

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PROOF OF SERVICE

DOCKET NO. UE-001952

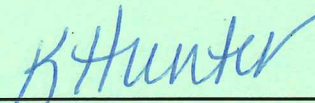
KNOW ALL PERSONS BY THESE PRESENTS That the undersigned, an employee of the Washington Utilities and Transportation Commission at Olympia, Washington, hereby certifies that a copy of the document referred to below was served on the parties of record in said proceeding in the following manner:

On the 5TH day of JANUARY, 2001, a true copy of FIFTH SUPPLEMENTAL ORDER: GRANTING MOTIONS CHALLENGING HIGHLY CONFIDENTIAL CLASSIFICATION; GRANTING MOTION TO STRIKE SECOND AMENDED COMPLAINT.

in the above-entitled cause now pending before the Commission was enclosed in an envelope addressed to each of the parties of record as set forth below. Each envelope was addressed to the address shown in the official files attached hereto, sealed with the required first-class postage thereon, and deposited on said date in the United States mail in the City of Olympia, County of Thurston, State of Washington.

PARTIES OF RECORD AND OTHERS RECEIVING NOTICE

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Docket No. UE-001952 et al

Date: January 5, 2001

Number of pages including cover sheet: 7

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*              TRANSACTION REPORT                                *
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*                                                                 JAN-08-2001 MON 07:11 AM *
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TRANSACTION REPORT

P. 01

JAN-05-2001 FRI 05:41 PM

BROADCAST

| DATE | START | RECEIVER | TX TIME | PAGES | TYPE | NOTE | M# | DP |
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| 224998 | Equilon Enterprises LLC; PO Box 4453 | Houston | TX 77210 |
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| 224996 | The Boeing Company; PO Box 3707 | Seattle | WA 98124-2207 |
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FORMAL UTILITY ORDERS & LETTERS

Date Served: 01/05/01

Docket No: UE-001952

Document: FIFTH SUPPLEMENTAL ORDER: GRANTING MOTIONS CHALLENGING HIGHLY CONFIDENTIAL CLASSIFICATION; GRANTING MOTION TO STRIKE SECOND AMENDED COMPLAINT.

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| <input checked="" type="checkbox"/> Cathy Kern (hand deliver 2 copies) | <input checked="" type="checkbox"/> Policy Planning |
| <input checked="" type="checkbox"/> Utility Industry Support Person | <input checked="" type="checkbox"/> Paul Curl |
| <input checked="" type="checkbox"/> water - 5 copies, telecom & energy | <input checked="" type="checkbox"/> Final Util. Sub. File |
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| <input checked="" type="checkbox"/> Vicki Elliott | <input checked="" type="checkbox"/> Team members - inc. Reg Svcs. |
| <input checked="" type="checkbox"/> ALJ assigned? if not, 1 copy ALD | (check in-house distribution list too) |
| <input checked="" type="checkbox"/> Penny Hansen | <input checked="" type="checkbox"/> Dept of Health (Ethan Moseng & Gregg Grunenfelder) Water Orders Only! |
| <input checked="" type="checkbox"/> Rachel Porter (1 copy) (No Protective Orders and No Consent Open Meeting Orders) | <input checked="" type="checkbox"/> Mike Sommerville (Protective Orders Only) |
| <input checked="" type="checkbox"/> Comm. AAG's (AG assigned - & one copy to Jeff Goltz - do not send copies of Open Meeting orders to the AG's) | |
| <input checked="" type="checkbox"/> Krista Linley (scheduling orders, notices, changes to schedules) | |
| <input checked="" type="checkbox"/> Financial Svcs. (Instituting Invest. & penalty assessment) | |
| <input checked="" type="checkbox"/> Mary Mendoza | |
- Walls miss*

SERVICE DATE

JAN - 5 2001

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, The City of Anacortes, Washington, and Intel Corporation

Complainants,

v.

Puget Sound Energy, Inc.

Respondent.

.....

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

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DOCKET NO. UE-001952 (consolidated)

DOCKET NO. UE-001959 (consolidated)

FIFTH SUPPLEMENTAL ORDER: GRANTING MOTIONS CHALLENGING HIGHLY CONFIDENTIAL CLASSIFICATION; GRANTING MOTION TO STRIKE SECOND AMENDED COMPLAINT

1 PROCEEDINGS: Air Liquide, et al. filed their original Formal Complaint Requesting Emergency Adjudicative Proceeding in Docket No. UE-001952 on December 12, 2000. Complainants filed an Amended Complaint on December 18, 2000, and a Second Amended Complaint on December 28, 2000. PSE filed its Petition in Docket No. UE-001959 on December 13, 2000. PSE filed its Answer to the Amended Complaint on January 2, 2001.

2 The Commission, on due and proper 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 established a procedural schedule, invoked the discovery rule (WAC

the Second Amended Complaint is wholly inconsistent with the expedited schedule . . .” in this proceeding. Third, and finally, PSE argues the addition of Intel Corporation as a Complainant at this time “would prevent PSE from conducting meaningful and necessary discovery before [commencement of evidentiary proceedings on] January 8, and thereby prejudice PSE in its hearing preparation.”

8 Complainants replied orally that since the Second Amended Complaint made no substantive change in the allegations previously asserted via the first Amended Complaint, it really does not matter to Complainant whether the Commission decides to proceed on the first Amended Complaint or the Second Amended Complaint. Complainants also noted that the Second Amended Complaint withdrew certain affidavits that accompanied the first Amended Complaint.

9 WAC 480-09-425 provides that pleadings should be liberally construed with a view to effect justice among the parties. WAC 480-09-425(5) says that “[t]he Commission may allow amendments to the pleadings or other relevant documents at any time upon such terms as may be lawful and just.” Thus, whether to permit the Second Amended Complaint is a matter that remains within the sound discretion of the Commission to decide. The ends of justice do not appear to require the Commission to allow the Second Amended Complaint in this proceeding. The Second Amended Complaint would effect no substantive change in the allegations Respondents face, but in the face of Respondent’s claim of prejudice, the Commission exercises its discretion to not allow the Second Amended Complaint.

10 We turn next to Complainants’ Motion Challenging PSE’s November Financial Report as Highly Confidential and PSE’s response. The Commission’s Protective Order in this proceeding, as amended, provides in Section 6 that parties may designate documents “that truly might impose a serious business risk if disseminated without the heightened protections provided in this Section” as “Highly Confidential.” When so designated, scrutiny of such documents is strictly limited to no more than one counsel and one consultant per party (other than Staff and Public Counsel) under highly restrictive terms. Principally, the “Highly Confidential” designation is to protect parties from disclosure of their documents that might, if disseminated, cause the producing party competitive harm. Thus, anyone designated for review of such documents must execute an affidavit, under oath, certifying among other things that “they do not now, and will not for a period of five years, involve themselves in competitive decision making by any company or business organization that competes, or potentially competes, with the company or business organization from whom they seek disclosure of highly confidential information.”

11 This contrasts to the treatment of documents that are designated “Confidential” under the Protective Order. “Confidential” documents also are afforded substantial protections from disclosure, including limited distribution to designated persons who

securities on the basis of the information.” Thus, the non-disclosure rules simply do not apply to documents filed at the Commission and sought for review by outside counsel and consultants in an adjudicatory proceeding pending before the Commission.

- 16 For these reasons, we find that the “Highly Confidential” designation is not warranted for PSE’s November 2000 Financial Report. We find no reason, however, not to afford the document a “Confidential” designation absent further challenge.
- 17 Finally, we turn to Complainants Expedited Motion Challenging Designation of PSE’s Response to Complainants’ Data Request 1.03 as Highly Confidential and Request for Expedited Treatment and PSE’s response in opposition. The background set forth above pertains with equal force here. The facts are that PSE previously produced a paper copy of the disputed information under the “Confidential” designation. Later, however, after the Protective Order was amended, PSE produced the same data in electronic format but assigned a “Highly Confidential” designation. PSE’s reason for this appears from its response to be that it believes Complainants’ counsel and outside consultants who are entitled to review “Confidential” documents will breach the requirements of our Protective Order. We are not prepared to make that assumption. The purpose of a Protective Order is to facilitate discovery by providing assurances that sensitive information will be afforded certain protections from disclosure. The “Confidential” designation apparently was sufficient to PSE’s needs in this regard when it provided the paper version of this data. The risk that someone will breach the Protective Order’s terms protecting documents from the type of disclosure PSE says it fears does not appear to be either greater or lesser because the same data now is being made available in electronic format. Complainant’s Motion is well taken; PSE’s argument in opposition is misplaced. The Motion should be granted.

ORDER

THE COMMISSION ORDERS That PSE’s Motion To Strike Second Amended Complaint is GRANTED.

THE COMMISSION ORDERS FURTHER That Complainants’ Motion Challenging PSE’s November Financial Report as “Highly Confidential” is GRANTED.

THE COMMISSION ORDERS FURTHER That PSE’s November Financial Report is classified as “Confidential” under the terms of the Protective Order in this proceeding, subject to further review in the event of a challenge to that status.