BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

KIMBERLY-CLARK TISSUE COMPANY,

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

No. UG-990619

BRIEF OF KIMBERLY-CLARK TISSUE COMPANY

INTRODUCTION

Puget Sound Energy ("Puget") breached its statutory and common law duty to provide adequate, efficient, and reasonable natural gas transportation service to Kimberly-Clark Tissue Company ("Kimberly-Clark") for the period from December 25 to December 28, 1998. On December 19, 1998, Puget curtailed interruptible sales and transportation service due to distribution capacity constraints caused by severe cold weather. On the morning of December 24, 1998 – Christmas Eve – Puget management made the decision to extend the curtailment over the long holiday weekend to December 28, 1998. Between December 25 and December 28, temperatures reached a high of 51 degrees. Uncontroverted evidence indicates that Puget's distribution system temperatures and pressures had returned to normal. Puget's failure to resume service to its interruptible customers under these circumstances constitutes a breach of its duty to provide adequate, efficient, and reasonable service.

Kimberly-Clark is an interruptible transportation customer of Puget. Due to the unforeseen failure of its back-up fuel supply, Kimberly-Clark's Everett mill was forced to burn natural gas from December 25 to December 28, 1998. As a result, Puget charged

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Kimberly-Clark approximately $346,000 in penalties. For these reasons, Kimberly-Clark urges the Commission to rescind the penalty of $2 per therm charged by Puget for the period from December 25 to December 28, 1998. *See* Ex. 6 (DJF-5), p. 8.[1]

I. Puget Has A Duty To Provide Adequate, Efficient, And Reasonable Interruptible Service.

Washington law requires Puget to provide adequate and efficient service to all customers. The statute provides:

> Every gas company . . . shall furnish and supply such service . . . as shall be safe, adequate and efficient, and in all respect just and reasonable."

RCW 80.28.010(2). Puget may be held liable in damages for a breach of this duty to provide safe, adequate, and efficient service. *Shannon v. Grand Coulee,* 7 Wash. App. 919, 921, 503 P.2d 760 (1972).

Puget's duty to provide safe, adequate, and efficient service extends to customers who take interruptible service as well as to firm customers. The Commission's rules for service interruptions provide: "[E]ach utility shall endeavor to avoid interruptions of service, and, when such interruptions occur, to reestablish service with a minimum of delay." WAC 480-100-076. In *National Union Insurance Co. v. Puget Sound Power & Light*, 94 Wash. App. 163, 972 P.2d 481 (1999), Puget was sued for damages resulting from its negligent failure to utilize available back-up facilities to serve Boeing during a period of service interruption caused by a windstorm. Citing RCW 80.28.010(2) and WAC 480-100-076, the Court of Appeals held that Puget was liable for its negligent failure to reestablish service promptly. 94 Wash. App. at 174. Specifically, the Court held that Puget was liable for damages for service interruptions "that it could have controlled or mitigated but for its unreasonable or unexplained failure to utilize available back-up equipment in order to reestablish service with a minimum of delay while storm damage to regular equipment is being repaired." 94 Wash. App. at 175.

The duty to provide adequate and efficient service is not only imposed upon Puget by

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[1] Although the exact amount of the penalty at issue has not been calculated, Kimberly-Clark and Puget agree on the volume of penalty therms at issue. *See* Tr. 93, ll. 1-15.

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Washington statutes and the Commission's regulations, but by the state's earliest, well-established common law. The duty to serve arises out of the special rights and privileges enjoyed by public utilities. In 1891 – a year after Washington achieved statehood – the Supreme Court defined the duty of a water utility in Tacoma to provide service under reasonable conditions:

> "[A utility's] relations to the people, and the rights and privileges it must from the very nature of its business necessarily exercise, give it a public character, and to some extent a monopoly, which it is true can only be tolerated upon the ground of a reciprocal duty to meet the public want. Its duty is to supply the inhabitants of Tacoma within the extent of its business, who may apply to it therefor, with water for a reasonable price, and upon reasonable conditions. This it can be compelled to do." *Tacoma Hotel Co. v. Tacoma Light and Water Co.*, 3 Wash. 316, 321-2 (1891).

Puget's contention that interruptible transportation is "second-rate service at lower prices" is no excuse. *See* Tr. 81, l. 9. Puget may prescribe rules and regulations in its tariffs for interruptible service, but those rules must be reasonable, and they must be administered reasonably. *State of Washington ex rel. Hallett v. Seattle Lighting Co.*, 60 Wash. 81 (1910). The fact that Puget provides service to Kimberly-Clark under an interruptible tariff does not change this obligation to provide "adequate and efficient service."

Rule 23 permits curtailment of interruptible transportation service *only* 'if the company's distribution capacity is insufficient to meet estimated requirements for all customers on interruptible sales and transportation service." Ex. 29 (JTO-13), p. 9. The uncontroverted evidence presented at the hearing demonstrates that by December 25, 1998, Puget's distribution system had returned to pre-curtailment status and its distribution capacity was sufficient to serve all of Puget's customers. Under these circumstances, Puget breached its duty to provide adequate, efficient, and reasonable service. Kimberly-Clark urges the Commission to rescind the penalty charged by Puget for the period from December 25, 1998, to December 28, 1998. *See* Ex. 6 (DJF-5), p. 8.

II. Puget Breached Its Duty To Provide Adequate, Efficient, And Reasonable Service.

A. Puget Unreasonably Failed To Resume Interruptible Service Between December 25 And December 28, 1998.

Tom Owens, Kimberly-Clark's expert witness, concluded that "Puget's conduct fell

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short of its obligation to provide adequate service to its interruptible customers." Ex. T-12, p. 11. A review of Puget's management of the curtailment of interruptible service between December 25 and December 28, 1998, supports Mr. Owens' opinion.

Puget's senior management made the initial decision to curtail interruptible service based upon a detailed review of the impact of freezing weather conditions upon the distribution system. According to Tim Hogan's testimony, "senior management would be involved in reviewing any operation plans and authorizing any curtailment action." Ex. T-81, p.5, ll. 13-16.

On December 17, 1998, when Puget first began receiving forecasts of cold weather, Heide Caswell – manager of operations planning – and others began reviewing distribution system pressures and evaluating areas where action might be needed during the cold weather. During the next two days, Gary Swofford, Tim Hogan, and Sue McLean – all vice-presidents and officers of the company – participated in meetings to evaluate the cold weather conditions. Tr. 200, l. 13 -201, l. 24. Based on temperatures, weather forecasts, system pressures, and expected performance of the system, the curtailment was called for 10 p.m. on Saturday, December 19, 1998. Mr. Hogan, Mr. Swofford, and Ms. McLean – along with technical staff including Paul Riley and Heide Caswell – participated in the curtailment decision. Tr. P. 234 (Caswell).

The Emergency Operations Center was opened on December 20, 1998. Ms. Caswell was primarily responsible for the Emergency Operations Center, and she and other managers were physically stationed there. Tr. 232, l. 3 – 236, l. 25. Puget's operations personnel were busy, carrying pagers, communicating regularly by email, supervising injections of compressed gas, monitoring weather forecasts, and working long hours. *See, e.g.,* Ex. 51. They reviewed ambient temperatures, checked system pressures and temperatures, measured throughput, monitored weather forecasts, and reviewed customer service calls. Tr. 304, l. 13 – 306, l. 22. A December 21, 1998, email from Paul Riley to the operations staff said: "Thanks to all who have put in looooonnnnnggg hours these last few days." Ex. 51, p. PSE 01230.

By December 24, conditions were returning to normal. On December 23, 1998, the

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Emergency Center closed and operations returned to the gas control and gas dispatch center – "like normal." Tr. 246, ll. 13-19. The weather turned warm; Heide Caswell agreed that temperatures on the distribution system were "climbing." Tr. 286, l. 13 – 287, l. 6. Volumes of gas deliveries or "send-out" markedly declined. Ex. C-20 (JTO-7). System pressures rose significantly, and remote telemetry unit ("RTU") data indicated a rise both in system pressures and temperatures. Ex. 27 (JTO-11); Ex. C-21 (JTO-8A); Ex. C-22 (JTO-8B). Customer service calls dropped dramatically. Ex. 105 (PAR-4).

In spite of these improved conditions, on Thursday, December 24, Puget decided not to resume interruptible service. Instead, senior management decided to continue the curtailment through the long holiday weekend until Monday, December 28, 1998. Tim Hogan was the officer who approved the decision and the "parameters" under which the curtailment would continue. Tr. P. 197, ll. 11-3.

Following the Christmas Eve decision to continue the curtailment over the long weekend, Puget's attention to the curtailment abruptly ended. Tim Hogan – the officer who approved the curtailment and the "parameters" for its extension – went home. He stayed at home and did not work from the afternoon of December 24 until the morning of Monday, December 28, 1998. Tr. pp. 213, l. 15 – 214, l. 9. Although he claims that Paul Riley could have contacted him if he felt is was "appropriate" (Tr. 217, ll. 8-16), Mr. Hogan had no conversations about the curtailment with Paul Riley or anyone else between December 24 and December 28, 1998. Tr. 213, l. 21 – 214, l. 12.

Heide Caswell's involvement in the curtailment ended about noon on Thursday, December 24, 1998. At that time, Ms. Caswell left town and went to Chehalis, where she remained though Christmas Day. Ms. Caswell was not in her office on December 25, December 26, or December 27, 1998. Tr. 247, l. 9 – 248, l. 14. During that period, Ms. Caswell did not talk with <u>anyone</u> about the curtailment or the conditions on the distribution system. Tr. 247, ll. 24.

Paul Riley left his office on December 24 after the decision was made to continue the curtailment over the long holiday weekend. Although he claims that was in the office sporadically over the weekend, he could not recall the "specifics" as to when he was there or

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for how long. Tr. 315, ll. 10-24.

No one in authority monitored conditions on the distribution system. Even if Paul Riley did monitor the system over the long holiday weekend, he was not authorized on his own to resume service to interruptible customers. Every witness, including Mr. Riley himself, agreed that Paul Riley was not "senior management." *See, e.g.*, Tr. 214, l. 19. To the contrary, Mr. Riley was one of five shift managers assigned in December 1998 to a regular Monday through Friday schedule. Tr. 308, l. 1-18.[2]

Puget management's lack of concern about the needs of its interruptible customers is inexcusable. Tom Owens, who has been representing interruptible gas transportation customers for nearly a decade (Tr. 7-22), testified that when he worked at Portland General, "We had interruptible customers and we did everything we could to not interrupt those customers. And when they were interrupted, as soon as could bring them back on line, we did." Tr. 79, ll. 220-25. Puget owed the same obligation to bring Kimberly-Clark and its other interruptible customers back "on line" promptly when the cold weather ended.

B. Puget's Unwillingness To Call Out Meter Readers For Duty Over The Holidays Was Not A Valid Reason To Extend The Curtailment Until December 28, 1998.

It appears that the real reason the curtailment was not monitored over the long Christmas weekend was a management decision not to disrupt the holiday plans of its meter readers. A Puget document entitled "Big Chill 1998 (December 19 – 23, 1998)" relates the following account of events occurring on December 23:

> System pressures remained high through the peak. The Woodinville and Puyallup jumpers were complete. The forecasts for the next five days indicated a warming trend, and at approximately 2:00 PM EOC/West closed. While EOC/West was closed, not all were certain of weather forecasts. Based on this, as well as the relatively small distribution system problems and the logistics involved to resume all customers on Christmas weekend after the significant amount of overtime employees had already worked, the decision was made to extend the curtailment through Monday at 5:00PM. Curtailments are removed in reverse order of their invocation, thus Rate Schedule 86's require significant effort to curtail and restore. Scattered customer calls were

[2] Puget also claimed at the hearing that low level staff in gas control would have had authority to resume service to interruptible customers. *See, e.g.*, Tr. 279, ll. 10-13. There is no corroborating evidence to suggest that gas control workers would have had authority to end the curtailment. Such testimony is inconsistent with the evidence of senior management involvement in the decision to commence the curtailment.

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> received, where poor pressure was the cause. None were large system problems, but a continuation of scattered frozen equipment.

Ex. 54, p. PSE 01216 (emphasis added).

Although she denies writing the section outlining the role of the meter readers in the decision to extend the curtailment through Monday, Heide Caswell admits to being the "primary author" of the "Bill Chill" document. Tr. 239, ll. 21 – 25. The "Big Chill" document was initiated when Ms. Caswell's boss asked her to prepare a chronicle of events that occurred during the cold weather in December 1998. The document was "intended to characterize for people the actions that are taken during a cold weather emergency on the gas system." Tr. 271, l. 25- 272, l.5.

An explanation nearly identical to the "Big Chill" document appears in a Puget email to the Commission regarding a customer complaint. On December 30, 1998, Puget emailed Nancy Stanton of the Commission staff responding to a customer's complaint about the extension of curtailment. Ex. 99, p. 42. The explanation included a section entitled "Background on the Big Chill (Dec. 19 – 24)." The section included an explanation of Puget's management decision not to call out meter readers:

> The forecasts for the next five days indicated a warming trend, however, not all were certain of this forecast, and based on the number of small distribution system problems still existing and the logistics involved to resume all customers on Christmas weekend, the decision was made to extend the curtailment though Monday at 5:00 PM. Thursday, weather conditions were still uncertain and PSE was received conflicting weather repots. Finally, late Thursday afternoon the decision was made by upper management not to send the meter readers out to read meters over the Christmas weekend. They had already worked overtime the week before trying to keep up with all the system problems.
>
> When curtailment is lifted, our meter readers must re-read all the meters of those customers were curtailed and who don't have telemetering. After reading the meters, then the customers are turned re-lit. Priority for re-lites are customers on Rate Schedule 86, 85, 87 & 57.
>
> When the customer called on Monday, he is right, we did not have any meter readers to read the meters of those who were curtailed. It was a management decision to not call in our meter readers over the Christmas weekend and take them away from their families.

Ex. 99, pp. 42-43 (emphasis added).

The chain of Puget's email indicates that the draft of the meter reader story was revised by several different people Puget, apparently for the purpose of responding to the

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Commission's investigation of customer complaints about the curtailment. Another draft of the meter reader story stated:

> Finally, late Thursday afternoon, December 24th, the decision was made by upper management not to send the meter readers out to read meters over the Christmas weekend and take them away from their families. Overtime pay for PSE employees was never a constraints. They had already worked overtime the week before trying to keep up with all the system problems. Many had worked overtime the previous weekend as well as during the week.

Ex. 99, p. 33 (emphasis added).

Even though Puget apparently submitted at least one version of the meter reader story to the Commission, Puget witnesses denied that consideration for the holiday plans of meter readers was the reason for continuing the curtailment until the end of the Christmas weekend. *See, e.g.*, Direct Testimony of Tim Hogan, Ex. T-81, p. 9. Perhaps reflecting Puget's concern about the Commission's reaction, a later Puget email dated around January 6, 1999, deleted the meter reader story altogether and substituted the following:

> Finally, late Thursday afternoon, December 24th, PSE elected not to send the meter readers out. These employees, as well as other staff, were heavily burdened to ensure a high quality of service had been delivered to our customers. The company, however, attempts to balance the needs of its employees with its customers.

Ex. 99, p. 29 (emphasis added). Still another draft of the story appeared in a later Puget email:

> Thursday afternoon, December 24th, upon evaluating the long weekend's weather forecast, the availability of personnel and the likelihood of making contact with our interruptible customers during the holiday, Puget sound Energy elected not to send the meter readers out. These employees, as well as other staff, were heavily burdened to ensure a high quality of service had been delivered to our customers. The company, however, attempts to balance the needs of its employees with its customers.

Ex. 99, p. 24.

Finally, in an email entitled "Response to Commission Complaint," the meter reader paragraph is deleted in its entirety. Ex. 99, p. 8.

A version of the meter reader story appeared later in response to Kimberly-Clark's complaint to the Commission. A Puget email dated in February 1999 and forwarded to Kimberly-Clark by Commission staff stated:

> The forecasts for the next five days indicated a warming trend, however, not all were certain of this forecast and based on the number of small distribution system problems still existing and the logistics involved to resume all

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> curtailed customers over the Christmas weekend, the decision was made by upper management to extend the curtailment through Monday (28th) at 5:00 PM.
>
> Before curtailment can be lifted, our meter readers have to re-read all the meters of those customer who were curtailed and who didn't have telemetering: rate schedule customers 85, 86, and 87. After reading the meters, the customers were told that they may resume using natural gas as stated per Rule 23.

Ex. 4 (TJF-1), p. 4 (emphasis added).

At the hearing, Puget attempted to exclude these statements from evidence, claiming that the meter reader story was not "cleared by management." Tr. 44, ll. 8-18. To explain away the written statements made by Puget personnel, Tim Hogan added that perhaps the information was from "someone who wasn't experienced in the issues surrounding curtailment situations." Tr. 219, ll. 1-6. However, the meter reader story apparently originated with Linda Strand. Ex. T-81 (TJH-T), p. 9. According to Tim Hogan, Linda Strand had "management responsibility for meter readers." Tr. 212, ll. 5-8. Linda Strand was involved in both of the two conference calls that took place on December 24, 1998. Tr. 209, ll. 3-8. There is no reason to think that her report of the conversation regarding meter readers is inaccurate.

Puget had the obligation to take all action necessary to restore interruptible transportation service, including calling out meter readers over the holidays. Interruptible customers like Kimberly-Clark should not be penalized for Puget's management decision not to disrupt the holidays for its employees. The Commission should not permit Puget to force its interruptible customers to pay for their meter readers' uninterrupted holiday weekend. In the words of Dave Faddis, Kimberly-Clark's Everett Mill Manager:

> Based on my experience, a logistical problem over a holiday weekend is no excuse for failing to provide a vital customer service. Kimberly-Clark and other Puget customers should not be penalized for Puget's management decision not to call in the meter readers over the holidays.

Ex. T-1 (DJF-T), p. 3.

III. Puget Unreasonably Failed To End The Curtailment When It Was Possible To Restore Interruptible Service.

A. The Evidence In The Record Indicates That Puget's Distribution System Capacity Was Adequate To Serve All Firm And Interruptible Customers Between December 25 And December 28, 1998.

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Heide Caswell testified that in determining distribution system capacity, it is necessary to perform detailed review of SCADA data, Stoner models, customer complaints, weather forecasts, send out statistics, and pen gauge information. Ex. T-91 (HCC-T), p. 12. Specifically, the condition of the gas distribution system, system recovery, and customer usage based on customer response to weather conditions are "predominant factors" used by Puget in deciding whether to continue a curtailment. Ex. T-91 (HCC-T), p. 5.

At the hearing, Puget attempted to justify its failure to restore interruptible service by claiming that these "parameters" did not change over the long holiday weekend. Tr. 255, ll. 2-3. To the contrary, in Tom Owens' words, the parameters "changed markedly." Ex. T-12 (JTO-TR), p. 2, l. 6.[3] If Puget management had been paying attention, they would have known that every key parameter indicated that the distribution system had returned to its pre-curtailment condition by December 25, 1998.

1. Distribution System Pressures Returned To Pre-Curtailment Levels Between December 25 and December 28, 1998.

a. SCADA Data

Remote telemetry units or "RTU's" are field devices that convey real time temperature and pressure information from various points on the distribution system to Puget's SCADA computer system. Tr. 313, ll. 8-18. In a data request, Kimberly-Clark asked Puget to provide all the documents that demonstrate "distribution capacity was insufficient" to meet the estimated requirements of firm and interruptible sales and transportation customers from December 24 to December 28, 1998. *See* Ex. 23 (JTO-9). In response, Puget provided SCADA data from RTU's at Kayak, Smokey Point, North Everett, and several other locations for the period from December 21 through December 26 and, in one case, through December 27. In addition, Puget later supplied RTU data for these same system locations for

[3] Significantly, although Puget unsuccessfully tried to exclude Tom Owens' opinions on the inadequacy of its service, Puget did not object to his testimony on technical matters. Tr. 72, 11-13. On cross-examination, Puget did not ask a single question challenging Mr. Owens' technical conclusions. *See* Tr. 84, l. 2 – 93, l. 9

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the period between December 16 (before the curtailment) and December 31 (after the curtailment).

Tom Owens compiled Puget's SCADA data reported from sixteen points on the distribution system at the same hour of the morning each day from December 16 through December 31, 1998. *See* Ex. C-21 (JTO-8A). The compilation includes data for every significant data point that was provided by Puget. *See* Tr. 284, ll. 24-25. As Heide Caswell pointed out during the hearing, this data shows the lowest pressure for each day. Tr. 283, ll. 11-12.

The compilation of the data in chart form graphically demonstrates that by December 25, system pressures had returned to levels that were actually higher than they were on December 16. By December 24, system minimum pressures at all data points were rising. Pressures were even higher on December 25. By December 26, the minimum pressures at all locations had risen to approximately the same levels as they were before the curtailment. Minimum pressures were also at approximately the same level that they were on December 29 and December 30, after the curtailment had ended. *See* Ex. C-21 (JTO-8A).

Heide Caswell made an unsuccessful attempt at the hearing to discredit the irrefutable SCADA evidence. First, Ms. Caswell noted that the SCADA data for December 18 showed that the system was "starting to fail." From that observation, Ms. Caswell leaped to the unsubstantiated conclusion that the system was under "fairly significant stress" until mid-day through December 27. Tr. 277, ll. 10-22. Ms. Caswell's conclusion is contradicted by Puget's own data. As the data compilation shows, the RTU pressure readings for December 27 are substantially above those for December 18 and are even above levels reported for December 31, three days after the curtailment had ended. Ex. C-21 (JTO-8A).

Ms. Caswell also implied at the hearing that Mr. Owens erred by citing only the "puny ones in the whole scheme." Tr. 285, l. 3.[4] In the first place, Mr. Owens used the RTU data

[4] Heide Caswell also criticized Mr. Owens because he had not designed or operated a large scale natural gas distribution system. *See, e.g.* T-92 (HCC-TS), p. 1. This criticism is without merit. Mr. Owens has a Bachelors Degree in Mathematics, a Masters Degree in Engineering, and many years of engineering experience with various fuel systems. Ex. 14 (JTO-1); T-13 (JTO-TS), pp. 1-2. In any event, as Mr. Owens pointed out, the technical analysis required to analyze the data in this case involved "pretty basic mathematics" and "pretty basic engineering." Tr. 77, ll. 21-25.

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points selected by Ms. Caswell in response to the request for documents that demonstrate "distribution capacity was insufficient." Data points for the high-pressure distribution system were properly excluded from Mr. Owens' data compilation because there is no evidence of problems on Puget's high pressure system during the relevant period between December 25 and December 28, 1998. To the contrary, according to Ms. Caswell, as early as December 22 the high pressure distribution system was performing "okay." Tr. 285, l. 25 – 286, l. 5.

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b. Pen Graph Data

Pen gauges are devices that record pressures at various points on the system. Tr. 317, ll. 18-21. Tom Owens also compiled pen gauge data provided by Puget for the period from December 6, 1998, to January 7, 1999. *See* Ex. 27 (JTO-11). In graph form, this compilation illustrates the major decline in pressure at many points on the distribution system during the cold weather period between December 19 and December 23. Pressure at a number of points on the system dropped below 15 psi, which, according to the testimony of Paul Riley, is the minimum pressure at which outages would not be expected. Tr. 318, ll. 2-7.

The pen gauge compilation also clearly illustrates that by December 25, minimum pressures at these points were as high or higher than they were prior to the curtailment. On December 25, the minimum pressure at every pen gauge exceeded 30 psi. Ex. 27 (JTO-11). Minimum pressures as recorded by the pen gauges remained at those high levels until January 3, many days after the curtailment had been ended. *Id.*

Puget initially attempted to discredit the pen gauge data taken because the data covered only sixteen data points. Ex. T-91 (HCC-T), p. 11. However, Puget provided the pen gauge data for these selected locations to demonstrate that "distribution capacity was insufficient" from December 24 to December 28, 1998. Ex. T-12 (JTO-TR), pp. 4-5.

In her supplemental testimony, Heide Caswell also criticized Mr. Owens' use of the pen gauge data, claiming pen gauge information was "somewhat obsolete with the introduction of SCADA." Ex. T-92 (HCC-TS), p. 3. Ms. Caswell's critique ignores her own statement in her direct testimony that "extensive review" of data including pen gauge data must be performed. Ex. T-91 (HCC-T), p. 12. Paul Riley also noted that he used pen gauge recordings to monitor the distribution system during a curtailment. Ex. T-101 (PAR-T), p. 3.

Ms. Caswell's critique also fails to recognize that the pen gauge information is confirmed by the SCADA data showing that pressures were well above minimum during the period in question. Both the chart compiled by Mr. Owens showing the pen gauge data and the chart showing the SCADA data illustrate that system minimum pressures were low between December 18 and December 23, rose on December 24, and returned to pre-curtailment levels by December 25. *See* Ex. C-21 (JTO-8A); Ex. 27 (JTO-11).

2. Temperatures

Exhibit 103, sponsored by Puget witness Paul Riley, provides actual high and low temperatures at SeaTac for the period from December 15 to December 27, 1998. The gas day lows for the period from December 19 to December 23 were very cold, never exceeding 20 degrees Fahrenheit. Ex. 103 (PAR-2), p. 1. On December 24, the low rose to 30 degrees Fahrenheit, and the high temperature was 43 degrees. *Id*. Actual low temperatures between December 25 and December 27 were 41 degrees, 40 degrees, and 42 degrees Fahrenheit, respectively. The high temperature for those days reached a balmy 52 degrees Fahrenheit on December 27. *Id*.

The SCADA data confirms that actual temperatures at the selected points on the distribution rose to 40 degrees Fahrenheit or higher by December 25 and remained high. Ex.

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C-22 (JTO-8B).

It strains credulity for Puget to claim that Puget Sound's distribution system capacity was seriously constrained when actual temperatures were in the 40's and 50's. As Heide Caswell testified, actual temperatures on the distribution system impact its operation. Tr. 291, 23 – 292, l. 7. Puget has failed to offer any justification for not restoring service to interruptible customers when the temperatures reached and remained in the normal winter range for our region.

3. Weather Forecasts

Puget witnesses stressed that curtailment decisions are based on weather forecasts, not actual temperatures. *See, e.g.,* Testimony of Heide Caswell, Ex. T-91 (HCC-T), pp. 9-10. Although forecasts are important, the record does not support Puget's claim that the extension of the curtailment after December 25 was justified by weather forecasts. In the days prior to the curtailment, the weather forecasts were for very cold weather. On December 16, the forecast available to Puget was for a low of 39 degrees Fahrenheit on December 17, a low of 27 degrees Fahrenheit on December 18, and a low of 24 degrees Fahrenheit on December 19. In spite of these low forecasts, Puget did not call a curtailment. Ex. 103 (PAR-2).

By contrast, on December 24, Puget decided to extend the curtailment even though the forecasted lows were for much warmer temperatures. On December 24, Puget had a 24 hour forecast of 37 degrees for December 25, a 48 hour forecast of 35 degrees for December 26, and a 72 hour forecast of 35 degrees for December 27. *Id.* Even though these forecasts were for substantially higher temperatures than the forecasts on December 16 when no curtailment was called, Puget extended the curtailment on December 24.

By December 25, actual temperatures were significantly warming, and the forecasts showed a return to seasonal temperatures. On Christmas day, the actual SeaTac low temperatures had risen 21 degrees from the low on December 23, yet the curtailment continued. On December 25, all forecasted low temperatures for the next three days were well above freezing; the forecasted high temperatures were in the mid-40's. Ex. 103 (PAR-2). As discussed above, actual low temperatures at SeaTac for December 26, 27, and 28 were

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all in the 40's. The actual high temperature on December 27 – when the curtailment was still in effect – reached 52 degrees. *Id*.

Puget also attempts to justify the continuation of the curtailment by claiming that the weather forecasts were unreliable. Ex. T-101 (PAR-T), p. 9. To the contrary, the weather forecast data sponsored by Paul Riley shows that the forecasts were surprisingly accurate. The most accurate forecasts available to Puget were the shortest term or 24 hour forecasts. At least in part, Puget made its decision on December 18 to start the curtailment using the 24 hour forecast which showed very cold temperatures for the next day. As it turns out, the 24 hour forecasts were correct. Although the 48 and 72 hour forecasts were somewhat less reliable, there was still a close correlation between the actual temperatures and the forecasted lows. Exhibits 24 (JTO-10A), 25 (JTO-10B), and 26 (JTO-10C) illustrate this close correlation between the actual and the forecasted low temperatures for the period from December 15 to December 27.

4. Customer Service Calls

Puget attempted to demonstrate capacity constraints through the testimony of Paul Riley by citing numbers of customer service calls. T-101 (PAR-T), pp. 5-6. This evidence is of dubious value because, as Mr. Riley admitted, Puget has no way of knowing whether customer complaints represent a problem on the distribution system or simply a customer appliance in need of service. A Puget email dated January 6, 1999, explains why Puget employees had to respond to more service calls than normal: "Greater and prolonged use of heating equipment after several days of this weather caused customer equipment to fail, resulting in an increased volume of service call." Ex. 99, p. PSE 04128. Mr. Riley also testified that heavy customer use of furnaces during cold weather, rather than problems on the distribution system, could result in many customer service calls. Tr. 307, ll. 4-15. The customer complaint records reflected in Mr. Riley's exhibits – including the Stoner models – do not differentiate between system problems and customer equipment failures. Tr. 336, ll. 2-18.

However, to the extent that the number of customer service calls is relevant, Puget's evidence proves that the distribution system had returned to normal between December 25

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and December 27, 1998. According to Mr. Riley, during the previous days when the weather was very cold, there were hundreds of customer service calls:

12/20	433
12/21	971
12/22	754

Ex. 105 (PAR-4), p. 7. As the weather warmed up, the number of customer service calls dropped dramatically:

12/24	273
12/25	58
12/26	171
12/27	28.

Id., pp. 75-86. Surprisingly, the number of customer service calls rose again significantly on December 28, the day Puget decided to end the curtailment. *Id*., pp. 86-98. To the extent that the number of service calls proves anything, this evidence demonstrates that the system was operating under normal conditions during the period when the curtailment was extended between December 25 and December 27.

5. Send-Out

Volumes of gas deliveries or "send-out" reflects the level of stress experienced on the distribution system. T-12 (JTO-TR), p. 2. As the weather gets colder, Puget's customers use more gas for heating, resulting in send-out increases and strain on system capacity. The evidence provided by Puget demonstrates that send-out increased significantly in the cold weather period between December 19 and December 23. Ex. C-71, p. 4. However, by December 24, send-out declined to pre-curtailment levels. *Id.* Send-out markedly declined by December 25, dropping by more than half from its high point on December 21. *See* Exhibit Ex. C-20 (JTO-7).

6. Price And Availability Of Puget's Gas Supply

During the cold days from December 18 to December 23, Puget met its gas supply needs by withdrawing volumes from storage and purchasing high priced supplies. However, as Puget witness Bill Donahue admitted, Puget's storage withdrawals dropped by a third between December 25 and December 28. Tr. 351, l. 18 – 352, l. 2. Similarly, Puget was paying prices as high as $17.83 per decatherm (approximately $1.78 per therm) between

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December 19 and December 21. Tr. 346, ll. 5-19. Puget was still paying a high of $9.36 per MMBtu (approximately 93.6 cents per therm) on December 22 and December 23. Tr. 346, ll. 20-25. By contrast, between December 24 and December 28, Puget was paying only 28.6 cents per therm – a six-fold drop from the high price a few days before. Tr. 349, ll. 1-5; Tr. 350, ll. 8-19.

B. Puget's Stoner Model Exhibits Do Not Justify Puget's Failure To Resume Interruptible Service Between December 25 And December 28, 1998.

The only technical evidence presented by Puget to justify its failure to resume interruptible service between December 25 and December 28, 1998 were exhibits depicting the "Stoner model." The Stoner model exhibits fail to provide credible support for Puget's failure to resume interruptible service. The Stoner model exhibits were prepared long after the December 1998 curtailment, they are inconsistent with known data, and the model is of questionable technical integrity. In fact, the Stoner model exhibits contradict Puget's own RTU data, pen graph information, and weather data.

Heide Caswell admitted on cross-examination that the Stoner model exhibits were created months after the curtailment. Although Ms. Caswell testified that Stoner models were used during the curtailment, there is no evidence at all to demonstrate what Stoner models – if any – were used during the critical period between December 25 and December 28. Ms. Caswell testified that she used the other Stoner model exhibits after the curtailment to evaluate Puget's actions. Ex. T-91 (HCC-T), p. 10. Exhibit C-96, one of the Stoner model exhibits sponsored by Heide Caswell, was not prepared for use during the curtailment in December 1998, but was generated for this litigation on September 3, 1999. Tr. 265, ll. 9-13.

Moreover, at least some of the variables upon which the Stoner model simulation is based do not reflect reality. According to Ms. Caswell, the Stoner model presented by Puget was based on a temperature of 38 degrees Fahrenheit, which was the 24 hour forecast for 7:30 in the morning on December 25. Tr. 287, l. 22 – 288, l. 5; 291, ll. 11- 22. However, the actual low temperatures for December 25, 26, and 27 were in the forties. Tr. 298, l. 15; 301, l. 24 – 302, l. 5; Ex. 103 (PAR-2), p. 1. In constructing the Stoner model, Ms. Caswell

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also failed to consider that the on December 25, the 48 hour forecast for 7 a.m. was 42 degrees and on December 26, the 72 hour forecast for 7 a.m. was 41 degrees. Instead, Ms. Caswell selected the lowest forecast as the basis for her Stoner model.

The other Stoner model exhibits which were presented by Paul Riley show nothing whatsoever except the number and location of customer complaint calls. Tr. 332, ll. 24-25; 334, ll. 4-10. In any event, Mr. Riley admitted that he did not have the ability to interpret the Stoner model. Tr. 335, ll. 4-9.

Finally, Puget has offered no explanation as to why the distribution system performed in a satisfactory manner before and after the curtailment under worse conditions than those represented by the variables used in the Stoner model. For example, Puget was able to serve all of its firm and interruptible customers on December 17 and December 18, even though the actual temperature on those days was 34 degrees Fahrenheit and 30 degrees Fahrenheit respectively and no firm or interruptible customers were curtailed. On the other hand, the Stoner model exhibits purport to show distribution system constraints at 38 degrees Fahrenheit with interruptible customers curtailed.

Finally, none of the other evidence produced by Puget support the inferences Puget attempts to draw from the Stoner model exhibits. Asked whether the Stoner model demonstrates that Puget's distribution system capacity was inadequate to serve its firm and interruptible customers during the period between December 24 and December 28, Tom Owens noted that the other data supplied by Puget indicates "just the opposite." Mr. Owens responded:

> The RTU data, the weather data, the record of customer service calls, the PSE system send-out volumes, and the pen graph data all demonstrate that the distribution system was returning to its pre-curtailment condition between December 24 and December 28.

Ex. T-12 (JTO-TR), p. 3. From any standpoint, therefore, the Stoner model exhibits do not justify Puget's failure to restore service to its interruptible customers in a prompt and timely manner.

C. Puget's Distribution System Performed Satisfactorily Between December 25 and December 28, 1998, Even Though Kimberly-Clark And Other Interruptible Customers Were On-Line.

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The distribution system continued to perform satisfactorily even though Kimberly-Clark began burning more than its allowed firm volume of 14,000 therms per day beginning December 24, 1998. There is no evidence of distribution problems after that date, even though at least one other large interruptible customer was also using natural gas during the curtailment. *See* Tr. 270, ll. 13-15. On December 24, 1998, when Skip Walton informed the Puget dispatcher that Kimberly-Clark would begin firing the No. 14 Boiler with natural gas at approximately 9:00 p.m. that night, he was told that Puget would notify Kimberly-Clark if the their gas usage caused pressure problems. Tr. 128, ll. 2-21. This conversation is confirmed in Puget's gas dispatcher's log dated December 24, 1998, which states:

> Kimberly Clark will burn penalty gas starting around midnight due to problems w/ alternate fuel. They plan to run 250 mmbtu/hr. If pressure probs. arise, call Kimb. Clark boiler room & they can scale back.

Ex. 32, p. 1.

This agreement is also confirmed in Puget's email to Roger Kouchi of the Commission staff dated February 19, 1999. Puget informed the Commission:

> KC could burn during the curtailment (within the associated penalties) as long as PSE did not have pressure problems in the area.

Ex. 70, p. PSE 01133.

Puget never notified Kimberly-Clark that its usage created any pressure of other problem on the system. T-41 (MEA-T), p. 10. Kimberly-Clark was willing and able to shut down if Puget had notified the mill that its gas usage was causing problems on the system. Mark Armstrong testified:

> Kimberly-Clark's not in the business of causing difficulty to the outside world. We're a long-term player in the Everett waterfront, and we're not -- so we're quite concerned about our position in the community. And we would -- and it was very clear in our operating priority that both myself and Mr. Walton had the authority to begin shutting the mill down immediately, if, in fact, any disturbances were brought or were on the gas system that were reported to us.

Tr. 183, ll. 3-12. No such "disturbances" occurred, and the distribution system functioned

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effectively from December 25 to December 28.[5]

D. Puget Could Have Imposed A Limited Curtailment If There Were Concerns About The Performance Of The Distribution System During The Morning Peak Hours On December 28, 1998.

Even if some curtailment were justified after December 25 – which Puget has failed to establish – it was unreasonable of Puget not to provide Kimberly-Clark and other interruptible customers with any transportation service. For example, interruptible service could have been restored over the long holiday weekend with a limited curtailment during the peak hours on the morning of Monday, December 28, 1998.

If necessary, Kimberly-Clark could and would have curtailed its operations to protect Puget's system during the Monday morning peak. T-41 (MEA-T), p. 10. In fact, Paul Riley at one point developed such a plan to curtail Kimberly-Clark during the morning peak hours. Tr. 310, l. 20 – 311, l. 12. An email from Mr. Riley dated December 18, 1998, proposed: "Kimberly Clark (Scott Paper) to be held to 350,000 CFH from 0400-0900, if necessary they will be fully curtailed." Ex. 51, p. PSE 01233.

In the past, Kimberly-Clark has cooperated with Puget to limit gas usage for short periods of time. Kimberly-Clark has complied when Puget has requested load reduction for a few hours or even a few days. T-41 (MEA-T), p. 11. Mark Armstrong testified:

> I've personally been party to discussions with gas control around managing that morning peak load. We're very aware of that. We're very aware that that can be a concern, depending on weather, depending on different factors, and we have, in fact, demonstrated, over our history, our ability to react to their needs on load reduction during those time frames.

Tr. p. 185, ll. 18-25. A 1996 memorandum by Skip Walton indicated that he was contacting Washington Natural Gas every hour to get "usage updates" and was minimizing its usage between 6:00 a.m. and 9:00 a.m. during the peak demand hours. Ex. 149.

Rather than work cooperatively with Kimberly-Clark, however, Puget ignored the needs of Kimberly-Clark and its other interruptible customers. Instead, Puget management went home for the holidays, leaving the extended curtailment in place and its interruptible

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[5] There is no evidence in the record whatsoever to support Heide Caswell's hypothesis that Kimberly-Clark's gas usage "can" cause pressure problems in the area or that any such problems actually occurred. *See* Ex. T-91 (HCC-T), pp. 16-17.

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customers with no transportation service at all. Puget's arrogance and indifference to the needs of its customers clearly breached its duty to provide adequate, efficient, and reasonable service.

IV. Kimberly-Clark's Actions Do Not Excuse Puget's Failure To Provide Interruptible Transportation Service Between December 25 And December 28.

In order to divert attention away from its own breach of duty by failing to restore transportation service from December 25 to December 28, 1998, Puget attempts to shift the blame to Kimberly-Clark. Puget's strategy ignores the purpose of this Complaint proceeding, which is to investigate Puget's conduct, not Kimberly-Clark's fuel strategy. In light of its own disregard for Kimberly-Clark's fuel emergency as well the rights of all of its interruptible customers, Puget's attempt to blame Kimberly-Clark should be rejected.

A. The Failure Of Kimberly-Clark's Back-Up Fuel Supply Does Not Excuse Puget's Negligence.

Puget attempts to blame Kimberly-Clark for alleged mistakes in its "fuel strategy." Puget's attack ignores the fact that Kimberly-Clark's fuel supply plans were reasonable and that the failure of its primary and more than one of its back-up fuel supplies was unforeseeable. However, even if Kimberly-Clark's fuel strategy were deficient – which Kimberly-Clark does not concede – the failure of its back-up fuel during a critical period does not excuse Puget from satisfying its duty to provide adequate, efficient, and reasonable service.

1. Kimberly-Clark Has A Reasonable Fuel Strategy.

Kimberly-Clark's Everett mill has two boilers -- Boilers No. 10 and No. 14. Boiler No. 10 primarily uses spent sulfite liquor, a byproduct from the pulp process, and natural gas as a backup fuel. Wood waste is the primary fuel used to run the No. 14 Boiler, and natural gas is the secondary fuel source.[6] The Everett mill's main back-up is No. 2 diesel fuel oil, which is stored on the premises in bulk storage tanks. The No. 14 Boiler can operate on full load on diesel and is capable of shutting down on diesel. Tr. 179, ll. 9-13.

Under normal circumstances, Kimberly-Clark is capable of switching to diesel fuel to comply with any natural gas curtailment. As the record reflects, Kimberly-Clark substantially complied with Puget's curtailment of gas service for the period from December 20 until the end of the day on December 24, 1998. Tr. 358, ll. 20-24. Even during the period from December 24 to 28, Kimberly-Clark was able to substantially curtail its gas usage by

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[6] While Kimberly-Clark does not deny that the No. 14 Boiler has experienced some operating difficulties staying on wood reliably, the record reflects that those problems are currently being resolved. Tr. 141, l. 11 – 142, l. 7.

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reducing the steaming rate on both boilers, resulting in lower energy production on the turbine generator. T-31 (ESW-T), p. 3.

Puget's attempt to charge Kimberly-Clark with having an inadequate wood supply is simply not true. *See* Tr. 104-105; 122, ll. 18-24. Kimberly-Clark made the decision in 1998 to stop purchasing wood waste from old growth or rainforest sources. Tr. 144, ll. 18-24. Because of this change in purchasing policy and because wood waste or "hog fuel" can freeze in very cold weather, the supply at the mill was low. To conserve fuel, wood firing on the No. 14 Boiler was reduced because the No. 14 can co-fire with diesel fuel. The quantity of wood waste consumed by the No. 14 Boiler is clear from the record. Ex. 155. The Everett mill stockpiles hog fuel in two separate locations for the purpose of ensuring an adequate supply during holidays when its suppliers cannot deliver. Tr. 145, l. 22 – 146, l. 11. The confusion of one of Kimberly-Clark's witness about the quantity of wood waste in these two different locations does not establish a shortage of wood waste. Tr. 145, l. 14 – 146, l. 11.

2. The Failure Of Kimberly-Clark's Back Up Fuel Supply On December 24 Was Unforeseeable.

As discussed above, under normal circumstances Kimberly-Clark is able to curtail its interruptible gas usage by burning diesel. Unfortunately, in September 1998, a tanker truck driver accidentally pumped approximately 10,000 gallons of caustic sodium hydroxide into Kimberly-Clark's diesel fuel oil tanks. Because of its density, the caustic settled to the bottom of the tanks. Kimberly-Clark immediately hired a consultant to investigate and remedy the contamination. After the remediation was complete, tests were performed indicating that the tank system was ready to operate. Ex. 44 (MEA-2). As winter approached, Kimberly-Clark personnel believed that fuel oil in the bulk storage tanks was available for use. T-41 (MEA-T), p. 6.

Unexpectedly, when temperatures dropped, residual caustic in the piping froze and plugged the fuel tank system. In order to keep the fuel oil system working, Kimberly-Clark installed a temporary piping system to bypass the tank farm and deliver fuel oil directly to the day tank. The day tank holds a maximum of 15,000 gallons, enough supply for one day, and pumps fuel oil directly to the No. 14 Boiler. T-41 (MEA-T), p. 7. To assure a reliable supply

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of diesel oil, Kimberly-Clark negotiated a purchase order with Pacific Northern.

Because of the limited size of the day tank, smaller trucks which carry between 8,000 and 10,000 gallons were used to deliver fuel. In order to supply the day tank, Kimberly-Clark scheduled with Pacific Northern around-the-clock deliveries of diesel fuel. Fuel oil was delivered as scheduled from December 18 to December 24, 1998. Ex. T-41 (MEA-1), p. 7. Because the day tank system functioned effectively, the back-up system supplied the plant with diesel fuel during the cold weather portion of the Puget curtailment. *Id.*, p. 8.

On December 24, Pacific Northern unexpectedly informed Kimberly-Clark that no more deliveries could be made after that day because of a shortage of truck drivers. The drivers are only permitted to work a certain number of hours per day, and no drivers would be available to make deliveries before December 28. For that reason, the last fuel oil delivery during the Puget curtailment occurred on December 24, 1998. T-31 (ESW-1), pp. 2-3.

Pacific Northern's failure to deliver diesel fuel to the day tanks could not have been anticipated.[7] Pacific Northern had repeatedly assured Mark Armstrong between December 18 and December 24, 1998 that the company could supply the mill with fuel oil for the day tank. Kimberly-Clark had negotiated the terms, conditions, pricing, and delivery schedule with Pacific Northern a supply contract in advance. Tr. 182, ll. 3-10. Kimberly-Clark had purchased fuel from Pacific Northern for many years, and in the past, Pacific Northern had "always been a reliable supplier." Tr. 147, ll. 17-20. [8]

When asked whether Kimberly-Clark was adequately prepared for the curtailment, Mr. Armstrong testified:

> I felt adequately prepared for the curtailment with the knowledge that the diesel fuel bulk tank system was adequately cleaned up and was prepared for

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[7] The only evidence Puget adduced in an attempt to demonstrate that Kimberly-Clark's fuel oil supply was insecure was a December 26,1996 memorandum by Skip Walton that stated that he had tried unsuccessfully to order additional diesel fuel. *See* Ex. 149, p. 1. Puget failed to point out that on the next day, December 27, 1996, Mr. Walton successfully ordered 50,000 gallons more. In spite of bad weather, the fuel trucks were delivering adequate amounts of fuel. Ex. 149, p. 2.

[8] Puget criticized Kimberly-Clark for not procuring an alternate source of diesel on December 24. *See, e.g.*, Tr. 111, ll. 13-15. As the record reflects, it is highly unlikely that anyone could have arranged on Christmas Eve for deliveries of 43,000 gallons of diesel for the next four days. Tr. 111, ll. 16-21

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> use after the contamination incident. Only when it was discovered that there was residual caustic in the bulk tanks were we forced to switch to the plan of the smaller deliveries to the day tank. And at that point, obviously, we were into the cold weather and had to change our logistics plan. However, we ran that way for six or seven days, and it worked well. I feel we had enough fuel to handle the contingencies that we knew about going into the curtailment. We didn't know about the contingency of losing the tank farm. Nor did we know about the contingency of losing the delivery system to the diesel.

T-41 (MEA-T), pp. 8-9.

Under these extraordinary circumstances, Kimberly-Clark should not be blamed for the failure of its back-up fuel supply. However, even if Kimberly-Clark could have or should have done something differently, Puget's own conduct is not excused by Kimberly-Clark's actions.

3. Puget's Charge That Kimberly-Clark's Arrangements For Firm Transportation Is Insufficient Is Neither True Nor Relevant.

Puget has also attempted to divert attention from its own conduct by claiming that Kimberly-Clark did not contract for sufficient firm transportation. Again, Kimberly-Clark's conduct has no relevance to Puget's failure to end the curtailment and resume interruptible service between December 25 and December 28, 1998. However, the evidence demonstrates that Kimberly-Clark's arrangements for firm transportation were both reasonable and adequate.

As discussed above, the No. 14 Boiler can operate entirely on diesel fuel if necessary and can be shut down using diesel. Tr. 179, ll. 9-13. In addition, the Everett mill operates tissue machines and pulp-making equipment that primarily run on heat energy supplied by the steam system. Three of the tissue machines also have natural gas fired drying hoods, which require approximately 1,400 MMBtu's of natural gas per day. There are three boilers (Nos. 7, 8 and 9) that back up the tissue-making operation and the pulp-making operation. Boilers Nos. 8 and 9 use No. 2 diesel oil as a back-up fuel. Ex. T-41 (MEA-T), pp. 2-3.

There is no basis for Puget's charge that Kimberly-Clark would jeopardize the security of its operations or risk incurring huge penalties in order to save money on gas transportation service. *See, e.g.*, Ex. T-121 (WFD-T), pp. 7-8. When asked to respond to Puget's charge, Mark Armstrong testified:

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> Although firm transportation service costs more than interruptible, Kimberly-Clark's operating strategy is to use fuel oil and natural gas only to supplement the primary boiler fuels as necessary. It does not make either economic or operational sense to arrange for a firm supply of natural gas for the boilers when it plays a backup role, especially where we have second backup – the fuel oil system.

Ex. T-42 (MEA-TR), p. 2 (emphasis added).

Bill Donahue – the Puget witness who presented testimony criticizing Kimberly-Clark's firm transportation arrangements – has never even visited the Everett mill. Moreover, he has never been involved in the operation of a pulp or paper mill or any operation that uses a boiler that burns wood or spent sulfite liquor for fuel. For that matter, Mr. Donahue has never been involved in any operation that involved any other kind of boiler. Tr. 368, l. 9 – 369, ll. 6. Until Kimberly-Clark filed its complaint with the Commission, Mr. Donahue had never spoken to anyone at Kimberly-Clark regarding its firm transportation, never suggested that Puget's customer representative responsible for the account address the issue with Kimberly-Clark, and in fact never even reviewed the issue. Tr. 367, l. 14 – 368, l. 8.

There is no basis for the Puget's innuendo that Kimberly-Clark's firm transportation is insufficient for a safe shutdown of the mill. To the contrary, the evidence is that a controlled shutdown can be done safely on the available firm gas. In a controlled shut-down, which takes approximately 18 hours, Kimberly-Clark would curtail the tissue machines and then use the 1,400 MMBtu's of firm gas supply to take the No. 10 Boiler off line. Tr. 139, ll. 3-12.[9]

Puget attempted to support its charges against Kimberly-Clark with a 1995 memorandum that confirmed that Washington Natural Gas agreed to supply Scott Paper with a firm supply of gas due to a temporary problem. *See, e.g.*, 33, l. 13-38, l. 18. Exhibit 165 Tr. Events in 1995 have little or no relevance to Kimberly-Clark's gas usage in December 1998 because Kimberly-Clark's equipment, output at the mill, and other conditions have

[9] In response to Puget's attempt to impeach Kimberly-Clark's testimony on this point, Mark Armstrong testified although that the exact amount of gas needed to shut down the No. 10 Boiler is uncertain, the amount is between 1,400 and 2,000 MMBtu's. Tr. 137, l. 15 – 139, l. 9.

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changed significantly during the intervening years with the December 1995 merger of Scott Paper into Kimberly-Clark and the commercial operation of the No. 10 Boiler. Moreover, this memorandum refers to cubic feet per hour – not therms – and there is not evidence as to what rate deliveries to the boilers occurred during the curtailment. This document, therefore, has no probative value whatsoever on whether 14,000 therms of firm service was sufficient.[10]

B. Gas Deliveries To Kimberly-Clark Benefited Puget's Sales Customers By Permitting Puget To Avoid Incremental Purchases During The Cold Spell.

Puget has also attempt to deflect attention from its own failure to provide adequate service by charging that Kimberly-Clark's use of gas harmed other Puget customers by causing the company to purchase additional gas and hindering the company's ability to exercise cost-efficient gas supply. These charges are simply not true.

Puget withdrew large amounts of gas from storage to serve its firm sales customers each day between December 19 and December 23, 1998. Ex. 71, p. 6. These are the same days when Kimberly-Clark was curtailed and used only its firm allocation. On December 24 – the first day Kimberly-Clark drew upon Puget's supplies -- Puget's withdrawals from storage declined by more than half. *Id*. Puget's withdrawals from storage dropped dramatically on the days when Kimberly-Clark was on-line between December 25 and December 28, 1998. *Id.*

Moreover, as discussed above, Kimberly-Clark's usage did not create problems on the distribution system, and Puget had no shortage of gas supply during the curtailment. In fact, Kimberly-Clark's gas that was delivered to Puget's system during the cold spell was a benefit to Puget's other customers and possibly to its shareholders.

Between December 19 and December 21, Kimberly-Clark delivered approximately 140,000 therms more to Puget's system than it consumed. Tr. 356, ll. 20-24. This occurred because Puget, contrary to its usual practice, failed to notify Kimberly-Clark's marketer about

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[10] The memorandum, which appears in the record as Ex. 165, was admitted into evidence over Kimberly-Clark's objection. The Administrative Law Judge admitted the document with the admonition that the memorandum would be given its "due weight." Tr. 36, l. 14 – 37, 18.

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the curtailment. Tr. Tr. 364, l. 24-365, l. 3. Puget refused to compensate Kimberly-Clark or its marketer for the excess gas delivered to its system. Ex. C-53.

As a result of the gas of Kimberly-Clark and other transportation customers delivered to its system, Puget did not have to purchase additional firm supplies or upstream capacity. Instead, Puget was able to use Kimberly-Clark's resources to serve its firm sales customers. Tr. 357, l. 23 – 358, l. Bill Donahue wrote the following email in a draft report to the Commission responding to a customer complaint about the curtailment:

> PSE maintains firm gas supply and upstream pipeline capacity sufficient to provide service to its firm sales customers. During the curtailment period there were additional firm supplies and upstream capacity available to serve firm sales customer demand. <u>These resources were not called upon, (but could have been,) due to the fact that transportation customers' suppliers continued to make deliveries to the system</u>.

Tr. 360, l. 21 – 361, l.13; Ex. 99, p. PSE 04112 (emphasis added). At the hearing, Bill Donahue agreed that Puget did not call upon its other resources because "We did not need to, no." Tr. 361, l. 13.

The presence of Kimberly-Clark's gas on Puget's system also may have afforded an opportunity for Puget to make off-system sales. Based on the prices Puget was paying for its own gas, Kimberly-Clark delivered gas valued at approximately $250,000 into Puget's system between December 19 and December 21. Tr. 355, ll. 19-357, l. 22. Due to the curtailment, Kimberly-Clark was not permitted to and did not use this gas.

The market price of gas during this period was very high. Between December 19 and December 21, the price of gas at Sumas peaked at $11.66 per MMBtu. Ex. C-152, Ex. A. During the period from December 19 to December 23, Puget was making large sales of gas off-system. *See* Ex. C-28. Assuming these off-system gas sales were priced at market prices, Puget could have made a substantial profit from the sale of Kimberly-Clark's gas. Rather than harming Puget's customers, Kimberly-Clark's action benefited Puget and its other customers.

CONCLUSION

Puget has a duty under Washington law to provide adequate, efficient, and reasonable service to <u>all</u> its customers, including interruptible customers such as Kimberly-Clark. Puget

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may interrupt transportation service under the tariff only when distribution capacity is insufficient. Puget's discretion to curtail under the tariff must be grounded upon what Tom Owens referred to as "sound judgment and a reasonable assessment of the distribution system's capacity." Ex. T-12 (JTO-TR), p. 10.

Instead of meeting this standard, Puget management failed entirely to exercise judgment or assess the distribution system at all between noon on December 24 and the morning of December 28, 1998. In Mr. Owens' expert opinion, "Puget's conduct fell short of its obligation to provide adequate service to its interruptible customers." *Id.*, p. 11. Instead of restoring transportation service as soon as possible, Puget management permitted the curtailment to continue far longer than necessary. Kimberly-Clark believes that to minimize the cost and disruption incurred by its customers, Puget should be directed by the Commission to exercise the same level of due care in ending a curtailment that it applies when imposing a curtailment.

Puget's customers should not bear the financial burden of penalties charged solely as a result of Puget's own negligence. David Faddis, manager of the Everett mill, testified: "Kimberly-Clark objects to paying a substantial penalty for Puget's mismanagement of the natural gas curtailment of service to interruptible customers." Ex. T-1 (DJF-T), p. 2. For these reasons, Kimberly-Clark urges the Commission to require Puget to rescind the $2 per therm penalty imposed between December 25 and December 28, 1998.

DATED this 20*or20inal day of December, 1999.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the Initial Brief of Kimberly-Clark Tissue Company, upon all parties of record in this proceeding, via hand delivery, as follows:

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