

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

KIMBERLY-CLARK TISSUE COMPANY,)	
)	DOCKET NO. UG-990619
Complainant,)	
)	
v.)	
)	FOURTH SUPPLEMENTAL ORDER
PUGET SOUND ENERGY, INC.)	DENYING COMPLAINT
)	
Respondent.)	
)	
.....)	

I. SYNOPSIS

1 In this Order the Commission addresses whether Puget Sound Energy, Inc. (PSE) improperly charged Kimberly-Clark Tissue Company (Kimberly-Clark) approximately \$346,000 in penalties under Rate Schedule 57 for taking service beyond its firm service allotment during a natural gas curtailment. Kimberly-Clark alleges that PSE unnecessarily extended the curtailment through December 25-28, 1998. The Commission denies Kimberly-Clark’s complaint, and orders Kimberly-Clark to pay the penalty amount.

II. PROCEDURAL SUMMARY

2 **Hearing.** The Commission heard this matter pursuant to due and proper notice to all parties in Olympia, Washington on November 1 and 2, 1999, before Administrative Law Judge Karen M. Caillé. The parties waived the initial order afforded under RCW 34.05.461 and WAC 480-09-780, and agreed to submit the matter directly to the Commissioners for decision.

3 **Parties:** Carol S. Arnold, attorney, Preston Gates & Ellis LLP, Seattle Washington, represents Kimberly-Clark. Andrée Gagnon, attorney, Perkins Coie LLP, Bellevue, Washington represents PSE.

4 **Nature of the Proceeding:** This is a formal complaint brought by Kimberly-Clark Tissue Company (Kimberly-Clark), a customer of Puget Sound Energy, Inc. (PSE) who takes both firm and interruptible natural-gas transportation service under PSE’s Rate Schedule 57 tariff. Kimberly-Clark alleges that PSE improperly charged Kimberly-Clark approximately \$346,000 in penalties under Rate Schedule 57 for taking service beyond its firm service allotment during a natural gas curtailment.

Kimberly-Clark asks that the Commission require PSE to rescind the \$2 per therm penalty, and direct PSE to exercise the same level of due care in ending a curtailment that it applies when imposing a curtailment.

5 PSE denies that Kimberly-Clark is entitled to relief and contends that PSE was required by its tariffs to perform the actions it did. PSE asks the Commission to dismiss the complaint, to declare that PSE has complied with Rate Schedule 57, and to find that the penalty amount charged to Kimberly-Clark is correctly calculated and past due.

6 **Commission decision:** The Compliant is denied. Kimberly-Clark has failed to show by substantial competent evidence that PSE's December 24, 1998, decision to continue the curtailment through 5:00 p.m. on December 28, 1998, was unreasonable. Kimberly-Clark owes PSE \$362,064.86 (including municipal tax) for the number of penalty therms consumed during the curtailment.

III. MEMORANDUM

A. BACKGROUND

1. Procedural History

7 Kimberly-Clark filed its complaint on April 26, 1999. The complaint alleges that PSE improperly charged Kimberly-Clark \$367,683 in penalties under Rate Schedule 57 for the period December 25-29, 1998.¹ Kimberly-Clark asks the Commission to: 1) direct PSE to credit Kimberly-Clark's account in the amount of all penalties charged between December 25 and 29, 1998; 2) issue a declaratory order (a) requiring PSE to exercise reasonable discretion in declaring constraint periods under Rate Schedule 57 and (b) prohibiting PSE from imposing arbitrary and unreasonable penalties under Rate Schedule 57; and (3) award Kimberly-Clark costs and attorney fees.²

¹ During the hearing, the parties agreed that Exhibit 6, p.10, correctly shows the total number of penalty therms as 173,223.6. The total penalty owed at \$2 per therm based on 173,223.6 therms is \$346,447.20 (excluding municipal tax). *Ex. 6, p.8.* Kimberly-Clark only contests the penalty charge for December 25-28, 1998. *Tr. 52.* Kimberly-Clark does not contest the penalty charge for December 21 or 24, 1998. *Id.* The complaint erroneously includes December 29, 1998. No penalty charges were assessed for December 29, 1998. *Ex. 6, p. 10.* Kimberly-Clark has not paid any of the penalty charges. *Ex. T-1, p. 6.*

² In its brief, Kimberly-Clark only asks for relief from the \$2 per therm penalty imposed between December 25 and 28, 1998 and that the Commission direct PSE to exercise the same level of due care in ending a curtailment that is applies when imposing a curtailment. (*Kimberly-Clark brief at 32*).

- 8 PSE answered the complaint on May 17, 1999. In addition to denying that Kimberly-Clark is entitled to relief, PSE raised affirmative defenses including that Respondent was required by its tariffs to engage in the actions complained of. PSE requests that the Commission: 1) dismiss the complaint, and 2) declare that PSE has complied with Rate Schedule 57, and that the penalty amount charged to Kimberly-Clark's account is correctly calculated and past due.
- 9 Administrative Law Judge Karen M. Caillé conducted a prehearing conference on July 7, 1999, at the Commission's offices in Olympia, Washington. Among other things, a schedule was determined for further process, including formal hearing proceedings.
- 10 The parties conducted discovery, filed direct and rebuttal testimony and exhibits sponsored by nine witnesses, offered additional testimony by deposition, and otherwise prepared extensively for the evidentiary hearing. Evidentiary hearings were conducted before ALJ Caillé on November 1 and 2, 1999. The testimony and exhibits of the following witnesses were admitted into the record: David F. Faddis, Mill Manager of Kimberly-Clark's Everett facility; James T. Owens, Fuel/Energy Consulting, Inc. on behalf of Kimberly-Clark; Skip Walton, Power Asset Operations Leader at Kimberly-Clark's Everett facility; Mark Armstrong, Utilities Team Leader at Kimberly-Clark's Everett facility; Timothy Hogan, Vice President System Operations at PSE, Heidemarie Caswell, PSE's Manager-Operations Planning; Paul Riley, PSE System Manager in the 24-Hour Operations Group; Randy Lewis, Key Account Manager with PSE; and William Donahue, PSE Regulatory Consultant.
- 11 The record consists of 376 transcript pages and 92 exhibits, including prefiled direct and rebuttal testimony and 3 deposition transcripts. PSE responded to one Bench Request on November 11, 1999. Kimberly-Clark and PSE filed one round of briefs on December 17, 1999. The parties waived an initial decision and agreed this matter should be submitted directly to the Commission for decision.

2. Essential Facts

- 12 Kimberly-Clark operates a pulp and paper mill in Everett, Washington. The facility consists of five tissue machines, a pulp mill, and a cogeneration system. Kimberly-Clark is a customer of PSE and takes natural gas transportation service under Rate Schedule 57. *Complaint at 2.* Under Rate Schedule 57, PSE may curtail interruptible-transportation customers under certain circumstances. Rate Schedule 57 customers have the lowest priority of service, along with Rate Schedule 87 customers, of PSE's interruptible-gas customers. Pursuant to its service agreement, PSE supplies Kimberly-Clark with 14,000 therms of firm transportation per day. *Ex. 112.* In addition, PSE supplies Kimberly-Clark with interruptible transportation above 14,000 therms. *Id.*
- 13 This complaint arose out of a natural-gas curtailment called by PSE on December 19,

1998 due to low pressure in the distribution system as a result of cold weather. On December 24, 1998, PSE extended the curtailment through Monday, December 28, 1998. Kimberly-Clark does not contest PSE's decision to call a curtailment on December 19, 1998 and continue it through December 24, 1998. Rather, Kimberly-Clark takes issue with PSE's decision to extend the curtailment through December 25-28, 1998.

- 14 On December 24, 1998, Mr. Riley,³ System Manager for the 24-Hour Operations Group, met with members of senior management and others to discuss the parameters around which the curtailment would be extended. *Ex. T-101, p. 8.* They discussed the condition of the distribution system, the weather forecasts, the past inaccuracy of the forecasts, and the Monday forecasted peak load. *Exs. T-101, pp. 8-9; T-81, pp. 7-8.* In particular, Mr. Riley pointed out that the weather forecasts were inconsistent, with some forecasting continued cold through the weekend and the following week, and others indicating a warming trend after Christmas Day. *Ex. T-101, p. 9; Ex. 104.* Mr. Riley also noted the inaccuracy of the past forecasts. Overall, forecasts for the past seven days had been colder than predicted. *Ex. 109.*
- 15 Based on the forecasted temperatures, inconsistencies in the forecasts and the past inaccuracies in the forecasts, Mr. Riley planned for temperatures between 30-35 degrees Fahrenheit over the next four days. Discussions with Operations Planning about Stoner model simulations verified that PSE would not be able to serve interruptible loads in this range of temperatures without risking service to firm customers. *Ex. T-101, pp. 9-10.* Mr. Riley was also concerned that the system had not rebounded from the previous five days of cold weather. Based on his experience, when distribution capacity has been stressed, it may take a significant period of time to rebound. *Id.* The Monday expected peak flows were also a concern since curtailment plans are developed and implemented based on the peak flow conditions during any one gas day.⁴ *Tr. 289-90.*
- 16 Ms. Caswell, Manager of Operations Planning, confirmed Mr. Riley's conclusions. Ms. Caswell based her confirmation on her experience and on the data contained in the Stoner models in Ex. C-94 (which were available to Ms. Caswell in December 1998), the forecasts for continued cold, the existing distribution problems, and the Monday expected peak flows. *Ex. T-91, p. 13.* Given the condition of the distribution system

³ Mr. Riley was designated the Emergency Response Planning Supervisor (ERPS). As the ERPS, Mr. Riley was the focal point for execution of key actions authorized by senior management through the December 1998 Curtailment. *Ex. T-81, p.4; Ex. T-101, p.3.*

⁴ Historically, peak flows vary from approximately five to ten percent of the daily volume. The system is most stressed at its peak, and Monday peak flows tend to be extreme. *Ex. T-91, p. 7.* Thus, a critical issue in modeling distribution capacity is how the cold hits during peak hour. *Tr. 289.*

on December 24, 1998, PSE anticipated that the curtailment would continue through the peak on Monday morning, December 28, 1998.

- 17 While PSE was reviewing the condition of the gas distribution system, Kimberly-Clark learned that its fuel supplier would be unable to deliver any additional diesel fuel oil after 6:30 p.m. December 24, 1998, until 12 p.m. on December 28, 1998. At approximately 2:00 p.m., Kimberly-Clark attempted, without success, to communicate with PSE management to request relief from the curtailment due to problems with its alternate fuel supply. Kimberly-Clark then called PSE Gas Control. PSE Gas Control advised Kimberly-Clark that the curtailment was still in effect and that PSE Gas Control had no authority to lift the curtailment. Kimberly-Clark told PSE Gas Control that in order to prevent safety risks, lost production, and a mill shut-down, the plant would have to increase its flow of gas beyond its firm contract demand. *Complaint at 3.*
- 18 From December 24 through 27, 1998, Mr. Riley continued to monitor weather forecasts, kept in contact with Gas Control, which monitors SCADA⁵ information 24 hours a day, and Gas Dispatch, which keeps track of customer service orders. *Ex. T-101, pp. 3, 6, 7 & 11.* Mr. Riley did not believe that the parameters over the weekend changed significantly, and he did not believe that it was appropriate to initiate discussion to resume service to interruptible customers over the weekend. *Ex. T-101, p. 12.* In accordance with the resumption plan, meter readers began reading the meters of Rate Schedule 86 customers on Monday, December 28. *Tr. 215.* From the period after peak use on the morning of December 28, 1998, service was restored in the priority of service provided for under Rule 23. *Ex. 132.* All interruptible customers were resumed by 5:00 p.m. on Monday, December 28, 1998. *Id.*

IV. ISSUES PRESENTED

- A. WHAT STANDARD OF SERVICE DOES PSE OWE TO ITS RATE 57 INTERRUPTIBLE CUSTOMERS?**
- B. DID PSE UNREASONABLY FAIL TO RESUME INTERRUPTIBLE SERVICE PRIOR TO DECEMBER 28, 1998?**

V. DISCUSSION

- A. WHAT STANDARD OF SERVICE DOES PSE OWE TO ITS RATE 57 INTERRUPTIBLE CUSTOMERS?**

⁵ SCADA refers to the System Control and Data Acquisition system that is used by PSE to monitor and manage its gas distribution system. *Ex. T-91, p. 5.*

19 **Kimberly-Clark's Position.** Kimberly-Clark contends that the standard of service PSE owes to all customers is set forth in RCW 80.28.010 (2), which provides:

Every gas company, electrical company and water company shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.

20 Kimberly-Clark argues that the fact that PSE provides service to Kimberly-Clark under an interruptible tariff does not change this obligation to provide "adequate and efficient service." Kimberly-Clark quotes the Commission's rules for electric service interruptions, WAC 480-100-076, as support for its position that PSE's duty under RCW 80.28.010(2) extends to customers who take interruptible service as well as to firm customers: "[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 (*emphasis supplied by Kimberly-Clark*). Citing *Shannon v. Grand Coulee*, 7 Wash. App. 919, 921 (1972), and *National Union Insurance Co. v. Puget Sound Power & Light*, 94 Wash. App. 163, 175 (1999), Kimberly-Clark argues that PSE may be liable in damages for a breach of its duty to provide safe, adequate, and efficient service.

21 Kimberly-Clark acknowledges that PSE may prescribe rules and regulations in its tariffs for interruptible service, but argues that 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). Kimberly-Clark asserts that 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, p. 9*. Kimberly-Clark maintains that the evidence presented at the hearing demonstrates that by December 25, 1998, PSE's distribution system had returned to pre-curtailment status and its distribution capacity was sufficient to serve all of PSE's customers. Under these circumstances, argues Kimberly-Clark, PSE breached its duty to provide adequate, efficient, and reasonable service.

22 **PSE's Position.** PSE argues that its obligation to serve interruptible customers is defined by its Natural Gas Tariff, Rate Schedule 57, and the language of the Rate Schedule 57 service agreement. *In re Washington Natural Gas, Docket No. UG-950450*, (*August, 1995*). PSE's Natural Gas Tariff (Tariff) contains the general rules under which PSE provides service to its gas sales and transportation customers, as well as the individual rate schedules under which customers take specific service. In addition, individual rate schedules may require that customers enter into service agreements with PSE. PSE contends that the language of RCW 80.28.010(2) does not exist in a vacuum. The service requirements for interruptible customers with which PSE must comply are set forth in PSE's Tariff, rate schedules, and service agreements. *Bloom Township High School, et al. v. Commonwealth Edison Co.*, 1998 Ill. PUC LEXIS 1150 (1998).

23 PSE explains that under its Tariff, in a situation where there is insufficient distribution

capacity, firm customers have first priority to that capacity. After firm customers, interruptible sales and transportation customers have the priority of service established under Rule 23. The Tariff does not establish the criteria PSE must use for determining whether distribution capacity is sufficient to serve all customers. Nor does it require a specific process for managing curtailments of interruptible customers. The Tariff and PSE's Rate Schedule 57 Service Agreement specifically provide PSE with the discretion to manage curtailments and to make determinations about distribution capacity.

24 According to PSE, the conclusions reached in Kimberly-Clark's expert witness Mr. Owen's testimony are based on his apparent misconception that the standard of service required to serve Rate Schedule 57 customers is the same standard of service required to serve firm gas customers. Since Mr. Owens is applying the wrong standard of service, reasons PSE, his opinion that PSE did not provide adequate service to Kimberly-Clark is fatally flawed. PSE notes that this Commission has recognized that different levels of service obligations can exist for different end-use customers. In *WUTC v. The Washington Water Power Company, Docket No. UG-901459, Third Supplemental Order (March, 1992)*, the Commission stated that:

[a] gas company should, to the extent possible, make transportation service available to end-use customers without otherwise prejudicing its obligation to provide service to its core group of sales customers. The extent of its obligation does not rise to the level of "common carrier" status whereby the company would be required, under any circumstances, to provide transportation service to all who request it.

Third Supplemental Order at 2 (1992) (emphasis added by PSE). PSE notes that it does not design its gas distribution system to serve interruptible customers under all conditions. *Ex. T-91, p. 4*.

25 **Commission Discussion and Conclusion.** The Commission concludes that the standard of service required to serve PSE's Rate 57 interruptible customers is defined by PSE's Tariff, Rate Schedule 57 and the Rate Schedule 57 service agreement. PSE is bound by those tariff provisions. "Once a utility's tariff is filed and approved, it has the force and effect of law:" *General Tel. Co. v. City of Bothell, 105 Wn.2d 579, 585 (1986)*. The Commission considers the reasonableness of those tariff provisions in deciding whether PSE has complied with its statutory duty. While RCW 80.28.020(2) does require PSE to provide safe, adequate, efficient, and reasonable service, as PSE points out, that language does not exist in a vacuum. The Commission has recognized that different levels of service obligations can exist for different end-use customers. *WUTC v. The Washington Water Power Company, Docket No. UG-901459, Third Supplemental Order at 2 (1992)*. PSE's service obligations to Rate Schedule 57 interruptible customers differ from PSE's service obligations to firm gas customers and those differences are reflected in the tariffs and rates. We find these differing

levels of service obligations under Rate Schedule 57 to the reasonable and consistent with RCW 80.28.020(2).

- 26 Kimberly-Clark's analysis of the standard of service for interruptible customers under Rate Schedule 57 fails because it ignores the provisions of the tariff, rate schedule and service agreement and relies solely on RCW 80.28.020(2). Moreover, Kimberly-Clark mistakenly relies on WAC 480-100-176 to support its argument that PSE owes the same level of duty to provide safe, adequate, efficient and reasonable service to customers who take interruptible service and to firm customers. WAC 480-100-176 applies to electric utilities. WAC 480-90-076 applies to gas utilities and provides:

[T]he term "interruption" as used in this rule refers to the temporary discontinuance of gas flow to any customer or customers due to accident, required repairs or replacements, or the actions of municipal or other agencies. It does not refer to the discontinuance of gas flow to those customers receiving service under an interruptible service schedule. (Emphasis supplied).

- 27 Thus, the service responsibilities of electric utilities for interruptions of service are inapplicable to the situation presented here. WAC 480-90-076, which is applicable, specifically excludes interruptible customers from the definition of interruption. Kimberly-Clark's reliance on *National Union Insurance Co. v. Puget Sound Power & Light*, 94 Wash. App. 163 (1999), is inapposite for the same reason -- it involved the disruption of electrical service to Boeing caused by a windstorm and thus invoked WAC 480-100-076. This case involves a customer who takes interruptible natural-gas transportation service. Finally, *Shannon v. Grand Coulee*, 7 Wash. App. 919, 921 (1972) is not analogous to the present case. *Shannon* involved a city's failure to maintain water supply to a specific fire hydrant. The Court held that the city had a duty to regularly inspect its water system to insure an adequate flow to those hydrants. The Court added that only by doing so does the city meet the statutory duty to provide an efficient water system. Here, we are asked to determine whether PSE properly extended its curtailment of natural-gas transportation service through December 28, 1998. Our analysis of whether PSE satisfied its statutory obligations is guided by Rate Schedule 57 and the reasonableness of the factors relied upon by PSE in making its decision.

B. DID PSE UNREASONABLY FAIL TO RESUME INTERRUPTIBLE SERVICE PRIOR TO DECEMBER 28, 1998?

- 28 **Kimberly-Clark's Position.** Kimberly does not dispute the reasonableness of the curtailment from its inception on December 19, 1998, through December 24, 1998. Rather, Kimberly Clark contends that the system had returned to normal by December 25, 1998, and that PSE should have ended the curtailment on that date. Kimberly-Clark argues that the evidence in the record indicates that PSE's distribution system capacity was adequate to service all firm and interruptible customers between

December 25 and December 28, 1998. Specifically, Kimberly-Clark argues that taking into account the criteria that PSE uses in making curtailment decisions, every key parameter indicated that the distribution system had returned to its pre-curtailment condition by December 25, 1998, including SCADA data, pen-gauge data, temperatures, weather forecasts, customer service calls and send-out.

- 29 **SCADA Data.** In support of its position, Kimberly-Clark references a compilation of PSE's SCADA data in chart form, prepared by Kimberly-Clark's expert, Tom Owens. The compilation includes SCADA data reported from nine 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.* According to Kimberly-Clark, the compilation of the data in chart form graphically demonstrates that by December 25, 1998, system pressures had returned to levels that were actually higher than they were on December 16, 1998. *Id.*
- 30 **Pen-Gauge Data.** Kimberly-Clark argues that the pen-gauge⁶ data compiled by Tom Owens for the period from December 6, 1998, to January 7, 1999, confirm the SCADA data and show that pressures were well above minimum⁷ during the period in question. *Ex. 27.*
- 31 **Temperatures.** In further support of its position, Kimberly-Clark references Exhibit 103, which provides the actual high and low temperatures at SeaTac for the period from December 15 to December 27, 1998. Kimberly-Clark asserts that Exhibit 103 shows that on December 24, the low rose to 30 degrees Fahrenheit, and the high temperature was 43 degrees. Actual low temperatures between December 25 and 27 were 41 degrees, 40 degrees and 42 degrees Fahrenheit respectively. *Ex. 103.* The high temperature for those days reached 52 degrees Fahrenheit on December 27. *Id.*
- 32 **Weather Forecasts.** Kimberly-Clark argues that the record does not support PSE's claim that extension of the curtailment after December 25, 1998, was justified by weather forecasts. Kimberly-Clark notes that in the days prior to the curtailment, the weather forecasts were for very cold weather. *Ex. 103.* By contrast, on December 24, 1998, PSE decided to extend the curtailment even though the forecasted lows were for much warmer temperatures. *Id.*
- 33 **Customer Service Calls.** Kimberly-Clark suggests that PSE's reliance on the number of customer service calls to demonstrate capacity constraints is of dubious value because, as Mr. Riley admitted, the customer complaint records do not differentiate

⁶ Pen-gauges are devices that record pressures at various points on the system. *Tr. 317.*

⁷ According to the testimony of Paul Riley, 15 psi is the minimum pressure at which outages would not be expected. *Tr. 318.*

between system problems and customer equipment failures. Kimberly-Clark argues that, to the extent that the number of customer service calls is relevant, PSE's evidence proves that the distribution system had returned to normal between December 25 and December 27, 1998 because the number of service calls declined between December 25 and 27. *Ex. 105, pp.7, 75-86.*

- 34 ***Send-Out.*** Kimberly-Clark acknowledges that the evidence provided by PSE demonstrates that send-out⁸ increased significantly in the cold-weather period between December 19 and December 23, 1998. *Ex. C-71, p.4.* However, by December 24, 1998, send-out declined to pre-curtailement levels. *Id.* According to Kimberly-Clark, send-out markedly declined by December 25, dropping by more than half from its high point on December 21. *See Ex. C-20.* Thus, send-out data demonstrate that by December 24, 1998, the distribution system had returned to normal.
- 35 ***Stoner model.*** According to Kimberly-Clark, the only technical evidence presented by PSE to justify its failure to resume interruptible service between December 25 and December 28, 1998 were exhibits depicting the "Stoner model." Kimberly-Clark argues that the Stoner model exhibits fail to provide credible support for PSE's failure to resume interruptible service, because they were prepared long after the December 1998 curtailment, they are inconsistent with known data, the model is of questionable technical integrity, and the model exhibits contradict PSE's own RTU data, pen-gauge information, and weather data.
- 36 Kimberly-Clark argues that at least some of the variables upon which the Stoner model simulation is based do not reflect reality. Specifically, Kimberly-Clark contends that in constructing the Stoner model, Ms. Caswell used a temperature of 38 degrees Fahrenheit, the 24-hour forecast for 7:30 a.m. on December 25th, rather than the actual low temperatures for December 25, 26, and 27, 1998, that were in the forties. Kimberly-Clark points out that in constructing the Stoner model, Ms. Caswell also failed to consider that on December 25, 1998, the 48-hour forecast for 7 a.m. was 42 degrees and on December 26, 1998, 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.
- 37 Finally, Kimberly-Clark argues that PSE 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, PSE was able to serve all of its firm and interruptible customers on December 17 and December 18, 1998, even though the actual temperature on those days was 34 degrees Fahrenheit and 30 degrees Fahrenheit respectively and no firm or

⁸ Volumes of gas deliveries or "send-out" reflects the level of stress experienced on the distribution system. *Ex. T-12, p. 2.*

interruptible customers were curtailed. On the other hand, the Stoner model exhibits purport to show distribution system constraints at 38 degrees Fahrenheit.

38 **Management.** Kimberly-Clark further argues that a review of PSE's management of the curtailment of interruptible service between December 25 and December 28, 1998, supports Mr. Owens' opinion that PSE's conduct fell short of its obligation to provide adequate service to its interruptible customers. PSE contends that the involvement of PSE's senior management in the review of distribution system pressures, in calling for a curtailment, and monitoring the curtailment was greater prior to December 24, 1998, than the period from December 25 through 28, 1998. Kimberly-Clark maintains that following the Christmas Eve decision to continue the curtailment over the long weekend, PSE's attention to the curtailment abruptly ended.

39 **Meter Readers.** Kimberly-Clark suggests that the real reason the curtailment was not monitored over the long Christmas weekend was a management decision by PSE not to disrupt the holiday plans of its meter readers.⁹ In support of its position, Kimberly-Clark references a PSE document entitled "Big Chill 1998 (December 19-23, 1998)" *Ex. 54, p. PSE 01216*, and five email messages which mention not bringing in meter readers over the holiday weekend. *Ex. 99, pp. 42-43, 33, 29, 24, and 8.*

40 **PSE's Position.** PSE argues that its process for managing the December 1998 Curtailment was consistent with PSE's Tariff, Rate Schedule 57 and the Rate Schedule 57 service agreement. PSE points out that the language of Rate Schedule 57 does not delineate a specific process that PSE must use to determine whether there is sufficient distribution capacity to serve all customers. Rather, Rate Schedule 57 states that PSE may call constraint periods for insufficient distribution capacity in its sole judgment and discretion. The Rate Schedule 57 service agreement specifically states that PSE "reserves the right to declare these [constraint] periods at such time and for such duration as the Company deems necessary to manage its distribution system." *Ex. 112, p.1.*

41 PSE argues that the record demonstrates that PSE considered the relevant and appropriate criteria when it determined that there was insufficient distribution capacity to resume service to interruptible customers prior to December 28, 1998. The criteria that PSE uses to determine constraint periods include the estimated loads of all customers (including adjustments for particular day and time of day), supply and transportation requirements of customers, actual and estimated temperatures, weather forecasts, recent and current weather conditions (including but not limited to snow cover, cloud cover, wind, and precipitation), condition of the distribution system,

⁹ Consistent with PSE's Natural Gas Tariff and service agreements, PSE reads the meters of Rate Schedule 86 customers before resuming service to Rate Schedule 86 customers, followed by resumption of service to other lower priority customers (i.e. Rate Schedule 57 customers) in order to maintain the priority of service under Rule 23 and to manage the gas distribution system.

distribution system limitations, maintaining service to firm sales customers, past experience with distribution system and customer use, communications with customers, ability to communicate with customers, distribution system models and safety requirements. *Ex. 133.*

- 42 PSE makes the following points with respect to Kimberly-Clark's analysis of the criteria used by PSE in making its decision to extend the curtailment.
- 43 **SCADA/RTU Data.** PSE notes that Mr. Owens relied on only 9 RTU points out of 212 to evaluate the condition of the gas distribution system. *Ex. C-21.* Ms. Caswell testified that evaluation of the condition of PSE's gas distribution system would require evaluation of the information from all the RTU sites. *Tr. 275.* PSE contends that, in addition to using a very small selection of data to support his opinions, Mr. Owens mischaracterizes the data to support his opinions. In so doing, he neglects to disclose important information, such as in *Ex. C-21*, that he is comparing pressures in a system in which all customers are on the system to one in which interruptible customers have been curtailed. *Tr. 276-278.*
- 44 **Pen-Gauge Data.** PSE argues that Mr. Owens' review of only 16 data points over a time period of ten days for a piping system of just under 10,000 miles of mains is not valid to establish distribution system capacity. *Ex. T-91, p. 11.*
- 45 **Temperatures.** PSE argues that Mr. Owens' reliance on actual temperatures demonstrates that he does not understand how gas distribution companies manage curtailments, and that he is using hindsight to determine whether PSE's actions were reasonable. Mr. Owens opined that continuation of the curtailment after December 24 was uncalled for because the weather began to warm up. *Ex. T-11, p.5.* PSE notes that the temperature data that Mr. Owens relies on for this statement are the SeaTac actual temperatures provided by PSE in Exhibit 103. However, as Mr. Owens admitted in his deposition, PSE would not have known what the actual temperature was going to be prior to the day on which the actual temperature occurred. *Ex. 168, p. 43.* PSE maintains that in ascertaining whether a utility's decision-making is reasonable, only those facts available at the time judgment was exercised can be considered. *WUTC v. Puget Sound Power & Light Co., Cause No. U-83-54, Fourth Supplemental Order (Sept. 1984).*
- 46 **Weather Forecasts.** PSE argues that weather forecasts are an important factor in determining constraint periods. In his analysis of whether to continue the curtailment, Mr. Riley relied on Weather Net forecasted temperatures that indicated low temperatures would be around 35 degrees on December 26 and December 27, 1998. Mr. Riley also received forecast information that showed there would be continued cold through the weekend and the following week, while other forecasts were indicating a warming trend after Christmas Day. *Ex. T-101, p. 9; Ex. 104, PSE1228.*

Mr. Riley testified that in order to predict temperatures, the 24-hour, 48-hour and 72-hour Weather Net forecasts needed to be taken as a group and looked at several days in advance. The way in which Mr. Riley evaluated the weather forecast is demonstrated in Exhibit 109, which shows that for the seven days prior to December 24, 1998, actual temperatures were generally colder than predicted. PSE maintains that Mr. Riley's concern that temperatures could be colder than predicted was reasonable given the prior relationship between actual and forecasted temperatures.

47 **Customer Service Calls.** PSE explains that, although the sheer volume of customer service orders decreased from December 25 through 27, 1998, as compared to the "extreme" numbers that were seen during the coldest period of the curtailment, Mr. Riley testified that the number of service calls on December 25, 26, and 27, 1998, were much higher levels than he would expect to have on a holiday weekend. *Tr. 319.* In addition, the customer calls PSE received on December 24, 1998, were located throughout the system in concentrated groups in areas of high concentrations of Rate Schedule 86 customers. *Ex. T-101*, p. 8. Mr. Riley reasoned that if there was not sufficient distribution capacity to serve the smallest of interruptible customers (Rate Schedule 86), the large customers (Rate Schedules 85, 87, and 57) could have an even greater negative effect on the system. *Id. at 11.*

48 **Send-out.** PSE notes that the source of the send-out information upon which Mr. Owens relies is contained in Ex. C-71. Page 4 of Ex. C-71 contains send-out information for firm sales, interruptible sales and transportation deliveries. PSE explains that this information is considered "actual" by PSE and would not have been available until some time after the gas day was over. In addition, send-out over a 24-hour period does not provide any information as to the estimated customer loads during peak hour, which is the evaluation PSE relies on to determine whether there will be sufficient distribution capacity to serve all customers. *Tr. 289-91.*

49 **Stoner model.** PSE argues that the Stoner modeling information available to Ms. Caswell and Mr. Riley on December 24, 1998, demonstrated that at a temperature of 35 degrees Fahrenheit, PSE's gas distribution system had insufficient distribution capacity to serve all firm and interruptible customers from December 24 through December 28, 1998, during peak flow conditions. *See Ex. C-94.* Ms. Caswell pointed out that PSE uses a temperature forecast for the time that peak usage hours or that peak flows will be occurring. *Tr. 290.* Ms. Caswell explained that for purposes of modeling distribution capacity, the critical issue is how the cold hits during the peak hour. *Tr. 289.* Ms. Caswell testified that her staff runs models on a daily basis, and any PSE personnel involved in cold weather planning would have access to Stoner information. *Tr. 267-68.*

50 Ms. Caswell developed a subsequent Stoner model plot to evaluate the actions that PSE took during the curtailment. *Ex. T-91 at 10; Ex. C-96.* Although this exhibit was

prepared after December 1998, it reflects the customers that were on the system during that period. *Tr.* 270-71. Ms. Caswell plotted a Stoner model to demonstrate whether there were distribution system capacity constraints for a 38 degree Fahrenheit day (the 24-hour forecast for gas day December 27, 1998), with interruptibles on in the appropriate priority of service and with a 6% peak hour factor. In addition, Ms. Caswell added the actual peak load that Kimberly-Clark and another large customer (identified in Ex. C-96) consumed while they were burning penalty gas during the December 1998 Curtailment. Ms. Caswell testified that this Stoner plot demonstrates that with resumption of interruptible customers at 38 degrees Fahrenheit, a 6% peak factor, and the levels of consumption that Kimberly-Clark and this other customer were using, system failures for firm customers would have existed and PSE would have forecasted insufficient distribution system capacity to serve all customers. *Ex. T-91, p. 10.*

51 ***System equipment.*** PSE notes that in assessing whether to continue the curtailment on December 24, 1998, Mr. Riley also considered that there were still-frozen meters, regulators, mains and service lines and that system pressures had not rebounded from the prior five days of cold weather. *Ex. T-101, p.10.* The period that the system takes to return to its pre-stress behavior varies due to a number of factors including the duration and the severity of the event. *Id.* Both Mr. Riley and Ms. Caswell testified that Stoner models do not take into account the effect of a long cold period on distribution system capacity, and therefore the Stoner models may be viewed as optimistic. *Ex. 91, p. 8; Ex. T-101, p. 10.*

52 ***Management.*** PSE argues that the employee with the requisite knowledge and authority monitored the gas distribution system during the time period from December 25 through the morning of December 28, 1998. Paul Riley was the individual responsible for managing the gas distribution system, monitoring the performance of the gas distribution system and implementing the curtailment. Mr. Riley was in the office on December 24 and 25, 1998, and over the holiday weekend. *Tr. 315; T-101, p.12.* In addition, Mr. Riley remained in contact with Gas Control and Gas Dispatch, and continued to review weather forecasts, information about customer service calls, and SCADA readings over the holiday weekend. *Ex. T-101, p. 11.* Mr. Riley made the determination that the parameters did not change sufficiently to resume service to interruptible customers over the weekend. *Id. at 12.*

53 ***Meter Readers.*** PSE argues that there is no evidence that any of the individuals who were responsible for making the curtailment decisions continued the curtailment due to concerns about sending meter readers out over the Christmas weekend. PSE points out that the email exhibits that Kimberly-Clark relies upon all stem from two email messages that appear to be authored by Molly Bork, a PSE employee involved in providing preliminary responses in the informal complaint process. *Ex. 4; Ex. 99 at PSE04152.* PSE argues that Ms. Bork is not part of PSE management and was not

involved in any decisions with regard to the December 1998 Curtailment; therefore any statements made by her regarding the availability of meter readers as affecting curtailment decisions are inherently unreliable. Mr. Hogan and Mr. Riley were the two key PSE employees who were involved in the determination to continue the curtailment. Mr. Hogan testified that his decision to extend the curtailment was not based on a concern about sending meter readers out on Christmas. In fact, meter readers worked on December 25 and 26, 1998. *Tr. 215; Ex. T-81*. Mr. Riley testified that the parameters under which he was operating in monitoring the curtailment did not include the availability of meter readers. *Ex. T-101, p. 11-12*. With respect to the "Big Chill 1998" document, Ms. Caswell testified that although she was the primary author, she did not draft the entire document. In fact, she sent the document out for review and others commented and shipped it back. The document never became finalized and gross inaccuracies never got cleaned up. *Tr. 239-240*.

54 **Commission Discussion and Conclusion.** Kimberly-Clark has failed to show by substantial competent evidence that PSE's December 24, 1998, decision to continue the curtailment through December 28, 1998, was unreasonable. Kimberly-Clark does not dispute the criteria that PSE uses in making curtailment decisions. Rather, Kimberly-Clark argues that its analysis of those criteria demonstrates that the distribution system had returned to its pre-curtailment condition by December 25, 1998. We do not agree with Kimberly-Clark's analysis. Kimberly-Clark often applies a hindsight analysis which focuses on actual data that was not available to PSE at the time of its decision to continue the curtailment. In other instances, Kimberly-Clark's analysis fails to include the appropriate data, which leads to unreliable conclusions.

55 Kimberly-Clark's Exhibit C-21, showing SCADA data reported from nine RTU points out of 212, and Exhibit 27, showing pen-gauge data reported from sixteen points, form an unreliable foundation from which to conclude that by December 25, 1998, system pressures had returned to pre-curtailment levels. Ms. Caswell testified that evaluation of the condition of PSE's gas distribution system would require evaluation of the information from all the RTU sites. *Tr. 275*. She also testified that a review of only sixteen data points over a time period of ten days for a piping system of just under 10,000 miles of mains is not valid to establish distribution system capacity. *Ex. T-91, p. 11*. Moreover, we find misleading Kimberly-Clark's comparison of RTU pressures with all customers on the system against pressures that occurred with interruptible customers curtailed to show that service to interruptible customers could be resumed because pressures had returned to pre-curtailment levels.

56 Kimberly-Clark appears to ignore, or to a great extent discount, PSE's reliance on forecasted pressures and temperatures in making curtailment decisions. Instead, Mr. Owens opines that PSE unreasonably continued the curtailment after December 24, 1998, because the weather began to warm up on December 24, 1998, and that it remained warm through the holiday weekend. Mr. Owens relies on SeaTac actual temperatures in Exhibit 103 to form his opinion. However, PSE would not

have known what the actual temperature was going to be prior to the day on which the actual temperature occurred. Mr. Owens relies on actual send-out data in the same way. In ascertaining whether a utility's decision-making is reasonable, only those facts available at the time judgment was exercised can be considered. *WUTC v. Puget Sound Power & Light Co.*, Cause No. U-83-54, *Fourth Supplemental Order (Sept. 1984)*.

57 Besides ignoring the importance of weather forecasts in evaluating the distribution system, Mr. Owens also discounts another forecasting tool, the Stoner models. Ms. Caswell testified that the Stoner model is a standard tool used to evaluate both short- and long-range operational activities, the most pivotal of which is the evaluation of the distribution system capacity. *Ex. T-91, p. 4; Tr.262*. Using forecasted peak temperatures in a range of 30 to 35 degrees Fahrenheit with peak-hour factors ranging from 6% to 7.5%, the Stoner model indicated that PSE would not be able to serve all of its customers prior to December 28, 1998. An "after-the-fact" Stoner model plot developed to evaluate the actions that PSE took during the curtailment confirmed PSE's decision to extend the curtailment through December 28, 1998.

58 Based on our review of the record, we are not persuaded by Kimberly-Clark's suggestion that the real reason PSE did not end the curtailment over the holiday weekend was a management decision by PSE not to disrupt the holiday plans of its meter readers. There is no evidence that any of the individuals who were responsible for making the curtailment decisions continued the curtailment due to concerns about sending meter readers out over the Christmas weekend.

59 The record demonstrates that PSE resumed service to interruptible customers when PSE determined that resumption of service to these customers would not jeopardize firm service. The record does not support Kimberly-Clark's contention that PSE management did not review or monitor PSE's decision to continue the curtailment. Instead, the record shows that PSE considered the relevant and appropriate criteria when it determined that there was insufficient distribution capacity to resume service to interruptible customers prior to December 28, 1998. Moreover, PSE continued to monitor the situation throughout the holiday weekend.

60 We find that the evidence demonstrates that the basis for the continuation of the curtailment from December 25, 1998, through December 28, 1998 was reasonable and complied with PSE's Tariff and Rate Schedule 57. For these reasons the Complaint is denied. Because Kimberly-Clark violated the curtailment and consumed penalty therms, Kimberly-Clark owes PSE for the number of penalty therms consumed during the entire curtailment.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

61 Having discussed above in detail the testimony and documentary evidence concerning

all material matters, and having stated findings and conclusions upon contested issues, the Commission now augments those findings and conclusions with the following general statements on the evidence of record. Those portions of the preceding detailed findings and conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

A. FINDINGS OF FACT

- 62 1. The Washington Utilities and Transportation Commission is an agency of the state of Washington vested by statute with the authority to regulate the rates, rules, regulations, practices, accounts, securities and transfers of public service companies.
- 63 2. Puget Sound Energy, Inc. is engaged in the business of furnishing electric and gas service within the state of Washington as a public service company.
- 64 3. Kimberly-Clark Tissue Company is a customer of PSE that takes both firm and interruptible natural gas transportation service under PSE's Rate Schedule 57.
- 65 4. On April 26, 1999, Kimberly-Clark filed a complaint against PSE alleging that PSE improperly charged Kimberly-Clark approximately \$346,000 in penalties for taking service beyond its firm service allotment during a curtailment extended to include December 25-28, 1998.
- 66 5. PSE reasonably extended the curtailment from December 25, 1998, to December 28, 1998, based on relevant and appropriate criteria.
- 67 6. Because it violated the curtailment, Kimberly- Clark owes PSE payment according to the tariff for the number of penalty therms consumed during the entire curtailment.

B. CONCLUSIONS OF LAW

- 68 1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this complaint pursuant to RCW 80.01.040 and Chapter 80.28 RCW.
- 69 2. The standard of service required to serve PSE's Rate Schedule 57 interruptible customers is defined by PSE's Tariff, Rate Schedule 57, and the Rate Schedule 57 service agreement, and is consistent with RCW 80.28.020(2).
- 70 3. PSE's continuation of the curtailment from December 25-28, 1998, complied with PSE's Tariff and the language of Rate Schedule 57, and therefore is consistent with RCW 80.28.010(2).

- 71 4. Kimberly-Clark failed to show by substantial competent evidence that PSE's
decision to continue the curtailment through 5:00 p.m. on December 28, 1998,
was unreasonable.
- 72 5. Because it violated the curtailment and consumed penalty therms, Kimberly-Clark
must pay the penalty amount as set forth in Rate Schedule 57, Section 8.

VII. ORDER

THE COMMISSION ORDERS:

- 73 1. The Complaint of Kimberly-Clark Tissue Company is denied.
- 74 2. Kimberly-Clark Tissue Company shall pay PSE \$362,064.86 for penalty therms
consumed during the December 1998 curtailment as forth in Rate Schedule 57,
Section 8.
- 75 THE COMMISSION ORDERS FURTHER That all amounts owed for penalty therms
consumed be paid within thirty (30) days of the date of this Order.

DATED at Olympia, Washington, and effective this day of May 2000.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner

**NOTICE TO PARTIES: This is a final Order of the Commission. In addition to
judicial review, administrative relief may be available through a petition for
reconsideration, filed within 10 days of the service of this Order pursuant to
RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to
RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).**

APPENDIX A**STATUTES, RULES AND TARIFFS REFERENCED IN ORDER**

The following statutes, rules, and tariffs are referenced in this Order.

RCW 80.28.010 Duties as to rates, services, and facilities. . . .(2) Every gas company, electrical company and water company shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.

WAC 480-100-076 Service responsibilities. . . . Interruptions of service - each utility shall endeavor to avoid interruptions of service, and, when such interruptions occur, to reestablish service with a minimum of delay.

WAC 480-90-076 Service responsibilities. . . . Interruptions of service - the term “interruptions” as used in this rule refers to the temporary discontinuance of gas flow to any customer or customers due to accident, required repairs or replacements, or to the actions of municipal or other agencies. It does not refer to the discontinuance of gas flow to those customers receiving service under an interruptible service schedule.

PSE Rate Schedule 57, Section 15: Balancing Services -- Constraint Periods.

- (1) Constraint periods, to be declared at the sole judgment and discretion of the company, may occur when the company’s gas supply or distribution capacity is insufficient to meet the estimated requirements of all firm sales customers, interruptible sales customers, and transportation customers.
- (2) Each constraint period will be specified as either a distribution system curtailment, an overrun entitlement, or an underrun entitlement. Only one type of constraint period may exist at any one time.
 - a. Distribution system curtailment: Allowable daily delivered volumes are limited to the lesser of the contracted daily firm demand or the confirmed nomination. Volumes delivered in excess of the allowed volumes will be billed at the unauthorized use of gas rate described in this schedule.

PSE Rules and Regulations. Rule No. 21, Section 1: When Curtailment May Occur; Liability. The company may curtail firm gas service to firm gas customers if the company’s firm gas supply is insufficient at any time or location to meet in full the requirements of all customers served under firm rate schedules. No curtailment in firm gas service will be imposed by the company until all interruptible service customers in the area affected have been ordered to curtail to one hundred percent of their interruptible requirements.

The company shall not be liable in damages or otherwise to any customer for failure to deliver gas curtailed pursuant to this rule.

PSE Rules and Regulations. Rule No. 23, Section 1: When Curtailment May Occur.

- (1) The company may curtail interruptible sales service if the company's gas supply is insufficient to meet estimated requirements for all customers on interruptible sales service or the company's distribution capacity is insufficient to meet estimated requirements for all customers on interruptible sales and transportation service.
- (2) The company may curtail interruptible transportation service if the company's distribution capacity is insufficient to meet estimated requirements for all customers on interruptible sales and transportation service.

PSE Rules and Regulations. Rule No. 23, Section 2: Order of Interruptible Service Priority. . . .

- (2) The order of service priority, when there are curtailments caused by insufficient company distribution capacity, is as follows:
 - a. Requirements of Rate Schedule No. 86 sales service customers.
 - b. Requirements of Rate Schedule No. 85 sales service customers.
 - c. Requirements of Rate Schedule No. 87 sales service customers and Rate Schedule No. 57 transportation service customers.

PSE Rate Schedule 57, Section 8: Unauthorized Use of Gas. If the customer fails to comply with the company's request to curtail or interrupt its use of gas in accordance with the provisions set forth in Section 15 of this rate schedule, all gas used in excess of such curtailment will be billed at the applicable Rate Schedule No. 41 commodity rates; and, in addition, the customer shall pay its pro rata share of any penalties imposed upon the company by its supplier(s) on the day(s) of violation or at the penalty rate of \$2.00 per therm, whichever is greater. The provisions of this paragraph are exclusive of, and in addition to, the company's right to enforce compliance with its curtailment or interruption request by immediate suspension of all gas service to the customer.