

December 11, 2000

Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S Evergreen Park Drive SW
Olympia, WA 98504

Re: WUTC v. Puget Sound Energy
Docket No. UE-001521

Dear Ms. Washburn:

This case involves a Commission Complaint and Order Instituting Adjudication to determine whether Puget Sound Energy (PSE) violated RCW 80.28.080 and WAC 480-80-335 by failing to charge the rates for service required by its special contracts with Georgia-Pacific West, Inc. and Bellingham Cold Storage Company (collectively, the Customers) from June 1, 1998, through July 12, 2000.

On December 11, 2000, PSE and the Customers filed with the Commission a Settlement Agreement which they state resolves all issues between them related to the Complaint. Specifically, the Settlement Agreement obligates PSE to jointly pay the Customers a refund of \$800,000 for the period prior to November 1, 1999. PSE must also pay Georgia-Pacific \$705,661 and Bellingham Cold Storage \$106,689 for the period November 1, 1999, through July 12, 2000. Staff understands these additional amounts to represent one-half the difference between the Mid-Columbia Non-Firm Electricity Index and the Mid-Columbia Firm Electricity Index, less 1.07 mills/kWh. The former Index was the pricing mechanism specified by the special contracts from January 1997 through July 12, 2000. The latter Index became effective on July 13, 2000 by amendment to the special contracts.

The Commission will note that Staff is not a party to the Settlement Agreement. This is because, under the facts and circumstances of this case, Staff believes there are genuine "Filed Rate Doctrine" issues with respect to: (1) the payment of a refund that is less than the refund that would otherwise be required by the special contracts prior to November 1, 1999; and (2) the retroactive application of an Index not approved until July 13, 2000, to calculate the rate for

Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
December 11, 2000
Page 2

service under the special contracts since November 1, 1999. These concerns are present with respect to both the Commission Complaint and the Settlement Agreement.

However, Staff also realizes that there are contrary opinions that deserve reasonable consideration and that all parties and the Commission have limited time and resources to devote to such contested matters, especially given the other dockets outstanding before the Commission that involve these same parties. Moreover, the Commission possesses some "prosecutorial discretion" to decide not to remedy matters that are properly within its jurisdiction to remedy. This may be especially the case when the parties the Commission would act to protect, here Georgia-Pacific and Bellingham Cold Storage, are satisfied with the remedy they themselves have fashioned and where no other customers are harmed by that remedy.

Therefore, Staff does not object to the Commission dismissing its Complaint and Order Instituting Adjudication in accordance with the Settlement Agreement, provided that the Commission state clearly that dismissal is neither a decision on the underlying legal issues nor does it bind the Commission in future proceedings should similar issues come before it. We also do not object to the Commission suspending the existing procedural schedule in this case to allow for Commission deliberation of the Settlement Agreement. No hearing for presentation of the Settlement Agreement appears necessary for these purposes, although Staff is certainly available for such a hearing should the Commission wish to convene one.

Thank you for your consideration of these matters.

Sincerely,

ROBERT D. CEDARBAUM
Senior Counsel

RDC: pah
cc: All Parties
Dennis Moss, ALJ