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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION
3 WASHINGTON UTILITIES AND)
4 TRANSPORTATION COMMISSION,)
5 Complainant,)
6 vs.) DOCKET NO. PG-030080
7 PUGET SOUND ENERGY, INC.,) Volume II
8 Respondent.) Pages 10 - 30
9 -----

10 A hearing in the above matter was held on
11 January 27, 2005, at 1:38 p.m., at 1300 South Evergreen
12 Park Drive Southwest, Olympia, Washington, before
13 Administrative Law Judge C. ROBERT WALLIS, Chairwoman
14 MARILYN SHOWALTER, Commissioners RICHARD HEMSTAD and
15 PATRICK OSHIE.

16
17 The parties were present as follows:
18 WASHINGTON UTILITIES AND TRANSPORTATION
19 COMMISSION, by DONALD T. TROTTER, Assistant Attorney
20 General, 1400 South Evergreen Park Drive Southwest,
21 Post Office Box 40128, Olympia, Washington 98504;
22 telephone, (360) 664-1189.

23
24 PUGET SOUND ENERGY, INC., by SHEREE STROM
25 CARSON, Attorney at Law, Perkins Coie, 10885 Northeast
Fourth Street, Suite 700, Bellevue, Washington
98004-5579; telephone, (425) 635-1422.
Kathryn T. Wilson, CCR
Court Reporter

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INDEX OF EXHIBITS

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EXHIBIT:

MARKED:

OFFERED:

ADMITTED:

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1 P R O C E E D I N G S

2 JUDGE WALLIS: The hearing will please come
3 to order. This is a hearing before the Washington
4 Utilities and Transportation Commission being held on
5 January 27 of the year 2005 before Chairwoman Marilyn
6 Showalter, Commissioner Richard Hemstad, and
7 Commissioner Patrick Oshie. My name is Bob Wallis, and
8 I am the presiding administrative law judge for this
9 proceeding. This hearing is being held in Olympia,
10 Washington.

11 This afternoon's session is a session in
12 which the Commission will be receiving a presentation
13 of and inquiring into a proposed settlement that the
14 Commission staff and the Company have agreed upon and
15 are offering to resolve the issues in this proceeding.

16 As a preliminary step, I would like to mark
17 the settlement agreement, including its attachments, as
18 Exhibit No. 1 in this docket and mark the narrative
19 supporting settlement as Exhibit No. 2. Let me ask if
20 there is any objection to the receipt of those
21 exhibits? Very well. Those documents are received in
22 evidence.

23 My understanding of the parties' agreement as
24 to process is that counsel will be making a brief
25 introductory statement regarding the settlement and

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1 then making witnesses available to respond to
2 inquiries. What I would like you to do is after we
3 take appearances, introduce your witnesses and then
4 proceed with the statements. So may we have
5 appearances at this time; for the Complainant?

6 MR. TROTTER: For the Commission, my name is
7 Donald T. Trotter, assistant attorney general.

8 JUDGE WALLIS: For the Respondent?

9 MS. CARSON: For the Company, I'm Sheree
10 Strom Carson representing Puget Sound Energy.

11 JUDGE WALLIS: Thank you. Who would like to
12 proceed? Mr. Trotter?

13 MR. TROTTER: If I could just give a very
14 brief introduction, and then I believe counsel for the
15 Company has a short statement, and then the witnesses
16 can be made available, and if you want anything more,
17 we would be happy to supply that.

18 Again, Donald T. Trotter for the Commission
19 staff. This is a settlement in docket numbers
20 PG-030080 and 030128. Complaint was issued in those
21 dockets on June 29th of last year. It involves alleged
22 violations of pipeline safety rules by Puget Sound
23 Energy Company. The Company answered, and they
24 stipulated to certain facts and disputed other facts.
25 Settlement discussions ensued to see if the parties

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1 could come to some agreement. During that time frame,
2 there was a prehearing conference on November 10th of
3 2004, and PSE and the Commission are the only parties
4 to this docket, so this is a unanimous settlement
5 proposal.

6 The parties made substantial progress in
7 settlement, and then with the assistance of ALJ Rendahl
8 of the Commission, a full settlement was reached, and
9 that is before you as Exhibit 1. It consists of a
10 document entitled "settlement agreement," and it has
11 three appendices, and in those appendices are four
12 programs that PSE has agreed to implement and/or
13 continue to completion.

14 One involves SAP process improvements, and
15 that's software improvements; isolated facilities
16 program and critical bond program to locate certain
17 types of facilities and take appropriate action, and
18 then Appendix C, called the bare steel replacement
19 program, which deals with certain types of pipes still
20 in the Company system that has been in that system for
21 a very long period of time. The agreement also calls
22 for a seven-hundred-thousand-dollar penalty, two
23 hundred thousand of which is suspended in a cash
24 payment of five hundred thousand.

25 There are other provisions that I'm sure you

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1 may have questions on, and we are prepared to answer
2 them, but that's the big picture view. We also filed a
3 joint narrative explaining the settlement, which
4 hopefully was of some use to you.

5 The two staff witnesses today are Alan E.
6 Rathbun, who is the director of the Commission's
7 pipeline safety section, and David D. Lykken, a senior
8 pipeline safety engineer in that section. The engineer
9 who did the investigation primarily was Scott Rukke,
10 and he is not available today, except -- he is not
11 available to be present today, but if needed, we can
12 contact him and he will participate via the bridge if
13 there is some very technical question focused on the
14 investigations. We can make him available. So I'll
15 turn it over to the Company.

16 JUDGE WALLIS: Thank you. Ms. Carson?

17 MS. CARSON: Good afternoon. I'm Sheree
18 Strom Carson representing Puget Sound Energy. Sitting
19 next to me are the two witnesses that are here on
20 behalf of Puget. First there is Duane Henderson, who
21 is the director of safety and operations for the
22 Company, and next to him is Jim Hogan, who is the
23 manager for standards and compliance from the Company.
24 Also present here for the Company is Sue McLain, who is
25 the senior vice president of operations. She's sitting

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1 behind me.

2 I just want to say a few words about this
3 settlement. This relates to audits in King and Pierce
4 County in 2003 that Staff conducted, and in 2004, a
5 formal complaint was filed with the Commission. Before
6 that complaint was filed and after that complaint was
7 filed, Puget and members of the pipeline safety staff
8 worked closely together collaboratively to look not
9 only at the particular violations that came out of King
10 and Pierce County but also to look at how Puget's safe
11 gas system can be made even safer company-wide as a
12 result of this audit, and the results of that are what
13 you have here before you, the settlement agreement.

14 We want to stress that Puget's gas system is
15 safe, and Puget strives for zero tolerance when it
16 comes to violations of state or federal regulations.
17 That's the goal, and we believe Puget is very close to
18 that goal when you look at the number of facilities and
19 monitoring that Puget has company-wide.

20 The SAP program that Mr. Trotter mentioned is
21 one of the enhancements that Puget is doing as part of
22 the settlement, and it's an enhancement to Puget's
23 software program that will allow Puget to even better
24 identify when monitoring needs to be done so that it
25 can be done timely and so that we can get to that

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1 one-hundred-percent compliance, which is our goal.

2 The isolated facilities program is the second
3 program that Puget is implementing, and it actually is
4 replacing a couple of other programs that Puget had in
5 place to identify isolated segments of steel, and this
6 again was a result of collaboration between the Company
7 and Staff to talk about how can we do this better and
8 how can we improve the system company-wide.

9 Puget as part of the settlement agreement has
10 also agreed to continue the critical bond program that
11 has been in place since the late 1990's and continues
12 for ten years, and then Puget has taken on a big
13 undertaking to replace all the bare steel, which is
14 over two hundred miles of bare steel, and this was a
15 proposal that Puget had for a few years and had
16 proposed to begin in, I think, 2007 and have a 15-year
17 program to do it, but as part of this settlement
18 agreement, Puget is agreeing to start it in 2005 and
19 complete it, expedite it on an expedited basis in ten
20 years. So we think that these are very positive moves.
21 Puget is investing resources into the Company, and this
22 is for the benefit of everyone.

23 But Puget's system is safe. Puget is
24 constantly monitoring its system itself. In fact, many
25 of the violations that showed up here, actually, are

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1 violations Puget has caught through its own auditing
2 process and that were called to the attention of Staff
3 during the audit. So I'm very pleased with the
4 collaborative process that took place in this case and
5 the way that Staff and the Company were able to work
6 through this themselves and come up with positive
7 substantive programs, and most all of it done without
8 the assistance of counsel, which I think is always a
9 positive thing too, so we really weren't involved until
10 the very end, and I think they did a great job, and I
11 will turn it over to the panel to answer any questions
12 you may have.

13 JUDGE WALLIS: Before we begin questions, I
14 would like to swear the witnesses and would ask you to
15 stand and raise your right hand, please.

16 (Witnesses sworn.)

17 JUDGE WALLIS: Do we have questions from the
18 Commission?

19 CHAIRWOMAN SHOWALTER: I just have one
20 question. It's really a question for Ms. -- is it
21 Strom Carson?

22 MS. CARSON: Carson.

23 CHAIRWOMAN SHOWALTER: And that is, on the
24 settlement agreement, Page 4, Paragraph 18, the third
25 sentence there says, "PSE concurs with the allegations

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1 in Complaint Paragraphs 9, 10, 12, 13, 14, 15, and 17."

2 My question is, if the Commission finds that
3 the Company violated rules as laid out in those very
4 same paragraphs, is that consistent with your
5 settlement agreement? In other words, you appear to
6 have admitted, I would say, that facts are true, which
7 I think then would entitle us to make a finding of
8 violation, but that is not explicitly stated here, and
9 I want to make sure that that would not be contravening
10 your understanding of the settlement agreement.

11 MS. CARSON: That is my understanding of the
12 settlement agreement as to those paragraphs that you
13 cited.

14 CHAIRWOMAN SHOWALTER: I was a little unclear
15 on the next sentence. There is an agreement that the
16 number of violations should be eight, not nine, but
17 there is nothing there that states that PSE concurs in
18 those eight.

19 MS. CARSON: That's true. PSE does concur in
20 those eight.

21 CHAIRWOMAN SHOWALTER: It was implied, but I
22 was not sure, and then I think I understand the issue
23 on Paragraph 16. Thank you.

24 MS. CARSON: You're welcome.

25 COMMISSIONER HEMSTAD: I have a general

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1 question about the timing of the bare steel pipe
2 replacement to be accomplished over ten years. How was
3 that time period arrived at, and is that driven by
4 practical problems of what can be done when, or is it
5 driven by the financial burdens of doing so, or is it
6 both?

7 MR. TROTTER: Mr. Hogan, why don't you start?

8 JUDGE WALLIS: When you respond, could you
9 start by stating your name so that it's in the record?

10 MR. HOGAN: Yes. This is Jim Hogan. Our
11 bare steel pipe, we have been replacing it. We've had
12 our own program in place for a number of years where
13 we've been replacing a certain amount of mileage each
14 year, and the Company, before this complaint was filed,
15 we recognized that we would like to not have any more
16 bare steel pipe in our system because there is certain
17 operational and economic factors that make bare steel
18 not as attractive as newer pipe.

19 So we have been replacing it for a number of
20 years based on, off and on, our ability to take a
21 certain amount of workload. There is certainly
22 engineering associated with it, and we had proposed to
23 Staff the 15-year time frame based on that we felt it
24 was reasonable to accomplish.

25 The actual pipe itself has decades of life

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1 left in it, and there are thousands of miles of bare
2 steel used in other states, so it's not necessarily an
3 imminent safety issue. It's more of an issue that we
4 as a company, and I think Staff was in agreement, would
5 prefer not to have any more bare steel in our system.
6 So the 15-year goal was, again, around something we
7 thought was manageable looking at all the other
8 programs we have in place.

9 We also have a cast-iron pipe replacement
10 program in place, which was something that's been going
11 on for a number of years, and due to the resources of
12 construction associated with doing the cast-iron
13 replacement, that's why we had initially proposed to
14 begin bare steel replacement in 2007 because we would
15 be completing cast iron.

16 Staff felt we should accelerate the schedule
17 both from a miles-per-year standpoint, therefore
18 reducing it from ten to fifteen, and also thought that
19 we should begin immediately, and we are in agreement
20 with that, and we will make that possible.

21 But I guess to answer your question, it is
22 200 miles of pipe, so there are permanent engineering
23 coordination with all the various jurisdictions, and we
24 feel that's manageable and something we can accomplish.

25 MR. RATHBUN: This is Alan Rathbun, pipeline

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1 safety director. I agree with what Mr. Hogan has said.
2 I think we were looking at this from the standpoint of
3 getting it done as quickly as we possibly can.
4 However, one of the major issues I want to highlight
5 too in replacement program is the fact that the Company
6 is required to do a prioritization, a risk-based
7 assessment of their bare steel.

8 Now, the bare steel that's in the ground is
9 not so much the issue as it has been repaired over
10 time, whether or not those repairs have been completed
11 in accordance with rule. So our concern now is to go
12 back and assess their bare steel program that's in the
13 ground to prioritize that replacement in a sense of
14 where the risk applies and then make those replacements
15 in accordance with that risk assessment.

16 COMMISSIONER HEMSTAD: I take it parties
17 represent to us that the timing of that is such that
18 the Commission and the Public can be reasonably assured
19 the system is safe.

20 MR. RATHBUN: Yes, Commissioner Hemstad,
21 that's the concern, and that's what drove us coming to
22 this point. This does not in any way let the Company
23 out of their requirements under continued monitoring of
24 their bare steel program, and if requirements are to
25 mitigate a leak that's found, they still must comply

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1 with those. None of the issues about forbearance in
2 our agreement relate to the issue of not being in
3 compliance with rules. The forbearance only deals with
4 Staff not asking for penalties for similar violations.

5 COMMISSIONER HEMSTAD: I take it the Company
6 agrees with that statement.

7 MR. HOGAN: Yes, we are in agreement with
8 Staff on this.

9 COMMISSIONER HEMSTAD: There is obviously a
10 trade-off between speed and cost. The program that is
11 now proposed here for implementation, will that
12 translate into projected requirements of increase in
13 rates as a result of this program, or is that not able
14 to be determined?

15 MR. RATHBUN: There is nothing in the
16 agreement which really relates to rate structure or
17 need for rates.

18 COMMISSIONER HEMSTAD: Does the Company have
19 any comment on that?

20 MS. CARSON: I think that's not addressed in
21 the agreement, and Sue McLain may have something more
22 on that.

23 MS. MCLAIN: If you want to swear me in, I
24 would be happy to.

25 JUDGE WALLIS: Raise your right hand, please.

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1 (Witness sworn.)

2 JUDGE WALLIS: Please step forward.

3 MS. MCLAIN: I'm Susan McLain, senior vice
4 president, operations of Puget Sound Energy. With
5 respect to the question on impact on rates, we expect
6 to take our normal course of action. So for example on
7 a program such as this, to competitively bid out the
8 project and insure that we are receiving competitive
9 costs back in order to perform the construction work.

10 Once the work is completed, obviously during
11 a general rate proceeding, if we have indeed put in new
12 plant, we would expect that those costs associated with
13 the plant would be evaluated during that general rate
14 case proceeding and could impact the cost to our
15 customers.

16 COMMISSIONER HEMSTAD: Thank you. That's all
17 I have.

18 JUDGE WALLIS: Commissioner Oshie?

19 COMMISSIONER OSHIE: A couple of questions
20 for both parties as to, I think it's the interplay
21 between Paragraphs 21 and 22 of the agreement. It
22 starts on Page 4 and overlaps into Page 5, and the
23 first question is really trying to get a feel for what
24 the parties meant by the language on Page 5 under the
25 first bullet, and it's in the first sentence, "Staff or

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1 PSE finds the same sorts of violations as those alleged
2 in the Complaint."

3 I guess it's the use of the term "same
4 sorts," and the language seems pretty broad, but what
5 do the parties mean by that? Is it identical or
6 similar violations or of the general nature of the same
7 violations? I can have my own idea what "same sorts"
8 mean, but what do the parties mean by that?

9 MR. TROTTER: This is Donald T. Trotter.
10 What I believe was contemplated was the same section of
11 the CFR. If you look at the Complaint, for example,
12 there were some allegations where certain remedial
13 action or a survey or similar type of conduct was not
14 made by a prescribed deadline, so then we cited the
15 specific section of the CFR.

16 This deals with the SAP program enhancements,
17 so while the Company is implementing that, if the same
18 CFR sections are implicated in another investigation,
19 the Staff would still go to the Company and say, This
20 is a problem. You need to fix it, and they are
21 required to fix it if there is a problem, but Staff
22 would not recommend to the Commission any additional
23 penalties during that time frame once the SAP program
24 is implemented, and if we find a problem that occurs
25 after the program is implemented, then that's a

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1 different matter and a penalty could be recommended at
2 that time.

3 MS. CARSON: Could I make one clarification?
4 You said the SAP, and I think the SAP program is not
5 addressed in Bullet 1. Those are the other programs.
6 There is a slightly different standard in Bullet 2 for
7 the SAP.

8 MR. TROTTER: That's correct. I was just
9 using that as an example in the same subject area.

10 COMMISSIONER OSHIE: Let's move on to
11 Paragraph 22, because it seems when I read that, all
12 bets were off. In other words, the restrictions that
13 Staff may have recommended monetary penalties are
14 lifted under Paragraph 22. Is my understanding
15 correct?

16 MR. TROTTER: Yes.

17 COMMISSIONER OSHIE: A couple of questions on
18 the wording in the paragraph. The "serious personal
19 injury," you have an example there. Is there any other
20 direction you can give us as to what the parties meant
21 by "serious"?

22 MR. RATHBUN: This is Alan Rathbun, pipeline
23 safety director. We had basically taken this
24 limitation on kind of a threshold determination as to
25 when this would kick in basically from the Code of

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1 Federal Regulation as to reportable incidents, so we
2 took the language right out of that, and in the case of
3 serious, it was one that requires inpatient
4 hospitalization, for instance, for serious injury and
5 certainly loss of life, and property damage of fifty
6 thousand dollars, so that's the threshold that was
7 established.

8 COMMISSIONER OSHIE: And the fifty thousand
9 dollars from the CFR as well, Mr. Rathbun?

10 MR. RATHBUN: Yes, it is.

11 COMMISSIONER OSHIE: Do you know what the
12 rationale is, fifty thousand dollars as opposed to
13 twenty or one hundred?

14 MR. RATHBUN: I can't speak to the rationale
15 behind the numbers.

16 COMMISSIONER OSHIE: Thank you.

17 JUDGE WALLIS: Any further questions from the
18 Commission? I have just a couple of questions. Does
19 the agreement require the replacement of all bare steel
20 in the Company's inventory?

21 MR. HOGAN: This is Jim Hogan. The agreement
22 as it is right now requires -- we do have a small
23 subset of our bare steel pipe that has active cathodic
24 protection, which is active corrosion control. In our
25 original proposal to Staff, we had proposed to keep

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1 that element, and currently, that's something on the
2 order of between twenty and forty miles, and not
3 replace that.

4 Subsequent in our settlement negotiations,
5 Staff felt that there was a need to replace that
6 portion of the mileage that has active cathodic
7 protection. Basically what we've agreed to is that
8 based on our risk base, elements where we are replacing
9 the oldest or worst bare steel pipe first, those miles
10 of pipe that have active corrosion control on them now
11 would be the last to be replaced.

12 We have verbiage in there now that says in
13 the latter years of the program, we evaluate with Staff
14 whether that pipe should remain in the ground or be
15 replaced. At this point in time, I don't feel we have
16 a strong opinion either way. We will evaluate that in
17 eight years.

18 MR. RATHBUN: This is Alan Rathbun, and we
19 would concur with that.

20 JUDGE WALLIS: Are any counties excluded from
21 the operative effects of the settlement agreement?

22 MR. RATHBUN: No. This does address the
23 entire area of Puget Sound Energy.

24 COMMISSIONER OSHIE: Judge Wallis, I have a
25 question. I would like to know if this agreement

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1 affects what I understand to be Puget's ongoing leak
2 detection activity as a result of the incident, I
3 think, back in September. Is this meant to affect that
4 at all, or is that just a separate investigation that's
5 ongoing? Do we have an order in place that requires to
6 help you conduct the inspections, and there was a
7 graduated inspection schedule, and I'm not quite sure
8 where we are at in that. How does this affect that
9 order?

10 MR. RATHBUN: Nothing that's ordered would
11 impact the emergency order issued by this commission as
12 relates to the Bellevue incident. That was the
13 particular leak survey that you are talking about
14 relative to the Bellevue incident was in that confined
15 area over a period of time, and nothing in this order
16 would impact that.

17 JUDGE WALLIS: Very well. Are there any
18 further questions? Do the parties wish to add anything
19 for the Commission's consideration? Let the record
20 show there is no response. Is there anything further
21 to come before the Commission at this time?

22 MR. TROTTER: One small point, Your Honor.
23 The schedule called for Staff to distribute its case, I
24 think, in a couple of days, and that schedule has not
25 been suspended. We had an understanding among the

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1 parties we weren't going to be held to it, but I wanted
2 to point that out so it's clear we aren't
3 intentionally --

4 JUDGE WALLIS: Perhaps we should make a
5 procedural ruling from the Bench that the schedule is
6 suspended in the event that the Commission rejects a
7 proposed settlement, and we will hold a prehearing
8 conference and establish a new schedule.

9 MR. TROTTER: Thank you, Your Honor.

10 JUDGE WALLIS: Anything further? It appears
11 there is not. Thank you for attending. Thank you for
12 the hard work that you undertook to reach this
13 settlement. Commission will take the matter under
14 advisement, and we will enter an order resolving the
15 questions related to the settlement. Thank you.

16 (Hearing concluded at 2:06 p.m.)

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