

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UE-161123

ORDER 06

ORDER APPROVING SETTLEMENT
AGREEMENT

BACKGROUND

- 1 On October 7, 2016, Puget Sound Energy (PSE or Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective Tariff WN U-60, Schedule 451 – Large Customer Retail Wheeling. PSE proposed an optional schedule for customers who have maintained a minimum of an average of 10 average megawatts (aMW) at one or more customer sites served under Schedule 40 – Large General Service Greater than 3 aMW (average megawatts) over the entire test year of the most recent general rate case.¹ The Company also sought approval of a signed Service Agreement between PSE and Microsoft Corporation (Microsoft),² including the Service Agreement’s \$23.685 million Power Supply Stranded Cost Charge (Transition Fee).
- 2 PSE’s initial submission included the prefiled direct testimony and exhibits of Jon A. Piliaris, Manager, Pricing and Cost of Service at PSE in support of the Company’s requested relief. Mr. Piliaris evaluates the stranded cost associated with Microsoft’s potential decision to take service under the proposed Schedule 451 and the calculation of

¹ Schedule 451, Exh. PSE-1.

² Microsoft Service Agreement, Exh. PSE-2.

the Transition Fee Microsoft agreed to pay. The testimony also addresses the proposed rates and charges within Schedule 451 and how existing rider schedules would apply to customers taking service under Schedule 451.³

- 3 On October 12, 2016, Microsoft submitted the prefiled direct testimony and exhibits of Irene Plenefisch, Government Affairs Director for Microsoft, and Gary S. Saleba, a utility industry consultant. Ms. Plenefisch describes Microsoft's energy policy goals, explains how Schedule 451 would better enable Microsoft to pursue those goals, and provides assurance that paying PSE's proposed Transition Fee would ensure that the Company's remaining bundled customers would be fully protected from potential adverse impacts of Microsoft's use of Schedule 451.⁴ Mr. Saleba provides background on exit fees and opines that a proper analysis would result in PSE paying Microsoft up to \$35 million. He concludes that PSE's proposed Transition Fee is in excess of what is needed to hold the remaining PSE customers harmless and that Microsoft's agreement to pay that fee is more than generous.⁵
- 4 The Commission convened a prehearing conference on November 7, 2016. The Commission granted petitions to intervene from Microsoft, the Industrial Customers of Northwest Utilities (ICNU), The Energy Project, Northwest Energy Coalition (NVEC), The Kroger Co. (Kroger), and Wal-Mart Stores, Inc., and Sam's West, Inc. (Wal-Mart). The Commission initially denied intervention to the Northwest and Intermountain Power Producers Coalition (NIPPC), but on review allowed NIPPC to intervene without access to information designated as confidential. The Commission also established a procedural schedule that included evidentiary hearings on May 3-5, 2017.
- 5 On December 15, 2016, PSE and Microsoft submitted supplemental prefiled direct testimony. Mr. Piliaris' supplemental direct testimony on behalf of PSE provides clarification regarding the Company's proposed eligibility standards for service under the proposed Schedule 451 and the impacts that proposed Schedule 451 may have on PSE's low-income and conservation programs.⁶ Ms. Plenefisch's supplemental testimony on behalf of Microsoft provides additional detail on Microsoft's commitment to renewable

³ Piliaris, Exh. JAP-1CT.

⁴ Plenefisch, Exh. IP-1T.

⁵ Saleba, Exh. GSS-1T.

⁶ Piliaris, Exh. JAP-6T.

energy and carbon neutrality, the role of the Energy Independence Act (“I-937”) in this proceeding, and the relationship between this proceeding and the process of allocating costs for PSE’s anticipated retirement and decommissioning of Colstrip Generating Stations 1 and 2 (collectively, Colstrip).⁷

- 6 On March 10, 2017, the Commission suspended the procedural schedule in response to a request from Staff to enable the parties to finalize a settlement agreement and determine whether all parties would join that settlement. On March 16, 2017, the Commission scheduled a settlement hearing for May 3, 2017, after receiving a letter from Staff notifying the Commission that the parties anticipated submitting a full settlement agreement and supporting documentation, including testimony, by April 11, 2017.
- 7 On April 11, 2017, the parties submitted a Settlement Stipulation and Agreement between all parties (Settlement) and supporting documentation, including a special contract between PSE and Microsoft, a joint memorandum, and prefiled testimony of witnesses for each of the parties. The Commission conducted a hearing on the Settlement on May 3, 2017.
- 8 Jason Kuzma and David S. Steele, Perkins Coie, Seattle, Washington, represent PSE. Liz Thomas, K&L Gates LLP, Seattle, Washington, represents Microsoft. Sally Brown, Christopher M. Casey, and Jeff Roberson, Assistant Attorneys General, Olympia, Washington, represent Staff. Lisa Gafken, Assistant Attorney General, Seattle, Washington represents the Public Counsel Unit of the Attorney General’s Office (Public Counsel). Patrick Oshie and Tyler Pepple, Davison Van Cleve PC, Zillah, Washington, and Portland, Oregon, represent ICNU. Jeffrey D. Goltz, Cascadia Law Group, Olympia, Washington, represents NVEC. Simon ffitich, Bainbridge Island, Washington, represents The Energy Project. Vicki M. Baldwin, Parsons Behle & Latimer, Salt Lake City, Utah, represents Wal-Mart. Kurt J. Boehm, Boehm, Kurtz & Lowry, Cincinnati, Ohio, represents Kroger. Irion A. Sanger, Sanger Law PC, Portland, Oregon, represents NIPPC.

SETTLEMENT

Stipulation and Agreement

- 9 The parties’ agreement includes the following provisions:

⁷ Plenefisch, Exh. IP-3T.

- (a) **Special Contract.** PSE and Microsoft have entered into a special contract that meets all requirements of WAC 480-80-143.⁸ The contract will have a 20-year initial term with automatic five-year extensions.⁹
- (b) **Withdrawal of Schedule 451.** Upon Commission approval of the Settlement, PSE will withdraw proposed Schedule 451, the companion customer agreement, and the Microsoft customer agreement the Company filed on October 7, 2016.¹⁰
- (c) **Commencement of Service.** Service under the Special Contract begins only when metering has been installed, Microsoft has arranged one or more alternative power suppliers, and arrangements are in place for transmission and ancillary services.¹¹
- (d) **Transition Fee.** Microsoft will make a one-time payment of \$23,685,000 that PSE will pass through on a dollar-for-dollar basis to the Company's bundled retail electric customers over a 12-month period through PSE's existing electric Schedule 95 (Power Cost Adjustment Clause).¹²
- (e) **Colstrip Costs.** The Settlement does not address or resolve any issues relating to Microsoft's potential obligation to contribute to Colstrip remediation, decommissioning, or accelerated depreciation costs. All parties retain the right to make any assertions about allocation or recovery of such costs in other dockets or proceedings in which the Commission is considering those issues.¹³
- (f) **Renewable Energy Obligations.** Microsoft will meet its energy needs with 25 percent "eligible renewable resources" from commencement of service under the Special Contract through 2020 and with 40 percent eligible renewable resources in subsequent years. If the percentage in RCW 19.285.040(2) is increased above 40 percent, Microsoft will comply with the higher percentage applicable to PSE.¹⁴

⁸ Settlement, Exh. JP-1 ¶ 7.

⁹ *Id.* ¶ 12.

¹⁰ *Id.* ¶ 8.

¹¹ *Id.* ¶ 9.

¹² *Id.* ¶ 10.

¹³ *Id.* ¶ 11.

¹⁴ *Id.* ¶ 13(a).

Microsoft may use incremental hydropower in the same manner as a utility that is subject to WAC 480-109-200(7).¹⁵ In meeting its annual renewable energy targets, Microsoft must calculate those targets based on the most recent (initially) or prior two years.¹⁶ All renewable energy credits Microsoft uses to satisfy these requirements:

- (i) Must meet the criteria in RCW 19.285;¹⁷
- (ii) Must be produced during the target year, preceding year, or subsequent year;¹⁸
- (iii) Must be registered in the Western Renewable Energy Generation Information System (WREGIS);¹⁹
- (iv) When derived from retired certificates, may be calculated using multipliers in the same manner as a utility subject to WAC 480-109-200(4);²⁰ and
- (v) Must be included, along with annual load and eligible renewable resources Microsoft uses, in an annual renewable portfolio standard report that Microsoft provides to PSE on or before March 31 of each year, which PSE will submit to the Commission as a compliance filing and provide to Staff and Public Counsel (and to other parties on request);²¹ provided that Microsoft may make a force majeure demonstration in the report that events beyond the company's control prevented it from meeting the renewable energy target.²²

¹⁵ *Id.* ¶ 13(a)(v).

¹⁶ *Id.* ¶ 13(a)(iv).

¹⁷ *Id.* ¶ 13(a)(v).

¹⁸ *Id.* ¶ 13(a)(i).

¹⁹ *Id.* ¶ 13(a)(ii).

²⁰ *Id.* ¶ 13(a)(iii).

²¹ *Id.* ¶ 13(a)(vi).

²² *Id.* ¶ 13(a)(vii).

- (g) **Carbon-free Power.** Subject to its renewable energy targets, Microsoft will require all of its power suppliers to provide carbon-free power (*i.e.*, electricity produced by generation facilities that are not powered by fossil fuels) from identified generating resources, with the recognition that suppliers may need to use minor amounts of fossil-fueled power to provide ancillary or other incidental services, which Microsoft must identify, quantify, and offset with renewable energy credits.²³
- (h) **Change in Law.** Microsoft's compliance with any subsequently enacted statute or regulation that requires Microsoft to meet some or all of its power needs with renewable, low-carbon, or carbon-free generating resources will count toward the requirements of this Settlement provision.²⁴
- (i) **Enforcement.** Staff will verify Microsoft's compliance with its annual renewable resource target obligations. If Microsoft fails to achieve those targets in any year, Microsoft will pay a penalty to the Commission for deposit in the Energy Independence Act Special Account. The penalty will be equivalent to the administrative penalty provided in RCW 19.285.060 and WAC 480-109-070 for each megawatt-hour shortfall in the same manner as a utility subject to those provisions. Any such penalty is subject to a showing that Microsoft failed to exercise reasonable care and prudence in obtaining eligible renewable resources or renewable energy credits and is subject to consideration of any mitigating circumstances.²⁵
- (j) **Distribution Service Charges.** Microsoft must pay the cost-based distribution service charges specified in the Special Contract as and when those charges are updated in each subsequent PSE rate case.²⁶
- (k) **Conservation Funding.** Microsoft will make payments to PSE under Schedule 120 (electric conservation service rider) based on power delivered and calculated as if Microsoft continued to take service under Schedule 40.²⁷

²³ *Id.* ¶ 13(b).

²⁴ *Id.* ¶ 13(c).

²⁵ *Id.* ¶ 13(d).

²⁶ *Id.* ¶ 14.

- (l) **Low-Income Funding.** Microsoft will make payments to PSE under Schedule 129 (low-income assistance program) at the current rate of \$0.000614 per delivered kilowatt hour (kWh), whether purchased from a third party or provided by Microsoft from its own generation facilities and delivered by PSE, for the entire term of the Special Contract and any renewal periods.²⁸
- (m) **Low-Income Weatherization.** Microsoft will make payments to a low-income weatherization fund PSE manages at the rate of \$0.000307 per delivered kWh for the entire term of the Special Contract and any renewal periods. The purpose of the fund is to expand energy efficiency services and renewable energy technology to directly benefit eligible low-income PSE customers. Allowable uses for the fund include repairs necessary for the installation of cost effective energy efficiency upgrades approved by the state Department of Commerce, installation of advanced energy efficiency equipment in low-income weatherization projects, and distributed generation resources.²⁹
- (n) **State and Local Taxes.** No later than the last day of the month following the date on which Microsoft commences service under the Special Contract, PSE will notify all relevant jurisdictions of the potential tax consequences of Microsoft changing its power supplier and will provide the Commission with a copy of each notice.³⁰
- (o) **Notice of Supplier Identity.** Microsoft will provide PSE with a list of all power suppliers and the corresponding amount and source of supplied power or renewable energy credits by March 31 of each year. PSE will file these lists with the Commission as compliance filings in this docket and will provide copies to Staff and Public Counsel (and to other parties on request).³¹
- (p) **No Precedential Effect.** The parties agree that the Settlement and Special Contract do not bind the Commission in future proceedings when it considers the

²⁷ *Id.* ¶ 15.

²⁸ *Id.* ¶ 16.

²⁹ *Id.* ¶ 17.

³⁰ *Id.* ¶ 18.

³¹ *Id.* ¶ 19.

issue of retail access or any other matter not specifically resolved by this Settlement.

Joint Memorandum and Supporting Testimony

- 10 The parties submitted a Joint Memorandum in Support of the Full Settlement Agreement (Memorandum) that summarizes the Settlement's provisions and the reasons the parties believe it is in the public interest.³² The parties also explain that PSE's proposed Schedule 451 raised broad public policy issues that the Commission need not resolve to allow Microsoft to meet its clean energy goals. Accordingly, the parties settled on a special contract between PSE and Microsoft, which establishes terms and conditions applicable only to those two companies. The parties assert that this contract complies with the Commission's rule on special contracts³³ and enables Microsoft to achieve its corporate commitments to carbon neutrality and renewable energy while significantly advancing the state's energy policy goals and protecting PSE's remaining customers. Each party also provided its own testimony, summarized below, to explain why that party supports the Settlement.
- 11 **PSE.** Mr. Piliaris supplements his prior testimony on behalf of PSE by summarizing the four significant differences between the Company's original proposal and the Settlement. The Settlement (1) establishes terms and conditions in a special contract with Microsoft rather than a tariff schedule; (2) enhances Microsoft's renewable energy requirements; (3) maintains Microsoft's contribution to conservation funding; and (4) provides greater funding for PSE's bill-assisted customers. Mr. Piliaris also explains that PSE will disburse the Transition Fee through the Company's Schedule 95, its Power Adjustment Clause, rather than Schedule 137, which is used for temporary customer charges or credits, to improve administration and auditing and to recognize that these funds are not separate from base rates but are intended to reimburse PSE's remaining customers for Microsoft's discontinued contribution to production costs included in base rates. Mr. Piliaris states that the Settlement is in PSE's interest by addressing the needs of its largest customer and by narrowing the scope of issues presented in this proceeding. He asserts that the Settlement is in the public interest because Microsoft has made commitments that hold customers harmless and provide additional customer benefits. PSE, however, opposes a new docket to discuss broader retail wheeling issues, characterizing such an

³² Memorandum, Exh. JP-2.

³³ WAC 480-80-143.

effort as unnecessarily opening a Pandora's box of complicated and controversial issues without clear legislative direction or significant interest from other customers.³⁴

- 12 **Microsoft.** Ms. Plenefisch expanded on her direct and supplemental direct testimony to support the Settlement on behalf of Microsoft. She testified that the Special Contract will advance the public interest through Microsoft's commitments to invest in renewable energy and carbon free resources, to continue to contribute to PSE's conservation funding program, and to increase its contribution to low-income programs. In addition, she contends that payment of the Transition Fee will fully protect remaining PSE customers from any financial impacts associated with the retail wheeling arrangement. From Microsoft's perspective, moreover, that arrangement will allow the company to meet its business and energy sustainability goals more effectively, efficiently, and quickly.³⁵
- 13 **Staff.** Two members of the Commission's Regulatory Services staff provided testimony in support of Staff's advocacy for the Settlement. Jennifer E. Snyder, Regulatory Analyst in the Conservation and Energy Planning Section, describes Staff's concerns with a tariff approach in general and proposed Schedule 451 in particular, and summarizes the Settlement and Special Contract. Ms. Snyder recommends that the Commission approve the retail wheeling agreement between PSE and Microsoft because it (a) is particularly well suited to Microsoft given that company's sophistication and circumstances; (b) holds remaining ratepayers harmless; (c) advances state policy goals in a manner that results in a net public good; (d) poses only minimal system reliability issues that PSE can manage using its existing procedures; and (e) is narrowly focused on the service PSE provides to a unique customer, thus avoiding the need to address broader retail wheeling and direct access issues and their statewide implications. Staff recommends that the Commission open a separate docket to discuss those broader legal and policy issues and better understand statewide stakeholder interests and perspectives before other large customers seek to make their own wheeling arrangements.³⁶
- 14 David C. Gomez, Assistant Power Supply Manager in the Commission's Energy Section, describes his analysis of the "revenues lost" approach PSE used to calculate the Transition Fee. He concludes that the Company's methodology and the calculations result

³⁴ Piliaris, Exh. JAP-8T.

³⁵ Plenefisch, Exh. IP-6T.

³⁶ Snyder, Exh. JES-1T.

in a payment that is sufficient to protect remaining ratepayers from having to make up for Microsoft's share of PSE's allocated power costs.³⁷

- 15 **Public Counsel.** Public Counsel presented the testimony of Carla A. Colamonici, Regulatory Analyst for Public Counsel, in support of its position that the Settlement is in the public interest. She testified that Public Counsel has five bases for this conclusion: (1) a special contract, rather than a tariff schedule, is a more appropriate means of enabling Microsoft to achieve its corporate sustainability goals; (2) the Transition Fee will hold other PSE ratepayers harmless from the stranded power costs associated with Microsoft's load leaving PSE's system; (3) Microsoft's commitments to renewable energy acquisition and low-income assistance exceed current requirements; (4) Microsoft has agreed to maintain the status quo with respect to energy conservation; and (5) the Special Contract does not include or preclude Microsoft's responsibility for decommissioning, remediation, or potential accelerated depreciation of the Colstrip facilities. Public Counsel, however, does not support Staff's recommendation for the Commission to open a new docket to have a broader discussion of retail wheeling, believing that legislative action may be a prerequisite to any state-wide open access.³⁸
- 16 **ICNU.** Bradley C. Mullins, an independent energy and utilities consultant, presented testimony on behalf of ICNU. Mr. Mullins analyzed the calculation of the Transition Fee and determined that it will more than compensate PSE's remaining customers for any costs associated with the Company's wheeling agreement with Microsoft because the fee does not account for the long-term benefits those ratepayers will receive. Mr. Mullins nevertheless concludes that the fee is reasonable because it is acceptable to Microsoft as a gesture of good will. The Settlement's acknowledgement that it does not resolve the issue of Microsoft's responsibility for any Colstrip remediation costs is also an important factor in ICNU's decision to support the Settlement. ICNU also generally supports consumer choice and thus supports Staff's recommendation that the Commission initiate a separate docket to discuss retail wheeling issues more broadly.³⁹
- 17 **NWEC.** NWEC provided the testimony of Wendy Gerlitz, the Coalition's Policy Director. She testified that direct retail access to alternative energy providers inherently

³⁷ Gomez, Exh. DCG-1T.

³⁸ Colamonici, Exh. CAC-1T.

³⁹ Mullins, Exh. BGM-1T.

disrupts the historic regulatory construct, and any such arrangement must benefit customers and enhance the public interest in renewable energy and energy efficiency. The Settlement, in her view, satisfies these requirements through Microsoft's commitments to using carbon neutral and renewable energy, energy efficiency, and low-income customer support. The Settlement also is not intended to establish a broader program for retail access but is a unique agreement designed to meet one customer's needs. She believes the Settlement appropriately leaves open the issue of Microsoft's responsibilities for decommissioning and remediation costs associated with the Colstrip generating units because such costs are unknown. NWECA neither supports nor opposes a general discussion on retail access in a separate proceeding but cautions that delaying that discussion may be warranted in light of workload issues and the recent vintage of PSE's new Voluntary Renewable Energy Tariff. Finally, Ms. Gerlitz emphasizes the importance of compliance and enforcement of the special contract, specifically the sufficiency of compliance filings and the Commission's authority to assess penalties against Microsoft or initiate termination of the contract for non-compliance.⁴⁰

18 **The Energy Project.** Shawn M. Collins, Director of The Energy Project, testified concerning the impact of the Settlement on low-income populations within PSE's service territory. He testified that the Settlement addresses The Energy Project's concerns by providing that Microsoft will maintain its current levels of contribution to low-income energy assistance and conservation funding. In addition, The Energy Project views Microsoft's contribution to low-income energy and efficiency programs as a critical component of the Settlement. The other provisions that benefit low-income customers include Microsoft's payment of the Transition Fee to hold all customers harmless from the costs resulting from the transition, Microsoft's renewable energy commitments, and the lack of any determination of Microsoft's responsibility for any Colstrip decommissioning, remediation, or accelerated depreciation costs. The Energy Project, however, observes that retail access or retail competition is a complex and controversial subject and recommends that the Commission not address those issues at this time in light of the many other energy matters presently before it.⁴¹

19 **NIPPC.** Robert D. Kahn, Executive Director, testified on behalf of NIPPC. He states that the Settlement is in the public interest because it allows Microsoft the opportunity to

⁴⁰ Gerlitz, Exh. WG-1T.

⁴¹ Collins, Exh. SMC-1T.

lower its power costs and access more renewable energy, consistent with both corporate and Washington state policies. At the same time, Mr. Kahn states, the Settlement results in a net benefit to other PSE customers through Microsoft's agreement to pay a transition fee arguably in excess of stranded costs and the company's commitments to obtaining renewable energy and funding conservation and low-income assistance programs. NIPPC also supports Staff's recommendation to initiate a broader discussion of retail wheeling and direct access to establish overall policy guidance in a forum that permits the Commission to set and control the agenda, rather than merely react to individual legislative or administrative requests for retail wheeling.⁴²

20 **Wal-Mart.** Wal-Mart submitted the testimony of Chris Hendrix, Director of Markets and Compliance. Mr. Hendrix testified that the Settlement is in the public interest because it is the just and reasonable result of extensive arms-length negotiation between the parties and greatly aids administrative efficiency, to the benefit of the Commission and the parties. Wal-Mart also supports Staff's recommendation that the Commission open a docket to undertake a broader discussion of retail wheeling for industrial and commercial customers.⁴³

21 **Kroger.** Kevin C. Higgins, Principal in the private consulting firm of Energy Strategies, LLC, testified on behalf of Kroger. He described Kroger's position that the Settlement is in the public interest because it provides Microsoft with an equitable means of migrating to a retail wheeling service while producing net benefits for PSE's remaining customers. Kroger further supports a broader discussion of retail wheeling and direct access in a new docket to determine which customers may purchase energy in the competitive market and under what terms and conditions.⁴⁴

RETAIL WHEELING IN WASHINGTON

22 Retail wheeling allows a utility customer to contract with an entity other than the utility to provide electricity delivered or "wheeled in" to the customer over the utility's transmission and distribution facilities. In this case, Microsoft seeks to obtain electricity from one or more third party generators delivered over PSE's network. This is not the first time the Commission has considered such an arrangement.

⁴² Kahn, Exh. RDK-1T.

⁴³ Hendrix, Exh. CWH-1T.

⁴⁴ Higgins, Exh. KCH-1T.

- 23 During the mid-1990s, at a time when wholesale energy prices entered a cyclic low, large customers sought opportunities to purchase directly from the wholesale energy market. The Commission opened a docket to review electric utility regulation, and in 1995, issued a policy statement outlining the guiding principles it would use to develop its judgments on competition in the electric industry.⁴⁵ Shortly thereafter, PSE developed Schedule 48 as an optional tariff for large customers to access “competitively priced electricity.”⁴⁶ PSE designed Schedule 48 based on special contracts the Company had negotiated with a few large customers to emulate the market by pegging energy prices to a market index, plus a charge for ancillary services and margin, taxes and regulatory fee costs, delivery-loss markup, and transition charges.⁴⁷
- 24 In 2000, volatility in the western wholesale power markets spurred a new round of requests for energy alternatives. On December 8, 2000, the Mid-Columbia firm index price on which Schedule 48 rates were based reached a peak one-hour price of \$714.44. Just three days later, on December 11, that index price hit \$3,300. The next day, Air Liquide, along with seven other Schedule 48 customers and a special contract customer, filed a formal complaint requesting an emergency adjudicative proceeding, arguing that the Mid-Columbia prices were no longer a reasonable basis for setting rates that were fair, just, and reasonable.
- 25 The complaint was resolved with the Commission approval of a settlement agreement between PSE and 12 large customers. The settlement created Schedules 448 and 449, Schedule 45, and several customer-specific special contracts.⁴⁸ The settlement also resulted in a number of confidential bilateral monetary settlements between parties. The Commission terminated Schedule 48 on October 31, 2001. Schedule 449 continues to provide transmission service to a handful of customers but is not open to new customers.

⁴⁵ *In re Notice of Inquiry: Examining Regulation of Electric Utilities in the Face of Change in the Electric Industry*, Docket UE-940932, Policy Statement, Guiding Principles for Regulation in an Evolving Electricity Industry (Dec. 13, 1995).

⁴⁶ *Air Liquide America Corporation, et al. v. PSE*, Docket UE-981410, Fifth Supp. Order at 3 (Aug. 3, 1999).

⁴⁷ *Id.* at 3-4; *Air Liquide America Corporation, et al. v. PSE*, Dockets UE-001952 and UE-001959, Eleventh Supp. Order ¶ 6 (April 5, 2001).

⁴⁸ *Id.* ¶ 24.

26 In this proceeding, the Commission once again considers whether to approve a wheeling arrangement through which a large core customer can satisfy its energy needs with power it obtains from a provider other than PSE.

DISCUSSION AND DECISION

27 “The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.”⁴⁹ The Commission may approve the Settlement, with or without conditions, or reject it.

28 The Commission finds that the Settlement is lawful, its terms are supported by an appropriate record, and the result is consistent with the public interest of promoting the state’s and the Commission’s energy policy goals and protecting ratepayers and the electric system. We therefore approve the Settlement without conditions. We recognize, however, that the Settlement also raises certain issues as discussed below. We will interpret the Settlement terms and the parties’ compliance with those terms in light of our resolution of those issues.

Introduction

29 The Settlement reflects the efforts of the 10 parties that participated actively during several months of negotiations “to bridge their diverse interests.”⁵⁰ The parties represent that the result is “a unique agreement that both holds remaining customers harmless from cost shifts and significantly promotes the public interest.”⁵¹

30 The Settlement would permit Microsoft to cease to be a “core customer” and instead acquire its power supply through direct purchases of electricity from providers other than PSE.⁵² The parties propose to protect PSE’s remaining customers from the resulting cost shifts by requiring Microsoft to pay a one-time Transition Fee of \$23.685 million based

⁴⁹ WAC 480-07-750(1).

⁵⁰ Staff, TR. 64:10-11.

⁵¹ Staff, TR. 64:11-13.

⁵² The Special Contract defines a “core customer” as “a [c]ustomer taking power from PSE under tariff rates set by the Commission pursuant to traditional cost-of-service ratemaking principles.” Special Contract, Exh. JP-3 § 1 at 1. Microsoft will continue to be a customer of PSE’s transmission and distribution services but will not be a core customer because Microsoft will not purchase power from PSE.

on PSE's calculation of the costs and benefits expected over the first five years after Microsoft becomes a retail wheeling customer. PSE will distribute this payment to its retail customers over a 12-month period beginning when Microsoft relinquishes its core customer status and takes service under the Special Contract.⁵³

- 31 The parties contend that the Settlement promotes the public interest in mitigating the adverse environmental impacts of energy production and energy conservation, both as addressed in Initiative 937, the Energy Independence Act,⁵⁴ and as addressed in low-income assistance programs.

[W]ith respect to power supply resources, Microsoft's commitment to procure only carbon neutral and renewable energy resources advances not only Microsoft's corporate goals, but also the shared energy policy goals of this state and this Commission. Washington Public Policy prefers carbon neutral power generation and mandates large utilities to deliver retail customers increasing amounts of power generated from eligible renewable resources.⁵⁵

- 32 During the first several years of the contract, Microsoft will increase its use of eligible renewable resources from 25 percent to 40 percent. Microsoft, over time, will exceed the Energy Independence Act's renewable energy requirement by 25 percent, tripling the status quo requirement under the Act. In addition, the balance of Microsoft's power supply obtained under the special contract will be carbon neutral.⁵⁶ Thus, Microsoft is committing that there will be no carbon dioxide emissions resulting from approximately 80 percent of its power consumption in the Puget Sound region.⁵⁷

- 33 In terms of policies and the public interest in promoting energy efficiency, Microsoft agrees that it will continue to fund and participate in PSE's self-directed energy

⁵³ Staff, TR. 68:14-18. We take official notice of the fact that PSE proposes to address the impacts of these payments on rates for PSE's retail customers who take bundled service, both during the 12-month payout period, and subsequently, in the Company's pending general rate case in Dockets UE-170033 and UG-170034.

⁵⁴ Chapter 19.285 RCW.

⁵⁵ Staff, TR. 66:15-23.

⁵⁶ Plenefisch, Exh. IP-6T at 4:21 – 5:5.

⁵⁷ The special contract substitutes for Microsoft's service under PSE's Tariff Schedule 40, which is about 80 percent of Microsoft's total Puget Sound load. Plenefisch, TR. 156:3-11.

efficiency program for large power users.⁵⁸ Thus, Microsoft will remain a part of PSE's pursuit of all conservation that is cost-effective, reliable, and feasible, as required under the Energy Independence Act, and Microsoft's departure will not negatively impact the effectiveness of the Act.

- 34 Finally, Microsoft agrees to continue to fund PSE's low-income energy assistance program and to increase its contribution to 150 percent of its current contribution. The additional funds above the current funding will be paid into a separate account to be managed and disbursed by PSE's low-income weatherization manager to expand access to energy efficiency services and renewable energy technology for low-income customers in PSE's service territory.⁵⁹
- 35 The Settlement, in these broad terms, has much to commend it in terms of advancing important public policy goals, including policies directed to protection, and even improvement, of environmental quality, and policies that ease the burden on low-income households for whom essential energy services demand a disproportionately high share of available financial resources. The Settlement appears to be protective, too, of the interests of PSE's remaining retail customers, who will not bear additional costs in the near term as Microsoft's shift from core to non-core customer leaves significant stranded costs.
- 36 When we focus on the Settlement more closely, however, we find the provisions of the Settlement that are designed to hold Microsoft accountable for its promised environmental accomplishments need further explanation. It is necessary to clarify these provisions to define more fully how PSE and the Commission will monitor and enforce Microsoft's compliance.
- 37 In addition, the provisions meant to hold other customers harmless from stranded costs for which Microsoft is rightly held accountable leave unresolved, in terms of Microsoft's responsibility, one very significant cost that PSE faces today. These are the costs PSE faces for decommissioning and remediation following the imminent closure of coal power facilities Colstrip 1 and 2 in Montana, in which PSE has a 50 percent ownership interest. Thus, these costs become the proverbial "elephant in the room" that must be handled appropriately lest serious damage be caused to the occupants (*i.e.*, retail customers) who remain after Microsoft becomes a non-core customer.

⁵⁸ Staff, TR. 67:17-23.

⁵⁹ Staff, TR. 67:24 – 68:9.

38 Finally we note that the Settlement's benefits and protections arise in the context of PSE's largest customer no longer purchasing electricity from the Company's power supply network. Retail wheeling, while not new in Washington, is not common, and we approach its usage with caution, recognizing that the shift of a large business core customer to a non-core customer impacts all customers and the electric system that serves them.

39 We agree with Staff that it is "important to note that each party has its own unique nuanced view about the terms of the settlement and about why the settlement is in the public interest."⁶⁰ We consider each major provision of the Settlement, the agreement as a whole, and the related issues in this light.

Special Contract

40 The Settlement establishes the terms of the wheeling arrangement between PSE and Microsoft in a special contract, rather than the tariff schedule PSE originally submitted. As an initial matter, therefore, PSE and Microsoft must:

- (a) Show that the contract complies with the statutory prohibitions on unreasonable preference or rate discrimination;
- (b) Demonstrate that the contract charges recover all costs resulting from providing the service during its term and contribute to the utility's fixed costs;
- (c) Summarize the basis of the contract charges and explain their derivation, including all cost computations; and
- (d) Explain the reason for using a contract rather than a filed tariff to govern the service.⁶¹

We address each of these requirements below.

Unreasonable Preference/Rate Discrimination

⁶⁰ Staff, TR. 65:14-18.

⁶¹ WAC 480-80-143(5). The rule also requires a complete copy of the contract, which is included in the record as Exh. JP-3, and the contract must be for a stated time period, which in this case is an initial term of 20 years with automatic five year renewals. Exh. JP-3 § 3.1.

- 41 Washington statutes prohibit an electrical company from making or granting any undue or unreasonable preference or advantage to any person,⁶² or from charging or receiving a greater or less compensation from any person than the company charges or receives from any other person for a comparable service under substantially similar circumstances.⁶³ The parties contend that the Special Contract does not grant Microsoft undue preference or prejudice any other customer by allowing Microsoft to meet its electricity needs under conditions that significantly advance state energy policy goals. The parties also claim that Microsoft will pay the same tariff rates for transmission and distribution services that PSE charges all similarly situated customers.⁶⁴
- 42 We agree that the rates and charges in the Special Contract are not discriminatory. Microsoft will pay tariffed rates for the transmission and distribution services PSE provides. There is no evidence in the record that PSE would calculate the one-time Transition Fee Microsoft has agreed to pay differently for any other similarly situated customer. The penalty to which Microsoft is subject should it not meet its renewable energy commitments is also the same penalty a utility faces for a similar failure.
- 43 We also find that PSE is not granting Microsoft an undue or unreasonable preference or advantage. Microsoft contends that it is unable to accomplish its corporate sustainability goals and commitments to carbon neutrality as a PSE core customer.⁶⁵ Microsoft is unique in terms of both the amount and the concentrated location of its load. As we discuss further below, the Special Contract enables Microsoft to meet its needs by obtaining electricity from other sources without negatively impacting PSE's remaining customers. PSE thus is not giving Microsoft undue or unreasonable preferential treatment or advantage at the expense of other ratepayers.

Cost Recovery

- 44 The parties maintain that the Special Contract allows PSE to recover all of its costs to provide the contract services through Microsoft (a) paying the Transition Fee; (b) continuing to make payments under Schedule 120 as if Microsoft were a core customer to fund conservation programs; (c) making payments to fund expanded access to energy

⁶² RCW 80.28.090.

⁶³ RCW 80.28.100.

⁶⁴ Memorandum, Exh. JP-2 ¶ 18.

⁶⁵ Plenefisch, Exh. IP-6T at 2:20 – 3:7.

efficiency services and renewable energy technology for eligible low-income customers; and (d) leaving open Microsoft's potential liability for Colstrip decommissioning and remediation costs.⁶⁶ The parties further assert that Microsoft must contribute to PSE's fixed costs through the Commission-approved rates PSE charges Microsoft for distribution services, which include fixed distribution costs.⁶⁷

45 We find that the parties have demonstrated that the charges in the Special Contract recover all costs resulting from providing the contract services during the term of the agreement and contribute to PSE's fixed costs. Microsoft will pay the cost-based tariffed rates for transmission and distribution services and will contribute to PSE's costs to fund its conservation and low-income assistance programs. The Transition Fee recovers the stranded costs associated with the loss of Microsoft's load from PSE's generation system. PSE, therefore, will recover its costs under the Special Contract.

Basis and Derivation of Contract Charges

46 The parties rely on the testimony of their witnesses to demonstrate the basis and derivation of the charges in the Special Contract. Most of that testimony focuses on the calculation of the Transition Fee, which all witnesses who address it agree ensures that PSE's remaining ratepayers will be held harmless as a result of Microsoft's decision to no longer be a core customer.⁶⁸

47 The parties have demonstrated the basis and derivation of the charges in the Special Contract. Only the Transition Fee varies from the types of charges Microsoft currently pays, and the record contains extensive evidence of the costs that are included in that fee and how PSE calculated them.⁶⁹ We discuss those costs in greater detail below, but for purposes of WAC 480-80-143, we find that PSE and Microsoft have complied with this requirement.

⁶⁶ Memorandum, Exh. JP-2 ¶¶ 19-24.

⁶⁷ *Id.* ¶ 25.

⁶⁸ Memorandum, Exh. JP-2 ¶ 10; Piliaris, Exh. JAP-1CT; Saleba, Exh. GSS-1T; Gomez, Exh. DCG-1T; Colamonici, Exh. CAC-1T; Mullins, Exh. BGM-1T; Collins, Exh. SMC-1T; Kahn, Exh. RDK-1T.

⁶⁹ Piliaris, Exhs. JAP-1CT through JAP-5C; Saleba, Exhs. GSS-1T through GSS-5C; Gomez, Exh. DCG-1T.

Reason for Using a Contract

48 The parties explain that they have attempted to narrow the scope of this proceeding and bridge their diverse interests by settling on a special contract rather than a tariff for PSE to provide retail wheeling service to Microsoft:

Proposed Schedule 451 raised issues broader than necessary to resolve issues relating to Microsoft's need to meet its clean energy goals through direct purchases of electricity. It raised questions of law and policy concerning whether authorizing an optional retail wheeling service is in the public interest and whether Schedule 451's eligibility criteria and other terms are fair, just, and reasonable. These questions elicited broader questions, of potential statewide significance, about the extent to which competitive retail power supply should be available to utility customers.⁷⁰

49 Avoiding the broader public policy implications of a utility service ordinarily does not justify providing that service through a special contract with a single customer instead of making the service available to all similarly situated customers via tariff. Special contracts recognize and accommodate a customer's unique needs and circumstances in a way that a generally applicable tariff cannot. Using a special contract to avoid offering the same service to other customers can raise issues of unreasonable preference or discrimination.

50 The service and the customer before us in this proceeding, however, are not ordinary. PSE has not offered retail wheeling to new customers in over 15 years and does not intend to lose additional core customers by making that service more widely available. Indeed as a practical matter, only Microsoft, as PSE's largest core customer whose primary load is concentrated in a single geographic location, could have satisfied the prerequisites in originally proposed tariff Schedule 451. The Special Contract better recognizes these circumstances.

51 At the same time, however, we cannot entirely avoid the public policy ramifications of allowing Microsoft to obtain its power from providers other than PSE, regardless of the form that takes. We address such issues in greater detail below. For purposes of WAC 480-80-143, however, we are satisfied that a Special Contract, rather than a tariff, is an

⁷⁰ Memorandum, Exh. JP-2 ¶ 10.

appropriate means of establishing the rates, terms, and conditions of the services PSE will provide to Microsoft.

52 PSE and Microsoft, therefore, have made the requisite showing to comply with WAC 480-80-143.

Transition Fee

53 The Transition Fee is an “exit fee,” which is a generally accepted means to keep a regulated utility’s “remaining customers financially indifferent or ‘held harmless’ from the actions of a customer taking power supply from a non-incumbent supplier.”⁷¹ PSE contends that it will incur stranded energy generation system costs as a result of Microsoft obtaining power from providers other than PSE. In other words, PSE has deployed sufficient facilities to provide electricity to all of its current customers, and the loss of Microsoft’s load means that PSE will have excess power generating capacity, the costs of which the Company claims it will no longer be able to recover in the absence of Microsoft as a core customer. PSE calculated the net present value of the revenue and cost differences between its network with and without Microsoft over the initial 20-year term of the Special Contract. According to that calculation, PSE’s generation system cost recovery shortfall will be almost \$24 million during the first five years of the contract.⁷²

54 Microsoft disagrees with two of the assumptions in PSE’s calculations. First, Microsoft contends that pursuant to the theory underlying an exit fee, the Company should calculate the net present value differential over the useful lives of PSE’s generating assets, which conservatively would be a period of 15, rather than five, years.⁷³ Second, Microsoft claims that PSE is undervaluing the power supply Microsoft’s departure will free up by assuming that PSE will use that excess to reduce PSE’s purchase of power for its remaining customers, rather than selling the power on the open market.⁷⁴ Correcting these assumptions, according to Microsoft, would result in PSE receiving a net benefit of \$35.2 million from no longer serving Microsoft as a core customer, instead of the \$23.685

⁷¹ Saleba, Exh. GSS 1T at 3:7-9.

⁷² Piliaris, Exh. JAP-1CT at 3-9 & Exh. JAP-3C.

⁷³ Saleba, Exh. GSS-1T at 6:17 – 7:11.

⁷⁴ *Id.* at 8:6-23.

million deficit PSE determined.⁷⁵ Microsoft nevertheless has agreed to pay the Transition Fee as PSE calculated it as “an assurance that ratepayers will be held harmless.”⁷⁶

55 Staff believes that the “revenues lost” approach PSE has taken to calculate the Transition Fee “is simple and produces reasonable estimates of a departing customer’s share of power costs,”⁷⁷ and that PSE’s application of that approach in this case is faithful to the accepted methodology.⁷⁸ Staff agrees with the Company’s calculations and does not share Microsoft’s concerns about the underlying assumptions. Staff maintains that a five-year period is appropriate because “relying on long-range estimates of market prices for power and gas conveys an unacceptable amount of risk to remaining customers,”⁷⁹ and the assumptions in PSE’s methodology are consistent with PSE’s 2015 Integrated Resource Plan.⁸⁰ Staff also opines that the “capacity benefit associated with Microsoft’s departure is already accounted for in PSE’s model,” so the value Microsoft would ascribe to the market power prices “overstates capacity benefits.”⁸¹ Staff cautions, however, that the revenues lost approach is just one of several reasonable ways of calculating transition payments associated with departing customers and recommends that the Commission not adopt any approach without first considering the broader policy implications of retail wheeling.⁸²

56 The record evidence amply supports a finding that \$23.685 million is a reasonable estimate of the power supply costs for which PSE’s remaining customers would be responsible upon Microsoft’s transition to being a non-core customer.⁸³ Microsoft’s agreement to pay that Transition Fee helps to ensure that the Special Contract will not adversely affect other ratepayers.

⁷⁵ *Id.* at 10:8-10 & Exh, GSS-5C.

⁷⁶ Plenefisch, Exh. IP-1T at 9:18.

⁷⁷ Gomez, Exh. DCG-1T at 4:12-13.

⁷⁸ *Id.* at 6:7.

⁷⁹ *Id.* at 8:14-16.

⁸⁰ *Id.* at 9:6-17.

⁸¹ *Id.* at 10:3-5.

⁸² *Id.* at 10:6 – 11:4.

⁸³ As we discuss beginning in paragraph 72 below, such costs do not include Colstrip decommissioning and remediation costs.

57 We need not, and do not, however, adopt the revenues lost approach to calculating a transition fee. We agree with Staff that choosing any one approach should await further examination of alternative methodologies and the attendant policy ramifications of each. We also need not resolve Microsoft's concerns with the assumptions PSE used in its calculations in light of Microsoft's agreement to pay the Transition Fee PSE proposed. We conclude only that the Transition Fee is lawful, supported by an appropriate record, and consistent with the public interest in protecting ratepayers from being responsible for the costs PSE will incur when Microsoft no longer purchases power from PSE.

Renewable and Carbon-Free Energy Commitments

58 Microsoft's primary motivation for obtaining power from providers other than PSE is to further Microsoft's corporate clean energy goals. Consistent with that objective, the Special Contract includes Microsoft's commitments to meet its energy needs with 25 percent eligible renewable resources through 2020 and with 40 percent of such resources in subsequent years. Microsoft must comply with any higher percentages applicable to PSE if the percentage in RCW 19.285.040(2) rises above 40 percent.⁸⁴ The Special Contract further requires Microsoft to obtain all its power from identified carbon-free generating resources, with limited exceptions that Microsoft must identify, quantify, and offset with renewable energy credits.⁸⁵ The parties universally support these commitments and requirements as furthering Washington public policy to encourage reduced carbon emissions and their attendant environmental impacts.

59 We agree. The Energy Independence Act firmly established Washington as a leader in reducing the use of carbon-based sources of energy. Microsoft's individual commitment to substantially exceed the targets in that statute represents significant progress toward achieving the state's and the Commission's objectives. Microsoft's targets are not only aggressive but meaningful because Microsoft has agreed to be subject to the same penalties that utilities face if they fail to meet those requirements.⁸⁶ The contractual requirement that Microsoft obtain all of its energy from verifiable carbon-free resources supports these commitments and enhances the corresponding benefits to the environment and the citizens of Washington.

⁸⁴ Special Contract, Exh. JP-3 § 4.9.2.1.

⁸⁵ *Id.* § 4.9.2.

⁸⁶ *Id.* § 4.9.3.

60 We conclude that Microsoft's renewable and carbon-free energy commitments and requirements in the Settlement and Special Contract are lawful, supported by an appropriate record, and consistent with the public interest in fostering the use of renewable and carbon-free energy.

Conservation and Low-Income Assistance

61 The rates Microsoft currently pays include contributions to PSE's energy conservation and low-income assistance programs. The Settlement includes Microsoft's agreement to continue making conservation contributions as if it were still a core customer.⁸⁷ Microsoft will also contribute to PSE's low-income assistance program at the current rate throughout the term of the Special Contract and subsequent renewals.⁸⁸ Microsoft will make an additional contribution to a separate fund for PSE to expand energy efficiency services and renewable energy technology for low-income customers in PSE's service territory.⁸⁹ The parties support these terms as another means to ensure that the Special Contract does not adversely affect PSE's remaining ratepayers and, at the same time, further the state's policy goals of encouraging conservation, promoting renewable energy usage, and assisting low-income customers.

62 Again we agree that Microsoft's commitments serve the public interest. The Commission has long worked with regulated utilities to develop energy conservation and low-income assistance programs and to fund those programs through a portion of the rates all customers pay. As PSE's largest customer, Microsoft has historically made substantial contributions to these efforts. Microsoft's agreement to continue those contributions ensures that its decision to become a non-core customer will not negatively impact consumers who rely on PSE's programs to reduce or afford their energy consumption. Microsoft's commitment to contribute additional funds for energy efficiency and access to renewable resources for low-income customers expands its corporate objectives to assist other consumers in sharing the benefits of promoting the state's energy policy goals.

63 We conclude that Microsoft's agreement to continue its contributions to PSE's conservation and low-income assistance programs and to contribute additional funds for

⁸⁷ Settlement, Exh. JP-1 ¶ 15.

⁸⁸ *Id.* ¶ 16.

⁸⁹ *Id.* ¶ 17.

energy efficiency and access to renewable resources for low-income customers is lawful, supported by an appropriate record, and consistent with the public interest in protecting ratepayers from Microsoft's departure and in promoting the State's and the Commission's conservation, energy efficiency, and low-income assistance policies.

Enforcement

- 64 The Special Contract provides that Microsoft must provide PSE an annual renewable portfolio standard report by March 31 of each year, which PSE will submit to the Commission as a compliance filing in this docket. If Microsoft does not meet its annual renewable energy target obligations in any year, Microsoft must pay the same penalty applicable to a utility that fails to meet its statutory targets. "Any penalty imposed on 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 the Energy Independence Act and is subject to the consideration of any mitigating circumstances."⁹⁰
- 65 Unfortunately, the contract does not establish a process for enforcing these requirements, and the testimony at the evidentiary hearing did not clarify this aspect of the Settlement. Microsoft apparently believes the Commission does not have direct authority to enforce the terms of the Special Contract as they apply to Microsoft.⁹¹ Other witnesses expressed views that suggest the parties did not fully determine how to enforce Microsoft's environmental commitments.⁹² Accordingly, we provide clarity and guidance to the parties concerning our jurisdiction and enforcement of the Special Contract.
- 66 A tariff establishes the rates, terms, and conditions under which a regulated electric company provides service and is legally binding on the company and its customers once the Commission has approved the tariff or allowed it to become effective.⁹³ The Commission has the authority to enforce these rates, terms, and conditions.⁹⁴ Electric companies may include rates, terms, and conditions of service provided to specific customers in special contracts, but the essential terms of such contracts are considered

⁹⁰ Special Contract, Exh. JP-3 § 4.9.3.

⁹¹ Plenefisch, TR. 73:4-16, 76:20-25 & 77:7-20.

⁹² See generally TR. 76-89.

⁹³ RCW 80.28.050.

⁹⁴ See RCW 80.01.040 (General powers and duties of Commission).

part of the company's "filed tariffs and are subject to enforcement, supervision, regulation, control, and public inspection as such."⁹⁵

67 The Commission's subject matter jurisdiction over special contracts necessarily includes personal jurisdiction over the parties to those contracts for purposes of enforcing their terms. The Commission could not enforce a contract if the Commission could not require one or both parties to take the actions necessary to comply with their agreement. The Commission's governing statutes recognize this reality and extend the Commission's personal jurisdiction to entities that are not independently and directly regulated as public service companies. The penalty provisions at the heart of the Commission's enforcement authority provide for penalties against not only a non-compliant public service company and its officers, agents, and employees, but against "corporations, *other than a public service company*," and "[e]very person who, either individually, or acting as an officer or agent of a corporation *other than a public service company*" who violates any provision of Chapter 80 RCW or "fail[s] to observe, obey or comply with any order made by the commission."⁹⁶

68 The Special Contract, moreover, is part of the Settlement,⁹⁷ which the Commission has incorporated into this Order. Accordingly, Microsoft's obligations arise from a Commission order as well as the contract itself. The Commission, therefore, bears the ultimate authority and duty to enforce those obligations, including but not limited to Microsoft's compliance with its annual renewable energy targets.

69 The Special Contract requires PSE to provide the Commission with Microsoft's annual renewable portfolio standard report. Such a process would be needlessly cumbersome if, as the witnesses for PSE, Microsoft, and Staff testified, PSE were acting as nothing more than a conduit for transmitting the report from Microsoft to the Commission.⁹⁸ We do not accept such a limited role for PSE in this process. Rather, we expect PSE to analyze carefully Microsoft's report prior to submitting it to the Commission for filing and to provide PSE's position on whether Microsoft has complied with sections 4.9.1 and 4.9.2 of the Special Contract.

⁹⁵ WAC 480-80-143(3).

⁹⁶ RCW 80.04.387 (emphasis added).

⁹⁷ Settlement, Exh. JP-1 ¶ 7 & Exh. A.

⁹⁸ Piliaris, TR. 72:21 – 73:1; Plenefisch, TR. 73:4-16; Snyder, TR. 73:23-25. Ms. Snyder stated that she does not "envision Commission Staff ever directly contacting Microsoft." Snyder, TR. 73:25 – 74:1.

70 Section 4.9.3 of the Special Contract also contemplates that Staff will verify Microsoft's compliance with its annual renewable energy targets. Staff's views are invaluable, but the Commission, not Staff, must ultimately determine whether Microsoft has complied with the requirements of this order, including but not limited to Microsoft's obligations under sections 4.9.1 and 4.9.2 in the Special Contract. As it typically does in response to any compliance filing, we expect Staff to submit a letter to the Commission with Staff's analysis of Microsoft's annual renewable portfolio standard report and PSE's position on that report. We further expect Staff to communicate directly with Microsoft about any additional information Staff requires to analyze Microsoft's compliance with this order, without the need to work through PSE.⁹⁹ Because PSE will submit Microsoft's report in this docket, the other parties will also have an opportunity to comment on that report.

71 The Commission will determine whether Microsoft has complied with sections 4.9.1 and 4.9.2 after the Commission receives Microsoft's report and parties' comments on that report. If the parties conclude, and the Commission agrees, that Microsoft is in compliance, the Commission will authorize the Secretary to issue a letter confirming that compliance. If a party disputes or otherwise raises an issue with Microsoft's compliance, the Commission will conduct appropriate proceedings to resolve that dispute, either in this docket or a separate docket, as appropriate. In any such proceeding, Microsoft will be a party and will bear the burden to prove that it complied with sections 4.9.1 and 4.9.2. In the absence of such compliance, Microsoft also must prove that it exercised reasonable care and prudence in obtaining eligible renewable resources or renewable energy credits and that any mitigating circumstances exist that should reduce the penalty the Commission assesses for violation of this Order and the Special Contract.

Responsibility for Colstrip Costs

72 The Settlement provides that the parties "agree that approval of the Transition Fee, Special Contract, and this Settlement does not address or resolve any issues relating to

⁹⁹ Ms. Snyder testified that she expects Staff "will work with PSE" and that "PSE will then work with Microsoft" unless Staff "need[s] to speak directly to Microsoft," in which case she "envision[s] all three parties being involved in the conversation." Snyder, TR 74:1-6. Our vision differs to the extent that Staff suggests there is some limitation on its or the Commission's ability to elicit needed information directly from Microsoft. We therefore clarify that Staff, in addition to PSE, has every right to communicate directly with Microsoft concerning its compliance with the terms of the Special Contract. This includes communication in the form of information requests, sometimes referred to as data requests, seeking specific information or documentation concerning matters relevant to the Commission's enforcement of the Special Contract.

Microsoft's potential obligation to contribute to Colstrip remediation, decommissioning, and/or accelerated depreciation costs."¹⁰⁰ On its face, this states nothing more than that the parties reserve for another day and another proceeding the extent to which Microsoft must pay any portion of the costs PSE inevitably will incur in the near future when it retires Colstrip Units 1 and 2. We nevertheless are concerned that this provision reflects a belief that Microsoft's responsibility to contribute to these costs is an open question. We clarify that it is not.

73 Paragraph 10 of the Settlement provides that the \$23.685 million Transition Fee Microsoft commits to pay in recognition of costs that will be stranded when it ceases to be a PSE core customer "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)."¹⁰¹

74 There is a definite tension between the parties' agreement that the Transition Fee "is sufficient to hold customers harmless from the costs of Microsoft's decision to decline PSE's power supply services"¹⁰² and the parties' failure in Section 11 of the Settlement to resolve the issue whether Microsoft has a continuing obligation to pay a fair share of the potentially significant costs of decommissioning and remediating Colstrip 1 and 2. PSE's responsibility for these costs will mature approximately five years from now when the facilities are scheduled to cease operating. In legal terms, this tension establishes an ambiguity in the Special Contract that we recognize and address here to resolve what could become in the future a highly contentious dispute.¹⁰³ In philosophical terms this tension violates the principle of non-contradiction,¹⁰⁴ which can be reduced to the simple proposition that a thing cannot both be and not be. Either the Transition Fee adequately

¹⁰⁰ Settlement, Exh. JP-1 ¶ 11.

¹⁰¹ Settlement, Exh. JP-1 ¶ 10.

¹⁰² Memorandum, Exh. JP-2 ¶ 20.

¹⁰³ We use the conditional here to recognize that it is at least possible that PSE will find already available financial resources adequate to avoid any need to raise rates specifically to address Colstrip decommissioning and remediation costs.

¹⁰⁴ See Gottlieb, Paula, "Aristotle on Non-contradiction", *The Stanford Encyclopedia of Philosophy* (Summer 2015 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/sum2015/entries/aristotle-noncontradiction/>.

protects those who will continue to be PSE's retail customers after Microsoft removes itself from that status, or it does not.

- 75 Microsoft's status as a PSE retail customer is unique in certain respects. Microsoft, for example, is PSE's largest commercial customer, representing a significant percentage of the Company's total retail load. In addition, unlike other large core PSE commercial and industrial customers, over 80 percent of Microsoft's load is concentrated in one area, in this case the Redmond campus. Despite these distinctive aspects, Microsoft shares with many other core commercial and industrial customers the characteristics of being a large, long-term retail customer whose power needs have figured prominently in PSE's power portfolio planning for many years.
- 76 Colstrip 1 and 2 have been part of PSE's power portfolio throughout Microsoft's tenure as a core retail customer. We know today, and have known for some time, that these resources are nearing the ends of their useful lives. This is because, among other reasons, increasing operating and maintenance expenses and competition from other types of generation, coupled with increasing expenses of compliance with laws protective of the environment, are making these facilities uneconomic to operate.
- 77 PSE continues to actively study the implications of its long-term ownership interest in Colstrip 1 and 2, its reliance on this power supply to meet the needs of approximately 20 percent of the Company's total retail load,¹⁰⁵ and, the Company's prospective liability for the costs of decommissioning and remediation caused by these facilities. Representatives of the full range of customers continue to participate actively with PSE in these discussions concerning the planned cessation of operations at Colstrip 1 and 2 by 2022. We do not know the full extent of these costs today, but we do know they will be significant. Nor has it been resolved how PSE will pay for these costs, but ratepayers, as the beneficiaries of PSE's ownership of these assets over a long period of time, will be responsible in one way or another to bear these costs. It is under these circumstances that we consider paragraphs 10 and 11 of the Settlement and section 12 of the Special Contract.
- 78 We begin with the fact that Microsoft today, like any other long-term core customer on PSE's system, has a responsibility to pay a fair share of the costs of decommissioning and

¹⁰⁵ In terms of capacity, the figure is closer to 10 percent (592 MW of 6,022 MW at December peak), according to PSE's 2015 IRP. The 20 percent figure is a measure of energy.

remediation that will follow from the closure of Colstrip 1 and 2. We cannot approve the Settlement allowing Microsoft to relinquish its status as a core customer and leave open the question whether its responsibility to pay a fair share of Colstrip's decommissioning and remediation costs survives such a change in status. Microsoft has that obligation today and will continue to have that obligation whether or not we approve this Settlement and regardless of whether Microsoft no longer purchases power from PSE.

79 Taking this policy perspective in juxtaposition with the suggestion that Microsoft's payment of the Transition Fee will hold harmless PSE's retail customers who will continue to be responsible for paying the fixed and variable costs of PSE's power portfolio, however, does not relieve the tension we find inherent in the Settlement terms. Indeed, testimony elicited at hearing makes the tension between these provisions even more evident. Chairman Danner asked Microsoft, for example: "So you could, in fact, say in a future proceeding that, hey, we don't owe anything. We settled everything in this 23.7 million?"¹⁰⁶ Ms. Plenefisch responded,

Yeah, we are reserving all future arguments and intend to be included in that discussion or a party to that discussion when it comes up. So I think the parties felt that, given that there are many other parties that would be a part of that discussion and that the costs are as yet unknown, it would be impossible to make any sort of determination at this point as to whether or not Microsoft had continued or future liability.

And so the settlement -- the settlement states that that issue is not addressed here and, yes, all the parties have reserved the right to make whatever arguments they may wish to make. Those, of course, may or may not be accepted, but that's the way the settlement has been agreed to.¹⁰⁷

80 While Ms. Plenefisch suggests that it is debatable whether the Transition Fee covers any amount of future decommissioning and remediation costs,¹⁰⁸ we find that the record in this proceeding establishes definitively this is not the case. In his prefiled testimony for PSE, Mr. Piliaris is asked the question whether "potential decommissioning and

¹⁰⁶ Commission, TR. 93:1-3.

¹⁰⁷ Plenefisch, TR. 93:4-12.

¹⁰⁸ Plenefisch, TR. 93:4-12; Piliaris, TR. 96:24-97:5 & 98:21-99:2.

remediation expenses associated with PSE's future closure of its Colstrip generating facilities [are] included in the estimated stranded cost for Microsoft." He responds,

No, these potential expenses are not included in [PSE's] proposed stranded cost charge for Microsoft's service under Schedule 451. PSE anticipates that the recovery of Colstrip-related decommissioning and remediation expenses will be the subject of a future filing and the amount, if any, assigned to customers taking service under Schedule 451 would be addressed at that time.¹⁰⁹

81 The Transition Fee calculation remains unchanged under the Settlement that relies on a special contract rather than on the proposed addition of Schedule 451 to PSE's tariff. Mr. Piliaris testified for PSE during the settlement hearing,

[Y]es, there are some Colstrip-related costs embedded within the calculation of the transition fee. A fairly small amount. I guess more broadly, you're noticing a wide variety of opinions around the number, the validity of the number -- "number" being the transition fee -- what it represents, what it includes, what it does not include. It's been noted that it's intended to mitigate the intended harm to customers.

[T]here are no future remediation costs embedded in that calculation currently. If we have reserves for ARO or a depreciation expense, those are clearly -- if there are rates right now, then they're being included. The ongoing discussions in the rate case around, maybe, further accelerating or future costs, those are not embedded currently within that analysis.¹¹⁰

82 Even Ms. Plenefisch acknowledged that "the necessary information about the costs associated with decommissioning and remediation of Colstrip is not yet available. Thus any attempt to allocate responsibility for costs of Colstrip closure would be premature."¹¹¹

¹⁰⁹ Piliaris, Exh. JAP-1CT at 10:1-8.

¹¹⁰ Piliaris, TR. 96:16-23 & 97:12-18.

¹¹¹ Plenefisch, TR. 7:5-8. *See also* Plenefisch, Exh. IP-3T at 2:6-9 ("Microsoft does not view this proceeding as addressing the question of responsibility for Colstrip decommissioning and retirement costs.

83 NWEC's witness testified that:

NWEC had concerns about the original proposal's impact on allocation of liability for closure and remediation of these coal plant units among all of PSE's customers and whether the proposed tariff would leave existing customers with higher costs.¹¹²

....

[T]he settlement agreement makes clear that the transition fee does not incorporate unknown costs associated with Colstrip generating units, ensuring that the Commission can make a fair, future judgment on Microsoft's responsibilities regarding decommissioning and remediation costs as they become known.¹¹³

Specifically with respect to the Transition Fee, she testified that "our interpretation is that the costs that are currently unknown could not possibly be in that calculation because they are unknown. And so unknown costs will be dealt with in a future proceeding."¹¹⁴

84 Public Counsel's witness testified,

[F]rom Public Counsel's perspective, [the Transition Fee] does not cover costs related with the decommissioning, remediation, and/or accelerated depreciation costs of Colstrip units 1, 2, 3, and 4. Rather, this proceeding does not alter Microsoft's potential liability for those costs, as those costs are beyond the scope of this proceeding, due in part to the costs being unknown, coupled with Microsoft enjoying the benefit of Colstrip. Thus, recovery of costs associated with Colstrip will be determined in future proceeding(s).¹¹⁵

Microsoft expects that those costs will be determined and allocated in a separate proceeding and therefore should not be addressed here.").

¹¹² Gerlitz, Exh. WG-1T at 8:14-16.

¹¹³ *Id.* at 9:16-19.

¹¹⁴ Gerlitz, TR. 94:18-22.

¹¹⁵ Colamonici, Exh. CAC-1T at 7:19 – 8:6.

She testified further that “[t]hese costs are not included in the stranded cost calculation because they are currently unknown, but they will be determined later.”¹¹⁶

85 ICNU’s witness testified that he did not “necessarily disagree with” the other witnesses’ testimony during the hearing that the Transition Fee does not include or reflect Colstrip decommissioning or remediation costs.¹¹⁷ He added, however, that ICNU’s “position on this matter [is] a little bit nuanced.”¹¹⁸ He explained that while ICNU was “still mulling over different ideas and thoughts” on the subject, at the time of hearing it was of the view that the manner of determining the Transition Fee based on cost and benefits over a five year period “is relevant in determining the ultimate ratemaking treatment of the remediation, decommissioning, and accelerated depreciation costs as it relates to Microsoft.”¹¹⁹

86 ICNU’s testimony notwithstanding, the record is clear: the Transition Fee does not include, and therefore should not be argued to cover, any part of any decommissioning and remediation costs for which Microsoft may be found responsible in a future proceeding. Determinations in PSE’s pending general rate case in Dockets UE-170033 and UG-170034, and in future cases, will resolve how and from whom PSE will recover its Colstrip decommissioning and remediation costs. We find here, on the basis of the record in this proceeding, that parties in any such pending or future proceedings will not be able to credibly argue that the Transition Fee Microsoft has agreed to pay in this docket absolves it from any cost responsibility for Colstrip decommissioning and remediation costs if the Commission finds further contributions are required.

87 As so interpreted, we conclude that paragraph 11 in the Settlement is lawful, supported by the record, and consistent with the public interest in leaving to a more appropriate proceeding the determination of the amount of Microsoft’s contribution to Colstrip remediation, decommissioning, or accelerated depreciation costs.

¹¹⁶ *Id.* at 9:8-9.

¹¹⁷ Mullins, TR. 99:9-12.

¹¹⁸ *Id.*

¹¹⁹ Mullins, TR. 99:13 – 100:3.

Public Interest

88 We have concluded that the major Settlement provisions are lawful, supported by an appropriate record, and consistent with the public interest. The remaining parts of the Settlement implement those provisions or provide definitional, logistical, or legal details. We ultimately must determine, then, whether the Settlement as a whole satisfies WAC 480-07-750. We conclude that it does.

89 We begin with the rationale for Microsoft's decision to choose a different energy supplier. That decision comes at a time when large customers across the country are seeking direct access to power generation, in particular renewable energy. This new customer emphasis on procuring clean energy is markedly different from previous cycles. In the past, large customers were simply trying to find a way to lower their energy costs. In this current cycle of customer demand for direct access, customers appear to be driven by not only financial interests, but also corporate commitments to reducing greenhouse gas emissions through a focus on renewable energy procurement.

90 We have seen the increase in customer demand for access to renewable energy in Washington. In a direct response to the western energy crisis, the legislature required all utilities to offer voluntary green energy programs.¹²⁰ In 2006, citizens passed Initiative 937, the Energy Independence Act, to create a state renewable energy portfolio standard. Most recently, PSE began offering its voluntary renewable energy tariff, the Green Direct Program Schedule 139, which provides large customers direct access to specific renewable energy generation. Some of the state's largest corporate and government agencies have elected to take service under this Schedule.¹²¹ Programs such as these will serve an important role in utilities' adaptation to a new service paradigm increasingly driven by customer demand. Microsoft has elected to go further and seek a mechanism that enables it to be powered by 100 percent carbon-free and renewable energy.

91 We balance this pursuit of individual and state energy policy goals with the needs of PSE's other customers. We reaffirm the Commission's 1995 Policy Statement, Guiding

¹²⁰ RCW 19.29A.090.

¹²¹ Green Direct's first subscribers include commercial customers (REI, Starbucks, Target), local governments (Anacortes, Bellevue, King County, Mercer Island, and Snoqualmie) and local institutions (Western Washington University and Sound Transit). URL = <https://www.greentechmedia.com/articles/read/Washington-State-Spearheads-a-Novel-Clean-Energy-Solution-for-Starbucks-RE>.

Principles for an Evolving Electricity Industry.¹²² In particular, we stress that “[e]lectricity service should be available to customers at prices that are both reasonable and affordable,” and “[t]he long term integrity, safety, reliability, and quality of the bulk electric system and retail electricity service should not be jeopardized.” We are acutely concerned that large business access to wholesale markets, regardless of the rationale, should not result in unreasonable or unaffordable rates for remaining customers, especially those least able to pay, or threaten the integrity, safety, reliability, and quality of the electric system and retail electric service.

92 Microsoft’s suite of commitments in the Settlement addresses these concerns to a significant degree. Microsoft’s payment of the Transition Fee and agreement to continue or increase its contribution to conservation, energy efficiency, and low-income support funding reasonably protects remaining customers from the potentially adverse effect of by Microsoft’s change from a core to a non-core customer.

93 The nature of the customer and proposed service further assuage our concerns. Microsoft has the capability and size to assume the risks and benefits of direct access to the wholesale market without imperiling PSE’s electric system.¹²³ Microsoft also seeks to limit its direct access to its two core areas of operations – its Redmond campus and its cluster of offices in downtown Bellevue. Both are finite locations on the distribution system at which Microsoft can contract to take delivery of its purchased energy. Single point locations with large demands, such as those identified by Microsoft, are best suited for direct wholesale market access because they minimize the amount of affected transmission, distribution, and metering facilities, thereby reducing the network impacts and greatly facilitating the energy scheduling and financial settlement processes.

94 We find under the unique circumstances of this case that the retail wheeling arrangement in the Settlement is in the public interest. Our decision is a narrow one. We approve only the Settlement before us and express no opinion on the extent to which retail wheeling generally may be in the public interest or may be acceptable under different facts. Nor will we initiate such an inquiry at this time, although we reserve the right to do so in a future proceeding. The resources of the Commission and stakeholders at this time are

¹²² *In re Notice of Inquiry: Examining Regulation of Electric Utilities in the Face of Change in the Electric Industry*, Docket UE-940932, Policy Statement, Guiding Principles for Regulation in an Evolving Electricity Industry (Dec. 13, 1995).

¹²³ Plenefisch, Exh. IP-1T at 5:19 - 6:1.

better focused on the proceedings currently pending before the Commission, and before embarking on a broader exploration of the complex and divisive subject of retail wheeling, utilities and their large customers should evaluate voluntary renewable energy tariffs, like PSE's Green Direct Program, to determine if these programs can meet their collective goals.

95 We conclude in this case that the Settlement as a whole, and the retail wheeling arrangement it establishes in particular, are lawful, supported by an appropriate record, and consistent with the public interest in promoting carbon-free energy while protecting ratepayers and PSE's electric system.

FINDINGS OF FACT

- 96 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including investor-owned electric companies.
- 97 (2) PSE is a public service company regulated by the Commission, providing service as an electrical company and natural gas distribution company.
- 98 (3) On April 11, 2017, the parties submitted a full Settlement pursuant to WAC 480-07-730(1), including a Special Contract, establishing the rates, terms, and conditions of retail wheeling service PSE will provide to Microsoft. Those terms include, but are not limited to, Microsoft's agreement to pay a Transition Fee of \$23.685 million, enforceable commitments to renewable energy targets and purchases of carbon-free energy, and agreement to continue and make additional contributions to PSE's energy conservation and low-income assistance programs. The parties further agree that the Settlement does not address or resolve any issues relating to any obligation Microsoft may have to contribute to Colstrip remediation, decommissioning, or accelerated depreciation costs.
- 99 (4) The charges in the Special Contract recover all costs PSE incurs to provide the contract services during the contract term and contribute to PSE's fixed costs.
- 100 (5) \$23.685 million is a reasonable estimate of the difference between PSE's power supply revenues and expenses over the initial five years of the Special Contract term with and without Microsoft as a core customer.

- 101 (6) The Transition Fee includes Colstrip depreciation costs that PSE recovers in its current rates but does not recover any future Colstrip remediation, decommissioning, or accelerated depreciation costs.

CONCLUSIONS OF LAW

- 102 (1) The Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 103 (2) The Special Contract satisfies the requirements for such contracts in WAC 480-80-143. Specifically:
- (a) The contract complies with the statutory prohibitions on unreasonable preference or rate discrimination;
 - (b) PSE demonstrated that the contract charges recover all costs resulting from providing the service during its term and contribute to PSE's fixed costs;
 - (c) PSE summarized the basis of the contract charges and explained their derivation, including all cost computations; and
 - (d) A special contract is an appropriate means of establishing the rates, terms, and conditions of the retail wheeling service PSE will provide to Microsoft.
- 104 (3) Microsoft's agreement to pay a \$23.685 million Transition Fee is lawful, supported by an appropriate record, and consistent with the public interest in protecting PSE's remaining customers from financial harm following Microsoft's shift from a core to a non-core customer.
- 105 (4) Microsoft's renewable and carbon-free energy commitments in the Settlement and Special Contract are lawful, supported by an appropriate record, and consistent with the public interest in promoting the use of renewable and carbon-free energy.
- 106 (5) The provisions in the Settlement and Special Contract requiring Microsoft to continue its contributions to PSE's conservation and low-income assistance programs and to contribute additional funds for energy efficiency and access to renewable resources for low-income customers are lawful, supported by an appropriate record, and consistent with the public interest in protecting ratepayers from Microsoft's election to become a non-core customer and in promoting the

Commission's conservation, energy efficiency, and low-income assistance policies.

- 107 (6) The Commission has personal jurisdiction over Microsoft to enforce the provisions of this Order, including the Settlement and the Special Contract.
- 108 (7) In any proceeding to enforce Microsoft's renewable energy commitments, Microsoft will bear the burden to prove it complied with those requirements. In the absence of such compliance, Microsoft also must prove that it exercised reasonable care and prudence in obtaining eligible renewable resources or renewable energy credits and that any mitigating circumstances exist that should reduce the penalty the Commission assesses for violation of this order and the Special Contract.
- 109 (8) Microsoft's election to stop purchasing power from PSE's power supply network will not relieve Microsoft of any responsibility Microsoft otherwise has to contribute to Colstrip remediation, decommissioning, or accelerated depreciation costs as a historically core customer of PSE while PSE generated and supplied power from those facilities.
- 110 (9) Microsoft's payment of the Transition Fee does not relieve Microsoft of any responsibility Microsoft otherwise has to contribute to Colstrip remediation, decommissioning, or accelerated depreciation costs.
- 111 (10) The Settlement as a whole is lawful, supported by an appropriate record, and consistent with the public interest in protecting ratepayers from financial harm and promoting the state's and the Commission's energy policy goals.

ORDER

112 THE COMMISSION ORDERS:

- 113 (1) The Commission approves and adopts the Settlement Stipulation and Agreement between Puget Sound Energy, Commission Staff, the Public Counsel Unit of the Attorney General's Office, Microsoft Corporation, the Industrial Customers of Northwest Utilities, Walmart Stores, Inc. and Sam's West, The Kroger Company, The Energy Project, Northwest Energy Coalition, and the Northwest & Intermountain Power Producers Coalition, attached to this Order as Appendix A.

- 114 (2) The Commission delegates to the Secretary the authority to approve parties' submissions in compliance with this Order.
- 115 (3) The Commission retains jurisdiction to enforce this Order.

Dated at Olympia, Washington, and effective July 13, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner

Separate Statement of Commissioner Balasbas

- 116 I join today's Order Approving Settlement Agreement (order) and support the discussion and conclusions as the correct interpretation of the agreement's terms and special contract between PSE and Microsoft. I write separately to express my view that approval of the settlement agreement should also have been conditioned on Microsoft's acknowledgment of its responsibility for Colstrip decommissioning, remediation, or accelerated depreciation costs (Colstrip).
- 117 In the conclusions of law stated in paragraphs 109 and 110 of order, the Commission clearly articulates its view that Microsoft will owe its fair share of any Colstrip costs. I share that view, but believe the Commission should have taken the additional step of placing a condition on approval of the settlement agreement to unequivocally secure Microsoft's commitment to protect remaining ratepayers from its departure as a PSE core customer.

- 118 I commend the parties in this proceeding for bringing forward a settlement agreement supported by all involved. However, the settlement agreement left the question of Colstrip costs open to interpretation. The language in the settlement agreement and special contract allows Microsoft to argue it owes nothing when Colstrip is adjudicated in a future proceeding(s). That argument saddles remaining PSE ratepayers with Microsoft's share of Colstrip costs, which is not acceptable, not in the public interest and would not live up to Microsoft's stated commitment to hold remaining ratepayers harmless.
- 119 Microsoft's desire to leave as a core PSE customer is by choice. Its reasons for leaving are compelling, but neither urgent nor necessary. Indeed, Microsoft's departure as a core customer has profound impacts on PSE's remaining ratepayers. The settlement agreement does strive to mitigate some of these impacts. The payment of the \$23.685 million Transition Fee is intended to protect PSE ratepayers for the next five years. The settlement agreement also includes continued contributions by Microsoft to PSE's conservation and low-income billing assistance programs as well as additional funding for low-income energy efficiency and renewable energy technologies. I applaud Microsoft for making these commitments.
- 120 Microsoft should have also made a commitment to paying its fair share of any Colstrip costs in the settlement agreement rather than leave resolution of the issue to the Commission. The order resolves the Colstrip question and I reiterate the conclusion that Microsoft's departure as a PSE core customer will not relieve it of any responsibility to contribute to any Colstrip costs. Conditioning approval of the settlement agreement on the Colstrip issue would have further advanced Microsoft's commitment to PSE's remaining ratepayers.

Separate Statement of Chairman Danner and Commissioner Rendahl

- 121 In his separate statement, Commissioner Balasbas agrees with the discussion and conclusions in this Order, but on the issue of Colstrip decommissioning, remediation, and accelerated depreciation costs, states that the Commission should condition its approval of the Settlement on Microsoft making the commitment to remain responsible for its share of Colstrip costs.
- 122 The Commission generally includes conditions in its orders approving settlement agreements when the parties must make additional commitments to ensure that the

agreement is consistent with the public interest. In this case, however, such a condition is unnecessary. We determine as a matter of law that Microsoft is responsible for its share of Colstrip costs, regardless of whether we approve the Settlement or Microsoft becomes a non-core customer of PSE. While we may have preferred Microsoft to accept that responsibility as part of the Settlement, we believe that such acceptance is not a prerequisite to Microsoft's obligation, and conditioning our approval of the Settlement on that acceptance would needlessly suggest otherwise.

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.

Appendix A

(Settlement Stipulation and Agreement)