BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of PUGET SOUND ENERGY, INC.'s General Rate Increase Request and Petition for an Order Approving a Surcharge (Subject to Refund) for Recovery of Certain Electric Energy Supply Costs	)))))))	DOCKET NOS. UE-011569, UE-011570 and UG-011571 ICNU'S RESPONSE TO PSE'S MOTION TO STRIKE

INTRODUCTION

The Industrial Customers of Northwest Utilities ("ICNU") submits this response in opposition to Puget Sound Energy's ("PSE") Motion to Strike ("Motion"). On February 15, 2002, PSE filed a Motion to Strike certain portions of the prefiled testimony of ICNU witness Donald Schoenbeck in this case. PSE also seeks to strike portions of the testimony submitted by Stephen Hill and Lisa Steel. The Washington Utilities and Transportation Commission ("WUTC" or "Commission") should deny PSE's Motion since it would: 1) limit the Commission's authority; 2) impair the Commission's public interest responsibilities; 3) prevent parties from ever being able to present evidence regarding factual issues that form the basis of an interim rate request. Furthermore, PSE itself has raised the power cost issues in this case by basing its calculation of the amount of interim relief on allegedly unrecovered power costs. PSE's Motion is without sound legal support and should be denied for the reasons set forth below.

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ARGUMENT

PSE concedes that the testimony it seeks to strike addresses "important issues for the Commission's consideration." Motion at 3. However, PSE argues that interim rate proceedings are expedited proceedings with limited scope. Id. at 4. Previous Commission orders directly contradict PSE's unusual proposition that all evidence beyond the Company's "current and short-term financial projections" should be ignored in interim rate case proceedings. *See* WUTC v. Alderton McMillin Water Supply, Inc., WUTC Docket No. UW-911041, First Supp, Order Denying Petition for Interim Rates (June 3, 1992) (Commission considered evidence regarding concerns about service quality and prudence of management in denying interim rate request); WUTC v. Richardson Water Co., Inc., WUTC Docket No. U-88-2294-T, Second Supp. Order Denying Petition for Interim Rates (Nov. 10, 1988) (Commission considered evidence of affiliate transactions and customer complaints in denying petition for interim rate relief).

PSE has requested a unique form of interim rate relief that requires the Commission to carefully review the basis upon which the Company is seeking this rate relief. Unlike past interim rate proceedings, PSE's interim rate request is unrelated to the revenue requirement that the Company is seeking in its general rate case. PSE's interim rate request appears to be patterned after Avista's recent power cost surcharge case. In re Avista Corp., WUTC Docket No. UE-010395, Sixth Supp. Order (Sept. 24, 2001). Specifically, PSE's request in its direct case for approximately $170 million in interim rate relief is not based on current and short-term financial needs, rather, it is based

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entirely on its allegedly unrecovered power costs. In Exhibit WAG-3, PSE witness William Gaines calculates the $170 million figure based on a comparison of power costs currently in rates with projected power costs from January 1, 2001 to October 31, 2002. It is PSE, and not Mr. Schoenbeck, that has raised the issue of power costs. Thus, it is absurd to suggest that testimony that rebuts Exhibit WAG-3 is irrelevant to this proceeding.

A. PSE's Requested Relief is a Power Cost Surcharge Case Disguised as an Interim Rate Case

While PSE has styled this action as an interim rate case, neither the requested relief nor the numbers support this perspective. PSE originally requested $170 million in interim rate relief, which it proposed to recover through a $14.5 per megawatt hour surcharge from March 15, 2002 through October 31, 2002. In its rebuttal case, the Company proposed to recover the $170 million over a longer time period, which reduced the charge during the interim period to $12.5 per megawatt hour. Even at this reduced level, the interim increase exceeds the revenue requirement that PSE seeks in its general rate case (this assumes PSE's ROE is adjusted to the currently authorized level of 10.5% and the cost of elective risk hedging is removed). Confidential Attachment A shows these numbers.

One reason the interim rate request is dramatically higher than the general rate request is due to the fact that PSE is seeking recovery of high priced gas hedges purchased during the period April to June of 2001 for delivery from January to March 2002. PSE's power costs in the general rate case are normalized and do not include the

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high cost hedges purchased for early 2002. The general rate case uses normalized power costs from October 2002 to September 2003 to set PSE's power rates. Therefore, if the Commission grants PSE's interim rate request, which is in large part based on these early 2002 hedging losses and other high power costs from January 1, 2002 through October 31, 2002, the parties will not have an opportunity to argue that these costs were imprudently incurred. Since the general rate case is based on future normalized power costs there is a complete mismatch of the time periods covered.

Mr. Gaines recognizes this mismatch problem when he explains:

> If the Commission recognizes that the full amount of request interim relief is needed to satisfy the PNB standard, then it would be appropriate to adjust the amount of interim relief afforded in an amount equal to the amount by which actual power costs are greater or lesser than projected power costs. Otherwise, the Company could exceed or fall short of the relief required by the PNB standard.

Ex. No. (WAG-5T) at 2, lines 14-19. The problem with Mr. Gaines' suggestion is that a comparison of actual versus projected power costs does not address whether these costs were prudently incurred and are properly recoverable through an interim rate increase. Therefore, the validity and prudency of the January 1, 2002, to October 31, 2002 power purchased must be considered here, if the Commission allows recovery of those costs in interim rates.

Given the unique nature of this interim surcharge case, the Commission must consider all of the testimony and exhibits of Mr. Schoenbeck in order to reach an

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informed decision on the prudency of the early 2002 power costs that make up a majority of the $170 million interim rate increase request.

B. The Commission Must Consider the Circumstances Surrounding the Company's Alleged Financial Crisis

The Washington legislature has charged the Commission with the duty to "[r]egulate in the public interest." RCW § 80.01.040(2), (3). The interest of the public to be protected is that of the customers of the regulated utilities. Cole v. WUTC, 79 Wash.2d 302, 306 (1971). When considering interim rate relief, the Commission has recognized that consideration of the public interest is paramount. WUTC v. Pacific Northwest Bell Tel. Co., WUTC Cause No. U-72-30 tr, Second Supp. Order Denying Petition for Interim rate Relief at 13 (Oct. 10, 1972) ("PNB") (regulation in the public interest "is our ultimate responsibility and a reasoned judgment must give appropriate weight to all salient factors.")

The Commission analyzes six factors when determining whether to grant interim rate relief, and has always emphasized the centrality of the public interest review. Id. The Commission has stated that the PNB factors are not to be applied mechanically or exclusively; instead, a broad inquiry into the fairness of the proposed rate hike must be undertaken. WUTC v. PSE, WUTC Docket Nos. UE-011163, UE-011170, Sixth Supp. Order, Order Granting Motions at 6 (Oct. 4, 2001). In Docket Nos. UE-011163, UE-011170, PSE attempted to limit the matters under consideration by invoking the PNB factors as exclusive. The Commission rejected this argument stating:

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> The Company argues that because fairness, justness, and reasonableness of interim rates are not listed in those criteria, the Company need not prove that rates resulting from an extraordinary proceeding are fair, just, and reasonable. We disagree with the Company.

Id. at 11.

The Commission has determined that its charge to "regulate in the public interest" requires consideration of fairness, justness, and reasonableness of interim rates. *See* PNB at 13; WUTC v. Olympic Pipeline Co., WUTC Docket No. TO-011472, Third Supp. Order (Jan. 31, 2002). Determination of justness and reasonableness, in turn, cannot be made solely on the basis of the utility's financial situation, but must inquire how and why that situation came about, in order to decide whether it is fair, just and reasonable to impose additional burdens on ratepayers in bailing out the utility.

PSE's arguments if adopted by this Commission could result in absurd results. For example, under PSE's rationale, if a utility's financial conditions were the result of fraudulent behavior, the Commission could not consider such evidence. It is critically important for the Commission to consider evidence regarding what created the alleged financial crisis. Indeed, PSE has submitted extensive testimony on this very issue. Ex. No. WAG-5T at sections IV-VI, VIII.

Mr. Schoenbeck's testimony attempts to quantify an appropriate level of recovery, if the Commission determines that PSE has proven that as a matter of law it has met the standard for granting interim rate relief. Mr. Schoenbeck has submitted prefiled testimony regarding the appropriate level of recovery of PSE's high 2002 power cost, including which costs the Commission should and should not consider in setting an

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interim rate increase level. In this regard, Mr. Schoenbeck merely follows the lead of Mr. Gaines, in using recoverable power costs to determine the amount of interim relief.

Mr. Schoenbeck's approach is consistent with his approach in Avista's recent power cost surcharge case. In the Avista case, the Commission not only considered, but adopted Mr. Schoenbeck's approach, in part. While the Commission deferred certain issues for later consideration in the general rate case, the Commission pointed out, "We do, however, consider these factors [referring to the hydro and power risk adjustments] when assessing Avista's justification for surcharge." In re Avista, UE-010395, Sixth Supp. Order at 29.

C. PSE's Selection of the Sections of the Testimony that are the Subject of the Motion Makes No Sense

PSE, while not fully explaining the basis for striking the portions of the individual testimony, appears to attempt to strike Mr. Schoenbeck's testimony regarding the power cost contracts and hedges. However, PSE does not seek to strike all of Mr. Schoenbeck's testimony on these issues. Neither ICNU's counsel nor Mr. Schoenbeck can make any sense out of the page numbers and line references that are the subject of the Motion to Strike. Perhaps most notably PSE only seeks to strike DWS, Chart 3 when other charts in Mr. Schoenbeck's testimony cover the same subject matter. Finally, Staff Witness Merton Lott also submits testimony on the same power cost subjects covered by Mr. Schoenbeck, but PSE apparently does not seek to strike Mr. Lott's testimony. MRL-1TC at 4-5; 10-11; 24-26.

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D. Motions to Strike are Disfavored

Motions to strike testimony are generally disfavored in administrative proceedings because ascertaining all relevant facts is the primary objective, not allowing parties to engage in legal maneuvering. PSE's objections to the testimony of Ms. Steel and Messrs. Schoenbeck and Hill should be directed at "the weight to be given the evidence," not its admissibility. *See* WUTC v. US West Communications, WUTC Docket No. UT-961638, Third Supp. Order Denying Motion to Strike (Dec. 19, 1997); In re Evergreen Trails, Order M.V.C. No. 1824, Hearing No. D-2559 (July 10, 1989). As at least one federal court has concluded, "even a properly made motion to strike is a drastic remedy which is disfavored by the courts and infrequently granted." Int'l Longshoremen's Ass'n v. Virginia Int'l Terminals, 904 F. Supp. 500, 504 (E.D. Va. 1995).

E. PSE's Motion to Dismiss is Untimely

The Commission should deny PSE's Motion on the basis that it is untimely. PSE's Motion was filed the business day immediately prior to the hearing on PSE's interim rate request, despite the fact that PSE has had the testimony since late January. PSE has not offered any explanation for why it waited until this late date to submit its Motion and dispute this testimony.

CONCLUSION

The Commission should deny PSE's Motion to Strike. The Motion to Strike is an eleventh hour attempt by PSE to limit the Commission's authority to protect

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the public interest and ensure that ratepayers are not charged unjust and unreasonable rates. Since PSE bases its request for interim rate relief on the amount of its current power costs, it is appropriate for other parties to address those same power costs in suggesting an appropriate level of relief. Furthermore, consideration of these costs cannot simply be deferred to the general rate case, because the general rate case only concerns normalized power costs from October 1, 2002 – September 1, 2003, and it does not address the power costs that PSE seeks to recover through the interim rate surcharge.

WHEREFORE, ICNU respectfully petitions the Commission to deny PSE's Motion to Strike.

Dated this 18th day of February, 2002.

Respectfully submitted,

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