

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

SEATTLE CHILDREN'S HOSPITAL;
OVERLAKE HOSPITAL MEDICAL
CENTER; HOSPITAL CENTRAL
SERVICES ASSOCIATION; COSTCO
WHOLESALE CORPORATION;
NORTHWEST BAKING LIMITED
PARTNERSHIP, d/b/a NORTHWEST
BANKING COMPANY; FIRST CALL
PLUS OF WASHINGTON, L.L.C.;
REPAUL TEXTILES LLC d/b/a
STERILE SURGICAL SYSTEMS;
SHINING OCEAN, INC.; TUCCI &
SONS, INC.; WESTROCK CP, LLC;
NUCOR STEEL SEATTLE INC.; ACE
GALVANIZING, INC.; GARDNER
ASPHALT CORPORATION; and
WESTERN WOOD PRESERVING CO.,

Complainants,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UG-190857

ORDER 02

PREHEARING CONFERENCE
ORDER; NOTICE OF HEARING
**(Evidentiary Hearing set for March
19, 2020, at 9:00 a.m.)**

- 1 **NATURE OF PROCEEDING.** On October 1, 2019, the above-captioned natural gas transportation customers (Customers) of Puget Sound Energy (PSE or Company) filed with the Washington Utilities and Transportation Commission (Commission) a complaint (Complaint) alleging that PSE imposed upon them Curtailment Penalties of more than \$900,000 despite lacking authorization to do so under the Company's tariff. The Customers request that the Commission order PSE to (1) cease and desist from collecting any Curtailment Penalties for the use of gas in excess of the penalty free threshold of a declared overrun entitlement incurred between October 11, 2018, and February 28, 2019, and (2) refund with interest Curtailment Penalties collected from Customers when there was no Curtailment Period. On November 12, 2019, PSE filed an answer to the

Complaint, denying that the penalties that it charged to the customers were unlawful under its tariff.¹

2 **CONFERENCE.** The Commission convened a prehearing conference at Lacey, Washington on November 25, 2019, before Administrative Law Judge Nelli Doroshkin.

3 **APPEARANCES.** Chad M. Stokes and Tommy Brooks, of Cable Huston LLP, Portland, Oregon, represent the customers and the Tulalip Tribes of Washington (Tulalip Tribes). Sheree Strom Carson, of Perkins Coie LLP, Bellevue, Washington, represents PSE. Nash Callaghan, Assistant Attorney General, Lacey, Washington, represents Commission staff (Staff).² Contact information for the representatives of those granted party status is attached as Appendix A to this Order.

4 **STAFF PARTICIPATION.** Staff requested leave to withdraw from the proceeding at the prehearing conference, arguing that there are no factual issues in dispute that would require Staff's input; Staff also argues that its participation is not imperative because all parties to the proceeding are represented by counsel. The Customers and the Tulalip Tribes do not oppose Staff's request. PSE does oppose Staff's request to withdraw, stating that Staff would need to review any compliance filings that may be required in the proceeding.

5 At this time, the Commission finds that Staff's participation in this proceeding may be limited to monitoring compliance filings, should any be required in this case; *i.e.*, Staff need not file any documents indicated in the procedural schedule in Appendix B nor participate in discussions on fact stipulations. The parties also must copy Staff with their discovery requests and responses in this case, and any Staff member who reviews information designated as confidential must have executed the protective order issued in this docket. As the record develops in this case, however, the Commission may require additional assistance from Staff and will indicate if and when Staff will be required to submit filings or otherwise participate in the proceeding other than as described above.

¹ In Order 01 issued in this proceeding, the Commission granted PSE's November 5, 2019 motion for extension of time to answer the complaint.

² 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.

6 **PETITION FOR INTERVENTION.** The Tulalip Tribes timely filed a petition to
intervene. The Tulalip Tribes are a PSE natural gas transportation customer.

7 Absent objections to the petition to intervene, the Commission finds that the Tulalip
Tribes established a substantial interest in this proceeding and that their participation will
be in the public interest. Accordingly, the Commission grants the Tulalip Tribes' petition.

8 **AMENDING COMPLAINT.** In their petition for intervention, the Tulalip Tribes
explain that they are similarly situated to the Customers, but that their participation in the
Complaint filing was delayed pending approval from the Bureau of Indian Affairs for
securing legal representation, which they have since received.³ To encourage efficiency
in this proceeding, the Commission finds good cause to allow the Customers and the
Tulalip Tribes leave to amend the Complaint for the limited purpose of adding the Tulalip
Tribes as a complainant. Thus, the Tulalip Tribes will not be participating in this
proceeding as a party separate from the Customers. No party objects to such an
amendment. The filing deadline for the limited amendment is indicated in the procedural
schedule attached to this order as Appendix B.

9 **PROTECTIVE ORDER.** The Commission accepts the parties' representation that
confidential information may need to be filed or shared in this docket and thus will enter
a standard protective order.

10 **DISCOVERY.** The Commission finds that this docket meets the criteria of WAC 480-
07-400(2)(b) and that the parties may conduct discovery pursuant to the Commission's
discovery rules in WAC 480-07-400 – 425. The Commission urges the parties to work
cooperatively together to avoid having to bring discovery matters forward for formal
resolution. Response times to data requests are as set forth in Appendix B.

11 The Commission believes it will aid discovery in this case if each party shares its
responses to all data requests with all other parties. No party objects to the Commission
making the exchange of data request responses with all parties a requirement for
discovery in this case. Accordingly, the Commission requires the parties to share every
data request response with all parties, including Staff, subject to any confidentiality
limitations contained in Commission rule or the protective order issued in this docket.

³ Tulalip Tribes of Washington Petition to Intervene at 3-4 (Nov. 19, 2019).

- 12 **PROCEDURAL SCHEDULE.** The parties presented an agreed procedural schedule at the prehearing conference. The Commission adopts the parties' proposed procedural schedule, which is attached to this Order as Appendix B, including the deadline for filing the limited amendment to the Complaint.
- 13 **DOCUMENT FILING AND SERVICE REQUIREMENTS.** Parties must file and serve all pleadings, motions, briefs, and other pre-filed materials in compliance with all of the following requirements:
- (a) Parties must submit electronic copies of all documents by 5 p.m. on the filing deadline established in the procedural schedule (or other deadline as applicable) unless the Commission orders otherwise. Parties must comply with WAC 480-07-140(6) in formatting, organizing, and identifying electronic files.
 - (b) The Commission accepts only electronic versions of documents for formal filing. Parties must submit documents electronically through the Commission's web portal (www.utc.wa.gov/e-filing). If a party is unable to use the web portal to submit documents for filing, the Commission will accept a submission via email to records@utc.wa.gov, provided that the email: (1) explains the reason the documents are not being submitted via the web portal, and (2) complies with the requirements in WAC 480-07-140(5)(b). No paper copies of any pleading need to be filed.
 - (c) Documents filed with the Commission must conform to the formatting and other requirements in WAC 480-07-395 and WAC 480-07-460, and must comply with the requirements in WAC 480-07-160 and the protective order in this docket for documents that include information designated as confidential.
 - (d) Parties must electronically serve the other parties and provide courtesy electronic copies of filings to the presiding administrative law judge (nelly.doroshkin@utc.wa.gov) by 5 p.m. on the filing deadline unless the Commission orders otherwise. If parties are unable to email copies, they may furnish electronic copies by delivering them on a flash drive only.
- 14 **EXHIBITS FOR CROSS-EXAMINATION; EXHIBIT LISTS; CROSS-EXAMINATION TIME ESTIMATES.** The Commission will address deadlines for filing cross-examination exhibits, exhibit lists, and cross-examination time estimates by

notice issued after January 31, 2020, if the parties do not notify the Commission prior to that date that they jointly waive the evidentiary hearing.

- 15 **NOTICE OF EVIDENTIARY HEARING.** The Commission will hold an evidentiary hearing in this docket on **March 19, 2020, at 9:00 a.m.**, in the Commission's Hearing Room at 621 Woodland Square Loop SE, Lacey, Washington.
- 16 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission has limited ability to provide dispute resolution services. If you wish to explore those services, please contact Rayne Pearson, Director, Administrative Law Division (360-664-1136).
- 17 **NOTICE TO PARTIES: A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of this Order, in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this docket, subject to Commission review.**

Dated at Olympia, Washington, and effective November 26, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Nelli Doroshkin
NELLI DOROSHKIN
Administrative Law Judge

**APPENDIX A
PARTIES' REPRESENTATIVES
DOCKET UG-190857**

PARTY	REPRESENTATIVE	PHONE	E-MAIL
Customers and Tulalip Tribes of Washington	Chad M. Stokes Cable Huston LLP 1455 SW Broadway, Suite 1500 Portland, OR 97201	(503) 224-3092	cstoke@cablehuston.com
	Tommy A. Brooks		tbrooks@cablehuston.com
	Doug Kincaid		dkincaid@cablehuston.com
	Britta Henry		bhenry@cablehuston.com
Puget Sound Energy	Sheree Strom Carson Perkins Coie LLP 10885 N.E. Fourth St. Bellevue, WA 98004	(425) 635-1422	scarson@perkinscoie.com
	Jon Piliaris Service	(425) 456-2142	jon.piliaris@pse.com
			psedrs@perkinscoie.com
Commission Staff ⁴	Nash Callaghan Assistant Attorney General Office of the Attorney General P.O. Box 40128 Olympia, WA 98504	(360) 664-1187	nash.callaghan@utc.wa.gov
	Krista Gross		krista.gross@utc.wa.gov
	Betsy DeMarco		betsy.demarco@utc.wa.gov

⁴ Staff's participation is limited in this proceeding, as indicated in ¶ 5 of this Order.

**APPENDIX B
PROCEDURAL SCHEDULE
DOCKET UG-190857**

EVENT¹	DATE
Amended Complaint Filed	December 2, 2019
Initial Settlement Conference	December 10, 2019
Discovery Deadline ²	January 21, 2020
Deadline for Agreement on Stipulated Facts for Summary Determination and Filing of Joint Request for Waiver of Prefiled Testimony and Evidentiary Hearing	January 31, 2020
[Opening Testimony]	February 18, 2020
[Cross-Answering Testimony]	March 2, 2020
[Evidentiary Hearing]	March 19, 2020
Motions for Summary Determination or Opening Brief Filed	April 9, 2020
Responses to Motions for Summary Determination of Responses to Opening Brief Filed	April 30, 2020
Replies to Motions for Summary Determination or Replies to Response to Opening Brief Filed	May 14, 2020

¹ The parties may waive any of the events denoted in brackets.

² Response time to data requests is seven (7) business days.