

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SEATTLE CHILDREN'S HOSPITAL, a Washington nonprofit corporation; OVERLAKE HOSPITAL MEDICAL CENTER, a Washington nonprofit corporation; HOSPITAL CENTRAL SERVICES ASSOCIATION, a Washington nonprofit corporation; COSTCO WHOLESALE CORPORATION, a Washington corporation; NORTHWEST BAKING LIMITED PARTNERSHIP dba NORTHWEST BAKING COMPANY, a Washington limited partnership; FIRST CALL PLUS OF WASHINGTON, L.L.C., a Washington limited liability company; REPAUL TEXTILES LLC dba STERILE SURGICAL SYSTEMS, a Washington limited liability company; SHINING OCEAN, INC., a Washington corporation; TUCCI & SONS, INC., a Washington corporation; WESTROCK CP, LLC, a Delaware limited liability company; NUCOR STEEL SEATTLE INC., a Delaware corporation; ACE GALVANIZING, INC., a Washington corporation; GARDNER ASPHALT CORPORATION, a Delaware corporation; WESTERN WOOD PRESERVING CO., a Washington corporation; and TULALIP TRIBES OF WASHINGTON, a federally recognized Indian Tribe;

Complainants,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UG-190857

SETTLEMENT STIPULATION AND AGREEMENT

SETTLEMENT STIPULATION AND AGREEMENT- 1

146021825.2

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## I. INTRODUCTION

1. This Settlement Stipulation and Agreement (“Settlement Agreement”) is entered into by and between Puget Sound Energy (“PSE”) and the Complainants in this case: Seattle Children’s Hospital, Overlake Medical Center, Hospital Central Services Association, Costco Wholesale Corporation, Northwest Baking Limited Partnership dba Northwest Baking Company, First Call Plus of Washington, L.L.C., Repaul Textiles dba Sterile Surgical Systems, Shining Ocean, Inc., Tucci & Sons, Inc., Westrock CP, LLC, Nucor Steel Seattle Inc., Ace Galvanizing, Inc., Gardner Asphalt Corporation, Western Wood Preserving Co., and Tulalip Tribes of Washington (“Customers”). These parties are hereinafter collectively referred to as “Settling Parties” and each individually as a “Settling Party.”

2. This Settlement Agreement is a “full settlement,” as that term is defined in WAC 480-07-730(1), because this Settlement Agreement is entered into by all parties and resolves all disputed issues in the case.

3. This Settlement Agreement is subject to review and disposition by the Washington Utilities and Transportation Commission (“Commission”). Section III of the Settlement Agreement is effective on the date of the Commission order approving it (unless the Commission establishes a different effective date).

## II. BACKGROUND AND NATURE OF THE DOCKET

4. On October 9, 2018, a rupture occurred on the Enbridge Pipeline (“Rupture”). The Rupture caused significant impacts to the natural gas and energy markets throughout the Pacific Northwest. Among other impacts, PSE declared a “Curtalement Period”, as defined in Section 2 of Rule 23 of PSE’s tariffs, on October 10-11, 2018. The Curtalement Period was lifted on October 11, 2018. A “Curtalement” is a condition

1 specifically and expressly declared by PSE during which interruptible customers must  
2 “partially or totally stop consumption” of natural gas “in excess of the firm contracted  
3 amount.” Further, PSE operated from time to time following the Rupture under various  
4 stages of declared “Overrun Entitlements,” ranging from three percent (3%) to thirteen  
5 percent (13%). During a declared Overrun Entitlement Constraint Period, customers  
6 must balance their pre-scheduled or “nominated” natural gas usage with their actual  
7 natural gas usage within a certain threshold percentage on a daily basis.

8 5. On October 1, 2019, Customers filed a Complaint with the Commission claiming  
9 that PSE unlawfully charged Customers “Curtailment Penalties” of more than \$900,000  
10 for a period of time in which there was no declared Curtailment Period. Customers  
11 alleged that the Curtailment Penalty may be applied by PSE only during a Curtailment  
12 Period and not during an overrun entitlement or other constraint period.

13 6. On November 12, 2019, PSE filed an Answer to the Complaint. In its Answer PSE  
14 denied the claims made by Customers. Specifically, PSE denied that the penalties  
15 charged during Overrun Entitlement Constraint Periods were unlawful. PSE asserted that  
16 it billed Customers the appropriate penalties for unauthorized use of gas for declared  
17 Overrun Entitlement Constraint Periods.

18 7. A Prehearing Conference was held on November 25, 2019. At the Prehearing  
19 Conference Staff requested leave to withdraw from the proceeding and the Commission  
20 granted that request subject to the conditions set forth in Order 02 in this docket.  
21 Customers also moved to amend the Complaint and add the Tulalip Tribes of Washington  
22 as a complainant. The motion was unopposed, and an Amended Complaint was filed on  
23 November 27, 2019.

1 8. On December 12, 2019, the parties participated in a Settlement Conference. The  
2 parties reached agreement on the terms of a full settlement, and the parties notified the  
3 Commission that a settlement in principle had been reached.

4 9. This Settlement Agreement sets forth the terms of the agreement reached by the  
5 Settling Parties.

### 6 III. AGREEMENT

7 10. The Settlement Agreement represents a compromise of the amount of penalties owed,  
8 or paid, to PSE for unauthorized use of gas during declared Overrun Entitlement  
9 Constraint Periods for the time period of October 11, 2018 through February 28, 2019,  
10 based on two reasonable but conflicting interpretations of the language in the tariff rules.

11 11. The Settling Parties agree to calculate the Overrun Entitlement penalties from  
12 October 11, 2018 through February 28, 2019 as follows: The Overrun Entitlement  
13 penalties will be comprised of both the Schedule 41 delivery charges and a \$1 per therm  
14 penalty.

15 12. For those Customers who paid Overrun Entitlement penalties during the time period  
16 October 11, 2018 through February 28, 2019, they will be refunded the difference  
17 between the amount of Overrun Entitlement penalties paid and the amount agreed to in  
18 this Settlement Agreement.<sup>1</sup> For those customers who were billed for penalties  
19 associated with the Overrun Entitlement Constraint Period during the time period  
20 October 11, 2018 through February 28, 2019, but who have not yet paid such penalties,

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<sup>1</sup> Any state or local taxes paid on billed penalties will be refunded or adjusted to reflect the proposed settlement penalties described in this Settlement Agreement.

1 PSE will issue revised statements reflecting the amounts due under the terms of the  
2 Settlement Agreement.

3 13. The revised calculation of the Overrun Entitlement penalties will apply to Customers  
4 who are the Complainants in this case as well as to all natural gas transportation  
5 customers who were charged for Overrun Entitlement penalties during the period of  
6 October 11, 2018 through February 28, 2019.

7 14. The Settlement Agreement does not include a calculation of interest.

8 15. Each party is responsible for payment of their own attorneys' fees.

9 16. As the initial Overrun Entitlement Constraint Period penalties had been credited to  
10 the Purchased Gas Adjustment ("PGA") mechanism based upon the billed amount in the  
11 2019 PGA annual filing, the difference between the billed penalties and the proposed  
12 Settlement penalties will follow the same treatment by passing it through the PGA  
13 mechanism, in the 2020 PGA annual filing. The total amount to be adjusted in the PGA  
14 deferral mechanism, i.e., the billing difference between the billed penalties and the  
15 settlement rate, is estimated at \$2.3 million. A similar amount was credited to the PGA  
16 in 2019.

17 17. The Settling Parties agree that a key term of this Settlement Agreement is that the  
18 Commission authorize the payment of the billing difference for the Overrun Entitlement  
19 Constraint Period penalties from the PGA deferral account before refunds are paid to  
20 Customers. The Settling Parties agree this is equitable because an equivalent amount was  
21 credited to the PGA in the prior year. As such, the Settling Parties require Commission  
22 approval of the terms of the Settlement Agreement by the Commission before refunds are  
23 paid.

1 **IV. GENERAL PROVISIONS**

2 18. Entire Agreement. This Settlement Agreement is the product of negotiations and  
3 compromise amongst the Settling Parties and constitutes the entire agreement of the  
4 Settling Parties. Accordingly, the Settling Parties recommend that the Commission adopt  
5 and approve the Settlement Agreement in its entirety as a full resolution of contested  
6 issues in this docket. This Settlement Agreement will not be construed against any  
7 Settling Party on the basis that it was the drafter of any or all portions of this Settlement  
8 Agreement. This Settlement Agreement supersedes any and all prior oral and written  
9 understandings and agreements on such matters that previously existed or occurred in this  
10 proceeding, and no such prior understanding or agreement or related representations will  
11 be relied upon by the Settling Parties to interpret this Settlement Agreement or for any  
12 other reason.

13 19. Confidentiality of Negotiations. The Settling Parties agree that this Settlement  
14 Agreement represents a compromise in the Settling Parties' positions. As such, conduct,  
15 statements and documents disclosed during the negotiation of this Settlement Agreement  
16 are not admissible in this or any other proceeding and will remain confidential.  
17 Notwithstanding the foregoing, the Settlement Agreement itself and its terms do not fall  
18 within the scope of this confidentiality provision, and each Settling Party is free to  
19 publicly disclose the basis for its own support of the Settlement Agreement.

20 20. Precedential Effect of Settlement Agreement. The Settling Parties enter into this  
21 Settlement Agreement to avoid further expense, uncertainty, inconvenience and delay.  
22 The Settling Parties agree that this Settlement Agreement does not serve to bind the  
23 Commission when it considers any other matter not specifically resolved by this  
24 Settlement Agreement in future proceedings. Notwithstanding the above, the Settling

1 Parties request that the Commission authorize the payment of refunds through the PGA  
2 mechanism as set forth in this Settlement Agreement. Nothing in this Settlement  
3 Agreement compels any Settling Party to affirmatively intervene or participate in a future  
4 proceeding.

5 21. Positions Not Conceded. In reaching this Settlement Agreement, the Settling Parties  
6 agree that no Settling Party concedes any particular argument advanced by that Settling  
7 Party or accedes to any particular argument made by any other Settling Party. Nothing in  
8 this Settlement Agreement (or any testimony, presentation or briefing supporting this  
9 Settlement Agreement) shall be asserted or deemed to mean that a Settling Party agreed  
10 with or adopted another Settling Party's legal or factual assertions in this proceeding. The  
11 limitations in this paragraph will not apply to any proceeding to enforce the terms of this  
12 Settlement Agreement or any Commission order adopting this Settlement Agreement in  
13 full.

14 22. Manner of Execution. This Settlement Agreement is executed when all Settling  
15 Parties sign the Settlement Agreement. A designated and authorized representative may  
16 sign the Settlement Agreement on a Settling Party's behalf. The Settling Parties may  
17 execute this Settlement Agreement in counterparts. If the Settlement Agreement is  
18 executed in counterparts, all counterparts shall constitute one agreement. A Settlement  
19 Agreement signed in counterpart and sent by facsimile or emailed as a pdf is as effective  
20 as an original document. A faxed or emailed signature page containing the signature of a  
21 Settling Party is acceptable as an original signature page signed by that Settling Party.  
22 Each Settling Party shall indicate the date of its signature on the signature page. The date

1 of execution of the Settlement Agreement will be the latest date indicated on the  
2 signature page(s).

3 23. Approval Process and Support of Settlement. Each Settling Party agrees to support in  
4 this proceeding the terms and conditions of this Settlement Agreement as a full and final  
5 resolution of all contested issues between them in the above-captioned docket. Each  
6 Settling Party agrees to support or not to oppose the Settlement Agreement during the  
7 course of whatever proceedings and procedures the Commission determines are  
8 appropriate for approval of the Settlement Agreement.

9 24. Commission Approval with Conditions. In the event the Commission approves this  
10 Settlement Agreement, but with conditions not proposed in this Settlement Agreement,  
11 the provisions of WAC 480-07-750(2)(b) will apply. The Settling Parties will have ten  
12 (10) business days to seek reconsideration and/or file a letter with the Commission  
13 accepting or rejecting each such condition. If, in such a timely filed letter, a Settling Party  
14 rejects a condition, this Settlement Agreement is deemed rejected and void and the  
15 Settling Parties will jointly and promptly request the Commission convene a prehearing  
16 conference to address procedural matters, including a procedural schedule for resolution  
17 of the case at the earliest possible date.

18 25. Commission Rejection. In the event the Commission rejects this Settlement  
19 Agreement, the provisions of WAC 480-07-750(2)(c) will apply. In that event, the  
20 Settling Parties agree to jointly and promptly request the Commission convene a  
21 prehearing conference to address procedural matters, including a procedural schedule for  
22 resolution of the case at the earliest possible date.



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Dated this 18th day of February, 2020

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**PUGET SOUND ENERGY**

**CABLE HUSTON LLP**

By:   
\_\_\_\_\_  
JON PILARIS  
Director, Regulatory Affairs

By: \_\_\_\_\_  
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