

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

BELLINGHAM COLD STORAGE
COMPANY and GEORGIA-PACIFIC WEST,
INC.,

Complainants,

v.

PUGET SOUND ENERGY, INC.,
Respondent.

DOCKET NO. UE-001014

PUGET SOUND ENERGY, INC.'S ANSWER
TO FORMAL COMPLAINT

STIPULATED FACTS

1. Puget Sound Energy, Inc. ("PSE") answers the Formal Complaint ("Complaint") of Bellingham Cold Storage Company ("BCS") and Georgia-Pacific West, Inc. ("GP"), dated June 29, 2000. BCS and GP are sometimes collectively referred to herein as the Complainants.

JURISDICTION

2. The Commission has jurisdiction over special contracts filed and approved by the Commission in accordance with WAC 480-80-335. The Commission is authorized to hear complaints arising under the purview of RCW 80.04.110.

II. BACKGROUND

3. PSE entered into special contracts with GP and BCS in May of 1996. As

amended, these contracts are hereinafter referred to as the "Special Contracts." The special contracts were entered into pursuant to WAC 480-40-335 and were approved by Commission Order, Docket UE-960612, June 7, 1996. The Special Contracts embody a twenty-year commitment to provide service to GP and BCS. The terms and conditions of the Special Contracts are comprised of a five-year "Power Sales Agreement" and "Schedule RTP."

4. The Special Contracts were entered into by GP and BCS in lieu of a bypass alternative offered by Public Utility District No. 1 of Whatcom County ("PUD"). As an alternative to the PUD's bypass, a fundamental promise underlying the Special Contracts was that GP and BCS would adhere to their twenty-year commitment to PSE.

5. In return for this commitment, the Special Contracts confer the right to GP and BCS to purchase power from PSE at market prices. The Complainants sought such contracts, as they believed that buying power at market would cost less than buying power at PSE's embedded cost rate.

6. The twenty-year Special Contracts absolutely commit GP and BCS to secure transportation from PSE, regardless of who supplies power. As to the supply of power, the Power Sales Agreement states that, at the end of its five-year term:

[I]f and to the extent that retail wheeling is generally made available by the Company to retail customers in the State of Washington, the Company will offer wheeling for retail power supply to the customer at applicable rates under authorized tariffs or contracts.

See, Power Sales Agreement, ? 3.3. To date, retail wheeling has not been made "generally available" in the State of Washington. Any decision to make retail wheeling "generally

available" is a legislative decision, which carries broad policy implications. Thus, in no way do the Special Contracts commit PSE to provide unbundled transmission service. PSE cannot provide such service until the Washington Legislature authorizes retail wheeling as part of electric industry deregulation.

7. Further, the Complainants' desire for unbundled transportation service cannot be addressed in isolation. Provision of such service to these customers only would appear unduly discriminatory in violation of state law. Customers taking service under Schedule 48, a tariff patterned closely after the Complainants' Special Contracts, would surely argue for non-discriminatory treatment, and other customers may seek open access as well. However, movement to open access through this proceeding would lack necessary legislative guidance or the orderly process that will be required to address industry restructuring, and that the Commission has advocated in its policy statements.

8. Over the last ten to twelve months, GP and BCS have refused terms proposed by PSE for the "transportation contract" that the Complainants are "required to sign" by Schedule RTP. Instead, they demand that PSE provide unbundled transmission service. PSE has consistently declined this "offer," because no such commitment is required or contemplated by the Special Contracts until retail wheeling becomes generally available in the State of Washington. PSE cannot provide retail wheeling to these two customers without making retail wheeling available to other customers, which amounts to electric deregulation and raises a host of important policy issues not yet addressed by the Washington Legislature.

9. During the term of the Special Contract, the Complainants have reaped substantial

benefits of the deal they struck with PSE. As of May 2000, PSE estimates that the Special Contracts have resulted in a savings in power costs for the Complainants of approximately \$8 million.

10. More recently, the market price for power has risen. GP and BCS have had the opportunity to hedge against the "devastating problems" they now face. However, the Complainants elected not to hedge against rising market prices, and declined PSE's offers to assist them in this regard. GP has also stated that it is GP's corporate policy not to hedge against increasing power costs, choosing instead to self-insure against this risk. In other words, GP chose to save the premium of an insurance policy that could have protected it against increases in market prices. Had the Complainants hedged when PSE offered to assist in this regard, their power costs would currently be substantially below the current market price.

11. This case involves more than an effort on the Complainants' part to break their contract. These Special Contracts were approved within a regulatory context that protects the public interest. In this regard:

? The risk of volatility in market prices was a risk absolutely and completely borne by the Complainants, not PSE's core customers or its stockholders.

? The Special Contracts are compensatory, with provisions that pass through the variable cost of providing this service, as well as some contributions to fixed cost. They explicitly provide that "[t]he customer bears all the risk for price movements in the market price" Special Contract at 5 (definition of "Non-Firm Energy").

? In approving the Special Contracts, the Commission affirmed that the

Complainants became non-core customers through the Special Contracts. GP and BCS receive no right to PSE's existing resource base. The Complainants' resources were to be those available on the market, at market prices. The Order allowing the Special Contracts to go into effect clearly states: "After the expiration of the five year power sales agreement, the customer shall have no expectation of access to power resources that it otherwise may be entitled to under RCW 80.28.110."

12. The legal and regulatory principles embodied in these requirements are fatal to the Complainants' desire to rewrite their contract to suit their individual needs. To be clear:

PSE's core customers do not subsidize the Complainants.

PSE's shareholders do not subsidize the Complainants' shareholders.

? The needs of PSE's core customers are the touchstone of resource planning, as reflected in the merger order, and more recently in PSE's 2000-2001 Gas and Electric Least Cost Plan ("LCP").

13. GP and BCS elected to opt out of the protections afforded core customers, preferring the market. The fact that the market is no longer desirable to them does not justify a unilateral decision allowing them to opt back into these protections, particularly when to do so would be prejudicial to other customers, and would effect discrimination among customers similarly situated.

14. The Complaint alleges that a substantial number of jobs will be lost if the Commission does not grant the relief requested. PSE sincerely regrets any loss of jobs that may result from the decisions made by GP and BCS. Had the Complainants truly been concerned

with the welfare of their employees, they would have hedged against increased power costs. Instead, they chose to gamble with these jobs and are now trying to blame PSE for the consequences of their own poor judgment. Moreover, it is not at all clear that the allegations of job loss in the Complaint are true. On information and belief, GP has obtained a hedge to cover its risk of market price increases over the next 30 days and is currently operating its plant at normal capacity. See Exhibit C.

15. The Complainants assert a desire for a "pricing methodology" that will "price contract energy as it is priced in competitive markets." Ironically, what the Complainants seek in their request for relief is not a market price, but a price based upon an estimate of the cost of operating the Whitehorn combustion turbine. Having secured an \$8 million benefit when the market was favorable to their interest, the Complainants now want the best of both worlds: the lower of market or PSE's incremental cost. The Complainants' actions are inconsistent with their words:

? The Complainants are still actively supporting a bypass and/or retail wheeling through Whatcom PUD, so they can purchase below-market federal power from BPA, instead of buying power in "competitive markets."

? In so doing, the Complainants seek an inequitable allocation of regional resources, randomly creating a false economy of "haves" and "have nots."

16. PSE has complied with its obligations under the Special Contracts. Retail wheeling is not an option available to the Complainants under the Special Contracts and Washington law. Their recourse is to the Washington State Legislature, which can enact retail

wheeling while addressing the many difficult policy issues raised by electric industry restructuring. The Complaint is without merit and should be dismissed with prejudice.

III.ANSWER

[I. INTRODUCTION]

17. Answering ? 1 of the Complaint, the Special Contracts speak for themselves. The paragraph states legal assertions and conclusions for which an answer is inappropriate and is therefore denied. To the extent this paragraph contains additional factual allegations, PSE is without information sufficient to form a belief as to the truth or accuracy thereof, and therefore denies the same. As set forth in paragraph 14 of this Answer, supra, an industry news article indicates that the allegations regarding plant shutdown by GP are not true.

18. Answering ? 2 of the Complaint, PSE denies the same. The paragraph states legal assertions and conclusions for which an answer is inappropriate and is therefore denied. As noted above, PSE's proposed terms for a twenty-year "transmission contract" that are consistent with Schedule RTP and the Power Sales Agreement have been rejected. The five-year window for pursuing these discussions does not end until May 31, 2001. In all other respects, PSE denies the allegations set forth in this paragraph.

19. Answering ? 3 of the Complaint, the paragraph states legal assertions and conclusions for which an answer is inappropriate and is therefore denied. As they relate to PSE, PSE denies the factual allegations contained therein. As they relate to the Complainants and other matters, PSE is without information sufficient to form a belief as to the truth or accuracy

thereof, and therefore denies the same. As to alleged plant shutdown, PSE repeats the statements made in paragraphs 14 and 17, supra.

20. Answering ? 4 of the Complaint, the Special Contracts speak for themselves. The parties' understanding as to the referenced index has been reduced to writing in an "Amendment to Power Sales Agreement" and an "Accord and Satisfaction" filed with the Commission on June 28, 2000. Such documents are attached at Exhibit A. As to all other factual allegations set forth in this paragraph, PSE denies the same.

21. Answering ? 5 of the Complaint, PSE denies the same as they relate to PSE. On information and belief, the Index set forth in the Special Contracts accurately characterizes the parties' understanding with respect to the subject matter thereof. To the extent this paragraph contains factual allegations concerning other matters or "players in West Coast markets," PSE is without information sufficient to form a belief as to the truth or accuracy thereof, and therefore denies the same.

22. Answering ? 6 of the Complaint, the paragraph states legal assertions and conclusions for which an answer is inappropriate and is therefore denied. To the extent this paragraph contains factual allegations, PSE denies the same as they relate to PSE, and PSE is without information sufficient to form a belief as to the truth or accuracy thereof, and therefore denies the same as they relate to the Complainants.

[II. IDENTITY OF PARTIES BRINGING THIS COMPLAINT]

23. Answering ? 7 of the Complaint, PSE admits the allegations contained in the first

two sentences thereof. The Special Contracts speak for themselves. As to the remaining factual allegations, PSE is without information sufficient to form a belief as to the truth or accuracy thereof, and therefore denies the same.

[III. JURISDICTION]

24. Answering ? 8 of the Complaint, the paragraph states legal assertions and conclusions for which an answer is inappropriate and is therefore denied.

25. Answering ? 9 of the Complaint, the paragraph states legal assertions and conclusions for which an answer is inappropriate and is therefore denied. As to any factual allegations set forth therein, PSE denies the same.

26. Answering ? 10 of the Complaint, PSE admits that Exhibit C to the Complaint contains a letter signed by the Honorable Mark Asmundson, Mayor of the City of Bellingham. The paragraph states legal assertions and conclusions for which an answer is inappropriate and is therefore denied. As to factual allegations set forth in this paragraph (including, but not limited to, Exhibit C), PSE admits that it has not offered the Complainants unbundled transmission services and denies that it has any obligation or ability to do so.

[IV. REQUEST FOR EXPEDITED CONSIDERATION]

27. Answering ? 11 of the Complaint, the Complaint was served on PSE on June 30, 2000. PSE's attorneys were notified of the Complainants' intent to file a complaint on the afternoon of Wednesday, June 28, 2000. The Complainants cite no legal authority in support of their request for expedited action, including waiver of regular notice requirements. On

information and belief, PSE states that GP has hedged to cover its risk of market price increases over the next 30 days, and is operating its plant. See Answer paragraph 14, supra. The paragraph states legal assertions and conclusions for which an answer is inappropriate and is therefore denied. As to the other factual allegations set forth therein, PSE is without information sufficient to form a belief as to the truth or accuracy thereof, and therefore denies the same.

[V. CONTRACTUAL BACKGROUND]

28. Answering ? 12 of the Complaint, the Special Contracts speak for themselves. As noted above, the parties agreed to an Index, with the risk of market volatility borne by the Complainants. As to the other factual allegations set forth therein, PSE denies the same as they relate to PSE, and, as to other matters, is without information sufficient to form a belief as to the truth or accuracy thereof, and therefore denies the same.

[A. Transmission Services]

29. Answering ? 13 of the Complaint, PSE denies that it is obligated to provide unbundled transmission service. The Special Contracts do obligate the Complainants to take transmission service from PSE for twenty years, regardless of who is supplying power. The Special Contracts speak for themselves.

30. Answering ? 14 of the Complaint, PSE denies that the Special Contracts provide express contractual rights to unbundled transmission service. Rather, the Special Contracts provide that, at the end of the first five years, "if and to the extent that retail wheeling is generally made available by the Company to retail customers in the State of Washington, the Company will

offer wheeling for retail power supply to the customer at applicable rates under authorized tariffs or contracts." Special Contracts, ? 3.3, page 2. Nor is it the case that "non-firm energy" has not been made available for purposes of ? 1.0 of the Special Contracts. As to any and all other allegations set forth in this paragraph, PSE denies the same.

31. Answering ? 15 of the Complaint, PSE has fully performed its obligations under the Special Contracts. PSE admits that it has not offered the Complainants unbundled transmission service, nor is PSE required or able to do so until the Washington Legislature enacts electric industry restructuring legislation providing for retail wheeling. As to any and all other allegations set forth in this paragraph, PSE denies the same.

32. Answering ? 16 of the Complaint, the Special Contracts eliminated any need or justification for construction of a bypass by the PUD. The Complainants are bound to the terms and conditions of the Special Contracts, and their twenty-year commitment to PSE thereunder. PSE is informed and believes that the Complainants have entered into contracts with the PUD, are pursuing actions inconsistent with their obligations arising under the Special Contracts, and are committing to the construction of unnecessary and duplicative electrical facilities. PSE opposes such actions because they are inconsistent with the Special Contracts and carry substantial public and environmental costs. In all other respects, PSE denies the factual allegations set forth in this paragraph.

[B. Energy Pricing]

33. Answering ? 17 of the Complaint, the Special Contracts speak for themselves. In

all other respects, PSE denies the factual allegations set forth in this paragraph.

34. Answering ? 18 of the Complaint, for purposes relevant to this proceeding, the allegations set forth in this paragraph have been addressed by the "Amendment to Power Sales Agreement" and an "Accord and Satisfaction" filed with the Commission on June 28, 2000, which documents are attached at Exhibit A. In all other respects, PSE denies the factual allegations set forth in this paragraph.

35. Answering ? 19 of the Complaint, PSE denies the same.

36. Answering ? 20 of the Complaint, the Special Contracts entitle the Complainants to service at the rate specified in Schedule RTP. PSE has no unbundled transmission service commitment, and PSE is not "indifferent" as to this matter. In all other respects, PSE denies the factual allegations set forth in this paragraph.

37. Answering ? 21 of the Complaint, PSE denies the same.

[C. Exit Fees and Allegations Regarding Cost Shifts]

38. Answering ? 22 of the Complaint, PSE denies that the relief sought by the Complainants does not pose adverse consequences to PSE's other customers. PSE admits that Schedule RTP includes a PURPA Charge. In all other respects, PSE denies the allegations set forth in this paragraph.

39. In answering ? 23 of the Complaint, the Order speaks for itself. This paragraph states legal assertions and conclusions for which an answer is inappropriate and is therefore denied. PSE believes that the relief sought by the Complainants will subject other PSE

customers to adverse consequences.

PSE denies that the Complainants are entitled to any relief.

IV.AFFIRMATIVE DEFENSES

40. The Complaint fails to state a claim upon which relief can be granted.

41. PSE's acts and/or practices have fully complied with the Special Contracts and the Commission's Order approving the same. Any Order granting the relief requested would be contrary to the Special Contracts filed and approved by the Commission and unlawful, and would not be just, reasonable or proper.

42. This complaint proceeding is not the proper proceeding for examination or resolution of issues related to retail wheeling. The Complaint seeks an order requiring PSE to provide unbundled retail transmission service. The "relief" the Complainants seek requires action by the Washington State Legislature, which has not yet resolved the many difficult policy issues essential to successful electric industry deregulation.

43. The Complaint seeks to force PSE to provide services beyond those provided for in the Special Contract and without compensation, in violation of applicable statutes and regulations.

44. Any order requiring PSE to provide services without compensation would violate the Takings Clause of the Fifth Amendment to the United States Constitution and Article I, Section 16 of the Washington Constitution, and this Commission is without authority to order any such Taking.

45. The Complainants' claims as to the Index are barred by the doctrines of waiver

and equitable estoppel.

COUNTERCLAIMS

46. Paragraphs 3 through 15 are incorporated herein by this reference.

47. The Complainants have refused terms proposed by PSE for a twenty-year transportation contract affording the Complainants the continuation of service under Schedule RTP.

48. In so doing, the Complainants are frustrating PSE's ability to perform its obligation to offer such a contract on or before May 31, 2001, and have committed anticipatory breach of their obligations under the Special Contracts.

49. Special Contracts have "the same effect as filed tariffs and are subject to enforcement, supervision, regulation, and control as such." WAC 480-80-335(3).

50. The Special Contracts require the Complainants to sign a transportation contract providing service in a form and of a nature that is subject to the Commission's jurisdiction (i.e., bundled service).

51. In order to implement the Special Contracts, so that service can be continued thereunder without material modification or change, Schedule RTP should be extended through 2016. To this end, an addendum to Schedule RTP is attached hereto as Exhibit D.

52. PSE respectfully requests an order allowing such revised Schedule RTP to go into effect as of May 31, 2001, through May 31, 2016, with the further provision that, during such term, if and to the extent that retail wheeling is generally made available by PSE to retail customers in the State of Washington, PSE will offer wheeling for retail power supply to the

Complainants at applicable rates under authorized tariffs or contracts.

53. Attached as Exhibit E are copies of "Support Agreements" entered into by the Complainants. Among other things, the Support Agreements obligate the Complainants to support the "adoption and retention . . . of the Schedule RTP."

54. The Support Agreement, along with the implied covenants of good faith and fair dealing, compel the Complainants to sign a twenty-year transportation contract implementing Schedule RTP, which prices transportation as a component of bundled service until such time as the Legislature provides for retail wheeling.

55. The Complainants' actions constitute a breach of the Special Contracts, and PSE is thereby entitled to appropriate relief

VI. PRAYER FOR RELIEF

WHEREFORE, PSE prays for the following relief:

That the Complaint be dismissed, with prejudice.

B. That the Commission enter an order confirming that the terms and conditions of the "transportation contract" are as set forth in the revised Schedule RTP, attached hereto as Exhibit D.

C. That the Complainants be required to sign a transportation contract, confirming their twenty-year commitment to service in accordance with Schedule RTP.

D. That the Complainants be restrained from taking further action in contravention of the Special Contracts, including, but not limited to, such actions as may be calculated to frustrate PSE's performance of its obligations thereunder.

E. For such other relief as the Commission deems just and appropriate.

DATED: July ____, 2000.

PERKINS COIE LLP

By

Markham A. Quehrn

Kirstin S. Dodge

Attorneys for Puget Sound Energy, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by mailing with postage prepaid to:

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Dated at _____, Washington, this _____ day of _____, 2000.

Pam Iverson