

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET NO. UE-001521

SETTLEMENT AGREEMENT

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I. PARTIES

This Settlement Agreement dated this 5th day of December, 2000, is entered into by and among Puget Sound Energy, Inc. ("PSE"), Georgia-Pacific West, Inc. ("G-P") and Bellingham Cold Storage Company ("BCS"), (collectively, "the Parties").

II. PURPOSE

This Settlement Agreement resolves all disputes among the Parties related to the Complaint and Order Instituting Adjudicative Proceeding that the Washington Utilities and Transportation Commission ("Commission") has initiated against PSE in Docket No UE-001521 (the "Claims"). That case, initiated upon request of the Commission Staff, concerns refunds allegedly owed by PSE to G-P and BCS relating to two, identical Special Contracts for the period up to and including July 12, 2000. BCS and G-P, the real parties in interest in this proceeding, have negotiated a compromise with PSE whereby specified dollar amounts will be paid in full settlement of all disputes related to all refunds allegedly owed.

III. BACKGROUND

1. PSE (then Puget Sound Power & Light Company) and G-P are parties to a May 1996 Power Sale Agreement which was approved by the Commission on June 7, 1996, in Docket No. UE-960612. PSE and BCS are parties to a separate May 1996 Power Sale Agreement, which was approved by the Commission on June 7, 1996, in Docket No. UE-960613. These agreements are subsequently referred to collectively herein as the "Power Sales Agreements."
2. The G-P and BCS Power Sale Agreements have identical terms.

3. Pricing under the Power Sale Agreements was based on the Dow Jones Mid-Columbia Non-Firm Electricity Index prices.
4. Between the time the Commission approved the Power Sales Agreements and June 1998, Dow Jones only reported a “blended” index of firm and non-firm wholesale transactions at the Mid-Columbia.
5. In June 1998, Dow Jones began reporting separate indices for both firm and non-firm transactions at the Mid-Columbia. However, PSE used a "blended" index to calculate prices for G-P, BCS and the PSE industrial customers purchasing under Schedule 48.
6. Five Schedule 48 customers filed a complaint with the Commission seeking an interpretation from the Commission that PSE’s blended price was not the lawful rate for Schedule 48 service and requesting refunds.
7. After extensive hearings in that proceeding, on August 3, 1999, the Commission issued a decision in Docket No. UE-981410. The Commission concluded that PSE charged lawful rates in accordance with Schedule 48 from November 1, 1996 through May 31, 1998, but that after May 31, 1998, PSE continuously charged unlawful and excessive rates. The Commission ordered PSE to refund, with interest, any overcharge. The Commission further ordered that PSE must follow the requirements of Schedule 48 prospectively and charge lawful rates in accordance with Docket No. UE-981410.
8. G-P, BCS and PSE entered into negotiations to resolve questions related to the Power Sales Agreements index and pricing
9. On October 27, 1999, PSE entered into an Accord and Satisfaction Agreement Regarding Index (“Accord”) with G-P and BCS. The Accord partially resolved the Mid-Columbia Index pricing issue as to BCS and G-P. The Accord provided for a refund of \$800,000 payable to G-P and BCS jointly, to resolve all disputes and claims arising prior to November 1, 1999. The Accord further provided that the parties would agree to, or enter into binding arbitration to select, a replacement index for the Power Sales Agreements, which index would be effective as of November 1, 1999.
10. The Parties subsequently agreed to an Amendment to each Power Sales Agreement and executed such Amendments on April 28, 2000 (“Amendments”). The Amendments expressly changed the contractual pricing mechanism to set the energy price equal to the Dow Jones Mid-Columbia Firm Electricity Index, less 1.07 mills/kWh.
11. On June 28, 2000, PSE filed the Amendments and the Accord with the Commission for approval. The Commission approved the Amendments prospectively at its July 12, 2000 public meeting. The Amendments took effect on July 13, 2000. The Commission did not consider the effect of the Amendments or Accord for the time period prior to July 13, 2000. The Commission Staff, BCS and G-P maintain that refunds are owed by PSE for at least some portion of the period between June 1998 and July 13, 2000; PSE maintains that no such refunds are owed.

12. On October 27, 2000, the Commission on its own motion, issued a Complaint and Order Instituting Adjudicative Proceeding to consider allegations that PSE charged rates other than those authorized under the Power Sale Agreements between G-P and BCS in violation of RCW 80.28.080 and WAC 480-80-33 in Docket No. UE-001521. Specifically, the Commission ordered the adjudicative proceeding to investigate whether PSE failed to charge the rate for service specified in its contracts with G-P and BCS from June 1, 1998, through July 12, 2000.

AGREEMENT

13. The Parties have reached agreement on the Claims and wish to present their agreement for the Commission's consideration and approval. The Parties therefore adopt the following Settlement Agreement, which is entered into by the Parties voluntarily to resolve matters in dispute among them and to expedite the orderly disposition of this proceeding.
14. By this Settlement Agreement, and in consideration of the provisions set forth below, the sufficiency of which is hereby acknowledged, the Parties hereby agree to compromise, settle and seek dismissal with prejudice and without costs of the Claims. This agreement specifically includes settlement of all issues related to the Complaint and Order Instituting Adjudicative Proceeding that the WUTC has filed against PSE in Docket No. UE-001521.
15. The Parties agree that the prompt settlement of this dispute, avoidance of attorney fees and other litigation costs are of value to G-P, BCS and PSE. PSE shall pay the sum of \$705,661 to G-P, and shall pay the sum of \$106, 689 to BCS, with both sums to be paid within five business days of the date the Commission approves this Settlement Agreement or dismisses Docket No. UE-001521 in its entirety, with prejudice. These amounts are agreed to in settlement of the contested issues in this proceeding. Work papers supporting the returned amounts have been provided to staff.
16. The Parties agree that the remaining issues regarding the appropriate rate for the period prior to November 1, 1999, will be considered resolved by the prior \$800,000 payment made to G-P and BCS pursuant to the Accord without payment of any additional amount.
17. The Parties agree that the settlement amounts described above are fair, just and reasonable. The Parties represent to the Commission that there are no remaining issues in Docket No. UE-001521 that remain outstanding among them. BCS and G-P believe that this constitutes good cause for the Commission to dismiss the subject docket.

GENERAL PROVISIONS

18. The Parties agree to support this Settlement Agreement as a settlement of all contested issues in this proceeding. The Parties understand that this Settlement Agreement is not binding on the Commission.
19. The Parties enter into this Settlement Agreement to avoid further expense, inconvenience, uncertainty and delay. By executing this Settlement Agreement, no Party shall be deemed to have approved, admitted or consented to the facts, principles, methods or theories employed in arriving at the terms of this Settlement Agreement, nor shall any Party be deemed to have agreed that any provision of this Settlement Agreement is appropriate for resolving issues in any other proceeding.
20. The parties have negotiated this Settlement Agreement as an integrated document. Accordingly, the parties recommend that the Commission adopt this Settlement Agreement in its entirety.
21. The Parties shall cooperate in submitting this Settlement Agreement promptly to the Commission for acceptance. The Parties agree to support the Settlement Agreement throughout this proceeding, to solicit Commission Staff's support of the Settlement Agreement, to provide witnesses to sponsor the Settlement Agreement at a Commission hearing and recommend that the Commission issue an order adopting the settlement contained herein. In the event the Commission rejects all or any material portion of this Settlement Agreement, each Party reserves the right, upon written notice to the Commission and all parties to this proceeding within fifteen (15) days of the Commission's order, to withdraw from the Settlement Agreement. In such event, the parties will jointly request the reconvening of a pre-hearing conference for purposes of establishing a procedural schedule for the completion of the case.
22. All costs and attorney's fees incurred by the parties shall be borne by the party incurring them.
23. This Settlement Agreement contains all of the promises and covenants made by the parties. In executing this Settlement Agreement, each party warrants that it is relying solely upon its own judgment and knowledge, and that it is not relying on any statement or representation made by any other party or its agents.
24. This Settlement Agreement shall bind the successors, representatives and assigns of each party.
25. All questions with respect to construction of this Settlement Agreement and the rights and liabilities incurred hereto shall be governed by the laws of the State of Washington. With the exclusion of matters subject to the primary jurisdiction of the Commission, venue for any dispute arising out of this Settlement Agreement shall be in Superior Court for the State of Washington for Thurston County.

This Settlement Agreement is entered into by each party as of the date entered below.

On Behalf of
Puget Sound Energy, Inc.

By: _____

Date: _____

On Behalf of
Georgia Pacific West, Inc.

By: _____

Date: _____

On Behalf of
Bellingham Cold Storage Co

By _____

Date: _____