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BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET PG-160924

PUGET SOUND ENERGY'S ANSWER TO
COMPLAINT AND AFFIRMATIVE
DEFENSES

I. INTRODUCTION

1. Puget Sound Energy's ("PSE" or the "Company") representatives for purposes of this proceeding are:

James F. Williams, Lead Attorney
(JWilliams@perkinscoie.com)
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2. PSE recognizes the Washington Utilities and Transportation Commission's ("WUTC" or the "Commission") important responsibilities in enforcing pipeline safety with respect to companies it regulates. PSE is committed to operational excellence, to full compliance with federal and state regulations, and to operating and maintaining a safe and reliable system.

1 3. PSE answers the Complaint of the Commission dated September 20, 2016,
2
3 (the "Complaint"), as stated below.
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5 **II. ANSWER TO WUTC STAFF'S ALLEGATIONS**
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7 **A. The Parties**
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9 4. Answering paragraph 2, PSE admits the allegations.
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11 5. Answering paragraph 3, PSE admits the allegations.
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13 **B. Jurisdiction**
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15 6. Answering paragraph 4, PSE admits the allegations.
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17 7. Answering paragraph 5, PSE admits the allegations.
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19 **C. Factual Allegations**
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21 8. Answering paragraph 6, PSE admits the allegations.
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23 9. Answering paragraph 7, PSE admits that there was a March 9, 2016, natural
24 gas explosion in the 8400 Block of Greenwood Avenue North in Seattle's Greenwood
25 Community ("Greenwood Incident"), that several buildings were damaged, and that several
26 Seattle Fire Department members were transported to a local hospital for care. Except as
27 expressly admitted, PSE denies the allegations in paragraph 7.
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33 10. Answering paragraph 8, PSE admits that there was an escape of gas from a
34 3/4" service line attached to the north-facing wall of the building located at 8411
35 Greenwood Avenue North. Except as expressly admitted, PSE denies the allegations in
36 paragraph 8.
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41 11. Answering paragraph 9, PSE admits that the escape of gas was caused solely
42 by an external force in the form of unauthorized individuals who broke PSE's gas service
43 line. Except as expressly admitted, PSE denies the allegations in paragraph 9.
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1 12. Answering paragraph 10, PSE admits its records show that a 3/4” service line
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3 in the vicinity of the building located at 8411 Greenwood Avenue North was properly
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5 deactivated and abandoned by PSE’s contractor, Pilchuck Contractors, Inc. (“Pilchuck”), on
6
7 or about September 1, 2004, in accordance with federal regulations and PSE standard
8
9 operating procedures. After the Greenwood Incident, it was discovered that Pilchuck failed
10
11 to perform the work as instructed. Except as expressly admitted, PSE denies the allegations
12
13 in paragraph 10.

14 13. Answering paragraph 11, PSE admits its records show that a 3/4” service line
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16 in the vicinity of the building located at 8411 Greenwood Avenue North was properly
17
18 deactivated and abandoned by PSE’s contractor, Pilchuck, on or about September 1, 2004, in
19
20 accordance with federal regulations and PSE standard operating procedures. After the
21
22 Greenwood Incident, it was discovered that Pilchuck failed to perform the work as
23
24 instructed. Except as expressly admitted, PSE denies the allegations in paragraph 11.

25 14. Answering paragraph 12, PSE admits its records show that a 3/4” service line
26
27 in the vicinity of the building located at 8411 Greenwood Avenue North was properly
28
29 deactivated and abandoned by PSE’s contractor, Pilchuck, on or about September 1, 2004, in
30
31 accordance with federal regulations and PSE standard operating procedures. After the
32
33 Greenwood Incident, it was discovered that Pilchuck failed to perform the work as
34
35 instructed. Except as expressly admitted, PSE denies the allegations in paragraph 12.

36 15. Answering paragraph 13, PSE denies the allegations in paragraph 13.

37 16. Answering paragraph 14, PSE denies the allegations in paragraph 14.

38 17. Answering paragraph 15, PSE denies the allegations in paragraph 15.

39 18. Answering paragraph 16, PSE denies the allegations in paragraph 16.

40 19. Answering paragraph 17, PSE denies the allegations in paragraph 17.

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III. CAUSES OF ACTION

A. First Cause of Action (Improper Deactivation of Pipeline)

20. Answering paragraph 18, PSE has insufficient information to admit or deny the allegations and, on that basis, denies the allegations.

21. Answering paragraph 19, PSE has insufficient information to admit or deny the allegations and, on that basis, denies the allegations.

B. Second Cause of Action (Failure to Follow Internal Procedures)

22. Answering paragraph 20, PSE has insufficient information to admit or deny the allegations and, on that basis, denies the allegations.

23. Answering paragraph 21, PSE has insufficient information to admit or deny the allegations and, on that basis, denies the allegations.

C. Third Cause of Action (Failure to Perform Gas Leak Surveys)

24. Answering paragraph 22, PSE has insufficient information to admit or deny the allegations and, on that basis, denies the allegations.

25. Answering paragraph 23, PSE has insufficient information to admit or deny the allegations and, on that basis, denies the allegations.

D. Fourth Cause of Action (Failure to Perform Atmospheric Corrosion Tests)

26. Answering paragraph 24, PSE has insufficient information to admit or deny the allegations and, on that basis, denies the allegations.

27. Answering paragraph 25, PSE has insufficient information to admit or deny the allegations and, on that basis, denies the allegations.

1 **E. Fifth Cause of Action (Failure to Perform External Corrosion Tests)**

2 28. Answering paragraph 26, PSE has insufficient information to admit or deny
3 the allegations and, on that basis, denies the allegations.
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5 29. Answering paragraph 27, PSE has insufficient information to admit or deny
6 the allegations and, on that basis, denies the allegations.
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10 **IV. REQUEST FOR RELIEF**

11 30. Answering paragraph 28, PSE is not required to respond but submits that the
12 proposed penalties are unfounded under WAC 480-93-223 and are excessive for the
13 following reasons:
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- 18 • This case is extremely unique given the unforeseeability of the
19 unauthorized individuals trespassing onto private property and breaking
20 the gas pipe.
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- 22 • An expert report shows the gas pipe was solid and presented no danger to
23 anyone had it simply been left alone;
24
- 25 • The result (i.e., the explosion) caused by the unauthorized individuals
26 would have been no different had PSE's records shown that the gas
27 service line was active and functioning;
28
- 29 • The amount of penalty requested is not appropriate or commensurate
30 under the facts and circumstances of this case. Further, the penalties
31 sought by Commission Staff are not reasonable based on the factors set
32 forth by the Commission in its Policy Statement in Docket A-120061, and
33 would serve only a retributive and not a corrective function;
34
- 35 • The total potential penalties alleged in the Complaint are not appropriate
36 because they are retributive. "The assessment of penalties for violations
37 of law is meant to be corrective, not retributive. The purpose is to secure
38 compliance by inciting reasonable and appropriate conduct by the
39 offending party." *MCI Metro Access Transmission Serv., Inc. v. US*
40 *WEST Comm., Inc.*, Dkt. No. UT-971063, p 154 (Feb. 10, 1999);
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- Because the causes of action alleged are a “related series of violations,” the penalties sought exceed the maximum civil penalty allowed by WAC 480-93-223; and
- Given that Commission Staff concedes that an external or outside force broke the gas service line and caused the explosion, PSE should not face any penalties relating to the explosion.

31. Answering paragraph 29, PSE denies that any form of relief is warranted.

V. PROBABLE CAUSE

32. Answering paragraph 30, PSE is not required to respond.

VI. PSE’S AFFIRMATIVE DEFENSES

A. Background Facts

33. PSE’s focus is on the safety of its customers, the public at large, and the environment. To that end, PSE has a comprehensive program to manage the system and takes steps within its control to prevent events like the Greenwood Incident from occurring. This matter, however, is not about PSE. Instead, it is about unauthorized individuals who unlawfully came onto private property, broke a PSE gas service line, and caused an explosion in the 8400 block of Greenwood Avenue North in Seattle’s Greenwood community (“8400 Block”) on the early morning of March 9, 2016.

34. Because the actions of the unauthorized individuals were totally unforeseeable by PSE and because the accuracy of PSE’s recordkeeping had nothing to do with breaking the gas service line, the Greenwood Incident was caused solely by an outside force that was beyond PSE’s control.

35. Unbeknownst to PSE, for many years prior to the Greenwood Incident, the back alley portion of the 8400 Block was a place where transient individuals routinely congregated. They were well-known by area business owners for creating a public nuisance.

1 36. These unauthorized individuals unlawfully trespassed on the 8400 Block
2 business owners' properties by sleeping and storing personal items on the properties, among
3 other illegal activities.
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6 37. The 8400 Block business owners complained about those unauthorized
7 individuals for over five years in an effort to obtain assistance from the Seattle Police
8 Department and the City of Seattle. Those efforts were unsuccessful.
9

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11 38. The back alley of the 8400 Block included a two-foot gap between businesses
12 located at 8411 (former location of Mr. Gyros) and 8413 (former location of Neptune
13 Coffee) Greenwood Avenue North where a PSE gas service line (the "Gasline Area") was
14 located. It was buried under the street in front of the buildings located at 8411 and 8413
15 Greenwood Avenue North and was, therefore, below grade on the street-front side
16 underneath the sidewalk.
17

18 39. From the edge of the sidewalk to the backside of the buildings where the gas
19 meter was located, there was a significant drop of elevation that caused the gas service line
20 in the Gasline Area to be above grade on the alley side of the buildings.
21

22 40. There was a façade on the front of the buildings that disguised the two-foot
23 gap and made the buildings located at 8413 and 8411 Greenwood Avenue North appear
24 connected.
25

26 41. On the backside of the buildings, the Gasline Area was covered and
27 concealed with a piece of wood material that was painted to match the color of the buildings.
28

29 42. At some point prior to the Greenwood Incident, a group of five or more
30 unauthorized individuals removed a portion of the rear alley wall to expose the two-foot gap
31 and began using the Gasline Area on a daily basis.
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1 43. The unauthorized individuals admitted to using the Gasline Area as a place to
2 hide personal property, for example, where they stored heavy equipment, machinery, and
3 scrap metal that was moved around the PSE gas service line.
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6 44. On the morning of March 9, at approximately 1:00 AM, an escape of gas was
7 discovered by one of the unauthorized individuals inside the Gasline Area.
8
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10 45. The firemen who appeared on the scene prior to the explosion and who
11 followed the individual to the place where the escaping gas was found stated that they could
12 clearly see where the gas service line had been broken.
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15 46. By March 10, the term “outside force” was being used by the governmental
16 entities responsible for overseeing PSE’s investigation of the Greenwood Incident.
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19 47. “Outside force” is a term of art within the utility industry that describes a
20 situation where an incident has occurred but the cause is outside of the utility’s ability or
21 power to control.
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24 48. The gas service line had no natural reason to give way. It was located on
25 private property and not used by the building owners for any purpose. Moreover, an expert
26 forensic engineering report (“Expert Report”) shows that the gas service line was solid and
27 did not crack on its own.
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30 49. The experts who examined the gas service line fragments confirmed that the
31 escape of gas was caused by someone cracking or breaking the pipe by stepping or pulling
32 on it.
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35 50. Several of the unauthorized individuals admit having direct contact with the
36 broken gas service line whenever they entered or left the Gasline Area.
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39 51. All of the witness interviews support the factual conclusion that the
40 unauthorized individuals were the sole outside force that caused the Greenwood Incident.
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1 52. All of the expert opinions point to the PSE gas service line being broken by
2 an outside force.
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5 **B. PSE's Defenses**
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7 53. The Complaint is unfounded because the Greenwood Incident was caused by
8 unforeseeable and superseding outside forces that were beyond PSE's control.
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10 54. The Complaint is barred, in whole or in part, by estoppel.
11

12 55. PSE denies that the Commission should impose any penalties on PSE.
13 However, even if the Commission determines that penalties should be imposed, for the
14 reasons described in paragraph 30 above, the amount of penalty requested is not appropriate
15 or commensurate under the facts and circumstances of this case. Further, the penalties
16 sought by Commission Staff are not reasonable based on the factors set forth by the
17 Commission in its Policy Statement in Docket A-120061, and would serve only a retributive
18 and not a corrective function.
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26 DATED this 3rd day of October, 2016.
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29 **PERKINS COIE LLP**

30
31
32 By: 

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