

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AIR LIQUIDE AMERICA CORPORATION,)
AIR PRODUCTS AND CHEMICALS, INC.,)
THE BOEING COMPANY, CNC)
CONTAINERS, EQUILON ENTERPRISES,)
LLC, GEORGIA-PACIFIC WEST, INC.,)
TESORO NORTHWEST CO., THE CITY OF)
ANACORTES, WASHINGTON AND INTEL) DOCKET NO. UE-001952
CORPORATION) SECOND AMENDED COMPLAINT
)
)
Complainants,)
)
v.)
)
PUGET SOUND ENERGY,)
)
Respondent.)
)

INTRODUCTION

Air Liquide America Corporation (“Air Liquide”), Air Products and Chemicals, Inc. (“Air Products”), The Boeing Company (“Boeing”), CNC Containers (“CNC”), Equilon Enterprises, LLC (“Equilon”), Georgia-Pacific West, Inc. (“G-P”), Tesoro Northwest Company (“Tesoro”), the City of Anacortes, Washington (“Anacortes”) and Intel Corporation (“Intel”) (collectively referred to herein as “Complainants”), bring this complaint before the Washington Utilities and Transportation Commission (“WUTC” or “Commission”) against Puget Sound Energy (“PSE”) for charging rates that are not just, fair and reasonable, in violation of RCW § 80.28.010. Specifically, pricing for retail electric service based on the Dow Jones Mid-Columbia indices is unjust, unfair, unreasonable and not in the public interest.

The prices under the Dow Jones Mid-Columbia indices have skyrocketed in recent weeks to the point at which customers purchasing from PSE pursuant to Schedule 48 or

1 special contracts are paying among the highest, if not, the highest retail price for electricity in the
2 entire United States. As a result, daily spot market pricing at the Mid-Columbia no longer
3 provides a reasonable basis for setting retail electric rates. These rates have little relationship to
4 PSE's cost of service, and, the Complainants believe, are resulting in a financial windfall to PSE.
5 PSE's current rates "are unjust, unreasonable, unjustly discriminatory or unduly preferential,"
6 therefore, the Commission is required to, "determine the just, reasonable, or sufficient rates . . .
7 to be thereafter observed and in force, and shall fix the same by order." RCW § 80.28.020.
8

9 The Commission should authorize the use of the emergency adjudicative
10 proceeding statute, which is available "to require immediate action in any situation involving an
11 immediate danger to the public health, safety, or welfare requiring immediate action by the
12 commission." WAC § 490-09-510. Several Complainants have already closed or curtailed their
13 operations due to unprecedented high power prices, and others may soon follow. These closures
14 or reductions in operations, even temporarily, will result in employment terminations, lost
15 revenues, economic and social hardship and pose an immediate danger to the Puget Sound area
16 economy, and therefore, the public welfare. The standard complaint procedure, in which the
17 Commission must order relief in up to ten months, will not provide an adequate remedy to the
18 Complainants' immediate and dire need for power at just and reasonable rates.
19

20 Washington law provides that "no complaint shall be entertained by the
21 Commission except upon its own motion, as to the reasonableness of the schedule of the rates or
22 charges of any gas company, electrical company, water company or telecommunications
23 company, unless the same be signed by the mayor, council or commission of the city or town in
24 which the company complained of is engaged in business." RCW § 80.04.110. The statute also
25 allows "not less than 25 consumers" to initiate a complaint as to the reasonableness of the rates.

1 Id. Schedule 48 was offered to and accepted by a limited class of customers, which cannot
2 satisfy the requirements of RCW § 80.04.110. The City of Anacortes, Washington is a
3 Complainant, and the Mayor has signed this Complaint in accordance with RCW § 80.04.110.
4 Attachment H is a letter from the Mayor of the City of Anacortes.

5 **In support of their Complaint, Complainants allege as follows:**

6 **IDENTITY OF THE PARTIES**

7
8 1. Air Liquide is a Delaware corporation that is qualified to do business, and
9 is doing business, in the State of Washington. Air Liquide's address is 2700 Post Oak Blvd.,
10 Houston, Texas 77056.

11 2. Air Products is a Delaware corporation that is qualified to do business, and
12 is doing business, in the State of Washington. Air Products' address is 7201 Hamilton
13 Boulevard, Allentown, Pennsylvania 18195.

14 3. Boeing is a Delaware corporation with its principal place of business in
15 Seattle, Washington. Boeing's address is PO Box 3707, Seattle, Washington 98124-2207.

16 4. CNC is a Washington company that is doing business in Washington.
17 CNC's address is 3045 32nd Avenue, Tumwater, WA 98512.

18 5. Equilon is a Delaware limited liability company that is qualified to do
19 business, and is doing business, in the State of Washington. Equilon's address is PO Box 4453,
20 Houston, Texas 77210.

21 6. G-P is an Oregon corporation that is qualified to do business, and is doing
22 business in the State of Washington as a manufacturer of paper pulp, paper products, and
23 assorted industrial chemicals. G-P's address is 300 W. Laurel Street, Bellingham, WA 98227-
24 1236.
25

1 7. Tesoro is a Delaware corporation that is qualified to do business, and is
2 doing business, in the State of Washington. Tesoro’s address is 3450 S. 344th Way, Auburn, WA
3 98001.

4 8. The City of Anacortes is a municipal corporation located in the State of
5 Washington. Anacortes address is PO Box 547, Anacortes, WA 98221.

6 9. Intel is a Delaware corporation that is qualified to do business and is doing
7 business at 2800 Center Drive, Dupont, WA 98325-5050. Intel’s corporate address is 2200
8 Mission College Blvd., Santa Clara, CA 95052-8119.

9 10. Each of the Complainants, except for Georgia-Pacific, currently purchases
10 power from PSE pursuant to Schedule 48. Georgia-Pacific purchases power from PSE pursuant
11 to a special contract that was approved by the Commission in Docket No. UE-960612 (“G-P
12 Special Contract”).

13 11. Respondent, PSE is a Washington corporation that is qualified to do
14 business in the state of Washington as an electric utility company regulated by the Commission.
15 Puget’s address is P.O. Box 97304, Bellevue, WA 98009-9734.

16
17 **APPLICABLE STATUTES AND ADMINISTRATIVE RULES**

18 11. The Commission has jurisdiction over this complaint and PSE pursuant to
19 RCW § 34.05.479 (emergency adjudicative proceedings); RCW § 80.01.040 (general powers and
20 duties of the Commission); RCW § 80.04.110 (complaints); RCW § 80.28.010 (utility required
21 to charge just, fair and reasonable rates); and RCW § 80.28.020 (Commission required to fix just
22 and reasonable rates).

23 12. The statutes expected to be involved in this case include:
24 RCW § 34.05.479; RCW § 80.01.040; RCW §§ 80.04.020, .110 and .120; RCW §§ 80.28.010
25

1 and .020. The rules involved in this case include: WAC §§ 480-09-400, -410, -420, -425, -480,
2 -510, -700, -710, -720, -730, -735, -736, -740, -750 and -770.

3 **FACTUAL BACKGROUND**

4 **Complainants First Claim for Relief**

5 **Unjust, Unfair and Unreasonable Rates and a Violation of the Public Interest**

6 **Complainants Allege:**

7 13. The Complainants take electric service from PSE under pricing based on
8 the Mid-Columbia indices through the Schedule 48 tariff or the G-P Special Contract. Air
9 Liquide, Air Products, Boeing, CNC, Equilon, Tesoro and Anacortes purchase power priced at
10 the Dow Jones Mid-Columbia Revised Nonfirm Index. G-P receives its power priced at the Dow
11 Jones Mid-Columbia Firm Index. The Complainants' principal purpose in choosing electric
12 service priced at the Mid-Columbia indices was to receive just and reasonable rates, leading to
13 complete market access at the end of the five-year service agreement and Special Contract term.
14 Attachment A is a signed and notarized Affidavit of Kenneth D. Canon, which replaces Exhibit
15 A in the original complaint.
16

17 14. The historic price of power for the Mid-Columbia Firm Index is
18 approximately 26.24 on peak and 18.19 off peak for 1999. Attachment B provides detailed
19 information supporting this historic price calculation.
20

21 15. The historic price of power for the Mid-Columbia Non-Firm Index is
22 approximately 23.24 on peak and 17.40 off peak for 1999. *See* Attachment B.

23 16. The California marketplace is directly impacting the spot market prices in
24 the Northwest. The Federal Energy Regulatory Commission ("FERC") recently concluded that,
25 the California market structure and rules are providing sellers an opportunity to exercise market

1 power and causing California electric rates to be unjust and unreasonable. San Diego Gas &
2 Electric Co. v. Sellers of Energy, 93 FERC ¶ 61,121 (Nov. 1, 2000).

3 17. The Pacific Northwest and California markets are interrelated, and the
4 high price of power in California is a substantial factor that is causing the price of power in the
5 Pacific Northwest to increase. *See* PSE v. All Jurisdictional Sellers of Elec., Docket No. EL01-
6 10-000, PSE Complaint at 7-13 (Oct. 26, 2000) (PSE requesting a price cap on wholesale electric
7 energy because of the interrelated California and Pacific Northwest markets).

8 18. At least in part due to current circumstances in the California market, the
9 current price of power for the Mid-Columbia Indices far exceeds historic levels. For example,
10 the Mid-Columbia Firm Index on peak price was \$714.44 for Friday, December 8, 2000, and the
11 Mid-Columbia Non-Firm Index on peak price was \$604.06. The Mid-Columbia Firm Index on
12 peak price was at \$3,300.00 for Monday, December 11, 2000. The Mid-Columbia Non- Firm
13 Index on peak price for Monday, December 11, 2000, was at \$1285.00.^{1/}

14 19. Air Liquide is a customer of PSE and purchases its electric supply
15 pursuant to Schedule 48. Air Liquide takes approximately 8 aMW of electricity from PSE under
16 Schedule 48. Because of the high price of electricity, Air Liquide has reduced its operations,
17 shutting down operations at certain times.

18 20. Air Products is a customer of PSE and purchases its electric supply
19 pursuant to Schedule 48. Air Products takes approximately 7 aMW of electricity from PSE.
20 Because of the high price of electricity, Air Products has been forced to reduce its operations, by
21 shutting down operations at certain times. Attachment C is the Affidavit of Randall Clancy.
22
23
24

25

^{1/} The source for the Mid-Columbia numbers is the Wall Street Journal, Dec. 12 and 13, 2000.

1 21. G-P is a customer of PSE and purchases its electric supply pursuant to a
2 Special Contract with pricing provisions tied to the Mid-Columbia Firm Index. G-P takes
3 approximately 40 aMW of electricity from PSE. Because of the high price of electricity, G-P has
4 been forced to close its Bellingham operations indefinitely. Attachment D is the Affidavit of
5 James Cunningham.

6 22. Boeing is a customer of PSE and purchases its electric supply pursuant to
7 Schedule 48. Boeing takes approximately 80 aMW of electricity from PSE.
8

9 23. CNC is a customer of PSE and purchases its electric supply pursuant to
10 Schedule 48. CNC takes approximately 8 aMW of electricity from PSE. Because of the high
11 price of electricity, CNC has been forced to shut down its operations at certain times.
12 Attachment F is the Affidavit of Matthew Franz.

13 24. Equilon is a customer of PSE and purchases its electric supply pursuant to
14 Schedule 48. Equilon takes approximately 34 aMW of electricity from PSE.

15 25. Tesoro is a customer of PSE and purchases its electric supply pursuant to
16 Schedule 48. Tesoro takes approximately 20 aMW of electricity from PSE.

17 26. Anacortes is a customer of PSE and purchases its electric supply pursuant
18 to Schedule 48, for its water treatment facilities.

19 27. Intel is a customer of PSE and purchases its electric supply pursuant to
20 Schedule 48.
21

22 28. Upon information and belief, continued use of the Mid-Columbia indices
23 to set retail power prices will result in enormous windfall profits to PSE. PSE's September 30,
24 2000 10-Q financial report shows an increase in industrial revenues from approximately \$38
25 million for 1999, to approximately \$101 million for the first nine months of 2000. Given the

1 33. Schedule 48 was designed as the first step toward bringing market access
2 to all customers.

3 34. The Complainants' principal purpose in choosing electric service priced at
4 the Mid-Columbia indices was to receive just and reasonable rates, leading to complete market
5 access at the end of the five-year service agreements and G-P Special Contract term. *See*
6 Attachment A, Affidavit of Ken Canon.

7 35. During the Washington Natural Gas and Puget Sound Power & Light
8 merger industrial customers promised not to oppose the merger in exchange for PSE's promise to
9 propose Schedule 48 and establish open access in PSE's service territory within 5 years.
10

11 36. Complainants allege that under Schedule 48 and G-P's Special Contract,
12 Complainants paid transition charges for approximately three years.

13 37. The purpose of these transition charges was to pay the costs associated
14 with the historical demands the customers placed on PSE. These charges were paid in
15 anticipation of the customers being legally able to purchase electricity directly from third party
16 (non-PSE) power providers, within, at a minimum, the end of the five-year term.

17 38. PSE promised to work with Industrial Customers to develop and propose
18 open access legislation.

19 39. PSE failed to develop and propose open access legislation.

20 40. PSE promised to work with industrial customers to develop and propose
21 an open access rate tariff.

22 41. PSE failed to develop and propose an open access rate tariff.

23 42. PSE promised to submit its own open access rate schedule by mid-August,
24 1997, if it could not jointly propose an open access tariff with industrial customers.
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

4. Finding that the Complainants shall receive a refund of the transition charges paid to PSE in exchange for market access at the end of the five year service agreements and G-P Special Contract;
5. Finding that the relief shall become effective as of the date of the Complaint;
6. Alternatively, the Complainants request that the Commission issue a finding that Schedule 48 and the Special Contract include an interim price cap based on Schedule 49 subject to refund or surcharge or another interim price cap level which the Commission considers to be just and reasonable; and
7. Such other relief as the Commission may deem necessary.

1 Dated this 28th day of December, 2000.

2 Respectfully submitted,

3 DAVISON VAN CLEVE, P.C.

4
5

Melinda J. Davison
6 Irion A. Sanger
7 Davison Van Cleve, P.C.
8 1300 S.W. Fifth Avenue, Suite 2915
9 Portland, OR 97201
10 (503) 241-7242 phone
11 (503) 241-8160 fax
12 mail@dvclaw.com
13 Of Attorneys for Air Liquide America
14 Corporation, Air Products and Chemicals Inc., The
15 Boeing Company, CNC Containers, Equilon
16 Enterprises, LLC, Georgia-Pacific West, Inc.,
17 Tesoro Northwest Company, the City of Anacortes,
18 Washington., and Intel Corporation

19 City of Anacortes

20

H. Dean Maxwell
21 Mayor