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BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

BERNICE BRANNAN, et al., and TERRY
MCNEIL, et al.,

Complainants,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

NOS. UE-010990
UE-010995

**RESPONDENT PUGET SOUND ENERGY,
INC.'S ANSWER TO COMPLAINTS**

1. Puget Sound Energy, Inc. ("PSE") hereby answers the Complaints ("Complaints") of Bernice Brannan, et al., and Terry McNeil, et al. (the "Complainants"). PSE's address is One Bellevue Center, 411 – 108th Avenue, NE, Suite 300, Bellevue, Washington 98004.

I. JURISDICTION

2. The Commission has certain jurisdiction over the form of bills issued by public utilities, including the inclusion of local taxes, in accordance with WAC 480-100-101. The Commission is authorized to hear certain complaints arising under the terms of RCW 80.04.110.

II. BACKGROUND

3. On July 6, 2001, the Commission received a complaint filed by Bernice Brannan, et al., requesting the Commission remove the Lummi Utility Business

**RESPONDENT PUGET SOUND ENERGY,
INC.'S ANSWER TO COMPLAINTS- 1**

[07771-0100/010995, PSE, Answer to Complaints, 8-2-01.doc]

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Activities Tax (the “Lummi Utility Tax”), from the tariffs of PSE to the extent the tax is passed through to non-tribal members located on fee land within the Lummi Reservation.

4. On July 9, 2001, the Commission received a complaint filed by Terry McNeil, et al., requesting the Commission remove the Swinomish Utility Business Activity Tax (the “Swinomish Utility Tax”), from the tariffs of PSE to the extent the tax is passed through to non-tribal members located on fee land within the Swinomish Reservation.

5. PSE collects both the Lummi Utility Tax and the Swinomish Utility Tax under Schedule 81 of PSE’s Electric Tariff G.

6. In the Complaints, the Complainants cite Atkinson Trading Co., Inc. v. Shirley, 532 U.S. ___, 121 S. Ct. 1825, 149 L. Ed. 2d 889 (2001) (“Atkinson”) and Big Horn County Electric Cooperative, Inc. v. Adams, 219 F.3d 944 (9th Cir. 2000) (“Big Horn”) to support their allegation that each of the Lummi Utility Tax and Swinomish Utility Tax is illegal and invalid as applied to non-tribal members on fee land within the respective reservations.

III. ANSWER

7. Answering ¶ 1 of the Complaint filed by Bernice Brannan, et al., PSE admits that it collects the Lummi Utility Tax from its customers living within the boundaries of the Lummi Reservation and remits such tax to the Lummi Indian Business Council and that the United States Supreme Court decided Atkinson and that the Ninth Circuit decided Big Horn. Paragraph 1 of the Complaint also makes legal assertions and conclusions for which no answer is required. To the extent ¶ 1 contains additional factual allegations, PSE is without information sufficient to form a belief as to the truth or accuracy thereof, and therefore denies the same.

8. Answering ¶ 2 of the Complaint filed by Bernice Brannan, et al., PSE is without

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information sufficient to form a belief as to the truth or accuracy thereof, and therefore denies the same. Paragraph 2 also makes legal assertions and conclusions for which no answer is required.

9. Answering ¶ 1 of the Complaint filed by Terry McNeil, et al., PSE admits that it collects the Swinomish Utility Tax from its customers living within the boundaries of the Swinomish Reservation and remits such tax to the Swinomish Indian Tribal Community and that the United States Supreme Court decided Atkinson and that the Ninth Circuit decided Big Horn. Paragraph 1 also makes legal assertions and conclusions for which no answer is required. To the extent ¶ 1 contains additional factual allegations, PSE is without information sufficient to form a belief as to the truth or accuracy thereof, and therefore denies the same.

10. Answering ¶ 2 of the Complaint filed by Terry McNeil, et al., PSE is without information sufficient to form a belief as to the truth or accuracy thereof, and therefore denies the same. Paragraph 2 also makes legal assertions and conclusions for which no answer is required.

IV. AFFIRMATIVE DEFENSES

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

12. PSE's actions are consistent with the Commission's Second Supplemental Order in Washington Utilities and Transportation Commission v. US West Communications, Inc., Docket No. UT-911306 (1992), in which the Commission held that tribal utility taxes should be borne by ratepayers, both members and non-members owning fee lands, residing within the boundaries of the reservation.

13. PSE anticipates submitting to the Commission within thirty (30) days of the date of this Answer revisions to its Schedule 81 consistent with the holding of Atkinson.

V. PRAYER FOR RELIEF

WHEREFORE, PSE prays for the following relief:

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That the Complaints be suspended pending submittal and Commission consideration of the tariff revisions discussed in ¶ 13 above. Upon conclusion of such consideration, PSE requests the Complaints be dismissed.

DATED: August 2, 2001.

PERKINS COIE LLP

By _____
Steven C. Marshall
William R. Maurer
Attorneys for Puget Sound Energy, Inc.

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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 first class mailing with postage prepaid to:

Terry McNeil
16750 Warren Street
La Connor, Washington 98257

Bernice Brannan
4145 Patos Drvie
Ferndale, Washington 98248

Robert D. Cedarbaum
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Simon ffitch
Office of the Attorney General
Public Counsel
900 - 4th Avenue, Suite 2000
Seattle, WA 98164-1012

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

Pam Iverson

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