

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO BENCH REQUEST

DATE PREPARED: March 21, 2008
DOCKET: PG-060215
REQUESTER: Bench

WITNESS: Steve King and Sue McLain
RESPONDER: Same
TELEPHONE: Steve King (360-664-1115);
Sue McLain (425-462-3696)

BENCH REQUEST NO. 2:

Please clarify the intent of ¶ 25 in the Settlement Agreement. In particular, does it limit Commission Staff's ability to file a complaint or recommend penalties for violations within the forbearance parameters that cause actual damage or injury below the defined thresholds (i.e., less than serious injury or less than \$50,000 in property damage)?

JOINT RESPONSE:

As outlined in the settlement agreement, Staff will generally forbear from recommending enforcement action for issues similar to the ones identified in Docket PG-060215 or related to sequential numbering of leak records as described in Docket UG-920487. Additionally, Staff will generally forbear from recommending enforcement action for issues identified during the course of the third-party audit that Staff and PSE have agreed to undertake as part of the settlement agreement. Whether for these described matters or others, however, Staff can recommend enforcement action if any of the following situations apply as more fully described in the settlement agreement: serious injury, loss of life, or property damage of \$50,000 or more. Hence, if the result of a particular violation falling within the parameters of the forbearance provisions of the settlement fell below these thresholds, Staff would not recommend an enforcement action.

The forbearance thresholds in ¶ 25 (i.e., serious injury, loss of life, property damage or loss greater than \$50,000) match the definition of "incident" in 49 C.F.R. § 191.3(1). That section uses these thresholds to prescribe the circumstances when a pipeline operator must report a particular event. Accordingly, these thresholds provide a "bright line" measure for determining when an event is serious.

The Commission has adopted 49 C.F.R. § 191.3 by reference in WAC 480-93-999.

Moreover, the Commission approved a settlement agreement containing similar forbearance thresholds in *WUTC v. Puget Sound Energy, Inc.*, Dockets PG-030080 and 030128, Order 02 (January 31, 2005)(see ¶ 22 of the settlement agreement in that docket).