

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UE-200027

**BRIEF SUPPORTING FULL
SETTLEMENT STIPULATION
AND AGREEMENT**

I. INTRODUCTION

1 Pursuant to WAC 480-07-740(3)(a), this brief is submitted in support of the Settlement Stipulation and Agreement (“Settlement Agreement”) entered into by and between Puget Sound Energy (“PSE”), the regulatory staff of the Washington Utilities and Transportation Commission (“Commission Staff”), and the Public Counsel Unit of the Washington Office of the Attorney General (“Public Counsel”). The parties are hereinafter collectively referred to as “Settling Parties” and each individually as “Settling Party.”

2 The Settlement Agreement presented to the Commission in this case is a “full settlement,” as that term is defined in WAC 480-07-730(1), because the Settlement Agreement is entered into by all parties and resolves all disputed issues in the case.

3 The Settling Parties request that the Commission review the Settlement Agreement and this brief supporting the Settlement Agreement and approve the terms of the Settlement Agreement in their entirety and without condition.

4 Consistent with the requirements of WAC 480-07-740(2)(b), (2)(e) and (3)(b), the Settling Parties request that review of the Settlement Agreement proceed on a timetable for

less complex matters. The Settling Parties will present one or more witnesses to testify in support of the Settlement Agreement if the Commission determines a hearing will assist the Commission to decide whether to approve the Settlement Agreement.

II. SCOPE OF DISPUTE

5 On April 2, 2020, the Commission issued a complaint against PSE addressing
alleged billing irregularities, after finding probable cause existed to issue the complaint. The
complaint was issued in response to two customer complaints and a subsequent Commission
Staff Investigation Report.

6 The complaint addressed two separate categories of improper billing: (i)
disconnection of service due to misrouting of payments by an automated system that
resulted in improper security deposits, late fees and reconnection charges to customers; and
(ii) treble damages charged on customer bills for unlawful tampering with, unauthorized
connection, or diversion of utility services, prior to PSE obtaining a court award for treble
damages.

7 In the complaint, Commission Staff recommended that PSE be required to refund or
credit customers for improper billing, in those cases where PSE had not already done so.
The complaint further recommended that the Commission require PSE to pay a penalty of
\$72,000.

8 PSE disputed some of the factual allegations in the Commission Staff Investigation
Report. PSE further disputed the penalty recommendation.

9 PSE, Commission Staff and Public Counsel participated in an Early Settlement
Conference on May 28, 2020. The Settling Parties reached a settlement in principle and
notified the Commission that a settlement in principle had been reached.

10 The Settling Parties agreed to file the Settlement Agreement and supporting documentation with the Commission by July 10, 2020. The Commission extended this filing deadline to July 24, 2020, with consent of all Parties.

III. SCOPE OF THE SETTLEMENT AGREEMENT AND ITS PRINCIPAL ASPECTS

A. Disconnection of Service and Improper Fees Due to Misrouting of Payments

11 The Settlement Agreement clarifies several points in the Commission Staff Investigation Report regarding payments routed to the wrong accounts, including the following:

- PSE did not intentionally route payments to the wrong accounts. The billing irregularities and errors stemmed from technological errors with Neustar, a third-party application used to identify customer accounts by customer phone numbers. When PSE became aware that Neustar had misrouted payments it discontinued use of Neustar.
- Although the Commission Staff Investigation Report identifies Bill Matrix as the third-party application that caused payments to be routed to the wrong accounts, it was Neustar, not Bill Matrix, that caused the improper routing of payments.
- Customers were not solely required to enter a phone number to identify an account for payment. A customer could also contact PSE's customer service agent to look up their account number before paying via the automated telephone system.

12 The Settlement Agreement provides that PSE will reverse the amounts inadvertently but inappropriately charged to customer accounts, including any improper reconnection charges, security deposits or late fees with interest. The Settling Parties agree that the refund amounts in the Commission Staff Investigation Report may need to be adjusted. The

Settling Parties agree that they will work together to identify the proper amounts to be refunded or credited to customers.

13 As part of the Settlement Agreement, PSE agrees to pay \$72,000 in penalties in settlement of the allegations in the complaint stemming from the inadvertent, but improper, routing of payments to the wrong accounts by PSE's telephonic billing system.

B. Treble Damages for Improper Tampering and Diversion of Utility Service

14 The Settlement Agreement restates the prior agreement by Commission Staff and PSE regarding the process PSE will use to seek treble damages from customers for tampering with meters, unauthorized connections, or diversion of utility service pursuant to RCW 80.28.240. PSE will not charge customers for treble damages without first obtaining either a court award of treble damages or entering into a settlement agreement with the customer for treble damages.

15 In the Settlement Agreement, PSE agrees to refund or credit treble damages to customers who paid or were billed treble damages prior to PSE obtaining a court award or entering into a settlement for treble damages. The refund or credit amounts set forth in the Commission Staff Investigation Report may need to be adjusted, and the Settling Parties agree to work together to identify the proper amounts. The Settlement Agreement also makes clear that PSE may pursue treble damages from these customers through a court proceeding or settlement.

16 There are no penalties imposed for the treble damages allegations, consistent with the recommendation in the Commission Staff Investigation Report.

17 The Settling Parties agree to submit the Settlement and supporting documents to the Commission by July 24, 2020, and to make available witnesses to testify if the Commission determines a hearing is necessary.

IV. THE SETTLEMENT AGREEMENT IS IN THE PUBLIC INTEREST AND SHOULD BE APPROVED

A. Joint Position

18 Washington law and Commission precedent strongly support and encourage “the resolution of contested issues through settlement when doing so is lawful and consistent with the public interest.”¹ The Commission should approve a settlement when doing so is lawful, the settlement terms are supported by an appropriate record, and the result is consistent with the public interest in light of all the information available to the Commission.²

19 The Settlement Agreement in this case meets the criteria set forth above and should be approved. The Settlement Agreement is lawful, it is supported by an appropriate record and is consistent with the public interest. Despite the disruptions caused by COVID-19, the Settling Parties engaged in early settlement communications resulting in an efficient and expedited resolution of this matter that avoids a prolonged proceeding, reduces costs and conserves the resources of the parties and the Commission.

20 The Settling Parties recommend that the Commission approve the Settlement, as filed, as expeditiously as possible.

¹ See RCW 34.05.060 (informal settlement of matters that may make unnecessary more elaborate proceedings under this chapter is strongly encouraged); WAC 480-07-700, -740–750; *WUTC v. Cascade Natural Gas Co.*, Docket UG-060256, Order 05 ¶ 24 (Jan. 12, 2007) (internal citations omitted); see also *WUTC v. Verizon Northwest, Inc.*, Docket UT-061777, Order 01 ¶ 11 (June 30, 2008).

² See WAC 480-07-750(2); *WUTC v. Puget Sound Energy*, Dockets UE-170033 and UG170034 (consolidated), Order 08 ¶ 63 (Dec. 5, 2017).

B. PSE's Statement

21 PSE enters into this Settlement Agreement as a compromise. As consideration for entering into the Settlement Agreement, it was important for PSE to clarify several points from the Commission Staff Investigation Report. Most of these have been clarified in the Settlement Agreement, but some are further clarified below.

22 First, the third-party automated billing system that inadvertently routed payments to the wrong account is Neustar; it is not Bill Matrix, contrary to language in the Commission Staff Investigation Report.

23 Second, PSE did not intentionally direct payments to the wrong accounts, contrary to language in the Commission Staff Investigation Report. The third-party automated system PSE used, Neustar, had a glitch that occasionally, mistakenly, identified the wrong account to which payment was to be credited.

24 Third, there were 27 customers who were improperly disconnected due to nonpayment of service after Neustar routed payments to the wrong accounts. In 25 of the 27 cases, the payments were routed to an old account of the same customer.

25 Fourth, when PSE realized that Neustar had misdirected payments to the wrong accounts, PSE undertook an exhaustive investigation of more than 600,000 transactions to identify any occurrence in which a payment may have been misdirected to the wrong account. PSE corrected many of these errors and refunded improperly billed fees for customers when the errors were identified, as noted in Commission Staff's Investigation Report.

26 Fifth, the Commission Staff Investigation Report incorrectly states that a customer must enter a phone number to identify an account for payment. There are other methods by

which customers can identify an account for payment including by contacting PSE customer service agents to look up their account number before paying via the automated telephone system.

27 Sixth, PSE disagrees with Commission Staff’s analysis of penalties for the billing irregularities that resulted from Neustar inadvertently, but incorrectly, routing payments to the wrong account. As a result of the inadvertent but improper routing of payment, 27 customers were improperly disconnected. Of these 27 improper disconnections, 12 customers received improper security deposit charges on their account, 15 customers received improper reconnection fee charges on their account and 18 customers received improper late fee charges on their accounts. Commission Staff treats these as 72 separate violations and seeks the maximum penalty available by law of \$1,000 for each of these violations.³ Commission Staff imposes the maximum violation not only for each disconnection resulting from the inadvertent misrouting of payments by Neustar but also for each of the charges that flowed from the inadvertent misrouting of payment. PSE views this as excessive. Moreover, Commission Staff’s penalty recommendation is based on an alleged “belief” that PSE intentionally routed payments to the wrong accounts and intentionally charged customers fees that were not owed.⁴ But as the Settlement Agreement recognizes, PSE did not intentionally route payments to the wrong account. The billing irregularities and errors stemmed from technological errors with Neustar, a third-party application used to identify customer accounts by customer phone numbers.

28 In recommending the maximum penalty amount, Commission Staff cites some, but not all, factors set forth in the Commission’s Enforcement Policy Statement in Docket A-

³ See RCW 80.04.380.

⁴ Commission Staff Investigation Report at 15.

120061. Most of the factors in the Enforcement Policy Statement, including those cited by Commission Staff, militate for less than the maximum penalty amount:

- The routing of payments to old accounts was not intentional.
- PSE did not self-report the violation because it was unaware of the incorrect routing of payment until the customer complaint was received. Once PSE became aware of the potential for payments to be misrouted it undertook a review of over 600,000 transactions to determine any other instances where the payments were inadvertently misrouted.
- PSE was cooperative and responsive during the investigation.
- PSE properly corrected the violations and remedied many of the impacts.
- The number of violations are low in comparison to the more than 600,000 transactions processed.
- The number of customers affected is low.
- There is a low likelihood of recurrence as PSE has disabled the application that caused payments to be misrouted.
- PSE does not have a history of non-compliance or repeated violations of the same or other regulations, or recent previous penalty.
- PSE has an existing compliance program.

29 While PSE disagrees with Commission Staff's penalty analysis, for purposes of compromise and in exchange for setting the record straight, PSE has agreed to pay the penalty amount of \$72,000.

30 Finally, with respect to the customers who engaged in unlawful conduct such as tampering with, unauthorized connection, or diversion of utility services, PSE will refund the treble damages that were charged, since PSE did not obtain an award from the court or settlement for the treble damages. However, PSE reserves its right to pursue legal action for treble damages against these same customers or enter into a settlement agreement with the customers for treble damages. Commission Staff and Public Counsel agree with this approach.

C. Commission Staff’s Statement

31 Staff finds that overall the Settlement Agreement is fair, just, and in the public interest. First, in agreeing to pay the penalties for the violations alleged in the report, the company acknowledges its responsibility to ensure its third-party vendor billing systems are performing accurately. Second, the Settling Parties agreed to a penalty that is reasonable in light of the gravity of the violations, taking into account the company’s willingness to acknowledge its responsibility. Finally, the Settling Parties’ agreement to refund customers improperly charged treble damages is essential for the public to maintain trust in the company and its practices. The Settlement Agreement represents a proper resolution of the complaint and is in the best interest of the public.

D. Public Counsel’s Statement

32 Public Counsel believes this Settlement represents a reasonable compromise among the parties. The provisions of the Settlement Agreement, including the penalty amount, full refunds to customers for the both the billing error and treble damages issues, and the notification letter drafted by the Parties informing customers of their rights regarding treble

damages, satisfy Public Counsel's concerns and ensure the Settlement is in the public interest.

33 Regarding the billing and disconnection issue, Public Counsel believes the penalty amount of \$72,000 is proper because the actions stemming from errors in PSE's telephonic billing system materially affected customers who were not at fault. 27 customers were disconnected from service, 12 customers were improperly charged for security deposits to reconnect service, 15 customers were improperly charged reconnection fees, and 18 were charged improper late fees. Those mistakes, though unintentional, harmed these customers. The errors cost these customers time and money to either prevent disconnection or be reconnected and likely caused significant confusion and stress, despite properly paying for their bills. Public Counsel also believes the settlement's requirement to refund all amounts improperly charged to customer accounts due to the billing errors, including improper reconnection charges, security deposits, and late payment fees, with interest, is just and reasonably addresses the harm caused to these customers.

34 Regarding the treble damages issue, Public Counsel believes the settlement reaches a reasonable compromise on this issue given the confusion between PSE and Staff over customer billing and communications. PSE's agreement to refund all amounts that were collected as treble damages prior to pursuing legal action or engaging in a settlement with customers reasonably addresses the harm caused. Additionally, PSE's agreement to use the jointly drafted notice letter regarding treble damages in the future will enhance customer communications and ensure customers understand their rights and potential obligations in these situations. The letter notifies customers that they have the right to challenge the alleged violation in court before PSE can collect treble damages but offers the customer an

opportunity to settle the matter outside of court if they wish. The letter also provides a clear statement of the damages sought, PSE's contact information, and citations to the statute. Public Counsel believes this letter will provide proper notice to customers and clarify why, and how, PSE can attempt to collect these funds.

35 For these reasons, Public Counsel believes the Settlement Agreement is just, reasonable, and in the public interest.

V. CONCLUSION

36 For the reasons set forth above, the Settling Parties respectfully request the Commission approve the Settlement Agreement filed in this docket.

DATED this 23rd day of July 2020.

Respectfully submitted,

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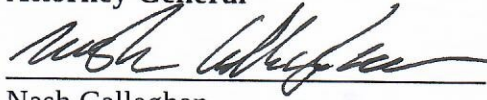


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