

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UE-161123

SETTLEMENT STIPULATION AND  
AGREEMENT

**I. INTRODUCTION**

1. This Settlement Stipulation and Agreement (“Settlement”) is entered into by and between the following parties in this case: Puget Sound Energy (“PSE”), the Staff of the Washington Utilities and Transportation Commission (“Commission Staff”), the Public Counsel Unit of the Attorney General’s Office (“Public Counsel”), Microsoft Corporation (“Microsoft”), the Industrial Customers of Northwest Utilities (“ICNU”), Walmart Stores, Inc. and Sam’s West, Inc. (“Walmart”), The Kroger Company (“Kroger”), The Energy Project (“TEP”), NW Energy Coalition (“NWEC”) and the Northwest & Intermountain Power Producers Coalition (“NIPPC”). These parties are hereinafter collectively referred to as “Settling Parties” and individually as a “Settling Party.”

2. Because this Settlement is entered into by and between all of the Settling Parties to this case and it resolves all the issues in the docket, it is a “full settlement,” as that term is defined in WAC 480-07-730(1).

3. This Settlement is subject to review and disposition by the Washington Utilities and Transportation Commission (“Commission”). Section III of the Settlement is effective on the date of the Commission order approving it (unless the Commission establishes a different effective date).

## **II. BACKGROUND AND NATURE OF THE DOCKET**

4. **Initial Filings.** PSE initiated this proceeding on October 7, 2016 by filing Advice No. 2016-28 for proposed revisions to the WN U-60, Tariff G for electric service. These revisions included the proposed addition of a new tariff, Schedule 451 - Large Customer Retail Wheeling and a related customer agreement. The filing also included an executed version of the customer agreement between Microsoft and PSE and supporting pre-filed testimony and exhibits. PSE’s filing requested approval of the tariff and the Microsoft customer agreement.

5. **Subsequent Filings and Settlement Negotiations.** Microsoft filed pre-filed testimony and exhibits in support of PSE’s filing on October 12, 2016. The Commission held a prehearing conference on November 7, 2016. The Settling Parties participated in an issues conference on December 2, 2016. PSE and Microsoft filed supplemental prefiled testimony on December 15, 2016. The Settling Parties have conducted some discovery. The Settling Parties participated in a settlement conference on February 22, 2017 and have participated in subsequent settlement-related calls and correspondence after that date.

6. **Public Interest.** Through settlement discussions, all Settling Parties have agreed that the Commission’s approval of this Settlement and the special contract attached as Exhibit A hereto (“Special Contract”), and PSE’s withdrawal of proposed tariff Schedule 451, will promote the public interest and will not result in any undue preferences or discrimination, and will otherwise meet the requirements of WAC 480-80-143. The Settling Parties agree that

Microsoft's substantial commitments in the Special Contract, such as contributions to conservation funding, contributions to low income funding, and the advancement of renewable resources, significantly advance state policy goals and provide a sufficient basis for the Commission to find that the Special Contract is in the public interest. The Settling Parties further agree that the terms of this Settlement are intended to hold customers harmless from adverse financial impacts resulting from Microsoft meeting its load under the Special Contract.

### **III. AGREEMENT**

7. **Use of Special Contract.** PSE and Microsoft have entered into the Special Contract attached hereto as Exhibit A. The Settling Parties request that the Commission approve the Special Contract with no material conditions or changes and agree that the Special Contract meets all the requirements of WAC 480-80-143 and is otherwise in the public interest.

8. **Withdrawal of Proposed Schedule 451.** Upon the Commission's approval of this Settlement and the Special Contract, PSE will withdraw proposed Schedule 451, the companion customer agreement, and the Microsoft customer agreement filed with the Commission on October 7, 2016. The Settling Parties stipulate to the admission into evidence in this docket of the prefiled direct and supplemental testimony of PSE and Microsoft.

9. **Commencement of Service under Special Contract.** Service under the Special Contract shall not commence unless and until (i) metering has been installed; (ii) Microsoft has arranged to purchase Supplied Power from one or more Power Suppliers (other than PSE); and (iii) arrangements are in place for transmission and ancillary services, all as defined and specified in the Special Contract.

10. **Transition Fee.** Microsoft will make a one-time payment of \$23,685,000 (the "Transition Fee") to PSE for redistribution to PSE's customers. This Transition Fee payment

is intended to hold customers harmless from adverse financial impacts resulting from Microsoft transitioning its load to the Special Contract. PSE will pass-through the Transition Fee, on a dollar-for-dollar basis, to PSE's bundled retail electric customers over a 12-month period through PSE's existing electric Schedule 95 (Power Cost Adjustment Clause).

11. **Allocation of Colstrip Remediation Costs.** All Settling Parties acknowledge and agree that approval of the Transition Fee, Special Contract, and this Settlement does not address or resolve any issues relating to Microsoft's potential obligation to contribute to Colstrip remediation, decommissioning, and/or accelerated depreciation costs. The recovery of Colstrip-related remediation, decommissioning, and/or accelerated depreciation costs will be at issue in other dockets, and the amount, if any, assigned to Microsoft will be addressed in those dockets. All Settling Parties retain the right to make any assertions regarding allocation or recovery of such costs as determined in PSE's general rate case, Docket UE-170033, in future general rate cases, or in other relevant proceedings.

12. **Special Contract Term.** The Special Contract will have a 20-year initial term with automatic 5-year extensions so long as Microsoft does not have any cost-effective alternative to PSE for distribution service, all as set forth in the Special Contract.

13. **Renewable/Carbon-Free Power Supply.**

a. **RPS - Renewable Energy Target Obligations.** Microsoft, consistent with its corporate commitment to renewable energy as expressed in testimony, will meet its electricity needs under the Special Contract with 25% "eligible renewable resources" as that term is used in RCW 19.285.040(2) from commencement of service under the Special Contract through 2020 and 40% eligible renewable resources in 2021 and subsequent years. In the event the percentage amount under RCW 19.285.040(2) is increased above 40% for any year in which

Microsoft takes electricity under the Special Contract, Microsoft will meet its electricity needs under the Special Contract in any such year with the higher percentage of eligible renewable resources that would apply to PSE. Renewable energy credits used to satisfy Microsoft's renewable energy target obligations must meet the criteria for "renewable energy credits" as defined in Washington's Energy Independence Act, RCW 19.285.

i. If Microsoft uses renewable energy credits for compliance, it must use renewable energy credits produced during the target year, the preceding year, or the subsequent year to comply with this annual renewable resource requirement provided that they were acquired by January 1 of the target year.

ii. All renewable energy credits used for Microsoft's compliance with the renewable energy target, including any bundled renewable energy credits associated with eligible hydropower generation, must be registered in WREGIS, regardless of facility ownership. Any megawatt-hour of bundled renewable energy credits from eligible hydropower or renewable energy credits that Microsoft uses for compliance must have a corresponding certificate retired in Microsoft's WREGIS account.

iii. Microsoft may apply renewable energy credit multipliers to retired certificates in the same manner as a utility that is subject to WAC 480-109-200(4).

iv. In meeting the annual renewable energy targets of this section, for the first year under the Special Contract Microsoft will calculate its annual target based on the average of the most recent two years of Microsoft's load being transferred to service under the Special Contract. For the second year under the Special Contract, Microsoft will calculate its annual target based on the first year amount of delivered electricity. Thereafter, Microsoft must

calculate its annual target on the average of Microsoft's delivered electricity under the Special Contract for the previous two years.

v. Microsoft may use incremental hydropower in the same manner as a utility that is subject to WAC 480-109-200(7). If Microsoft uses incremental hydropower to meet any portion of its renewable energy target in a given year, Microsoft shall calculate the quantity of incremental electricity produced by eligible efficiency upgrades to a hydropower facility using one of the methods provided in WAC 480-109-200(7).

vi. On or before March 31 of each year, Microsoft will provide PSE with an annual renewable portfolio standard report that includes Microsoft's annual load under the Special Contract for the prior two years, the total number of megawatt-hours from eligible renewable resources and/or renewable resource credits that Microsoft needed to meet its annual renewable energy target by January 1 of the target year, the amount (in megawatt-hours) of each type of eligible renewable resource used, and the amount of eligible renewable energy credits acquired. PSE will file these annual reports with the Commission as compliance filings in this docket and provide copies to Commission Staff and Public Counsel. PSE will provide copies of these annual reports to other Settling Parties upon request.

vii. Instead of fully meeting its annual renewable resource target in this section, Microsoft may make a *force majeure* demonstration in its annual renewable portfolio standard report that events beyond its reasonable control, that could not have been reasonably anticipated or ameliorated, prevented it from meeting the renewable energy target. Such events may include weather-related damage, mechanical failure, strikes, lockouts, or actions of a governmental authority that adversely affect the generation, transmission, or distribution of an eligible renewable resource owned by or under contract to Microsoft.

viii. Power delivered by PSE pursuant to the Special Contract is considered “electricity delivered to transmission-only customers” for the purpose of the definition of PSE’s load under WAC 480-109-060.

b. **Carbon-free.** The remainder of Microsoft’s power supply under the Special Contract must be supplied by carbon free power.

i. Carbon free power refers to electricity produced by generation facilities that are not powered by fossil fuels.

ii. Microsoft will require all its suppliers to provide carbon-free power from identified generating resources. The Setting Parties recognize that occasionally Microsoft’s third party suppliers may need to use minor amounts of fossil-fueled power to provide ancillary services or other incidental services and suppliers will be required to provide equivalent renewable energy credits under such circumstances. Microsoft will require suppliers to identify and quantify any power supplied from fossil-fueled resources.

c. **Change in Law.** In the event of the adoption of any statute or regulation that requires Microsoft to meet some or all of its power needs under the Special Contract with renewable, low-carbon or carbon-free generating resources, Microsoft’s compliance with such statute or regulation will count toward the requirements of this provision.

d. **Enforcement of Microsoft’s Renewable Energy Target Obligations.** Commission Staff will verify Microsoft’s compliance with the annual renewable resource target obligations specified in Section 13(a) of this Settlement in any target year. If Microsoft fails to achieve its annual renewable resource target obligations specified in Section 13(a) of this Settlement in any target year, Microsoft will pay a penalty equivalent to the administrative penalty provided in RCW 19.285.060 and WAC 480-109-070 for each megawatt-hour of

shortfall in the same manner as a utility that is subject to these provisions. The penalty shall be paid to the Commission for deposit in the Energy Independence Act Special Account. Any penalty imposed upon Microsoft under this provision is subject to a showing that Microsoft failed to exercise reasonable care and prudence in obtaining “eligible renewable resources” or “renewable energy credits” as defined in Washington’s Energy Independence Act and is subject to the consideration of any mitigating circumstances, including, but not limited to, *force majeure* as defined in Section 13(a)(vii) of this Settlement Agreement.

14. **Distribution Service Charges.** The distribution service charges applicable to Microsoft under the Special Contract Service are set forth in Exhibit C to the Special Contract. These distribution service charges are cost-based and will be updated in each general rate case proceeding of PSE during the term of the Special Contract. These distribution service charges, as updated, will become effective contemporaneously with rate changes resulting from such general rate case proceeding.

15. **Conservation Funding - Schedule 120.** The payment Microsoft makes to PSE under Schedule 120 (electric conservation service rider) will be calculated as if Microsoft continued to take service under Schedule 40, based on power delivered.

16. **Low Income Funding - Schedule 129.** Microsoft’s Schedule 129 (HELP program) payment will be fixed at the current rate of \$0.000614 per delivered kWh. This rate will remain fixed for the 20-year term of the Special Contract, and will continue for any additional renewed contract term. Delivered power includes power purchased from a third party or provided by Microsoft from its own generation facilities located off-site and delivered by PSE under the Special Contract.



17. **Additional Low Income Funding.** Microsoft will make an additional payment of \$0.000307 per delivered kWh for the 20-year term of the Special Contract, and any additional renewed contract term. The funds will be paid into a separate account to be managed and disbursed by PSE's Low-Income Weatherization Manager. The purpose of this additional financial commitment above and beyond Microsoft's Schedule 129 commitment is to expand energy efficiency services and renewable energy technology to directly benefit eligible low-income customers in PSE's service territory. Allowable uses of these additional funds include:

- a. Repairs necessary for the installation of WA State Department of Commerce approved cost effective energy efficiency upgrades. These repairs include but are not limited to roof repairs, electrical repairs, carpentry repairs, and furnace repairs.
- b. Installation of advanced energy efficiency equipment in low-income weatherization projects. This includes but is not limited to equipment capable of utilizing "smart grid" technology, advanced heating/ventilation equipment, household energy monitoring equipment, and other relevant emerging energy efficiency technology.
- c. Distributed generation resources. These resources include but are not limited to on site renewable energy installations such as photovoltaic equipment, community solar projects, and other renewable energy equipment the benefits of which are directed to low-income PSE customers.

18. **State and Local Taxes - Schedule 81.** PSE will notify all relevant jurisdictions of the potential municipal tax consequences of Microsoft's changing its power provider and will provide the Commission with a copy of each such notice. Such notices shall be issued no later than the last day of the month following the date upon which Microsoft commences service under the Special Contract.

19. **Notice of Supplier Identity.** By March 31 of each year, Microsoft will provide to PSE a list of the identity of all Power Suppliers, as that term is defined in the Special Contract,

along with the corresponding amount and source of supplied power and/or renewable energy credits. PSE will file these annual lists with the Commission as compliance filings in this docket and provide copies of these annual lists to Commission Staff and Public Counsel. PSE will provide copies of these annual lists to other Settling Parties upon request.

#### **IV. GENERAL PROVISIONS**

20. **Entire Agreement.** This Settlement is the product of negotiations and compromise amongst the Settling Parties and constitutes the entire agreement of the Settling Parties. Accordingly, the Settling Parties recommend that the Commission adopt and approve the Settlement in its entirety as a full resolution of contested issues in this docket. This Settlement will not be construed against any Settling Party on the basis that it was the drafter of any or all portions of this Settlement. This Settlement supersedes any and all prior oral and written understandings and agreements on such matters that previously existed or occurred in this proceeding, and no such prior understanding or agreement or related representations will be relied upon by the Settling Parties to interpret this Settlement or for any other reason.

21. **Confidentiality of Negotiations.** The Settling Parties agree that this Settlement represents a compromise in the Settling Parties' positions. As such, conduct, statements and documents disclosed during the negotiation of this Settlement are not admissible in this or any other proceeding and will remain confidential.

22. **Precedential Effect of Settlement.** The Settling Parties enter into this Settlement to avoid further expense, uncertainty, inconvenience and delay. The Settling Parties agree that this Settlement Agreement and Special Contract does not serve to bind the Commission when it considers the issue of retail access or any other matter not specifically resolved by this Settlement in future proceedings. The Settling Parties reserve the right to argue in future

proceedings regarding the merits of direct access with reference to the terms of the Settlement Agreement and Special Contract.

23. **Positions Not Conceded.** In reaching this Settlement, the Settling Parties agree that no Settling Party concedes any particular argument advanced by that Settling Party or accedes to any particular argument made by any other Settling Party. Nothing in this Settlement (or any testimony, presentation or briefing supporting this Settlement) shall be asserted or deemed to mean that a Settling Party agreed with or adopted another Settling Party's legal or factual assertions in this proceeding. The limitations in this paragraph will not apply to any proceeding to enforce the terms of this Settlement, the Special Contract or any Commission order adopting this Settlement in full.

24. **Manner of Execution.** This Settlement is executed when all Settling Parties sign the Settlement. A designated and authorized representative may sign the Settlement on a Settling Party's behalf. The Settling Parties may execute this Settlement in counterparts. If the Settlement is executed in counterparts, all counterparts shall constitute one agreement. A Settlement signed in counterpart and sent by facsimile or emailed as a pdf is as effective as an original document. A faxed or emailed signature page containing the signature of a Settling Party is acceptable as an original signature page signed by that Settling Party. Each Settling Party shall indicate the date of its signature on the signature page. The date of execution of the Settlement will be the latest date indicated on the signature page(s).

25. **Approval Process and Support of Settlement.** Each Settling Party agrees to support the terms and conditions of this Settlement as a full and final resolution of all contested issues between them in the above-captioned docket. Each Settling Party agrees to support the

Settlement during the course of whatever proceedings and procedures the Commission determines are appropriate for approval of the Settlement.

26. **Commission Approval with Conditions.** In the event the Commission approves this Settlement, but with conditions not proposed in this Settlement, the provisions of WAC 480-07-550(2)(b) will apply. The Settling Parties will have ten (10) business days to seek reconsideration and/or file a letter with the Commission accepting or rejecting each such condition. If, in such a timely filed letter, a Settling Party rejects a condition, this Settlement is deemed rejected and void and the Settling Parties will jointly and promptly request the Commission convene a prehearing conference to address procedural matters, including a procedural schedule for resolution of the case at the earliest possible date.

27. **Commission Rejection.** In the event the Commission rejects this Settlement, the provisions of WAC 480-07-550(2)(a) will apply. In that event, the Settling Parties agree to jointly and promptly request the Commission convene a prehearing conference to address procedural matters, including a procedural schedule for resolution of the case at the earliest possible date.

Dated this 11th day of April, 2017.

**ROBERT W. FERGUSON**  
**Attorney General**

**PUGET SOUND ENERGY, INC.**

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Christopher M. Casey  
Assistant Attorney General  
Counsel for Commission Staff

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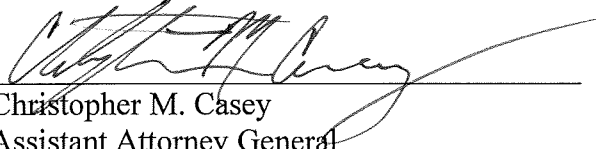
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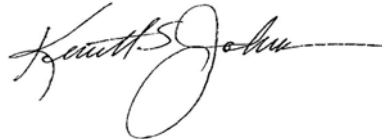
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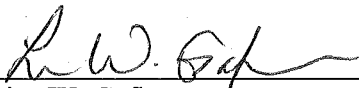
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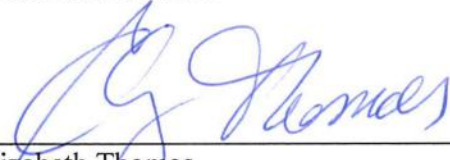
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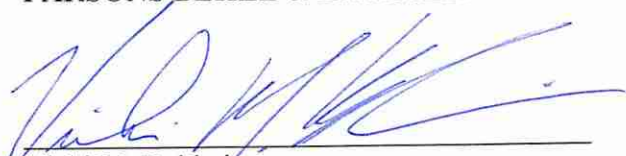
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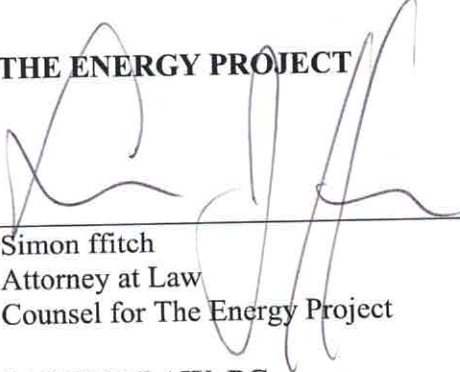
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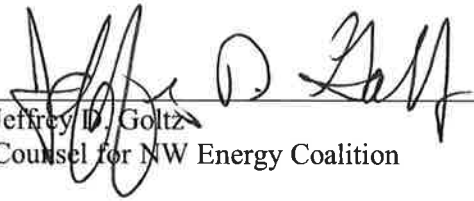
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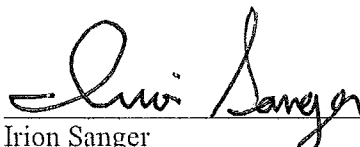
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