

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

AIR LIQUIDE AMERICA  
CORPORATION, AIR PRODUCTS AND  
CHEMICALS, INC., THE BOEING  
COMPANY, CNC CONTAINERS,  
EQUILON ENTERPRISES, LLC,  
GEORGIA-PACIFIC WEST, INC., AND  
TESORO NORTHWEST COMPANY

Complainants,

v.

PUGET SOUND ENERGY, INC.

Respondent.

Docket No. UE-001952  
(consolidated)

PUBLIC COUNSEL ANSWER TO  
PSE MOTION TO STRIKE JOINT  
RATE CAP PROPOSAL OF  
COMMISSION STAFF AND  
PUBLIC COUNSEL

IN RE: PETITION OF PUGET SOUND  
ENERGY, INC. FOR AN ORDER  
REALLOCATING LOST REVENUES  
RELATED TO ANY REDUCTION IN  
THE SCHEDULE 48 OR G-P SPECIAL  
CONTRACT RATES

Docket No. UE- 001959  
(consolidated)

Pursuant to WAC 480-09-420(8) and 480-09-425, Public Counsel files this answer to Puget Sound Energy's (PSE's) Motion to Strike Joint Proposal, received after the close of business on Friday, January 5, 2000.

The Commission should deny PSE's motion. Public Counsel concurs with the response of Staff counsel Mr. Cedarbaum to Judge Moss via email on January 6, and also generally agrees with the points made in Complainants' response to the motion, filed today. Public Counsel requests that parties be given an opportunity to orally address the motion further in the event that the Commission is giving any consideration to a grant.

The motion is not well taken. PSE's assertion that the proposed cap remedy "far exceeds the established parameters for the Phase One proceeding" is mistaken. The Commission's Prehearing Conference Order of December 18, 2000, set the evidentiary hearing in this matter for December 29, 2000, "to determine whether *price caps* or other emergency rate relief should be

implemented[.]”<sup>1</sup> The order thus makes clear that the Commission will not only determine whether an emergency exists but will consider recommendations for action as well.

Next PSE asserts surprise.<sup>2</sup> The proposal of a retail rate cap as a potential remedy in this case should not come as a surprise to PSE. From the time of the first complaint in this proceeding a cap has been proposed. Formal Complaint Requesting an Emergency Adjudicative Proceeding, December 12, 2000, p. 9 (Prayer, ¶6). The day after the complaint was filed, PSE filed its own Petition for An Order Allocating Lost Revenues in which it acknowledged and opposed the request for a cap.<sup>3</sup> The next day, on December 14, 2000, Public Counsel’s Initial Response to the PSE Petition and Complainants’ Formal Complaint contained a clear description of a “soft cap” proposal. That proposal formed the basis for the joint Staff/Public Counsel proposal which PSE now seeks to strike.<sup>4</sup> Public Counsel’s Initial Response not only described how the cap would work, but suggested, as did Public Counsel’s Prehearing Memorandum, that the cap be adopted as a remedy in the event that the Commission were to conclude that an emergency existed. Finally, as PSE itself concedes in its motion,<sup>5</sup> several forms of cap were discussed during the mediation.<sup>6</sup> PSE simply has no reasonable basis to claim surprise that a rate cap would be a possible form of remedy to be considered in the emergency adjudication.

Finally, PSE’s assertion that it needs more time to conduct discovery and prepare for hearing on this issue deserves little weight. As noted, PSE has had ample notice that rate cap proposals, including this one, would be before the Commission at this stage of the proceeding. PSE did not issue discovery request to Public Counsel until a week after the conclusion of the mediation sessions at which cap proposals were discussed. It had the opportunity to target

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<sup>1</sup> Prehearing Conference Order, p. 3.

<sup>2</sup> PSE asserts in its motion that “yesterday [January 4] was the first time that this proposal was put forward as a formally proposed remedy in this proceeding.” PSE Motion, p. 3.

<sup>3</sup> PSE Petition, December 13, 2000, ¶ 8 (“The Company vigorously disputes that the Schedule 48 and G-P Special Contract rates should be cost-based *or capped*.”)

<sup>4</sup> Public Counsel Initial Response, December 14, 2000, pp. 3-4.

<sup>5</sup> PSE Motion, p. 3.

<sup>6</sup> Mediation discussions were agreed to be confidential. PSE in this instance has now made reference on the public record to a topic of discussion. Public Counsel therefore believes it may appropriately make reference to that topic.

discovery on cap proposals and to seek depositions of Staff and Public Counsel witnesses. It did not do so. As a practical matter, however, the data requests it did issue to Public Counsel covered the topic of rate caps. PSE asked for “any analysis, documents, or other evidence that Public Counsel intends to introduce or rely on at the hearing in this docket.”<sup>7</sup> Public Counsel produced in response detailed spreadsheets regarding the cap proposal. PSE also received a detailed statement of the proposal and its underlying assumptions three full days prior to the hearing in attachments to Staff’s brief. Messrs. Buckley and Lazar will be available for cross-examination at the hearing. Given the expedited nature of these proceedings, PSE has no serious ground for complaint that it has had an inadequate opportunity to conduct discovery or prepare for the hearing.

For the foregoing reasons, Public Counsel respectfully requests that PSE’s motion to strike the joint rate cap proposal of the Commission Staff and Public Counsel be denied.

Dated this 7<sup>th</sup> day of January, 2001.

CHRISTINE GREGOIRE  
Attorney General of Washington

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Simon J. ffitch  
Assistant Attorney General  
Public Counsel

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<sup>7</sup> PSE Data Request No. 1 to Public Counsel, December 28, 2000.  
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TO MOTION TO STIKE