

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	DOCKET NO. UE-010525
)	
v.)	
)	SECOND SUPPLEMENTAL ORDER
PUGET SOUND ENERGY, INC.,)	APPROVING SPECIAL
)	CONTRACTS, SUBJECT TO
Respondent.)	CONDITIONS
.....)	

Synopsis: The Commission approves Special Contracts as transition tariffs for the three remaining customers who receive service under PSE’s Schedule 48. The Special Contracts will provide a bridge for these customers between the termination of Schedule 48 on October 31, 2001, and the completion of PSE’s general rate case that is to be filed by the end of 2001.

1 **PROCEEDINGS:** On April 16, 2001, Puget Sound Energy, Inc. (PSE), filed with the Commission certain tariff revisions in the form of a new Schedule 45 to provide what PSE contends is a new form of electric service to a class of large industrial customers. The Commission entered a Complaint and Order Suspending Tariff Revisions on June 27, 2001. The Commission convened a prehearing conference in Olympia, Washington, on September 7, 2001, before Administrative Law Judge Dennis J. Moss.

2 On September 17, 2001, PSE, AT&T Wireless (AT&T), WorldCom Inc. (WorldCom), and Qwest Corporation (Qwest) filed a Stipulation of Settlement. PSE also filed a Petition To Substitute Revised Schedule 45. On October 16, 2001, PSE filed an Amendment To Stipulation of Settlement. Among other things, the Amendment proposed to resolve this proceeding by the adoption of Special Contracts as a preferred alternative to Commission approval of Schedule 45. The Commission held hearings on October 17, 2001, to consider the proposed settlement, as amended.

3 **PARTIES:** Todd Glass, Heller, Ehrman, White & McAuliffe, LLP, Seattle, Washington represents PSE. Melinda Davison and Irion Sanger, Davison Van Cleve,

P.C., Portland, Oregon, represent the Industrial Customers of Northwest Utilities (ICNU). Lisa Anderl and Adam Sherr, attorneys, Qwest Corporation (Qwest), represent Qwest. Kirk Gibson and Melissa Robertson, Ater Wynne, LLP, Portland, Oregon, represent WorldCom, Inc. (Worldcom). John Cameron, Davis Wright Tremaine, LLP, Portland, Oregon, represents AT&T Wireless (AT&T). Robert Cromwell, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section, Office of Attorney General (Public Counsel). Sally Johnston and Donald Trotter, Senior Assistant Attorneys General, Olympia, Washington, represent the Commission's regulatory staff (Staff).

- 4 **COMMISSION:** The Commission approves, subject to conditions, three Special Contracts that were proposed as part of the settlement agreement. The Commission authorizes and requires PSE to withdraw Schedule 45.

MEMORANDUM

I. Background and Procedural History.

- 5 The genesis of this proceeding is found in the Commission's Eleventh Supplemental Order in *Air Liquide America Corporation, et al. v. Puget Sound Energy, Inc.*, Docket Nos. UE-001952 and UE-001959 (consolidated). The Eleventh Supplemental Order in that proceeding, entered on April 5, 2001, approved and adopted a settlement agreement to resolve disputes between PSE and many of its industrial customers who were then taking service under PSE's rate Schedule 48. The settlement agreement provided among other things that Schedule 48 would be terminated on October 31, 2001. The settlement agreement also provided alternative rate schedules for the Schedule 48 customers that were parties to the proceeding, identifying these customers as being in either the "Large Customer class" or "Small Customer class" as defined under the terms of the settlement agreement.

- 6 Four Schedule 48 customers, however, were not parties to the proceeding. One of these four, King County, entered into a Special Contract that the Commission approved on May 30, 2001.¹

¹ *In the Matter of the Application of PUGET SOUND ENERGY, INC., For Authority To Implement a Special Contract for Electric Service with King County, a Political Subdivision of the State of Washington. Order Approving Special Contract on Less Than Statutory Notice, Docket No. UE-010772 (May 30, 2001).*

7 We discussed in our Eleventh Supplemental Order the treatment that would be afforded the remaining three Schedule 48 customers—AT&T, WorldCom, and Qwest—as follows:

Three other Schedule 48 customers—AT&T, WorldCom, and Qwest—also fall outside the Large Customer or Small Customer classes. These customers are so-called Internet Data Center (IDC) customers. The IDC customers began taking service under Schedule 48 late in 2000, and have not made any transition payments under Schedule 48. The IDC customers also are neither Complainants nor Intervenors in Docket Nos. UE-001952 and UE-001959 (Consolidated) and are not parties to the settlement. PSE commits under the terms of the Stipulation of Settlement to file by April 16, 2001, a new tariff Schedule 45 that will provide proposed rates, terms, and conditions of service for these customers. The settlement Parties propose by their agreement that the IDC customers will continue to receive service under Schedule 48 pending final Commission action on the required Schedule 45 filing.

* * *

AT&T, WorldCom, and Qwest's rights are preserved under the settlement agreement. Under the terms of the settlement agreement, PSE is required to file a new tariff schedule (*i.e.*, Schedule 45) by April 16, 2001, to address the needs of these customers that the Stipulation of Settlement refers to as the Internet Data Center or IDC class. AT&T, WorldCom, and Qwest will have the opportunity to seek intervention and participation in whatever proceedings the Commission conducts in connection with PSE's filings. In the meantime, these customers remain on Schedule 48. Commission approval of the settlement agreement in no way compromises the rights of these parties to complain or otherwise seek relief in connection with any service they are entitled to receive from PSE under Schedule 48, or otherwise.

Air Liquide America Corporation, et al. v. Puget Sound Energy, Inc., Eleventh Supplemental Order, Docket Nos. UE-001952 and UE-001959 (consolidated), ¶¶29 and 39 (April 5, 2001).

8 Consistent with the requirements of the Eleventh Supplemental Order, PSE, on April 16, 2001, filed with the Commission certain tariff revisions to provide what PSE contends is a new form of electric service to a class of large industrial customers. The purported class of customers includes those customers having premises with a high-intensity load that requires improved infrastructure to reduce the possibility of power service interruption. Proposed Original Sheet No. 45 defines eligible customers as being those that meet the following criteria:

1. A Customer that has requested the installation of new dedicated transmission, distribution, or substation facilities; and
2. A Customer that has a Premises with: (i) one or more individually metered accounts with current or projected demand in the aggregate over 1 MW; (ii) a current or forecasted average monthly load factor for such Premises to be equal to or greater than 80%; and (iii) a high intensity load that requires improved infrastructure in order to reduce the possibility of power service interruption.

9 AT&T, WorldCom, and Qwest all meet these eligibility requirements with respect to the service they currently take from PSE under Schedule 48. PSE contends that no other existing customers (*e.g.*, those that take service under PSE's Schedules 31 and 49) meet these criteria, but new customers, including other potential IDC customers, might meet these eligibility requirements. *Exhibit No. 2 at 14; see, id. at 9-10.*

10 The Commission considered PSE's April 16, 2001, tariff filing (as amended to provide a stated effective date of June 28, 2001) and entered a Complaint and Order Suspending Tariff Revisions on June 27, 2001. In its Complaint and Order, the Commission found among other things that "PSE has not demonstrated that the proposed rates and charges in its tariff would result in rates that are fair, just, and reasonable, and would not be injurious to the public interest."

11 The Commission convened a prehearing conference in Olympia, Washington, on September 7, 2001, before Administrative Law Judge (ALJ) Dennis J. Moss. PSE, AT&T, WorldCom, and Qwest stated that they were continuing negotiations and were optimistic that a settlement could be achieved to address their interests. ICNU stated its opposition to proposed Schedule 45. Alternative procedural schedules were established—one to accommodate the possibility that a settlement agreement would

be filed, the other to provide for additional adjudicatory process if no settlement was achieved.

- 12 On September 17, 2001, PSE, AT&T, WorldCom, and Qwest filed a Stipulation of Settlement. PSE also filed a Petition To Substitute Revised Schedule 45. The parties requested as a primary alternative that the Commission approve the revised Schedule 45, but offered three Special Contracts as an alternative to meet the immediate needs of the three Schedule 48 customers if the Commission determined that the revised Schedule 45 should not be approved.
- 13 On October 16, 2001, PSE filed an Amendment To Stipulation of Settlement. The Amendment did not change the substance of proposed Schedule 45 or the Special Contracts, but proposed that the Commission first consider approving the three Special Contracts. The Amendment also proposed that if the Commission approved the Special Contracts, then PSE should be authorized to withdraw the Schedule 45 filing. Under both the original settlement agreement and the Amendment, the parties propose that whatever tariff (*i.e.*, Schedule 45 or Special Contracts²) is approved, it will be transitional in nature and will terminate at the conclusion of PSE's next general rate case, which PSE intends to file during November 2001.³ *TR. 74, 81-82, 96 (Secrist); See also TR. 41 (counsel for PSE)*. If the rate case is not concluded as anticipated, the transitional tariff nevertheless would be limited to a term of 24 months under the parties' proposal.
- 14 A hearing before Chairwoman Marilyn Showalter, Commissioner Richard Hempstad, Commissioner Patrick J. Oshie, and ALJ Moss was held on October 17, 2001, to develop a record concerning the proposed settlement, as amended. A witness panel responded to questions from counsel, and from the Bench. Various exhibits were received, including comments filed by PSE in support of the settlement agreement and a statement from ICNU opposing the approval and adoption of Schedule 45. Counsel were given the opportunity for argument.

² The "essential terms and conditions of [Special Contracts] are considered a part of a company's filed tariffs and are subject to enforcement, supervision, regulation, control, and public inspection as such." WAC 480-80-335.

³ Mr. Secrist testified that:

I can say on the record that Puget Sound Energy is filing a general rate case. We are moving as quickly as we can to complete that filing. We are targeting the 1st of November. I don't know if we will make the 1st of November, and that's what gives

II. Discussion and Decision.

A. Governing Statutes and Rules.

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The following statutory provisions and rules are most central to our discussion and decision:

RCW 80.01.040 General Powers and Duties of Commission.

The utilities and transportation commission shall:

* * *

(3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities; including, but not limited to, electrical companies

80.28.010 Duties as to rates, services, and facilities

(1) All charges made, demanded or received by any . . . electrical company . . . for . . . electricity . . . , or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient.

(2) Every . . . electrical company . . . shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.

(3) All rules and regulations issued by any . . . electrical company . . . affecting or pertaining to the sale or distribution of its product, shall be just and reasonable.

me concern about the conditioning upon the filing of November 15th. I think that if we said by the end of the year, that would be a safe outside harbor. TR. 96.

80.28.020 Commission to fix just, reasonable, and compensatory rates.

Whenever the commission shall find, after a hearing had upon its own motion, or upon complaint, that the rates or charges demanded, exacted, charged or collected by any . . . electrical company. . . for . . . electricity . . ., or in connection therewith, or that the rules, regulations, practices or contracts affecting such rates or charges are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order.

RCW 80.28.090 Unreasonable preference prohibited. No . . . electrical company . . . shall make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

RCW 80.28.100 Rate discrimination prohibited--Exception. No . . . electrical company . . . shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for . . . electricity . . ., or for any service rendered or to be rendered, or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like or contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

WAC 480-80-335 Special contracts for electric, water, and natural gas companies. (1) Contracts to be filed. Electric . . . companies

must file with the commission all contracts for the retail sale of regulated utility services to end-use customers that:

- (a) State charges or conditions that do not conform to any existing tariff; or
 - (b) Provide for utility services not specifically addressed in the company's existing tariffs.
- (2) Significant modification of a previously executed contract will be treated as a new contract for purposes of this section.
- (3) Essential terms and conditions of all contracts filed pursuant to this section are considered a part of the company's filed tariffs and are subject to enforcement, supervision, regulation, control, and public inspection as such. The provisions of this chapter will apply except for those provisions governing the filing, notice, and form of tariffs, including those stated in WAC 480-80-060 through 480-80-320.
- (4) Filing and effective dates. The contract will become effective on the effective date stated on the contract or thirty days after the filing date, whichever occurs later, unless suspended or rejected by the commission. The commission, for good cause shown, may approve an earlier effective date. In no event may a contract become effective on a date that precedes commission approval. The request for an earlier effective date must include a complete explanation of why an earlier effective date is appropriate.
- (5) Each application filed for commission approval of a contract must:
 - (a) Include a complete copy of the proposed contract;
 - (b) Show that the contract meets the requirements of RCW 80.28.090 (prohibiting unreasonable preference) and RCW 80.28.100 (prohibiting rate discrimination);
 - (c) Demonstrate, at a minimum, that the contract charges recover all costs resulting from providing the service during its term, and, in addition, provide a contribution to the company's fixed costs;
 - (d) Summarize the basis of the charge(s) proposed in the contract and explain the derivation of the proposed charge(s) including all cost computations involved; and
 - (e) Indicate the basis for using a contract rather than a filed tariff for the specific service involved. If the basis for using a

contract is the availability of an alternative service provider, identify that provider.

(6) All contracts must be for a stated time period. The commission may approve terms and conditions that prescribe the charge(s) to be applied during the time period, if such charge(s) are found to be appropriate. Unless otherwise provided by the commission, such approval will not be determinative with respect to the expenses and revenues of the company for subsequent ratemaking considerations.

(7) Filings under this section may be submitted with portions designated "confidential" pursuant to WAC 480-09-015. However, any filing that designates the essential terms and conditions of the contract as "confidential" shall be rejected by the commission as not in compliance with the public inspection requirement of RCW 80.28.050.

Essential terms and conditions are:

- (a) Identity of the customer;
- (b) Nature and characteristics of the service provided, including interruptible, firm, or peak delivery;
- (c) Duration of the contract, including any options to renew;
- (d) Charge(s) for service, including minimum charge provisions;
- (e) Geographic location where service will be provided; and
- (f) Additional obligations specified in the contract, if any.

16 We consider whether to approve the settlement agreement in the context of these statutes and rules. We may consider other statutes or rules on specific points as the need arises in our analysis.

B. Substantive and Policy Issues

17 The Commission has carefully reviewed the proposed settlement agreement in the context of the record in this proceeding, and has weighed the settlement agreement's provisions and effects against the statutory standards in Chapter 80 RCW and the requirements of WAC 480-80-335. We are persuaded, as discussed more fully below, that the result that best promotes the public interest is to approve the three Special Contracts, subject to certain conditions.

- 18 It is important that the three remaining Schedule 48 customers have certainty with respect to the rates, terms, and conditions under which they will take electric service from PSE after Schedule 48 is terminated on October 31, 2001. Mr. Cameron spoke emphatically to this point in his remarks on behalf of AT&T. *TR. 52-53, 136.* Mr. Gibson, for WorldCom, echoed Mr. Cameron on this point. *TR. 68, 135.* Mr. Sherr, for Qwest, also endorsed the special contract approach. *TR. 134-35.* All three of these customers participated in the negotiations that led to the settlement agreement and to its amendment shortly before the hearing. All three of these customers are signatories to both settlement documents. In short, the only customers immediately affected by our decision to approve the Special Contracts agree that those contracts establish rates, terms, and conditions of service that are satisfactory to them, at least as a transition tariff until the conclusion of PSE's upcoming general rate proceeding.
- 19 Similar certainty for these customers could be achieved, of course, by means of a tariff schedule of general applicability. Approving a schedule of general applicability, however, potentially has immediate consequences for other present and prospective PSE customers. ICNU argued persuasively in its written comments (*Exhibit No. 3*), and at hearing (*TR. 127-26, 130 (counsel for ICNU)*), that additional process would be required to develop an adequate record to support approval of such a tariff schedule. Staff agrees with ICNU's assessment on this point. *TR. 61, 132-33 (counsel for Staff).*
- 20 In approving the Special Contracts and rejecting Schedule 45, we are mindful of PSE's representation through its witness, Mr. Secrist, that PSE definitely will file a general rate case by the end of 2001. We regard PSE's general rate case to be a superior procedural alternative to conduct any additional process concerning the asserted need for a new tariff schedule of general applicability.
- 21 ICNU does not support approval of the Special Contracts. *TR. 60-61, 129 (counsel for ICNU).* ICNU argues that if the Commission approves them, it is important to be clear that any such approval should not be precedential in nature, nor even necessarily indicative of what rates, terms, and conditions of service might be found to apply if an existing customer (other than AT&T, WorldCom, or Qwest), or a new customer seeks service that meets the service eligibility criteria set forth in Schedule 45 and the Special Contracts. In approving these Special Contracts we are resolving the unique circumstances that confront the remaining Schedule 48 customers, and our approval is in the context of understanding that PSE will file in the near future a general rate

case. Although there may be similarly situated customers currently, or in the future, we emphasize that there are no other customers or potential customers identically situated. Those customers who may be similarly situated will have the opportunity to intervene in the general rate case proceeding. In that proceeding we will be able to consider the broader issues that relate to PSE's tariff schedules for all customers. Our approval of the Special Contracts here establishes neither precedent, nor principles, for purposes of the general rate case, for our consideration of any other special contracts or other tariffs that may be filed in the future, or in the context of a complaint proceeding. ICNU's interests thus are protected.

22 We turn our discussion next to the question whether the Special Contracts meet the requirements set forth in WAC 480-80-335. We have discussed above that PSE intends to file a general rate case by the end of this year. The Special Contracts represent a transition mechanism to provide certainty to the remaining Schedule 48 customers between the time Schedule 48 expires on October 31, 2001, and the conclusion of the rate case. In that sense, and during that period, the Special Contracts state charges or conditions that do not conform to any existing tariff, thus meeting the requirements under WAC 480-80-335 (1)(a). We express no opinion whether the Special Contracts provide for utility services not specifically addressed in PSE's existing tariffs. *See WAC 480-80-335(1)(b)*. That is a matter we can consider in the context of PSE's general rate case.⁴

23 Although we condition approval of the Special Contracts by requiring that they be refiled with certain changes to conform them to the understandings reached during the settlement hearing, we have before us essentially complete copies of the proposed contracts. *WAC 480-80-335(5)(a)*. In light of the imminent termination of Schedule 48, there is good cause for the Commission to approve an effective date that conforms to the requirements of this Order. *WAC 480-80-335(4)*. PSE is required to file conformed contracts that meet the requirements of this Order no later than October 31, 2001; the conformed Special Contracts must state an effective date that is no

⁴ We recognize that an application for service by a new or existing customer that has service requirements similar to, or identical to, the service provided under the Special Contracts may be presented to PSE before the conclusion of the general rate case. PSE states it would offer such service according to certain "principles." *Exhibit No. 2 at 5*. The potential customer may take a different view of PSE's service obligation from what is suggested by these principles. We will consider any such matters through appropriate process if, and when, they are presented to the Commission.

earlier than the date they are filed, and no later than November 1, 2001, with the effective date reflecting agreement between PSE and the respective customers.⁵

24 We are satisfied that the Special Contracts meet the requirements of RCW 80.28.090 (prohibiting unreasonable preference) and RCW 80.28.100 (prohibiting rate discrimination). *WAC 480-80-335(5)(b)*. The so-called Tier I rates that apply to the first 5 MW of service are the same rates as those provided under PSE Schedules 31 and 49. Our record shows that none of the Special Contract customers' loads, existing or planned during the transitional period, is expected to exceed this level. *TR. 55 (counsel for AT&T); Exhibit No. 2 at 4, 15*. The power cost component of Tier II rates under the Special Contracts would be determined on the same basis as we approved for Schedule 448, one of the tariff alternatives established by our Eleventh Supplemental Order in the *Air Liquide* proceeding. The Tier III rates, which apply only to unplanned monthly demand exceeding 3,650,000 kWh (5,000 kW*730 hours/month), are tied to PSE's generation costs; such rates do not appear under the circumstances of this proceeding to prejudice other customers and are acceptable on a transitional basis pending the completion of PSE's general rate case that is to be filed by the end of this year.

25 These contract rates are designed, in part, to ensure that the charges recover the costs PSE incurs in providing service to these customers during the limited term of the Special Contracts, and to contribute to PSE's fixed costs. Again, the Tier I rates are based on existing rates under Schedule 31 and 49, rates that remain effective as fair, just, reasonable, and sufficient as required under our governing statutes. The Tier II and Tier III rates are designed to recover PSE's incremental power costs. While we express no opinion here whether incremental power costs are an appropriate basis to establish permanent rates, such rates do demonstrate, at a minimum, that PSE will recover its costs during the transition period. *WAC 480-80-335(5)(c)*.

26 Sections 4 and 5 of the Special Contracts adequately summarize the basis of the charges proposed and the derivation of the proposed charges. *WAC 480-80-335(5)(d)*. Our record provides additional explanation of these aspects of the Special Contracts. Similarly, our record demonstrates the basis for using a contract rather than a filed tariff of general applicability to provide rates, terms, and conditions of

⁵ WAC 480-80-335(4) provides in relevant part that "[i]n no event may a contract become effective on a date that precedes Commission approval."

service for these customers during the transition period between October 31, 2001 and the conclusion of PSE's next general rate case. *WAC 480-80-335(5)(e)*.

27 The Special Contracts are to be effective for a stated time period, as previously described. Our approval is not determinative with respect to the expenses and revenues of the company for subsequent ratemaking considerations. Thus, the requirements of WAC480-80-335(6) are met.

28 Although the Special Contracts were filed with certain portions designated "confidential," arguably in violation of WAC 480-80-335(7), the parties waived any assertions of confidentiality at hearing. No portion of the conformed Special Contracts that we require PSE to file should be designated confidential, or the filing may be rejected.

C. Conditions

29 We condition our approval of the Special Contracts in light of the record developed during the settlement hearing on October 17, 2001. Our record shows that the principal motivation behind the parties settlement agreement was the customers' need for certainty with respect to the rates, terms, and conditions under which they would take service from PSE after the termination of Schedule 48. We approve the Special Contracts as an appropriate transition mechanism to bridge the gap between the expiration of Schedule 48 on October 31, 2001, and the completion of PSE's next general rate case. We do not find on the basis of our current record that these customers constitute a new class on the basis of their load or reliability requirements. It is inappropriate and unnecessary for the Special Contracts to include language that even arguably suggests that they are such a new class. Accordingly, we require that PSE refile the Special Contracts with the following sentence deleted from the "**Service**" provision: "Company has reasonably determined that Customer meets the criteria for High Intensity Load Electric Service as set forth in this Special Contract."

30 Paragraph 3, "**Term**" in the Special Contracts, of course, should be modified to reflect the appropriate effective date consistent with the requirements of this Order and WAC 480-80-335(4). In addition, we require that this paragraph be clarified by adding the words "of a longer extension" after the words "absent Commission approval."

31 During our settlement hearing PSE agreed and the customers did not disagree that an additional term is required to be included in paragraph 5 of the Special Contracts (Pricing Process and Designation of Load). We condition our approval of the Special Contracts on a refiling that redesignates the existing paragraph 5 as part “A” of that paragraph, and adds a new part “B” to paragraph 5 as follows:

B. Significant Load Reduction: To the extent Customer does not consume its Planned Incremental Load take-or-pay energy in a given month, the Company shall remarket such energy and provide a credit equal to such energy at a price of 90% of the weighted average Mid-Columbia Firm Index price for the applicable month, up to but not exceeding Customer’s total take-or-pay obligation (the Planned Incremental Load times the price set forth in Paragraph 5.A. herein).

32 As previously discussed, PSE is required to conform the Special Contracts to the conditions imposed by this Order and to file the conformed copies with the Commission.

33 Finally, consistent with the terms of the parties’ settlement agreement and our decision to approve the Special Contracts, PSE is authorized and required to withdraw proposed Schedule 45. Our approval of the Special Contracts is conditioned on that withdrawal.

FINDINGS OF FACT

34 Having discussed above all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the ultimate decisions of the Commission are incorporated by this reference.

35 (1) The Washington Utilities and Transportation 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 electric companies.

- 36 (2) The Special Contracts, as described and discussed in the body of this Order, meet the requirements set forth in WAC 480-80-335.

CONCLUSIONS OF LAW

- 37 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.
- 38 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and all parties to, these proceedings. *Title 80 RCW.*
- 39 (2) PSE is a “public service company” and an “electrical company” as those terms are defined in RCW 80.04.010, and as those terms otherwise may be used in Title 80 RCW. PSE is engaged in Washington State in the business of supplying utility services and commodities to the public for compensation.
- 40 (3) The Special Contracts for electric service with AT&T, WorldCom, and Qwest filed by Puget Sound Energy, Inc. comply with the requirements of WAC 480-80-335.
- 41 (4) There is good cause shown to approve an effective date for the Special Contracts that coincides with the date of the filing required under the terms of this Order pursuant to an agreed effective date that is no earlier than the date of this Order and no later than November 1, 2001. *WAC 480-80-335(4).*
- 42 (5) The rates, terms, and conditions of service established by the Special Contracts are fair, just, reasonable, and sufficient. *RCW 80.28.010 and 80.28.020.*
- 43 (6) The Special Contracts are neither unreasonably preferential nor unduly discriminatory. *RCW 80.28.090 and 80.28.100.*

- 44 (7) Commission approval of the Special Contracts under the circumstances of this proceeding and on the conditions set forth in this Order is consistent with the public interest. *RCW 80.01.040.*

ORDER

45 THE COMMISSION ORDERS That Special Contracts between PSE and three customers—AT&T, WorldCom, and Qwest—tendered as part of a settlement agreement in this proceeding are approved, subject to the conditions stated in the body of this Order and subject to refile. PSE is authorized and required to refile conformed contracts to effectuate the terms of this Order.

46 THE COMMISSION ORDERS FURTHER That PSE is authorized and required to withdraw proposed Schedule 45 as a condition of the Commission's approval of the Special Contracts between PSE and AT&T, PSE and WorldCom, and PSE and Qwest. In view of PSE's withdrawal, proceedings concerning Schedule 45 are terminated on the effective date of this Order.

DATED at Olympia, Washington, and effective this ___ day of October, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

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 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).