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March 5, 2003

*Via Electronic Mail and Federal Express*

Carole J. Washburn  
Secretary  
Washington Utilities and Transportation Commission  
PO Box 47250  
1300 S Evergreen Park Drive, SW  
Olympia WA 98504-7250

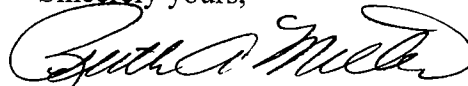
Re: In the Matter of Washington Utilities and Transportation Commission v. Puget  
Sound Energy, Inc.  
**Docket No. UE-031725**

Dear Ms. Washburn:

Enclosed please find an original and seventeen (17) copies of the Response of the Industrial Customers of Northwest Utilities to Puget Sound Energy's Motion to Strike ICNU's Response to Bench Request No. 6 in the above-captioned matter.

Please return one file-stamped copy in the postage-prepaid envelope provided.  
Thank you for your assistance.

Sincerely yours,



Ruth A. Miller

Enclosures

cc: Service List

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RECORDS MANAGEMENT  
04 MAR -8 AM 8:59  
STATE OF WASH  
UTIL AND TRANS  
COMMISSION

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND ) DOCKET NO. UE-031725  
TRANSPORTATION COMMISSION, )  
)  
Complainant, ) RESPONSE OF THE INDUSTRIAL  
) CUSTOMERS OF NORTHWEST  
v. ) UTILITIES TO PUGET SOUND ENERGY’S  
) MOTION TO STRIKE ICNU’S RESPONSE  
PUGET SOUND ENERGY, INC. ) TO BENCH REQUEST NO. 6  
)  
Respondent. )  
\_\_\_\_\_)

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UTIL. AND TRANSP.  
COMMISSION

**INTRODUCTION**

1. Pursuant to WAC § 480-07-375(4) and the Notice issued in Washington Utilities and Transportation Commission (“WUTC” or the “Commission”) Docket No. UE-031725 on March 5, 2004, the Industrial Customers of Northwest Utilities (“ICNU”) submits this Response to Puget Sound Energy’s (“PSE” or the “Company”) Motion to Strike (“Motion”) ICNU’s Response to Bench Request No. 6 (“ICNU Response”), filed on March 4, 2004. PSE requests that the Commission strike the ICNU Response on both procedural and substantive grounds. For the reasons stated below, PSE’s arguments for excluding the ICNU Response do not outweigh the benefit to the Commission of having the most well-developed and complete evidentiary record possible in this proceeding. As a result, the Commission should deny PSE’s Motion.

2. The statutes and rules that this Response puts at issue are: RCW § 80.04.020; WAC §§ 480-07-375, -405, -460, and -490.

**ARGUMENT**

3. PSE asserts a number of reasons why the Commission should strike the ICNU

Response from the record in this proceeding, none of which are persuasive. PSE first argues that “ICNU has no right” to submit a response to the bench request; however, neither Judge Moss’ instructions to the parties, nor the discovery rules prohibit the ICNU Response. Motion at 1; Tr. 535:1-11. WAC § 480-07-405(7)(d) and (8) govern responses to bench requests. The primary requirements for submitting a response to a bench request are: 1) the response must be filed with the Commission; 2) the response must be served on all parties; and 3) the response must be filed and served within ten business days of the request. WAC § 480-07-405(7)(d). The ICNU Response meets all of these requirements. Furthermore, WAC § 480-07-405(8) provides that “[p]arties must immediately supplement any response to a . . . bench request upon learning that the prior response was incorrect or incomplete . . . .” Neither of these rules prohibits the ICNU Response. In fact, consistent with WAC § 480-07-405(8), the ICNU Response makes the information available to the Commission related to Bench Request No. 6 more complete.

4. PSE also argues that the ICNU Response impermissibly “attempts to rebut PSE’s earlier response.” Motion at 1. The ICNU Response, however, does not contradict PSE’s response but adds supplementary information to make a more complete record in this proceeding. The ICNU Response does not indicate that the information provided in the PSE Response is incorrect. Rather, the ICNU Response provides the Commission with information that more directly addresses the specific issue in this proceeding to which the request relates: use of NYMEX futures prices in September to forecast prices during the Rate Period.

5. PSE is not prejudiced by the ICNU Response, as the Company claims in its Motion. *Id.* at 2. ICNU is not engaging in a “point-counterpoint” with PSE. Rather, the ICNU Response provides supplementary information that was not included in PSE’s response. The

ICNU Response does not invalidate any of the information provided by PSE and therefore does not prejudice PSE in any way. Further, PSE is free to provide additional information if it feels that anything in the ICNU Response is incorrect or incomplete. WAC § 480-07-405(8). Rather than pointing out any inaccuracy or incompleteness in the ICNU Response, however, PSE has sought to strike the ICNU Response in an effort to limit the information before the Commission on this topic.

6. PSE also maintains that “[t]he Exhibit List in this proceeding is final” and that “[n]o basis exists for ICNU to add new and unsolicited material into the record that the Administrative Law Judge has essentially finalized.” Motion at 2. The exhibit list reflects the information accepted at hearing and the exhibit numbers assigned “for purposes of the official record . . .”; it does not, as PSE suggests, comprise “the record” in its entirety. WAC § 480-07-460(2)(a); Motion at 2. PSE acknowledges that briefs are yet to be submitted in this proceeding. Motion at 2. This information will be included in the record. Moreover, PSE filed its Corrections to Julia M. Ryan’s and William A. Gaines’s Responses Made Subject to Check on March 3, 2004, the same day the ICNU Response was filed. These responses are not reflected on the final exhibit list circulated by Judge Moss, yet they presumably will be accepted into the record. Under PSE’s rationale, the Briefs and the Corrections to Responses Made Subject to Check are “new” pieces of information that would have to be stricken. The record in this proceeding has not been “essentially finalized,” and there is no basis to exclude information that is directly relevant to issues in this case and was submitted in a timely manner.

7. PSE also argues that “the ICNU Response is inconsistent with the remaining schedule,” referring to the fact that “[a]ll of the parties (and the Commission) are operating on an

accelerated timetable” in this proceeding. Id. WAC § 480-07-405(7)(d) provides that parties have ten business days to respond to a bench request unless the presiding officer amends the time for response. ICNU complied with this rule. Furthermore, the ICNU Response does not impact any of the parties’ ability to deal with the accelerated schedule any more than PSE’s Correction to Responses Made Subject to Check, which was filed on the same day. Additionally, no “party” other than PSE has objected to the ICNU Response, indicating a relative lack of impairment of the parties’ ability to digest the ICNU Response in the context of the accelerated schedule.

8. PSE’s argument that ICNU was required to seek leave to file the ICNU Response is not supported by either the WAC or Judge Moss’ instructions. Nothing in WAC § 480-07-405 requires a party responding to a bench request to move the Commission to respond.

9. Finally, PSE argues that the ICNU Response “is not responsive to Bench Request No. 6.” Id. Although the Bench Request solicited information regarding the relationship between NYMEX futures offered in September and actual average monthly gas prices for the calendar year, in the context of this case, variability between NYMEX futures in September and actual prices during the Rate Period is a more relevant comparison. The ICNU Response makes the information in the record regarding this topic more complete. Furthermore, PSE criticizes the ICNU Response for not “adequately explain[ing] whether the spreadsheet corresponds to Henry Hub or Sumas, even though the spreadsheet indicates that it includes Henry Hub settlement prices. Thus PSE’s criticisms are not valid.

### **CONCLUSION**


10. The fundamental question presented by PSE’s Motion is whether the final record in this proceeding will be as complete and well-developed as possible. The ICNU Response

provides a more comprehensive record upon which the Commission can make its determination and does not violate any procedural or substantive rule regarding responses to bench requests. The information provided does not contradict or seek to rebut any information provided by PSE in its earlier response and does not prejudice PSE in any way. Rather, the ICNU Response provides information that supplements the information provided by PSE and addresses the issues in a more comprehensive manner.

WHEREFORE, for the reasons stated above, ICNU requests that the Commission deny PSE's Motion to Strike ICNU's Response to Data Request No. 6.

DATED this 5th day of March, 2004.

Respectfully Submitted,

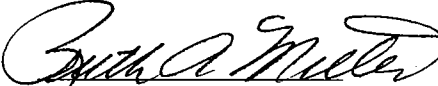
  
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Of Attorneys for the Industrial Customers of  
Northwest Utilities

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Response of the Industrial Customers of Northwest Utilities to Puget Sound Energy's Motion to Strike ICNU's Response to Bench Request No. 6 to each of the individuals on the service list below by mailing a copy thereof in a sealed, first-class postage prepaid envelope to each individual's last-known address. Copies were deposited in the U.S. mail at Portland, Oregon on this 5<sup>th</sup> day of March, 2004.

DATED this 5<sup>th</sup> day of March, 2004.

Davison Van Cleve, P.C.

By:   
Ruth A. Miller

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