

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.	)	DOCKET NO. UE-001952
	)	(consolidated)
)	
Puget Sound Energy, Inc.)	
)	
Respondent.)	
.....)	
)	
)	
)	
<i>In re:</i> Petition of Puget Sound Energy,	)	DOCKET NO. UE-001959
Inc. for an Order Reallocating Lost	)	(consolidated)
Revenues Related to any Reduction in)	
the Schedule 48 or G-P Special)	
Contract Rates)	
	)	ORDER CONSOLIDATING
	)	PROCEEDINGS; PREHEARING
	)	CONFERENCE ORDER
	)	and
	)	NOTICE OF HEARING
	)	(December 29, 2000)

1 **PREHEARING CONFERENCE:** The Commission convened a prehearing conference in Docket No. UE-001952 in Olympia, Washington, on November 30, 2000, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, and Administrative Law Judge Dennis J. Moss. The Complaint in Docket No. UE-001952 asks the Commission to proceed under its authority to conduct emergency adjudicative proceedings. RCW 34.05.479; WAC 480-09-510. Accordingly, the matter was convened on shortened notice.

2 **CONSOLIDATION:** Following notice of the prehearing conference in Docket No. UE-001952, and one day prior to the prehearing conference, Puget Sound Energy filed its Petition in Docket No. UE-001959. Because it appeared from the face of the

pleadings that the two matters involve common issues of fact and law, and otherwise raise related issues, the Commission considered at the prehearing conference the question whether the two proceedings should be consolidated. Following argument by the parties, the Commission determined the two dockets should be consolidated.

3 **PETITIONS TO INTERVENE; EXTENDED TIME PERIOD FOR FILING PETITIONS TO INTERVENE:** The following persons petitioned to intervene in these proceedings: Public Utility District No. 1 of Whatcom County; City of Anacortes; Bellingham Cold Storage Company. Following argument, the Commission granted the three petitions in accordance with WAC 480-09-430.

4 In view of the shortened notice upon which the prehearing conference was convened in Docket No. UE-001952, and considering the Commission's decision to consolidate Docket No. UE-001059, which had not previously been noticed for prehearing, the Commission will consider any Petition To Intervene filed by December 26, 2000, to be timely filed. Any objections to a Petition To Intervene must be filed by December 28, 2000. The Commission will grant or deny all such petitions by oral order in proceedings to be convened on December 29, 2000, as discussed more fully below.

5 **PARTIES:** Melinda Davison, Davison Van Cleve, P.C., Portland, Oregon, represents 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. Stan Berman, Heller Ehrman White & McAuliffe, LLP, Seattle, Washington, and James M. Van Nostrand, Stoel Rives, Seattle, Washington, represent Puget Sound Energy, Inc. (PSE). Jim Pemberton appeared *pro se* to represent the interests of the City of Anacortes and its water utility. John A. Cameron and Traci Grundon, Davis Wright Tremaine LLP, Portland, Oregon, represent Bellingham Cold Storage Company (BCS). Public Utility District No. 1 of Whatcom County (Whatcom PUD), by prior arrangement, did not appear at prehearing and will designate its legal counsel or permanent representative later; Whatcom PUD did appear via its written Petition To Intervene, signed by Tom Anderson, *pro se*. Simon ffitch and Robert Cromwell, Assistant Attorneys General, Seattle, Washington, represent the Public Counsel Section, Office of Attorney General (Public Counsel). Robert D. Cedarbaum and Donald Trotter, Assistant Attorneys General, Olympia, Washington, represent the Commission's regulatory staff (Staff).

6 **DISCOVERY; SHORTENED RESPONSE TIME:** Complainants request the opportunity for discovery and request that responses be required within three business days. The Commission finds that this proceeding is the type described in WAC 480-09-480(2). Discovery may commence immediately.

7 The Commission considered Complainants request for a shortened response time and the presiding Administrative Law Judge held informal discussions on that question with all parties who elected to participate in person or via teleconference on Friday, December 15, 2000. In view of the expedited schedule established below, and based the informal discussion among the parties, it is determined that parties are required to respond to all discovery requests within five business days. The Parties nevertheless committed to work in good faith to provide answers to data requests as quickly as possible. Parties are required to limit discovery to that necessary to their respective cases, and parties should cooperate to facilitate discovery and resolve informally any disputes. Any discovery dispute referred to the Commission by motion must state what steps the parties have taken to resolve the dispute.

8 **PROTECTIVE ORDER:** The Commission anticipates that certain confidential information may be requested during the discovery process. Accordingly, discovery may be facilitated by a protective order. A protective order consistent in substance with the form typically used in Commission proceedings will be entered to protect the parties' interests in insulating confidential information from public disclosure.

9 **PROCESS AND PROCEDURAL SCHEDULE; NOTICE OF HEARING:** Complainants propose a two-phase proceeding. Complainants propose that the Commission first should convene an evidentiary hearing on December 29, 2000, to determine whether price caps or other emergency rate relief should be implemented for PSE's Schedule 48 customers, and under Georgia-Pacific's special contract with PSE. The Commission determines that it should provide Complainants an opportunity to carry their burden to show that such relief is warranted and legally permissible. **Accordingly, the Commission will convene the requested Phase One hearing on December 29, 2000, beginning at 9:00 a.m., in room 206 at the Commission's offices in Olympia, Washington.**

10 Additional procedural dates and requirements for Phase One may be established by subsequent notice or order. Additional procedural dates and requirements for Phase Two will be established by subsequent notice or order.

11 **LEGAL ISSUES TO BE CONSIDERED:** The legal issues and certain mixed questions of law and fact to be considered in Phase One include, but are not necessarily limited to, the following:

- Is the financial ability of individual ratepayers to pay increased costs for electricity a consideration relevant to determine whether there exists an immediate danger to the public health, safety, or welfare? What indices of proof are required to show an individual ratepayer is financially incapable of paying increased costs for electricity so that there exists an

immediate danger to the public health, safety, or welfare?

- Must the circumstances that Complainants assert constitute an immediate danger to the public health, safety, or welfare be circumstances beyond the ability of Complainants to cure?
- What legal authority does the Commission possess to take the minimum action necessary to prevent or avoid the asserted immediate danger to the public health, safety, or welfare? What does each party assert is the minimum action necessary to prevent or avoid the asserted immediate danger to the public health, safety, or welfare?
- Is a finding that the rates charged by PSE are unjust, unreasonable, unjustly discriminatory, or unduly preferential a necessary predicate to ordering the relief Complainants request? What indices of proof are required to show the Schedule 48 or Special contract rates are unjust, unreasonable, unjustly discriminatory, or unduly preferential?
- Is a determination of what rate is a “sufficient” rate a predicate to ordering the relief Complainants request? What rate does each party contend is a sufficient rate to be charged? What indices of proof are required to show the sufficiency of the proposed rate?
- By what legal authority can the Commission order an interim, or temporary, rate subject to refund when the regulated company has not filed for a rate change? On what basis(es) may the Commission determine what should be the interim, or temporary, rate?
- By what legal authority can the Commission order an interim, or temporary, rate subject to surcharge?
- Must an interim, or temporary, rate decrease be determined to be a just, fair, reasonable, and sufficient rate before it is placed into effect?
- Does the Commission possess any legal authority to require customers of regulated utilities to take specific actions to protect themselves from circumstances such as those Complainants contend now constitute an immediate danger to the public health, safety, or welfare? For example, does the Commission have the authority to order Complainants to seek financial or physical hedges against increased prices when they have elected to purchase power under a rate schedule that includes market-indexed rates?

12

FILING; COPIES OF MATERIALS: Pending further notice to the contrary, filing can be accomplished in this proceeding via facsimile transmission (360 586-1150) followed by mail delivery or courier delivery the following morning.

All filings should be directed to the Commission Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250, or by hand delivery to the Commission Secretary

at the Commission's records center at the Washington Utilities and Transportation Commission, 1300 S. Evergreen Park Drive, S.W., Olympia, Washington, 98504. Both the post office box and street address are required to expedite deliveries by U.S. Postal Service. An original plus nineteen (19) copies of all pleadings, motions, briefs, and other prefiled materials must be filed with the Commission. **A courtesy copy of all filings made via facsimile should be provided to the Presiding Administrative Law Judge at (360) 664-2654.**

- 13 Parties must furnish separately a 3.5 inch IBM formatted high-density diskette including the filed document(s) in .pdf format, MS Word 97 (or later), or WordPerfect 5.1 (or later) format, or may supplement their filing by sending an electronic copy via e-mail attachment to: <records@wutc.wa.gov>.
- 14 **ALTERNATIVE DISPUTE RESOLUTION; SETTLEMENT:** The Parties' attention is directed to WAC 480-09-465, "Alternative dispute resolution," and WAC 480-09-466, "Settlement conferences." The Commission urges all parties to formal adjudications to include alternative methods to bring resolution to contested issues.
- 15 The Commission notes that the Parties have agreed to mediation with the assistance of a Commission appointed mediator. We encourage the Parties to take full advantage of this opportunity to resolve the issues to their mutual benefit with an eye to protecting the broader public interest.
- 16 **NOTICE TO PARTIES:** Any objection to the provisions of this Order must be filed within ten (10) days after the date of mailing of this statement, pursuant to WAC 480-09-460(2). Absent such objections, this prehearing conference order will control further proceedings in this matter, subject to Commission review.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS,
Administrative Law Judge