

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UE-200027

**FULL SETTLEMENT
STIPULATION AND AGREEMENT**

I. INTRODUCTION

1 This Settlement Stipulation and Agreement (“Settlement”) is entered into by and between the following parties in this case: (i) Puget Sound Energy (“PSE”), (ii) the regulatory staff of the Washington Utilities and Transportation Commission (“Commission Staff”),¹ and (iii) the Public Counsel Unit of the Washington Office of the Attorney General (“Public Counsel”), as of July 23, 2020 (the “Settlement Date”). These parties are hereinafter collectively referred to as “Settling Parties” and individually as “Settling Party.”

2 Because this Settlement is entered into by all parties and it resolves all issues in the case, it is a “full settlement,” as that term is defined in WAC 480-07-730(1).

3 This Settlement is subject to review and disposition by the Washington Utilities and Transportation Commission (“Commission”). The Settlement is effective on the date

¹ In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

executed except that Section III of the Settlement is effective on the date the Commission order approving it becomes final (unless the Commission establishes a different date).

II. BACKGROUND AND NATURE OF THE DOCKET

4 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.

5 The complaint and Commission Staff Investigation Report allege the following two general categories of improper billing: (1) PSE’s third-party automated telephone billing system misrouted 27 payments to the wrong accounts resulting in improper disconnections, reconnection fees, late payment fees and security deposits; and (2) PSE billed customers treble damages for the customers’ unlawful tampering with, unauthorized connection, and diversion of utility services, prior to PSE obtaining a court award for treble damages pursuant to RCW 80.28.240.

A. Payments Improperly Routed by Automated Telephone Billing System

6 With respect to PSE’s automated telephone billing system, the complaint alleges several instances when the third-party automated billing system misrouted payments to the wrong accounts resulting in 27 improper disconnections of service. As a result of the improper disconnection of service, 12 customers were improperly required to pay security deposits, 15 customers were charged improper reconnection fees and 18 customers were charged improper late payment fees.

7 Regarding the instances in which payments were applied to an incorrect account, the payment was directed to a closed account affiliated with the customer in 25 of those 27

cases. In the other two cases, the payment was directed to an account not affiliated with the customer.

8 In several instances, PSE applied credits to customer accounts when it became aware the customer payments had been directed to the wrong account and that fees for late payment and reconnection were incorrectly charged.

9 PSE discontinued using the automated billing system on March 29, 2019, and it remains disabled. PSE reviewed over 600,000 transaction records to identify any customers whose payments might have been improperly routed.

10 In the complaint, Commission Staff recommends that the Commission order PSE to apply a credit or provide a refund to customers' accounts that were improperly charged security deposits, and fees for reconnection or late payments due to misrouting of payments to the wrong accounts.

11 In the complaint, Commission Staff recommends that the Commission assess penalties in the amount of up to \$1,000 for each of the 72 violation of RCW 80.28.080. The complaint recommends penalties in the amount of up to \$72,000.

B. Treble Damages for Customer Tampering, Unauthorized Connection, and Diversion of Service

12 With respect to billing for treble damages for tampering with, unauthorized connections, and diversion of utility services, the Commission Staff Investigation Report alleged that from March 23, 2018, through March 15, 2019, PSE sent billing statements that contained treble damage charges to 325 customers, without PSE being awarded the damages civilly. The investigation alleges PSE received a total \$170,488.05 in treble damages from 286 customers during this time period.

13 Commission Staff is not recommending penalties against PSE regarding treble
charges as there has been a long history of discussions and some confusion between
Commission Staff and PSE related to customer billing and customer communications
regarding treble damages. Commission Staff recommends the Commission order PSE to
remit to 286 affected customers a total refund of \$170,488.05 collected for treble damages
that were not awarded in successfully litigated lawsuits per RCW 80.28.080 and RCW
80.28.240.

C. Procedural Background

14 Public Counsel filed a notice of appearance in the case on April 14, 2020.

15 The Commission scheduled a telephonic prehearing conference for June 1, 2020.

16 On May 28, 2020 the Settling Parties convened an early telephonic settlement
conference pursuant to WAC 480-07-700(5)(b). The Settling Parties reached a settlement in
principle on that date and provided notice of this settlement in principle to Administrative
Law Judge Gregory Kopta.

17 Judge Kopta issued a notice cancelling the prehearing conference and requiring the
filing of settlement documents by July 10, 2020. The Commission extended this filing
deadline to July 24, 2020, with the consent of all Settling Parties.

18 This Settlement Agreement sets forth the terms of the agreement reached by the
Settling Parties.

III. AGREEMENT

19 The Settling Parties agree to the following terms for settlement.

A. Payments Inadvertently Routed to Wrong Accounts by Automated System

20 Clarification of Commission Staff Investigation Report: The Settling Parties agree that several facts in the Commission Staff Investigation Report need to be clarified. These include 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 of the misrouted payments that had occurred through the use of Neustar, and the subsequent billing irregularities that resulted, 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 required to enter a phone number to identify an account for payment. A customer could contact PSE's customer service agent to look up their account number before paying via the automated telephone system.

21 Refund Amounts: The Settling Parties agree 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, and the Settling Parties will work together to identify the proper amounts to be refunded or credited to customers.

22 Penalty. PSE will pay a penalty of \$72,000 in settlement of this case. PSE will
make payment within 30 days after the final order is issued in this case.

B. Billing of Treble Damages Without a Court Order or Settlement Agreement

23 Process for Obtaining Treble Damages. PSE agrees that it will not include treble
damages for tampering with, unauthorized connections or diversion of utility service on
customer bills prior to (i) obtaining a civil award for such damages or (ii) entering into a
settlement agreement for treble damages. The Settling Parties have agreed to a process for
obtaining treble damages and the use of a form notification letter regarding PSE's rights to
pursue legal action or settlement and seek treble damages from customers who improperly
tamper with or divert utility services. The form has been reviewed by the Settling Parties
and is provided as an Attachment to this Settlement Agreement. The Settling Parties agree
that this resolves their specific dispute over this specific interpretation of RCW 80.28.080
and RCW 80.28.240 regarding billing for diversion of utility services.

24 Customer Refunds. PSE will refund amounts that were billed and collected as treble
damages without pursuing legal action or entering into a settlement between February 13,
2018 and September 1, 2019. The Settling Parties agree that the refund amounts in the
Commission Staff Investigation Report may need to be adjusted, and the Settling Parties will
work together to identify the proper amounts owed and refund customers accordingly. Once
PSE has issued the refunds the company will provide proof of the customer refunds to the
other Settling Parties. PSE may pursue legal action or seek to enter into settlements with
these customers to recover treble damages.

25 No Penalty. The Settling Parties agree with the recommendation in the Commission Staff Investigation Report that no penalty should be assessed against PSE for billing treble damages without a court order or settlement.

IV. **GENERAL PROVISIONS**

26 Entire Agreement. This Settlement is the product of negotiations and compromise amongst the Settling Parties and constitutes the entire agreement of the Settling Parties. Accordingly, the Settling Parties recommend that the Commission adopt and approve the Settlement in its entirety as a full resolution of contested issues in this docket. This Settlement will not be construed against any Settling Party on the basis that it was the drafter of any or all portions of this Settlement. This Settlement supersedes any and all prior oral and written understandings and agreements on such matters that previously existed or occurred in this proceeding, and no such prior understanding or agreement or related representations will be relied upon by the Settling Parties to interpret this Settlement or for any other reason.

27 Confidentiality of Negotiations. The Settling Parties agree that this Settlement represents a compromise in the Settling Parties' positions. As such, conduct, statements and documents disclosed during the negotiation of this Settlement are not admissible in this or any other proceeding and will remain confidential. Notwithstanding the foregoing, the Settlement itself and its terms do not fall within the scope of this confidentiality provision, and each Settling Party is free to publicly disclose the basis for its own support of the Settlement.

28 Precedential Effect of Settlement. The Settling Parties enter into this Settlement to avoid further expense, uncertainty, inconvenience and delay. No Settling Party may cite this Settlement as precedent in any proceeding other than a proceeding to enforce its terms.

29 Positions Not Conceded. In reaching this Settlement, the Settling Parties agree that no Settling Party concedes any particular argument advanced by that Settling Party or accedes to any particular argument made by any other Settling Party. Nothing in this Settlement (or any testimony, presentation or briefing supporting this Settlement) shall be asserted or deemed to mean that a Settling Party agreed with or adopted another Settling Party's legal or factual assertions in this proceeding.

30 Manner of Execution. This Settlement is executed when all Settling Parties sign the Settlement. A designated and authorized representative may sign the Settlement on a Settling Party's behalf. The Settling Parties may execute this Settlement in counterparts. If the Settlement is executed in counterparts, all counterparts shall constitute one agreement. A Settlement signed in counterpart and sent by facsimile or emailed as a pdf is as effective as an original document. A faxed or emailed signature page containing the signature of a Settling Party is acceptable as an original signature page signed by that Settling Party. Each Settling Party shall indicate the date of its signature on the signature page. The date of execution of the Settlement will be the latest date indicated on the signature page(s).

31 Approval Process and Support of Settlement. Each Settling Party agrees to support in this proceeding the terms and conditions of this Settlement as a full and final resolution of all contested issues between them in the above-captioned docket. Each Settling Party agrees to support or not to oppose the Settlement during the course of whatever proceedings and procedures the Commission determines are appropriate for approval of the Settlement.

32 Commission Approval with Conditions. In the event the Commission approves this Settlement, but with conditions not proposed in this Settlement, the provisions of WAC 480-07-750(2)(b) will apply. The Settling Parties will have ten (10) business days to seek reconsideration and/or file a letter with the Commission accepting or rejecting each such condition. If, in such a timely filed letter, a Settling Party rejects a condition, this Settlement is deemed rejected and void and the Settling Parties will jointly and promptly request the Commission convene a prehearing conference to address procedural matters, including a procedural schedule for resolution of the case at the earliest possible date.

33 Commission Rejection. In the event the Commission rejects this Settlement, the provisions of WAC 480-07-750(2)(c) will apply. In that event, the Settling Parties agree to jointly and promptly request the Commission convene a prehearing conference to address procedural matters, including a procedural schedule for resolution of the case at the earliest possible date.

DATED this 23rd day of July 2020.

ROBERT W. FERGUSON
Attorney General

Nash Callaghan
Assistant Attorney General
Counsel for Washington Utilities and
Transportation Commission Staff

ROBERT W. FERGUSON
Attorney General

Nina Suetake
Assistant Attorney General
Public Counsel Unit

PUGET SOUND ENERGY

/s/ Jon Piliaris

Jon Piliaris
Director, Regulatory Affairs

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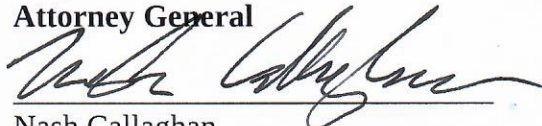
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/s/ Jon Piliaris
Jon Piliaris
Director, Regulatory Affairs

ATTACHMENT 1

FORM NOTIFICATION LETTER

DOCKET UE-200027

[DATE]

[CUSTOMER NAME]

Regarding: [SERVICE ADDRESS]

Diversion Charges

Account number: _____

[CUSTOMER NAME] you are receiving this letter as this account has been identified with energy diversion. This letter is an attempt to resolve the issue without Puget Sound Energy pursuing civil action. [DESCRIPTION OF DIVERSION ACTIVITIES].

This letter is an attempt to resolve the issue without Puget Sound Energy pursuing civil action. Washington law allows Puget Sound Energy to take this issue to court, and, if successful, recover treble damages related to the unlawful diversion of energy or meter tampering. Treble Damages is a term allowed by statute that permits a court to triple the amount of actual/compensatory damages to be awarded to the plaintiffs. You have the right to challenge this alleged violation in court, but Puget Sound Energy is offering to settle this claim outside of court for treble damages.

If you choose not to accept this offer, this notice is to advise you that Puget Sound Energy intends to bring a civil action against you for violation of Washington law, Revised Code of Washington (RCW) 80.28.240 (1), which states, "A utility may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts to (a) Divert, or cause to be diverted, utility services by any means whatsoever; (b) Make, or cause to be made, any connection or reconnection with property owned or used by the utility to provide utility service without the authorization or consent of the utility; (c) Prevent any utility meter or other device used in determining the charge for utility services from accurately performing its measuring function by tampering or by any other means; (d) Tamper with any property owned or used by the utility to provide utility services : or (e) Use or receive the direct benefit of all or a portion of the utility service with knowledge of, or reason to believe that, the diversion, tampering, or unauthorized connection existed at the time of the use or that the use or receipt was without the authorization or consent of the utility. "

Under RCW 80.28.240 (2) "the utility may recover from the defendant as damages three times the amount of actual damages, if any, plus the cost of the suit and reasonable attorney's fees, plus the costs incurred on account of the bypassing, tampering, or unauthorized reconnection, including but not limited to costs and expenses for investigation, disconnection, reconnection,

service calls, and expert witnesses.” These additional costs could greatly increase the amount you owe, if the court finds against you.

You have the right to challenge the alleged violation in civil court before the utility may charge, demand, collect, or receive treble damages under RCW 80.28.080 (c).

Puget Sound Energy is offering to settle this claim for the following treble damages.

Treble Consumption: _____

Time and Material: _____

Treble: _____

Total: _____

You have 20 calendar days from the date of this letter to accept this offer. You will need to make payment to account number _____. Please note the amount showing on your bill does not include treble charges. If you choose to accept this proposed settlement offer in lieu of civil action, payment of \$ ____ which includes treble charges is required.

For service to be reconnected, please contact revenue protection for current requirements. Please note there will be additional charges (time, material and treble) after reconnection or connection is made. You will receive a second settlement letter after reconnection is made.

Payment can be made in any of the following methods:

By calling 1-888-225-5773 Over the phone (accept Accel, Pulse, NYCE, STAR, Discover, Visa, Mastercard, American Express, ACH (Electronic Check)) we will accept 3 payments in 5 days with a maximum of \$1100 each payment).

Mail a payment to:

Puget Sound Energy

BOT-O1H, PO Box 91269

Bellevue, WA 98009-9269

Puget Sound Energy also has authorized pay stations available where payment can be made. That list can be located on www.pse.com under pay stations.

If you need to make payment arrangements please contact revenueprotection@pse.com.

We are willing to set up a payment plan of 3 installments over 3 months. If you require something longer please contact revenueprotection@pse.com so that we may discuss other options.

If you choose to accept this offer to settle in lieu of Puget Sound Energy seeking civil action, please sign and date this document within 20 calendar days from the date of this letter and return in the enclosed envelope.

Regards,

Revenue Protection

[CUSTOMER SIGNATURE]

Date