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BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,  
  
Complainant,

v.

PUGET SOUND ENERGY, INC.,  
  
Respondent.

Docket No. UE-031725

PUGET SOUND ENERGY, INC.'S  
MOTION TO STRIKE ICNU'S  
RESPONSE TO BENCH REQUEST  
NO. 6

Puget Sound Energy, Inc. ("PSE") moves to strike the Response to Bench Request No. 6 that ICNU filed on March 3, 2004 ("ICNU Response"). PSE submits this motion for several reasons:

- *The Commission did not solicit the ICNU Response.* The Administrative Law Judge issued two bench requests at the end of the February 25, 2004 hearing day. His direction to the parties could not have been more clear: Only ICNU was asked to respond to Bench Request No. 5,<sup>1</sup> and only PSE was asked to respond to Bench Request No. 6.<sup>2</sup> ICNU has no right, therefore, to submit an unsolicited response to Bench Request No. 6.
- *The ICNU Response attempts to rebut PSE's earlier response, which is not permitted.* The ICNU Response is a thinly-disguised attempt to rebut the response that PSE properly and timely filed 5 days earlier, on February 27, 2004. But the Commission's discovery rule (WAC 480-07-405) does not permit a party to file a rebuttal to a bench request response that another party

<sup>1</sup> TR. 535: 15-16 ("Bench Request Number 5 is to ICNU...").

<sup>2</sup> TR. 536: 2-3 ("...Bench Request Number 6 is directed to Puget Sound Energy...").

1 has already filed.

- 2
- 3 • *PSE is prejudiced by the ICNU Response.* It would be unfair and prejudicial
- 4 to PSE if ICNU – but not PSE – were allowed, well after the hearings have
- 5 concluded, to engage in a selective “point-counterpoint” with respect to
- 6 hearing exhibits of ICNU’s choosing.
- 7 • *The Exhibit List in this proceeding is final.* Early in the day on March 3,
- 8 2004 (and before ICNU made its unsolicited filing), the Administrative Law
- 9 Judge sent the parties a final Exhibit List.<sup>3</sup> No basis exists for ICNU to add
- 10 new and unsolicited material into the record that the Administrative Law
- 11 Judge has essentially finalized.
- 12 • *The ICNU Response is inconsistent with the remaining schedule.* All of the
- 13 parties (and the Commission) are operating on an accelerated timetable, with
- 14 opening briefs due just 8 days from today. Given this short time frame, it is
- 15 unacceptable for ICNU to attempt, at this late date, to shoehorn new and
- 16 unsolicited information into the record.
- 17 • *ICNU did not seek leave to file the ICNU Response.* ICNU did not seek
- 18 leave to modify the Administrative Law Judge’s unambiguous direction to
- 19 the parties. Instead, ICNU responded to Bench Request No. 6 without an
- 20 accompanying motion and without bothering to explain why the
- 21 Administrative Law Judge’s direction should be revised.
- 22 • *The ICNU Response is not responsive to Bench Request No. 6.* Independent
- 23 of the foregoing reasons, the ICNU Response should be stricken because it is
- 24 outside the scope of, and does not respond to, Bench Request No. 6. That
- 25 request asked for calendar year analyses that examined the relationship
- 26 between the average of NYMEX futures (adjusted for the Sumas basis
- 27

28 <sup>3</sup> PSE’s response to Bench Request No. 6 appears in the Exhibit List as Exh. 7.

1 differential) and actual average gas prices at Sumas. Nothing in the ICNU  
2 Response, however, discusses calendar year prices or prices at Sumas (either  
3 future or actual). The ICNU Response does not adequately explain whether  
4 the spreadsheet prices correspond to a Henry Hub physical market price or to  
5 a Sumas price. As such, the ICNU Response does not further the  
6 administrative process.

7 For all of the foregoing reasons, PSE respectfully requests that the Commission  
8 grant its Motion to Strike ICNU's Response to Bench Request No. 6.

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10  
11 DATED: March 4, 2004

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date I caused to be served the foregoing via U.S. mail, postage prepaid to the following:

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Signed at Seattle, Washington this 4<sup>th</sup> day of March, 2004.

  
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