revenue to offset new investments between rate cases. In other words, PSE rejects the opportunity to recover most of its lost revenue because the mechanism does not address the incremental impacts of regulatory lag, a problem decoupling was never intended to fix."); Dockets UE-121697/UG-121705 & UE-130137 and UG-130138, Order 07; and WUTC v. PSE, Dockets UE-060266 and UG-060267 (consolidated), Order 08 ¶ 36 (Jan. 5, 2007) ("PSE argues it needs the depreciation tracker to address regulatory lag.").

9/ Exh. TES-1T at 9-10. The unrebutted evidence presented by Staff shows that PSE's electric utility has earned more than its authorized return in the last two reporting years, requiring it to refund a portion of its earnings back to ratepayers.

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advocacy regarding the purported earnings drag associated with the Commission's current regulatory framework. Even looking forward, PSE does not support its complaints about regulatory lag or the existence of attrition with an attrition study or similar work.

11 Nor does the evidence demonstrate that the ECRM is needed to ensure that PSE's system is safe and reliable. If its system has reliability problems, PSE is under a statutory duty to correct them. Instead, PSE looks to the Commission to make circuit replacement decisions for it. To this point, the mechanism would require the Commission to approve reliability projects that even PSE's Board of Directors refused to fund.

12 The Commission should reject the ECRM as unnecessary to support the financial health of the Company or to improve the reliability of PSE's electric system. Furthermore, PSE's call to directly involve the Commission in its capital investment decisions prior to construction should be summarily dismissed as an obvious departure from the regulatory responsibilities the legislature delegated to the Commission.

1. The ECRM Is Not Needed to Support the Earnings of the Company.

13 As the applicant, PSE bears the burden of proof and persuasion on its request for approval of the ECRM.[10/] PSE attempts to carry its burden by leaning on the familiar themes of regulatory lag and attrition. To this end, Ms. Barnard and Mr. Doyle reference regulatory lag and attrition numerous times in their filed testimonies.[11/]

[10/] RCW § 80.04.130(4); WUTC v. Avista, Dockets UE-160228 and UG-160229 (consolidated), Order No. 06 ¶¶ 54-55 (Dec. 15, 2016).

[11/] See, for example, Exh. DAD-7T at 24. ("Without the proposed Electric Cost Recovery Mechanism, PSE will be subject to *significant* regulatory lag until its next general rate case or expedited rate filing."). (Emphasis added)

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14 The ECRM is not the first time PSE has requested extraordinary rate treatment for infrastructure improvements its management refused to fund.[12/] Nor is it the first time that PSE has flagged the common themes of regulatory lag and attrition to seek expedited cost recovery for ordinary system improvements.[13/] In today's regulatory arenas, regulatory lag and attrition can be considered trigger words intended to convey a sense of injustice or unfairness in the Commission's treatment of the utility. In real terms, these words mean little when the utility fails to produce the evidence to support their intended inference or connotation. This is the situation now presented to the Commission by PSE.

15 PSE presents no attrition study to support its claims.[14/] When asked directly for the objective evidence linking the ECRM and attrition, Mr. Doyle could provide none, but noted that the relationship between the ECRM and attrition:

> [I]s knowable on its face without the need for studies, reports, analyses, workpapers, projections or other documents. As such, *none were relied upon or associated with PSE's position of the ECRM upon regulatory lag and/or future earnings attrition.*[15/]

Without such a study, PSE's statements regarding attrition can be chalked up as mere speculation or hyperbole.

16 Nor could PSE produce "studies, reports, analyses … projections" linking its ECRM proposal with future earnings attrition.[16/] The case evidence demonstrates that PSE's electric utility over-earned in 2015 and 2016 without the ECRM. Certainly, PSE offered no

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[12/] See, for example, WUTC v. PSE, Docket UG-110723 (2012).
[13/] Docket UG-110723 (2012).
[14/] Exh. MLB-5 at 2. ("Mr. Doyle's testimony does not address whether attrition will or will not exist prospectively")
[15/] Id. at 2-3 (Emphasis added).
[16/] Id. at 1-2.

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evidence contradicting these facts or to show that circumstances in the rate year would be materially different than those recently experienced.

17 The Commission has pronounced that attrition is represented by a demonstrated mismatch in a utility's projected revenues, rate base, and expenses.[17/] Logically, then, attrition looks at the utility's financial performance as a whole and not at selected elements of its operations. Furthermore, the Commission requires that a utility demonstrate that the causes of attrition are beyond the control of the utility.[18/] This is to protect ratepayers from claims of attrition that would be based upon discretionary but not absolutely required spending by a utility.[19/] If attrition is claimed, a utility must file an attrition study to demonstrate attrition's existence in the rate year and its financial impact. Without it, the Commission would have no way to determine if actionable attrition has been demonstrated.[20/]

18 Since the Company offered no fact-based evidence of attrition, the Commission has no way to know if regulatory lag without the ECRM would be significant enough to materially and negatively impact PSE's overall allowed return. Without this evidence, the Commission need only to look at PSE's recent earnings success without the ECRM, and logically conclude that the mechanism is not needed.

17/ WUTC v. Avista, Dockets UE-150204 and UG-150205, Order 05 ¶111 (Jan. 6, 2016). ("An attrition study is based on the resulting projected earnings and revenue requirements, and the attrition adjustment is added only if the study shows a mismatch of earnings and expenditures.")

18/ Id. ("However, we do require that utilities requesting an attrition adjustment demonstrate that the cause of the mismatch between revenues, rate base and expenses is not within the utility's control.")

19/ Id.

20/ Id. at ¶ 47, n.60. ("When developing an attrition adjustment, parties first provide a revenue requirement analysis based on a modified historical test year. Parties then perform an attrition study to determine the utility's revenue requirement in the rate year. The attrition adjustment is the difference between the revenue requirement provided by the modified historical test year and the revenue requirement provided by the attrition study.")

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19 Ms. Barnard did discuss the delay in cost recovery should PSE have to file a rate case to include the ECRM's distribution investments in rates.[21/] But, this delay is allowed by statute and understood to impose upon a regulated utility the requirement to be efficient in order to earn its allowed return.[22/] This is the Commission's current regulatory paradigm, and is considered to be most effective at aligning contemporary customer rates with actual company costs.[23/]

20 Importantly, the regulatory lag PSE criticizes was not created by the Commission but by the legislature, and, as a result, supports the Commission's legal framework. The suspension period called for by RCW 80.04.130(1) cannot be assumed to have been blindly imposed by the legislature.[24/] The statute's plain language calling for the period between the tariff filing and the Commission's final order must be assumed to be both deliberately crafted and purposeful. The Commission's statutory framework thus creates regulatory lag, and the mere fact that it exists – and has existed for decades – is no cause to take extraordinary steps to avoid it.

21 This does not mean that regulatory lag should be allowed to unconstitutionally impair the earnings of the Company.[25/] But, it is PSE's burden to show the earnings' impact of regulatory lag and attrition empirically. No party is expected to take it on "faith" that the mere existence of regulatory lag would prevent the Company from earning its allowed return.

[21/] Exh. KJB-17T at 100

[22/] See, RCW 80.04.130(1). Moreover, the Company can control when it files rate cases, and the start and end of its test year. Thus, it can effectively capture build-year investments by adjusting its test year accordingly.

[23/] See Dockets UE-111048 & UG-111049 (consolidated), Order 08 ¶¶ 93-98.

[24/] State v. J.M., 144 Wash. 2d. 472, 480 (2001) ("The Court's fundamental objective in determining what a statute means is to ascertain and carry out the Legislature's intent. If the statute's meaning is plain on its face, then courts must give effect to its plain meaning as an expression of what the Legislature intended.").

[25/] See generally, Fed. Power Comm'n v. Hope Nat. Gas Co., 320 U.S. 591, 600-02 (1944); Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm'n of W. Va., 262 U.S. 679, 690 (1923).

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Moreover, it is not unreasonable to expect the Company to make every attempt to deal with regulatory lag internally before coming to the Commission for extraordinary relief.[26/] And when such extraordinary relief is requested, the extraordinary need for it must be demonstrated.

22 Undoubtedly, the experimental rate mechanisms the Commission awarded to the Company in 2013 – the ERF, decoupling, and a rate plan – contributed to PSE's currently healthy financial state.[27/] The Company has requested the ability to continue implementing two of these mechanisms (the ERF and decoupling). The Commission should evaluate whether these are sufficient to address the Company's concerns before authorizing yet another experimental mechanism.

23 The weight of the evidence must lead the Commission to change its existing regulatory paradigm. PSE gave the Commission no empirical or objective reason to allow such a departure from the existing regulatory framework. It is one thing to complain of regulatory lag or attrition. It is another thing to actually prove it.

2. The ECRM's Enhanced Revenue Recovery Is Unnecessary to Support a Safe and Reliable Electric System.

24 There is absolutely no question that PSE has a continuing statutory obligation to install and maintain facilities for the provision of safe and reliable services to the public.[28/] There is nothing remarkable about PSE's obligation to provide safe, reliable, and adequate service. It is a fundamental responsibility acknowledged and assumed by PSE for the privilege of doing business as an electric and natural gas utility in Washington.[29/] If indeed PSE were

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[26/] Doyle, TR. 175:24-25. ("And with the ECRM, it would eliminate any issues of regulatory lag ….")
[27/] Dockets UE-121697/UG-121705 & UE-130137/UG-130138, Order 07.
[28/] RCW 80.28.010(2). ("Every gas company, electrical company, wastewater company, and water company shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.").
[29/] Koch, TR. 206:16-24.

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troubled by its system or circuit reliability, it has a clear and unambiguous responsibility to take corrective action, without regard to the alacrity of cost recovery. The Commission can conclude, therefore, that the circuits that would be included in the ECRM are still providing safe and reliable service.[30/] If not, PSE should look first to the limitations of its planning process before coming to the Commission with its ECRM proposal.

25 Like all other electric and natural gas utilities doing business in Washington, PSE engages in an annual and ongoing planning process to determine what facilities will be replaced.[31/] PSE describes its planning process as being "robust" and includes the use of an optimization tool known internally as iDOT.[32/] Notably, PSE's capital planning process has two limitations that impact its investment decisions.

26 First, PSE's planning tools prioritize "reliability improvements that have the greatest benefit for the cost …."[33/] As explained by Ms. Koch in her direct testimony, the "greatest benefit" is extracted by focusing "on circuits with a large number of customers that have higher customer interruptions and higher customer minutes of interruption."[34/] It appears, then, that circuit replacement decisions depend less upon reliability than the number of

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30/ Id., 206:22-24. See also id., 209:4-10. ("PSE is already addressing worst-performing circuits, but these circuits tend to stay at the bottom of the list and so this program addresses that. Without the recovery, the timely recovery, PSE will probably follow the same plan but do it at historic levels as it's been doing in the past, so it will take longer to accomplish."

31/ Exh. CAK-1T at 3-4.

32/ Id. at 4. iDOT is PSE's Investment Decision Optimization Tool that "compares the relative costs and benefits (e.g. reliability, safety, external stakeholder input) of various solutions. Total value is optimized across the entire portfolio of electric and gas infrastructure projects, which results in a set of capital projects that provide maximum value of PSE customers and stakeholders." Id., n.2.

33/ Id. at 3.

34/ Id. at 3-4.

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customers served.[35/] Certainly, PSE is aware of these reliability issues, but chooses not to correct them "year after year," unless, of course, the Commission would approve the ECRM.[36/]

27 Perhaps more importantly, reliability improvement projects compete with other demands for capital, including dividends to PSE's owners.[37/] This internal management process allocates capital across the Company, and effectively limits PSE's capital spending for distribution system improvements.[38/] The Commission can reasonably conclude that PSE's capital budget has not been set with the intent to address the circuits identified as candidates for the ECRM.

28 Mr. Doyle testified that he must balance the financial needs (and metrics) of the Company by managing capital costs, while providing dividends to PSE's owners according to the Company's "dividend policy."[39/] Nowhere in PSE's pre-filed testimony does it suggest that dividends to its owners have been or would be compromised in order to fund distribution infrastructure. However, such tolerance should be expected by the Commission given the commitments made by Puget Holdings, LLC, and PSE to secure approval of PSE's merger with Macquarie and its partners. To this point, Puget Holdings, LLC, and PSE committed to making the Company's capital needs for "delivery infrastructure" a "high priority."[40/] In its Order 08, the Commission commented on this provision, stating:

35/ Id. at 4. ("PSE's planning process does not favor projects on circuits that have a lower number of customers, which tend to be in heavily treed areas. As a result, these customers experience the worst performance each year and land on the worst performing circuit list year after year.").

36/ Exh. CAK-1T at 4. See also, Koch, TR. 209:7-10. ("Without the recovery, the timely recovery, PSE will probably follow the same plan but do it at historic levels as it's been doing in the past ….")

37/ Doyle, TR. 172:12-23.

38/ Id.

39/ Id., 172:16-19.

40/ In the Matter of the Joint Application of PUGET HOLDINGS LLC AND PUGET SOUND ENERGY, INC., for an Order Authorizing Proposed Transaction, Docket U-072375, Order 08, Attachment A (Dec. 30, 2008) ("Puget Holdings acknowledges PSE's need for significant amounts of capital to invest in

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> Finally, members of the Consortium are capable of, and may, inject capital in addition to that already committed in the transaction. Although they are not expressly required to provide for PSE's capital needs using their own resources, the investors here recognize and commit in the Settlement to make funding PSE's capital needs a "high priority."[41/]

Given PSE's advocacy regarding its ECRM, it is hard to ascertain whether the Company and Puget Holdings still feel bound by their commitment to make delivery infrastructure a "high priority." The customers dropped from consideration by PSE's capital planning process because of cost or the low customer numbers on their circuit may be an indication that they do not.

29 To sum up, PSE is obligated by statute to provide safe and reliable service to its customers. The Commission can conclude from Ms. Koch's testimony that the ECRM is not needed to make PSE's system safe and reliable.[42/] It can also conclude that PSE's planning process is not associating the problem circuits identified for correction under the ECRM with a recommendation to replace.[43/] The Commission can also conclude that PSE's planning tools require projects to meet replacement tolerances that are set to eliminate from consideration projects identified as problems "year after year."[44/] Finally, PSE offers no commitment that capital for system reliability will take priority over dividends to PSE's owners. To secure approval of the merger transaction, these same owners promised that delivery infrastructure would be given a "high priority" when considering capital investments. While the term "high priority" is inherently subjective, it follows that the Company should have to demonstrate that

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its energy supply and delivery infrastructure and commits that meeting these capital requirements will be considered a high priority by the Boards of Puget Holdings and PSE.").

41/ Id., Order 08 ¶147.

42/ Koch, TR. 206:22-23. ("I would agree we are providing safe and reliable service.").

43/ Id., 209:4-7. ("PSE is already addressing worst-performing circuits, but these circuits tend to stay at the bottom of the list and so this program addresses that.")

44/ Exh. CAK-1T at 4.

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other uses of available capital are indeed a "higher priority" than replacement of distribution circuits to ensure system reliability.

30 In the end, the replacement of problem circuits should not be considered an extraordinary occurrence. Such tasks are everyday, commonplace activities conducted by any reasonable utility to ensure system safety and reliability, as required by statute. PSE has not demonstrated the need for an extraordinary mechanism like the ECRM to effectively do its job.

3. Adoption of the ECRM Would Require the Commission to Make Investment Decisions Properly Reserved For PSE's Board of Directors.

31 The ECRM would require the Commission to review and approve the Company's Electric Reliability Plan, and its three components – the Master Plan, the Two-Year Work Plan, and the proposed budget.[45/] The Company points to the Commission's Accelerated Replacement Policy ("ARP") for natural gas as its working model for the ECRM.[46/] Once submitted for approval, the Commission would have a limited time to review the three components before final approval.[47/] PSE's contemplated process would review project prudency at some future date.[48/]

32 Unlike the Commission's approval of the natural gas ARP, the ECRM is aimed solely at improving the reliability of certain circuits that do not make the cut after "robust" scrutiny has been deployed by the Company's planning tools.[49/] It appears then that filings made under the ECRM would be comprised of replacement projects that PSE's management had previously rejected for inclusion in its core capital spending plan, presumably because it decided

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45/ Id. at 10; Koch, TR. 195:21-25.

46/ Exh. CAK-1T at 9. ("PSE believes that the robust workshops and input gained through the development of the Accelerated Replacement Policy provide a strong foundation that can be similarly applied to an Electric Reliability Plan and associated Cost Recovery Mechanism.").

47/ Koch, TR. 197:18-22.

48/ Id., 196:6-11.

49/ Exh. CAK-1T at 4.

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that capital resources would be better spent elsewhere in the Company, or dividended up to the parent.[50/] In other words, PSE's management and Board of Directors would defer these distribution infrastructure investment decisions to the Commission for final approval. The Commission must then "stand in the shoes" of PSE's Board, and effectively assume responsibility for those capital spending decisions deferred to the Commission by management, including the responsibility to require customers to pay sums that are incremental to authorized rates in order to support these reliability projects that the Company itself was unwilling to fund from its existing revenue.[51/]

33 The Commission has long avoided the assumption of responsibilities reserved to management, and for good reason.[52/] The Commission does not have the day-to-day knowledge and understanding of the Company, as its management does, that is necessary for the type of informed decision-making the Company is requesting the Commission exercise here. Moreover, once a project is approved, it would be very difficult to "second-guess" its need after the facts are fully disclosed. On many occasions, the Commission has spoken out against the pre-approval of utility spending decisions.[53/]

[50/] Koch, TR. 200:5-10.

[51/] It is also true that a Commission decision to approve could be later confronted by upset ratepayers for resulting in traffic delays, tree damage from trimming decisions, or for "NIMBY-related" reasons. Whether the Company would point to the Commission for "protection" in such circumstances is an unknown.

[52/] See, e.g. Dockets UE-150204 & UG-150205 (consolidated), Order No. 5 at ¶ 192 ("The responsibility for a decision to move forward with an investment rests with the Company. Avista's proposal asks the Commission to make the managerial decisions for it; we decline to do so."); Docket UG-110723, Order 07, at 12.

[53/] See Dockets UE-150204 & UG-150205 (consolidated), Order No. 5 at ¶191 ("We decline Avista's requested action because this issue is not ripe for Commission determination. The Commission's longstanding practice is to review the prudence of a utility's investment in plant after that plant is placed in service and is used and useful… this case discusses a proposal for a future investment that… could be viewed as the Commission indicating pre-approval." (emphasis in original)).

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34 In a recent PSE case seeking approval of a gas pipeline replacement mechanism[54/] with a similar pre-approval requirement, the Commission explained why it should leave investment decisions to the Company.[55/] To this point, it said:

> It is the Company's obligation to ensure safe and reliable service,[56/] which includes the responsibility to construct its gas distribution network according to explicit safety standards. The Commission establishes and enforces standards within which the Company must operate, but *PSE alone shoulders the obligation to apply those standards to specific projects and determine which ones should be constructed and when*."[57/]

35 Addressing the very question of Commission approval of construction plans, it went on to conclude: "The PIP would impermissibly expand that role [referring to Staff's limited role in project selection] and the involvement of the Commission in Company infrastructure management decisions.[58/]

36 With its ECRM, PSE is again requesting that the Commission make infrastructure decisions that should be left to Company management. While it points to the ARP for support, the circumstances of its approval are not at all similar.[59/] The Commission's adoption order in Docket UG-120715 is entitled Commission Policy on Accelerated Replacement of Pipeline Facilities With Elevated Risk.[60/] The importance of the final clause of the order's title cannot be

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54/ Commonly referred to as the Pipeline Integrity Program or PIP.

55/ As used here, "pre-approval" means Commission approval of projects prior to construction.

56/ RCW 80.28.010(2).

57/ Docket UG-110723, Order 07 at 12 (Emphasis added).

58/ Id. The Commission's referenced footnote then went on to state: "Commission enforcement actions have resulted in clear direction to PSE regarding construction decisions. We cross that line reluctantly and only when such action is necessary to protect the public interest. We point to our recent order involving the Company's bare steel pipe, in which we ordered PSE to replace all such pipe on its system within a defined period. Even then, we did not dictate which bare steel projects should precede the others. The details of implementation were left to the Company."

59/ Exh. No.__(CAK-1CT) at 9.

60/ In the Matter of the Policy of the WUTC Related to Replacing Pipeline Facilities with an Elevated Risk of Failure, Docket UG-120715, Commission Policy on Accelerated Replacement of Pipeline Facilities With Elevated Risk, (Dec. 31, 2012).

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disregarded.

37 The Commission's policy statement was preceded by numerous meetings with natural gas companies and Commission-sponsored workshops to understand better the condition of underground natural gas pipelines in Washington. The risks to public safety presented by certain facilities, such as bare steel and duPont plastic pipe, were known by both the utilities and the Commission.[61/] Furthermore, the unfortunate natural gas pipeline explosions in California and Pennsylvania suddenly thrust pipeline safety into the mainstream press and the everyday discussions of regulatory commissions and politicians.[62/] The Commission was expected to act to protect the public from such risk, and its policy statement resulted, in part, from this expectation.

38 Without question, the risks to the public associated with ruptured or broken natural gas facilities is much different than the risks associated with more frequent outages of PSE's "deteriorating underground direct-bury high-molecular-weight ("HMW") cable."[63/] This statement should not be construed nor is it intended to downplay the importance of reliable electric service. But, by comparison, the risks to public safety from gas pipeline failures exceed, in almost all cases, the reliability risks posed by PSE to justify its ECRM.[64/] For this reason, PSE should not look to the Commission's natural gas pipeline replacement policy statement as a means to justify the ECRM.

[61/] Id. at ¶ 21 ("… [W]hile we are fortunate to have very little of the highest risk, or even dangerous, pipe in service, the companies report that they have other kinds of elevated-risk gas infrastructure in service, including plastic mains and services manufactured before 1986 and coated steel mains and services that may not have had adequate corrosion protection throughout their service life.") At that time, PSE had both pre-1986 plastic pipe and coated steel mains in service.

[62/] Id. at 5-6.

[63/] Exh. CAK-1CT at 2.

[64/] Id. at 2-3.

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39 In the end, the Commission, informed by its experience with PSE's 2011 Pipeline Integrity Program proposal and having time to reflect after numerous meetings and workshops, issued its policy statement that would now apply to *all* natural gas companies under its regulation in Washington. By contrast, PSE proposes here a Company-specific financial incentive mechanism to allegedly allow it to do what it is already statutorily obligated to do, and without putting on any evidence to demonstrate that this ECRM is necessary to enable it to meet that obligation.

B. The Commission Should Discontinue PSE's Decoupling Mechanism, at Least for Customers on Schedules 46 and 49.

40 PSE has a full, revenue-per-customer, decoupling mechanism. This mechanism establishes an "allowed delivery revenue" per customer necessary to recover its fixed delivery costs. To the extent the actual delivery revenue per customer differs from the allowed delivery revenue, the difference is deferred and recovered or refunded in the subsequent period. The variations in sales captured by PSE's mechanism can result from any cause, as the mechanism is agnostic as to why customer loads drop or increase between periods.[65/] For the purpose of setting rates, it makes no attempt to distinguish between load variations caused by conservation, weather, changes in behavior by the customer (e.g. winter "snowbird"), or – importantly for ICNU's members and other large industrial and commercial customers – changes in business sales, locations (e.g. plant or store closures), or some change in processes or practices, which are largely driven by economic factors.[66/] While regarded as a mechanism that would encourage conservation, decoupling in the form approved for PSE makes no attempt to align rate recovery

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[65/] Piliaris, TR. 290:4-7

[66/] Id., 291:22-25; id. at 292:1-22

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with kilowatt hour sales impacted by customer conservation.

41 Since its mechanism was authorized, PSE has established an allowed delivery revenue per customer for the nonresidential customer class as a whole (with a few rate schedules excepted). The Company proposes to modify this approach by breaking up the nonresidential customer class into distinct groups. Schedules 40, 46, and 49 would form one group of the Company's largest fully bundled customers. PSE acknowledges that this likely will result in larger deferral balances for this decoupling group.[67/] PSE also proposes to include fixed production costs in the decoupling mechanism, which has been included, with some modifications proposed by Staff, in the Multiparty Stipulation.[68/]

42 ICNU opposes continuation of the decoupling mechanism for the following reasons. First, decoupling is inconsistent with sound ratemaking practices. Second, decoupling in the form applied to PSE is inconsistent with the Commission's statutes that relate to services rendered. Third, decoupling as applied specifically to Schedules 46 and 49 does not appropriately balance the interests of the Company and these customers.

1. Decoupling is inconsistent with established ratemaking policies.

43 The Commission has approved varying forms of decoupling mechanisms for electric and natural gas utilities under its regulation.[69/] At their core, the decoupling mechanisms approved in Washington address utility revenue collection discrepancies caused by fluctuations in kilowatt hour sales. These mechanisms have been promoted by utilities and others to reduce

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[67/] Id., 325:6-25.
[68/] Multiparty Stipulation ¶ 113.
[69/] See, for example, WUTC v. Avista Corporation, Dockets UE-140188 and UG-140189 (consolidated), Order 05 (Nov. 25, 2014); Dockets UE-121697/UG-121704 & UE-130137/UG-130138 (consolidated) Order 07; and WUTC v. Pacific Power & Light, Docket UE-152253, Order 12, (Sept. 1, 2016).

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or eliminate the utilities' throughput incentive.[70/] In other words, decoupling is thought to incent utilities to promote conservation or to at least secure its neutrality when faced with the implementation of conservation in its service territory.[71/] With and without decoupling, PSE has exceeded its biennial targets for conservation.[72/]

44 PSE's decoupling design allows it to charge customers for kilowatt hours never used by and never before billed to a customer. Thus, decoupling breaks the link between a customer's use of PSE's electricity or natural gas and the charges demanded by the Company. Said another way, the service received by a customer from PSE during a billing period no longer determines the monthly charge demanded by PSE.

45 Just as the term "negawatts" once aptly described the energy resources provided by conservation, the term could also be used to describe kilowatt hour sales **not** made to a customer due to decoupling. In the context of decoupling, the customer must continue to pay for kilowatt hours never delivered or for the "negawatts" never supplied by PSE.[73/] There is, however, a crucial distinction between the "negawatts" acquired through conservation and those not delivered under decoupling. The former represents a resource purchased for the system. By pursuing energy efficiency, customers are saving electricity that otherwise would have had to be

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70/ See, Report and Policy Statement on Regulatory Mechanisms, Including Decoupling, to Encourage Utilities to Meet or Exceed Their Conservation Targets, Docket U-100522 at 6. (Nov. 4, 2010) ("Decoupling Policy Statement").

71/ By "decoupling" sales from revenues, a utility should no longer be encouraged to sell more energy, and conserve less, in order to earn more profit. Ending this so-called "throughput incentive" is the essence of a full decoupling mechanism. Dockets UE-121697/UG-121705 & UE-130137/UG-130138 (consolidated), Order 07 ¶¶ 84-85.

72/ See, In the Matter of Puget Sound Energy's 2014-2015 Biennial Conservation Target Under RCW 19.285.040, Docket UE-132043, Order 05 (Aug. 15, 2016). See also, In the Matter of Puget Sound Energy's 2012-2013 Biennial Conservation Target Under RCW 19.285.040, Docket UE-111881, Order 02 (July 31, 2014).

73/ "Negawatts" are not priced as other kilowatt hours sold, but at an amount representing the "fixed costs" attributed to the Company's full volumetric rate.

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provided by supply-side resources. Customers, in other words, are receiving a benefit for their investment in conservation resources. Not so with the "negawatts" associated with decoupling. These "negawatts" are nothing but additional costs that are necessary for the Company to recover its allowed delivery revenue – customers do not receive an incremental benefit from these incremental costs. Indeed, to the extent decoupling's "negawatts" are also attributable to conservation, they can be viewed as customers paying twice for the same resource – once for the conservation, and once more to compensate the Company for reduced loads due to conservation.

46 In originally approving decoupling, the Commission noted that it was "essentially [a] deferred accounting mechanism[]."[74/] Again, however, there is a critical distinction between a traditional deferral and decoupling. Deferrals allow for the recovery between rate periods of actual – and extraordinary – costs.[75/] PSE's decoupling mechanism defers for later recovery an imputed cost – a cost that exists solely because the Company did not receive as much revenue in the applicable period as it anticipated.

2. The Commission's Authorizing Statutes Explicitly Require that Services be Rendered to the Customer Before Allowing Recovery in Rates.

47 The Commission's authority to set rates is expressly and undeniably linked to the services actually provided by the Company. RCW 80.28.010 clearly establishes this link in section (1) stating: "All charges made, demanded or received by any gas company, electrical company, wastewater company, or water company for gas, electricity or water, or for any *service*

[74/] Dockets UE-121697/UG-121704 & UE-130137/UG-130138, Order 07 ¶ 90.

[75/] See, e.g., WUTC v. Avista, Dockets UE-110876 and UG-110877 (consolidated), Order No. 06 at ¶¶ 21-23 (Dec. 16, 2011); WUTC v. Avista, Docket Nos. UE-120436 et al., Order No. 09/14 at ¶ 41 (Dec. 26, 2012); WUTC v. PSE, Docket UG-040640 et al., Order No. 06 at ¶¶ 231-43 (Feb. 18, 2005); In re Avista, Docket UE-011597, Order Granting Accounting Petition at ¶ 3 (Dec. 28, 2001); In re PSE, Docket UE-011600, Order Granting Accounting Petition at ¶ 6-9 (Dec. 28, 2001); In re Avista, Docket UE-021537, Order Approving Accounting Petition at ¶ 9 (April 30, 2003).

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rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient." (Emphasis added). RCW 80.28.020 elaborates on this basic principle, stating in pertinent part:

> Whenever the commission shall find, after a hearing had upon its own motion, or upon complaint, that the rates or charges demanded, exacted, charged or collected by any … electrical company … for … *electricity … services*, … or in connection therewith, or that the rules, regulations, practices or contracts affecting such rates or charges are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient *to yield a reasonable compensation for the service rendered*, the commission shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order. (Emphasis added).

48 In the seminal 1985 Power case, the Washington Supreme Court interpreted these statutes, concluding their plain language made clear the legislature's intent – utility services in the context of rate setting refers to *services rendered* by the utility.[76/] To this point, the Court declared:

> "In reading the *rate setting* statutes (footnote 66), it is clear that they are simply referring to "service rendered" in the context of utilities charging customers "for services rendered" or "services to be rendered" to their customers, and that these terms are used in much the same sense that lawyers charge their clients "for services rendered" and doctors charge their patients "for services rendered."[77/]

[76/] People's Organization for Washington Energy Resources v. Washington Utilities and Transp. Com'n, 104 Wash.2d 798 (1985).

[77/] Id. at 825. Footnote 66 referred to by the Supreme Court references RCW 80.28.010 and 80.28.020. The Court went on to note: "When the language of a statute is clear, we will respect it" citing to Griffin v. Department of Social & Health Servs., 91 Wash.2d 616, 624, 590 P.2d 816 (1979). See also, Department of Transp. v. State Employees' Ins. Bd., 97 Wash.2d 454, 458 (1982). ("The primary objective of statutory construction is to carry out the intent of the legislature. The intent must be determined primarily from the language of the statute itself.")

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49 Here, the Power Court expressed its belief that utility service must be *rendered* or otherwise delivered to the customer before charges for such services can be included in rates. To put the simplicity of this concept in commonly understood relationships, it compared the delivery of utility services to those services provided by doctors or attorneys, as they too must provide an actual service before charging a customer.[78/] If a lawyer charged his or her client for service he or she did not provide, or if a doctor charged his or her patient for services he or she did not provide, there is little doubt that both would be subject to disciplinary action.[79/] The Court's opinion leaves no doubt that utility customers should only be charged for services they in fact receive from the Company.

50 For similar reasons, Washington courts have overturned Commission orders that approved rates and surcharges that were unrelated to services rendered. In Washington Independent Telephone Ass'n v. Telecommunications Ratepayers Ass'n for Cost-Based & Equitable Rates ("Tracer"), the Washington Court of Appeals struck down a Commission rule that created a "Community Calling Fund" ("CCF").[80/] The CCF was created in response to a reorganization of the telecommunications industry and consisted of charges levied against local exchange carriers ("LECs") based on the number of exchange access lines a LEC controlled in the State.[81/] Smaller LECs, which were projected to see revenue shortfalls due to the reorganization, were allowed to draw on the fund to mitigate the financial impact.[82/] The court, however, found that creation of the fund exceeded the Commission's authority. Citing RCW

78/ Power, 104 Wash.2d. at 825.

79/ For example, an attorney would be violating basic rules of professional conduct by charging clients for services never performed. See Washington Rules of Professional Conduct Rule 1.5

80/ 75 Wash. App. 356 (1994).

81/ Id. at 361.

82/ Id.

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80.36.080, which, similar to RCW 80.28.010 for electric utilities, requires rates for telecommunications services to be fair, just, reasonable, and sufficient, the court found that "[t]he charge proposed … on access lines to fund the CCF is *unrelated to service provided by the company*."[83/] In essence, the court objected to the Commission's decision, through the CCF, to "impose a charge on all access lines, assess the charge against [LECs], and then distribute the funds to other LECs …."[84/]

51 Similarly, in Jewell v. WUTC, the Washington Supreme Court overturned a Commission order that allowed the costs of charitable contributions to be included in telephone companies' rates.[85/] Applying a standard similar to RCW 80.28.010's "services rendered" language, the Court found that there was "a total lack of any proof or finding that the telephone users are receiving any more 'prompt, expeditious and efficient' telephone service…" because of the companies' charitable contributions.[86/] In other words, the telephone companies were unable to show any connection between charitable contributions and service rendered.

52 As in Tracer and Jewell, there is no connection between the deferred costs created by PSE's decoupling program and service rendered to the customers who would be required to pay rates to cover these deferred costs. The decoupling charge on customers' bills is a charge "unrelated to service provided by the company."[87/] Washington law simply does not authorize a public service company to charge its customers for services not rendered – such charges are, by definition of law, unjust, unfair, and unreasonable. This is the litmus test for PSE's decoupling program: associated fees must be "rendered in connection" with a public service company's

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[83/] Id. at 367 (emphasis added).
[84/] Id.
[85/] 90 Wn.2d 775 (1978).
[86/] Id. at 777.
[87/] Tracer, 75 Wash. App. at 367.

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provision of "gas, electricity or water."[88/] For this reason alone, the Commission should reject the Company's decoupling program.

3. Exempting customers on Schedules 46 and 49 from decoupling best balances the interests of customers and the Company and promotes the public interest.

53 Even assuming the Company's decoupling mechanism is lawful, public policy reasons promote exempting customers on Schedules 46 and 49 from its operation. Doing so best balances the interests of these customers with those of the Company and its remaining customers. PSE is the only Commission-regulated utility that applies its decoupling mechanism to its largest customers – both Avista Corp. and Pacific Power & Light Co. exempt these customers.[89/]

54 In its order approving PSE's decoupling mechanism, the Commission recognized a number of factors unique to non-residential customers that "raise questions about the suitability of decoupling that relies exclusively on average revenue per customer."[90/] Nevertheless, the Commission determined to apply decoupling to these customers, reasoning that it "should better enable PSE to recover its fixed costs."[91/] It further stated that it:

> [I]s receptive to changes in rate design that might better enable PSE to recover its fixed costs from non-residential customers by including in demand and customer rates more of the fixed costs of providing them service. These sorts of changes, however, should be supported by a detailed cost of service study and such other evidence as may be needed to protect both the company and its customers.[92/]

88/ RCW § 08.28.010(1).
89/ Docket Nos. UE-140188/UG-140189, Order 05 ¶ 22; Exh. JAP-57X at 14:6-15:13.
90/ Docket Nos. UE-121697/UG-121705 & UE-130137/UG-130138, Order 07 ¶ 127.
91/ Id. ¶ 128.
92/ Id.

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In this case, Staff's witness, Jason Ball, has performed such a cost of service study that includes higher demand charges on customers in Schedules 46 and 49.[93/] As a consequence, he, along with Staff witness Jing Liu, propose to exempt these schedules from PSE's decoupling mechanism.[94/] ICNU supported Staff's proposal to replace decoupling with higher demand charges for these customers in its cross-answering testimony,[95/] and approval of higher demand charges has been requested in the Multiparty Stipulation.[96/]

55 The Company admits that "demand charges likely mitigate a utility's throughput incentive …."[97/] The Company, however, continues to oppose eliminating these customers from decoupling on the basis that, while a higher demand charge mitigates the throughput incentive, it does not eliminate it entirely.[98/] An appreciation of scale is appropriate here.

56 PSE's total delivery revenue subject to the decoupling mechanism is $623,553,410.[99/] Schedules 46 and 49 represent just over 1% of this amount.[100/] Similarly, the Company's total fixed power costs that would be subject to decoupling under the Multiparty Settlement is $579,720,787.[101/] Schedules 46 and 49 represent approximately 2.5% of this amount.[102/] PSE also has $737,123,080 in variable power costs and $139,880,412 in basic charges that are not subject to the decoupling mechanism.[103/] This means that, if Schedules 46

93/ Exh. JLB-2.
94/ Exh. JLB-1T at 54:3-10; Exh. JL-1CT at 31:3-10, 35:1-42:11.
95/ Exh. MPG-7Tr at 2:14-3:4.
96/ Multiparty Stipulation ¶ 97.
97/ Exh. JAP-46CT at 22:14-15.
98/ Id. The Company appears to be suggesting that it is impossible to completely eliminate the throughput incentive without decoupling. If this is indeed the case, then ICNU submits that this is a shortcoming of the peak credit methodology the Company uses, which should be explored in the current generic cost of service collaborative.
99/ Exh. JAP-41 at 1.
100/ Id.
101/ Id.
102/ Id.
103/ Id.

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and 49 were exempted from decoupling, approximately 1% of the Company's total revenue would be subject to a throughput incentive, even before considering the mitigating impact of higher demand charges.[104/]

57 Moreover, while PSE's decoupling mechanism accounts for variations in energy sales due to weather, weather has literally no impact on these customers' operations. Since 2012, there have been no temperature normalization adjustments for these schedules,[105/] meaning that the effects of weather would be immaterial to these customers' contributions to PSE's fixed cost recovery in the absence of decoupling.

58 Simply put, any impact to the Company or its actions from the throughput incentive associated with Schedule 46 and 49 customers is *de minimis*. Thus, exempting Schedules 46 and 49 from decoupling would not undermine the Commission's concern with ensuring PSE recovers its fixed costs in any material way. Nor is it reasonable to believe that the Company would consciously act to influence these customers to increase their usage during peak times, as it suggests,[106/] in order to eke out a modest level of additional revenue from that 1%. If the Company intends to take steps to increase its income (as any reasonable company would), surely there are more effective ways to do so than this.

59 Conversely, the impact to these customers from decoupling is both material and inequitable. There are only 25 customers, combined, in Schedules 46 and 49, and their energy usage varies widely. Some customers use less than 1.5 million KWh per year, while others use over 60 million KWh. Thus, if these Schedules are placed into their own decoupling class, this is

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104/ Id. (summing total basic charge revenue, net pro forma delivery revenue, variable power costs, and fixed power costs and dividing by the sum of the Schedule 46/49 net pro forma delivery revenue and net pro forma fixed power costs. Thus: $23,933,575/$2,080,277,688 = 1.15%).

105/ Exh. CKC-6X.

106/ Exh. JAP-46CT at 22:11-14.

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likely to result in larger, more disproportionate cost impacts on the customers within this class. This is precisely the type of situation the Regulatory Assistance Project, a supporter of decoupling generally, cautions against:

> Decoupling is applied to the residential and small commercial classes, because as groups they are fairly homogenous in their usage, unlike the industrial class, in which there are large differences among customers in how they use electricity. Moreover, for the residential and small commercial class, there is no single customer whose usage requirements comprise a dominant portion of that customer class …. In situations in which there are very large industrial customers in the class, especially in the case where there may be only a few customers in the industrial class, decoupling can have too large an effect on other customers in the class, owing to sales increases or decreases by a single large customer. In these cases, industrial customers are nearly always excluded from the decoupling mechanism.[107/]

The RAP also notes that the "industrial customer class may have too few and too diverse customers for" revenue-per-customer decoupling – the type of decoupling mechanism in place for PSE – "to work well."[108/]

60 Mr. Piliaris' testimony confirms the RAP's conclusions. At the hearing, Mr. Piliaris testified that "breaking out 46 and 49 … introduces potentially a lot more volatility that was otherwise embedded within a much larger group of customers …. [T]he disaggregation of that group gives the Company a little bit more concern about the potential for increasing deferrals."[109/] These increasing deferrals will, in turn, have greater rate impacts on these customers. Again, these larger impacts will exist solely to eliminate a negligible throughput incentive.

[107/] Exh. AML-21X at 18-19.
[108/] Id. at 21.
[109/] TR. 325:6-21.

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61 Further, if the Commission's objective with decoupling is to reduce or eliminate the disincentive to invest in conservation and demand-side management, which reduces customer loads,[110/] applying the mechanism to Schedule 46 and 49 customers is ineffective. These customers participate in a different type of conservation program than smaller customers. While smaller customers are eligible for incentives for certain, largely prescriptive, measures that the Company itself selects, Schedule 46 and 49 customers are eligible for the Company's Large Power User Self-Direct program under Schedule 258. Under that program, customers propose their *own projects* and are eligible to receive funding for those projects up to the amount *they* contribute to the Company's energy efficiency programs (minus certain administrative costs and assuming cost-effectiveness thresholds are met).[111/] If a customer does not use its allocation, that allocation becomes available to other Schedule 258-eligible customers pursuant to a competitive request for proposals ("RFP") process.[112/]

62 Thus, the Company's involvement in the Schedule 258 program is largely passive. It holds the customer's money essentially in escrow, ensures conservation proposals meet cost-effectiveness thresholds, and runs the competitive RFP process. But it is the *customer* who identifies and pursues the energy efficiency measures. To the extent the Company has a disincentive to encourage these customers from pursuing energy efficiency, then, that disincentive is irrelevant because these customers' pursuit of energy efficiency is largely out of the Company's control. Moreover, the customers themselves have a strong incentive to pursue energy efficiency because they lose their allocation of funding if they do not propose a cost-

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[110/] Decoupling Policy Statement ¶ 12.
[111/] Schedule 258 ¶ 4.
[112/] Id. ¶ 5.

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effective project.

63 Indeed, if anything, decoupling reduces the incentive for these customers to pursue conservation because they will not realize most of the economic benefits of doing so.[113/] Under decoupling, the reduced costs to these customers associated with load decreases due to energy efficiency also means reduced revenues to PSE, which will be captured in the decoupling deferrals and passed back as a cost to the very customers that pursued these energy efficiency measures. Decoupling is nearly a zero-sum game for these customers.

64 For all of these reasons, exempting Schedules 46 and 49 from decoupling is in the public interest. It results in more equitable treatment for these customers by preventing unwarranted cost-shifting between customers on these schedules through the decoupling deferrals. Meanwhile, to the extent it reintroduces a throughput incentive for PSE, that incentive is *de minimis*, impacting a mere 1% of its revenues, and, in any event, should have no impact on the level of conservation activity pursued by customers on these Schedules since these customers mostly self-direct their energy efficiency.

4. <u>If the Commission continues to include Schedules 46 and 49 in the decoupling mechanism, ICNU recommends that the Commission maintain the current nonresidential customer class.</u>

65 Under the current decoupling mechanism, Schedules 8, 11, 24, 25, 29, 35, 40, 43, 46, and 49 are all combined as a single decoupling group.[114/] PSE has proposed in this case to break this group out such that Schedules 40, 46, and 49 would comprise their own group. The Company's basis for this proposal is to reduce cost-shifting among nonresidential customer classes. If the Commission approves the Multiparty Stipulation, Schedule 40 will be phased out

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[113/] Exh. MPG-1T at 32:13-34:4; Exh. JL-1CT at 36:10-38:6.
[114/] PSE Schedule 142.

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over time, leaving Schedules 46 and 49 alone in their own decoupling group. The Company has acknowledged that this is likely to lead to greater decoupling deferrals for this group, and has stated that it "doesn't have a very strong position on [segregating the nonresidential group]."[115/]

66 ICNU believes that maintaining rate stability for customers is more important in this situation than reducing cost shifting among customer classes. Decoupling, by its very nature, results in cost-shifting among customers and classes. Further dividing the nonresidential customer group will not resolve this. It will merely balkanize the cost-shifting by confining it to the new nonresidential decoupling groups. Accordingly, the public interest is better served by minimizing the rate impacts associated with decoupling.

C. The Commission Should Approve the Multiparty Stipulation

67 ICNU believes the Multiparty Stipulation represents a comprehensive resolution of the issues in this proceeding, and no additional relief is necessary, including approval of the ECRM or an extension of decoupling. The Multiparty Stipulation reduces PSE's ROE to 9.5%, a level that is far more reflective of current capital markets than the 9.8% it has been operating with since 2011. It also proposes a balanced approach to addressing the costs associated with the closure of Colstrip Units 1 and 2.[116/] ICNU also particularly supports the reallocation of costs for the Ardmore Substation in order to better reflect the benefits customer classes receive from this substation, and the reduced rate impacts to customers on Schedules 46 and 49, which recognizes that these schedules are currently above their cost of service.[117/]

68 Public Counsel is the only party that opposes the Multiparty Stipulation. ICNU does not disagree with Public Counsel that the Multiparty Stipulation could be improved upon in

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[115/] TR. 326:1-2.
[116/] Exh. BGM-17T at 3-4.
[117/] Id. at 5-6

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areas. But Public Counsel is allowing perfect to become the enemy of good. Settlements involve a compromise of positions and, therefore, inherently require tradeoffs. ICNU agreed to the Multiparty Stipulation not because it felt that it was ideal in all areas, but because it considers the stipulation, as a whole, to result in fair and reasonable rates for PSE. That is, ultimately, the objective of ratemaking.[118/]

IV. CONCLUSION

69 For the foregoing reasons, ICNU recommends that the Commission: (1) approve the Multiparty Stipulation; (2) reject the Company's requested ERCM; and (3) decline to extend the Company's decoupling mechanism or, alternatively, exempt customers on Schedules 46 and 49 from decoupling.

Dated this 18th day of October, 2017.

Respectfully submitted,

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[118/] Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 602 (1944) ("[u]nder the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling").

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