

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	)	DOCKET NO. UE-001952
THE CITY OF ANACORTES,	)	(Consolidated)
WASHINGTON,)	
)	
Complainants,)	
)	
v.)	
)	
PUGET SOUND ENERGY, INC.,)	
)	
Respondent.)	
.....)	
<i>In re:</i> Petition of PUGET SOUND	)	DOCKET NO. UE-001959
ENERGY, INC. for an Order	)	(Consolidated)
Reallocating Lost Revenues Related to)	
any Reduction in the Schedule 48 or G-	)	ELEVENTH SUPPLEMENTAL
P Special Contract Rates	)	ORDER APPROVING AND
	)	ADOPTING SETTLEMENT
	)	AGREEMENT, SUBJECT TO
	)	CONDITIONS; DISMISSING
	)	PROCEEDINGS; AND GRANTING
.....	)	OTHER RELIEF

SYNOPSIS: *The Commission approves an unopposed settlement agreement that resolves numerous pending disputes between Puget Sound Energy, Inc. (PSE) and twelve industrial customers. The settlement authorizes and requires PSE to provide forms of service that satisfy both the short-term and long-term needs of its industrial customers while protecting other customer classes and promoting results that are in the public interest.*

SUMMARY

- 1 **PROCEEDINGS:** These proceedings were initiated by a complaint filed on December 12, 2000, by a number of Puget Sound Energy, Inc.'s (PSE) industrial customers who take service from PSE under tariff Schedule 48 and one customer who takes service under a Special Contract that is closely similar to Schedule 48. The customers alleged that PSE was charging retail electric rates under its Tariff WN U-60, Schedule 48, Optional Large Power Sales Rate, and pursuant to a Special Contract with Georgia-Pacific West, Inc. (Georgia-Pacific), that are not just, fair, and reasonable, in violation of RCW 80.28.010. At the time the Complaint was filed in Docket No. UE-001952, the Commission already had under consideration a number of other proceedings, including several other complaint proceedings, involving the relationships between PSE and its industrial customers. Specifically, complaints by industrial customers against PSE were pending in Docket Nos. UE-000735, UE-001014, and UE-001616. During the course of the instant proceedings, Docket Nos. UE-001952 and UE-001959 (Consolidated), three additional dockets related to PSE's industrial tariffs were initiated by PSE. These are Docket No. UE-010046, a filing required by the Commission's 1996 Order approving Schedule 48; Docket No. UE-010038, a new tariff proposed by PSE to largely, if not wholly, replace Schedule 48; and Docket No. UE-010010, a filing to reclassify certain PSE plant from transmission to distribution, a matter that bears on the non-energy aspects of the service PSE provides to its industrial customers.
- 2 On March 9, 2001, the Parties filed a set of related documents which together comprise a comprehensive settlement agreement that would resolve all issues pending in Docket Nos. UE-001952 and UE-001959 (Consolidated), UE-000735, UE-001014, UE-001616, UE-010038, and UE-010046. The settlement agreement requires final Commission action in Docket No. UE-010010 as a condition precedent. The settlement agreement also would resolve PSE's Complaint in Case No. 01-2-03801-0SEA, now pending in the Superior Court for the State of Washington, King County. The settlement agreement would effect a comprehensive release of claims against PSE by Complainants and Intervenors in Docket Nos. UE-001952 and UE-001959 (Consolidated) insofar as those claims relate to the business relationships between PSE and these customers under Schedule 48 and certain Special Contracts.

3 The Commission conducted a hearing on the proposed settlement on March 21 and 22, 2001. The record remained open until March 28, 2001, for the receipt of additional exhibits described, but not fully prepared, on March 22, 2001. Additional exhibits received on March 28, 2001, included a revised settlement agreement. The question whether the Commission should approve and adopt the revised settlement agreement as a full, fair, and final resolution of the issues in the various dockets proposed to be resolved now is ripe for determination.¹

4 **PARTIES:** Melinda Davison and Bradley Van Cleve, Davison Van Cleve, P.C., Portland, Oregon, represent Air Liquide America Corporation, Air Products and Chemicals, Inc., The Boeing Company, CNC Containers, Equilon Enterprises, LLC, Georgia-Pacific West, Inc., Tesoro Northwest Company, the City of Anacortes, and Intel Corporation.² Stan Berman, Heller Ehrman White & McAuliffe, LLP, Seattle, Washington, and James M. Van Nostrand, Stoel Rives, Seattle, Washington, represent Puget Sound Energy, Inc. (PSE). John A. Cameron and Traci Grundon, Davis Wright Tremaine LLP, Portland, Oregon, represent Bellingham Cold Storage Company (BCS), Atlantic Richfield Company (ARCO), and Olympic Pipeline, Inc.³ Brian Walters and Tom Anderson provided *pro se* representation for Public Utility District No. 1 of Whatcom County (Whatcom PUD). Frank Prochaska appeared *pro se* to represent the Association of Western Pulp and Paper Workers (AWPPW). William Blakney and Donald C. Woodworth, Senior Deputy Prosecuting Attorneys (King County), Seattle, Washington, represent King County, Washington.⁴ Simon ffitich, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section, Office of Attorney General (Public Counsel). Robert D. Cedarbaum and Donald T. Trotter, Assistant Attorneys General, Olympia, Washington, represent the Commission's regulatory staff (Staff).

¹ The Commission will enter appropriate orders in the related dockets to effect their final disposition consistent with the Findings, Conclusions, and Ordering paragraphs in this Order. The Commission previously has entered its Declaratory Order in Docket No. UE-010010.

² We granted, by oral order on March 21, 2001, Intel Corporation's late-filed petition to intervene.

³ We granted, by oral order on March 21, 2001, Olympic Pipeline, Inc.'s late-filed petition to intervene.

⁴ We granted, by written order entered on March 6, 2001, King County's late-filed petition to intervene. In this Order, we grant King County's request to withdraw its intervention in light of the County's decisions to not become a party to the settlement agreement and to neither support nor oppose the settlement agreement.

5 **COMMISSION:** The Commission approves and adopts the Parties' settlement agreement subject to the conditions stated in this Order. As conditioned, the settlement agreement represents a full and final resolution of the issues in this consolidated proceeding and in all matters pending in related proceedings in Docket Nos. UE-000735, UE-001014, UE-001616, UE-010038, and UE-010046.⁵ The Commission incorporates the Parties' settlement agreement by reference and makes it a part of this Order. The Commission authorizes and requires PSE to make any compliance filings required to effectuate the terms of the settlement agreement and this Order.

MEMORANDUM

I. Background and Procedural History.

6 Most of PSE's industrial customers, including the Complainants and Intervenors in Docket Nos. UE-001952 and UE-001959 (Consolidated), currently are served under PSE's Tariff WN U-60 (Schedule 48, Optional Large Power Sales Rate) or pursuant to a Special Contract with terms closely similar to those in Schedule 48. Schedule 48 and the Special Contracts fundamentally are the products of negotiations that were conducted in 1996 between PSE and certain of PSE's large industrial customers. Rates for retail electric service that PSE provides under Schedule 48 and the Special Contracts include an energy cost component that is based on certain wholesale price indices published by Dow Jones. These indices nominally reflect prices paid in the wholesale power market for certain categories of transactions, as defined by Dow Jones, for transactions that occur at the Mid-Columbia trading hub.

7 Formally, at least, the business relationships between PSE and its customers under Schedule 48 and the Special Contracts remained uncontroversial for about two years. In November 1998, however, certain of the Schedule 48 customers filed a complaint against PSE alleging that PSE, commencing in June 1998, consistently had applied index prices other than as required under Schedule 48. The customers' Complaint was heard in Commission Docket No. UE-981410 and they prevailed on the merits of their claim. *Air Liquide America Corporation, et al. v. Puget Sound Energy, Inc.*,

⁵ The Commission has granted, by separate Declaratory Order, PSE's Petition in Docket No. UE-010010 concerning the classification of PSE's transmission and distribution facilities.

Fifth Supplemental Order Granting Complaint, Ordering Refunds and Other Relief, Docket No. UE-981410 (August 3, 1999).⁶

- 8 Since its determination in the 1998 customer-initiated complaint case in Docket No. UE-981410, the Commission has conducted adjudicative proceedings concerning the operation of Schedule 48 in at least five dockets, either on customer complaint or on its own complaint, and has addressed Schedule 48 and Special Contract matters in several open public meetings.⁷ In short, controversies of one type or another, and proposals intended to avoid further controversy, have surrounded Schedule 48 and the Special Contracts more or less continuously for more than two years.
- 9 All of this controversy arises in one fashion or another from, or at least relates to, the wholesale market-based pricing provisions in Schedule 48 and the Special Contracts. Most recently, events in the wholesale markets on the interconnected Western power grid have brought matters to a critical state, at least from the perspectives of the customers who are Complainants in this proceeding. Volatility in the Western wholesale power markets during the first half of 2000 were reflected in price spikes at the Mid-Columbia trading hub, spikes that became particularly acute in June 2000.
- 10 The Western wholesale power markets remained higher than normal through the fall of 2000, but were more stable during October and into early November. In mid- to late-November, and in December 2000, however, a series of events converged to again cause prices to rise sharply and to unprecedented levels. The Mid-Columbia firm index, for example, reached a peak one-hour price of \$714.44 on December 8,

⁶ The referenced case provides a detailed discussion of the genesis of Schedule 48 and the parties' conduct under its terms from the date of its approval through the period of the complaint in Docket No. UE-981410.

⁷ These include Docket No. UE-981238, concerning the price for optional firming service under Schedule 48; Docket No. UE-000735, a formal complaint by Georgia-Pacific under its Special Contract with PSE; Docket No. UE-001014, a formal complaint by Bellingham Cold Storage Company and Georgia-Pacific under their essentially identical Special Contracts with PSE; Docket No. UE-001616, another formal complaint by Georgia-Pacific under its Special Contract with PSE; and Docket No. UE-001521, a Commission-initiated complaint concerning the Georgia-Pacific and Bellingham Cold Storage Special Contracts with PSE. Some of these matters have been resolved; others remain pending. Open-meeting matters have included Commission approval of amendments to the energy pricing provisions of the Georgia-Pacific and Bellingham Cold Storage Special Contracts; PSE's refiling of Schedule 48 on January 1, 2001, in Docket No. UE-960696, as required under the terms of the Commission's Order approving Schedule 48; and PSE's filing of a new tariff, Schedule 448, which it proposes as an alternative tariff for these, and other, industrial customers.

2000, and the non-firm index reached a peak one-hour price of \$604.06. Three days later, on December 11, 2000, the corresponding prices for the peak hour were \$3,300.00 and \$1,285.00. This contrasts sharply to historic prices in the range of \$26 for firm on-peak and \$23 for non-firm on-peak during all of 1999.⁸

11 Air Liquide, *et al.* filed their original Formal Complaint Requesting Emergency Adjudicative Proceeding in this docket on December 12, 2000, one day after the Mid-Columbia indices reached these extraordinary levels. The Complaint alleges that “daily spot market pricing at the Mid-Columbia no longer provides a reasonable basis for setting retail electric rates” and that such rates are “unjust, unreasonable, unjustly discriminatory or unduly preferential.” The Complaint asserts that “the Commission is required to, ‘determine the just, reasonable, or sufficient rates . . . to be thereafter observed and in force, and shall fix the same by order.’” *Complaint at 2 (quoting RCW 80.28.020)*.⁹

12 On December 13, 2000, PSE filed its Petition in Docket No. UE-001959, requesting the Commission to “issue an order reallocating lost revenues related to any reduction in the Schedule 48 or G-P Special Contract rates.” The Petition, albeit not PSE’s formal answer, responds generally to the Complaint and asserts that, to the extent the Commission acts to reduce the revenues PSE otherwise would obtain under Schedule 48 and the PSE/Georgia-Pacific Special Contract, the Commission should allow PSE to establish a deferral account and determine whether “such deferred revenue requirement should be paid by the industrial customers who have chosen market-based prices or reallocated among other customer classes.”

13 The Commission, on shortened notice, conducted a prehearing conference on December 14, 2000, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, and Administrative Law Judge Dennis J. Moss. Among other things, the Commission determined it would consolidate the Complaint in Docket No. UE-001952 with the Petition in Docket No. UE-001959. The Commission established a procedural schedule and invoked the discovery rule (WAC 480-09-480). We entered

⁸ We note for purposes of illustration that a hypothetical industrial customer who consumed 100 MWh in December 2000 would have paid \$34,856 under Schedule 48. This compares to \$3,743 for that same 100 MWh of consumption in January 2000. This calculation is derived from data included in Exhibit No. 18-C (page 5, line 11).

⁹ The two preceding references are to the original Complaint. Identical allegations and language are included in the first Amended Complaint, which is the formal pleading to which this Order pertains.

our Order Consolidating Proceedings; Prehearing Conference Order and Notice of Hearing on December 18, 2000. Evidentiary hearing proceedings were scheduled for December 29, 2000. To facilitate discovery, the Commission entered a Protective Order (First Supplemental Order, December 19, 2000).

- 14 During our first prehearing conference, we urged the Parties to consider entering into mediated settlement negotiations and offered the services of Administrative Law Judge C. Robert Wallis to act as facilitator. Complainants accepted our offer and agreed to commence such discussions at the Commission on December 19, 2000. Complainants requested, however, that the Commission simultaneously move forward with the complaint action. PSE agreed to the mediation and did not object to proceeding in parallel with the adjudication. Following several days of discussion, the Parties reported that “[s]cheduled mediation talks among Puget Sound Energy and several industrial customers about the effects of recent market conditions on electricity rates paid by the industries have concluded without producing an agreement among parties that resolves the rate issue.” *Agreed Statement on Mediation (12/21/00)*.
- 15 Complainants filed an Amended Complaint on December 18, 2000. A second prehearing conference was convened before ALJ Moss on December 22, 2000. Among other things, following discussion with, and agreement by, the Parties concerning the need for additional time to prepare for hearing, the evidentiary hearings were rescheduled to January 8, 2001. Additional process and procedural dates were established at the conference and by subsequent order.
- 16 Complainants filed a Second Amended Complaint on December 28, 2000. PSE filed its Motion To Strike Second Amended Complaint, and its Answer to the Amended Complaint on January 2, 2000. The Commission granted PSE’s Motion To Strike Second Amended Complaint and went forward on the first Amended Complaint and PSE’s Answer. We note that the basic substance of the three Complaints remained the same throughout. The first Amended Complaint simply added the City of Anacortes as a Complainant, added a few factual assertions, and corrected an arguable technical deficiency in the original Complaint. The Second Amended Complaint merely sought to add Intel Corporation as a Complainant and to withdraw two of the affidavits filed as part of the first Amended Complaint. Later,

Complainants were granted leave to withdraw the same two affidavits from the Amended Complaint.¹⁰

- 17 The Parties filed lengthy and detailed prehearing briefs on January 4, 2001. Evidentiary hearing proceedings were conducted on an expanded hearing-day basis on January 8 (8:00 a.m. – 10:05 p.m.), January 9 (9:00 a.m. – 11:59 p.m.), January 12 (9:00 a.m. – 10:55 p.m.), and January 15 (9:30 a.m. – 10:00 p.m.), 2001, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, and Administrative Law Judge Dennis J. Moss. These 55 hours of evidentiary hearings produced a transcript of more than 1550 pages reflecting the direct- and cross-examination of 10 witnesses. Approximately 175 exhibits were introduced into the record. The Commission heard oral argument from Complainants, Staff, Public Counsel, and PSE on January 16, 2001,¹¹ and entered its Sixth Supplemental Order on January 22, 2001, resolving the Phase One issues.
- 18 The Commission found and concluded in its Sixth Supplemental Order that Schedule 48 and the Special Contract, with retail rates pegged via Mid-Columbia index pricing to then-volatile and exceedingly high Western wholesale power markets, are not fair, just, and reasonable; and that customers did not have effective options, in the face of such conditions, to achieve price stability and reasonable rates under the Optional Price Stability provisions of Schedule 48 and the Special Contract. *Sixth Supplemental Order at ¶¶ 99 and 103 (January 22, 2001) (citing RCW 80.28.010 and RCW 80.28.020)*. The Commission ordered immediate proceedings in Phase Two of this Docket to establish temporary terms under the Optional Price Stability provisions of Schedule 48 and the Georgia-Pacific/PSE Special Contract that would provide customers effective options to achieve price stability and reasonable rates, consistent with the Commission's discussion in the body of its Sixth Supplemental Order. *Id. at ¶ 106*.
- 19 By Notice issued and served simultaneously with its Sixth Supplemental Order, the Commission set January 29, 2001, as the date on which to commence the Phase Two hearings to finalize and implement the relief ordered. During proceedings held on

¹⁰ The withdrawn affidavits had been filed by Mr. Keith C. Warner for The Boeing Company, and Mr. Mark C. Darnell for Air Liquide, as attachments E and G to the Amended Complaint. *See* TR. 351.

¹¹ The Commission also allowed Parties who elected to not participate actively in the evidentiary proceedings to submit a written closing statement in lieu of oral argument. One Intervenor, AWPPW, made such a filing.

January 29, 2001, the Commission heard additional testimony regarding remedies and considered Staff's oral motion for a continuance. Following argument by the parties, the Commission granted a brief continuance until February 5, 2001.

- 20 On February 5, 2001, the parties stated they had resumed settlement discussions and requested a recess to determine whether a further continuance would facilitate their efforts. Following the recess, the Parties informed the Commission that they had agreed it would be worthwhile to continue settlement negotiations, again with the assistance of ALJ Wallis in the role of mediator. The Commission granted the Parties' request for a continuance until February 8, 2001, to permit the Parties a further opportunity to pursue settlement. The continuance to February 8, 2001, was granted with the understanding that the Parties could informally request additional time if the progress of their discussions warranted a further continuance.
- 21 On February 9, 2001, the Parties reported via an agreed statement that they had achieved a settlement in principle. After February 9, 2001, the Parties reported from time to time that they were working diligently to produce a final settlement agreement for the Commission's consideration. On March 9, 2001, the Parties filed a set of related documents which together comprise their settlement agreement. The settlement agreement would resolve all issues pending in Docket Nos. UE-001952 and UE-001959 (Consolidated), UE-000735, UE-001014, UE-001616, UE-010038, and UE-010046. The settlement agreement requires final Commission action in Docket No. UE-010010 as a condition precedent. The settlement agreement also would resolve PSE's Complaint in Case No. 01-2-03801-0SEA, now pending in the Superior Court for the State of Washington, King County. The settlement agreement would effect a comprehensive release of claims against PSE by Complainants and Intervenor in Docket Nos. UE-001952 and UE-001959 (Consolidated) insofar as those claims relate to the business relationships between PSE and these customers under Schedule 48 and certain Special Contracts.
- 22 Staff filed a Memorandum Of Commission Staff In Support Of Settlement on March 9, 2001. PSE filed its Comments In Support Of Settlement on March 19, 2001. Complainants filed a Brief In Support Of Settlement on March 20, 2001. Also on March 20, 2001, King County filed its Response to Proposed Stipulation of Settlement and Request for Order. The Commission conducted evidentiary proceedings and heard oral argument on March 21 and 22, 2001. The Commission determined that the record should remain open until March 28, 2001, to receive

certain additional testimony by affidavit, and certain exhibits. The exhibits submitted include revised pages to several of the settlement agreement documents. It is the revised settlement agreement that we consider and discuss throughout this Order.

II. Brief Description of the Settlement Agreement¹²

23 As discussed above, and in our Sixth Supplemental Order in this proceeding, most of PSE's industrial customers have taken power from PSE under Schedule 48 or a Special Contract for a number of years. Schedule 48 and the Special Contracts include energy prices that are pegged to the Mid-Columbia price indices for wholesale power transactions. Persistent and extraordinary volatility in the wholesale power markets during 2000 and into 2001 resulted in prices to PSE's industrial customers under these tariffs that the customers found unacceptable. Accordingly, a number of PSE's industrial customers filed a complaint with the Commission seeking to obtain relief. In PSE's words, "[t]he Settlement gives these customers the essence of the relief they have been seeking, freeing them from dependence on purchases and pricing in the volatile spot markets and allowing them to devise long term arrangements that better meet their power supply needs." *PSE Comments at 5.*

24 The settlement agreement includes six principal documents filed as an integrated package. A 51-page Stipulation of Settlement details the settlement conditions and overall framework of the negotiated agreement. The terms of the Stipulation of Settlement are implemented through a proposed tariff Schedule 448, and a corresponding form of Service Agreement; a proposed tariff Schedule 449, and a corresponding form of Service Agreement; a Small Customer Special Contract; and an agreement whereby the City of Anacortes and Olympic Pipeline, which are Schedule 48 customers with very small loads relative to other industrial customers, are returned to existing tariff Schedules suitable to their requirements. Prospective service arrangements for the four Schedule 48 customers who are not signatories to the settlement agreement (*i.e.*, King County, AT&T, WorldCom, and Qwest) also are described in the Stipulation of Settlement. As Staff observes in its Memorandum,

¹² The settlement agreement includes numerous detailed provisions, and the various documents comprising it are an interrelated package. Our brief description of the settlement agreement in the body of this Order does not attempt to capture all of the detailed provisions. We incorporate the settlement agreement by reference, and include it in a set of appendices to this Order. To the extent of any arguable discrepancy between our brief summary here and the detailed terms of the settlement documents, we intend that the settlement documents prevail, except as we may otherwise expressly provide in this Order.

“[i]n broad terms, the Settlement offers paths for rate stability for all customers served under Schedule 48 and the Special Contracts” *Staff Memorandum at 3.*

25 The Stipulation of Settlement classifies each current Schedule 48 or Special Contract customer to one of five categories based on the customer’s historic and projected load and load characteristics, and on the basis of the customer’s service history.¹³ “Large Customers” are defined as Schedule 48 or Special Contract customers who made transition payments under those tariffs and have aggregate historic and projected loads that exceed 10 MW. The Large Customers are Boeing, BCS, Equilon, Georgia-Pacific, Tesoro, and ARCO. These Large Customers will: (1) terminate service under Schedule 48 and their Special Contracts; (2) renounce all current and future rights to PSE generating resources;¹⁴ and (3) take service prospectively under either Schedule 448 or Schedule 449.

26 “Small Customers” are defined as Schedule 48 customers who made transition payments under that tariff and have aggregate historic and projected loads less than 10 MW, but greater than 2.4 average MW. The Small Customers are Air Liquide, Air Products, CNC, and Intel. Small Customers will terminate service under Schedule 48 and take service under the terms of a “Small Customer Special Contract” that is part of the settlement package. Small Customers also may elect, subject to certain time constraints, to take service under Schedule 448 or Schedule 449. Pending a Small Customer’s decision to take service under Schedule 448 or Schedule 449, or if the customer elects to not take service under either Schedule 448 or Schedule 449 during the period when that option is available, the customer is afforded options for stable rates until the earlier of December 31, 2005, or the entry of a final order by the

¹³ Under the settlement agreement, all of PSE’s Special Contract customers, and all Schedule 48 customers who have paid transition payments to PSE under those tariffs, except Anacortes and Olympic Pipeline, are eligible to receive service under either of two proposed tariff schedules, Schedule 448 (Power Supplier Choice) or Schedule 449 (Retail Wheeling Choice). Anacortes and Olympic Pipeline are excluded because of their very small loads, but are permitted to return to core service. *See, infra, n.15.* PSE states in its Comments in Support of Settlement that these transition payments “were paid as part of a contemplated transition to retail wheeling for such customers” such as that provided indirectly via Schedule 448 or directly via Schedule 449.

¹⁴ Under Schedule 48 and the Special Contracts, these customers have been “non-core” customers for a number of years. *See, infra, n.15.* Schedule 48, however, provided a means by which these customers could return to core service at the termination of Schedule 48 by agreeing to pay PSE’s long-run resource costs and any incremental capacity costs. Under the Stipulation of Settlement, the customers relinquish the right to return to core status in exchange for other rights that expand the scope of available energy acquisition options.

Commission in PSE's next general rate case. At that time, the Small Customer Special Contract will terminate and the customer will be returned to core service under an otherwise applicable PSE tariff schedule.

- 27 Three Schedule 48 customers—King County, Anacortes, and Olympic Pipeline—do not meet the Large Customer or Small Customer criteria due to their load size or load characteristics. The City of Anacortes and Olympic Pipeline have historic and projected loads that are significantly less than 2.4 aMW. These two customers will terminate service under Schedule 48 and take service prospectively as core customers under existing, otherwise applicable industrial rate schedules suitable for such customers.¹⁵
- 28 According to the Stipulation of Settlement, King County, which is a Schedule 48 customer for a wastewater treatment plant, does not neatly fall into either the Small or Large Customer categories because it has a high peak demand, but a low average demand.¹⁶ The original Stipulation of Settlement provided various options for King County, predicated in part on the assumption that King County would be persuaded to become a signatory to the settlement agreement. King County, however, elected not to sign. The settlement Parties¹⁷ revised their Stipulation of Settlement and now would expressly condition the availability of the options outlined for King County by requiring that the settlement Parties agree to any subsequent request by King County to become a signatory to the Stipulation of Settlement. We address this proposed treatment of King County below in Part II.B. of our Order.
- 29 Three other Schedule 48 customers—AT&T, WorldCom, and Qwest—also fall outside the Large Customer or Small Customer classes. These customers are so-

¹⁵ Schedule 48 introduced a new class of “non-core service” for PSE’s industrial customers. These customers assumed risks for both variability of non-firm energy prices and the availability of energy. PSE was relieved from the obligation to include the non-core customers’ needs in its long-term planning and resource acquisition decisions. By contrast, PSE remains obligated to plan for, and acquire, resources to furnish power to its “core customers” on a firm or interruptible basis as defined by the tariff schedule under which the core customer takes service.

¹⁶ King County intervened late in these proceedings and filed a Response to Proposed Stipulation of Settlement and Request for Order and participated in our settlement hearing. King County states that it neither supports nor opposes the proposed settlement, but requests that the Commission expressly order that King County’s rights are preserved. We address King County’s request below.

¹⁷ We refer to the Parties who are signatories to the Stipulation of Settlement or the City of Anacortes and Olympic Pipeline Stipulation of Settlement as the “settlement Parties.”

called Internet Data Center (IDC) customers. The IDC customers began taking service under Schedule 48 late in 2000, and have not made any transition payments under Schedule 48. The IDC customers also are neither Complainants nor Intervenor in Docket Nos. UE-001952 and UE-001959 (Consolidated) and are not parties to the settlement. PSE commits under the terms of the Stipulation of Settlement to file by April 16, 2001, a new tariff Schedule 45 that will provide proposed rates, terms, and conditions of service for these customers. The settlement Parties propose by their agreement that the IDC customers will continue to receive service under Schedule 48 pending final Commission action on the required Schedule 45 filing.

- 30 Proposed Schedules 448 and 449 are similar in many respects and complementary in others. Most significantly, both preserve the right PSE's industrial customers currently have to enjoy the benefits of self-generated power. That is, there are no restrictions imposed that would limit an individual customer's ability to install facilities to generate part or all of its own power needs. Moreover, both Schedules 448 and 449 promote the development of distributed generation by allowing PSE's industrial customers to develop generation assets capable of providing excess power for sale to other Schedule 448 and 449 customers. In fact, as we discuss more fully in Part III of our Order, self-generation and generation of excess power for sale to others are central to the plans now being implemented by PSE's industrial customers who are parties to the settlement agreement.
- 31 The essential thrust of Schedules 448 and 449 is to broaden significantly the power supply options available to PSE's industrial customers. In addition to self-generation options, a customer who takes service under Schedule 448 may arrange for one or more power suppliers other than PSE to make available to PSE power sufficient to meet the customer's load. Under Schedule 448, PSE will purchase power from the power supplier(s) on terms and at rates negotiated by the customer and the power supplier. PSE then will resell the power to the customer under a so-called Buy/Sell Contract without any mark-up or additional charges for the commodity, except for applicable state and local utility taxes.
- 32 A Schedule 449 customer also may arrange for one or more power suppliers other than PSE to make available to PSE power sufficient to meet the customer's load. Under Schedule 449, however, customers will make their own arrangements with

power suppliers and will enter contracts directly with those power suppliers for electricity that will be delivered over PSE's transmission and distribution facilities.

- 33 Aside from the different power supplier contractual arrangements described above, Schedules 448 and 449 essentially are identical in their terms. Schedule 448 and 449 customers both are given the flexibility to select their own power suppliers and to make power supply arrangements that best meet their individual needs. Neither Schedule 448 nor Schedule 449 places any restriction on the customers' current right to construct and rely on self-generation for part or all of their power needs. A customer under either rate schedule can arrange with its respective power supplier(s) to remarket power that exceeds the customer's load. A customer who operates power generation facilities that produce more power than it needs to serve its own load, or to meet any scheduled deliveries to an entity other than PSE, can sell that power to PSE, or PSE will remarket the excess power for the customer. If a power supplier fails to meet its obligations, or if a customer's self-generation fails to operate as scheduled, PSE will make commercially reasonable efforts to provide replacement power.
- 34 Under both Schedule 448 and Schedule 449, PSE will provide transmission service and applicable ancillary services, on a nondiscriminatory basis, under PSE's Open Access Transmission Tariff (OATT), as approved by the Federal Energy Regulatory Commission. PSE will provide distribution service to Schedule 448 and 449 customers under PSE's tariff Schedule 80, also on a nondiscriminatory basis. Neither Schedule 448 nor Schedule 449 customers will be subject to transmission or generation stranded costs.¹⁸ Under the settlement agreement PSE waives any right it may have to recover such costs from any of its ratepayers, to the extent the costs relate to Schedule 448 or Schedule 449 customers.
- 35 Finally, in this brief summary of the settlement terms, we emphasize that the Parties' settlement agreement promises to bring composure and relieve the contentiousness that has characterized the relationships between PSE and many of its industrial customers under Schedule 48 and the Special Contracts. In addition to resolving this complaint docket, the settlement agreement would resolve three other dockets

¹⁸ "Stranded costs" are determined on a case-by-case basis. In general, the term refers to costs a company with a *de jure* or *de facto* monopoly in a particular service territory prudently incurs and is ordinarily allowed to recover under traditional forms of utility regulation, but that may become unrecoverable if the industry is deregulated so that the utility's historic customers are given access to competitive markets.

pending before the Commission on complaints by various of PSE’s Special Contract customers, and PSE’s Complaint against Schedule 48 customers and one Special Contract customer in Case No. 01-2-03801-0SEA, now pending in the Superior Court for the State of Washington, King County. The settlement agreement would effect a comprehensive release of claims against PSE by Complainants and Intervenors in Docket Nos. UE-001952 and UE-001959 (Consolidated) insofar as those claims relate to the business relationships between PSE and these customers under Schedule 48 and the Special Contracts.

III. Discussion and Decision.

A. Governing Statutes and Rules.

36

The following statutory provisions and rules are most central to our discussion and decision:

RCW 80.01.040 General Powers and Duties of Commission.

The utilities and transportation commission shall:

* * *

(3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities; including, but not limited to, electrical companies

80.28.010 Duties as to rates, services, and facilities

(1) All charges made, demanded or received by any . . . electrical company . . . for . . . electricity . . . , or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient.

(2) Every . . . electrical company . . . shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.

(3) All rules and regulations issued by any . . . electrical company . . . affecting or pertaining to the sale or distribution of its product, shall be just and reasonable.

80.28.020 Commission to fix just, reasonable, and compensatory rates.

Whenever the commission shall find, after a hearing had upon its own motion, or upon complaint, that the rates or charges demanded, exacted, charged or collected by any . . . electrical company. . . for . . . electricity . . ., or in connection therewith, or that the rules, regulations, practices or contracts affecting such rates or charges are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order.

37 We consider whether to approve the settlement agreement in the context of these statutes. We consider other statutes on specific points as the need arises in our analysis. The Commission conducted two days of hearing and inquired of witnesses and each Party's counsel with respect to various aspects of the settlement that bear most directly on whether the settlement agreement, if adopted, would produce results that are in the public interest and that produce rates, terms, and conditions of service that are fair, just, reasonable, and sufficient. Our discussion of the essential points follows below.

B. Procedural Issues

38 Four Schedule 48 customers, King County, AT&T, WorldCom, and Qwest are not signatories to the Stipulation of Settlement. AT&T, WorldCom, and Qwest did not seek intervention in Docket Nos. UE-001952 and UE-001959 (Consolidated), or in any of the related dockets addressed under the settlement agreement.

39 AT&T, WorldCom, and Qwest's rights are preserved under the settlement agreement. Under the terms of the settlement agreement, PSE is required to file a new tariff

schedule (*i.e.*, Schedule 45) by April 16, 2001, to address the needs of these customers that the Stipulation of Settlement refers to as the Internet Data Center or IDC class. AT&T, WorldCom, and Qwest will have the opportunity to seek intervention and participation in whatever proceedings the Commission conducts in connection with PSE's filings. In the meantime, these customers remain on Schedule 48. Commission approval of the settlement agreement in no way compromises the rights of these parties to complain or otherwise seek relief in connection with any service they are entitled to receive from PSE under Schedule 48, or otherwise.

40 King County intervened late in these proceedings and filed a Response to Proposed Stipulation of Settlement and Request for Order on March 20, 2001. King County is not a signatory to the Stipulation of Settlement and is not a "settlement Party" as we use that term in our Order. Nevertheless, King County offered to not object to the settlement agreement and to withdraw from these proceedings—as it was requested to do by the settlement Parties—so long as its rights are not compromised by any approval of the settlement agreement by the Commission. *TR. 2329 (Mr. Woodward)*. Specifically, King County asks that the Commission make clear in any order approving the settlement agreement that "King County is not bound by the Stipulation of Settlement; that [nothing in any such Commission order] shall preclude King County from electing service under Schedules 448 or 449 by October 31, 2001; and . . . that King County retains its right to file its own complaint against Schedule 48." *TR. 2329-30 (Mr. Woodward)*. We find, for the reasons discussed below, that King County's requested conditions are reasonable. They are adequate to protect King County's procedural rights without causing any material change to the settlement agreement. We grant King County's request for leave to withdraw from its status as an Intervenor in these proceedings.

41 As previously discussed, the settlement Parties regard King County as not falling neatly into either the Large Customer or Small Customer class because it has high peak demand but low average demand. The Stipulation of Settlement would afford King County several options should it elect, and be permitted, to become a signatory. *Exhibit No. 1801 (revised) (Stipulation of Settlement at §§ 12.2.1 – 12.2.3)*. One option is that King County could elect to be classified as a Large Customer, if its load characteristics remained unchanged. Alternatively, the settlement Parties agreed among themselves that King County could opt to stay on Schedule 48 until it

terminates.¹⁹ At that time, King County would be able to return to core service, subject to the terms of Schedule 48 that would require King County to pay PSE's long-run resource costs and any incremental capacity costs associated with securing resources to serve King County's load requirements. The settlement Parties also agree among themselves that King County should have the option to be classified as a Small Customer, if King County commits to reducing its demands so that it meets the Stipulation of Settlement's definition of that customer class.

42 The Parties to the revised Stipulation of Settlement would leave these options intact except in one important way. The settlement Parties now would condition King County's ability to exercise the options it otherwise is afforded under the Stipulation of Settlement on its execution of that document, and purports to give the settlement Parties or, presumably, any of them, the right to refuse to allow King County to become a signatory. *Exhibit No. 1801 (revised) (Stipulation of Settlement §§ 1, 4.15, 4.3.3., 4.3.8, 12.2)*. It is not unreasonable that King County be required to sign the Stipulation of Settlement if it wishes to take advantage of the Stipulation's provisions without further process. However, if the revised sections of the Stipulation of Settlement that concern King County are intended to limit King County's rights to seek relief in proceedings before us, or to constrain Staff or Public Counsel from taking whatever positions they deem appropriate in any such proceedings, we reject these intended constraints. Although our concern may be unfounded in light of Section 18.9 of the Stipulation of Settlement,²⁰ we will condition our approval of the settlement agreement as King County requests to ensure its rights are protected.

43 We emphasize, too, that the eligibility requirements of Schedules 448 and 449 do not include any requirement that an otherwise eligible customer, such as King County, also be a signatory to the Stipulation of Settlement. The revised terms of the Stipulation of Settlement, however, at least raise the question whether the settlement Parties intend that they should have the ability to control King County's right to opt for service under either one of those Schedules. We here remove any doubt on this question and find that King County is a customer eligible to take service under

¹⁹ This option remains open to King County without regard to the Stipulation of Settlement. However, Schedule 48 will be terminated on October 31, 2001, under the terms of the settlement agreement and our Order here.

²⁰ Section 18.9 provides that: "[n]othing in this Stipulation dictates Staff's or Public Counsel's positions in future proceedings involving public service companies other than PSE, and/or with respect to entities not signatories to this Stipulation."

Schedule 448 and Schedule 449 in accordance with the Eligibility for Service provisions of those Schedules and that King County is not precluded by the settlement agreement, or our Order, from exercising its right to opt for such service on or after the effective date of Schedules 448 and 449. As a practical matter, whether or not King County later elects to become a signatory to the Stipulation of Settlement, it must exercise this option on or before October 31, 2001.

- 44 The Commission finds that the revised settlement agreement may affect the rights of King County in ways that are unacceptable. Moreover, under the terms of the revised Stipulation of Settlement, the Commission's ability to consider fully and fairly any subsequent complaint by King County with regard to Schedule 48 might be compromised if Staff and Public Counsel are limited in terms of the positions they might take with respect to any issues the Commission must decide. That would be contrary to the public interest.
- 45 The settlement Parties' uncertain treatment of King County stands in distinct contrast to their proposed treatment of the other Schedule 48 customers—the IDC customers—who are not parties to the settlement agreement. The IDC customers are promised the opportunity to participate in whatever proceedings the Commission undertakes in connection with the filing of Schedule 45 that PSE is required to make by April 16, 2001. The IDC customers' rights are protected not only by their ability to intervene in that proceeding, but also by the ability of Staff and Public Counsel to participate and take any position they find appropriate on any issues raised by PSE's Schedule 45 filing.
- 46 King County should be afforded no less opportunity than the other Schedule 48 customers who are not signatories to the Stipulation of Settlement to pursue its rights before the Commission. Accordingly, we expressly reject Section 12.2 of the Stipulation of Settlement, and any other provision included in the revised settlement agreement, to the extent that Section 12.2 or any other provision of the revised settlement agreement would limit in any way King County's ability to seek relief from the Commission in connection with the service it takes from PSE under Schedule 48, or otherwise. To the extent of any ambiguity in the Stipulation of Settlement in connection with the ability of Staff or Public Counsel to take principled positions with respect to any complaint King County might bring before us, our Order controls the question. Staff and Public Counsel must be free to advocate whatever positions are appropriate to their roles in any subsequent proceedings concerning

King County's service under Schedule 48, or its rights vis-à-vis our Order here. We condition our approval and adoption of the settlement agreement accordingly.

C. Substantive Issues

47 The Commission has reviewed the proposed settlement agreement carefully in the context of its full record in this proceeding, and has weighed the settlement agreement's provisions and effects against the statutory standards in Chapter 80 RCW. Several substantive issues were explored extensively in the Parties' briefs and during our settlement hearing. These issues warrant discussion here.

48 **1. Jurisdiction:** Although the Commission's jurisdiction is a matter defined by statute and is not something the Commission can affect by any action it may take, the Parties requested in Section 2.17 of their original filing that the Commission:

Find that marketers or other entities who sell power to Schedule 449 Customers, but who do not own, operate, or manage electric plant for hire within the State of Washington are not subject to regulation as electric utilities under Washington law as it exists as of the date of execution of this Stipulation, solely because of such sales to Schedule 449 Customers, whether or not such marketer or entity has a corporate affiliate that owns, operates, or manages electric plant for hire in the State of Washington.

49 Complainants argued that a conclusion of law by the Commission along these lines is essential to promote the competitive supply of electricity to those Special Contract and Schedule 48 customers who elect to take service under Schedule 449. *Complainants' Brief at 5.* Complainants' concern is that some potential power suppliers will be reluctant, or even refuse, to enter into contracts to sell power to Schedule 449 customers, absent the requested conclusion of law. This could include PSE's industrial customers who are planning to install and operate generating facilities to produce power in excess of their own needs.

50 It became clear at hearing that the Parties intended to request a conclusion of law on this point that is somewhat narrower than what the originally proposed language might imply. Thus, they proposed new language for Section 2.17 of the Stipulation

of Settlement to capture their intent. The proposed substitute language for Section 2.17 is as follows:

The Commission finds and concludes that the act of selling power to a Schedule 449 customer will not, by itself, subject that seller to the Commission's jurisdiction.

Exhibit No. 1801 (revised).

51 This new language captures more precisely the Parties' intent as expressed in Complainants' Brief in Support of Settlement:

The parties are seeking affirmation from the Commission that it will not regulate power marketers and Schedule 449 customers as public service companies, simply because they provide service under Schedule 449. Complainants do not believe that these transactions fall within the definition, meaning and application of "public service companies" under current law. A corporation providing electric service only becomes a public service company subject to Commission jurisdiction if it: 1) is an electric company as defined in RCW § 80.04.010; and 2) is "a public service corporation within the purview of the public service commission law."

Complainants' Brief at 5-6 (citations omitted). Other parties argue similarly. Staff Memorandum at 10-19; PSE Comments at 8-10.

52 Although we need not, and do not, endorse all of the arguments advanced in support of the Parties' request for the conclusion of law as originally stated, we do conclude that the simple act of selling power to a customer under Schedule 449 is not, by itself, sufficient to bring the seller within our jurisdiction.

53 **2. Obligation To Serve:** Just as the Commission cannot by its own act alter its jurisdiction, regulated companies and their customers cannot act by oral or written agreement to waive the protections afforded by the statutes that define our obligations. *RCW 80.28.010(9)*. Thus, we must consider whether the proposed relationships between PSE and its industrial customers under Schedules 448 and 449 satisfy PSE's obligation to serve under *RCW 80.28.110*.

54 RCW 80.28.110 provides in relevant part that:

Every . . . electrical company . . . engaged in the sale and distribution of . . . electricity . . . shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto, suitable facilities for furnishing and furnish all available . . . electricity . . . as demanded

Under proposed Schedules 448 and 449, PSE's eligible industrial customers assume direct responsibility to establish contractual relationships that will ensure power is available in sufficient quantity and quality to satisfy their requirements. The customers will be free to negotiate prices and terms tailored to their individual needs. Customers, for example, may enter into long-term contracts at favorable prices when market conditions make such contracts available and may negotiate flexible terms to accommodate changing needs. This contrasts to the arrangements under Schedule 48 and the Special Contracts whereby PSE is obligated to obtain power supplies for the customers, but customers must pay rates based on highly volatile spot market prices.

55 In addition, while the customers are responsible for obtaining their own power supplies through direct purchases (Schedule 449), indirect purchases (Schedule 448), or through self-generation, PSE is obligated to make all commercially reasonable efforts to provide replacement power, if such arrangements fail. *Exhibit 1801 (revised) (Stipulation at §§ 7.11, 7.13, 8.11, and 8.13)*. Schedule 448 and 449 customers will be curtailed on the same basis as other customers, consistent with the requirements of PSE's Schedule 80. *Exhibit 1801 (revised) (Stipulation at § 7.11 and 8.11)*.

56 Under Schedules 448 and 449, PSE remains obligated to provide adequate facilities and services necessary to furnish power to its industrial customers, including transmission, distribution, and ancillary services. *Exhibit 1801 (revised) (Stipulation at §§ 7.10 and 8.10)*. These services will be provided on a non-discriminatory basis and will continue to be subject to traditional cost of service rates.

57 We are satisfied, both by our consideration of the facts and circumstances discussed above, and by virtue of the agreement and support of the Parties to the settlement

agreement, that PSE will satisfy its statutory obligation to serve those customers who are eligible for service under Schedules 448 and 449.

58 **3. The Broader Public Interest:** Significantly, the arrangements proposed under the settlement agreement promise to promote the development of distributed generation (*i.e.*, power generation located at the site where it is used) by large industrial customers in PSE's service territory. ARCO, for example, already has plans underway to install generation not only to meet its own needs, but to provide excess power to the market, including other potential Schedule 448 or 449 customers. *Exhibit No. 1810 (Mark Woodward Affidavit of 3/27/01)*. Currently, ARCO has 26 MW of diesel generation in place and 73 MW of gas-fired turbine generators close to operational condition. Thus, ARCO soon will be able to self-generate in excess of its own load requirements that are approximately 80 MW at the peak. Over the longer term, ARCO plans to install cogeneration facilities using even larger and more efficient turbines with heat rates below 7,000 BTU/KWh. We take administrative notice that BP/ARCO filed before the Washington Energy Facility Site Evaluation Council on March 12, 2001, a Request To Initiate a Potential Site Study for the BP Cherry Point Cogeneration Project in Whatcom County, Washington. *Exhibit No. 1811 (Request To Initiate a Potential Site Study for the BP Cherry Point Cogeneration Project in Whatcom County, Washington)*. The request indicates BP/ARCO may formally apply to install up to 750 MW of generation.

59 Boeing witness, Mr. Dan Summers, testified that his company is not only cutting demand through aggressive conservation efforts, but also plans to install approximately 42 MW of self-generation capacity in the near term. *TR. 2239-40*. Through conservation, Boeing already has reduced its demand by 14 percent and anticipates lowering its demand by 25 percent to 64 MW. This compares to historic load requirements in the range of 85 MW. Thus, Boeing anticipates that it will self-generate approximately two-thirds of its power requirements in the post-settlement period.

60 Equilon's witness, Suzanne Hahn, testified that her company currently is using diesel generators to meet its load requirements. *TR. 2244*. Equilon plans to replace this self-generation with gas-fired turbine facilities adequate to meet its full load of 30 to 35 MW by June 2001. Over the longer term, Equilon plans to build a more efficient merchant power plant, or will purchase power from an independent merchant plant.

Ms. Hahn testified that Schedule 449 “is very important to [Equilon]” if the company is to achieve its long-term goals. *TR. 2245.*

- 61 Tesoro ceased purchasing electricity from PSE on January 24, 2001, other than 1-2 MW of power it requires to supplement temporary diesel generators. *Exhibit No. 1808 (Russell Crawford Affidavit of 3/26/01).* Tesoro’s full load requirements are approximately 20 MW. Tesoro plans to install gas-fired generation facilities in the near-term and ultimately expects to install a more permanent self-generation solution to its power needs. *Id.*
- 62 Bellingham Cold Storage is acquiring gas-fired reciprocating generation with heat rates of approximately 10,000 BTUs/KWh to cover much, if not all, of its 10 MW load. *Exhibit No. 1809 (Douglas C. Thomas Affidavit of 3/26/01).* Since BCS’s load is seasonal, it is expected that there will be times during the year when the company’s generation capacity exceeds its energy demand. The excess power thus available could be sold on the open market.
- 63 By approving Schedules 448 and 449, we enhance the ability of PSE’s customers who are planning self-generation or participation in distributed generation projects to make sound investments. Industrial customers who wish to capture economies of scale by installing generation capacity that exceeds their own demand will have more flexibility to market excess power under Schedules 448 and 449 and will receive accurate price signals from the power supply market against which to measure the viability of planned projects. Customers who generate more power than what is required to meet their own load may take advantage of PSE’s commitment to purchase or remarket such power. Customers also will have the option to negotiate suitable arrangements for remarketing excess power they procure from each other or from independent power suppliers.
- 64 Additional sources of supply in our region and flexible marketing arrangements should serve to increase electric reliability and foster competition in Washington and, arguably, throughout the Western States power market. In light of the pressing need for additional power generation capacity in our region and the desirability of more diversity in ownership and geographical distribution of power resources in Washington State, we find that promoting these developments through approving the settlement agreement provides significant benefits to the broader public interest.

65 The Commission recognizes that the market arrangements that would be enabled under Schedule 449 (*e.g.*, direct retail power sales by independent marketers) and promoted by both Schedule 448 and 449 (*i.e.*, self-generation) may have state and municipal tax consequences. Certainly, our direct jurisdiction does not extend to the administration of the laws governing taxation. Nevertheless, the Commission is charged to regulate in the public interest, and potential effects on tax receipts must be considered in that context. We explored this question in some detail during our settlement hearing.

66 The electricity business in Washington is subject to a variety of forms of taxation. *Exhibit No. 1802*. On close examination at hearing, it became apparent that Commission approval of the settlement agreement could affect the form of taxation to which these customers' energy supply is subject, but may not significantly change the total taxes collected. Self-generators, for example, do not pay that portion of the state and municipal Public Utility Tax (PUT)²¹ that otherwise would be included as part of the cost of their power purchases from PSE. However, they continue to pay the PUT on the charges for any power back-up, distribution backup, or other services purchased from PSE. Moreover, while self-generators avoid the PUT, they will pay taxes on natural gas or diesel fuel used to generate power.²² In addition, the facilities and plant used for power generation constitute property on which property taxes would be assessed.²³ A comparison between tax revenue generated by the PUT and the tax revenue generated by the various taxes relevant to self-generation depends on specific circumstances. *See, e.g., Exhibit No. 1809 (Douglas C. Thompson Affidavit of 3/26/01); Exhibit No. 1810 (Mark Woodward Affidavit of 3/27/01)*. We note, however, that even though our approval of the settlement agreement may accelerate the development of distributed generation and promote economies of scale in that development, the shift to self-generation by these customers *already* is allowed, is occurring, and appears to be the dominant strategy these customers plan to employ, regardless of our decision in this Order.

67 Turning our public interest focus to PSE's residential and commercial customers, we consider what potential effects the settlement agreement may have on their service

²¹ Authorized under chapter 80.16 RCW and RCW 35.21.860 - 870.

²² Authorized under RCW 82.12.022, RCW 82.14.230, RCW 82.12.020, and RCW 82.14.030.

²³ Authorized under chapter 84.12 RCW.

and rates. The Commission's approvals of Schedule 48 and PSE's Merger Rate Plan turned, in part, on assurances that residential and commercial customers would be protected as PSE adjusted its energy supply portfolio to reflect the move to non-core status by most of PSE's industrial customers.²⁴ This was ensured not only by the Commission's approval of transition charges that the non-core customers would be required to pay under Schedule 48, but also by a "guarantee" against cost shifting to PSE's core customer classes. In addition, in the merger docket, the Commission approved a five-year rate plan period through December 31, 2001, during which PSE would not file a general rate case. These protections are preserved under Section 6.4 of the Stipulation of Settlement. Section 6.4 provides that:

All Parties agree that this Stipulation does not alter any rights or obligations under the Schedule 48 guarantee against cost-shifting and the provisions of the PSE Merger Rate Plan (Consolidated Docket Nos. UE-951270 and UE-960195). This Stipulation preserves intact all the protections afforded to Core Customers of PSE under the Schedule 48 guarantee and the provisions of the PSE Merger Rate Plan (Consolidated Docket Nos. UE-951270 and UE-960195).

68 The five-year rate plan period established via our approval of the PSE Merger Rate Plan ends on December 31, 2001. Under the settlement agreement PSE still may not file a general rate case with a proposed effective date prior to January 1, 2002. If PSE does file a general rate case, Small Customers who wish to return to PSE's core customer ranks must exercise their one-time option to do so within 30 days after PSE's filing. *Stipulation of Settlement Section 12.3*. Alternatively, if PSE does not file a general rate case before then, each Small Customer must exercise its option by June 1, 2002. Either way, as Staff argues, PSE should be able to plan its resource requirements in an orderly fashion to minimize any potential adverse effects on other core customers. *Staff Memorandum at 7*.

²⁴ *WUTC v. Puget Sound Power & Light Co., Docket No. UE-960696, Commission Order Approving Schedule 48 With Conditions (October 31, 1996); In the Matter of the Application by Puget Sound Power & Light Co. and Washington Natural Gas Co. for an Order Authorizing Merger, Docket Nos. UE-951270 and UE-960195 (Consolidated), Fourteenth Supplemental Order Accepting Stipulation; Approving Merger (February 5, 1997).*

- 69 Thus, under the settlement agreement's time-lines, protections afforded to PSE's residential and commercial customers by our prior Orders are unaffected. Looking beyond the short term, during which the status quo is preserved for core customers, PSE already has the right to file a general rate increase to be effective as early as January 1, 2002. Whenever PSE files such a case, however, the Commission will have up to ten months to review the company's proposal, and ensure that all customers continue to pay rates that are fair, just, reasonable, and sufficient, taking into account the cost causation principles by which any increased costs of service, including any prudently incurred power costs, are to be allocated among customer classes.
- 70 The settlement agreement resolves any questions related to potential claims for stranded generation or transmission costs associated with service PSE has provided, or will provide, to non-core customers. PSE waives all claims to recover any such costs from any customer class. *Stipulation of Settlement §§ 7.17 and 8.17.*
- 71 In conclusion, the settlement promises to benefit the state by increasing the availability, reliability, and diversity of ownership and location of power resources. The settlement promises to end what has been a costly and vexing set of disputes between PSE and most of its major industrial customers. PSE's other customers are not affected adversely by the settlement agreement. Their present rates will remain unaffected through the end of the current five-year rate plan period. Their future rates will be subject to careful scrutiny by the Commission in PSE's next general rate proceeding. All customers are protected by PSE's waiver of any right it may have to recover generation and transmission stranded costs related to service provided to non-core customers. On balance, considering all of these factors in light of the evidence before us, we find that the proposed settlement agreement is in the public interest.

FINDINGS OF FACT

- 72 Having discussed above all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the ultimate decisions of the Commission are incorporated by this reference.

- 73 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including electric companies.
- 74 (2) The rates, terms, and conditions of service under PSE's tariff Schedule 448 (Appendix 4 to this Order) are fair, just, reasonable, and sufficient.
- 75 (3) The rates, terms, and conditions of service under PSE's tariff Schedule 449 (Appendix 5 to this Order) are fair, just, reasonable, and sufficient.
- 76 (4) The rates, terms, and conditions of service under PSE's Small Customer Special Contract (Appendix 3 to this Order) are fair, just, reasonable, and sufficient.
- 77 (5) Under the settlement agreement, PSE will satisfy its statutory obligation to serve those customers who are eligible for service under Schedules 448 and 449.
- 78 (6) Approving Schedules 448 and 449 should promote the development of generation facilities by PSE's industrial customers who are eligible to take service under those Schedules, and others. In light of the pressing need for additional power generation capacity in our region and the need for more diversity in ownership and location of power resources in Washington State, we find that promoting these developments through approving the settlement agreement provides significant benefits to the broader public interest.
- 79 (7) The settlement agreement (Appendices 1 through 5 to this Order), considered as a whole, fully and fairly resolves the issues pending in this proceeding (*i.e.*, Docket Nos. UE-001952 and UE-001959 (Consolidated)) and in related proceedings in Docket Nos. UE-000735, UE-001014, UE-001616, UE-010038, and UE-010046, and is in the public interest.

CONCLUSIONS OF LAW

80 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following

summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

- 81 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and all parties to, these proceedings. *Title 80 RCW.*
- 82 (2) PSE is a “public service company” and an “electrical company” as those terms are defined in RCW 80.04.010, and as those terms otherwise may be used in Title 80 RCW. PSE is engaged in Washington State in the business of supplying utility services and commodities to the public for compensation.
- 83 (3) The rates, terms, and conditions of service under PSE’s Schedule 448 (Appendix 4 to this Order) are fair, just, reasonable, and sufficient. *RCW 80.28.010.*
- 84 (4) The rates, terms, and conditions of service under PSE’s Schedule 449 (Appendix 5 to this Order) are fair, just, reasonable, and sufficient. *RCW 80.28.010.*
- 85 (5) The rates, terms, and conditions of service under PSE’s Small Customer Special Contract (Appendix 3 to this Order) are fair, just, reasonable, and sufficient. *RCW 80.28.010.*
- 86 (6) Under the terms of the settlement agreement, PSE will satisfy its statutory obligation to serve those customers who are eligible for service under Schedules 448 and 449. *RCW 80.28.110.*
- 87 (7) The Commission finds and concludes that the act of selling power to a Schedule 449 customer will not, by itself, subject that seller to the Commission’s jurisdiction. *RCW 80.01.040(3); RCW 80.04.010; RCW 80.28.120.*
- 88 (8) PSE’s tariff Schedule 48 should be terminated on October 31, 2001, and PSE’s customers who take service under Schedule 48 should be offered service under other applicable tariff Schedules consistent with the terms of this Order. *RCW 80.28.010; RCW 80.28.020.*

- 89 (9) The settlement agreement (Appendices 1 through 5 to this Order), considered as a whole, fully and fairly resolves the issues pending in this proceeding (*i.e.*, Docket Nos. UE-001952 and UE-001959 (Consolidated)) and in related proceedings in Docket Nos. UE-000735, UE-001014, UE-001616, UE-010038, and UE-010046, and is in the public interest. The settlement agreement establishes prospective rates, terms, and conditions of service that meet all relevant requirements of law, and that are in the public interest. Accordingly, it is in the public interest to approve the settlement agreement in accordance with its terms and the requirements of this Order. *RCW 80.01.040*.
- 90 (10) Consistent with the terms of settlement, each of the following proceedings should be dismissed with prejudice by separate orders:
- *Georgia-Pacific West, Inc. v. Puget Sound Energy, Inc.*, Docket No. UE-000735
 - *Bellingham Cold Storage Company and Georgia-Pacific West, Inc. v. Puget Sound Energy, Inc.*, Docket No. UE-001014
 - *Georgia-Pacific West, Inc. v. Puget Sound Energy, Inc.*, Docket No. UE-001616
- 91 (11) Consistent with the terms of settlement and our Order below that tariff Schedule 48 is terminated effective October 31, 2001, we conclude that the Commission's suspension of PSE's filing in Docket No. UE-010046 should be lifted, that PSE is authorized to withdraw its filing in Docket No. UE-010046; we also conclude that the proceedings in Docket No. UE-010046 should be closed as of the date of this Order.
- 92 (12) Consistent with the terms of settlement and our Order below approving Schedule 448, as appended to this Order (Appendix 4), the Commission concludes that its suspension of PSE's filing in Docket No. UE-010038 should be lifted and PSE should be authorized, and required, to withdraw its filing of a version of Schedule 448 that is different from the version of Schedule 448 approved and adopted by this Order; we also conclude that the proceedings in Docket No. UE-010038 should be terminated as of the date of this Order.

- 93 (13) Schedule 48 customers who are not signatories to the Stipulation of Settlement or City of Anacortes and Olympic Pipeline Stipulation of Settlement are not bound by the terms of those agreements; are not precluded by this Order from electing service under Schedules 448 or 449, if otherwise eligible for such service under the terms of those Schedules as approved by this Order; and their rights to file complaints against PSE or otherwise to seek action by the Commission in connection with any service they receive from PSE under Schedule 48 are unaffected by this Order.

ORDER

94 THE COMMISSION ORDERS That the settlement agreement attached to this Order as Appendices 1 through 5, is approved and adopted as part of this Order as if set forth fully in the body of this Order, subject to the condition that the rights of current Schedule 48 customers who are not signatories to the settlement agreement are in no way compromised or affected by our approval and adoption of the settlement agreement, as more fully discussed in the body of this Order at paragraphs 38-45, and 91.

95 THE COMMISSION ORDERS FURTHER That King County's request for leave to withdraw from its status as an Intervenor in these proceedings is granted.

96 THE COMMISSION ORDERS FURTHER That Puget Sound Energy, Inc., is authorized and required to file any revised tariff sheets to its Tariff WN U-60 that are necessary to effectuate the terms of this Order. Any compliance filing tariff sheets must bear an effective date that will allow the Commission an appropriate interval after filing to review the tariff sheets and determine whether they conform in all respects to the requirements of this Order.

97 THE COMMISSION ORDERS FURTHER That the Amended Complaint in Docket No. UE-001952 and the Petition in Docket No. UE-001959, having been resolved consistent with the terms of the settlement agreement attached to this Order as Appendices 1 through 5, are dismissed with prejudice.

- 98 THE COMMISSION ORDERS FURTHER That Puget Sound Energy, Inc.'s Special Contracts with ARCO, Bellingham Cold Storage, and Georgia-Pacific shall remain effective until midnight on October 31, 2001, unless terminated earlier as provided under the settlement agreement attached to this Order as Appendices 1 through 5.
- 99 THE COMMISSION ORDERS FURTHER That Schedule 48 is terminated effective at midnight on October 31, 2001, and that, from and after the date of this Order, Puget Sound Energy, Inc., is foreclosed from providing service under its tariff Schedule 48 to any new applicants for service.
- 100 THE COMMISSION ORDERS FURTHER That Puget Sound Energy, Inc., shall file no later than April 16, 2001, a tariff Schedule 45 as provided by, and consistent with, the provisions of Section 10 of the Stipulation of Settlement (Appendix 1 to this Order).
- 101 THE COMMISSION ORDERS FURTHER That it retains jurisdiction to effectuate this Order's terms and requirements.

DATED at Olympia, Washington, and effective this 5th day of April 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

DOCKET NOS. UE-001952 and UE-001959

APPENDICES 1 - 5

DOCKET NOS. UE-001952 and UE-001959

APPENDIX 1

STIPULATION OF SETTLEMENT

DOCKET NOS. UE-001952 and UE-001959

APPENDIX 2

**CITY OF ANACORTES AND OLYMPIC PIPELINE
STIPULATION OF SETTLEMENT**

DOCKET NOS. UE-001952 and UE-001959

APPENDIX 3

SMALL CUSTOMER SPECIAL CONTRACT

DOCKET NOS. UE-001952 and UE-001959

APPENDIX 4

SCHEDULE 448

And

FORM OF SERVICE AGREEMENT

DOCKET NOS. UE-001952 and UE-001959

APPENDIX 5

SCHEDULE 449

And

FORM OF SERVICE AGREEMENT