

APPENDIX A

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

DOCKET NO. UG-001116

SETTLEMENT AGREEMENT

1 This Settlement Agreement (“Agreement”) is entered into for the purpose of resolving all issues raised in the above docket. This Settlement Agreement is subject to Commission approval.

I. PARTIES

2 The parties to this Agreement are Puget Sound Energy, Inc. (“Puget”) and the Staff of the Washington Utilities and Transportation Commission (“Staff”) (collectively, “the Parties”).

II. BACKGROUND

3 The issues and claims asserted in the above docket arise from Staff’s investigation of allegations that Puget violated WAC 480-93-010, which adopts and incorporates Title 49 of the Code of Federal Regulations (“CFR”), Part 199, by failing to maintain an anti-drug and alcohol misuse prevention plan for its covered gas pipeline employees during the years 1997 through 2000. Specifically, Staff found apparent violations of the applicable regulations, including:

- 49 CFR, Part 199.7, which requires pipeline operators to maintain and follow a written anti-drug plan that specifies the methods and procedures for compliance.

- 49 CFR, Part 199.11, which requires pipeline operators to administer a pre-employment, post-accident, random, reasonable cause, return to duty, and follow-up testing as specified in 49 CFR Part 199.
- 49 CFR, Part 199.19, which requires pipeline operators to provide an employee assistance program for its employees and supervisory personnel, including education and training on drug misuse.
- 49 CFR, Part 199.21, which requires pipeline operators to ensure that their contractors maintain and follow a written anti-drug plan that specifies the methods and procedures for compliance with 49 CFR, Part 199.
- 49 CFR, Part 199.23, which requires pipeline operators to keep records of the collection process, drug test results, function performed by each employee, follow-up process for positive tests, number of employees tested, and the training that was provided for employees and supervisors.
- 49 CFR, Part 199.25, which requires pipeline operators with more than 50 covered employees to submit an annual Management Information System (MIS) report to the Office of Pipeline Safety, Research and Special Programs Administration (RSPA) office, of its anti-drug testing results.
- 49 CFR, Part 199.202, which requires pipeline operators to maintain and follow a written alcohol misuse plan that specifies the methods and procedures for compliance.
- 49 CFR, Part 199. 229, which requires pipeline operators with more than 50 covered employees to submit an annual Management Information System (MIS) report to the Office of Pipeline Safety, Research and Special Programs Administration (RSPA) office, of its alcohol testing results.

4 In March 2001, Puget implemented a new anti-drug and alcohol misuse prevention plan. Staff believes that this March 2001 plan complies with all applicable federal and state regulations.

5 On May 18, 2001, the Commission issued two reports outlining Staff's findings related to Puget's apparent violations of federal and state regulations (the "Reports"). The Reports raise legal issues identical to those alleged in the Complaint.

6 On June 19, 2001, Puget responded to the Reports, submitting substantial evidence and making legal argument in its defense.

7 Shortly thereafter, the Parties entered into discussions to settle the issues raised in the Reports. These negotiations, which spanned more than one year, resulted in this Agreement.

III. AGREEMENT

8 The Parties have reached agreement on the issues raised in the above docket and wish to present their agreement for the Commission's consideration and approval. The Parties voluntarily enter this Settlement Agreement without hearing or adjudication of any issues of fact or law to resolve the matters in dispute between them and to avoid the expense, time and uncertainty of litigation.

9 The parties agree that Puget will pay the Commission penalties totaling \$50,000 for apparent violations of WAC 480-93-010 (Compliance with federal standards), which adopts and incorporates 49 CFR, Part 199.

10 This amount shall be ordered due and payable within fifteen calendar days of the date this Settlement Agreement is approved by the Commission.

11 The Parties agree that Puget will continue to implement and comply with the substance abuse plan for covered employees that it instituted in March 2001 (the "2001 Plan"), including random drug testing at a rate equal to or greater than the required minimum level. The Parties agree that the 2001 Plan currently complies with WAC 480-93-101 and 49 CFR, Part 199.

12 The Parties agree that Puget will spend an amount totaling approximately \$56,000 to implement an anti-drug and alcohol abuse awareness training program for all of its employees. This additional training will consist of a 30-minute mandatory training session for all employees covering Puget's "Substance Abuse Plan for Covered Employees" and Puget's "Substance Abuse Plan for Non-Covered Employees. The Parties agree that the cost of this program shall be paid for with shareholder funds, and will not be recovered through rates.

13 This Agreement does not preclude the Commission from pursuing penalties for violations of Commission rules unrelated to the specific violations alleged in Staff's Reports and the Complaint, or for subsequent violations of the rules and statutes stated above.

IV. GENERAL PROVISIONS

- 14 The Parties agree that this Agreement is a settlement of all contested issues between them in this proceeding. The Parties understand that this Agreement is not binding unless and until accepted by the Commission.
- 15 The Parties agree to cooperate in submitting this Agreement promptly to the Commission for approval. The Parties agree to support adoption of this Agreement by the Commission in proceedings before the Commission, through testimony or briefing.
- 16 The Parties have entered into this Agreement to avoid further expense, inconvenience, uncertainty, and delay. The Parties recognize that this Agreement represents a compromise of the Parties' positions. As such, no action taken or statement made by a Party in connection with the compromise reflected in this Agreement shall be deemed or construed to be an admission of the truth or falsity of any matter pertaining to any claim, demand, or cause of action referred to herein or relating to the subject matter of this Agreement, or any acknowledgment by such Party of any fault or liability to the other Party or to any other person or entity. For the purpose of construing or interpreting this Agreement, this Agreement shall be deemed to have been drafted by both Parties.
- 17 The Parties have negotiated this Agreement as an integrated document to be effective upon execution. This Agreement supersedes all prior oral and written agreements on issues addressed herein. Accordingly, the Parties recommend that the Commission accept this Agreement in its entirety.
- 18 The Parties may execute this Agreement in counterparts and as executed, shall constitute one agreement. Copies sent by facsimile are as effective as original documents.
- 19 The Parties shall take all actions reasonably necessary and appropriate to carry out this Agreement.

20

In the event that the Commission rejects all or any portion of this Agreement, each party reserves the right to withdraw from this Agreement by written notice to the other party and the Commission. Written notice must be served within 10 calendar days of the Commission Order or action rejecting part or all of this Agreement. In such event, neither party will be bound or prejudiced by the terms of this Agreement, and either party shall be entitled to seek reconsideration of the Order pursuant to WAC 480-09-810. Additionally, the Parties will jointly request that a prehearing conference be reconvened for purposes of establishing a procedural schedule to complete the case.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION STAFF

CHRISTINE O. GREGOIRE
Attorney General

PUGET SOUND ENERGY, INC.

Donald T. Trotter
Assistant Attorney General
Counsel for Commission Staff
Dated: _____, 2002.

By: _____
Its: _____
Dated: _____, 2002.