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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)

4)
Complainant,)

5)

6 vs.)

7 PUGET SOUND ENERGY,)

8 Respondent.)

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DOCKET NO. UE-981238

VOLUME 3

Pages 30 - 45

A prehearing conference in the above matter was held on November 30, 1999 at 8:50 a.m., at 1300 South Evergreen Park Drive Southwest, Olympia, Washington, before Administrative Law Judge DENNIS MOSS, Commissioners MARILYN SHOWALTER and WILLIAM GILLIS.

The parties were present as follows:

THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, by ROBERT CEDARBAUM, Assistant Attorney General, 1400 South Evergreen Park Drive Southwest, Post Office Box 40128, Olympia, Washington 98504.
Also Present: Ken Elgin.

PUGET SOUND ENERGY, by FRANK H. MORROW, Attorney at Law, Summit Law Group, 1505 Westlake Avenue North, Suite 300, Seattle, Washington 98109.
Also Present: Christy Omohundro.

INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES, by S. BRADLEY VAN CLEVE, Attorney at Law, Duncan, Weinberg, Genzer and Pembroke, 1300 Southwest Fifth Avenue, Suite 2915, Portland, Oregon 97201.
Also Present: Ken Canon.
Kathryn T. Wilson, CCR
Court Reporter

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	MARKED	ADMITTED
1 EXHIBIT		
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1 P R O C E E D I N G S

2 JUDGE MOSS: Let's go on the record. We are
3 convened on November the 30th, 1999, at the
4 Commission's headquarters in the matter styled
5 Washington Utilities and Transportation Commission
6 against Puget Sound Energy, Docket No. UE-981238.

7 Let's just go ahead and get the appearances
8 out of the way. WUTC is the Complainant in the case,
9 so I'll start with Staff.

10 MR. CEDARBAUM: I'm Robert Cedarbaum,
11 assistant attorney general. My business address is as
12 stated previously on the record.

13 JUDGE MOSS: Thank you; and for the
14 Respondent?

15 MR. MORROW: Frank Morrow, attorney, Summit
16 Law Group. I believe you have my address.

17 JUDGE MOSS: Yes. We have the information
18 previously entered for Mr. Harris. For the Intervenor?

19 MR. VAN CLEVE: Brad Van Cleve on behalf of
20 the Industrial Customers of Northwest Utilities, and I
21 believe my business address is already on the record.

22 JUDGE MOSS: Yes, it is, unless it's changed.

23 MR. VAN CLEVE: No, it has not.

24 JUDGE MOSS: Our purpose for being here this
25 morning -- and we are crowded in here before the open

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1 meeting today -- is to build a record in this docket
2 and present the proposed Stipulation and Settlement
3 Agreement to the Commission, who will join me on the
4 Bench momentarily. The Bench has several questions --
5 I'm not certain at this juncture who will pose them,
6 but they will be posed by a panel of witnesses, or
7 questions may be directed to counsel as appropriate.

8 I understand we do have three panelists
9 today. Let me ask before we call the panel to the
10 witness stand if there are any preliminary matters
11 before we launch into the heart of the matter.

12 MR. CEDARBAUM: Your Honor, we talked before
13 we went on the record this morning about handling Lloyd
14 Reed's direct testimony that was prefiled, and I think
15 you indicated the desire to have that admitted by
16 stipulation, which is fine with staff.

17 JUDGE MOSS: I would suggest we build a
18 record by having that testimony come in by stipulation
19 as Exhibit 1. Is there any objection? Hearing no
20 objection, it will be admitted as marked, and does
21 anybody have a clean copy of the Stipulation and
22 Settlement Agreement today? I'd like to make that an
23 exhibit for purposes of our record. If not, it can be
24 furnished later.

25 MR. MORROW: I do.

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1 JUDGE MOSS: Do you want to hold on to that
2 for the time being and give it to me at the end? We'll
3 mark that as Exhibit 2. Any objection to its
4 admission? Hearing no objection, it will be admitted
5 as marked. Is there anything else to be included in
6 the record in this proceeding, aside from whatever the
7 panelists have to say? Seeing no indication, I'll ask
8 that our panelists assume their positions in the
9 witness box. We're going to go off the record
10 momentarily, and I'll bring in the Commissioners.

11 (Discussion off the record.)

12 JUDGE MOSS: We're back on the record in
13 Docket No. UE-981238. Chairwoman Showalter and
14 Commissioner Gillis have joined me on the Bench this
15 morning, and we have our witnesses in the box over
16 here, and the first order of business will be that we
17 swear them.

18 (Witnesses sworn.)

19 JUDGE MOSS: We have in the witness box
20 Ms. Omohundro from PSE, Mr. Canon from the Industrial
21 Customers of Northwest Utilities, and Mr. Elgin
22 representing the Commission staff, and I believe
23 counsel are familiar to the Bench.

24 We have accepted into the record -- and I
25 want to correct one of the exhibits. I had indicated

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1 Mr. Lloyd's testimony would be Exhibit 1. That will be
2 Exhibit T-1, as following the nomenclature that we
3 typically follow, and then we have Exhibit 2, which is
4 the Stipulation and Settlement Agreement. Based on our
5 off-the-record discussions, I believe, Ms. Omohundro,
6 you said you had a brief statement regarding the
7 settlement?

8 MS. OMOHUNDRO: That would be Mr. Lloyd Reed.
9 He has two last names. I'm Christy Omohundro, and I'm
10 PSE's witness to present the settlement of all Schedule
11 48 issues, and I'm here principally to answer your
12 questions, but I just wanted to make a few remarks at
13 the outset.

14 The Settlement itself is a product of a long
15 and sometimes difficult negotiations with our
16 customers, but I'm happy to report that we have reached
17 agreement on all of the outstanding issues. As some
18 may recall, Schedule 48 was drafted and implemented in
19 times of great uncertainty regarding open access and
20 the direction of markets and other things, and it was
21 viewed -- and even the merger. It was viewed as a
22 transitional tariff, and as the market has evolved, I
23 believe the way that Schedule 48 was written,
24 disagreements came up as a result of the way it was
25 written.

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1 This settlement not only resolves all of
2 those problems but it also resolves the firming charge
3 issues for the remainder of the rate stability period,
4 and in that respect, it is a comprehensive settlement.
5 Most important for us, we view this as a start of a new
6 productive working relationship with our industrial
7 customers. In the last year, our relationship with our
8 customers has been markedly contentious, and we view
9 that settlement agreement as a turning point in that
10 relationship, and hopefully our customers will agree,
11 and we expect to work together with the Customers
12 because we will continue to experience uncertainty and
13 change in this market, so we hope to work with them in
14 that regard.

15 As to the specifics of the Settlement, what
16 does it settle? Number one, it settles the firming
17 charge for the period 1998-1999. Additionally, it
18 settles the firming charge for 1999-2000. It also
19 settles the firming charge for the period 2000-2001 in
20 the sense that there can be two outcomes: either the
21 existing rate would stay into effect, or we will
22 implement a new collaborative process to set a new
23 firming rate starting in November 1, 2000, and we've
24 set a date by which that must be complete, and that
25 would be March 31st, 2000, so we'll have some advance

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1 notice on that one. Finally, it settles all the issues
2 regarding the language and dispute around Schedule 48.

3 So what are we asking from you? We're asking
4 you to approve the Settlement and allow the Tariff
5 revisions to go into effect. Those are all my remarks.
6 I'm available for questions.

7 JUDGE MOSS: Mr. Canon, did you have
8 anything?

9 MR. CANON: Just very briefly, I would second
10 what Ms. Omohundro just mentioned. We have had a
11 contentious year. I think both parties have worked
12 very hard in trying to put this behind us, and I was
13 very pleased; a little over a week ago we had a meeting
14 with PSE to talk about winter operations. It's
15 something both on the natural gas and on the electric
16 side that my members are greatly interested in, and it
17 has a real relationship when you're talking about
18 firming options, for example, and I think that meeting
19 went very well, and we see this as closing a book and
20 hopefully moving forward on a different basis.

21 JUDGE MOSS: Mr. Elgin, did you have
22 anything?

23 MR. ELGIN: No, Your Honor.

24 JUDGE MOSS: There are a few questions from
25 the Bench. I think we can characterize these as being

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1 in the nature of clarifying questions. With respect to
2 the rate itself, it appears that the Settlement
3 Agreement would establish a rate at 46 cents for about
4 a two-year period. Of course, the Tariff has provided
5 for annual redetermination. As Ms. Omohundro observed,
6 the market is a changing market, and we want to be
7 clear that the Customers and the Company are, in
8 striking this settlement, accepting the risk that there
9 will be market changes that will cause this optional
10 firming rate of 46 cents to be either higher or lower
11 than what would perhaps be in a market rate in a fully
12 open and competitive market. Is that something both
13 parties are prepared to accept?

14 MR. CANON: Yes, we are.

15 MS. OMOHUNDRO: Yes, we are as well, and the
16 process that we've set up to go forth in establishing a
17 firming charge actually goes out and tests that market,
18 and it's a way -- we hope to establish a process that
19 we can both agree to to test the market and establish a
20 market price.

21 JUDGE MOSS: And staff is equally comfortable
22 with this for a two-year period?

23 MR. ELGIN: Yes, Your Honor.

24 JUDGE MOSS: Will there still be an annual
25 filing, a compliance filing?

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1 MS. OMOHUNDRO: Yes.

2 JUDGE MOSS: I guess we're seeing one of them
3 perhaps as early as today, and then the other one would
4 be in September or October, that period.

5 MS. OMOHUNDRO: In that time frame.

6 MR. ELGIN: If I could clarify, the
7 Settlement does provide for a process where the
8 Customers and the Company would negotiate and convene a
9 process, and in the context of the compliance filing
10 for the next cycle, it may very well be there would be
11 additional Tariff changes as part of that filing, not
12 necessarily just a change in the rate, so this
13 settlement does contemplate bringing something to the
14 Commission, and it could very well be just a new rate,
15 or it could be some other mechanism in terms of how the
16 parties go about determining what is an appropriate
17 market mechanism for establishing the rate, so there
18 would be additional Tariff revisions in the next
19 compliance as well.

20 JUDGE MOSS: And the Commission would have an
21 opportunity to take a look at that?

22 MR. ELGIN: Yes, that's correct.

23 JUDGE MOSS: And that brings me to the third
24 question, really, which is the change. I think it's
25 indicated as Paragraph G of the Settlement Agreement.

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1 This provision appears to provide that any further
2 changes in the Tariff beyond those expressly set forth
3 in the Stipulation and Settlement Agreement would
4 require unanimous consent among the Schedule 48
5 customers and the Company. Am I understanding that
6 correctly?

7 MR. CANON: Correct.

8 MS. OMOHUNDRO: That's correct, through the
9 period October 31st, 2001.

10 JUDGE MOSS: So this would potentially impact
11 on the filings that Mr. Elgin just referred to.
12 Something that would be brought to the Commission as a
13 unanimous matter or not at all.

14 MS. OMOHUNDRO: That is my understanding as
15 well.

16 JUDGE MOSS: Let me turn to my second
17 question, which was on Paragraph B. There, there is
18 some language proposed to be stricken from the Tariff
19 as it exists today, and the Bench wants to be clear on
20 what that portends. What is the significance of
21 striking this language? You decide among yourselves
22 who should answer that.

23 MR. CANON: I guess from our perspective,
24 what this strikes is what we call, "third party
25 firming." It is something that PSE had difficulty

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1 with, and as part of an overall comprehensive agreement
2 and settlement of all these matters, we agreed that
3 this tariff change would be made.

4 MS. OMOHUNDRO: As Mr. Canon indicates, we
5 did have a problem with this because of some things
6 that happened subsequent to the initiation of Schedule
7 48, the Tariff that created some jurisdictional and
8 operational problems in being able to provide this, so
9 we did reach settlement to eliminate that language in
10 the tariff.

11 JUDGE MOSS: One effect of this will be if a
12 customer wishes to have core type service, then the
13 optional firming will be the only option available.

14 MR. CANON: That is correct.

15 MR. ELGIN: Your Honor, I believe you
16 misspoke. Not core type service. This is still a non
17 core service. If the customer does want a firming
18 service, a firm product, this would be the only option
19 and not an option of going to an independent third
20 party and purchasing the firming service, but it is
21 still non core service.

22 JUDGE MOSS: I understand. Unfortunate
23 choice of words, perhaps. The only other question I
24 have is if the panelists are satisfied that the 46-cent
25 rate does today reasonably reflect what's going on in

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1 the market.

2 MS. OMOHUNDRO: The 46 cents is an estimate.
3 The firming product that's contemplated in Schedule 48
4 is not a widespread, widely traded product, so it's
5 our estimate. We believe it's a number we can settle
6 on and it's a fair price.

7 MR. CANON: I would agree with that.

8 MR. ELGIN: Yes.

9 JUDGE MOSS: Any other questions from the
10 Bench?

11 CHAIRWOMAN SHOWALTER: I'm looking at this as
12 one as the default, and the default is 46 cents. In
13 the event that the parties try to agree to something
14 else and can't, which could happen, it remains 46
15 cents; is that correct?

16 MR. CANON: That is correct.

17 CHAIRWOMAN SHOWALTER: That means that one or
18 the other of you is probably not going to fair as well
19 relative to some other market rate or some kind of
20 rate, but because of Schedule 48's underlying
21 provisions that the risk is not borne by the
22 ratepayers, it means in that event, either the Company
23 or the special customers, as opposed to the general
24 payers, will bear that risk.

25 MS. OMOHUNDRO: That's correct.

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1 CHAIRWOMAN SHOWALTER: Thanks.

2 COMMISSIONER GILLIS: I have something
3 related. Maybe it's the same question, but is it clear
4 that this settlement and the agreement on the rate in
5 this settlement in no way would result in the potential
6 of cost shifting onto nonparticipating customers?

7 MR. CANON: It is my understanding this
8 changes nothing at all from kind of the fundamental
9 underling basis of Schedule 48. Commissioner Gillis, I
10 think that's correct.

11 MS. OMOHUNDRO: It's important to note that
12 this is in place in a rate stability period, so there
13 really wouldn't be any opportunity to cause cost
14 shifting to occur in that period of time.

15 COMMISSIONER GILLIS: Thank you.

16 JUDGE MOSS: Anything further? That would
17 appear to complete the questions from the Bench. I
18 think with that then we can release the witnesses from
19 the stand, and we thank you all very much for appearing
20 and presenting this illuminating information.

21 Do we have any other business to conduct on
22 the record before the Commission retires to deliberate?
23 Seeing no indication, we'll be in a brief recess for
24 the opportunity for the Commissioners to talk.

25 (Recess.)

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1 JUDGE MOSS: We're back on the record in
2 Docket No. UE-981238. Commission has completed its
3 deliberations.

4 CHAIRWOMAN SHOWALTER: We have. Commissioner
5 Gillis, is there anything you would like to say?

6 COMMISSIONER GILLIS: No. Go ahead.

7 CHAIRWOMAN SHOWALTER: I think this is a
8 great effort by the parties. This obviously has been
9 contentious, both this phase and the previous phase,
10 and for the parties to wrap all that up in a manner
11 that's satisfactory to them and also, I think, in the
12 public interest is a great feat, and I hope it is the
13 beginning of a good, cooperative relationship in pretty
14 difficult and uncertain times, and that's obviously
15 partly what's behind this, so I'm prepared to approve
16 the Stipulation and enter an order approving it.

17 COMMISSIONER GILLIS: And I agree.

18 JUDGE MOSS: With that, we do have an order
19 prepared, and that will be entered momentarily
20 downstairs with the records center and at that point in
21 time will be an official order of the Commission and
22 copies will be available through the records center.

23 I believe that concludes our business this
24 morning. Thank you all very much for attending at the
25 early hour in advance of the open meeting. We're off

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1 the record.

2 (Prehearing conference concluded at 9:15 a.m.)

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