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BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

The PUBLIC COUNSEL Section of the Office of the Washington Attorney General, Complainant, v. PUGET SOUND ENERGY, INC., Respondent.	NO. UE-011411 PUGET SOUND ENERGY, INC.'S ANSWER TO COMPLAINT
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1. Puget Sound Energy, Inc. ("PSE" or "the Company") answers the Complaint filed by the Public Counsel Section of the Office of the Washington Attorney General ("Public Counsel") dated October 17, 2001 (the "Complaint"), as set forth below. PSE's address is One Bellevue Center, 411 – 108th Avenue, NE, Suite 300, Bellevue, Washington 98004.

2. Public Counsel's Complaint brings into issue RCW 80.01.040, 80.04.110, 80.04.220, 80.04.230, 80.28.010, 80.28.020; WAC 480-09-420(5), and the Pacific Northwest Electric

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Power Planning and Conservation Act, Pub. L. No. 96-501, 94 Stat. 2697, 16 U.S.C. §§ 839-839h (1980) (the "Northwest Power Act" or the "Act").

I. BACKGROUND

3. The Complaint by Public Counsel concerns the pass through to PSE's eligible residential and small farm customers of benefits received by PSE from the Bonneville Power Administration ("BPA") pursuant to the Northwest Power Act, hereinafter referred to as "Exchange Benefits."

4. Public Counsel's Complaint specifically concerns the treatment of Exchange Benefits under the Commission's order authorizing the merger of the Puget Sound Power & Light Company and the Washington Natural Gas Company, *Fourteenth Supplemental Order Accepting Stipulation; Approving Merger*, Docket No. UE-960195 (the "Merger Order"). The treatment of Exchange Benefits is addressed in Section III.A.3.d ("Residential and Small Farm Energy Exchange Benefits") of the Stipulation that was approved, adopted and incorporated by reference into the Merger Order. That portion of the Stipulation provides, in full:

d. Residential and Small Farm Energy Exchange Benefits. The rate plan recommended in this Stipulation passes through directly to eligible customers the residential exchange benefits received from BPA during the Rate Plan Period. Notwithstanding any reduction in the actual level of residential exchange benefits received from BPA during the Rate Plan Period, PSE will maintain (drawing first from any residential exchange benefits received from BPA) the credits under Schedule 94 (Residential and Farm Energy Exchange) and Schedule 97 (Irrigation Credit) at the current levels during the Rate Plan Period. Commission Staff and Public Counsel will support PSE's efforts during the Rate Plan Period to obtain their residential exchange

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benefits to which PSE's customers are entitled under the Regional Act. At the expiration of the current Residential Exchange contract on June 30, 2001, the current credit under Schedule 94 shall be transferred to general rates.

Stipulation at 7. The "Rate Plan Period" to which the Stipulation refers commenced on the date of the merger approval and continues through December 31, 2001.

5. On June 13, 2001, the Commission issued its "Order Approving Agreement, and Granting Tariff Revisions on Less Than Statutory Notice," in Docket No. UE-010815 (the "June 13 Order"). The June 13 Order addressed PSE's request for Commission approval of an Amended Settlement Agreement, Contract No. 01PB-10885 (including the Firm Power Block Sales Agreement, Contract No. 01PB-10886) (collectively, the "PSE-BPA Amended Agreement"). The PSE-BPA Amended Agreement monetized the power portion of PSE's new Exchange Benefits over a five-year period (October 1, 2001 through September 30, 2006). June 13 Order at 2. The June 13 Order approved PSE's requested revisions to its Electric Tariff G that "pass[ed] benefits arising under the PSE-BPA Agreement through to eligible customers, as required by the [Northwest Power] Act." June 13 Order at 2.¹ The total amount of Exchange Benefits under the PSE-BPA Amended Agreement (as monetized) to be passed through for the time period July 1, 2001 through September 30, 2006, is \$884,365,720.

¹ This pass through was implemented through a revision of a number of PSE's existing schedules (Nos. 7, 8, 10, 11, 12, 29, 35, 56, 59 and 307) and the implementation of an original Schedule 194. The revisions transferred the then-current residential exchange credit to general rates. Schedule 194 passes through Exchange Benefits after June 30, 2001, if and to the extent that such benefits are received in a cumulative amount that exceeds the Exchange Benefits passed through to eligible customers by Schedule Nos. 7, 8, 10, 11, 12, 29, 35, 56, 59, and 307.

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6. The June 13 Order also recognized that disagreements existed among the parties regarding the treatment of residential exchange benefits.

7. Public Counsel has now filed a Complaint alleging that Section III.A.3.d of the Stipulation creates a rate reduction after June 30, 2001 equal to the amount of the residential exchange credit provided to PSE’s customers prior to June 30, 2001. Public Counsel further contends that this alleged rate reduction is on top of and in addition to the new Exchange Benefits received by PSE under the PSE-BPA Amended Agreement – thus creating *two* credits for PSE’s customers for the same Exchange Benefits. Public Counsel alleges that Section III.A.3.d of the Stipulation – which is clearly entitled "Residential and Small Farm Energy Exchange Benefits," – has "no relation to and was not intended to govern the treatment of residential exchange benefits that might be received by PSE after June 30, 2001." Complaint at 4-5.

8. The Merger Order’s treatment of Exchange Benefits is clear and unambiguous and does not mean what Public Counsel says it means. The Stipulation does *not* transform the 1.085 cents/kWh Exchange Benefit credit into a permanent rate reduction designed to "reflect the achievement of merger benefits, best practices, and power stretch savings at the end of the rate predictability period" as asserted by Public Counsel. Complaint at 4. The Stipulation says no such thing, nor does the Merger Order create any such requirement. Rather, the Stipulation says that "the current credit under Schedule 94 shall be transferred to general rates." The "current credit" reflected the pass through of Exchange Benefits. Section III.A.3.d, "Residential and Small Farm Energy Exchange Benefits," does not mention, refer to, or reference a new 1.085 cents/kWh credit to reflect merger benefits, best practices, and power stretch savings.

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9. The Stipulation is clear and unambiguous. While the Stipulation unambiguously speaks to the treatment of Exchange Benefits, an examination of the environment under which the Stipulation was entered into also contradicts the interpretation now urged by Public Counsel.

10. At the time the Stipulation was entered into, a contract existed between PSE and BPA providing eligible PSE customers Exchange Benefits. The parties to the Stipulation understood that this contract would expire six months *before* the expiration of the Rate Plan Period. BPA was also scheduled by law to initiate a rate case prior to the expiration of the Rate Plan Period, and there was a widespread belief that residential exchange benefits would be greatly reduced, if not eliminated, by July 2001.² There was

² This uncertainty was evidenced by the *Comprehensive Review of the Northwest Energy System Final Report: Toward a Competitive Electric Power Industry for the 21st Century*, document number CR 96-26 (December 12, 1996) (the "Report"). The Report was commissioned by the governors of the four Northwest states and recommended that investor-owned utility residential and small farm customers receive benefits of the Federal Columbia River Power Systems in the form of power. The Report recognized that Exchange Benefits were declining and encouraged the parties in the region to explore other mechanisms for providing federal power benefits to the residential and small farm loads of investor owned utilities. The Report stated:

As a result of the Northwest Power Act of 1980, Northwest utilities have the right to sell to Bonneville an amount of power equal to that required to serve their residential and small farm customers at the utilities' average system costs and receive an equal amount of power at Bonneville's average system cost. In reality, this is an accounting transaction. No power is actually delivered. This was intended to be a mechanism to share the benefits of the low-cost federal hydropower system with the residential and small farm customers of the region's investor-owned utilities. As a result of decisions made by Bonneville in its most recent rate case, those benefits have been reduced. The Steering Committee acknowledges that the residential and small farm consumers of exchanging investor-owned utilities will be adversely affected by the reduction of exchange benefits. Congress intervened for one year to stabilize the exchange benefits. However, on October 1, 1997, there

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therefore a disconnect in timing between the Rate Plan Period and the contract for Exchange Benefits. Under the Merger Order, the Rate Plan Period extends through December 31, 2001, while Schedule 94, the mechanism by which PSE passed through residential exchange benefits, and the Exchange Benefits under the existing BPA contract, were both generally assumed to terminate on June 30, 2001.

11. In order to provide a mechanism during the Rate Plan Period to transfer Exchange Benefits the parties to the Stipulation agreed that the current credit reflecting Exchange Benefits would be transferred to general rates after June 30, 2001. Giving the words of the Stipulation their plain meaning, *if* the rate plan "passes through directly to eligible customers" Exchange Benefits "received from BPA during the Rate Plan Period," then the rate plan must be interpreted to include a pass through mechanism (other than Schedule 94 that would expire) that takes effect after June 30, 2001. The Stipulation thus provides two pass through mechanisms in order to address the timing problems during the Rate Plan Period between the Exchange Benefit contract and the Rate Plan Period: Schedule 94 (which expired June 30, 2001) and a subsequent transfer of the "current credit" to general rates. No other pass through mechanisms are provided for in the Merger Order.

12. The Merger Order's discussion of the Stipulation reflects this agreement. The Merger Order states:

will be rate increases to the residential and small farm customers of the exchanging utilities. *The Steering Committee encourages the parties to continue settlement discussions and to explore other paths to ensure that residential and small farm loads receive an equitable share of the benefits of the federal base system.*

Report at 17 (emphasis added).

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PSE will pass through directly to eligible customers *the residential exchange benefits received from BPA during the rate plan period*, and notwithstanding any reduction in the actual level of residential benefits received from BPA during the Rate Plan Period, PSE will maintain the credits under Schedule 94 and 97 at their current levels.

Merger Order at 13. Thus, by its discussion, the Commission clearly understood the Stipulation to provide a pass through of Exchange Benefits during the entire Rate Plan Period (i.e., after Schedule 94 and the then-current level of Exchange Benefits expired on June 30, 2001 until December 31, 2001) and clearly stated that such a pass through would be maintained at "current levels," i.e., the amount of credit for Exchange Benefits under Schedule 94.

13. A further examination of the Stipulation also contradicts the interpretation urged by Public Counsel. Both the Merger Order and the Stipulation recognize the fact that PSE would continue the level of credits reflecting Exchange Benefits during the Rate Plan Period "[n]otwithstanding any reduction in the actual level of residential exchange benefits received from BPA during the Rate Plan Period" Stipulation at 7. These words acknowledge the risk during the Rate Plan Period that the level of Exchange Benefits could be reduced or eliminated before the end of the Rate Plan Period. Thus, in order to preserve the rate stability inherent in the rate plan, the Stipulation provides that the current level of benefits passed through to customers would stay the same during the Rate Plan Period regardless of whether the Exchange Benefits were reduced or eliminated. That is, PSE's customers would not experience a *rate increase* during the Rate Plan Period if the Exchange Benefits were reduced or eliminated after June 30, 2001.

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14. In fact, PSE has recovered the 1.085 cents per kWh *and* has achieved, through its and the Commission's efforts in negotiating with BPA, and a substantial *increase* in the amount of Exchange Benefits it receives under the PSE-BPA Amended Agreement as monetized. Thus, there was no gap during the Rate Plan Period between the benefits received before and after June 30, 2001 that PSE had to cover. This was a win for both consumers and the Company.

15. Conspicuously absent from any of the language regarding Exchange Benefits in the Merger Order or the Stipulation is any discussion of "merger benefits, best practices, and power stretch savings." What is discussed in the portions of the Merger Order and Stipulation dealing with Exchange Benefits is how these benefits would be passed through to eligible customers without disturbing the rate stability inherent in the rate plan.

16. In sum, the relevant portions of the Merger Order and Stipulation unambiguously speak to passing through Exchange Benefits during the Rate Plan Period. The Rate Plan Period extends through December 31, 2001. The mechanism to provide such transfer up to and through June 30, 2001 was Schedule 94. The mechanism to transfer such benefits, if received after June 30, 2001, is a transfer of the "current credit" reflecting the then-current Exchange Benefits to general rates. If the Exchange Benefits received by PSE fell short after June 30, 2001, PSE agreed to absorb the cost so as to preserve rate stability during the Rate Plan Period. If, however, Exchange Benefits were received in an amount equal to or greater than the "current credit," those benefits were also to be flowed through. By operation of federal law, any amount of Exchange Benefits received by PSE from BPA above and beyond the level of the "current credit" are to be passed

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through to customers (e.g., via a schedule that adds to the level of Exchange Benefits secured by the Stipulation). Public Counsel's claim that an amount equal to 1.085 cents/kWh must be passed through on top of and in addition to the Exchange Benefits under the PSE-BPA Amended Agreement is contrary to the Stipulation and Merger Order.

II. ANSWER

17. Answering paragraph 1 of the Complaint, paragraph 1 states legal assertions and conclusions for which an answer is inappropriate and is therefore denied. To the extent paragraph 1 contains factual allegations that require an answer, PSE denies the allegations.

18. PSE admits the allegations in paragraph 2 on information and belief.

19. PSE admits the allegations in paragraph 3.

20. Answering paragraph 4 of the Complaint, paragraph 4 states legal assertions and conclusions for which an answer is inappropriate and is therefore denied.

21. Answering paragraph 5 of the Complaint, paragraph 5 states legal assertions and conclusions for which an answer is inappropriate and is therefore denied.

22. PSE admits the allegations in paragraph 6.

23. PSE admits the allegations in paragraph 7.

24. PSE admits the allegations in paragraph 8.

25. PSE admits the allegations in paragraph 9.

26. Answering paragraph 10, PSE admits that the Commission issued the Merger Order on February 5, 1997. PSE further admits that Appendix A to the Complaint is a copy of the merger Stipulation. To the

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extent this paragraph contains legal assertions and conclusions for which an answer is inappropriate, PSE denies the same.

27. Paragraph 11 states legal assertions and conclusions for which an answer is inappropriate and is therefore denied. Section III.A of the Stipulation speaks for itself.

28. Paragraph 12 states legal assertions and conclusions for which an answer is inappropriate and is therefore denied. Section III.A of the Stipulation speaks for itself.

29. Answering paragraph 13, PSE admits that the Stipulation contains the phrase quoted by Public Counsel in the first sentence of paragraph 13. Regarding the second sentence, PSE states that the Stipulation speaks for itself. The second sentence of paragraph 13 states legal assertions and conclusions for which an answer is inappropriate and is therefore denied. To the extent that this paragraph contains additional factual allegations, PSE denies the additional allegations set forth in this paragraph.

30. Paragraph 14 states legal assertions and conclusions for which an answer is inappropriate and is therefore denied. To the extent that this paragraph contains additional factual allegations, PSE denies the additional allegations set forth in this paragraph.

31. Paragraph 15 states legal assertions and conclusions for which an answer is inappropriate and is therefore denied.

32. Answering paragraph 16, PSE admits that the Commission issued an Order Approving Agreement and Granting Tariff Revisions on Less Than Statutory Notice on June 13, 2001. With regard

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to the second sentence of paragraph 16, this sentence states legal assertions and conclusions for which an answer is inappropriate and is therefore denied.

33. Answering paragraph 17, PSE admits that the June 13 Order contains the excerpt quoted in paragraph 17.

34. Answering paragraph 18, PSE admits that the June 13 Order contains the excerpt quoted in paragraph 18.

35. Answering paragraph 19, PSE admits that it filed revisions to Schedule 7 and other schedules and a new Schedule 194 in order to implement the new PSE-BPA Agreement and that the Commission approved certain tariff changes as part of the June 13 Order. The remainder of paragraph 19 states legal assertions and conclusions for which an answer is inappropriate and is therefore denied. To the extent that this paragraph contains additional factual allegations, PSE denies the additional allegations set forth in this paragraph.

36. Answering paragraph 20 of the Complaint, PSE incorporates by reference its answers to paragraphs 1-19 set forth above.

37. Paragraph 21 states legal assertions and conclusions for which an answer is inappropriate and is therefore denied. To the extent that this paragraph contains additional factual allegations, PSE denies the allegations set forth in this paragraph.

38. Answering paragraph 22 of the Complaint, PSE incorporates by reference its answers to paragraphs 1-19 set forth above.

39. Paragraph 23 states legal assertions and conclusions for which an answer is inappropriate and is therefore denied. To the extent that this paragraph contains additional factual allegations, PSE denies the allegations set forth in this paragraph.

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40. Answering paragraph 24 of the Complaint, PSE incorporates by reference its answers to paragraphs 1-19 set forth above.

41. Paragraph 25 states legal assertions and conclusions for which an answer is inappropriate and is therefore denied. To the extent that this paragraph contains additional factual allegations, PSE denies the allegations set forth in this paragraph.

42. PSE further denies that any relief is due to Public Counsel or ratepayers based on the Complaint.

III. DEFENSES AND AFFIRMATIVE DEFENSES

43. The Complaint fails to state a claim upon which relief can be granted.

44. PSE's acts and/or practices have fully complied with the Merger Order and Stipulation. Any order granting the relief requested would be contrary to the Merger Order and unlawful, and would not be just, reasonable or proper.

45. The Complaint seeks to force PSE to reduce rates below those provided for in the Merger Order and without compensation, in violation of applicable statutes and regulations.

46. Any order requiring granting the Complaint would violate the Takings Clause of the Fifth Amendment of the United States Constitution and Article I, Section 16 of the Washington State Constitution.

47. Public Counsel's claims as to PSE's alleged violation of the Merger Order are barred by the doctrines of waiver and equitable estoppel.

IV. PRAYER FOR RELIEF

A. That the Complaint be dismissed with prejudice.

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- B. That the Commission issue an order confirming that PSE's acts and/or practices have been consistent with the Merger Order and Stipulation.
- C. For such other relief as the Commission deems just and appropriate.

DATED: November ____, 2001.

PERKINS COIE LLP

By _____
Steve Marshall
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by mailing with postage prepaid to:

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Dated at _____, Washington, this _____ day of _____,
2001.

Pam Iverson

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