

## APPENDIX 3

Detailed explanation of the status of each violation alleged in the Complaint

## Detailed Description of the Current Status of Violations Alleged in the Complaint

- 1 The Complaint states three causes of action,<sup>1</sup> and alleges 209 gas safety rules violations.<sup>2</sup> Complaint Attachment 1 states the specific facts supporting each violation. The Complaint notes that many of the violations are continuing violations. Continuing violations increase substantially the number of violations, substantially beyond 209.<sup>3</sup>
- 2 As we explain below, based on the discovery that has taken place to date, Staff is prepared to prove 156 of the 209 violations identified in the Complaint (before consideration of continuing violations): 72 Cause of Action 1 violations and 82 Cause of Action 2 violations. The main reason for the reduction in violations from 209 to 156 relates to Cause of Action 3, which alleges 43 violations whereby PSE had not maintained certain gas safety records. During the course of this proceeding, PSE was able to locate almost all of these records.
- 3 Of the 156 violations, 152 involve falsification of records, which are intentional violations. Moreover, 84 of the 156 violations are continuing violations, so the maximum penalty permitted by law remains very substantial.

### 1. Cause of Action 1

- 4 Cause of Action 1 alleges that PSE failed to comply with its gas safety standards manual by failing to have a different person do a phantom leak follow-up evaluation, or failed to meet the 30 day deadline for that evaluation, or both. 84 violations are alleged.<sup>4</sup> The factual basis for each of these violations is provided in "Incident 1" through "Incident 84," which are detailed in Attachment 1 to the Complaint.
- 5 Included in the allegations is that Pilchuck knew that the same person did follow-up leak evaluation, contrary to PSE's manual.<sup>5</sup> We call these "Cause of Action 1 violations" in this Report.
- 6 PSE admits the conduct underlying 65 of the 84 alleged Cause of Action 1 violations.<sup>6</sup> However, PSE raises a statute of limitations defense regarding Cause of Action 1.<sup>7</sup> If this defense applies, it would bar a Commission penalty for all but four of the Incidents 1-84,

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<sup>1</sup> Complaint at 4-5, Part V, ¶¶ 20-29.

<sup>2</sup> Complaint at 5, ¶ 31.

<sup>3</sup> Complaint at 5-6, ¶ 31.

<sup>4</sup> Complaint at 4, ¶¶ 20-22.

<sup>5</sup> *E.g.*, Complaint Attachment 1 at 1, ¶ 2, second sentence.

<sup>6</sup> See PSE's response to Staff's Informal Information Request 1 (August 10, 2007). 64 of these 65 "admitted" Incidents involve falsification of records, *i.e.*, either the follow-up inspector's name was falsified (Incidents 1, 7, 9-11, 13-14, 18-30, 32-54, 56-60, 62, 64-70, 72, 74, and 76-79) or the follow-up inspection date was falsified (Incidents 55 and 83). The remaining one of these 65 Incidents involved a violation of the "different person" requirement, but the same person accurately filled in her name on the follow-up leak work order, so falsification is not involved (Incident 82).

<sup>7</sup> PSE Answer, ¶ 37.

namely, Incidents 9, 49, 58, and 82.<sup>8</sup> Staff will address this defense if this matter goes to hearing.

7 For six of the remaining 19 Cause of Action 1 violations (84 violations – 65 admitted conduct = 19 remaining violations), PSE stated that it had insufficient information to admit or deny the facts alleged.<sup>9</sup> However, Staff will rely on the evidence it has obtained through depositions to prove these violations.

8 For one of the remaining 19 Cause of Action 1 violations, PSE answered that while the same person did in fact perform the follow-up inspection, she did not “ascertain a leak.”<sup>10</sup> However, Staff will prove that this does not affect the application of the “different person” requirement, and this is a Cause of Action 1 violation.

9 For the last 12 of the remaining 19 violations, PSE answered that the “different person” requirement did not apply, either because the Incident did not involve a phantom leak, but rather newly replaced equipment, or because the item involved an actual leak.<sup>11</sup> Staff confirmed PSE’s claims, and therefore Staff now agrees that the “different person” requirement did not apply in these 12 Incidents.<sup>12</sup>

10 In sum, Staff is prepared to prove 72 of the 84 Cause of Action 1 violations.<sup>13</sup> All but two of these violations are intentional violations, involving falsification of records.<sup>14</sup>

## 2. Cause of Action 2 violations

11 Cause of Action 2 is based on PSE’s failure to maintain accurate leak evaluation records. 82 violations are alleged.<sup>15</sup> These are continuing violations<sup>16</sup> because a violation occurs each day PSE continues to maintain an inaccurate record. The factual basis for each of these violations is contained in Incident 1 through Incident 80 and Incident 83 and Incident 84, which are detailed in Attachment 1 to the Complaint.

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<sup>8</sup> PSE Response to Staff Data Request 19.

<sup>9</sup> These six Incidents are Incidents 8, 15-17, 75, and 84.

<sup>10</sup> This involves Incident 81. This Incident did not involve falsification of a record.

<sup>11</sup> These 12 Incidents are Incidents 2-6, 12, 31, 61, 63, 71, 73, and 80.

<sup>12</sup> However, these records are still falsified, because the person whose name appears on the form for the follow-up inspection did not actually do the work, and the entry of that incorrect name was intentional. Therefore, the 12 Incidents itemized in footnote 11 remain Cause of Action 2 violations.

<sup>13</sup> 72 = the 64 Incidents itemized in footnote 6 that involved falsification, the six Incidents itemized in footnote 9 (which also involved falsification), and the one Incident itemized in footnote 10.

<sup>14</sup> As explained in footnotes 6 and 10, the two Cause of Action 1 violations that do not involve falsification of records are Incidents 81 and 82. In each of these Incidents, the same employee classified the leak as a phantom leak and did the follow-up inspection, in violation of PSE’s gas safety standards manual. However, in each case, that employee accurately filled out the follow-up leak evaluation work order by signing his or her name, rather than place another person’s name on the record. For this reason, Incidents 81 and 82 are not Cause of Action 2 (inaccurate records) violations.

<sup>15</sup> Complaint at 4-5, ¶¶ 23-26.

<sup>16</sup> Complaint at 5, ¶ 25.

- 12 Included in these allegations is that Pilchuck knew that these records were not accurate.<sup>17</sup> We call these “Cause of Action 2 violations” in this Report.
- 13 PSE admits the conduct underlying 76 of the 82 Cause of Action 2 violations.<sup>18</sup> However, PSE raises a statute of limitations defense regarding Cause of Action 2.<sup>19</sup> If this defense applies, it would bar a Commission penalty for all but four of the Incidents 1-80 and 83-84, namely, Incidents 9, 49, 58, and 82.<sup>20</sup> Staff will address this defense if this case goes to hearing.
- 14 For the six remaining Incidents (82 violations – 76 admitted conduct = 6 remaining violations), PSE answered that it had insufficient information to admit or deny the allegations.<sup>21</sup> However, Staff will rely on the evidence it has obtained to prove these violations.
- 15 In sum, Staff is prepared to prove all 82 Cause of Action 2 violations. Each of these violations is an intentional violation, involving falsification of records. These violations are continuing in nature, because PSE did not correct the records until late 2007.<sup>22</sup>

### 3. Cause of Action 3.

- 16 Cause of Action 3 is based on PSE’s failure to maintain records.<sup>23</sup> These are continuing violations,<sup>24</sup> because a violation occurs each day PSE fails to maintain the record. The factual basis for each of these violations is contained in “Incident 85” through “Incident 127,” which are detailed in Attachment 1 to the Complaint, including the allegation that PSE made these documents available only in a “screen print” format, which was generated from PSE’s electronic data base.<sup>25</sup> We call these “Cause of Action 3 violations” in this Report.
- 17 In discovery, PSE provided the hard copy files related to 39 of these 43 Incidents, and PSE justified the absence of files for two of the of the remaining four Incidents, leaving two violations.<sup>26</sup> PSE does not raise a statute of limitations defense related to Cause of Action 3.

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<sup>17</sup> *E.g.*, Complaint Attachment 1 at 1, ¶ 2, first sentence.

<sup>18</sup> See PSE’s response to Staff’s Informal Information Request 1 (August 10, 2007). The 76 Incidents are Incidents 1-7, 9-14, 18-74, 76-80, and 83. Put another way, these are the 64 Incidents in Cause of Action 1 for which PSE admitted the conduct (itemized in footnote 6), plus the 12 Incidents in Cause of Action 1 for which PSE admitted the conduct underlying the falsification, but which involved newly replaced equipment (itemized and explained in footnotes 11 and 12).

<sup>19</sup> PSE Answer, ¶ 37.

<sup>20</sup> PSE Response to Staff Data Request 19.

<sup>21</sup> These are Incidents 8, 15-17, 75, and 84. See discussion in footnote 9.

<sup>22</sup> See PSE’s First Amended Response to Staff Data Request 2.

<sup>23</sup> Complaint at 5, ¶¶ 27-29.

<sup>24</sup> Complaint at 5, ¶ 29.

<sup>25</sup> Complaint Attachment 1 at 29, ¶ 174.

<sup>26</sup> PSE located most of these missing documents and provided them to Staff. PSE Response to Staff Data Request 1. PSE located the missing documents related to 39 of the 43 alleged Incidents: Incidents 85-101, 103, 105-108, 110-118, and 120-127. PSE explains that it was not required to maintain some of the missing documents because the facilities were replaced. This explanation affected two of the remaining four Incidents: Incident 102 and 119. The two surviving missing records violations are Incidents 104 and 109.

18 In sum, Staff could prove two of the 43 Cause of Action 3 violations. Staff would not plan to prove that these are intentional violations, nor would Staff plan to prove that these two violations involve falsification of records. In any event, Staff likely would not have alleged these Cause of Action 3 violations if Staff knew PSE had virtually all the records. Consequently, Staff does not intend to pursue Cause of Action 3 violations.