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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., TESORO NORTHWEST  
COMPANY, and THE CITY OF ANACORTES  
Complainants,

v.

PUGET SOUND ENERGY,  
Respondent,

DOCKET NO. UE-001952  
(consolidated)

In re: Petition of Puget Sound Energy, Inc. for an  
Order Reallocating Lost Revenues Related to any  
Reduction in the Schedule 48 or G-P Special  
Contract Rates

DOCKET NO. UE-001959  
(consolidated)

KING COUNTY’S RESPONSE TO  
PROPOSED STIPULATION OF  
SETTLEMENT AND REQUEST FOR  
ORDER

King County (“County”) is an Intervenor in *Air Liquide America et al. v. Puget Sound Energy, Inc.*, Docket No.UE-001952. King County has also petitioned to intervene in *Puget Sound Energy, Inc., Schedule 48*, Docket No. 010038. The Commission has not ruled on this petition. The County received copies of the Stipulation of Settlement and related documents (“Stipulation”) filed by the parties on March 9, 2001. King County regrets it is unable to join in the Stipulation at this time. King County neither supports nor objects to approval of the Stipulation of Settlement, but requests an order preserving its rights and interests under Schedule 48 and the Sixth Supplemental

1 Order: Order Requiring Further Proceedings to Implement Tariff Changes Necessary to Ensure  
2 Fair, Just, and Reasonable Rates, Terms, and Conditions of Service (“Sixth Supplemental Order”).

- 3
- 4 1. When the Commission entered its Sixth Supplemental Order, on January 22, 2001, the County  
5 anticipated that the parties would develop a “fully detailed soft-cap mechanism” that would  
6 allow “immediate implementation” of the soft-cap. *Sixth Supplemental Order*, ¶ 93, page 45.  
7 On February 15, 2001, the County petitioned to intervene in the proceedings. King County’s  
8 petition was granted by the Commission on March 6, 2001. By that time, the language of the  
9 Stipulation, which is 53 pages in length, was nearly completed. Indeed, the Stipulation of  
10 Settlement was filed on March 9, 2001, three days after the County’s intervention was granted.  
11 The Stipulation contains numerous provisions that impact King County. Unlike the parties who  
12 negotiated the Stipulation, King County has not been afforded the opportunity to review the  
13 Stipulation in its entirety with the thoroughness necessary for a full assessment of its terms as  
14 would be necessary for it to constitute a “fully negotiated agreement” as required by paragraph  
15 17.9 of the Stipulation.
- 16 2. The proposed Stipulation of Settlement defines King County as a Large Customer, one whose  
17 “aggregate and historic projected loads exceed 10 MW.” *Stipulation*, ¶ 4.3.3, at 7. King County  
18 questions whether this definition is appropriate to its situation. King County’s annual average  
19 load under Schedule 48 is approximately 7.2 MW, and has remained steady for the past five  
20 years.
- 21 3. As a large customer, King County would be classified as a “Non-core customer” under the  
22 Stipulation. It would thus be required to forever release and waive, among other things,

1 “eligibility for electric energy service (but not distribution or transportation service) based on  
2 PSE’s obligation to serve customers as provided by applicable Washington law.” *Stipulation,*  
3 *¶¶ 13.1 and 13.2.* King County cannot make this waiver or some of the other releases and  
4 waivers required under Section 13 and Section 17.

5 4. King County purchases electricity under Schedule 48 only to power the South Wastewater  
6 Treatment Plant in Renton. The South Treatment Plant, which is part of King County's regional  
7 system, helps treat wastewater for an estimated 1.2 million people in the Puget Sound region.  
8 Millions of gallons of wastewater from the region's homes, businesses, and industries are treated  
9 at the South Treatment Plant each day. This is an essential public service, one that cannot be  
10 discontinued or even substantially curtailed without posing a serious threat to the public health,  
11 safety and welfare.

12 5. As a “Non-core customer”, however, King County would be required under the Stipulation to  
13 agree that “[e]ven if pricing or availability of power make it impossible for {King County} to  
14 carry on its business, and even if such pricing or availability endangers the public health, safety,  
15 and welfare, that will not constitute a grounds for return to core status.” *Stipulation, ¶ 13.4, at*  
16 *41.* King County cannot agree to accept service under the “Non-core” customer schedules if it  
17 means exposing the community to this kind of risk. Because of this requirement, King County  
18 must weigh the option of returning the South Treatment Plant to a core customer retail tariff, to  
19 ensure a secure and reliable electric supply.

20 6. Under the Stipulation, King County would also have the option to elect treatment as a Small  
21 Customer, but “only if it has put in place, prior to November 1, 2001, self-generation or other  
22 arrangements that limit its aggregate peak demand at all Locations to no more than 10 MW.”

1        *Stipulation, ¶ 12.2, at 38.* Due to the lead-time required to design and construct such a project,  
2        King County cannot say with assurance that it will be able to do this. Electing service as a  
3        Small Customer would allow the County to eventually return to core customer status. Even if  
4        King County could limit its peak demand as required to elect Small Customer service, it would  
5        still run the risk of being required to shift to “Non-core” service under Schedules 448 and 449 if  
6        its demand were to grow too much. *Stipulation, ¶ 9.8, page 35.*

7        7. Under the Stipulation, King County’s remaining option is to choose to be treated as “neither a  
8        Small Customer nor a Large Customer, in which case it will remain on Schedule 48. . . .”  
9        *Stipulation, ¶ 12.2,* The Commission has already found and concluded that “PSE’s retail rates  
10        under Schedule 48 . . . that are pegged to the Mid-Columbia index pricing to Western wholesale  
11        power markets that are volatile and exceedingly high are not fair, just, and reasonable because  
12        customers do not have effective options to achieve price stability and reasonable rates under the  
13        Optional Price Stability provisions of Schedule 48. . . .” *Sixth Supplemental Order, ¶ 6, at*  
14        *page 3.* Thus, under the Stipulation, King County would continue to be required to pay unfair,  
15        unjust, and unreasonable rates until its service under Schedule 48 terminates.

16        8. The Commission found that:

17                Western wholesale power markets, and retail power rates under Schedule 48 and the  
18                Special Contract that are pegged to those markets via Mid-Columbia index pricing, have  
19                been consistently volatile and have produced unreasonably high rates for PSE’s  
20                customers since June 2000. Projections are that there will be continued volatility and  
21                extraordinarily high prices in the western wholesale power markets during 2001.

22                The Commission ordered that the rates charged under Schedule 48 should be subject to a “soft  
cap” of \$125/MWh, “unless PSE demonstrates that the costs it actually incurred to serve the

1 customers exceed that amount . . .” *Sixth Supplemental Order, ¶ 83, page 41*. The Commission  
2 directed the parties to “develop a fully detailed soft-cap mechanism.” *Sixth Supplemental*  
3 *Order, ¶ 93, page 45*.

4 9. While the Commission ordered discussions to implement the price caps, the result of the parties  
5 negotiations has been the creation of Schedule 449, agreement on the terms of Schedule 448,  
6 and the Stipulation of Settlement. Under the Stipulation, it appears that certain PSE customers  
7 may have received monetary payments. *Stipulation, ¶ 14.1, page 42*. PSE agreed not to seek  
8 recovery of such sums from other ratepayers. *Id.* PSE, however, has not paid or offered King  
9 County any monetary sum.

10 10. King County cannot benefit either from the special contracts offered to Small Customers  
11 (*Stipulation, §9, page 31*) or the return to core customer status afforded to Olympic Pipeline and  
12 Anacortes (*Stipulation, § 11, page 37*). In fact, if King County elects to return to core customer  
13 status, it appears the County will be PSE’s *only* customer to receive *no relief* from the unfair,  
14 unjust, and unreasonable Schedule 48 rates until the tariff expires on October 31, 2001.

15 11. King County appreciates all the hard work that has gone into negotiating the settlement and does  
16 not wish to interfere with the process for Commission approval of the Stipulation. Rather, King  
17 County does want to preserve the opportunity to seek relief from the Schedule 48 rates that the  
18 Commission has determined are unfair, unjust, and unreasonable. For these reasons, King  
19 County urges the Commission to specifically reserve in its Order on the Stipulation the  
20 opportunity for King County to separately adjudicate this issue.

21 12. For all of these reasons, King County requests and moves the Commission that, if the  
22 Commission approves the Stipulations, it include in its Order the following:

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The Commission finds that: 1) King County is not a Party to this Stipulation; 2) King County is not bound by the terms of the Stipulation; 3) King County's rights under Schedule 48, its agreements with Puget Sound Energy, Inc., and the Sixth Supplemental Order herein should be reserved for further proceedings; and further

ORDERS that: 1) Dismissal of Complainant's Amended Complaint in Commission Docket No. UE-001952, as provided in paragraphs 2.9 and 17.2 of the Stipulation, is without prejudice to King County, and 2) King County's rights and interests under Schedule 48, the County's agreements with Puget Sound Energy, Inc., and under the Sixth Supplemental Order herein are reserved for further proceedings.

DATED THIS 20th day of March, 2001

Respectfully Submitted,  
  
NORM MALENG  
King County Prosecuting Attorney

By: \_\_\_\_\_  
Donald C. Woodworth, WSBA #4627  
Senior Deputy Prosecuting Attorney

By: \_\_\_\_\_  
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Senior Deputy Prosecuting Attorney