

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

SEATTLE CHILDREN’S HOSPITAL;
OVERLAKE HOSPITAL MEDICAL
CENTER; HOSPITAL CENTRAL
SERVICES ASSOCIATION; COSTCO
WHOLESALE CORP.; NORTHWEST
BAKING LIMITED PARTNERSHIP,
d/b/a NORTHWEST BANKING CO.;
FIRST CALL PLUS OF
WASHINGTON, L.L.C.; REPAUL
TEXTILES LLC d/b/a STERILE
SURGICAL SYSTEMS; SHINING
OCEAN, INC.; TUCCI & SONS, INC.;
WESTROCK CP, LLC; NUCOR STEEL
SEATTLE INC.; ACE GALVANIZING,
INC.; GARDNER ASPHALT CORP.;
WESTERN WOOD PRESERVING CO.;
and TULALIP TRIBES OF WASH.,

Complainants,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UG-190857

ORDER 04

APPROVING SETTLEMENT
WITHOUT CONDITION

BACKGROUND

1 On October 1, 2019, Seattle Children’s Hospital, Overlake Medical Center, Hospital Central Services Association, Costco Wholesale Corp., Northwest Baking Limited Partnership, d/b/a Northwest Baking Co., First Call Plus of Washington, L.L.C., Repaul Textiles, d/b/a Sterile Surgical Systems, Shining Ocean, Inc., Tucci & Sons, Inc., Westrock CP, LLC, Nucor Steel Seattle Inc., Ace Galvanizing, Inc., Gardner Asphalt Corporation, and Western Wood Preserving Co., all natural gas transportation customers

(Customers) of Puget Sound Energy (PSE or Company), filed with the Washington Utilities and Transportation Commission (Commission) a complaint (Complaint) alleging that PSE imposed upon them Curtailment Penalties of more than \$900,000 despite lacking authorization to do so under the Company's tariff. The Complaint requested that the Commission order PSE to (1) cease and desist from collecting any Curtailment Penalties for the use of gas in excess of the penalty-free threshold of a declared overrun entitlement incurred between October 11, 2018, and February 28, 2019 (hereinafter 2018-2019 Winter Period), and (2) refund with interest Curtailment Penalties collected from Customers when there was no Curtailment Period.

2 On November 12, 2019, PSE filed an answer to the Complaint (Answer), denying that the penalties it charged to the Customers were unlawful under its tariff.

3 On November 25, 2019, the Commission convened a prehearing conference at its headquarters in Lacey, Washington. At the prehearing conference, Commission staff (Staff) requested leave to withdraw from the proceeding. While the Customers and the Tulalip Tribes did not oppose Staff's request, PSE did.

4 On November 26, 2019, the Commission issued Order 02, Prehearing Conference Order; Notice of Hearing (set for March 19, 2020, at 9:00 a.m.) (Order 02). Order 02 granted the Tulalip Tribes of Washington's (Tulalip Tribes) petition to intervene and also granted the Customers' unopposed motion to amend the Complaint by December 2, 2019, to add the Tulalip Tribes as a complainant. Order 02 found that Staff's participation would be limited to only monitoring compliance filings if any are required. The parties were also instructed to copy Staff on any discovery requests and responses in the event that the Commission later required additional assistance from Staff.¹

5 On November 27, 2019, the Customers filed an Amended Complaint, which added the Tulalip Tribes as a complainant.

6 On January 2, 2020, attorneys for the parties notified the Commission that the parties had reached a settlement in principle, requested the procedural schedule (and discovery) be

¹ Nash Callaghan, Assistant Attorney General, Lacey, Washington, represented Staff at the prehearing conference on November 25, 2019. In formal proceedings such as this, the Commission's regulatory staff typically participates like any other party, while the Commissioners make the decision. In this instance, the Commission permitted Staff to limit its participation to monitoring compliance filings, discovery requests, and discovery request responses in the event the Commission later needed Staff's assistance.

suspended, and indicated the parties intended to file a settlement agreement and supporting documentation by February 18, 2020.

7 On January 6, 2020, the Commission issued a Notice Suspending Procedural Schedule and Notice Requiring Filing of Settlement Documents or Status Report (by February 18, 2020).

8 On February 18, 2020, the Customers and PSE (collectively Settling Parties) filed with the Commission a joint Settlement Stipulation and Agreement (Settlement) and joint Brief Supporting Settlement Stipulation and Agreement (Brief). The Settlement is attached as Exhibit A to this Order.

9 Chad M. Stokes and Tommy Brooks, of Cable Huston LLP, Portland, Oregon, represent the Customers. Sheree Strom Carson, of Perkins Coie LLP, Bellevue, Washington, represents PSE.

SETTLEMENT²

10 On October 9, 2018, a rupture occurred on the Enbridge Pipeline, which delivers natural gas through British Columbia, Canada, to the Pacific Northwest for natural gas heating and energy markets.

11 On October 10, 2018, PSE declared a curtailment period that lasted until October 11, 2018. During a curtailment period, interruptible customers must, according to PSE's tariffs, "partially or totally stop consumption" of natural gas "in excess of the firm contracted amount."³

12 From time to time during the 2018-2019 Winter Period, PSE declared and operated under various stages of overrun entitlements, during which customers must balance their pre-scheduled or "nominated" natural gas usage with their actual natural gas usage within a certain threshold percentage on a daily basis. During the 2018-2019 Winter Period, PSE

² In the event of any discrepancy between the language of the Settlement in this Order and the language of the terms contained in the Settlement, the language of the terms in the Settlement will control.

³ Settlement at 2:22-3:3.

billed overrun entitlement penalties to customers. Some customers paid, some paid under protest, and others did not pay.⁴

13 On January 25, 2019, PSE filed revisions to its natural gas tariff rules after working with its natural gas stakeholder groups. The revisions went into effect by operation of law on March 1, 2019. The revisions were intended to clarify tariff rule language regarding curtailments and overrun entitlements, while also adding new entitlement penalty charges.⁵

14 The Complaint alleges that PSE unlawfully charged curtailment penalties of more than \$900,000 during a period when there was no declared curtailment period, and that PSE may not apply any curtailment penalty during an overrun entitlement or other constraint period. In its Answer, PSE denied that the penalties it charged during the overrun entitlement constraint periods were unlawful and asserted that the billed penalties for unauthorized use of gas were appropriate.

15 The Settling Parties present the Settlement as a product of negotiation and compromise, and as a full resolution of disputed issues in this proceeding.⁶

16 **Penalty Calculation.** The Settling Parties agree to an amount of penalties owed, or paid, to PSE for unauthorized gas use during the 2018-2019 Winter Period. The compromise reached by the Settling Parties for a penalty structure is generally consistent with “the tariff revisions that went into effect on March 1, 2019, without the natural gas market price component.”⁷

17 The Settling Parties agree to calculate overrun entitlement penalties that comprise both the Schedule 41 delivery charges and a \$1.00 per therm penalty.⁸ This calculation will apply to the Customers and any other natural gas transportation customers who were charged for overrun entitlement penalties for gas use during the 2018-2019 Winter

⁴ Brief at 4:4-6, ¶ 5.

⁵ Brief at 5:4-15, ¶ 9.

⁶ Settlement at 6:2-6, ¶ 18; *see* Settlement at 4:7-10, ¶ 10.

⁷ Brief at 5:16-23, 7:3-8, ¶¶ 10, 14.

⁸ Settlement at 4:11-14, ¶ 11.

Period.⁹ The Settlement does not include a calculation of interest, and each of the Settling Parties is responsible for paying their own attorneys' fees.¹⁰

18 The Settlement includes an explanation of how this calculation will affect customers who were billed and have already paid, as well as those who were billed but have yet to pay, the overrun entitlement penalties during the 2018-2019 Winter Period.¹¹ Those who were billed and have already paid will be refunded the difference between the amount paid and the amount agreed in the Settlement.¹² PSE will issue revised statements with amounts calculated as agreed in the Settlement to those who were billed but have yet to pay.¹³

19 **PGA Deferral Account.** The overrun entitlement penalties assessed for the 2018-2019 Winter Period were credited to the Purchase Gas Adjustment (PGA) mechanism in PSE's 2019 PGA annual filing based upon the billed amounts.¹⁴ The Settling Parties agree it would be equitable to pass the difference between these billed amounts and the penalties proposed by the Settlement through the PGA mechanism in the 2020 PGA annual filing.¹⁵ This difference is estimated at \$2.3 million – an amount similar to what was credited to the PGA mechanism in the 2019 PGA annual filing.¹⁶ The Settling Parties propose, therefore, that the Commission authorize the payment of the billing difference for the overrun entitlement penalties assessed for the 2018-2019 Winter Period from the PGA deferral account before refunds are paid.¹⁷

DISCUSSION AND DECISION

20 The Commission's statutory duty is to regulate in the public interest the rates, services, facilities, and practices of all persons engaged in the business of supplying natural gas

⁹ Settlement at 5:3-6, ¶ 13; Brief at 7:18-22, ¶ 16.

¹⁰ Settlement at 5:7; ¶ 14; Brief at 6:20-7:2, ¶ 14.

¹¹ Settlement at 4:15-5:2, ¶ 12.

¹² *Id.*

¹³ *Id.*

¹⁴ Settlement at 5:9-11; ¶ 16.

¹⁵ Settlement at 5:11-13, 20-21, ¶¶ 16-17.

¹⁶ Settlement at 5:13-16, ¶ 16.

¹⁷ Settlement at 5:17-23, ¶ 17.

service to the public for compensation.¹⁸ The Commission regulates the tariffs, showing all rates and charges, of natural gas companies in Washington.¹⁹ A complaint, setting forth any claimed act done or not done by a natural gas company in violation of Title 80 RCW, may be made by any person or corporation.²⁰

21 In this proceeding, the Customers alleged that PSE assessed penalties that violated its published tariff. PSE denied the allegations in the Complaint. Subsequently, the Settling Parties reached a full settlement and submitted it for the Commission's consideration.

22 As a preliminary matter, we find that we may consider the Settlement as a full settlement that resolves all issues in dispute in this proceeding. Staff moved to withdraw from this proceeding at the prehearing conference. The Commission required that Staff only *monitor* compliance filings and data requests in the event that the Commission required Staff's assistance. Such limited participation in this proceeding did not entitle Staff to challenge any disputed issue, substantively or procedurally, in this proceeding aside from monitoring compliance filings and ensuring any such compliance filings were consistent with Commission orders.²¹ Accordingly, we determine that the Settlement need not include Staff as a settling party to be considered a full settlement as defined in WAC 480-07-730(1).

23 WAC 480-07-750(1) states in part: "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." Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

The Commission must determine one of three possible results:

¹⁸ RCW 80.01.040.

¹⁹ RCW 80.28.050.

²⁰ RCW 80.04.110.

²¹ See WAC 480-07-730(1).

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to conditions.
- Reject the proposed settlement.

- 24 We approve the Settlement without condition. The parties made concessions relative to their respective litigation positions to arrive at end results that are not contrary to law or public policy, reasonably resolve all issues in this proceeding, and are supported by appropriate evidence in the record.
- 25 The terms of the Settlement present the Settling Parties' agreed calculation for the amount of penalties owed, or paid, to PSE for unauthorized use of gas during declared overrun entitlement constraint periods during the 2018-2019 Winter Period. Notably, the Settling Parties' proposed calculation applies not only to the Customers in this proceeding, but also to all natural gas transportation customers who were charged for overrun entitlement penalties during the 2018-2019 Winter Period.
- 26 Statute prohibits PSE, as a natural gas company, from charging or rebating a greater or lesser compensation for its services under the same or substantially similar circumstances or conditions.²² While all of the Customers are affected by the Settlement, the resulting rates charged do not discriminate against any customer because the proposed calculation applies equitably to all similarly situated customers. The Settlement is, therefore, not contrary to statute because the charges or rebates resulting from the Settlement will apply to all of PSE's natural gas transportation customers.
- 27 The Settling Parties also present a fair and equitable method for addressing the billed penalty amounts already included in PSE's PGA mechanism through its 2019 PGA annual filing. Because the billed amounts were included in the 2019 PGA annual filing, the Settling Parties propose that we authorize passing the difference between the amount billed and included in the 2019 PGA annual filing and the proposed Settlement penalties through the PGA mechanism in PSE's 2020 PGA annual filing. We agree with the Settling Parties that following the same treatment is fair, equitable, and consistent with the public interest in light of the fact that the estimated \$2.3 million difference is similar to the billed amount credited to PSE's PGA in 2019.

²² RCW 80.28.100.

28 The Settlement's terms are lawful, supported by an appropriate record, and consistent
with the public interest in light of all the information available to the Commission. We,
therefore, approve the Settlement without condition.

FINDINGS AND CONCLUSIONS

- 29 (1) The Commission is an agency of the State of Washington vested by statute with
authority to regulate natural gas companies in Washington, including PSE.
- 30 (2) The Commission has jurisdiction over PSE and the subject matter of this
proceeding.
- 31 (3) The Settlement's terms are lawful, supported by an appropriate record, and
consistent with the public interest in light of all the information available to the
Commission.
- 32 (4) The terms and conditions in the Settlement reasonably resolve all disputed issues.
- 33 (5) The Commission should approve the Settlement without condition.

ORDER

THE COMMISSION ORDERS:

34 The Commission approves the Settlement, which is attached as Exhibit A to, and
incorporated into, this Order, and adopts the Settlement as the final resolution of the
disputed issues in this docket.

DATED at Lacey, Washington, and effective March 2, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Andrew J. O'Connell
ANDREW J. O'CONNELL
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order and you would like the Order to become final before the time limits expire, you may send a letter to the Commission waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this initial order to file a petition for administrative review (Petition). Section (2)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(2)(c) states that any party may file a response to a Petition within 10 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable with due diligence at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

WAC 480-07-825(1) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5).