BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND ENERGY, INC., Respondent. _____	)	Docket Nos. UE-121697/UG-121705 *(Consolidated)* Docket Nos. UE-130137/UG-130138 *(Consolidated)*

POST-HEARING BRIEF

ON BEHALF OF

THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

May 30, 2013

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I. INTRODUCTION

1 The Industrial Customers of Northwest Utilities ("ICNU") submits this post-hearing brief requesting that the Washington Utilities and Transportation Commission ("WUTC" or the "Commission") reject the Multiparty Settlement Re: Coal Transition PPA and Other Pending Dockets ("Global Settlement" or "Settlement"), originally entered into by Puget Sound Energy, Inc. ("PSE" or the "Company"), Commission Staff ("Staff"), and the Northwest Energy Coalition ("NWEC") (collectively, the "Settling Parties"), which was filed with the Commission on March 22, 2013.[1/] ICNU also requests that the Commission decline to accept the Expedited Rate Filing ("ERF") and the Amended Petition for Decoupling Mechanisms ("Amended Petition") proposed in these dockets because PSE has not shown that these filings will produce just and reasonable rates.

2 PSE has not met its burdens of proof or persuasion justifying approval of the individual elements and components of the Settlement or for modification to the Final Order from the Coal Transition Power Purchase Agreement ("PPA") case. Washington law requires not only that PSE carry these burdens as to the approval of individual dockets, but also that sufficient evidence supports each of these dockets. Since the Company has not meet its burden on any level, the Settlement and the rate increases proposed in each individual docket should be denied.

3 Alternatively, if the Commission seeks to allow some aspects of the ERF and Decoupling filings to go into effect, ICNU recommends the following appropriate

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[1/] The Energy Project and NWIGU subsequently joined the settlement.

adjustments be made to the ERF, which cumulatively result in an overall *reduction* to PSE's revenue requirement by approximately $1.29 million, rather than an increase of $32.2 million:

- Require the use of the Commission's Standard Average of Monthly Averages ("AMA") accounting as required by rule, which will reduce PSE's revenue requirement by approximately $13.2 million using Mr. Gorman's recommended rate of return ("ROR") ($13.5 million using PSE's currently permitted ROR);
- Establish a 9.3% return on equity ("ROE") and 46.1% common equity capitalization, which reduces PSE's rate of return ("ROR") to 7.6%, and reduce PSE's revenue requirement by $11.0 million;
- Reduce electric pension expenses by $2.6 million (electric);
- Reduce incentive compensation by $6.5 million (electric);
- Reduce PSE's effective federal income tax rate to 35%; adjusting the requested increase by $3.45 million for electric;

If the Commission approves the Decoupling Mechanism, ICNU recommends that the Commission impose the customer protections set forth in the Commission Decoupling Policy Statement including:

- Eliminate the K-factor, and condition approval on implementing the requirements for full decoupling set forth in the Commission Decoupling Policy Statement;
- Reduce PSE's ROE by another 25 basis points if decoupling is approved;
- Impose a 3% hard cap for the annual rate increases associated

with Decoupling, with no deferrals permitted;

12 - Limit the duration of the decoupling mechanism to place no longer than two years, with an independent evaluation occurring at that time. Whether to continue decoupling beyond that point should be based on the evaluation results.

13 However, for the reasons described in detail in this brief, the Commission should reject the relief requested in these dockets and permit PSE to come back with a general rate case filing to develop a full and complete record. The record before the Commission seeking to support the Settlement is one of the most deficient ICNU has ever seen, yet PSE uses it to support an unprecedented multi-year rate increase of $351 million or even more. While the Settling Parties may consider these increases minor, cumulatively they are not. Each year's rate increase must be supported by evidence for the Commission to find that continued rate hikes are fair, just and reasonable. There is no evidence showing this, particularly in the latter years of the rate plan, other than arguments about historical trends, which the Commission has not accepted for even minor increases.

14 ICNU would welcome a new approach to ratemaking, were it done right. Rules should be established first, which should balance the interests of utilities and ratepayers. This Settlement does not achieve this balance. Rather than establishing a reliable baseline for a multi-year increase, it uses selective two-year old test year data from the last PSE General Rate Case ("GRC"), combined with a test year that ends on June 2012. It is, by definition, imbalanced and mismatched. It is also ironic that PSE has chosen this approach in light of its strong opposition to the use of historic test years.

15 The Settlement also suffers from so many legal infirmities that the Commission could not possibly approve it in its current form without violating an array of rules and statutes. Perhaps if Staff and PSE had included all the parties during their Settlement negotiations, a creative solution could have been developed. Instead, after weeks of negotiation in secret, the Settlement was presented to ICNU as a take-it-or-leave it proposition. While it is too late to salvage this Settlement, a carefully crafted, well-supported and balanced agreement may be possible in the future. This brief will address the extensive legal issues barring approval of this Settlement, as well as its significant evidentiary shortcomings. The Commission has broad discretion to approve settlements in the public interest, yet for the following reasons, this settlement is neither in the public interest nor is it legally defensible:

16 - The Washington Administrative Procedures Act ("APA"), as codified in RCW § 34.05.476, mandates that the Commission make a finding in the ERF and Decoupling dockets based on evidentiary records in each respective docket. It is not possible not to do this and approve the Settlement since the *quid pro quo* involves the Centralia docket, in which a final order has been issued;

17 - The ERF and Decoupling dockets share a common record, but curiously were not consolidated. In the first year, the ERF and Decoupling dockets collectively will raise electric customers' rates by 3.2%. Under WAC § 480-07-505, this proposed increase should trigger a general rate case. Failure to designate these dockets as a general rate case violates this Commission rule. The Decoupling 3% soft cap also violates this provision as any amount over 3% would be

deferred and collected with interest;

18 ● The Settlement allows for Power Cost Only Rate Case ("PCORC") rate cases without the protection of a follow-up GRC. This can only be changed in the PCORC Docket by amending Order 12 in Docket No. 011570. A settlement, even if approved by the Commission, cannot serve to amend an order establishing guidelines for future PCORC filings without again violating the APA and the Commission's rules;

19 ● Very little evidence supports these dockets. Staff and PSE rely on "gut reaction," anecdotal evidence, and unaudited historical performances to support a 3.2% rate increase in year one and potential higher increases over for the next four years. The ERF and K-factor are being sought under the guise of an attrition adjustment, yet there is no attrition study to provide evidentiary support for a one-year adjustment, much less annual adjustments for possibly four years;

20 ● The Decoupling proposal fails to follow most of the hard-fought consumer protections in the Decoupling Policy Statement. It is unbalanced, ill-conceived and discriminatory. The settlement excludes industrial natural gas sales and transportation customers, but does not exclude the industrial electric customers;

21 ● PSE's use of end-of-period ("EOP") rate base in the ERF Commission Basis Report ("CBR") rather than AMA violates WAC § 480-100-257, which requires a CBR to use the same adjustments as were accepted in its last GRC, which for PSE means AMA. PSE's use of EOP also violates the matching principle because it does not adjust its customer count or revenues levels to pro-

forma year-end figures, as explicitly required by the Commission in the extraordinary event that EOP is accepted. Use of EOP inflates the alleged ERF deficiency by approximately $13.6 million with no rationale for departing from longstanding precedent or request for waiver of the rule mandating AMA;

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- Known and measurable changes are not made to project the historic costs into the future. For example, PSE has sold 1.7% of its service territory to Jefferson County PUD, but fails to adjust the rate base and the revenues, putting in place a baseline for future rate increases that is knowingly inaccurate, while making other pro forma changes, including a pension adjustment that inflates its expenses by over $9 million;

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- PSE requests to continue to earn a return based on an inaccurate, hypothetical equity level of 48%. PSE makes "regulatory" adjustments that are not standard industry practice to get to the 48% level. There is no Commission rule or case that defines and approves of these adjustments;

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- The cost of debt is declining, particularly as compared to the last PSE general rate case, but there is no recognition of this in the ERF and Decoupling filings. In fact, in a surprising move, PSE offered to return to ratepayers about $1.5 million in savings for a pending refinancing of pollution control bonds. While a nice offer, PSE should not be permitted to decide what is "known and measurable" in this case and what is it not. This offer to return the savings from the pollution control bonds refinancing demonstrates how arbitrary PSE's filing really is. Basic ratemaking principles should not be thrown out the window in

the interest of being expeditious;

25 - The low-income rate increase is not supported by detailed analysis of economic conditions and customer demographics within PSE's service territory as required by Order 8 in the 2011 PSE GRC;

26 - The Settling Parties violated WAC § 480-07-700 (3)(b) by having secret settlement meetings. A settlement meeting was only noticed to all parties after Staff, NWEC and PSE had reached agreement on all issues.

27 This case is replete with evidentiary and procedural deficiencies. The parties had a mere seven weeks between the prehearing conference and the hearing. It is not possible to discern whether the rate increases mandated by the Settlement reflect the Company's actual revenue requirement deficiencies. PSE's own reports show that PSE's earnings are drastically improving, and failure to earn its authorized ROE during the "great recession" historically does not justify future annual 3% rate increases. PSE asks the Commission to discount the Cost of Capital evidence in the record because the expedited schedule PSE advocated for did not permit the Company as much time as it would have liked to respond.

28 ICNU witnesses Michael P. Gorman and Michael C. Deen have testified on the details of many errors in the Settling Parties' proposals. One result of PSE's hybridized rate calculations is an ROR mismatch inflating the ERF revenue deficiency by about $11 million. Flaws in the derivation of pension expense and the effective tax rate, as well as the inclusion of incentive compensation, justify a reduction in ERF revenue by over $9 million more. These adjustments should be made in concert with a return to AMA

ratebase, which will reduce the requested revenue requirement increase by $13 million more.

II. BACKGROUND

A. The Current Proceedings

29 The Global Settlement was filed on March 22, 2013. By its terms, the Settlement is "intended to compromise and settle all issues concerning" the ERF and Decoupling dockets, as well as PSE's reconsideration petition in the Coal Transition PPA case.[2/] Legally, there is nothing for the parties to compromise or settle upon regarding the Coal Transition PPA case: a Final Order was issued therein on January 9, 2013. The pending ERF and Decoupling dockets, however, would detrimentally affect PSE ratepayers and change the fundamental nature of WUTC ratemaking. Approval of the Settlement would increase electric rates by over 3%.[3/]

30 PSE filed the ERF dockets on February 1, 2013, seeking recovery of over $32 million[4/] in alleged electric revenue deficiency "[d]ue to the regulatory lag inherent in the historical test period approach to ratemaking . . . . [p]articularly true during times when PSE's investment in replacement infrastructure is growing."[5/] PSE claims the ERF is consistent with an approach outlined in Staff testimony during the Company's 2011 GRC, although PSE concedes that Staff's initial approach "did not include many details."[6/] Staff testifies that policy goals stated by the Commission have been met,

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2/ Multiparty Settlement Re: Coal Transition PPA and Other Pending Dockets, Docket Nos. UE-121373, UE-121697 and UG-121705, UE-130137 and UG-130138, ¶ 1 (March 22, 2013) (references to filings made in all dockets abbreviated as "Multiparty Settlement"; filings made only in Docket Nos. UE-121697 and UG-121705 abbreviated as "Decoupling"; filings made only in Docket Nos. UE-130137 and UG-130138 abbreviated as "ERF").

3/ Multiparty Settlement, Schooley, Exh. No. TES-1T at 4:19–21.

4/ ERF, Piliaris, Exh. No. JAP-1T at 1:14–15.

5/ ERF, Barnard, Exh. No. KJB-1T at 2:5–8.

6/ Id. at 4:7–10.

explaining that ERF filings are the result of Staff/Company meetings related to "reducing regulatory lag."[7/]

31 PSE and NWEC jointly filed the Amended Petition for a Decoupling Mechanism on March 1, 2013 ("Amended Petition"), revising their original October 25, 2012, petition. The decoupling proposal contains a "rate plan" and decoupling mechanisms for both gas and electric customers.[8/] A notable modification sets the baseline for determining allowed delivery revenue per customer ("ADRPC") based on ERF rates[9/]—thereby intertwining the ERF and Decoupling dockets and their respective tariffs.

32 The Amended Petition also includes a modified "K-factor adjustment," described as an "escalation factor, designed to . . . address the growth in non-energy costs,"[10/] thereby allegedly addressing "the revenue shortfall between rate cases that the decoupling mechanism on its own does not resolve."[11/] PSE explains that, in lieu "of basing the calculations of the K-factor on Company-sponsored conservation . . . they are now set at predetermined levels."[12/] Staff supports and "is comfortable with the K-factor because it . . . addresses attrition" and will be reset in the next GRC filed in 2015 or 2016.[13/]

33 According to NWEC, the modified "decoupling proposal includes protections for ratepayers by capping any rate increases at 3% annually,"[14/] though the "soft cap" allows surcharge balances in excess of the cap to be recoverable in subsequent rate periods, with no sunset date.[15/] PSE also explains that, as a further "safeguard to customers," the

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7/ Multiparty Settlement, Schooley, Exh. No. TES-1T at 5:18–6:4.
8/ Decoupling, Piliaris, Exh. No. JAP-8T at 3:6–10.
9/ Id. at 6:20–25.
10/ Decoupling, Barnard, Exh. No. KJB-1T at 2:7–10.
11/ Amended Petition ¶ 5.
12/ Decoupling, Piliaris, Exh. No. JAP-8T at 8:10–13.
13/ Decoupling, Reynolds, Exh. No. DJR-1T at 4:6–8.
14/ Multiparty Settlement, Hirsh, Exh. No. NH-1T at 2:15–16.
15/ Decoupling, Piliaris, Exh. No. JAP-1T at 39:7–19; see also Piliaris, Exh. No. JAP-8T at 6:10–12 and n.13

earnings test endorsed under the modified proposal only allows the Company "to earn up to twenty-five (25) basis points above its overall rate of return on rate base before rebating to customers fifty (50) percent of the earnings in excess of this level."[16/]

34 The gas and electric decoupling mechanisms work in tandem with the modified rate plan component of the proposal, "allowing for predetermined annual increases . . . through the rate plan period."[17/] As the duration of the proposal extends until the effective date of rates approved in the next GRC, to be filed no sooner than April 1, 2015, the rate plan period and pre-determined annual increases would continue into 2016 or 2017.[18/] Under the rate plan, electric retail wheeling customers would see basic charge and distribution service rates increase "by the electric K-factor increase each time it is applied to the allowed revenue of other electric customers."[19/] PSE and NWEC concede that the "vast majority of the cost of service" related to electric wheeling customers is already recovered by PSE's Open Access Transmission Tariff ("OATT"), but justify the rate plan increase "to ensure that these customers also contribute to PSE's growing costs" over the next several years.[20/]

35 The same day the Settlement was filed, the Commission convened a joint prehearing conference, noticed in these dockets as well as in UE-121373.[21/] A common procedural schedule was established in the "interrelated" ERF and Decoupling dockets and the Commission extended the deadline until May 30, 2013, for parties to answer

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(confirming that original rate increase and cap provisions are retained in the Amended Petition).

16/ Decoupling, Piliaris, Exh. No. JAP-8T at 19:10–20.
17/ Id. at 4:9–11.
18/ Id. at 7:22–26.
19/ Amended Petition ¶ 27.
20/ Id.
21/ Docket Nos. 121697 et al., Order 04 ¶ 5.

PSE's reconsideration petition and motion to reopen in the Coal Transition PPA docket.[22/]

36 On April 10, 2013, the Commission overruled objections to Order 02 filed by the Public Counsel Section of the Washington Office of the Attorney General ("Public Counsel"), in which Public Counsel, supported by ICNU and three other parties, argued "that the procedural schedule adopted in Order 02 did not give parties a fair opportunity to evaluate the decoupling and ERF proposals and prepare recommendations for the Commission."[23/]

B. Commission Precedent and Policy

37 The Settling Parties rely heavily on Order 08, the Final Order in the PSE 2011 GRC[24/] and the Report and Policy Statement on Regulatory Mechanisms, Including Decoupling, to Encourage Utilities to Meet or Exceed Their Conservation Targets (the "Policy Statement") to support their proposed Settlement.[25/] Accordingly, the Commission's findings and statements in these documents merit careful review.

1. The Decoupling Policy Statement

38 The inquiry that culminated in the 2010 Policy Statement examined whether the Commission should adopt regulations or policies "to address declines in revenues due to utility-sponsored conservation or other causes of conservation."[26/] Thus, the Policy Statement resulted from an extended WUTC inquiry with a purely "conservation" focus.[27/] The Policy Statement offers "policy guidance on selected regulatory

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[22/] Id. ¶ 6.
[23/] Id. ¶ 12.
[24/] WUTC v. PSE, Docket Nos. UE-111048 and UG-111049, Order No. 08 (May 7, 2012) ("Order 08").
[25/] WUTC Investigation into Energy Conservation Incentives, Docket No. U-100522, Report and Policy Statement (Nov. 4, 2010).
[26/] Id. ¶ 1.
[27/] Id.

mechanisms designed either to remove barriers to utilities acquiring all cost-effective conservation or to encourage utilities to acquire all cost-effective conservation."[28/] Indeed, the WUTC recognized that the Legislature had only granted authorization to ensure utility protection from earnings reductions "that are a '*direct result* of utility programs to increase the efficiency of energy use.'"[29/] The WUTC confirmed its reversal of prior indications that a decoupling mechanism could be proposed outside of a GRC by stating: "because a decoupling mechanism may provide reduced risk for the company, it stands to reason that such reduced risk may impact the company's appropriate return on equity."[30/] The Commission also expressed concern over cross-subsidies among rate classes, concluding: "A reasonable mechanism would balance conservation program achievements by class with the revenue recovery expected by that class under the mechanism."[31/]

39 The Policy Statement recognized the Energy Independence Act ("EIA") requirement that electric utilities "obtain all cost-effective conservation that is feasible," concluding, therefore, that "there is less of a need to provide an incentive to electric utilities."[32/] Nonetheless, in "a close call,"[33/] the Commission did articulate a policy regarding full decoupling mechanisms for electric utilities designed to minimize the risk of volatility "by class" of per customer usage.[34/] The Commission explained that, by reducing the risk of revenue volatility, a full decoupling mechanism could reduce the risk to companies and their investors, which "should benefit customers by reducing a

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[28/] Id. ¶ 12.
[29/] Id. ¶ 6 (emphasis added).
[30/] Id. ¶ 18, n. 33.
[31/] Id. ¶ 18, n. 34.
[32/] Id. ¶ 24.
[33/] Id. ¶ 27.
[34/] Id. ¶ 12.

company's debt and equity costs," flowing "through to ratepayers in the form of rates that would be lower than they otherwise would be, as the rates would be set to reflect the assumption of more risk by ratepayers."[35/]

40 Given the significance the Commission placed on debt and equity reductions to offset ratepayer risk assumption, the Policy Statement only makes provision for consideration of a full decoupling mechanism "[i]n the context of a general rate case."[36/] The Commission stated that one of the "minimum" elements for a full decoupling proposal, which "must be made in its *direct testimony*," is: "[e]vidence evaluating the impact of the proposal on risk to investors and ratepayers and its effect on the utility's ROE."[37/]

41 Minimum evidentiary requirements also included accounting for off-system sales and avoided costs through a direct testimony description of the intended method by which the company would net such benefits against "an annual true-up of revenue attributed to each affected class of customer."[38/] In all, the Commission articulated at least ten elements to which any full decoupling proposal should conform,[39/] including a reiteration that a reasonable decoupling "mechanism would balance conservation program achievements by class with the revenue recovery expected from that class."[40/]

42 Finally, it is clear from the Policy Statement that adoption of a full decoupling mechanism is a significant change to ratemaking that requires consideration of other

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[35/] Id. ¶ 27.
[36/] Id. ¶ 28.
[37/] Id. (emphasis added).
[38/] Id.
[39/] Id.
[40/] Id. ¶ 28, n. 46.

mechanisms, such as a K-factor, in the context of a GRC. This will ensure the proper consideration will be given to the near guarantee of revenues and the shift of risk to customers.

43 The Commission defines "lost margin" within the Policy Statement "as a reduction in revenue during a rate-effective period due to a reduction in usage, from the level of usage determined using a modified historic test year in a general rate case."[41/] Hence, the Commission's final clarification—that nothing in the Policy Statement would imply that an attrition adjustment protecting the company from lost margin would be precluded from consideration in a GRC—must be understood as meaning an attrition adjustment designed to protect the Company from revenue reductions arising from *usage reductions*. Attrition adjustments designed to protect a company from revenue reductions arising from capital infrastructure investments, for instance, were not the sort to which the Commission referred. Again the Commission stated that a "modified historic test year in a general rate case" should support margin adjustments for future consideration.[42/]

2. Order 08 From PSE's 2011 GRC

44 Among a host of other issues, Order 08 treats a few matters of seminal importance to the current proceedings: decoupling, attrition, cost of capital, and an expedited rate case proposal.

a. Decoupling

45 The Commission issued a bench request in the 2011 GRC directing Staff to provide "a discussion of the critical elements that a full decoupling proposal should contain, consistent with the Decoupling Policy Statement, including consideration of lost

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[41/] Id. ¶ 9.
[42/] Id.

sales revenues that are potentially offset by avoided costs and other benefits."[43/] PSE objected to this bench request.[44/] NWEC, on the other hand, filed testimony supporting implementation of a full decoupling mechanism for the Company.[45/]

46 The Commission noted that the NWEC proposal incorporated "many elements discussed in the" Policy Statement.[46/] PSE's opposition to full decoupling, however, led the Commission to abandon the NWEC proposal "regardless of the merit we *might* find on a close examination of its details."[47/] The Commission did not state that it *had* found ultimate merit in the NWEC proposal. In fact, the Commission was plainly asserting that it had *not* closely examined the details of the proposal. Moreover, to whatever extent the Commission did review the NWEC proposal, it noted several features that were inconsistent with the Policy Statement.[48/] Among these, the NWEC proposal explicitly advocated against an earnings test,[49/] one of four elements which were, "at a minimum," to be included within a decoupling proposal under the Policy Statement.[50/]

47 As to PSE's rejection of decoupling stance the Commission stated:

> 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.[51/]

[43/] Order 08 ¶ 440.
[44/] Id. ¶ 441.
[45/] Id. ¶ 449.
[46/] Id. ¶ 450.
[47/] Id. ¶ 456 (emphasis added).
[48/] Id. ¶ 450, n. 605.
[49/] Id.
[50/] Policy Statement ¶ 28.
[51/] Order 08 ¶ 454.

48 Similarly, the Commission asserted that decoupling "was never intended to supplant other tools that deal with demonstrated earnings attrition."[52/] The Commission then clarified the distinction between attrition and decoupling mechanisms stating: "[i]mplementation of decoupling to remove any financial disincentive to conservation in a fair and balanced manner was the motivation behind our Policy Statement."[53/]

49 The Settling Parties have overstated the Commission's views regarding NWEC's decoupling proposal in 2011. The Commission stated it "might" find merit if it had closely examined NWEC's proposal, but the proposed was not adopted as a replacement of the Policy Statement itself. In fact, the language relied upon so heavily by the Settling Parties is nothing more than dictum.

b. Attrition

50 An entire section of Order 08 is devoted to the issue of "Attrition,"[54/] which, as the Commission noted, "is often loosely applied to any situation in which a rate-regulated business fails to achieve its allowed earnings."[55/] To this end, the Commission observed that, in the 2011 GRC, Staff and PSE cited "ongoing costs associated with infrastructure additions, replacements and additions as an example" of "attrition in allowed earnings."[56/]

51 While PSE did not expressly request an attrition adjustment in the 2011 GRC, the Commission noted that "an attrition adjustment is one among several possible responses the Commission could make to address a demonstrated trend of under earning due to

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[52/] Id. ¶ 455.
[53/] Id.
[54/] Id. ¶¶ 483–91.
[55/] Id. ¶ 484, n. 658.
[56/] Id. ¶ 486.

circumstances beyond the Company's ability to control."[57/] The WUTC concluded an attrition adjustment could be made to address a "demonstrated" trend of underearning, thereby indicating a definite and deliberate evidentiary requirement. The Commission also stated that an attrition adjustment could be an appropriate response to address circumstances beyond the Company's control, eliminating such a mechanism as a possible response to situations in which poor company management led to underearning.

52 The Commission went on to state that an attrition adjustment might be available to address alleged "challenges posed by PSE's current intensive capital investment program to replace aging infrastructure," but only if an attrition adjustment was "shown to be a needed response."[58/] Several other potential attrition remedies were also listed; however, the Commission expressed reluctance to prescribe abstract remedies because regulatory literature provided little detailed guidance concerning the calculation or implementation of attrition remedies and comprehensive analyses of real-world application was also lacking.[59/]

53 Consequently, the Commission emphasized its willingness to fairly consider "*specific* proposals supported by *adequate evidence* showing them to be *appropriate responses* to PSE's economic and financial circumstances, including, *if demonstrated*, underearnings due to attrition."[60/] The emphasized words in that statement convey the deliberate, high evidentiary standard set by the Commission to even "consider" an attrition adjustment proposal, never mind approve of one without a study or projection of underearnings due to unusual capital expenditures in the future.

[57/] Id. ¶ 489.
[58/] Id.
[59/] Id. ¶ 491.
[60/] Id. (emphasis added).

c. Expedited Rate Case Proposal

54 Order 08 also discusses Staff's proposal for an expedited rate case.[61/] The Commission made no specific determination, but acknowledged "the outline of a proposed process" which Staff presented "to help address . . . PSE's current position in a cycle of capital investment . . . to maintain and replace significant amounts of aging infrastructure."[62/] Staff's proposal envisioned the filing of an ERF "[i]mmediately following the determination of a fully contested rate case," not a year subsequent, and which would function as "a form of decoupling since rates will be adjusted in a timely manner . . . "[63/] rather than being filed along with a separate, duplicative decoupling mechanism. The Commission envisioned "a broader discussion with other interested participants in the regulatory process," in which Staff, PSE, *and* these other stakeholders could "bring forward for consideration specific proposals that may satisfy a range of both common and diverse interests."[64/]

55 All of the Commission's encouragement of thoughtful solutions follow naturally from the ideas presented in its alternative scenario. Proposals of particular interest to the WUTC, which "might break the current pattern of almost continuous rate cases," which would *not* continue to weary ratepayers by instituting increase after increase, and which would "serve the public interest" would almost certainly require the "thoughtful" input of ratepayer representatives. In sum, the Commission expressed particular interest in expedited rate case proposals culminating from broad discussions including more than just Staff and PSE representatives at the table, proposals capable of satisfying a true

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[61/] Id. ¶¶ 492–507.
[62/] Id. ¶ 506.
[63/] UE-111048, Elgin, Exh. No. KLE-1T at 81:4–18.
[64/] Order 08 ¶ 507.

range of interests and thereby offering real promise for the implementation of sustainable, long-term solutions to the perpetual rate case rate increase cycle. The proposal before the Commission falls painfully short.

III. ARGUMENT

A. Adoption of the Global Settlement Would Violate the Washington APA and the Commission's Rules

56 PSE and Staff ignore the Washington Administrative Procedure Act ("APA") and Commission rules in requesting that the Commission accept their "Global Settlement" of these dockets and substitute terms of the Global Settlement for the Commission's determinations in Final Order 03 in UE-121373.

57 The APA protects due process rights by requiring that "the agency record constitutes the exclusive basis for agency action in adjudicative proceedings . . . . "[65/] Commission orders must contain statements of findings and conclusions on "all material issues of fact, law, or discretion presented on the record . . . [and] findings of fact shall be based exclusively on the evidence of record in the adjudicative proceeding . . . ."[66/] The existence of a record in these unconsolidated dockets may not serve as the basis for decisions in a different docket, and the record and decision in a different docket such as UE-121373, the Centralia Docket, may not serve as the basis for an order in these dockets. Rather, the requirement that findings must "be based exclusively on the evidence of record in the adjudicative proceeding" clarifies that the record relied upon must be that of each specific adjudicative proceeding. The Settlement proposes that in return for approval of these dockets, "concessions" will be made in UE-121373. This is

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[65/] RCW § 34.05.476(3).
[66/] Id. § 34.05.461(4).

an admission that the evidence in these dockets cannot justify the proposed rates – additional evidence from another, unconsolidated docket is required. Therefore, adopting the Settlement would violate Washington law.

58 PSE and Staff appear to acknowledge that the Washington APA's due process protections stand as a legal bar to their inter-docket horse-trading. Counsel for Staff attempted to have the hearing in this proceeding re-noticed so as to include Docket UE-121373 on one day's notice, which would have been a violation of WAC § 480-07-440.[67/] PSE, on the other hand, posits that all that is necessary to bypass the protections of the APA is a "hearing on the settlement."[68/] PSE would sweep aside the APA and the Commission's rules and all due process protections on the basis that a deal was made between PSE and Staff to the ERF and Decoupling proposals as filed in return for PSE dropping its claim that the Commission was not generous enough with the Company when it approved the Centralia Power Purchase Agreement ("PPA"). PSE's counsel elaborates, stating that the APA would be satisfied if there were a "joint evidentiary hearing looking at all --all the records together."[69/] While this simply is a misstatement of Washington law, as described above, it also misses the fact that there has been, in fact, no joint evidentiary hearing that included Docket No. UE-121373, as the Bench made exceedingly clear at the hearing.[70/]

[67/] WAC § 480-07-440(1); compare Letter of AAG Sally Brown to ALJ Moss dated May 15, 2013. Staff's request also appears to ignore the fact that Commission rules provide for specific procedures to be followed when a party petitions for reconsideration. ICNU addresses this issue in Docket No. UE-121373.

[68/] Hearing Tr. at p. 121 ll. 23-25.

[69/] Id. p. 123 ll. 4-6.

[70/] Id. p. 100 ll. 6-13.

59 In what appears to be an ambitious effort to expand the records in these dockets, Staff and PSE have filed voluminous materials from the ERF and Decoupling dockets in UE-121373. In fact, at one point, PSE even filed a bench request in a response pertaining to its decoupling proposal in the Trans Alta Centralia PPA docket, stating "Attached please find PSE's Responses to Bench Request Nos. 1 and 2 in Docket Nos. UE-121373, UE-121697 & UG-121705 (consolidated) . . . ." This is ironic, as a careful review of Bench Requests One and Two in Docket No. 121373 reveals no requests pertaining to decoupling rates.[71/] The law and the Commission's rules do not permit such sidestepping of the due process or conflating of Commission records.[72/] The Commission's rules state that the Commission issues a final order "within ninety days after the commission receives transcripts following the close of the record…."[73/] This means that unless the Commission has otherwise assented to leave a record open, the record is closed by the time the Commission receives transcripts. This is consistent with Washington law that states that the record includes "[e]vidence received or considered," in the past tense.[74/] Filing extraneous papers in a resolved docket in which a final order has been issued does not expand an agency record, nor does it make it proper for the Commission to consider evidence that is not part of the currently closed record when issuing an order.

60 No party timely filed for a stay of the order in Docket No. UE-121373. PSE's Petition for Reconsideration pending in that docket contains three discrete claims that the

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71/ In Docket UE-121373, Bench Request 1 requested employment levels at the Centralia generation plant while Bench Request 2 requested historical generation data from the same location.

72/ ICNU understands that the Commission's joint proceedings, noticed for Docket Nos. 121697 and 121705 (consolidated) and Docket Nos. 131037 and 131038 (consolidated) create parallel, yet separate, records for the present four dockets. See Hearing Tr., at 115:18-20.

73/ WAC § 480-07-820(3).

74/ RCW § 34.05.476(2)(d).

Commission has committed errors of law, but no other issues in that docket are before the Commission. The Settlement and the evidence presented to "support" it are not part of the record in Docket UE-121373, and the record in the Centralia docket may not be relied upon to decide the ERF or Decoupling dockets. Adoption of the Settlement would require the Commission to decide whether it committed an error of law in Docket No. UE-121373, as well as the entire outcome of the current Dockets, on evidence not within each respective docket's record, and would, therefore, violate Washington law and longstanding principles of due process.

B. Commission Rules Requires a General Rate Case in These Proceedings

61 WAC § 480-07-505(1)(b) defines a general rate proceeding as a filing by a regulated utility for an increase in rates in which "[t]ariffs would be restructured such that the gross revenue provided by any customer class would increase by three percent or more." These proceedings fit the definition of a GRC.

62 The interdependence between the ERF and Decoupling dockets qualifies these filings as a GRC – particularly given that Staff and PSE wish to resolve them in a single settlement. PSE has deliberately designed the decoupling mechanism to be dependent upon the ERF—i.e., the baseline for Decoupling ADRPC is determined by the ERF.[75/] In fact, the Commission has repeatedly acknowledged that the ERF and Decoupling dockets are "interrelated," and share a common procedural schedule.[76/] The ERF, as a consequence of this deliberate interrelation, will result in the restructuring of PSE's tariffs such that cumulative revenue will exceed a 3% increase.

[75/] Decoupling, Piliaris, Exh. No. JAP-8T at 6:22–25.
[76/] Order 04 ¶ 5; Order 05 ¶ 5.

63 In this regard, the situation mirrors one in which PacifiCorp filed a 2.99% rate increase, claiming it was not a GRC filing.[77/] The Commission found it could not determine whether the 2.99% increase would result in fair, just, reasonable, and sufficient rates without also considering the record and filings from additional dockets.[78/] This was because PacifiCorp was relying on evidence admitted in those other dockets,[79/] including facts and issues of law which were "substantially similar."[80/] Accordingly, the Commission consolidated all of the dockets.[81/]

64 Likewise, the Commission cannot presently determine whether decoupling rates would be fair, just, and reasonable without also considering the ERF record. In other words, even if the ERF, standing alone, does not qualify as a GRC filing, the ERF *cannot* be reviewed in isolation—it is a package deal with the Decoupling mechanism. Thus, the ERF is a GRC filing because it must be considered along with the Amended Petition, unavoidably resulting in a cumulative requested rate increase which exceeds 3%.

65 Finally, the Settlement provides that if the annual increases exceed 3%, then these costs are deferred and collected at a later date with interest. This is simply a case in which the parties are trying to get around the rule rather than abide by it. The Commission cannot approve this scheme without violating its rules; the increase occurred in the rate year, it is merely collected with interest later. Thus, the Settlement cannot be approved because by its terms, it authorizes a rate increase of 3% or more, which can only properly occur in the context of a GRC.

77/ WUTC v. PacifiCorp, Docket No. UE-050684 et at., Order No. 01 ¶¶ 1–2 (June 28, 2006).
78/ Id. ¶ 5.
79/ Id. ¶ 4.
80/ Id. ¶ 6.
81/ Id. ¶ 5.

C. PSE Has Not Met its Burdens of Proof and Persuasion in Supporting All of Its Requested Proposals

66 PSE bears the burden of proof to demonstrate that its proposed tariffs are just and reasonable.[82/] This burden includes the burden of going forward with evidence and the burden of persuasion.[83/] The Company retains this burden throughout the proceeding and must establish that any rate increase is just and reasonable.[84/] ICNU submits that PSE has failed to meet its burdens concerning approval of the Settlement, or in regard to the ERF or Decoupling proposals, taken individually.

67 Despite the obvious Commission precedent regarding the Company's burden, PSE has engaged in a transparent attempt in rebuttal testimony to shift all burdens to any party opposing the Settlement. This is perhaps nowhere more apparent than in the testimony of the Company's Chief Financial Officer ("CFO") Daniel Doyle, which is primarily making the argument that the Commission *cannot* look at equity, return, capital, or debt matters. Rather than actually confronting these issues, Mr. Doyle and other witnesses turn precedent on its head to assert that ICNU and other parties have not satisfied evidentiary burdens of proof and persuasion.[85/] While Mr. Doyle testified that he was too busy with board meetings to prepare a cost of capital update in response to Mr. Gorman, PSE would have been better served by attempting to rebut Mr. Gorman rather than trying to unilaterally declare what is or is not properly considered in this proceeding.[86/]

82/ RCW § 80.04.130(4).

83/ WUTC v. PacifiCorp, Docket Nos. UE-991832 and UE-020417, 2nd Suppl. Order ¶ 9 (Aug. 21, 2002); WUTC v. Inland Tel. Co., Docket No. UT-050606, Order 09 at n. 11 (Nov. 30, 2006).

84/ WUTC v. Pacific Power & Light Co., Cause No. U-84-65, Fourth Suppl. Order at 28 (Aug. 2, 1985).

85/ E.g., Multiparty Settlement, Doyle, Exh. No. DAD-1T at 2:11–14; 2:18–21; 3:19–22; 4:4–7; 4:20–23; 5:9–11; 6:16–19; 9:8–10; 9:15–18; 10:7–9; 11:14–16; 12:5–8; Piliaris, Exh. No. JAP-24T at 3:15–17; 5:11–14; Decoupling, Cavanagh, Exh. No. RCC-4T at 5:14–15.

86/ Hearing Tr. at 254:14-16.

68 ICNU and other challenging parties have presented more than enough positive proof to also justify rejection of each proposal, and the Settlement in its entirety.

D. PSE Has Failed to Prove that the Settlement Will Result in Rates that Are Fair, Just and Reasonable

a. The Company Has Not Proven Each Individual Element of the Settlement Is Supported by Sufficient Evidence

69 In its recent determination in the Final Order to Avista's consolidated 2011 GRC and 2012 tariff revision cases (the "Avista GRC"), the Commission stated it "will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the Commission."[87/] Further, the Commission expressly "considers *the individual components* of the settlement under a three-part inquiry."[88/] Specifically, the Commission will consider whether: 1) any aspect of a settlement is contrary to law; 2) any aspect of a settlement offends public policy; and 3) "the evidence supports the proposed *elements of the settlement* as a reasonable resolution of the issues at hand."[89/]

70 Understanding all facets of the WUTC standard is crucial because PSE is essentially asking the Commission to treat an unsupported Settlement. According to the Company: "The scope of this proceeding is to consider whether a proposed global settlement of five dockets is consistent with the public interest, and the determination of

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87/ WUTC v. Avista Corp., Docket Nos. UE-120436, UG-120437 (Consolidated), UE-110876 and UG-110877 (Consolidated). Order 09/14 ¶ 24 (December 26, 2012) ("Order 09/14").

88/ Id. ¶ 25 (emphasis added).

89/ Id. (emphasis added).

the cost of capital, including the authorized return on equity for PSE, is outside the scope of this proceeding."[90/] Such a "bottom-line only" rubric is contrary to Commission rules.

71 First, the Company refers to the current proceedings as "this proceeding," singular, even though the Commission has deliberately *not* consolidated the ERF and Decoupling dockets (and the quote above is far from an isolated use of "this proceeding," obviating any contention that this was an inadvertent reference).[91/] But PSE cannot have it both ways. If this is a single proceeding, WAC § 480-07-505(1)(b) would require that "this proceeding" be treated as a GRC, since the "single" rate increase request would exceed 3%.[92/] And, to be sure, PSE explicitly refers to its Settlement as comprising one single "rate increase."[93/] Most definitely, then, "determination of the cost of capital, including the authorized return on equity for PSE,"[94/] would be within the scope of "this proceeding."

72 Second, the Company flouts the WUTC standard on settlement review in stating that capital, return, equity, and debt issues are outside the scope of "this proceeding."[95/] Even if the Commission had consolidated all dockets included under the Settlement, the WUTC must still consider "the individual components of the settlement."[96/] Therefore, the Policy Statement would again direct a consideration of ROE effect and ROR impact alongside the Company's Decoupling request, since it is an "individual component" of the settlement.

[90/] Multiparty Settlement, Doyle, Exh. No. DAD-1T at 6:2–5.
[91/] E.g., id. at 2:5; 2:7; 2:9; 2:16; 3:19; 5:4; 5:12; 6:1; 7:18; 9:6; 9:15; 10:2; 10:7–8; 12:11.
[92/] Multiparty Settlement, Schooley, Exh. No. TES-1T at 4:19–21.
[93/] Multiparty Settlement, Johnson, Exh. No. KSJ-1T at 13:12.
[94/] Id., Doyle, Exh. No. DAD-1T at 6:4–5.
[95/] E.g., Multiparty Settlement, Doyle, Exh. No. DAD-1T at 2:8–9; 6:4–7; 9:5–6; 12:9–11.
[96/] Order 09/14 ¶ 25.

73 These same arguments can be applied to the ERF dockets in order to determine if ERF rate increases would be fair, just and reasonable. In all events, the Settlement should not be approved because the Company has not provided sufficient evidence to carry its burdens of proof and persuasion regarding appropriate capital, debt and return levels in light of *all* the rate increases proposed. Finally, the Settlement is contrary to the law, as discussed above.

b. The Company's Improper Demand for Final Order Modification of the Centralia Docket as a Settlement Condition Justifies Rejection of the Entire Settlement

74 The Global Settlement should also be rejected because it is being presented as an all-or-nothing venture by the Company.[97/] PSE witness Mr. Johnson stated that the Company would consider conditions to the Settlement, but made clear that the Company would accept no conditions impairing the major components of the package deal.[98/]

75 Perhaps the most glaring infirmity in presenting the Settlement "as a whole package" is the Company's thinly veiled effort to strong-arm the Commission into modifying its Final Order in the Coal Transition PPA case.[99/] PSE warns, in a tone and approach more appropriate for a Godfather film: "One unfortunate consequence of the failure of the Multiparty Settlement would be PSE's rejection of the Coal Transition PPA at issue in Docket UE-121373."[100/] All veneer of gentility aside, PSE is playing a high stakes game with the Commission. The Company details all the claimed benefits of the Coal Transition PPA,[101/] but only after dictating to the Commission terms of

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97/ Multiparty Settlement, Johnson, Exh. No. KSJ-1T at 11:3–12:19.
98/ Hearing Tr. at 127:3-6 (Johnson) ("I – I think we have made it clear that there – that the conditions in the final order, barring resolution as they are proposed in the global settlement, would prevent the company from executing the Power Purchase Agreement").
99/ Multiparty Settlement, Johnson, Exh. No. KSJ-1T at 11:17-12:4.
100/ Id. at 12:2–4.
101/ Id. at 3:8–19.

unconditional Settlement approval: "Once it is approved, PSE will finalize a long-term power purchase agreement . . . ."[102/]

76 Here is the problem with PSE's tactic: Order 03 is a Final Order in Docket No. UE-121373 and it cannot be legally modified through the backdoor, that is, via a settlement proposal coming after the Order. The WUTC rule on Final Orders provides that they "dispose of the merits of a proceeding" and " resolve contested issues on the basis of the official record in a proceeding."[103/] The Company is attempting to alter the disposition of Order 03 in the Coal Transition PPA case, but not on the merits of *that* proceeding. Instead, PSE requests alteration of Order 03 on the "merits" of what the Commission (or the public) supposedly stands to gain by meeting Company demands: "In the absence of a long-term power purchase agreement between TransAlta and PSE, it is highly unlikely any of these transition benefits will accrue to Washington State or Lewis County."[104/]

77 But the Commission would run afoul of its own rules by yielding to PSE's ultimatum. The contested issues of the Coal Transition PPA case would be "re-resolved," not on the basis of the official record in UE-121373, but as a result of leveraging. Such a result would delegitimize the entire process in UE-121373. The Settlement explicitly demonstrates that PSE is not simply asking the Commission to reconsider the merits of Order 03 and find in PSE's favor; this is a classic horse-trade: "In exchange for (1) and (2) above," meaning Commission approval of revisions to Order

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[102/] Id. at 3:8–9.
[103/] WAC § 480-07-820(1)(b).
[104/] Multiparty Settlement, Johnson, Exh. No. KSJ-1T at 3:19–21.

03, "and upon approval of the amended decoupling petition and ERF and the other terms set forth in this Agreement, PSE agrees to withdraw its request for reconsideration of the equity component of the Coal Transition PPA and will agree to the $1.49 equity component as set forth in" Order 03.[105/]

78 Even if the Commission found it politically expedient to accept PSE's terms, when ruling upon the Settlement the WUTC must still "consider[] the individual components of the settlement" and determine that "evidence supports the proposed elements of the settlement as a reasonable resolution of the issues at hand."[106/] In other words, evidence must support modification of Order 03 in its own right, as an individual component and element of the Settlement, and not merely because it forms the tidy half to a *quid pro quo* with the Company.

79 The Commission standard on Final Order reconsideration is: "A petition for reconsideration must demonstrate errors of law, or of facts not reasonably available to the petitioner at the time of entry of an order."[107/] Moreover, "reconsideration is not a second opportunity to litigate issues which were fully developed prior to entry of the final order and which were discussed and decided in the final order."[108/] Hence, Settlement approval would have to accompany specific findings by the Commission to the effect that it legally erred or lacked factual evidence previously unavailable to PSE—and either of which would have to be dispositive to a reversal of the ultimate dispositions contested in Order

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[105/] Multiparty Settlement ¶ 19.
[106/] Order 09/14 ¶ 25.
[107/] WUTC v. Olympic Pipeline Co., Docket No. TO-011472, Eight Suppl. Order ¶ 38 (Mar. 29, 2002) (quoting WUTC v. Avista, Docket Nos. UE-991255, UE-991262, and UE-991409, Fourth Suppl. Order (Apr. 21, 2000)).
[108/] Id.

03. In addition, the Settlement imposes additional conditions in the Centralia Order, all of which are harmful to customers.[109/]

E. The ERF Should Be Rejected or Modified by Significant Adjustments

80 The Commission should reject the ERF proposal because it is inappropriate for PSE to seek such an unprecedented rate increase given the Company's recent earnings improvement and the continuing economic difficulties faced by ratepayers.[110/] As Mr. Gorman has demonstrated, PSE's 2012 earnings were very strong, which apparently recorded a 10.75% return on equity ("ROE")—a full 95 basis points above the Company's 9.80% award in the 2011 GRC.[111/] Additionally, there are numerous flaws, errors, and methodology issues that warrant rejection of the current proposal.

81 Under Settlement terms, the Company would not file another GRC until at least April 1, 2015, including a waiver of its obligation to file a GRC within three months of an effective PCORC rate increase.[112/] This GRC "stay out period," however, would still allow for a bevy of other rate increases, including deferrals, tariff riders and trackers, PCORCs[113/]—all in addition to annual decoupling and associated rate plan increases. The end result of this arrangement will be a sharp lack of transparency in assessing PSE's earned ROE and cost of service, meaning the Commission and ratepayers alike will be unable to accurately determine whether the Company's revenue recovery during the four years will be fair and reasonable.

[109/] Multiparty Settlement ¶¶ 3, 16, and 18.
[110/] In addition, the ERF is illegal for the reasons stated above, i.e. violates WAC § 480-100-257.
[111/] Gorman, Exh. No. MPG-1T at 3:18–4:4.
[112/] Multiparty Settlement ¶¶ 2, 3.
[113/] Id. ¶ 13.

a. Use of End of Period Rate Base Is in Violation of WAC § 480-100-257

82 Mr. Deen points out the Company has calculated ERF revenue deficiency using EOP rate base amounts instead of the Commission standard AMA rate base.[114/] The Company's EOP approach results in a $32.2 million revenue deficiency calculation, even though PSE calculates that using a standard AMA rate base results in a deficiency calculation of only $18.6 million.[115/] In fact, Mr. Deen states that had PSE simply followed common practice in using a standard 2012 test year, there may be have been no revenue deficiency to report.[116/]

83 The EOP approach is also prohibited by Commission rule which provides that a CBR must contain:

> "all the necessary adjustments as accepted by the commission in the utility's most recent general rate case or subsequent orders . . . [and] should not include adjustments that annualize price, wage, or other cost changes during a reporting period, nor new theories or approaches that have not been previously addressed and resolved by the commission.[117/]

It is undisputed that the Commission has always used AMA ratebase, including during PSE's last GRC. EOP is a new theory for electric regulation; and, neither Staff nor PSE have provided any example of the Commission accepting or approving EOP rate base for an electric utility. Instead, PSE relies on a thirty-year old case in which a gas pipeline received EOP under extraordinary inflationary pressures, and a more recent case in which an oil pipeline that suffered a crippling, catastrophic explosion, had a 0% equity ratio,

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[114/] Deen, Exh. No. MCD-1T at 11:15–17.
[115/] Id. at 12:14–16.
[116/] Id. at 4:17–19.
[117/] Id. at 4:14–16.

and was granted EOP as an emergency provision.[118/] In no other known case has the Commission accepted EOP rate base. In this case, the hybrid test year created by the EOP method allows the Company to avoid reporting drastically improved results of operations in the latter half of 2012.[119/] The Company's attempt to deflect this criticism on rebuttal is unpersuasive. While it may or may not be true that PSE's latest CBR "demonstrates that the Company continues to earn below its authorized return on equity,"[120/] the Company neglects to acknowledge that the same CBR shows much stronger earning than in prior years.[121/]

84 According to PSE, using the EOP instead of the AMA method would help alleviate the Company's "significant" regulatory lag.[122/] The Company justifies the switch by claiming that the WUTC supports EOP use, quoting from paragraph 491 of Order 08 to allege the Commission's openness to such a transition.[123/] This is a misrepresentation. PSE is quoting from a section of Order 08 specifically addressing attrition, not from the separate section which dealt with the concept of an expedited rate case mechanism.

85 The WUTC only offered to consider "*specific* proposals supported by *adequate evidence* showing them to be an *appropriate response* to PSE's economic and financial circumstances, including, *if demonstrated*, under earnings due to attrition."[124/] Any implication, therefore, that the Commission "supported" EOP rate base calculations in an

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[118/] WUTC v. Olympic Pipeline Co., Docket No. TO 011472, Twentieth Supp. Order at 5-6, 44 (Sept. 27, 2002); WUTC v. Wash. Nat. Gas Co., Cause No. U-80-111, Third Supp. Order (Sept. 24, 1981).
[119/] WAC § 480-100-257(2)(3).
[120/] Multiparty Settlement, Barnard, Exh. No. KJB-11T at 12:25–13:1.
[121/] Gorman, Exh. No. MPG-1T at 3:18-4:4.
[122/] ERF, Barnard, Exh. No. KJB-1T at 16:18–17:3.
[123/] Id. at 17:5–8.
[124/] Order 08 ¶ 491 (emphasis added).

untested ERF process, and to address attrition claims, cannot be supported by Order 08's text.

86 In any event, the Company's EOP switch is not supported by "adequate evidence" showing that such methodology—which increases revenue deficiency calculations by more than $13 million—is an "appropriate response" to "demonstrated" earnings attrition. A scant nine lines of direct testimony,[125/] absent any evidentiary citations or exhibit references, do not come close to meeting PSE's burden of proof or persuasion in jettisoning standard AMA for an EOP methodology. If the ERF is accepted, as a starting point, the Commission should enforce Washington rules and apply AMA, which will reduce the revenue deficiency by $13.2 million, using Mr. Gorman's recommended ROR, in addition to the other adjustments identified below.

b. PSE's Hybrid Test Year Violates the Matching Principle

87 In addition to an unjustified, inflated revenue deficiency calculation caused by the EOP method, PSE's specific creation of a hybrid test year period breaks from traditional, cost-based rate principles, and with equal lack of justification. As Mr. Deen testifies, the Company is attempting to match 2011/2012 test year costs under the ERF with assumptions culled from 2010 (the 2011 GRC test year), thereby violating the fundamental matching principle of Commission ratemaking—i.e., that an accurate rate relationship is created by matching contemporaneous test year costs and revenues.[126/]

88 The Company testifies that the basis for the ERF is "regulatory lag," contending that "PSE's rates are stale by the time they are implemented," particularly "during times

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[125/] ERF, Barnard, Exh. No. KJB-1T at 16:20–17:4, 17:6–8.
[126/] Deen, Exh. No. MCD-1T at 3:10–13.

when PSE's investment in replacement infrastructure is growing."[127/] The "evidence" of such regulatory lag—and, apparently, justification for the Company's non-matching ratemaking approach as well—is that Staff proposed an expedited filing methodology during the 2011 GRC "to address some of the regulatory lag inherent in Washington's historical ratemaking approach."[128/] That is it. There is no attrition study supporting the ERF by PSE or Staff. Indeed, even on rebuttal, the Company points only to a one-page CBR comparison sheet from Staff,[129/] and this same threadbare "evidence" from direct testimony, as an alleged demonstration of PSE's inability to earn its authorized ROR. In any event, there is no justification for matching alleged attrition, stated in the 2011 GRC, with ERF rates that would go into effect in 2013 based on a hybrid test year.

c. The ERF Proposal Necessitates Return on Equity and Capital Adjustments

89 As Mr. Gorman testifies, the rate increase requested in the ERF is not warranted given PSE's strong 2012 earnings,[130/] all the more apparent given the results of the Company's recent CBR.[131/]

i. Adjustments to Reflect PSE's Actual Capital Structure

90 The Company has based the ERF revenue requirement on the capital structure approved in the 2011 GRC. But, as Mr. Gorman explains, the Company's actual common equity ratio over the past two years has been about 46%, while the hypothetical ratio set in Order 08 was 48%.[132/] The Commission also expressly addressed this contingency event when the capital structure was approved: "[w]hat the Company

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[127/] ERF, Barnard, Exh. No. KJB-1T at 2:4–8.
[128/] Id. at 2:8–12.
[129/] Multiparty Settlement, Exh. No. KJB-11T at 12:9-12. Mr. Schooley admits the CBRs are unaudited. Tr. at 277:19-21.
[130/] Gorman, Exh. No. MPG-1T at 4:1–4.
[131/] Gorman, Exh. No. MPG-23T at 1:16–2:22.
[132/] Gorman, Exh. No. MPG-1T at 7:4–6, Table 3.

proposes here is the most likely actual capital structure during the rate year. *Should this turn out not to be true*, a contrary result may be taken into account when the Commission evaluates evidence presented in PSE's next general rate case."[133/] While the Commission explicitly anticipated a reevaluation of PSE's capital structure in the Company's "next GRC," a reevaluation in response to the ERF is also appropriate.

91 In order to reflect the Company's actual capital structure, ICNU originally proposed that PSE's common equity ratio be set at 46.64%, with accompanying changes to short- and long-term debt, 1.65% and 51.71%, respectively, set to also reflect actual capital as of December 31, 2012.[134/] The actual common equity ratio proposed by ICNU was very close to the 46.7% ratio derived by the Company from CBRs filed before April 2013, once a $255.8 million equity overstatement in the Company's financial exhibits was corrected.[135/] In light of the significantly stronger earnings manifested in the Company's latest CBR, however, recently filed on April 30, 2013, Mr. Gorman has recommended a new common equity ratio of 46.14%, in conjunction with short-term debt cost of 2.68%.[136/]

ii. Actual Cost of Debt Adjustment

92 A rate approved under the ERF would be in effect for several years. The Company's ROR of 7.80%, however, is based upon a number of debt issuances which are set to mature and be refinanced at a lower market cost of debt *before* PSE plans to file another GRC.[137/] Consequently, ICNU recommends that the WUTC should, at a minimum, ask the Company to document its intended course of action concerning these

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[133/] Order 08 ¶ 55 (emphasis added).
[134/] Gorman, Exh. No. MPG-1T at 8:6–10:6, MPG-5, MPG-6, MPG-7.
[135/] Gorman, Exh. No. MPG-1T at 9:3–25.
[136/] Gorman, Exh. No. MPG-23T at 2:7–9, 3:1-17.
[137/] Gorman, Exh. No. MPG-1T at 11:1–13.

maturing debt issuances, as well as update its costs of long- and short-term debt. Neither Staff nor PSE chose to develop a cost of capital strategy in response, instead claiming that cost of capital is "beyond the scope" of these proceedings. Mr. Gorman's testimony regarding declining debt costs remains largely unrefuted and his cost-of-capital study is completely unrefuted.

iii. The Company's ROE Should Be Lowered Reflecting Current Market Costs

93 As Mr. Gorman demonstrates, market costs of capital have declined since the 2011 GRC, when the Commission approved a 9.80% ROE for the Company.[138/] For instance, current "A" rated utility bond yields are about 25 basis points lower than during the 2011 GRC, while "Baa" rated bond yields have decreased over 40 basis points.[139/]

94 Such significant declines indicate that PSE's current capital cost is much lower now. To this end, Mr. Gorman estimates a present market return on equity of 9.30%[140/] This estimate is based upon comprehensive and varied analyses, using a proxy group of electric utilities comparable in risk with PSE in order to derive discounted cash flow, capital asset pricing model, and risk premium market return studies, all based on up-to-date market conditions.[141/] If the ERF is to be approved at all, ICNU recommends the Commission set PSE's ROE at 9.30% to reflect present market conditions.

iv. Overall ROR Adjustment

95 Before the April 2013 CBR was filed, Mr. Gorman proposed that PSE's capital structure and ROE should be adjusted to reflect present financial and market conditions, resulting in a 46.7% common equity ratio and a 9.30% ROE. In turn, these adjustments

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[138/] Id. at 12:1–13, MPG-20.
[139/] Gorman, Exh. No. MPG-1T at 12:8–10, Table 5.
[140/] Id. at 13:3, 14:1–2, Table 6.
[141/] Id. at 13:4–20, MPG-3.

would reduce the Company's approved ROR from 7.80% to 7.60%, thereby decreasing PSE's alleged electric revenue requirement by approximately $11.0 million.[142/] After reviewing the Company's latest CBR, Mr. Gorman recommends further adjustment to PSE's common equity ratio to a level of 46.14%, resulting in a slightly lower ROR of 7.59%. This equity ratio should be adopted if the ERF is accepted.

d. Additional Revenue Deficiency Corrections

96 Several other revenue deficiency calculation adjustments are warranted if the ERF is approved, independent of the Commission's ultimate determination regarding the EOP rate base and cost of capital. These include: 1) a $2.60 million pension expense adjustment; 2) a $6.5 incentive compensation adjustment; and 3) a $3.45 million effective tax rate adjustment.[143/]

i. Pension Expense Adjustment

97 The Company's pension expense determination is unreasonably overstated and is not indicative of current contribution levels. PSE bases its calculations on an average of the actual cash contributions for 2009 through 2012, which comes out to $17.8 million.[144/] But this four year average is unreasonably high, owing to significantly large contribution levels in 2009 and 2010; in fact, PSE's average expense calculation is over 50% higher than the present contribution level.[145/] The Company offers no explanation in direct testimony to carry its burden of proof and persuasion in reaching back for a four-year average. In the absence of such justification, ICNU recommends that current 2012 contributions be used, as that is most likely to match rate year costs, thereby reducing the

[142/] Gorman, Exh. No. MPG-1T at 5:10-68, MPG-4.
[143/] Gorman, Exh. No. MPG-1T at 5:6–9, Table 2.
[144/] ERF, Barnard, Exh. No. KJB-1T at 25:3–10.
[145/] Gorman, Exh. No. MPG-1T at 14:8–14.

electric and natural gas revenue requirement by $2.6 and $1.3 million, respectively.[146] PSE's treatment of pension expenses shows the inconsistency in its approach to the test year and known and measurable changes.

ii. Incentive Compensation Adjustment

98 ICNU also recommends that incentive compensation be fully removed from the revenue requirement. PSE has included a four-year average expense (from 2009-2012) in its deficiency calculation for incentive compensation payouts.[147] As an initial matter, including such expense within the ERF is improper because there is good cause to believe that it will not be a known and continuing expense; that is, PSE fails to affirmatively establish such certainty in direct testimony now, as well as in the 2011 GRC.

99 Moreover, this uncertainty is compounded by the Company's own stated purpose for seeking a rate increase through the ERF—to address alleged underearning manifest in "regulatory lag," particularly "when PSE's investment in replacement infrastructure is growing."[148] Incentive compensation payouts in 2012 reached the highest level experienced over a period dating back to 2008.[149] Ramping up ratepayer-funded employee incentives in this manner, all while complaining of "stale" rates,[150] is unreasonable and logically inconsistent. Again, this has nothing to do with regulatory lag and further highlights PSE's pick-and-choose methodology of updating select expenses.

100 In broader terms, ICNU urges the Commission to reevaluate PSE's scheme of basing incentive compensation on financial goals. As Mr. Gorman testifies, such an arrangement inherently creates scenarios in which management will be led to boost

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[146] Id. at 15:5–10.
[147] ERF, Barnard, Exh. No. KJB-1T at 24:1–15.
[148] Id. at 2:4–8.
[149] Gorman, Exh. No. MPG-1T at 16:5–7.
[150] ERF, Barnard, Exh. No. KJB-1T at 2:6.

company profits at the expense of customer service, motivated by the prospect of personal gain through these incentives in conjunction with a fiduciary duty toward shareholders to maximize returns.[151/] ICNU requests that the Commission disallow incentive compensation payout expense from the Company's revenue requirement, resulting in a $6.5 million reduction for electric and $3.3 million for gas.[152/] Alternatively, a more conservative 50% reduction would reduce PSE's alleged revenue deficiency by $3.24 million.[153/]

iii. Effective Tax Rate Adjustment

101 PSE is using a higher effective tax rate in calculating cost of service than it applies to its net operating income, or 36% opposed to 35%, respectively.[154/] The Company offers no explanation in direct testimony for this discrepancy. On rebuttal, PSE witness Marcelia offers an explanation, but fails to provide a work paper or one shred of actual evidence upon which his assertions can be checked. As a result, since PSE carries the burden of proof, it has failed to demonstrate that Mr. Gorman's adjustment is wrong. ICNU recommends that an adjustment be made to apply the 35% statutory marginal federal income tax rate to revenue requirement calculations, thereby reducing PSE's revenue deficiency by $3.45 million for electric and $1.66 million for gas.[155/]

iv. Updated Returns Support Mr. Gorman's Recommendations

102 PSE's April 30, 2013 CBR supports Mr. Gorman's recommendations. In fact, Mr. Gorman's recommendations appear very conservative in light of the April 30, 2013

[151/] Gorman, Exh. No. MPG-1T at 16:23–17:2.
[152/] Id. at 17:20–21.
[153/] Id. at 17:21–22.
[154/] Compare ERF, Barnard, Exh. No. KJB-1T at 21:14–15, with KJB-1T at 22:7–9.
[155/] Gorman, Exh. No. MPG-1T at 18:11–14.

CBR. For example, Mr. Gorman analyzed PSE's current financial returns and adjusted only for an updated and more accurate ROR, and concluded that the maximum revenue deficiency PSE could possibly claim would be approximately $12.1 million.[156/] This $12.1 million nearly matches the total recommendation of an $11.91 million revenue deficiency that he recommended using PSE's stale, as-filed numbers in its ERF case, but does not include the recommended disallowances for Pension Expense, Incentive Compensation, and the Effective Tax Rate, which contributed over $9 million to Mr. Gorman's original recommendation.[157/] If these three adjustments as well as the EOP adjustments are made, it appears that PSE may in fact be overearning by as much as $10 million. Mr. Gorman's testimony demonstrates that the Commission should reject the ERF, or at a minimum, drastically reduce the rate increase.

F. The Amended Decoupling Proposal Should Be Rejected as an Unsupported Attrition Adjustment Contrary to WUTC Precedent and Policy

103 PSE and NWEC have sponsored a Decoupling proposal which should be rejected. The Company has not satisfied its burden of proof or persuasion to warrant the establishment of an annual "decoupling" rate increase which, in both purpose and operation, serves an insufficiently supported attrition adjustment without substantial nexus to actual conservation. The Decoupling proposal also includes a rate plan which would impermissibly increase the rates of many customers independent of any cost of service basis—indeed, discriminatorily so under a hollow assertion of "fairness."

a. The Amended Petition Is Essentially a Request for an Attrition Adjustment

156/ Gorman, Exh. No. MPG-23T at 2:1–3:2; MPG-24T.
157/ Gorman, Exh. No. MPG-1T at 5:8-9.

104 The Amended Petition has little to do with conservation related to decoupling. As "attrition," according to the Commission, "is often loosely applied to any situation in which a rate-regulated business fails to achieve its allowed earnings,"[158/] attrition is a much better term to describe the purpose and mechanics of the "decoupling" proposal. Either way, whether considered as an attrition or decoupling mechanism, the Company's proposal is contrary to Commission precedent and policy and should not be approved.

105 In Order 08, the Commission observed that PSE seemingly "wants more than decoupling has to offer, namely the freedom to recover incremental revenue to offset new investments between rate cases."[159/] Undeterred, the Company declares in the Amended Petition that it's modified "decoupling" proposal with a K-factor "also addresses the revenue shortfall between rate cases that the decoupling mechanism on its own does not resolve."[160/]

106 Likewise, the Commission noted PSE's rejection of Decoupling in the 2011 GRC because Decoupling "does not address the incremental impacts of regulatory lag, a problem decoupling was never intended to fix."[161/] Yet, PSE openly avers that its modified Decoupling proposal contains "a weighted escalation factor, designed to . . . address the growth in non-energy costs PSE has experienced and expects to continue to experience in the next few years."[162/] The Amended Petition also includes a

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[158/] Order 08 ¶ 484, n. 658.
[159/] Id. ¶ 454.
[160/] Amended Petition ¶ 5.
[161/] Order 08 ¶ 454.
[162/] Decoupling, Barnard, Exh. No. KJB-1T at 2:7–10.

rate plan which shuns mention of conservation, offsets and the like—being presented simply as "a series of *predetermined* rate increases."[163/]

107 The Company explains that, whereas it originally proposed to derive its Decoupling K-factor "based on reported conservation achievement," it later "focused on how the K-factor could be used to allow revenues to grow" during a GRC stay out period, with its modified K-factor now simply "based on escalation factors."[164/]

108 In response to PSE's claim of attrition caused by continued investments in rate base in the 2011 GRC, Mr. Schooley testified: "PSE and other utilities assert persistent underearnings and *present ever more creative ways* to address claims of declining sales and regulatory lag."[165/] Mr. Schooley added that Staff was open to new proposals, but only if "the utility adequately proves its claims of persistent underearning."[166/] Such adequate proof is lacking in these proceedings.

b. The Decoupling Proposal Fails as a Decoupling Mechanism

109 In PSE's and Avista's 2011 GRC, the Commission proactively issued Decoupling Bench Requests directing Staff to provide "a discussion of the critical elements that a full decoupling proposal should contain, consistent with the Decoupling Policy Statement, including consideration of lost sales revenues that are potentially offset by avoided costs and other benefits."[167/] While not foreclosing consideration of proposals varying from the Policy Statement, the Commission reiterated that it "expects Staff to provide an

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[163/] Decoupling, Piliaris, Exh. No. JAP-8T at 3:15 (emphasis added).
[164/] Decoupling, Barnard, Exh. No. KJB-1T at 2:11–19.
[165/] WUTC v. PSE, Docket Nos. UE-111048 and UG-111049, Schooley, Exh. No. TES-1T at 6:7–8 (emphasis added).
[166/] Id. at 6:8–10.
[167/] Order 08 ¶ 440.

analysis of PSE's proposal in light of the Decoupling Policy Statement."[168/] Hence, ICNU focuses its analysis upon the Policy Statement guidelines as well, and especially the consideration of balancing and offsets as specified by the WUTC in recent Bench Requests. This echoes Staff's observation in the 2011 GRC, too, that "parties would certainly be wise to discuss the Decoupling Policy statement when making a decoupling proposal."[169/]

i. A Decoupling Mechanism Should Only Be Proposed in the Context of a GRC

110 PSE's decision to request a decoupling mechanism outside of a GRC is contrary to the Policy Statement, which anticipates consideration of proposals from an electric utility only in the context of a general rate case. In fact, when discussing limited decoupling mechanisms for gas utilities, the Policy Statement expressly disclaims prior indications that such requests may have been acceptable outside of a GRC.[170/] The Commission's views appear to be related to raising equity and capital concerns within a GRC. Likewise, one of the four mandatory, electric decoupling elements that must be demonstrated under the Policy Statement is ROR impact.[171/]

111 Staff testimony in these proceedings emphasizes the need to conduct review of decoupling proposals only in the context of a GRC. Staff explains that the Decoupling mechanism is based on an update to PSE's last rate case, which was resolved by Order 08.[172/] In this way, the Company's proposal relies heavily upon determinations which cannot now be challenged—that is, the results being carried forward have already been

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[168/] Id. ¶ 440, n. 595.
[169/] Id. ¶ 461, n. 626.
[170/] Policy Statement ¶ 18, n. 33.
[171/] Id. ¶ 28.
[172/] Multiparty Settlement, Schooley, Exh. No. TES-1T at 4: 5-6, 14-17.

established in the 2011 GRC. Such reasoning begs the question of precisely how issues in the Commission's Policy Statement on Decoupling can be addressed during the course of a GRC which contained no decoupling proposal supported by PSE. For example, when asked if Staff factored in the risk shift to customers effected through the Decoupling proposal, Ms. Reynolds reasoned, "No, because we relied on the analysis in the general rate case, yet the rate case adopted assumptions based on the presence of no decoupling mechanism."[173/] Such illogic is unpersuasive given that the Decoupling Policy Statement is predicated on a decoupling mechanism being implemented as part of a general rate case. Staff's admission that the Amended Petition would institute new rate increase mechanisms without the opportunity for parties to contest all the component elements of those mechanisms justifies rejection of the decoupling proposals.

ii. The Decoupling Proposal Is Not Based upon Conservation Target Achievement

112 The Policy Statement provides a foundational requirement: "Revenue recovery by the company under the mechanism will be conditioned upon a utility's level of achievement with respect to its conservation target."[174/] In fact, the Commission revealed that "[i]implementation of decoupling to remove any financial disincentive to conservation in a fair and balanced manner was the motivation behind our Policy Statement."[175/] That PSE's Decoupling proposal does not condition recovery upon conservation achievement should be sufficient basis, standing alone, to justify its rejection.

[173/] Deen, Exh. No. MCD-3 at 7-12 (Reynolds Deposition).
[174/] Policy Statement ¶ 28.
[175/] Order 08 ¶ 455.

113 The Company states that "there is no proposed 'DSM test'" as regard to conservation achievement.[176/] Rather, PSE proposes "to *voluntarily* raise" its biennial conservation target,[177/] to "*agree* to achieve,"[178/] and to continue "to *offer* to exceed" its mandated target.[179/] Moreover, the Company will "*voluntarily* submit to" statutory penalties for failing to exceed its elective target by 5.0%[180/]

114 While all this seems to be designed to have the appearance of magnanimity on PSE's part, the Company is not truly conditioning revenue recovery on conservation achievement. Regardless of conservation achievement, decoupling rate increases are a fait accompli under the proposal—no matter what, PSE will collect pre-determined rate increases through its Decoupling plan, and rates will increase via an escalation factor to address alleged deficiencies due to regulatory lag.

115 The Company has provided no data in the Amended Petition or direct testimony demonstrating the impact its voluntary submission to EIA penalties would have in relation to the definite revenue increases obtained through the K-factor proposal. Indeed, as Staff is unaware of *any* conservation opportunities which PSE is foregoing,[181/] the Company could not increase conservation, at least in a cost-effective manner—suggesting that perhaps PSE anticipates paying EIA penalties. Obviously, PSE would only suggest a "trade-off" of decoupling rate increases against EIA penalties if the swap benefitted the Company. Such consideration is plainly relevant to assess the fairness of

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[176/] Decoupling, Piliaris, Exh. No. JAP-1T at 37:10–11.
[177/] Id. at 37:7–9 (emphasis added).
[178/] Id. at 36:18 (emphasis added).
[179/] Decoupling, Piliaris, Exh. No. JAP-8T at 6:3 (emphasis added).
[180/] Id. at 6:4–6 (emphasis added).
[181/] Deen, Exh. No. MCD-3 at 9:12-14.

decoupling rate increases, and the corresponding shift in financial risk to ratepayers. Having not met the burden of production or persuasion in this regard, PSE's proposal should not be approved.

116 Another key factor militating against PSE's "offer" to exceed conservation targets is the appropriateness of a target that can be exceeded. Washington law requires utilities to acquire all feasible, reliable conservation that is cost-effective[182/]—meaning a utility's conservation target is already set, by definition, to include all cost-effective conservation. The logical correlative is that any additional conservation is *not* cost-effective. The Policy Statement addresses this very issue, noting the Commission would examine proposals thoroughly because conditioning incentives upon exceeding target levels "could motivate a company to state a less ambitious conservation target so that it would be easier to exceed that target and thereby reap the benefits of whatever reward mechanism is in place."[183/] At the very least, PSE's proposal to establish annual decoupling rate increases in "exchange" for voluntary conservation achievement exceeding targets by 5% is worthy of much closer examination than the current proceedings have allowed.

iii. A Decoupling Proposal Should Include Offset Mechanisms

117 The Policy Statement also states that Commission will consider a full decoupling mechanism if it will "allow a utility to either recover revenue declines related to reduced sales volumes or, in the case of sales volume increases, refund such revenues to its

[182/] RCW § 19.285.040(1).
[183/] Policy Statement ¶ 32, n. 53.

customers."[184/] Such offset and balancing capability has remained of special concern to the Commission in recent GRC Bench Requests, as in "consideration of lost sales revenues that are potentially offset by avoided costs and other benefits."[185/] The Amended Petition does not contain these elements. Instead, as Mr. Deen testifies, PSE's Decoupling proposal "at its core, is a simple revenue escalator: if volumes go down, recovery goes up; likewise, if volumes go up, recovery still goes up."[186/]

118 As Staff pointed out in the 2011 GRC, conservation should prompt a utility to market electricity which would have otherwise been sold to customers, while the utility also "incurs lower costs due to the wholesale sales, such as reduced line losses, reduced uncollectible expense, and avoidance of the Public Utility Tax."[187/] Decoupling mechanisms should recognize the benefits of enhanced wholesale sales because specified levels of recovery are guaranteed.[188/] Accordingly, the Company's refusal to account for off-system sales and avoided costs should be another basis for rejection.

119 PSE's basis for contending that such accounting is "unnecessary" is unpersuasive. The Company believes the requisite accounting "will only serve to unnecessarily complicate the administration of the decoupling mechanisms,"[189/] presumably because "attempting to account for these effects may lead to unforeseen and unintended consequences in the interaction with PSE's PCA mechanism."[190/] Surely, the Company's burdens of proof and persuasion are not satisfied by raising such bare specters of

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[184/] Id. ¶ 28.
[185/] Order 08 ¶ 440.
[186/] Deen, Exh. No. MCD-1T at 25:8–9.
[187/] WUTC v. PSE, Docket Nos. UE-111048 and UG-111049, Exhibit No. DJR-3T at 14:22–25.
[188/] Deen, Exh. No. MCD-1T at 34:19–21.
[189/] Decoupling, Piliaris, Exh. No. JAP-1T at 35:1–2.
[190/] Id. at 35:20–36:1.

potential consequence, themselves so nebulous that they can only be referred to as "unforeseen."

120 Additionally, PSE argues that the mechanics of its power cost mechanisms obviate the need for off-system sales and avoided cost accounting because "at most there would be small deviations from the amounts of conservation already projected in the rate year."[191/] The problem with this logic is it permeates this entire proceeding—i.e., if the impact is small, it can be ignored, or evidence isn't required to provide support. PSE further ignores its commitment to achieve at least 5% more conservation than projected.

iv. Per-customer Decoupling Should Not Be Approved

121 The need for offsets is further evinced by the Commission's expectation of "per-class" decoupling mechanisms. The Policy Statement explicitly provides that decoupling true-ups should track customer use by class, and recover "revenue attributed to each affected class of customer," rather than simply revenue per-customer.[192/] Twice within the Policy Statement, the Commission recorded its concern that decoupling "may result in cross-subsidies among *rate classes*."[193/] To avoid such a result, the Policy Statement provides: "A reasonable mechanism would balance conservation program achievements by class with the revenue recovery expected from that class under the mechanism."[194/] The term "class" in the Policy Statement should, thus, be understood to mean "rate class," as synonymous with tariff schedules. PSE's proposed division of all customer rate classes into two "rate groups"[195/] does not square with Policy Statement guidelines.

[191/] Id. at 35:9–17.
[192/] Policy Statement ¶ 28.
[193/] Id. ¶ 18, n. 34, ¶ 28, n. 46.
[194/] Id.
[195/] Amended Petition, Attachment A at 2.

This issue is further exacerbated by Staff and PSE's willingness to exempt industrial natural gas customers (because the financial impact to PSE would be minimal),[196/] but not industrial electric customers. Such treatment is at odds with the Policy Statement and is discriminatory.

122 The Decoupling proposal divides customers into two rate groups and then calculates Current Allowed Revenue ("CAR") by multiplying the monthly allowed Delivery Revenue Per Customer by the number of customers in each rate group for that calendar month.[197/] Ultimately, this is per-customer decoupling—the Company's CAR will increase whenever new customers join the system.[198/] New customers entering an actual rate class will never be accounted for as found margin since, as Mr. Deen testifies, "the likelihood of underperformance by the class, as a whole, would increase because the revenue requirement would grow with each new customer."[199/]

123 Finally, the inclusion of a K-factor in PSE's Decoupling proposal exacerbates the effect of per-customer decoupling. That is, the K-factor's 3% attrition escalator will be multiplied by ADRPC which, in conjunction with per-customer decoupling, ensures PSE of steady revenue requirement growth.[200/] Since found margin cannot offset revenue requirement under the per-customer proposal, the cumulative result is a powerful "one-way ratchet to increase rates."[201/]

v. The Proposed Earnings Test Would Unreasonably Shift Risk to Ratepayers

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196/ Hearing Tr. at 272:20-21 (Deborah Reynolds).
197/ Amended Petition, Attachment A at 4.
198/ Deen, Exh. No. MCD-1T at 26:6–9.
199/ Id. at 27:5–8.
200/ Id. at 28:6–8, 11–12.
201/ Id. at 28:12–14.

124 The Amended Petition modifies PSE's original Decoupling proposal through an earnings test which would allow the Company to earn up to 25 percentage points over its authorized ROR, and then keep an additional 50% of earnings exceeding that limit.[202/] PSE claims this proposal "provides an appropriate safeguard to customers," which can "allay concerns that the Company will *greatly* exceed its rate of return."[203/] ICNU submits that customers will be safeguarded (that is, if the Decoupling proposal is approved in the first place) by an earnings test which allows PSE to plainly earn its authorized ROR, and not by allowing PSE to "comfortably" or "moderately" exceed its ROR—or however else PSE would describe something just short of "greatly" exceeding ROR.

125 Mr. Gorman testifies to the relationship between risk and authorized returns, demonstrating how imperative such consideration is in a Decoupling proceeding. Through the ROR, Company shareholders are compensated for the business risks of utility operation, including exposure to fluctuations in sales which would affect earnings.[204/] Decoupling eliminates such risk, however, by making a utility revenue neutral in respect to sales fluctuations; by definition, decoupling guarantees the utility will receive required revenues independent of sales levels.[205/] As a result, decoupling *shifts* risk to customers, i.e., the risk of increased rates due to events beyond ratepayer control which cause utility revenue decline, be it weather or economic slump.[206/]

[202/] Decoupling, Piliaris, Exh. No. JAP-8T at 19:10–13.
[203/] Id. at 19:18–20 (emphasis added).
[204/] Gorman, Exh. No. MPG-1T at 24:6–9.
[205/] Id. at 23:20–23.
[206/] Id. at 23:23–24:2.

126 Unless the Commission reevaluates the Company's ROE to determine an adequate, downward adjustment reflecting its reduced business risk resulting from decoupling, PSE's ROR will overcompensate shareholders.[207/] This problem only accentuates the need for closer review in light of the proposed earning test, which could overcompensate shareholders still more by allowing earnings which are 25 basis points *above* what would be an already inflated ROR (never mind the 50% take on earnings exceeding *that* level). In this light, the Company's reliance on the Avista GRC is beside the point—even if the Commission opposes a "hard cap," the establishment of an appropriate "cap" in the first place still requires initial determination of fair return levels.[208/]

127 The Policy Statement provides excellent guidance for today's Commission in considering the proposed earnings test and, more broadly, the entire Decoupling proposal. Rightly concerned about reduced utility incentive to manage efficiently if decoupling was permitted,[209/] the Commission included a risk assessment quite similar to the testimony of Mr. Gorman: "By reducing the risk of volatility of revenue based on customer usage . . . such a mechanism can serve to reduce risk to the company, and therefore to investors."[210/] The Commission then reasoned that such an effect "in turn should benefit customers by reducing a company's debt and equity costs."[211/] It would be unfair to allow PSE to reduce its debt and equity costs through annual decoupling rate increases while not adjusting return levels or capital structure for several years. Customers do not

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[207/] Id. at 24:9–12.
[208/] Multiparty Settlement, Piliaris, Exh. No. JAP-24T at 7:11–8:2.
[209/] Policy Statement ¶ 26; accord, Gorman, Exh. No. MPG-1T at 24:15–21.
[210/] Policy Statement ¶ 27.
[211/] Id.

agree with Staff that it is sufficient to address these issues in the next rate case, as they will be paying for risk the Company does not bear, while bearing that risk themselves, and Staff has not proposed that such real losses be returned at the end of the rate plan.

128 Moreover, the Commission provided further guidance in the Policy Statement on this matter, stating that a utility's reduction in debt and equity "costs would flow through to ratepayers in the form of rates that would be lower than they otherwise would be, as the rates would be set to reflect the assumption of more risk by ratepayers."[212/] That is precisely the risk shift emphasized by Mr. Gorman; and, in order for such cost reductions to "flow through to ratepayers" via lower rates, the Commission must adjust return levels and reassess the Company's capital, debt and equity structure.

c. The Decoupling Proposal Fails as an Attrition Adjustment

129 If the WUTC treats the mechanism proposed under the Amended Petition as an attrition adjustment, the Company must still be found to have failed in carrying its burdens of proof and persuasion. As an initial matter, PSE has produced no satisfactory evidence in direct testimony that attrition actually exists, and the Company has not demonstrated that its proposed, multi-year regime of annual rate increases is warranted.

i. PSE Does Not Meet Threshold Evidentiary Requirements

130 In Order 08, the Commission stated that "an attrition adjustment is one among several possible responses the Commission could make to address a demonstrated trend of underearning due to circumstances beyond the Company's ability to control."[213/] Not only, therefore, must the Company demonstrate underearnings, but a positive

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[212/] Id. ¶ 27.
[213/] Order 08 ¶ 489.

demonstration must also be made showing such underearnings have resulted from causes PSE could not control. The WUTC recognizes Washington law in that "a claimant generally has the burden of proving the facts necessary to sustain his or her claim."[214/] Hence, PSE cannot simply declare the existence of attrition as a self-affirming truth in order to justify an attrition adjustment. Nevertheless, PSE has not submitted an attrition study to support its alleged "revenue shortfall between rate cases that the decoupling mechanism on its own does not resolve,"[215/] or the claimed "growth in non-energy costs PSE has experienced and expects to continue to experience in the next few years."[216/] The Company provides only bald assertions, absent any demonstration. As such, PSE fails at the first evidentiary hurdle specified in the Final Order of the Company's own most recent GRC.

131 Moreover, PSE's failure to supply an attrition study sharply contrasts with practice recognized by the Commission in the recent Avista GRC. In that case, the Commission initially noted the "thorough review of the evidence necessary for an appropriate adjustment" based on attrition.[217/] To that end, the WUTC did not confirm that remediable attrition existed as a universal constant, but found that consideration of attrition was appropriate in setting rates for that case "on the basis of evidence presented."[218/] Likewise, "record evidence" in the case "support[ed] a finding of attrition in the near term."[219/] In sum, the Commission determined Avista had met its production

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[214/] WUTC v. Inland Tel. Co., Docket No. UT-050606, Order 09 at n. 11(Nov. 30, 2006) (quoting State v. Anderson, 72 Wn. App. 253, 260, 863 P.2d 1370 (1993)).
[215/] Amended Petition ¶ 5.
[216/] Decoupling, Barnard, Exh. No. KJB-1T at 2:7–10.
[217/] Order 09/14 ¶ 70.
[218/] Id. ¶ 10.
[219/] Id. ¶ 12.

burden. Additionally, the Commission expressly held that the burden of persuasion had also been satisfied, "find[ing] the arguments of some of the settling parties persuasive that attrition will continue into the very near future."[220/] Even though Avista presented far more evidence than has PSE, the Commission made the second year increase of Avista's two-year rate plan temporary, based on the evidence being less precise than a fully litigated rate case would produce.[221/] Such a finding could not be made here because neither Staff nor PSE performed an attrition study.

132 Ignoring all the positive indications for a high burden of necessary evidence to warrant the need for an attrition adjustment in the Avista GRC and Order 08, PSE hones in on footnote 673 of Order 08 to essentially reason that minimal historical and trending analyses are sufficient to demonstrate attrition,[222/] concluding also that "a detailed attrition analysis is not necessary."[223/] An attrition adjustment is a fundamental change to ratemaking that should be reserved for only the most extreme cases.

133 **ii. PSE Ignores Known and Measureable Changes to its Cost of Service**

134 PSE has recently sold a portion of its territory that equals approximately 1.7% of its service territory.[224/] PSE nowhere attempts to adjust for this change to its rate base and cost of service, either upward or downward, stating instead that it does not imagine that the adjustment "in aggregate will produce a material impact to the rate proposal in these dockets . . . ."[225/] PSE does not try to quantify what sort of change might be

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[220/] Id. ¶ 11.
[221/] Id. at 72.
[222/] Multiparty Settlement, Barnard, Exh. No. KJB-11T at 28:3-10.
[223/] Id. at 27:18.
[224/] Id. at 22:12.
[225/] Id. at 21:17-19.

"material," and provides analysis of the effects of this substantial change in its operations that extends no further than to estimate that rate base per customer in the lost service territory was similar to that in the retained service territory on a per-customer basis.[226/] The Company's refusal to accurately quantify the changes that have occurred to its cost of service is baffling, given that it has already received a $107 million payment for the facilities.[227/] In this drastically expedited proceeding, PSE wishes to set annual attrition-based rate increases for years to come based on rough projections and unaudited historic reports while ignoring and refusing to account for actual known and measureable changes to its operations.

iii. PSE Fails to Satisfy the Especially Stringent Standard for Justifying Multi-Step Rate Increases

135 The Amended Petition requests approval for annual rate increases beginning in 2013 and continuing through 2016 or 2017, based on the proposed GRC stay-out period.[228/] Thus, PSE is asking the Commission to establish a four- and possibly five-step attrition-based rate increase. In light of the Avista GRC, however, in which the Commission approved a much more modest two-step rate increase based on findings of attrition evidence, the Company's multi-year step rate increase request should not be approved. In fact, Avista's two-step increase was narrowly approved, and that was only upon condition of additional evidentiary requirements, along with explicit reservations from the Commission. PSE's present request fails to meet the same burdens of proof and

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[226/] Id. at 21:21-23.
[227/] Multiparty Settlement, Barnard, Exh. No. KJB-18CX.
[228/] Amended Petition ¶¶ 20, 21.

persuasion. There is simply no evidence to support a rate increase beyond the first year, and no evidence of a first year revenue shortfall.

136 At the very least, consistent with the Avista GRC, PSE should be required to submit an attrition study and actual evidence to support the multi-step rate increase plan of the Amended Petition. More in keeping with the Commission's guidance in the Avista case, though, the WUTC would be well served to reject PSE's proposal and maintain its usual standards for meeting burdens of production and persuasion.

137 Equally important, the Commission stated that part of its motivation in temporarily setting Avista's second rate step increase for 2014 was due to its "anticipation of revisiting the appropriate level of ROE" in just over a year (i.e., when Avista would file a new GRC in early 2014).[229/] By contrast, PSE has proposed a GRC stay-out period extending into 2016 or 2017—with no provision for reassessment of return rates or equity ratios—during which time multiple steps of rate increases would be levied on ratepayers. This difference is but one more indication that approval of rate increases proposed under the Amended Petition would be unfair and unjust outside of a GRC context.

d. The Rate Plan Component of the Decoupling Proposal Is Unfair and Unjust

138 Under the Amended Petition, rate classes who are otherwise excluded from the Company's Decoupling proposal will still be included in a "rate plan."[230/] For instance, throughout the GRC stay-out period, the rate plan will increase retail wheeling "Distribution Service rates by the electric K-factor increase each time it is applied to the

[229/] Order 09/14 ¶ 74.
[230/] Amended Petition ¶ 24.

allowed revenue of the other electric customers."[231] According to the Company, applying such a rate increase to retail wheeling customers will "ensure that these customers also contribute to PSE's growing costs" until the next GRC is filed in 2016 or 2017,[232] which, in turn, "will ensure that all of PSE's customers are treated fairly."[233] In reality, all the rate plan will accomplish is to unfairly discriminate against certain rate classes while unjustly charging those same customers for costs that are not rising for the limited services they take from PSE.

139 First, the rate plan suffers from the same evidentiary inadequacy common to all of PSE's Decoupling proposal: there is nothing in direct testimony to support the amounts rate plan customers are expected to contribute through the GRC stay-out period. Beyond this, as Mr. Deen testifies, ratepayers under retail wheeling tariffs are not similarly situated and do not take bundled service like other PSE customers; rather, "Schedule 449 Direct Access customers pay for the majority of their contribution to PSE's costs through PSE's" OATT.[234] For that matter, PSE even goes one step further in acknowledging this fact, admitting that "a *vast* majority of their cost of service is being recovered through" the OATT.[235] Moreover, many retail wheeling customers also take service at transmission voltage, meaning the Company incurs virtually no distribution costs to serve them.[236]

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[231] Id. ¶ 27.
[232] Id.
[233] Id. ¶ 24.
[234] Deen, Exh. No. MCD-1T at 42:18–20.
[235] Decoupling, Piliaris, Exh. No. JAP-8T at 17:15–17 (emphasis added).
[236] Deen, Exh. No. MCD-1T at 43:1–2.

140 In sum, PSE's one-size-fits-all rate plan is simply unfair as it is not cost of service based—i.e., increasing retail wheeling rates by a K-factor increase every time (and just because) the K-factor is applied to other customers. Customers whose "vast" majority of cost of service is already being recovered (many of whom do not even add any costs to PSE's distribution ledger), should not be required to contribute a second time to PSE's costs in order to "ensure that all of PSE's customers are treated fairly." The Company argues that Schedule 449 customers are not being charged higher rates, but the unconvincing "proof" supplied on rebuttal is that 449 rates had previously decreased due to a separate FERC transmission reclassification docket.[237/]

141 PSE and Staff have agreed to exclude the Northwest Industrial Gas Users ("NWIGU"), industrial gas customers from the gas Decoupling mechanism.[238/] PSE now testifies that on account of a "weakened throughput incentive, removing these customers from the decoupling mechanism appears appropriate."[239/] Staff says this is appropriate because these customers represent a small amount of revenue.[240/] How much more appropriate, then, to exclude retail wheeling customers from a "decoupling" rate increase entirely, given the complete absence of throughput incentive on account of OATT and transmission voltage service. While ICNU does not believe industrial gas users should be subject to decoupling, neither should electric industrial customers. There is no evidence to support this discriminatory approach.

[237/] Multiparty Settlement, Piliaris, Exh. No. JAP-24T at 13:3–14:10.
[238/] Id. at 15:6–9.
[239/] Id. at 15:12–14.
[240/] Hearing Tr. at 273:20-21 (Deborah Reynolds).

IV. CONCLUSION

142 The Settling Parties have proposed a rate plan mechanism that will increase PSE's rates by as much as $351 million or more, over the next four years. The rate plan includes an increase of more than 3%, yet it is not filed in a general rate case; it requests an attrition adjustment, applied yearly, yet it is accompanied by no attrition study, even for the first year; it relies upon the record in the unrelated, unconsolidated Centralia PPA docket; it claims underearning, yet it does not acknowledge PSE's falling capital costs; it imposes a decoupling regime, yet it does not recognize its reduced risk, nor embrace many customer protections in the Commission's Policy Statement. PSE and Staff present a Settlement proposal to award regular rate increases to the Company, but do not bother to support their case with cost based studies or audited evidence. This case has substantial legal infirmities and the opposing parties did not have ample time to identify all adjustments to the proposed rate plan. Given these infirmities, all parties and the public interest would be better served by the filing of a GRC after the conclusion of the PCORC case.

Dated this 30th day of May, 2013. Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Melinda J. Davison
Melinda J. Davison
Joshua D. Weber
333 S.W. Taylor, Suite 400
Portland, Oregon 97204
(503) 241-7242 telephone
(503) 241-8160 facsimile
mjd@dvclaw.com
jdw@dvclaw.com
Of Attorneys for Industrial Customers
of Northwest Utilities