

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

BELLINGHAM COLD STORAGE  
COMPANY and GEORGIA-PACIFIC WEST,  
INC.,

Complainants,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

NO. UE-001014

PUGET SOUND ENERGY, INC.'S  
ANSWER TO MOTION TO COMPEL

1. Puget Sound Energy, Inc. ("PSE") hereby answers the Motion to Compel of Georgia-Pacific West, Inc. ("GP"), dated August 2, 2000. GP and Bellingham Cold Storage ("BCS") are sometimes collectively referred to herein as the Complainants.

2. This Answer brings into issue the following rules or statutes: WAC 480-09-480.

### **I.BACKGROUND**

3. On June 29, 2000, Complainants filed a "Formal Complaint, Request for Expedited, Emergency Action Including Waiver of Regular Notice Periods, Relating to Special Contract Transmission Obligations and Pricing Provisions" (the "Complaint").

4. The Complaint contained a number of allegations against PSE. It also alleged "radical fluctuations in prices quoted by the current contract-pricing indicator, the Mid-Columbia Index." Complaint at 3. The Complaint did not, however, accuse PSE of collusion, nor did it accuse PSE of engaging in suspicious patterns of trading inimical to fair dealing. The Complaint did contain vague accusations of market manipulation *against certain unnamed California utilities, but not PSE*. Specifically, the Complaint made a general statement that "[a]llegations that the markets have become corrupted by energy under-scheduling and other manipulation have also been made by major players in West Coast markets. If true, these allegations would mean that the *Mid-Columbia Index* clearly does not reflect the competitive conditions that the contractual parties intended to replicate." Complaint at 3 (emphasis added, footnote omitted). Thus, the Complaint did not make any accusation that PSE was manipulating the market, nor did it address any other energy market besides the Mid-Columbia.

5. As evidence of their allegations against California utilities, Complainants attached a letter from an executive of San Diego Gas & Electric, a southern California utility, to the California Independent System Operator. As described by the Complainants, the letter called "for an investigation of underscheduling and market manipulation by other major California energy companies." Complaint at 3, n. 1.

6. On July 19, 2000, before discovery had even commenced, GP handed to PSE's counsel at the Prehearing Conference "First Discovery Request by Complainants [sic]" (the "Request"). The Request sought two sets of information:

Please provide hourly electric sales and purchase data, stating quantity, price per kilowatt-hour, and counterparty for the period May 22, 2000 to the present.

Please provide a list of all transactions including date, time, price, quantity, and counterparty reported to Dow Jones for inclusion in the Dow Jones firm index and the Dow Jones non-firm index

for the period from May 22, 2000 to the present.

A copy of the Request is attached to this Answer as Attachment A.

7. On July 25, 2000, PSE responded to the Request with certain objections and stated that it would provide certain responsive documents upon execution and delivery to PSE's counsel of signed agreements under the Protective Order in this case. See Attachment B.

8. On July 27, 2000, after receiving the signed confidentiality agreements of GP's counsel and expert, PSE submitted to GP Supplementary Responses to First Data Request (the "Supplementary Response"). Attachment C is a copy of PSE's response to the data request, along with a redacted sample page of the documents produced in response to each data request demonstrating the nature of the information provided to Complainants. As part of the Supplementary Response, PSE produced copies of PSE's hourly electric purchase and sale transaction data at Mid-Columbia from May 22, 2000, through July 24, 2000, including quantity and price per kilowatt hour, but excluding counterparty data. See id. PSE also produced copies of its reports to Dow Jones from May 22, 2000 through July 24, 2000. Those reports, by their nature, do not contain any reference to counterparties. See id.

9. After consulting with PSE's counsel, GP filed its "Motion to Compel" (the "Motion") on August 2, 2000. The Motion requests an order requiring PSE to provide "all electric purchase and sale transactions, as requested, rather than just those at Mid-Columbia, and to do so in electronic format, as requested." Motion at 1. The Motion also requests an order requiring PSE provide the names of all counterparties. Motion at 1.

10. The Motion is based solely on the argument that "identification of the counterparties will permit us to analyze the transactions for *collusion or suspicious patterns of trading inimical to fair dealing.*" Motion at 2 (emphasis added).

## II. ARGUMENT

### A. PSE Has Fully Complied With Request No. 2

11. GP's Request No. 2 asks for "*all transactions* including date, time, price, quantity, and counterparty *reported to Dow Jones* for inclusion in the Dow Jones index and the Dow Jones non-firm index." (Emphasis added). PSE has produced copies of its reports to Dow Jones. Those reports contain the information they contain. The fact that the reports do not contain counterparty information is a function of the nature of the reports and the information required by Dow Jones, not a function of any withholding of information by PSE.

12. GP's Motion claims that "the fact that Dow Jones does not require counterparty identification is not material to our inquiry." Motion at 2. This argument does not square with the plain language of GP's Request. GP specifically requested copies of "all transactions...reported to Dow Jones," and that is what they have received. GP's listing of types of information it may have hoped were included in such reports cannot change the content of the reports themselves.

13. GP's Motion as to Request No. 2 should be denied.

**B. PSE Should Not Be Compelled to Provide Counterparty Information or Information as to Markets Other Than Mid-Columbia In Response to Request No. 1**

14. Pursuant to WAC 480-09-480(6)(a)(vi):

*The scope of any request for data shall be for data relevant to the issues identified in the notices of hearing or orders in the adjudicative proceeding.*

(Emphasis added).

15. The Commission's Notice of Prehearing Conference in Docket No. UE-001014 provides:

*The pleadings indicate that a dispute exists between the Complainants and Respondent related to allegations that Respondent has violated its special contract with Complainants with respect to transmission obligations and pricing provisions. . . . It is appropriate for the matters raised in the pleadings to be brought to a hearing before the Commission.*

*The issues involved are generally stated above and more specifically contained in the pleadings herein.*

Notice of Prehearing Conference (July 19, 2000) at 1 (emphasis added).

16. On July 21, 2000, Administrative Law Judge Dennis J. Moss issued a Prehearing Conference Order setting, among other things, the limits of discovery in this case. The Prehearing Conference Order stated that "Parties are required to *limit* discovery to that *necessary to their respective cases.*" Prehearing Conference Order at 2 (emphasis added).

17. The Complaint in this proceeding does not mention, state, or even hint that GP or BCS had any concerns about collusion on PSE's part or PSE's activities in other markets. Under Washington law, a defendant or respondent is entitled to be advised by the complaint of issues he or she must be prepared to meet at trial. See Vogreg v. Shepard Ambulance Service, 47 Wn.2d 659 (1955). The Complaint did not advise PSE that it should be prepared to address accusations of collusion or questions related to PSE's activities in markets other than the Mid-Columbia.

18. Complainants' pleadings with respect to market manipulation dealt only with general accusations against unnamed California utilities. PSE is not a California utility. With all due respect, Complainants' accusations of collusion or market manipulation in California should be directed to the appropriate California utilities and should be in front of the California Public Utilities Commission or the Federal Energy Regulatory Commission. Complainants' data requests could then be properly directed at any California companies they believe are manipulating electricity markets.

19. The irrelevancy in these proceedings of any questions about collusion or market manipulation with respect to PSE is magnified by the fact that the Federal Energy Regulatory Commission has already determined that PSE does not possess, or has adequately mitigated, market power in generation and transmission of electricity in the energy markets in which it participates. In Puget Sound Energy, Inc., 86 F.E.R.C. ¶ 61,088 (1999), FERC accepted PSE's market-based power sales rate schedule. FERC permits power sales by jurisdictional utilities at market-based rates only if the utility can, among other things, demonstrate the absence or mitigation of market power. See Heartland Energy Services, Inc. et al., 68 F.E.R.C. ¶ 61,223, at 62,062-63 (1994). In Puget Sound Energy, Inc., the Commission determined that PSE's market share of installed and uncommitted generating capacity did not exceed levels the Commission found acceptable. The Commission likewise found that PSE met the Commission's market power standard for approval of market-based rate authority. Thus, by definition, PSE does not have power to manipulate markets. A copy of Puget Sound Energy, Inc., and a subsequent order addressing a compliance filing, is attached to this motion as Attachment D.

20. The Complainants' Motion does not contain any explanation as to why the material they have requested is relevant to this proceeding. The Motion merely states that "identification of the counterparties will permit us to analyze the transactions for collusion or suspicious patterns of trading inimical to fair dealing." Motion at 2.

21. As set forth above, the issues identified in the Commission's notices of hearing or orders in the case do not allege collusion or market manipulation by PSE, nor do they address PSE's activities in markets other than the Mid-Columbia. The prehearing notices and orders only discuss the Complainants' allegation that the *Mid-Columbia* Index is "broken." PSE has produced information regarding its hourly electric purchase and sale transactions at Mid-Columbia for the time period requested, including quantity and price per kilowatt-hour. Information as to transactions in other markets and as to counterparties is beyond the scope of these proceedings, irrelevant, and not necessary to the Complainants' case. PSE therefore should not be required to produce such information, and GP's Motion as to Request No. 1

should be denied.

### **III.CONCLUSION**

For the reasons set forth above, PSE respectfully requests that the Motion to Compel be denied.

DATED: August 7, 2000.

**PERKINS COIE LLP**

By

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by mailing with postage prepaid to:

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Dated at \_\_\_\_\_, Washington, this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

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