

1 **BEFORE THE**  
2 **WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

3 AIR LIQUIDE AMERICA  
4 CORPORATION, AIR PRODUCTS AND  
5 CHEMICALS, INC., THE BOEING  
6 COMPANY, CNC CONTAINERS,  
7 EQUILON ENTERPRISES, LLC,  
8 GEORGIA-PACIFIC WEST, INC.,  
9 TESORO NORTHWEST CO., and THE  
10 CITY OF ANACORTES,

11 Complainants,

12 v.

13 PUGET SOUND ENERGY,

14 Respondent.

15 *In re:* Petition of Puget Sound Energy, Inc.  
16 for an Order Reallocating Lost Revenues  
17 Related to any Reduction in the Schedule  
18 48 or G-P Special Contract Rates

DOCKET NO. UE-001952  
(consolidated)

DOCKET NO. UE-001959  
(consolidated)

PUGET SOUND ENERGY, INC.'S  
MOTION TO STRIKE JOINT  
PROPOSAL OF COMMISSION  
STAFF AND PUBLIC COUNSEL

19 Commission Staff and Public Counsel submitted a joint rate modification proposal as  
20 part of their pre-hearing briefs on Phase One of the proceedings. PSE moves to strike the  
21 joint proposal.

22 Pursuant to the Complainants' request, the Commission adopted a two-phase  
23 proceeding to address the issues in this case. Phase One was established to determine  
24 whether Complainants' request for emergency rate relief is warranted and legally  
25 permissible. *See* Order Consolidating Proceedings; Prehearing Conference Order and  
26 Notice of Hearing (December 18, 2000) at ¶ 9 ("Prehearing Conference Order"). As set

1 forth in the Staff’s Prehearing Brief, the issues listed by the Commission in its Prehearing  
2 Conference Order for Phase One fall generally into two categories: (1) issues related to  
3 Commission authority to grant Complainants’ request for an emergency adjudication; and  
4 (2) issues related to Commission authority to grant Complainants’ proposed emergency  
5 remedy. *See* Prehearing Brief of Commission Staff re: Phase One at 3-4 (“Staff’s  
6 Prehearing Brief”).

7 The Commission Staff concludes in its prehearing brief that (1) immediate,  
8 emergency action under RCW 34.05.479 is not warranted, and (2) the Commission is not  
9 legally authorized to grant the emergency remedy sought by the Complainants. *See* Staff’s  
10 Prehearing Brief at 2, 19 (emphasis added). Public Counsel, likewise, does not conclude  
11 that an emergency exists.

12 In spite of the foregoing conclusions, Commission Staff and Public Counsel have  
13 submitted a rate proposal that would replace the rates in Schedule 48 and the Special  
14 Contracts. *See* Staff and Public Counsel Joint Proposal, Attachment A to Staff’s Prehearing  
15 Brief (“Joint Proposal”). But consideration of the Joint Proposal at this time is inconsistent  
16 with the two-phased process that the Commission established in the Prehearing Conference  
17 Order, for two important reasons.

18 First, the scope of the Joint Proposal far exceeds the established parameters for the  
19 Phase One proceeding. Under the Prehearing Conference Order, Phase One is limited just to  
20 the very narrow questions of whether an emergency exists and whether emergency rate relief  
21 should be ordered. All of the parties, including Commission Staff and Public Counsel,  
22 addressed these narrow questions in their briefs. That is where the Commission intended  
23 Phase One to stop, and that is where it must stop. The Commission has plenty on its plate  
24 already for next week’s hearings. Expanding the Phase One inquiry at this very late date --  
25 to cover the new non-emergency proposal floated by Commission Staff and Public Counsel  
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1 – would violate the purpose and intent behind the Prehearing Conference Order, upon which  
2 PSE and Complainants have all relied since these expedited proceedings began.

3 Second, PSE became aware of the Joint Proposal just yesterday afternoon, on January  
4 4, 2001, when Commission Staff and Public Counsel filed their prehearing briefs. While  
5 various cap proposals have been discussed as a settlement idea by various parties, yesterday  
6 was the first time that this proposal was put forward as a formally proposed remedy in this  
7 proceeding. At this writing, therefore, there is less than one business day remaining before  
8 the Phase One hearings are scheduled to begin. Quite obviously, PSE will have no  
9 opportunity to conduct discovery on the Joint Proposal in Phase One, to explore the reasons  
10 behind a proposal that could lead to massive revenue loss from this customer class, and  
11 reallocation of massive costs to the other customer classes. It would be patently unfair and a  
12 violation of PSE's due process rights to allow Staff and Public Counsel to present the Joint  
13 Proposal, in Phase One, without first giving PSE an opportunity to conduct discovery and to  
14 otherwise investigate the Proposal.

15 The solution is simple. The Joint Proposal should be deferred for consideration to  
16 Phase Two of these proceedings, assuming the Commission concludes that it is appropriate  
17 for Phase Two to occur. The Commission has already stated that it will establish procedural  
18 dates and requirements for Phase Two, if and when Phase Two becomes necessary. *See*  
19 *Prehearing Conference Order at ¶ 10.* When the Commission sets these dates and  
20 requirements, it can add the Joint Proposal to its list of Phase Two issues, and PSE and the  
21 other parties can then conduct discovery on the Joint Proposal within the time limits that the  
22 Commission establishes. Until then, consideration of the Joint Proposal is wholly  
23 premature.

24 Based on the foregoing, PSE's motion to strike the Joint Proposal should be granted.

25 Dated: January 5, 2001.  
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Respectfully Submitted,

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