

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UE-200027

ORDER 01

INITIAL ORDER APPROVING FULL  
SETTLEMENT STIPULATION AND  
AGREEMENT

**BACKGROUND**

- 1 On April 2, 2020, the Washington Utilities and Transportation Commission (Commission) served on Puget Sound Energy (PSE or Company) a complaint alleging 72 violations of RCW 80.28.080, WAC 480-100-113, WAC 480-100-128(3)(a), and WAC 480-90-128(3)(a) (Complaint). The Complaint alleges that PSE engaged in two types of improper billing in violation of applicable law: (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) the Company billed customers treble damages for the customers' unlawful tampering with, unauthorized connection to, and diversion of utility services prior to PSE obtaining a court award for treble damages pursuant to RCW 80.28.240.
- 2 The Commission scheduled a prehearing conference on the Complaint for June 1, 2020. On May 28, 2020, counsel for Commission regulatory staff (Staff)<sup>1</sup> contacted the presiding officer on behalf of the parties to inform the Commission that PSE, Staff, and

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

the Public Counsel Unit of the Washington Attorney General's Office (Public Counsel) (collectively Parties) had reached a settlement in principle. The Parties requested that the Commission cancel the prehearing conference to afford them time to memorialize the settlement, which they intended to file by July 10, 2020.

3 The Commission issued a notice canceling the prehearing conference and establishing a deadline of July 10, 2020, for the Parties to file their settlement agreement and supporting documentation. The Commission subsequently extended that deadline to July 24, 2020, at the Parties' request.

4 On July 23, 2020, the Parties filed a Full Settlement Stipulation and Agreement (Settlement) and Brief in Support of Settlement (Brief).<sup>2</sup>

5 Sheree Strom Carson and Byron Starkey, Perkins Coie, Seattle, Washington, represent PSE. Nash Callaghan, Assistant Attorney General, Lacey, Washington, represents Staff. Nina Suetake, Assistant Attorney General, Seattle, Washington represents Public Counsel.

## SETTLEMENT AND DOCUMENTATION

### Settlement

6 The Settlement includes the following provisions:<sup>3</sup>

(a) **Clarification of Investigation Report.** The Settlement clarifies the following facts in the Investigation Report:

- (i) PSE did not intentionally route payments to the wrong accounts; rather the billing irregularities resulted from technological errors with Neustar, a third-party application, and PSE discontinued using Neustar when the Company became aware of the misrouted payments;

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<sup>2</sup> To provide a factual basis for its determination in this docket, the Commission admits into the evidentiary record the March 2020 Staff Investigation Report of PSE (Investigation Report) as Exh. 1 and the Settlement as Exh. 2.

<sup>3</sup> The Settlement contains the terms and conditions to which the Parties have agreed, and the summary of those agreements in this Order does not add to, subtract from, or otherwise modify those terms and conditions.

- (ii) Neustar was the third-party application responsible for the improper routing of payments, not Bill Matrix; and
  - (iii) Customers were not required to enter a phone number to identify an account for payment but could contact a PSE customer service agent to look up the account number.<sup>4</sup>
- (b) **Reversal of Charges.** PSE will reverse the improper charges to customer accounts, including reconnection charges, security deposits, or late fees, with interest. The Parties will work together to identify the amounts the Company will refund or credit to customers.<sup>5</sup>
- (c) **Penalties.** PSE will pay a penalty of \$72,000 within 30 days after the final order is entered in this case.<sup>6</sup>
- (d) **Treble Damages Process.** PSE will not include treble damages on customer bills for tampering with, unauthorized connections of, or diversion of utility service prior to obtaining a civil award or settlement agreement for such damages. The Parties have agreed on a process for seeking such an award or settlement, and attached to the Settlement is an agreed form notification letter regarding PSE's rights to pursue legal action for treble damages or a settlement from customers who improperly tamper with or divert utility services.<sup>7</sup>
- (e) **Refund of Treble Damages.** PSE will refund amounts it billed and collected as treble damages without a court order or settlement between February 13, 2018, and September 1, 2019. The Parties will work together to identify the amounts the Company will refund to customers, and the Company will provide proof of the refunds to the other Parties. PSE may pursue legal action to recover treble damages against these customers or seek to enter into settlements with them.<sup>8</sup>

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<sup>4</sup> Settlement, Exh. 2 ¶ 20.

<sup>5</sup> *Id.* ¶ 21.

<sup>6</sup> *Id.* ¶ 22.

<sup>7</sup> *Id.* ¶ 23.

<sup>8</sup> *Id.* ¶ 24.

- (f) **No Penalty.** Consistent with the recommendation in the Investigation Report, no penalty should be assessed against PSE for billing treble damages without a court order or settlement.<sup>9</sup>

**Brief**

- 7 The Parties' Brief summarizes the Settlement's provisions and the reasons they believe it is in the public interest. They jointly contend that the Settlement is lawful, supported by an appropriate record, and consistent with the public interest. Their "early settlement communications result[ed] 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."<sup>10</sup>
- 8 PSE states that it entered into the Settlement as a compromise. The Company stresses the importance of clarifying the Investigation Report, both in provisions of the Settlement and in representations in the Brief. PSE disagrees with Staff's analysis of the factors the Commission uses to determine penalties, but "for purposes of compromise and in exchange for setting the record straight, PSE has agreed to pay the penalty amount of \$72,000."<sup>11</sup> The Company also reserves the right to seek treble damages, whether through court order or settlement agreement, from the customers who have tampered with or diverted utility services, even though PSE will refund the amounts it previously charged to those customers without such authority, an approach with which all Parties agree.
- 9 Staff maintains that the Settlement properly resolves the Complaint and is in the best interests of the public. According to Staff, the Settlement reflects PSE's acknowledgement of its responsibility to ensure the integrity of its billing systems and requires the Company to pay a penalty that is reasonable in light of that acknowledgement and the gravity of the violations. The refund of improperly charged treble damages, moreover, "is essential for the public to maintain trust in the company and its practices."<sup>12</sup>

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<sup>9</sup> *Id.* ¶ 25.

<sup>10</sup> Brief ¶ 19.

<sup>11</sup> *Id.* ¶ 29.

<sup>12</sup> *Id.* ¶ 31.

10 Public Counsel touts the Settlement as a reasonable compromise. Public Counsel contends that PSE’s billing errors, while unintentional, harmed the 27 customers who were disconnected from service, the 12 customers who were incorrectly charged for security deposits to reconnect service, the 15 customers who were mistakenly charged reconnection fees, and the 18 customers charged improper late fees. The Settlement’s requirements to refund the erroneous charges and the \$72,000 penalty PSE must pay addresses these harms. Similarly, Public Counsel maintains that PSE’s obligation to refund the treble damages the Company charged without a court order or settlement agreement reasonably remedies the harm to affected customers. “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.”<sup>13</sup>

#### DISCUSSION AND DECISION

11 “If it considers a settlement, the commission may approve the settlement, with or without conditions, or reject it. The commission will approve a settlement if it is lawful, supported by an appropriate record, and consistent with the public interest in light of all the information available to the commission.”<sup>14</sup> The Commission considers the Settlement and finds that it is lawful, its terms are supported by an appropriate record, and the result is consistent with the public interest. We therefore approve the Settlement without conditions. We nevertheless clarify the timing of compliance with some of the Settlement terms to minimize the possibility of disputes arising from its implementation.

12 No billing system is flawless. Mistakes are inevitable, and the Commission primarily expects companies to adopt processes and procedures to minimize and promptly correct such mistakes. The Commission also requires companies to abide by their legal obligations. The Commission will take appropriate action when billing errors result in customer disconnections and significant unauthorized charges or companies exceed their lawful authority. The Complaint represents such action.

13 The Settlement remedies the harms that resulted from PSE’s billing system errors and unauthorized assessment of treble damages as alleged in the Complaint. PSE will reverse the improper charges to customer accounts, including reconnection charges, security

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<sup>13</sup> *Id.* ¶ 34.

<sup>14</sup> WAC 480-07-750(2).

deposits, or late fees, with interest, and will pay the maximum statutory penalty of \$72,000 for the violations that resulted in these charges. In addition, the Company will refund amounts it billed and collected as treble damages without a court order or settlement between February 13, 2018, and September 1, 2019. PSE will also comply with the law and use an agreed form letter to notify customers who improperly tamper with or divert utility services regarding the Company's rights to pursue legal action for treble damages or a settlement. These requirements appropriately redress the unlawful activities alleged in the Complaint.

- 14 We nevertheless note an ambiguity in the Settlement. It provides that PSE will pay the \$72,000 penalty "within 30 days after the final order is issued in this case."<sup>15</sup> Unless a party seeks administrative review of this initial order, however, the Commission will not enter a final order in this case. We therefore construe the Settlement to require the Company to pay the penalty within 30 days after Commission approval of the Settlement becomes effective, whether by final order or the finality of this Order. In the absence of a petition for administrative review, this Order will become final by operation of law 20 days after the entry date, and the penalty will be due within 30 days thereafter.
- 15 The Settlement also does not specify a time frame in which PSE must refund or credit amounts it erroneously or improperly charged affected customers. This open-ended requirement unnecessarily complicates the Commission's ability to determine the Company's compliance with these terms. Accordingly, we require the Parties to file reports on the status of PSE's compliance with the Settlement's customer refund and credit requirements every 30 days after this order becomes final until the Parties agree, and the Commission confirms, that the Company has fully complied with those requirements.

### FINDINGS OF FACT

- 16 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including investor-owned electric companies.
- 17 (2) PSE is a public service company regulated by the Commission, providing service as an electrical company and natural gas distribution company.

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<sup>15</sup> Settlement, Exh. 2 ¶ 22.

- 18 (3) PSE's third-party automated telephone billing system unintentionally misrouted payments to the wrong accounts resulting in improper disconnections, reconnection fees, late payment fees, and security deposits.
- 19 (4) PSE billed customers treble damages for the customers' unlawful tampering with, unauthorized connection to, and diversion of utility services, prior to the Company obtaining a court award for treble damages pursuant to RCW 80.28.240 or a settlement with the customers for such damages.
- 20 (5) On July 23, 2020, the Parties submitted a Settlement, pursuant to which PSE will reverse and refund or credit improper charges; pay a penalty of \$72,000; refrain from charging customers treble damages for tampering with, unauthorized connection to, or diverting utility services without a court order or settlement agreement; and in future use an agreed form notification letter to send to customers regarding PSE's rights to pursue legal action for treble damages or a settlement from customers who improperly tamper with, connect to, or divert utility services.

### **CONCLUSIONS OF LAW**

- 21 (1) The Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 22 (2) The Settlement is a full Settlement pursuant to WAC 480-07-730(1).
- 23 (3) The Settlement is lawful.
- 24 (4) The Settlement is supported by an appropriate record.
- 25 (5) The Settlement is consistent with the public interest in light of all the information available to the Commission.
- 26 (6) PSE should pay the \$72,000 penalty required under the Settlement either upon entry of a Commission final order or the date on which this initial order becomes final by operation of law.
- 27 (7) The Parties should file a report with the Commission every 30 days after this order becomes final on the status of PSE's compliance with the Settlement requirements that the Company refund or credit all improper charges to customers

until the Parties agree, and the Commission confirms, that PSE has complied with those requirements.

**ORDER**

THE COMMISSION ORDERS:

- 28 (1) The Commission approves and adopts the Full Settlement Stipulation and Agreement between Puget Sound Energy, Commission Staff, and the Public Counsel Unit of the Attorney General’s Office, attached to this Order as Appendix A.
- 29 (2) Puget Sound Energy must pay the \$72,000 penalty required under the Full Settlement Stipulation and Agreement within 30 days of the date on which this Order becomes final.
- 30 (3) Puget Sound Energy, Commission Staff, and the Public Counsel Unit of the Attorney General’s Office must jointly file reports every 30 days after the date on which this Order becomes final on the status of Puget Sound Energy’s compliance with the settlement requirements to refund or credit the erroneous or unauthorized charges until the parties agree, and the Commission confirms, that the Company has fully complied with those requirements.
- 31 (4) The Commission delegates to the Secretary the authority to approve parties’ submissions in compliance with this Order.
- 32 (5) The Commission retains jurisdiction to enforce this Order.

Dated at Lacey, Washington, and effective September 3, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

*/s/ Gregory J. Kopta*  
GREGORY J. KOPTA  
Administrative Law Judge



**NOTICE TO PARTIES**

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order and you would like the Order to become final before the time limits expire, you may send a letter to the Commission waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this initial order to file a petition for administrative review (Petition). Section (2)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(2)(c) states that any party may file a response to a Petition within 10 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence that is essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

WAC 480-07-610(9) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission does not exercise administrative review on its own motion.

Any Petition or response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5).

**Appendix A  
Settlement Agreement**