BEFORE THE WASHINGTON UTILTIES AND TRANSPORTATION COMMISSION

AIR LIQUIDE AMERICA CORPORATION, et al. Complainants v. PUGET SOUND ENERGY	Docket No. UE-001952
PETITION OF PUGET SOUND ENERGY	Docket No. UE- 001959

INITIAL RESPONSE OF PUBLIC COUNSEL

I. DISCUSSION

Public Counsel files this Initial Response to the Formal Complaint filed by Air Liquide America Corporation ("Air Liquide") other Schedule 48 customers, and Georgia Pacific (Docket UE-001952) and the related Petition filed by Puget Sound Energy (PSE) (Docket UE-001959).

The complaint and the petition reflect a significant factual dispute between the Complainants and PSE as to whether the market-based pricing mechanism mutually-agreed upon by those parties produces revenues in excess of costs for PSE, and whether resulting rates for the Complainants are fair, just and reasonable. No record has yet been developed in either docket to enable the Commission to make a determination as to which set of assertions is factually correct. It may be possible for the Commission to exercise authority under the emergency adjudication provisions of WAC 480-09-510 to provide some relief for the Complainants without such a finding. No such relief, however, can come at the expense of PSE's existing ratepayers. We object to any relief which would allow Complainants to return to the Schedule 49 tariffed service, which they voluntarily abandoned just four years ago, without appropriate compensatory payments designed to hold all other ratepayers harmless.

The Commission must seek a solution that provides fair, just, reasonable and sufficient rates for all of PSE's customers. RCW 80.01.040(3), 80.28.020. In our view, such a solution must account for the following factors.

1. Schedule 49, the standard industrial tariff which these customers abaondoned, is below cost. As of the time of PSE's last general rate case, UE-921262, Schedule 49 provided only 88% of its allocated revenue requirement. (PSE Response to Bench Request 515E, UE-921262). There is no reason to believe that this situation has changed. Such a below-cost rate cannot be employed as a safe-haven for Complainants without increasing the risk to all ratepayers of cost-shifting. Puget's other customers should not subsidize those industrial customers who chose to leave the tariffed rate.

2. The Commission approved Schedule 48 and the Georgia-Pacific Special Contract, over the objections of Public Counsel, with the provision that such approval would unequivocally not lead to higher rates for other ratepayers. The Commission's order explicitly affirmed an interpretation of the Company's commitment to prevent the shifting of costs to be a "*guarantee* that other classes will not pay more as a result of Schedule 48." *Washington Utilities and Transportation Commission v. Puget Sound Power & Light Company*, Docket No. UE-960696, Commission Order Approving Schedule 48 with Conditions, p. 7, (emphasis added). The Commission affirmed this protection in its order approving a settlement of a recent Schedule 48 debate, stating:

> We emphasize that this condition [no cost shifting], along with the others established by the Commission's order approving Schedule 48, remains effective.

WUTC v. Puget Sound Energy, Docket No. UE 981238, Seventh Supplemental Order, p. 5.

3. Schedule 48 does not provide make provision for the Complainants to return to tariffed service at this time. The schedule states:

> At the expiration of the term of the Service Agreement, Customer may commence taking service under any retail tariff providing firm service; however, the Customer understands

> and acknowledges that such service may be subject to payment by such Customer of any long-run resource costs and any incremental capacity costs (which costs are not intended by the Company and Customer to constitute an exit fee) incurred by the Company to provide service. (Original Tariff Sheet 48-E)

The term of Schedule 48 is not yet complete, thus there is no mechanism in place by which the customers can return to Schedule 49, or indeed any tariff. Should the Commission consider such a mechanism in these proceedings, it should include compensatory payments sufficient to ensure that there is no harm to other customers.

4. PSE is currently operating under a rate plan approved by the Commission in the Fourteenth Supplemental Order Accepting Stipulation; Approving Merger, Docket UE-951270 (Merger Order). The Merger Order prescribes very limited conditions under which rates can be changed during the rate plan period. Any rate change for other ratepayers resulting from a remedy granted to the Complainants is clearly not contemplated by, nor allowed under, the Merger Order.

5. PSE has made no showing that an emergency exists sufficient to allow the company to collect, defer, and ultimately charge to other ratepayers any revenues resulting from relief to Complainants exists under the Commission's articulated standard for emergency rate relief. See *WUTC v. Pacific Northwest Bell Telephone Company*, Cause No. U-72-30 (October 1972)

Public Counsel believes an interim solution that reduces the Complainants exposure to high prices without shifting risk to other ratepayers or imposing undue hardship on PSE can be developed. One potential solution is for the Commission to impose a price cap on Schedule 48 and the G-P Special contract of some reasonable level other than the unfettered pricing mechanism currently in place. The cap should be based on a reasonable allocation of the risks and rewards as between PSE and its Schedule 48 customers. To avoid accruing potential liabilities for other ratepayers, or unduly harming PSE, such a cap would be in place during times when PSE was not actually purchasing energy in the wholesale market. At times when PSE

could demonstrate that it actually faced generation or market prices above the cap, it would be allowed to pass those prices on to Complainants on a pro rata basis of their loads to PSE purchase. To prevent PSE from taking too active a role in the market to trigger waiver of the cap, we suggest that this clause be triggered only if for an entire calendar month PSE's net of purchased power over off-system sales is a net purchase, and the net cost of the purchase expenses less sales revenue, divided by the net purchased kWh less sales kWh exceeds the price cap. Further, the amount of energy to be passed through at a rate above the price cap should not exceed the actual amount of net energy purchased or generated by Puget at rates above the price cap. Such a solution provides the Complainants with relief without injuring other parties, and provides the Commission with an opportunity to evaluate the factual assertions of the Complainants and PSE as to the degree to which PSE faces market prices to serve the Complainants.

II. CONCLUSION

Public Counsel respectfully requests the Commission affirm the guarantees of protection from cost shifting and of rate stability found in the Merger Order and Schedule 48 Order and reaffirmed in the Schedule 48 complaint docket UE-991328. The Commission should prevent the shifting of any costs to any other ratepayers as a result of any relief granted to PSE or the Complainants.

We further recommend that the Commission consider implementing a price cap, with protections for all parties as described above, to resolve the dispute between PSE and Complainants.

Public Counsel reserves the right to file additional pleadings and evidence according to the procedures adopted by the Commission for these matters.

Dated this 14th day of December, 2000.

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