

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.

Respondent.

DOCKET NO. UE-010525

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (hereinafter referred to as the “Stipulation”) is made as of September 14, 2001, by and among Puget Sound Energy, Inc. (“PSE”) and AT&T Wireless (“AT&T”), MCI WorldCom, and Qwest (collectively “Customers”). PSE and Customers are collectively referred to herein as the “Parties”. This Stipulation is intended by the Parties to resolve specified rate and service controversies between PSE and the Customers.

In accordance with this Stipulation, PSE will propose to the Washington Utilities and Transportation Commission (“Commission”), and the Customers will support, a new, transitional tariff attached hereto, and referenced herein, as Stipulated Schedule 45. Stipulated Schedule 45 would be generally available to all customers meeting specified eligibility requirements, until the end of PSE’s next general rate case or October 1, 2003, whichever occurs earlier. Implementation of Stipulated Schedule 45 would facilitate removal of each Customer from Schedule 48, which expires on October 31, 2001. If for any reason the Commission declines to allow Stipulated Schedule 45 to go into immediate effect, however, PSE and the Customers will jointly request the Commission to approve the application of Stipulated

Schedule 45 rates, terms and conditions for application to each Customer in the form of a High Intensity Load Special Contract (“Special Contract”) with the same term as proposed for the transitional tariff.

This Stipulation resolves the rate schedule status of Customers currently served under PSE’s Schedule 48 who will be served under Stipulated Schedule 45 or Special Contract during the Effective Period, and to resolve all outstanding electric service disputes between PSE and Customers as provided herein. It does not prejudice the rights of any Party regarding PSE’s newly filed emergency rate or the general rate application that PSE is to file by November 30, 2001. The Parties expressly reserve their respective rights to advocate any position with regard to rates, terms and/or conditions that may be proposed or advocated by any Party before the Commission in such proceedings.

1. DESCRIPTION OF THE ACTIONS

- 1.1. Customers have recently developed, own and operate facilities within PSE’s service area (“Facilities”). Facilities have (i) one or more individually metered accounts with current or projected demand in the aggregate over 1 MW; (ii) a current or forecasted average monthly load factor for such premises to be equal to or greater than 80%; and (iii) a high intensity load that requires improved infrastructure in order to reduce the possibility of power service interruption. Pursuant to contract, each Customer has agreed to pay the cost (including Schedule 87 tax rider) of designing and constructing specified transmission, distribution and transformation equipment dedicated by PSE for service to their respective Facilities.
- 1.2. PSE currently serves Customers’ Facilities under its Schedule 48 – Optional Large Power Sales Rate.
- 1.3. On April 5, 2001, the Commission issued an order that, among other things, terminated Schedule 48, effective at midnight on October 31, 2001, and required PSE to file a new Schedule 45, for use by the Customers, not later than April 16, 2001. *Eleventh Supplemental Order Approving and Adopting Settlement Agreement, Subject to Conditions; Dismissing Proceedings; and Granting Other Relief*, WUTC Docket Nos. UE-001952 and UE-001959 (Consolidated) ¶¶99-100 (April 5, 2001). However, none of the Customers

were parties to that proceeding, and the Commission's order did not purport to prejudice their rights.

- 1.4. On April 16, 2001, PSE filed Schedule 45 pursuant to the Commission's Order in this Docket UE-010525. During its open meeting of June 27, 2001, the Commission suspended the proposed Schedule 45 without setting the matter for adjudicative hearing in order to allow the parties to negotiate a mutually acceptable rate schedule. On September 7, 2001, Customers intervened in the Schedule 45 matter (WUTC Docket UE-010525). Thereafter, PSE and Customers negotiated a settlement agreement on the terms and conditions of Stipulated Schedule 45, Special Contracts, and service under Stipulated Schedule 45 as memorialized in this Stipulation.

2. REQUESTED APPROVALS BY THE COMMISSION

- 2.1. PSE shall request, and the Customers shall actively support PSE's request, that the Commission expeditiously take the following actions no later than October 1, 2001:

- 2.1.1. Approve this Stipulation in its entirety, without material change or modification, and find that such Stipulation meets all statutory requirements and is in the public interest; and
- 2.1.2. Approve Stipulated Schedule 45 (as revised and attached hereto as Exhibit A) in its entirety for the transitional period, without material change or modification, and find that such Stipulated Schedule 45 meets all statutory and regulatory requirements and is in the public interest, or if the Commission is unable to approve the Stipulated Schedule 45, approve the Special Contracts (as attached hereto as Exhibit B) in their entirety for a coterminous transitional period, without material change or modification, and find that such Special Contracts meet all statutory and regulatory requirements and are in the public interest.
- 2.1.3. Expressly acknowledge that the rights of each Party are preserved to propose or advocate any position with regard to any matter arising either in PSE's emergency rate case or general rate case.

3. APPROVAL PROCEDURES

- 3.1. The Parties agree that the rates, terms and conditions that will result from Commission approval of the Stipulation and the Stipulated Schedule 45, and Special Contracts will represent fair, just and reasonable rates during the specified transitional period, within the meaning of RCW 80.28.010 and the requirements of other applicable Washington statutes and regulations, and that such approval by the Commission, and entry of all findings, approvals, and other actions, as requested by this Stipulation are in the public interest. Customers will not oppose PSE's representation to the Commission that the Stipulated Rates or Special Contracts will produce sufficient revenues to PSE.
- 3.2. The Parties unanimously agree to support Stipulated Schedule 45 as the preferred transitional rate arrangement for service to Customers (over the Special Contracts).

3.3. The Parties shall cooperate in filing the Stipulation, Stipulated Schedule 45, and Special Contracts with the Commission as soon as possible, but in any event no later than September 14, 2001. The Parties shall request a hearing or hearings to present the Stipulation, Stipulated Schedule 45, and Special Contracts to the Commission as the Commission deems necessary, and shall timely and completely respond to any inquiries the Commission may have regarding the Stipulation, Stipulated Schedule 45, and the Special Contracts. Unless otherwise agreed, PSE and Customers shall each make available a witness that will be available to testify at the hearing or hearings in support of the Stipulation, Stipulated Schedule 45, and Special Contracts. The Parties agree to use all reasonable efforts to secure approval of the Stipulation, Stipulated Schedule 45 and Special Contracts without material change or modification, and to obtain all approvals and other Commission actions requested in the Stipulation. The Parties agree to request that the Commission approve the Stipulation, Stipulated Schedule 45 or Special Contracts by October 1, 2001.

4. AGREEMENTS

- 4.1. The Parties agree that resolution of the matters identified in this Stipulation in the manner set forth in this Stipulation is in the public interest and complies with all applicable legal and regulatory standards. Therefore, all Parties support this Stipulation and recommend prompt Commission approval of the Stipulation.
- 4.2. The Parties agree that prompt Commission approval of the Stipulated Schedule 45 is in the public interest. Stipulated Schedule 45 is attached as Exhibit A to this Stipulation, is part of the Stipulation, and will be submitted to the Commission for approval with the Stipulation.
- 4.3. If the Commission is unable to approve Stipulated Schedule 45 by October 1, 2001 as filed, the Parties agree that prompt Commission approval of the Special Contracts by October 1, 2001 is in the public interest and otherwise complies with all statutory and regulatory requirements, including but not limited to WAC 480-80-335. The Special Contracts are attached as Exhibit B to this Stipulation, are part of the Stipulation, and will be submitted to the

Commission for approval with the Stipulation. All Parties support and recommend prompt Commission approval of Special Contracts if the Commission does not approve Stipulated Schedule 45 as filed.

- 4.4. The Parties agree that the Stipulated Schedule 45 is the appropriate rate schedule under which Customers should receive electric service during the transitional period specified therein. If the Commission is unable to approve Stipulated Schedule 45 by October 1, 2001, the Parties agree that the Special Contracts are the appropriate terms, conditions and arrangements under which to receive electric service. No Party shall propose or support any change to the rates in Stipulated Schedule 45 or the Special Contracts during the period extending from the date on which Stipulated Schedule 45 or the Special Contracts become effective by action of the Commission until the date on which Stipulated Schedule 45 or the Special Contracts are replaced, eliminated, or extended by final order of the Commission in the Company's next general rate proceeding, but, absent PSE's filing of a general rate case, in no case for a period longer than 24 months starting from the effective date of Commission acceptance of Stipulated Schedule 45 or the Special Contracts.
- 4.5. The Parties agree to fully, finally, and forever resolve, discharge, and settle any and all Released Claims (as defined below) upon and subject to the terms and conditions set forth herein.
- 4.6. The Parties agree that this Stipulation, Stipulated Schedule 45 and the Special Contracts do not constitute or create unlawful or undue discrimination or preference.
- 4.7. Except as expressly provided in this Stipulation, nothing in this Stipulation shall limit the position any Party may take in any future emergency or general rate proceeding.
- 4.8. The Parties hereby acknowledge and agree that each of the following agreements has been fully performed and/or superseded and is therefore terminated as of the date of this Stipulation with no further force of effect, including any precedential effect, and without further action by any Party:

- a. the “Agreement for the Installation of Electrical Facilities and the Provision of Electrical Service,” dated as of January 11, 2001, between PSE and AT&T Wireless, except for the unresolved parallel operation issues (interconnection issues) described in a letter from PSE to Mr. Russell Paine, dated June 8, 2001;
- b. the “Network Information Center Service Agreement” between PSE and WorldCom Network Services, Inc., executed August 28, 2000, by WorldCom Network Services, Inc.; and
- c. the “Qwest CyberCenter in Tukwila, Washington Service Agreement” dated as of November 17, 2000, between PSE and Qwest.

5. SETTLEMENT PAYMENT

The Parties acknowledge that certain monetary sums have been or will be exchanged in consideration of Parties’ agreement to this Stipulation to end and/or resolve the various billing disputes with respect to service under Schedule 48 and construction costs with respect to the first phase of construction of facilities necessary for service under Schedule 45. The details of such settlement payments are memorialized in a separate, confidential Accord and Satisfaction (“Accord”). Neither the Commission, its Staff, nor Public Counsel is a Party to the Accord.

6. RELEASE OF CLAIMS

Regardless of whether, when and how the Commission acts on this Stipulation, Stipulated Schedule 45, and Special Contracts, the release of the following claims (“Released Claims”) shall occur and/or take effect upon the date the settlement payments referenced Section 5 are made:

1.1.6.1. Each Customer shall fully, finally, irrevocably, unconditionally, and forever releases and discharges PSE, its owners, officers, employees, and agents, past and present, or anyone acting on its behalf, from any and all causes of action, demands, rights, damages, liability, fees, costs, or claims of any nature, arising from service under Schedule 48, known or unknown, that have been, could have been, or in the future could be asserted by, on behalf of or for the benefit of, such Customer and any other Customer with respect to Schedule 48, which arise

out of, relate to or by reason of their factual or legal relationship thereto, are in any way connected with any of the facts, circumstances, allegations, claims, causes of action, representations, statements, reports, transactions, events, occurrences, acts or omissions or failures to act, of whatever kind or nature.

- 6.2. Each Customer fully, finally, irrevocably, unconditionally, and forever releases and discharges PSE, its owners, officers, employees, and agents, past and present, or anyone acting on its behalf, from any and all causes of action, demands, rights, damages, liability, fees, costs, or claims of any nature, arising from the applicability of the Stipulated Schedule 45 or the alternative Special Contracts as the rate schedule, terms, conditions and rates under which Customers should receive electric service. This release shall not in any way restrict the Customers, or any of them, from asserting the inapplicability of any rate schedule during any future proceeding, including the next general rate case.
- 6.3. PSE and Customers hereby finally, irrevocably, and forever releases any claims to recover or seek reimbursement for any past construction costs necessary for the installation of new dedicated facilities, which claims are settled in separate confidential bilateral settlement agreements described in Section 5 of this Stipulation.

7. OTHER TERMS

- 7.1. Negotiated Agreement. The Stipulation, Stipulated Schedule 45, and the Special Contracts represent a fully negotiated agreement. Each Party has been afforded the opportunity, which it has exercised, to review the terms of the Stipulation, Stipulated Schedule 45, and the Special Contracts and to carefully consider the economic, regulatory, and other implications of entering into the Stipulation and (if applicable) of electing service under such a Schedule or Special Contract. Each Party has been afforded the opportunity, which it has exercised, to consult with legal counsel with energy experience of its choice concerning such terms and implications. Each Party has chosen of its own free will to enter into the Stipulation and, if applicable, of electing service under such a Schedule, based on a full assessment of such terms and

implications. The Stipulation, Stipulated Schedule 45, and the Special Contracts will not be construed for or against any Party based on the principle that ambiguities are construed against the drafter.

- 7.2. No Precedent. The Parties enter into the Stipulation to avoid further expense, inconvenience, uncertainty, and delay associated with the Proceedings and because the Commission has terminated Schedule 48, effective October 31, 2001. By executing the Stipulation, and except as otherwise provided in the Stipulation, no Party will be deemed to have accepted or consented to the facts, principles, methods, or theories employed in arriving at the Stipulation, nor will any Party be deemed to have agreed that such a Stipulation is appropriate for resolving issues in any other proceeding, except as provided herein or to enforce this Stipulation. Likewise, no Customer shall be deemed to have elected non-core service from PSE by virtue of being served under Rate Schedule 48.
- 7.3. Execution. The Stipulation may be executed by the Parties in several counterparts and, if so executed, will constitute one agreement.
- 7.4. Necessary Actions. Each Party shall take all actions necessary and appropriate, on a timely basis, to enable it to execute the Stipulation and to carry out all of its responsibilities under the Stipulation.
- 7.5. Binding Effect. The Stipulation and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective successors, assigns, purchasers, and transferees of the Customers.

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Therefore, the Parties respectfully request the Commission approve this Stipulation and the Stipulated Schedules, and grant such other approvals requested in the Stipulation, no later than October 1, 2001 in accordance with the terms and conditions set forth in this Stipulation.

DATED this 24th day of September, 2001

AT&T

By: _____

Its: _____

MCI WorldCom

By: _____

Its: _____

Qwest

By: _____

Its: _____

Puget Sound Energy, Inc.

By: _____

Its: _____