BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of PUGET SOUND ENERGY, INC. For an Order Authorizing Deferral of Certain Electric Energy Supply Costs	DOCKET NO. UE—011170
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND ENERGY, INC., Respondent.	DOCKET NO. UE—011163 ANSWER OF PUGET SOUND ENERGY, INC. TO MOTIONS TO DISMISS

1. Puget Sound Energy, Inc. ("PSE") answers the following motions: Public Counsel Motion To Dismiss, dated September 4, 2001 ("Public Counsel Motion"); Response Of Commission Staff In Support Of Motion To Dismiss, dated September 12, 2001 ("Staff Response"); Industrial Customers Of Northwest Utilities' Motion To Dismiss, dated September 12, 2001 ("ICNU Motion"); and Memorandum Of City Of Tukwila In

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Support Of Public Council's Motion To Dismiss ("Tukwila Memorandum") (collectively, the "Motions").[1] PSE's full name and mailing address are:

Puget Sound Energy, Inc.
P.O. Box 97034
Bellevue, Washington 98009-9734
Attn: Steve Secrist
Director, Rates and Regulation

2. This Answer brings into issue the following rules or statutes: RCW 80.28.010, RCW 80.28.020, RCW 80.28.060; WAC 480-09-330, WAC 480-09-420, WAC 480-09-425, WAC 480-09-426, WAC 480-100-193; CR 12, CR 50, CR 56.

I. ISSUES PRESENTED BY THE MOTIONS

3. The Motions present the following issues for consideration:

A. The Motions allege that PSE's Petition for interim rate relief is barred for lack of procedural consistency with the Fourteenth Supplemental Order Accepting Stipulation; Approving Merger, Cause No. UE-960195 (February 5, 1997) (the "Merger Order").

B. The Motions allege that filing a general rate case is a procedural prerequisite, established by prior Commission decisions, to consideration of PSE's Petition for interim relief.

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[1] ICNU did not file a hard copy of its Motion by September 12, 2001, which was the time period set for the filing of such motions in the Third Supplemental Order entered in these proceedings. PSE is filing, concurrently with this Answer, a Motion to Dismiss ICNU's Motion. By responding to ICNU's arguments, PSE does not waive any argument that ICNU's Motion is procedurally defective and should be dismissed. Moreover, PSE does not concede that the Commission is entitled to dismiss PSE's Petition based on the Tukwila Memorandum or any arguments contained therein. To the extent there are any arguments contained in the Tukwila Memorandum that are not also contained in a procedurally proper motion to dismiss, these arguments are defective because they were not filed as part of a motion to dismiss. The Tukwila Memorandum is per se an inadequate basis support an order dismissing PSE's Petition.

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C. The Motions allege that the Petition does not address past Commission precedent applicable to implementation of a power cost adjustment mechanism ("PCA") as a general (as opposed to an interim) rate.

D. The Motions allege that PSE failed to comply with the notice requirements of WAC 480-80-125.

E. The ICNU Motion urges the Commission to dismiss the Petition because the relief requested does not comport with the Merger Order.

F. The Tukwila Memorandum urges dismissal because PSE's request for interim relief is "based on speculation."

II. SUMMARY OF ARGUMENTS

Regulatory Principles

4. Commission precedent and public policy require prompt action in response to a utility's request for emergency rate relief.[2] The standard applied by the Commission in such cases is set forth in WUTC v. Pacific Northwest Bell Telephone Co., Cause No. U-72-30 (October 1972) (hereinafter "Pacific Northwest Bell").

5. This standard is embedded within the basic principles of ratemaking: to ensure fair prices and services to customers, and to ensure that regulated utilities earn enough money to remain in business—each of which function is as important in the eyes of the law as the other. People's Org. for Wash. Energy Res. v. WUTC, 104 Wn.2d 798 (1985). In this case, the Washington Supreme Court (quoting the United States Supreme Court in Bluefield Water Works &

[2] PSE appreciates that the Pre-Hearing Conference Order sets forth an expedited schedule for this proceeding, subject to resolution of the Motions.

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Improvement Co. v. Pub. Serv. Comm'n, 262 U.S. 679 (1923) elaborated on the application of these basic principles as they relate to the financial health of the utility:

> The return should be reasonably sufficient to *assure confidence in the financial soundness of the utility* and should be adequate, under efficient and economical management, *to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties*.

People's Org. for Wash. Energy Res., 104 Wn.2d at 813 (emphasis added). Subsequently speaking to the risk of disallowance of an investment in a nuclear power plant, and quoting the Supreme Judicial Court of Massachusetts, our Supreme Court spoke to the importance of the financial health of utilities from ratepayers' point of view:

> The disdain of the financial markets for this company will be formidable, and that disdain can only mean that *eventually the customers of the company will pay a high price in terms of both extravagant compensation for new capital and an unavoidable service deterioration reflecting the scarcity of reasonably priced capital.*

Id. at 820 (emphasis in the original).

6. State law and public policy mandate financially sound utilities. Interim relief is a mechanism the law provides to ensure that, pending the broader inquiry afforded by a general rate case, rates will be sufficient to attract the necessary capital, on reasonable terms, that a utility needs to discharge its public service obligations.

Capital Markets

7. As set forth in the Petition, the emergency in this instance reflects the response of the capital markets to volatile wholesale energy supply markets. Capital markets respond to risk, and higher risk results in a higher cost of capital. Especially as it relates to utilities in the West, lenders and investors have stated increase concerns, which

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correspond to higher capital costs. In the case of PSE, Moody's Investors Service has stated:

> Moody's Investors Service changed the outlook for the ratings of Puget Sound Energy, Inc. (PSE; Baa1 Sr. Sec.) to negative from stable to reflect the effects that recent changes in regional power market dynamics have had on PSE's ability to withstand resulting net power cost volatility. At the same time, Moody's also changed the rating outlook for Puget Energy, Inc. (Puget; Baa3 Issuer Rating) to negative from stable.

Moody's Investors Service, Rating Action (September 7, 2001), attached hereto as Exhibit A.

8. Higher capital costs for utilities increase the cost of service and result in higher rates for customers. Volatility in the wholesale markets—especially in the West—is driving capital markets to demand regulatory measures that better allocate risk, keeping capital costs reasonable, and thereby keeping the cost of service (and rates) reasonable.

9. In the instant case, the deterioration of PSE's financial position and the corresponding increases in the cost of capital caused PSE to seek interim relief.

Interim Relief

10. In applying the Pacific Northwest Bell standard over several years, the Commission has noted that swift action is required, and if necessary to prevent serious financial harm, appropriate interim relief should be granted. In WUTC v. Cascade Natural Gas Co., Cause No. U-74-20 (July 1974), the Commission endorsed the following principles:

> "The commission would be *remiss in its duties if it were to allow applicant's financial condition to deteriorate* to the point where it could not issue securities at a reasonable cost." Quoting Mich. Pub. Serv. Comm'n in re Detroit Edison, 2 P.U.R. 4, 188 (September 12, 1973).
>
> . . . The *public interest would not be served by the Company's inability to obtain reasonable debt and equity financing* . . . and such reasonable financing does not appear possible absent immediate upward rate adjustment.

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Cascade Natural Gas, at *14-15 (emphasis added).

11. Commission precedent establishes interim relief as a temporary and sequential remedy to the final disposition of a general rate case. As the term "interim" implies, the relief granted is a means to provide financial stability until a general rate case can be orderly prepared and duly considered. In WUTC v. Wash. Water Power Co., 1977 WUTC LEXIS 3 (1977), the Commission stated:

> We emphasize that the rates authorized herein are *necessary only to stabilize the company's financial position* until such time as the Commission reaches a determination upon the issues presented in the case in chief.

Wash. Water Power, at *18 (emphasis added).

The Motions

12. Against this backdrop, the Motions would bar the Commission from even entertaining the question of interim relief. The flaw, the Motions argue, is procedural. The Motions assert that PSE must first prepare and file a general rate case (in accordance with the substantial requirements of WAC 480-09-330) as a procedural condition precedent to a hearing on the merits of a request for interim relief.

13. PSE has not yet filed a general rate case in a form that complies with Commission rules. However, as noted in the Petition, PSE has committed to file a general rate case by November of this year.[3]

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[3] In view of the commitment to file a general rate case in the Petition and the likelihood that, when filed, any unresolved issues from this proceeding will be consolidated, for all practical purposes a general rate case has been initiated.

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14. It would indeed be an odd result if interim relief, responding to exigent circumstances and the public interest, could not even be considered until the months of work required to prepare and file a general rate case were completed. PSE respectfully submits that the Motions erroneously place procedural "form" over the substantial public interest in determining whether interim rate relief is needed now.

15. Moreover, prior Commission orders make it very clear that whatever evidence PSE subsequently files in support of a general rate case, such evidence need not and should not be considered in its request for interim relief. No harm is done to the moving parties in allowing a request for interim relief to be heard now. Time and time again, the Commission has made it clear that an interim rate relief request stands alone:

> This instant order is *addressed solely to the Petition for Emergency Rate Relief*. The matter of establishment of permanent rates must await completion of the evidentiary record, including cross-examination of the PNB witnesses, presentation of the evidence of the staff of the Commission and other parties, including members of the public, and the cross-examination thereof, and such rebuttal as PNB may then present.

Pacific Northwest Bell, at 2 (emphasis added). See also Wash. Water Power (the Commission's decision must be based entirely on the record in the matter showing facts and circumstances presently faced by the utility and the time frame in which those facts and circumstances are presented); WUTC v. Wash. Natural Gas, Cause No. U-80-111 (1981) (the decision must be based solely on the record of the interim proceeding, and within the time frame that has close proximity to the claimed emergency conditions).

16. Nothing of substance in a general rate case filing is required, nor should be considered, in the disposition of PSE's request for interim relief. The nexus between an interim filing and a general rate case is nothing more than the certainty that, whatever relief the Commission grants on an interim basis, extends

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no longer than is reasonably necessary to revisit in the context of a general rate increase. PSE has fully satisfied this requirement by committing to a general rate case filing in November.

17. To support their procedural arguments, the Motions rely on narrow readings of the Merger Order and the Commission's prior precedent. As noted in greater detail below, neither the Merger Order nor prior precedent is appropriately read so narrowly as to preclude the Commission's consideration of PSE's Petition. Nor would such a narrow reading be in the public interest. In the face of circumstances that warrant interim relief and where such relief can prevent a financial disaster, the Commission would be remiss if it did not let this matter go forward.

Other Arguments

18. Additional arguments are raised in the Motions that assert that the type of remedy PSE is seeking somehow changes the standard for determining if relief (of whatever form the Commission chooses to grant) is appropriate. PSE respectfully disagrees. The Commission is authorized to fashion any remedy it chooses in an interim rate proceeding, subject to the standard set forth in Pacific Northwest Bell. This case acknowledges that interim relief "is an extraordinary remedy and should be granted only where an actual emergency exists or where necessary to prevent gross hardship or gross inequity." However, neither this case, nor any other interim relief case of which PSE is aware, limits the type of remedy the Commission may choose to grant in this proceeding.

19. Other issues raised in the Motions have either been addressed (i.e., adequacy of notice for purposes of WAC 480-80-125) or such issues may be considered prospectively when the Commission reaches the question of what remedy is appropriate in this proceeding (i.e., whether the relief requested should be spread among electric customer classes based on an equal percentage of revenue).

Conclusion

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20. For these reasons, and as more fully set forth below, PSE respectfully requests that the Motions be dismissed and that the Commission allows this matter to proceed to a hearing on November 6, 2001, in accordance with the schedule established by the Prehearing Order.

III. ARGUMENT

A. Standard of Review

21. The Motions have been styled as motions to dismiss, and, in the alternative, Public Counsel and Staff move for summary determination.[4] Pursuant to WAC 480-09-426, a motion to dismiss is to be considered under the standards for consideration of a motion made under CR 12(b)(6) or CR 50, as applicable, of the civil rules for superior court. A dismissal for failure to state a claim upon which relief can be granted under CR 12(b)(6) is appropriate only if it appears beyond doubt that the plaintiff or petitioner cannot prove any set of facts that would justify recovery. Tenore v. AT&T Wireless Services, 136 Wn.2d 322, 329-30 (1998). In such a case, a plaintiff's

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[4] Public Counsel and Staff have offered no evidence in support of their motion for summary determination. As such, this motion is deficient under WAC 480-09-426(2). The rule provides that "the pleadings filed in the proceeding, together with any properly admissible evidentiary support, show that there is no genuine issue as to any material fact and the moving party is entitled to summary determination in its favor." The Commission considers motions for summary determination under "the standards applicable to a motion made under CR 56 of the civil rules for superior court." Id. The civil rules provide:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

CR 56(c). The moving party bears the burden of demonstrating an absence of any material fact and entitlement to judgment as a matter of law. Greater Harbor 2000 v. City of Seattle, 132 Wn.2d 267, 937 P.2d 1082 (1997). A material fact is one of such nature that it affects the outcome of litigation. Magula v. Benton Franklin Title Co., 131 Wn.2d 171, 930 P.2d 307 (1997). Public Counsel and Staff have not met this burden.

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allegations are presumed to be true and a court may consider hypothetical facts not included in the record. Id. CR 12(b)(6) motions should be granted sparingly and with care and only in the unusual case in which the plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief. Id.; see also Lawson v. State, 107 Wn.2d 444, 448, 730 P.2d 1308 (1986) (for purposes of a CR 12(b)(6) motion, the plaintiff's factual allegations are presumed to be true, and an action may only be dismissed if it appears beyond a doubt that the plaintiff can prove no set of facts, consistent with the complaint, that would entitle the plaintiff to relief).

22. The moving parties have not met their burden under applicable Commission rules, and for this reason, the Motions should be dismissed.

B. The Petition Is Not Inconsistent With the Merger Order

Merger Order Provides Process For Seeking Interim Relief

23. The Motions argue that the Petition should be dismissed for lack of consistency with the Merger Order. The Merger Order states in pertinent part:

> The *process* for seeking interim rate relief is as follows *(subject to modification by Commission order or rulemaking)*: PSE would file a general rate case under WAC 480-09-330, but with tariffs supportive only of the amount requested as interim rate relief; PSE would file testimony and other evidence that supports the amount of the requested interim rate relief; and PSE would propose to spread the requested interim rate relief among customer classes based on an equal percentage of margin (gas) and on equal percentage of revenues (electric).

Merger Order, Appendix A (Stipulation Section III.A.6), p. 11 (emphasis added).

24. The Merger Order establishes a process for seeking interim rate relief during the Rate Plan Period. However, this process is expressly "subject to modification by Commission order or rulemaking." The words do not say, nor can an intent be inferred from these words, that the process envisioned in December

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of 1996 was an inflexible bar to consideration of interim rate relief through some other process.

25. Other portions of the Merger Order support this interpretation. The Merger Order specifies that the Pacific Northwest Bell substantive standard for interim relief be applied to any request for interim relief made by PSE during the Rate Plan Period. The Pacific Northwest Bell six-part standard includes the following:

> [I]nterim relief stands as a useful tool in an appropriate case to stave off impending disaster. However, this tool must be used with caution and applied only in a case where not to grant would cause clear jeopardy to the utility and detriment to its ratepayers and stockholders.

Pacific Northwest Bell, at 13 (emphasis added).

26. The "useful tool" is of no value, and cannot stave off impending disaster, if it cannot be employed until the months required for preparation of a general rate case have passed and the substantial detail of a filing pursuant to WAC 480-09-330 have been satisfied.

27. Nor should the Merger Order be so construed. The process requirements for an interim rate filing set forth in the Merger Order were established in December of 1996 (the date of the Stipulation). These process requirements were established for a Rate Plan that could not be altered by a general rate case filing for five years. Had the interim rate process set forth in the Merger Order not also required a general rate case filing, any interim rates established during the Rate Plan Period would have been locked in until December 31, 2001. However, as we near the end of the Rate Plan Period, the concerns that gave rise to these Merger Order process requirements are no longer valid concerns. Further, PSE has committed to file a general rate case by November. Viewed in this context, PSE submits that the process requirements of the Merger Order have been satisfied by PSE's Petition in all material respects.

28. To summarize, the Merger Order presents no substantive requirement—and the moving parties do not point to

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any such substantive requirement—that a request for interim rate relief be filed with a general rate case.[5] Rather, the Merger Order lays out procedural steps and explicitly grants to the Commission the choice to modify or revise this process as it deems appropriate. PSE's commitment to file a general rate case by November fundamentally complies with this process, and is well within the parameters the Merger Order affords the Commission to consider a request for interim relief.

The Petition Substantially Complies With the Process Currently Set Forth in the Merger Order

29. If assumed, *arguendo*, that the process requirements of the Merger Order were not subject to modification by the Commission, Puget argues the Commission may still find that the Petition substantially complies with the December 1996 process requirements. To the extent that the Merger Order requires that a request for interim rate relief occur within the context of an examination of PSE's general rates, PSE's commitment to file for such an examination by a time certain satisfies that requirement. PSE's commitment to file a general rate case in November constitutes substantial compliance with the process currently set forth in the Merger Order.

30. This conclusion is drawn in recognition of the fact that the moving parties are not prejudiced by a general rate case filing that is *subsequent to* an interim relief determination. As noted above, Commission precedent makes it very clear that an interim rate request is a stand alone proceeding, and the decision made by the Commission must be based solely on the record in the interim proceeding. Pacific Northwest Bell, supra, at 7; Wash. Water Power, supra, at 7; Wash. Natural Gas, supra, at 7.

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[5] Commission Staff argues that the Commission may alter the process set forth in the Merger Order only after all the signatories to the Stipulation request the Commission amend the Merger Order to alter the process contained therein. Staff Response at 3 n. 3. The Merger Order clearly states that the Commission may alter the process and does not contain any requirement that the parties to the Stipulation first jointly petition the Commission to do so.

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31. Substantial compliance has been defined as actual compliance in respect to the substance essential to every reasonable objective of a statute. Seattle v. PERC, 116 Wn.2d 923, 928, 809 P.2d 1377 (1991). By committing to filing a general rate case in November, PSE has complied with every reasonable objective of this section of the Merger Order: the Commission will have the opportunity to examine PSE's general rates in due course; no examination of such a filing is essential or required to Commission action on a request for interim relief.

A Narrow Reading of the Merger Order Would Deny PSE the Ability to Seek Interim Rate Relief in Response to Extraordinary Circumstances

32. Should the Commission adopt the narrow reading of the Merger Order urged by the moving parties, PSE's ability to seek interim rate relief in a timely manner would be effectively foreclosed.[6] This reading is inconsistent with the emergency nature of interim rate relief given the fact that a general rate case takes months to prepare.

33. The Commission has an obligation to act swiftly to forestall the emergency circumstances that give rise to a request for interim rate relief. As the Commission has said in the past:

> The Commission notes with approval conclusions of the Michigan Public Service Commission in Re Detroit Edison Co., 2 P.U.R. 4, 188 (September 12, 1973) wherein that commission stated, at page 195: "The Commission would be remiss in its duties if it were to allow applicant's financial condition to deteriorate to the point where it could not issue securities as a reasonable cost," and, at page 199: "At least several months remain before a final order in this case. The revenue lost during the

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[6] As a point of reference, PSE filed its request in August and anticipates a hearing and decision in November (a three-month period). If PSE had to "refile" its interim request in November, in light of the issues raised by Staff and Public Counsel, and in light of the holidays, it is unlikely that its request could be heard before February (three more months). PSE needs relief now, and further delay will harm PSE and its customers.

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> intervening period is irretrievable and, therefore, causes unreasonable and harmful loss to applicant."

Cascade Natural Gas at *13. The public interest is not served by allowing a situation to deteriorate to the point where the company is unable to obtain reasonable debt and equity financing. Id. at *14-15. The Commission has also said:

> Interim rate relief should be granted only on a reasonable showing that an actual emergency exists or that, without affirmative relief, the financial integrity and ability of the company to continue to obtain financing at reasonable costs will be compromised. *The time frame to be considered must have close proximity to the claimed emergency conditions*.

WUTC v. Ludlow Util. Co., 1988 WUTC LEXIS 14, at *7 (1988) (emphasis added).

34. These very concerns are presented in this case. As stated in the Testimony of D.E. Gaines, without relief PSE is facing significant increases in the cost of capital, costs that ultimately will increase the cost of service to PSE's customers. Mr. Gaines has testified that, absent interim relief:

- The Company's ability to borrow through inexpensive uncommitted bank loans will become unavailable.
- Absent the issue of longer-term securities, the Company would exceed the maximum level ($375 million) of its committed credit agreement. This, coupled with the unavailability of the uncommitted loans, would seriously impair the Company's flexibility to deal with fluctuations in its cash flow needs.
- The Company's debt and preferred securities will be put under review for a possible downgrade or be downgraded altogether by the credit rating agencies due to a concern with PSE's increasing debt to total capital and other ratios. Regardless, investors will demand a penalty premium

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significantly increasing the cost of debt. Such premiums demanded by investors from other utilities facing similar cost recovery challenges recently have ranged from 125 basis points to more than 300 basis points.

- By the end of 2002, PSE will have an indenture coverage ratio of 1.9x. This would preclude issuance of first mortgage bonds under the terms of its mortgage indenture. Lack of ability to issue relatively inexpensive first mortgage debt results in a greater need to raise equity capital.

35. Mr. Gaines makes the additional point that PSE's weakened (below authorized) return on equity would make issuing equity unreasonably expensive, if it could be done at all. This is due to the significant risk premium the market would impose.

36. As noted above, state law and public policy require rates that are sufficient to assure confidence in the financial soundness of the utility, and rates that are adequate to maintain and support the utility's credit. People's Org. for Wash. Energy Res. v. WUTC, supra, at 4. The Court's noted concerns with the disdain of financial markets, and the resulting increased cost of capital for the utility and its customers, are concerns presented in this case.

37. This Commission has an obligation to regulate in the public interest. It is not prudent or in the public interest for the Commission to permit PSE to experience adverse financial consequences when interim rate relief is available. See Wash. Water Power, at *17 ("Were we to fail to [grant interim rate relief], adverse financial consequences would be a dangerously real possibility. It is not prudent nor in the public interest to risk such consequences."). For this reason, the Motions should be dismissed, and this matter should promptly proceed to hearing.

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C. Commission Precedent Does Not Require That Interim Rate Relief Be Sought Only in the Context of a General Rate Case

38. The moving parties argue that, apart from the Merger Order, past Commission precedent requires that the Petition be dismissed because it was not filed within the context of a general rate case. The moving parties cite no precedent that supports this proposition. It is the moving parties' burden to demonstrate that they are entitled to judgment as a matter of law. In that regard, none of Public Counsel, ICNU, Tukwila nor Commission Staff has been able to point to any case, statute, rule, opinion or order that holds that interim rate relief may only be sought within the context of a general rate case.[7]

39. As noted above, PSE does not dispute that interim relief is relief granted only for the period of time required to undertake a general rate case, filed and considered in an orderly fashion. PSE has committed to file such a general rate case. However, it is also clear, based on past Commission precedent that:

- An interim case stands on its own; it is not dependent upon evidence or analysis to be considered in a general rate case. Pacific Northwest Bell, supra, at 7; Wash. Water Power, supra, at 7; Wash. Natural Gas, supra, at 7.
- An interim case should be heard promptly, and the time frame to be considered must have close proximity to the claimed emergency conditions. Ludlow Util. Co., supra, at 14.

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[7] Public Counsel states that it is unaware of any case in which the Commission has considered interim relief outside of the context of a general rate case. Public Counsel Motion at 3. Staff's Motion makes a similar representation. Staff Motion at 4. However, none of these cases hold, to PSE's understanding, that a general rate case filing must necessarily precede a request for interim relief.

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- A request for interim relief is to be considered in light of the Pacific Northwest Bell six-part standard; this standard does not state that a general rate case is a jurisdictional prerequisite.

40. Further guidance as to the distinction between a general rate case and an interim relief case is provided in Wash. Water Power. In this case, the Commission contrasts the type of analysis applied in a general rate proceeding (e.g., actual analysis of existing and actual conditions during an appropriate test period) with the type of inquiry undertaken in an interim case. In commenting on its role in an interim case, the Commission stated:

> The Commission *cannot fulfill its charge to regulate in the public interest if it is restricted to an analysis of past periods in which a disaster has actually occurred. Short-range predictions, for the few months in which an interim rate relief request may be authorized, based upon recent figures and subject to cross-examination for factors affecting their reliability,* may be given some weight by this Commission to ascertain the accuracy of a utility's assertion that financial disaster is imminent. We believe that the record herein clearly establishes that the short-range projections offered by the company have sufficient reliability that they *may reasonably be utilized for the short interim period when the emergency rate increase sought would be effective,* if found necessary to preserve the company's financial integrity.

Wash. Water Power, at *8 (emphasis added).

41. In summary: the Commission *does not look to evidence* presented in a general rate case when it grants interim relief; it hears interim requests in an accelerated time frame pursuant to a *unique standard;* it undertakes a fundamentally *different scope of analysis*—current financial conditions and short-term projections—to decide if relief is appropriate. No case, of which PSE is aware, upsets this precedent and holds that notwithstanding these distinctions, a general rate case must—as a matter of law—precede a request for interim relief.

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D. The Form of Relief Requested Does Not Alter the Standard for Determining If Relief Is Appropriate

PCA Cases Not Applied in Context of Interim Relief

42. Public Counsel, Staff, ICNU and Tukwila argue, largely along the same lines, that because the form of relief requested by PSE is a PCA mechanism, the standard for determining if relief is appropriate is a standard other than Pacific Northwest Bell. These arguments are without merit.

43. First, it should be noted that none of the Commission's prior interim rate relief orders limits the Commission's discretion as to the type of remedy it may fashion to address a given set of circumstances. On the contrary, the Commission's discretion to fashion an appropriate remedy is very broad:

> An interim rate increase is an extraordinary remedy and should be granted only where an actual emergency exists or where . . . necessary to prevent gross hardship . . . .

Pacific Northwest Bell, at 13. The interim rate relief cases generally speak to the need for flexibility in fashioning a remedy that is appropriate to the need demonstrated by the utility. For example:

> *It is difficult in the time frame of consideration of interim rates to be precise in determining actual amounts. . . .* Further, it appears that without an adjustment at this time, it will likely be impossible for the company to issue mortgage debt in September of 1974. *We do not deem [it] prudent nor [sic] in the public interest to take this risk.*

WUTC v. Puget Sound Power & Light Co., Cause No. U-73-57 (1974) (emphasis added).

44. Second, the "PCA standard" the moving parties would have the Commission apply has only been applied when the requesting party sought a general PCA, as opposed to interim relief.

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More importantly, none of these cases hold that the Commission may not consider a PCA in an interim case, subject to the Pacific Northwest Bell standard.

- In its Sixth Supplemental Order in Docket No. U-81-41, December 19, 1988 (the "1988 ECAC Order"), the Commission first announced a version of that standard. In that order, the Commission reexamined PSE's Energy Cost Adjustment Clause, which the Commission had approved several years earlier when it was proposed by PSE in the context of general rate relief.
- The Commission next applied the three-part PCA test in its First Supplemental Order (Denying Petition) in Docket No. U-88-2363-P, September 18, 1989. Again, in this proceeding, Washington Water Power had requested a permanent PCA, which had no connection with interim rate relief.
- In its Third Supplemental Order in Docket Nos. UE-901183-T and UE-901184-P, April 1, 1991, the Commission applied the three-part test when it addressed PSE's proposed Periodic Rate Adjustment Mechanism. Such mechanism was also a general mechanism with no connection to interim rate relief. In fact, PSE made the proposal in response to a Notice of Inquiry made by the Commission.
- In the Commission's Third Supplemental Order in Docket No. UE-991606 and UG-991607, September 2000, the Commission considered a power cost adjustment mechanism proposed by Avista Corp. Avista proposed the mechanism as permanent, and the mechanism had no connection with interim rate relief.

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45. PSE has pled and provided supporting documentation with respect to the correct standard for interim rate relief. This standard is set forth in Pacific Northwest Bell.[8] The moving parties' assertion that PSE's interim rate relief filing is actually a request for a general PCA and that, accordingly, PSE must meet a standard different than the standard set forth in Pacific Northwest Bell is incorrect. PSE has clearly requested interim rate relief, not a permanent PCA. The role of the PCA in this context, as opposed to other contexts in which the Commission has addressed PCAs, is very limited.[9]

46. None of the "PCA cases" cited by the moving parties establish precedent for dismissal of a request for interim relief. Nor do any of the cases cited by the moving parties hold that the Commission may not consider a PCA mechanism under the standard applicable to interim relief. The issues raised by these PCA cases (and evidence responsive to these issues) are appropriately considered in a general rate case.

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[8] This standard sets forth the analysis the Commission should conduct in order to determine whether the relief requested is just, fair, reasonable and sufficient. By providing documentation to the Commission that demonstrates that PSE's requested interim rate relief satisfies this standard, PSE has also made a showing with respect to the justness, fairness, reasonableness and sufficiency of PSE's requested relief. No showing other than that required to meet the standard in Pacific Northwest Bell is required for the Commission to grant the relief requested by PSE.

[9] Both Commission Staff and ICNU argue that PSE has failed to meet the requirements of WAC 480-09-330, which concerns filing requirements for general rate cases. ICNU Motion at 5; Staff Response at 3. As discussed above, the Petition is a request for interim rate relief, and the filing requirements listed in WAC 480-09-330 do not apply. Commission Staff also allege that modifications to the requirements for a general rate case may only occur in the context of an order of general applicability. Staff Response at 3 n.3. PSE is not seeking to change general rate case requirements.

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PSE's Proposed Tracker Should Be Approved Because It Is Tailored to PSE's Specific Situation

47. Contrary to the allegations of the moving parties, PSE submits that the interim PCA proposed in the Petition is very appropriate in the context of an interim rate request. The proposed interim tracker is tailored to PSE's specific situation and will adjust as that situation changes. In his testimony, PSE's William A. Gaines stated:

> As an interim measure, the proposed tracker is targeted at the specific problem that has caused Puget's power costs to dramatically escalate, and will hold the line on a self-correcting basis while we consider future alternatives.

Testimony of William A. Gaines, at 9.

> The proposed interim power cost tracker mechanism, which is described in more detail by Karl Karzmar's testimony, will allow deferral of the difference between Puget's actual net power costs and the net power costs embedded in present retail rates, and a tariff mechanism that adjusts rates reflective of this deferral and the ongoing power cost differential. *This mechanism has the advantage of adjusting as necessary to avoid over or under recovery of costs by the Company, and providing the prospect that customers may see lower rates if the Company's power costs improve.*

Id. at 8-9 (emphasis added). The proposed PCA is the appropriate means to collect interim rate relief under the circumstances that give rise to the need for interim relief.

E. Failure to Provide Notice in Accordance With WAC 480-80-125

48. Subsequent to the date of the Motions, PSE provided additional notice of this proceeding in accordance with the requirements of WAC 480-80-125. At the Pre-hearing Conference held on September 18, 2001, all parties agreed that any further discussion of this issue would await PSE's submittal, for the record, of a copy of the subsequent notice so provided, and an explanation of how such

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notice was issued. Such a letter was submitted to the record on September 20, 2001.

F. Failure To Spread Rate Increase Among Customer Classes

49. ICNU alleges that PSE's Petition should be dismissed because it does not propose to spread the rate increase among customer classes on an equal percentage of revenue, as required by Merger Order.

50. PSE responds to ICNU's allegations as follows:

- ICNU cites no authority for the proposition that this allegation, assumed *arguendo*, warrants dismissal of a request for interim relief. As such, ICNU has not met its burden as a moving party.
- The "requirement" ICNU points to, in support of its motion, is one of the elements of process set forth in the Merger Order that is expressly subject to modification by the Commission. In this regard, PSE hereby incorporates its response to Merger Order issues set forth in pages 10 through 18, above.
- As a practical matter, spreading the proposed rate among customer classes, as desired by ICNU, is revenue-neutral for the Company. Although PSE believes that the rate it has proposed is fully consistent with the Pacific Northwest Bell standard, PSE, if requested by the Commission, would modify its proposed rate to comply with this portion of the Merger Order through the end of the Rate Plan Period.

G. Tukwila's Claim That PSE Has Not Met the Conditions for Interim Rate Relief

51. Tukwila argues that the Commission should deny PSE's request for interim rate relief because PSE has "fail[ed] to assert that it is unable to make principle payments on long term loans, pay its accounts payable, make interest payments, or continue providing service to its customers." Tukwila

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Memorandum, at 2. Tukwila asserts that the Commission "will not grant interim rate relief 'based on speculation.'" Id. (quoting WUTC v. Alderton-McMillan Water Supply Inc., 1992 WUTC LEXIS 76, at *15 (1992)).[10]

52. Tukwila mistates the conditions under which interim rate relief is appropriate. Tukwila's proffered standard—that the utility must be able to demonstrate that it can no longer make principle payments on long term loans, pay its accounts payable, make interest payments, or continue providing service to its customers—is not the standard for interim relief reflected in Commission precedents and public policy. The Commission has held that it will grant interim rate relief when the utility is 'experience[ing] a downward trend in its financial situation, and without immediate rate relief [it] will not be able to raise sufficient capital from external sources to finance its . . . construction projects." Wash. Natural Gas, at *13. As the Commission has stated, "[t]he public interest would not be served by the company's inability to obtain reasonable debt and equity financing . . . and such reasonable financing does not appear possible absent immediate upward rate adjustment." Cascade Natural Gas, at *14-15. A company need not be in as bad a shape as Tukwila alleges in order to seek interim rate relief. Interim rate relief need not only be granted "after disaster has struck or is imminent." Pacific Northwest Bell, at 13.

53. With regard to Tukwila's argument that the Commission should not grant interim rate relief "based on speculation," this Commission has held that "the very nature of a request for interim relief . . . dictates that the Commission attempt to ascertain whether, in fact, a disaster *is impending*." Wash. Water Power, at *8 (emphasis added). The Commission has further stated:

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[10] By responding to Tukwila's arguments, PSE does not concede that the Commission is entitled to dismiss its Petition based on arguments contained in Tukwila's Memorandum. To the extent there are independent arguments contained in the Tukwila and Commission Staff materials, these materials are per se inadequate basis to support an order dismissing PSE's Petition.

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> The Commission cannot fulfill its charge to regulate in the public interest if it is restricted to an analysis of past periods in which a disaster has actually occurred. Short-range predictions, for the few months in which an interim rate relief request may be authorized, based upon recent figures and subject to cross-examination for factors affecting their reliability, may be given some weight by this Commission to ascertain the accuracy of a utility's assertion that financial disaster is imminent.

Id.; see also id. at *15 ("For the period for which actual operating data are available, we observe that the respondent is not in the midst of disaster, but that serious conditions appear to be approaching.") Serious conditions are approaching PSE. PSE's Petition is not based on speculation; instead, it is based on current conditions and short-range predictions of PSE's ability to attract capital under reasonable circumstances.

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IV. CONCLUSION

54. Based upon the foregoing, the parties seeking dismissal of PSE's Petition have failed to meet their burden. The Motions should be dismissed, and the Petition heard on its merits in accordance with the schedule set forth in the Pre-Hearing Order.

Respectfully submitted this _____ day of _____, 2001.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing documents upon all parties of record in this proceeding, via facsimile and via U.S. mail, postage prepaid to:

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Dated at Bellevue, Washington, this 21st day of September, 2001.

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