

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	DOCKET U-110808
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	ORDER 03
	)	
v.	)	
	)	INITIAL ORDER APPROVING
PUGET SOUND ENERGY, INC.,	)	AND ADOPTING SETTLEMENT
	)	AGREEMENT
Respondent.	)	
	)	
.....	)	

1     ***Synopsis.** This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective as described in the notice at the end of this Order. If this Initial Order becomes final, the parties’ proposed Settlement Agreement will be approved and Puget Sound Energy, Inc. (PSE or Company) will be required to pay a monetary penalty of \$250,000 and make an additional \$75,000 contribution to PSE’s low income assistance program, neither of which the Company will recover in rates. In addition, PSE’s modified practices for handling “prior obligations” will be implemented to remedy past errors in separating a customer’s prior obligation balances from current account balances and to prevent future recurrences.*

2     **PARTY REPRESENTATIVES:** Michael A. Fassio and Robert D. Cedarbaum, Assistant Attorneys General, Olympia, Washington, represent Staff (Staff).<sup>1</sup> Donna L. Barnett, Perkins Coie, Bellevue, Washington, represents PSE. Lisa W. Gafken, Assistant Attorney General, Seattle, Washington, represents Public Counsel. Ronald L. Roseman, attorney, Seattle, Washington, represents The Energy Project.

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<sup>1</sup> In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. See RCW 34.05.455.

## I. Background and Procedural History

3 On October 26, 2011, the Washington Utilities and Transportation Commission  
(Commission) by and through its Staff filed a complaint against Puget Sound Energy,  
Inc. (PSE or Company) alleging as many as 515 failures to comply with a  
Commission order entered in December 2010.<sup>2</sup> PSE timely filed an Answer on  
November 15, 2011, denying that it had violated the Commission's order.

4 The Commission convened a prehearing conference in this docket on December 19,  
2011, before Administrative Law Judge Patricia Clark. Judge Clark adopted a  
procedural schedule proposed by the parties and established dates for filing of  
testimony by PSE, Staff, Public Counsel, and the Energy Project. The Commission  
reassigned the case to Administrative Law Judge Adam E. Torem on June 21, 2012.

5 PSE filed initial testimony and exhibits on April 3, 2012. Staff filed initial testimony  
and exhibits on May 3, 2012. PSE filed responsive testimony and exhibits on June 1,  
2012. Staff filed responsive testimony and exhibits on July 6, 2012. Neither Public  
Counsel nor the Energy Project filed testimony.

6 The parties filed a full settlement agreement (Settlement Agreement) with the  
Commission on August 30, 2012. Staff and PSE each filed individual narratives  
supporting the Settlement Agreement on September 7, 2012, and expressed their view  
that a hearing was no longer necessary. Public Counsel and The Energy Project  
jointly filed a narrative supporting the Settlement Agreement on September 10, 2012.

7 The Commission, concurring with the parties that no evidentiary hearing would be  
needed to evaluate the Settlement Agreement, issued a Notice Striking Evidentiary  
Hearing on September 7, 2012.

## II. Settlement Agreement Terms

8 This case involves PSE's handling of customer accounts known as "prior  
obligations," the dollar amount a customer owes a utility at the time service is  
disconnected for nonpayment. The Commission's rules prohibit regulated utilities

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<sup>2</sup> *WUTC v. PSE*, Docket U-100182, Order 01 (December 28, 2010).

from refusing to provide new or additional service to a customer with a prior obligation when that customer pays all appropriate deposit and reconnection fees.<sup>3</sup>

9 In Order 01 in Docket U-100182, the Commission approved a settlement agreement between PSE and Staff that resolved a penalty assessment alleging the Company had violated the prior obligation rules.<sup>4</sup> In addition to imposing a monetary penalty, the order required PSE to promptly complete internal investigations into twenty-six specific accounts where refunds or credits might be due to PSE customers. Staff filed the complaint in this case alleging that PSE failed to comply with that order.

10 The Settlement Agreement in this proceeding includes the following provisions: (1) PSE's admission of the alleged violations; (2) the Company's modifications to its "prior obligations" processes; (3) credits and refunds to be applied to affected customer accounts; (4) the Company's agreement to pay a monetary penalty and make a separate contribution to PSE Home Energy Lifeline Program (HELP) funds; and (5) PSE altering its customer bill information. We summarize each of these provisions in more detail below.

11 *Admission of Violations and Process Changes.* In the Settlement Agreement, PSE admits that its past practices violated the Commission's refusal of service rules. PSE had not always ensured payments were applied to a customer's current service account as opposed to prior obligation amounts that should have been serviced only after the customer's current billings. PSE has now implemented process changes to ensure separation of these two account balances (Appendix B to Settlement Agreement).<sup>5</sup> The parties further agree that the Company's new processes resolve all outstanding issues or potential violations related to PSE's past practices with regard to prior obligations.<sup>6</sup>

12 All parties also agree that PSE's new processes are satisfactory and should be retained when PSE migrates from its current CLX billing system to its new SAP billing

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<sup>3</sup> See WAC 480-90-123 and WAC 480-100-123.

<sup>4</sup> *WUTC v. PSE*, Docket U-100182, Order 01 (December 28, 2010).

<sup>5</sup> Settlement Agreement, ¶¶ 8-9; see also Appendix B to Settlement Agreement.

<sup>6</sup> Settlement Agreement, ¶ 8.

system. PSE agrees to file with the Commission a new summary of the process as implemented under the SAP billing system within 30 days of completing its transition from CLX to SAP.<sup>7</sup>

- 13 *Customer Credits and Refunds.* Order 01 in Docket U-100182 required PSE to “promptly complete its investigations” into twenty-six customer accounts where the Company may not have correctly handled prior obligations. PSE has now applied credits or refunds to the impacted customer accounts, as identified in the pre-filed rebuttal testimony of Vicki Elliott (Exh. VE-5).<sup>8</sup>
- 14 *PSE Report Filed on May 20, 2011.* PSE concedes that the report it submitted to Staff on May 20, 2011, in Docket U-100182 could, on its face and without further explanation, be interpreted to contain inaccurate information.<sup>9</sup>
- 15 *Monetary Penalty and Contribution to PSE Help.* PSE agrees to pay, within ten business days of the Commission approving the Settlement Agreement, a monetary penalty in the amount of \$250,000 and to make a separate contribution in the amount of \$75,000 to PSE HELP. PSE agrees not to seek recovery of either of these amounts from its ratepayers.<sup>10</sup>
- 16 *Other Settlement Terms.* The Settlement Agreement also resolves other concerns related to PSE’s handling of “prior obligation” accounts as follows:
- *Pledge Agreements:* PSE will maintain its current pledge payment process.<sup>11</sup>
  - *Customer Bill Information:* PSE will, within 60 business days of the Commission approving the Settlement Agreement, include language in customers’ prior obligation bills indicating that the customers cannot be

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<sup>7</sup> *Id.*, ¶9.

<sup>8</sup> *Id.*, ¶10.

<sup>9</sup> *Id.*, ¶ 13.

<sup>10</sup> *Id.*, ¶¶ 11 and 14.

<sup>11</sup> *Id.*, ¶ 12; *see also* Appendix D to Settlement Agreement.

disconnected for non-payment of that amount. PSE will ensure that this additional language or a similarly-worded message is carried over from PSE's existing CLX billing system to its new SAP billing system.<sup>12</sup>

- *Elimination of Reporting Requirements from Docket U-100182*: All parties agree that the provisions of the Settlement Agreement will supersede and replace any requirements created by Order 01 in Docket U-100182 or the settlement agreement that order approved.<sup>13</sup>

### III. Discussion and Decision

17 WAC 480-07-750(1) states in part: “The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.” Thus, the Commission considers the individual components of the Settlement under a three-part inquiry. We ask:

- Whether any aspect of the proposal is contrary to law;
- Whether any aspect of the proposal offends public policy; and,
- Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

18 The Commission must determine one of three possible results:

- Approve the proposed settlement without condition;
- Approve the proposed settlement subject to condition(s); or,
- Reject the proposed settlement.

19 The Settlement Agreement represents the parties' proposed resolution of a series of issues that arose following entry of Order 01 in Docket U-100182. In that docket, PSE applied for mitigation of a \$104,300 penalty assessment, and the parties negotiated a settlement agreement prior to the hearing on the Company's mitigation

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<sup>12</sup> *Id.*, ¶ 15.

<sup>13</sup> *Id.*, ¶ 16.

request.<sup>14</sup> In the ensuing months, Staff and PSE came to realize they had different understandings of what was actually required by that agreement and the Commission order approving it.

20 A review of the record in this case demonstrates that Staff interpreted PSE’s “investigation” obligation quite differently than the Company did.<sup>15</sup> In addition, Staff construed Order 01’s requirement that PSE “promptly complete its investigations” to require much faster resolution of the issues presented in the named customer accounts than the Company had understood.<sup>16</sup> In May 2011, when PSE realized that their work to comply with Order 01 would not satisfy Staff, they made a poor decision and made representations to Staff that admittedly could have been inaccurate or, perhaps, misleading.

21 After full consideration of the pre-filed testimony contained in the record of this case, as well as the Settlement Agreement and supporting narratives, the Commission approves the Settlement Agreement without condition. PSE and Staff have reached not only mutual understanding of what should have been done in the past, but also what needs to occur to prevent future misinterpretations of the Commission’s prior obligations and refusal of service rules. Public Counsel and The Energy Project also contributed to PSE’s efforts to establish a more coherent set of “prior obligations”

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<sup>14</sup> The record in Docket U-100182 was sparse, consisting only of the original penalty assessment, PSE’s request for mitigation, and a two-page *Joint Motion to Accept Full Payment of Penalty* filed on December 16, 2010. The *Joint Motion* was supported by a one-page appendix listing twenty-six customer accounts to be further investigated by PSE and a PowerPoint presentation consisting of seven slides (without notes) from a PSE meeting with Commission Staff on December 10, 2010.

<sup>15</sup> Staff expected the Company to thoroughly review each and every one of the twenty-six accounts identified. See Pearson, Exh. RP-1T at 11:8-13; Wallace, Exh. SW-1T at 3:4-14; and King, Exh. SVK 1T at 5:25 – 6:11. On the other hand, PSE believed they were obliged to review and evaluate the identified accounts, not perform a full re-processing of each account. See DeBoer, Exh. TAD-1T at 3:12-21; Archuleta, Exh. GA-1T at 8:16-20; Barard, Exh. APB-1T at 3:3-7; and McClenahan, Exh. KRM-1T at 3:1-8 (explaining how PSE determined it was only to evaluate a sample of the twenty-six accounts).

<sup>16</sup> Staff’s definition of “promptly” ranged from “within 30 days” (Pearson, Exh. RP-1T at 7:8-16) to “immediately” (Wallace, Exh. SW-1T at 3:16-19) to a statement that a period of nearly six months did not constitute a prompt investigation (King, Exh. SVK 1T at 3:18 – 4:2). The Company apparently interpreted “promptly” in the context of the required quarterly reports, the first of which was not due until the end of April 2011 (DeBoer, Exh. TAD-1T at 5:5-12).

procedures. Review of the individual provisions demonstrates that the Settlement Agreement as a whole is reasonable and in the public interest.

- 22 *PSE's Admission of Violations.* PSE properly admits fault in this instance and agrees to take appropriate action in response to its mishandling of payments to these customer accounts with prior obligations.
- 23 *PSE's Modified Process for Handling "Prior Obligation" Balances.* PSE worked with Staff, Public Counsel, and the Energy Project to make sure its new procedures fully comply with WAC 480-90-123 and WAC 480-100-123. It is in the public interest to have PSE bring its prior obligations procedures into compliance on its current billing system (CLX) and guarantee these new procedures are accurately carried over to and implemented in its new (SAP) billing system. We agree with the parties that creation of two separate accounts, one for current service and one for prior obligation amounts, is an easily understandable method for both PSE and its customers to ensure payments are applied correctly.
- 24 *Customer Credits and Refunds.* All twenty-six customer accounts originally identified in Docket U-100182 have now been fully investigated by PSE. Credits and refunds have been applied to each customer account to the satisfaction of all parties and are in the public interest.
- 25 *Monetary Penalty and Contribution to PSE Help.* PSE's payment of a \$250,000 penalty will serve as an incentive for the Company to ensure all customer payments are handled strictly in accordance with the Commission's regulatory requirements. We note that this amount is more than twice the penalty originally imposed in Docket U-100182 and believe that these penalties provide an appropriate incentive for PSE to comply with Commission prior obligation requirements. The Company's separate \$75,000 contribution to the PSE HELP fund is a fitting show of good faith toward helping keep the Company's most needy customers current on their payments, particularly as the winter heating season approaches.
- 26 *Pledge Agreements.* The Company's reaffirmation of its pledge payment process is an important part of ensuring continued compliance with the Commission's prior obligation rules.

- 27 *Customer Bill Information.* PSE's agreement to add language to customers' bills explaining their duties and rights with regard to prior obligations is important. We agree with Public Counsel and the Energy Project that such language is in the public interest and will serve to clarify and prioritize billing information for customers.
- 28 *PSE Report Filed on May 20, 2011.* PSE properly concedes that a report it submitted to Staff last year may have been inaccurate.
- 29 The Commission and its Staff must be able to rely on the accuracy of all submissions and filings made by a regulated Company. PSE's recognition that its May 20, 2011, report might have been interpreted to contain inaccurate information assures the Commission that when there might be confusion over what is required in the future, the Company will seek clarification from Staff.
- 30 *Elimination of Further Reporting Obligations under Docket U-100182.* We agree that the Settlement in this case is much more comprehensive and more clearly explained than that filed in Docket U-100182. Therefore, it is in the public interest to eliminate any ongoing reporting obligations from the prior docket.
- 31 *Summary.* The Commission finds that the Settlement Agreement proposed by the parties is in the public interest. The Settlement Agreement holds PSE responsible for correctly handling prior obligation amounts, crediting customers whose accounts were mishandled, and ensuring pledge agreements are honored to keep customer accounts current. Further, the Settlement Agreement requires PSE to pay a significant monetary penalty and make an additional contribution of funds toward keeping customers' lights and heat on in the coming winter months. We approve and accept the Settlement Agreement as filed and without condition.



**ORDER**

THE COMMISSION ORDERS That:

- 32 (1) The Settlement Agreement filed by the parties on August 30, 2012, which is attached to this Order as Appendix A and incorporated by reference as if set forth here in full, is approved and adopted as the final resolution of the issues presented in this docket.
- 33 (2) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective October 17, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM  
Administrative Law Judge

## NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An original and **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250

Appendix A  
Settlement Agreement