

1 **BEFORE THE**  
2 **WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

3  
4 AIR LIQUIDE AMERICA  
5 CORPORATION, AIR PRODUCTS AND  
6 CHEMICALS, INC., THE BOEING  
7 COMPANY, CNC CONTAINERS,  
8 EQUILON ENTERPRISES, LLC,  
9 GEORGIA-PACIFIC WEST, INC.,  
10 TESORO NORTHWEST CO., and THE  
11 CITY OF ANACORTES,  
12 WASHINGTON,

Complainants,

v.

13 PUGET SOUND ENERGY,

Respondent.

14 *In re:* Petition of Puget Sound Energy, Inc.  
15 for an Order Reallocating Lost Revenues  
16 Related to any Reduction in the Schedule  
17 48 or G-P Special Contract Rates

DOCKET NO. UE-001952  
(consolidated)

DOCKET NO. UE-001959  
(consolidated)

**MOTION OF PUGET SOUND  
ENERGY, INC. TO COMPEL  
DEPOSITIONS**

18 Respondent Puget Sound Energy, Inc. (PSE), by and through its counsel, moves the  
19 Commission for an order compelling the attendance at deposition of those individuals  
20 already identified, and those yet to be identified, by Complainants herein as witnesses in this  
21 matter. PSE timely served a notice upon all parties scheduling witnesses for depositions on  
22 December 26 and 27, 2000. Counsel for Complainants refuses to make these witnesses  
23 available on these dates or at any time prior to the Phase One Hearing. PSE's motion seeks  
24 an order compelling Complainants to produce their witnesses for deposition prior to  
25 December 29, 2000. In the alternative, PSE seeks either: 1) a continuance of the Phase One  
26 Hearing until such time as the depositions expeditiously may be completed, or 2) an order

1 excising from the record any affidavits, filed with Complainants' amended complaint that  
2 were executed by any witnesses not presented for their noticed depositions, and forbidding  
3 Complainants from calling witnesses at the December 29, 2000 hearing..

4  
5 In its December 18, 2000 Prehearing Conference Order and Notice of Hearing (the  
6 "Order"), the Commission, at Complainants' request, set an expedited discovery schedule  
7 leading up to the Phase One Hearing in this matter, which the Commission set for December  
8 29, 2000. On December 20, 2000, PSE served upon Complainants' counsel, among other  
9 things, a notice setting depositions for the following individuals: Keith D. Canon, Randall  
10 B. Clancy, James W. Cunningham, Keith C. Warner, Matthew G. Franz, Mark Darnell, H.  
11 Dean Maxwell and John Does Nos. 1-5.<sup>1</sup> See ¶ 1 and Exhibit A to the Declaration of Stan  
12 Berman, filed herewith. Each of these named individuals submitted a sworn affidavit in  
13 support of the amended complaint, or, in the case of H. Dean Maxwell, Mayor of Anacortes,  
14 Washington, actually signed the amended complaint in this matter.

15 By having submitted sworn affidavits and by having signed the amended complaint,  
16 each of these individuals is a witness-in-fact for Complainants in this matter, whether or not  
17 they intend to appear in person at the Phase One Hearing.<sup>2</sup> As such, and under WAC 480-  
18 09-480(6)(b), PSE is entitled to take their depositions. Such depositions are critical to  
19 PSE's ability to test the accuracy and veracity of the witnesses' affidavits as well as the  
20 allegations set forth in the amended complaint. Like any other respondent appearing before  
21 this body, PSE is entitled to certain procedural safeguards, including the opportunity to

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22 <sup>1</sup> These John Doe depositions were scheduled in the anticipation of Complainants  
23 identifying witnesses in addition to those who submitted affidavits or signed the amended  
24 complaint.

25 <sup>2</sup> At a minimum, these individuals are "prospective witnesses" as that term is used in  
26 WAC 480-09-480(6)(b).

1 conduct fair and meaningful discovery *before* the Commission hears and acts upon evidence  
2 that may affect PSE's rights. Counsel for Complainants, however, disagrees.

3  
4 On December 20, 2000, counsel for Complainants left a voice mail for undersigned  
5 counsel indicating an willingness to make the above-named witnesses available for the  
6 noticed depositions. *See* Berman Decl., ¶ 3. Undersigned counsel returned this call to  
7 further discuss the issue. *Id.* During this telephone conference, Complainants' counsel  
8 repeated the position that the named witnesses would not be made available prior to the  
9 December 29, 2000 Phase One Hearing. *Id.* Complainants' counsel stated that PSE did not  
10 need to depose these witnesses because PSE would have the right to question them at the  
11 Phase One Hearing. *Id.*

12 One of the primary reasons given by Complainants' counsel for their position was the  
13 impending holiday period. *Id.*<sup>3</sup> Undersigned counsel suggested that PSE's deposition rights  
14 could be preserved and that the witnesses' holiday plans could be respected by the parties  
15 agreeing to a short continuance of the Phase One Hearing date. *Id.*, ¶ 6. Complainants'  
16 counsel refused to agree to a continuance. *Id.*

17 Having successfully urged the Commission to set the Phase One Hearing on an  
18 expedited schedule, Complainants now seek to take advantage of that shortened time frame  
19 to foreclose PSE's right to discover, in full compliance with the Commission's rules, the  
20 bases for their claim to emergency rate relief. The Commission should not countenance  
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22 <sup>3</sup> Counsel for complainants also suggested that PSE's deposition notice failed to  
23 comply with certain technical requirements of WAC 480-09-480(6)(b). Given the unusual  
24 circumstances posed by the extremely accelerated hearing and discovery schedule in this  
25 matter, PSE believes that the Commission should exercise the discretion granted it in WAC  
26 480-09-010(3) and waive any technical requirements that have been rendered impracticable  
or impossible to meet.

1 such gamesmanship. Besides this point of fundamental fairness and due process, there are  
2 other reasons why the noticed depositions should go forward.

3 First, Complainants' counsel is simply wrong when she suggests that PSE's rights  
4 and interests will be adequately protected by its ability to question these individuals at the  
5 Phase One Hearing. Adequate cross examination of these witnesses will require adequate  
6 preparation. That preparation cannot depend solely upon a review of the self-serving  
7 affidavits submitted by these individuals. The facts underlying these affidavits, as well as  
8 facts relevant to PSE's side of the story, need to be drawn out of these witnesses in a  
9 discovery setting, unhampered by the time and other constraints imposed upon the parties in  
10 the context of an evidentiary hearing before the Commission. Without the benefit of  
11 deposition discovery, PSE will require far more time to examine these witnesses at the  
12 Phase One Hearing than otherwise. PSE does not believe that the Commission will look  
13 favorably upon witness examinations made unnecessarily long due to Complainants' refusal  
14 to produce their witnesses for deposition.  
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16 Second, Complainants' counsel has refused, thus far, to provide undersigned counsel  
17 with a list of witnesses that Complainants intend to call at the Phase One Hearing. If any of  
18 the above-named witnesses are not presented at the hearing, PSE will be unduly prejudiced  
19 by the appearance of those persons' affidavits in the record without the corresponding cross-  
20 examination of those persons also appearing.

21 For the foregoing reasons, PSE respectfully requests an order compelling the  
22 attendance at deposition of the above-named and any John Doe witnesses on the dates noted  
23 by PSE. In the alternative, PSE seeks either: 1) a continuance of the Phase One Hearing  
24 until such time as the depositions expeditiously may be completed, or 2) an order excising  
25 from the record any affidavits filed with Complainants' amended complaint that were  
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1 executed by any witnesses not presented for their noticed depositions, and forbidding  
2 Complainants from calling witnesses at the December 29, 2000 hearing.

3 Date: December 21, 2000  
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5 HELLER EHRMAN WHITE & MCAULIFFE LLP  
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7  
8 Stan Berman  
9 Todd Glass  
10 701 Fifth Avenue, Suite 6100  
11 Seattle, Washington 98104  
12 Ph: (206) 447-0900  
13 Fax: (206) 447-0849

14 STOEL RIVES, LLP  
15 James Van Nostrand  
16 600 University Street, Suite 3600  
17 Seattle, WA 98101  
18 Ph: (206) 624-0900  
19 Fax: (206) 386-7500

20 Attorneys for Puget Sound Energy, Inc.  
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