

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET NO. PG-041624

PUGET SOUND ENERGY'S BRIEF IN  
SUPPORT OF THE SETTLEMENT  
AGREEMENT

BRIEF IN SUPPORT OF SETTLEMENT  
AGREEMENT

[07771-0173/SL052520.063]

## CONTENTS

I.	INTRODUCTION.....	1
II.	BACKGROUND.....	1
	A. Factual Background .....	1
	B. Procedural Posture .....	3
III.	ARGUMENT .....	3
	A. The Agreement Should Be Approved Because there is No Evidence Linking the Alleged Violation and Explosion and the Agreement Serves the Public Interest .....	3
	B. The Agreement Properly Does Not Require Payment of a Penalty by PSE Because There Was No Violation and No Public Interest Is Served by Requiring a Fine as Part of the Agreement .....	5
IV.	CONCLUSION .....	6

## I. INTRODUCTION

1           Puget Sound Energy (“PSE”) respectfully submits that the Utilities and  
Transportation Commission (“Commission”) should approve the proposed Settlement  
Agreement (“Agreement”) for two reasons. First, the Agreement meets the legal and policy  
standards required by Washington law. It properly recognizes that there is no evidence  
linking the alleged violation and the September 2, 2004 explosion and tragic death of  
Mrs. Frances Schmitz. It also serves the public interest by providing risk assessment and  
mitigation for wrapped-steel service lines installed before the application of cathodic  
protection. Second, the Agreement properly avoids penalizing PSE because imposing such  
a penalty would be inconsistent with the WAC and equity and because there is no public  
interest served by doing so.

## II. BACKGROUND

### A. Factual Background

2           On September 2, 2004, PSE personnel were responding to a reported odor of gas in  
the Spiritridge subdivision of Bellevue, Washington when an explosion occurred at the  
home of Mrs. Frances Schmitz, fatally injuring her. Shortly thereafter, PSE discovered that  
the rectifier servicing the area in which Mrs. Schmitz’s home was located (the Vasa Park  
Rectifier) was cross-wired. PSE immediately corrected the cross-wiring. On September 10,  
2004, Commission Staff issued the Complaint in this docket. The basis for Staff’s  
Complaint was the cross-wiring of the rectifier. Staff alleged that PSE had violated cathodic

protection standards and requested an emergency adjudicative proceeding because of its concern that the cross-wired rectifier may have caused other leaks in the area.

3           Staff and PSE initiated a thorough and collaborate investigation into the cause of explosion and the effect of the cross-wired rectifier. Staff and PSE worked both independently and together to investigate the accident, and each hired a nationally-recognized expert in corrosion control. Each expert conducted independent tests and reviewed the other's data. PSE responded to 89 data requests from Staff and provided a large number of responsive documents, studies, and data.

4           Upon conclusion of the respective investigations, both Staff, PSE, and the experts reached the same result: the cross-wired rectifier did not cause the explosion at the home of Mrs. Schmitz. Rather, the leak in Mrs. Schmitz's service line was caused by corrosion that pre-existed regulations which required the application of cathodic protection to wrapped-steel pipe, and probably was a result of damage to coating that occurred around the time of the installation. Accordingly, the alleged violation that formed the basis of Staff's Complaint against PSE was actually unrelated to the accident, and the accident was not a result of any regulation violation on behalf of PSE. The results of these investigations are described in the pre-filed testimony of both Staff and PSE.

5           These conclusions led to the position adopted by Staff, PSE, and the City of Bellevue ("Bellevue") that the appropriate response to the explosion at Mrs. Schmitz's house (in addition to all of the studies, analysis, and remedial measures already implemented) should be an assessment and mitigation of other wrapped-steel service lines that were installed

before the application of cathodic protection. Accordingly, at the settlement conference held on August 22, 2004, the parties agreed to such a comprehensive program.

**B. Procedural Posture**

6           Having entered into a Settlement Agreement for this docket, the parties must now present the Agreement to the Commission for approval. WAC 480-070730. At the settlement hearing, the Commission will hear evidence from the parties regarding why the settlement should be approved. WAC 480-07-740. The Commission may either accept the settlement with or without conditions, or may reject it. WAC 480-07-750(2). If the Commission rejects a proposed settlement, the litigation returns to its pre-settlement status, and the time for a hearing will be extended by the amount of time elapsed during consideration of the settlement. WAC 480-07-750(2)(a).

7           Should the Commission accept a proposed settlement and impose conditions not proposed in the settlement, “the parties may seek reconsideration of the decision and the settling parties must within the time for reconsideration state their rejection of the conditions.” WAC 480-07-750(b). Rejection of a proposed condition by a party constitutes rejection of the settlement and the litigation returns to its pre-settlement status. *Id.*

**III. ARGUMENT**

**A. The Agreement Should Be Approved Because there is No Evidence Linking the Alleged Violation and Explosion and the Agreement Serves the Public Interest**

8           The Commission “must determine whether a proposed settlement meets all pertinent legal and policy standards.” WAC 480-07-740. The Commission will approve settlements

when (1) doing so is lawful, (2) the terms of the settlement are supported by an appropriate record, and (3) the result is consistent with the public interest in light of all the information available to the commission. WAC 480-07-750(1). The Agreement in this matter meets these standards.

9           The Agreement is both lawful and supported by the pre-filed testimony submitted in this matter because there is no evidence linking the cross-wired rectifier to the explosion. While this docket began with a concern that a cross-wired rectifier had caused a fatal explosion at the residence of a PSE natural gas customer, the year-long, exhaustive investigation undertaken by Staff, PSE, and two of the most preeminent national experts in corrosion control ultimately pointed to a single conclusion: the leak that caused the explosion was not the result of the temporary cross-wiring of PSE's rectifier. Rather, the leak was a result of corrosion that pre-existed regulations requiring the application of cathodic protection on wrapped-steel pipe.

10           Accordingly, viewed separately from the explosion, the cross-wiring of the rectifier, forming the basis for Staff's complaint, was brief, fixed immediately in accordance with applicable regulations, and relatively minor. The explosion was unrelated to any violation, but rather occurred because of corrosion that preexisted the requirement of the comprehensive application of cathodic protection. These undisputed facts support the lack of an imposition of a penalty on PSE for the temporarily cross-wired rectifier.

11           Moreover, the Agreement is consistent with the public interest. The goal of PSE and Staff is to ensure the safety of the public. By creating a comprehensive plan to assess and

mitigate wrapped-steel service lines installed before the application of cathodic protection was required, the parties seek to prevent leaks in service lines of similar type and vintage of Mrs. Schmitz. This plan effectively works to ensure the continuing safety of PSE's natural gas customers. The public interest will not be served, however, by imposing a penalty when the evidence clearly does not support it.

**B. The Agreement Properly Does Not Require Payment of a Penalty by PSE Because There Was No Violation and No Public Interest Is Served by Requiring a Fine as Part of the Agreement**

12 The Commission may assess a civil penalty against a “gas company which violates the provision of RCW 80.28.210.” RCW 80.28.212. However, no such violation has occurred here. The standards for cathodic protection of wrapped-steel pipe are set forth in WAC 480-93-110, which incorporates 49 C.F.R. § 192.463(a). Under Washington’s statute, known cathodic protection deficiencies must be fixed within 90 days of discovery. *Id.* PSE complied with this statute in correcting the cross-wired rectifier immediately upon discovery. Therefore, no violation has occurred, and assessment of a civil penalty is inappropriate.

13 Moreover, the imposition of a civil penalty based on a discovered deficiency in a cathodic protection system that has been repaired within the 90-day window provided for under WAC 480-93-110 would represent a fundamental change in the way the Commission enforces its regulations. Expert testimony submitted in this matter establishes that the C.F.R. and WAC allow a gas distribution operator 90 days within which to repair cathodic protection system deficiencies, and that correction within this allotted time constitutes

compliance with the relevant regulations, including C.F.R. § 192.463(a) and WAC 480-93-110. Exhibit No. \_\_\_(DB-1T), Prefiled Direct Testimony of Dennis Burke, p. 8-9.<sup>1</sup> In this situation, the exact time period that the rectifier was cross-wired is unknown but it was less than 90 days. All experts involved in this matter agree that it was cross-wired for as little as five days and it was corrected immediately upon discovery.

14 Finally, and most importantly, the parties all agree that the alleged violation did not cause the explosion at issue in this matter. All parties in this case also agree that PSE has taken very significant measures to cooperate with Staff and the City of Bellevue, to investigate the incident, take appropriate responsive measures, and to ensure the public's safety and confidence in PSE's gas distribution system. At the end of the day, a penalty imposed without evidence would be unjust and unfair.

#### IV. CONCLUSION

15 The safety of PSE's customers is PSE's highest priority. PSE's actions as a result of this tragic incident have continued to demonstrate this commitment. The Agreement sets

---

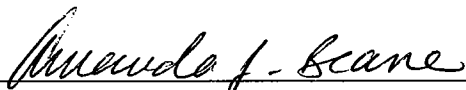
<sup>1</sup> Based on PSE's reliance on the Commission's enforcement policies to date, the Commission should also be equitably estopped from now imposing penalties for conduct which, to date, did not constitute a violation of Washington law. Equitable estoppel precludes a party from asserting a claim or position based on equitable principles. *Casey v. Chapman*, 123 Wn. App. 670, 682 (2004). Equitable estoppel is applicable against a governmental entity whose acts are within its powers and have been exercised in an irregular manner or through unauthorized means. *Rel v. Douglas County Civil Service Commission*, 20 Wn. App. 764, 766 (1978). A claim for equitable estoppel exists when there is 1) an admission, statement, or act inconsistent with the claim afterwards asserted; 2) action by the other party on the faith of such admission, statement, or act; and 3) injury to such other party from allowing the first party to contradict or repudiate such admission, statement or act. *Finch v. Matthews*, 74 Wn.2d 161, 171 n.3 (1968).



forth appropriate and efficient steps to maintain the safety of the natural gas distribution system and the confidence of PSE's customers. Accordingly, PSE respectfully submits that this Agreement should be approved. PSE looks forward to addressing any additional questions by the Commission at the settlement hearing on September 14, 2005.

DATED this 13<sup>th</sup> day of September, 2005.

**PERKINS COIE LLP**

By:   
James F. Williams, WSBA #23613  
Amanda J. Beane, WSBA #33070  
Attorneys for Puget Sound Energy

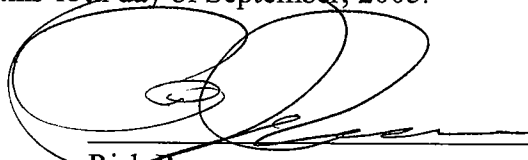
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served Puget Sound Energy's Brief in Support of Settlement Agreement on the parties listed below via hand delivery in accordance with WAC 480-07-150(6)(a).

Donald Thomas Trotter, WSBA # 8752  
Assistant Attorney General  
1400 S. Evergreen Park Drive SE  
Olympia, WA 98504-0128

Cheryl A. Zakrzewski  
Deputy City Attorney  
City Attorney's Office  
City of Bellevue  
11511 Main Street  
P.O. Box 90012  
Bellevue, WA 98009-9012

Dated at Seattle, Washington, this 13th day of September, 2005.



\_\_\_\_\_

Rick Rasmussen