

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

DOCKET NO. U-061239

SETTLEMENT AGREEMENT

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This Settlement Agreement (Agreement) is entered into by the parties to this proceeding for the purpose of resolving all issues raised in the above docket.

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I. PARTIES

The parties to this Agreement are Puget Sound Energy, Inc., (PSE), the Staff of the Washington Utilities and Transportation Commission (Staff), and the Public Counsel Section of the Washington Attorney General's Office (Public Counsel) (collectively, "the Parties").

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II. BACKGROUND

In March 2006, Staff received information that PSE was improperly disclosing private customer information as an integral part of its PSE Connections program. Staff began investigating the PSE Connections program and identified violations of Washington Utilities and Transportation Commission (Commission) rules governing the disclosure of private consumer information.

Commission rules prohibit gas and electric utilities from disclosing or selling private consumer information to any third party "for the purposes of marketing services or product offerings to a customer who does not already subscribe to that service or product, unless the utility has first obtained the customer's written permission to do so." WAC 480-90-153(1) and WAC 480-100-153(1). Under these rules, private consumer information includes "the customer's name, address, telephone number, and any other personally identifying

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SETTLEMENT AGREEMENT

Page 1 of 6

information...that is available to the utility solely by virtue of the customer-utility relationship.” WAC 480-90-153(2) and WAC 480-100-153(2).

- 5 The PSE Connections program is designed to allow PSE residential customers who are starting or transferring gas or electric service to arrange additional services, such as newspaper subscriptions or lawn care, with one telephone call. In order to implement this program, PSE entered into an agreement with a separate and unrelated company called Allconnect to transfer the telephone calls and private information of some of its residential customers to Allconnect.
- 6 Under the PSE Connections program, when a new or change-of-service customer calls PSE to establish or change service, PSE processes the request and then may transfer the call to Allconnect. Allconnect service representatives answer the transferred call, announcing “PSE Connections,” and confirm the service order and the information that the customer just provided to PSE. Coincident with transferring the customer, PSE electronically transfers the customer’s name, address, service start date, and a product order number to an Allconnect database. PSE describes the PSE Connections program as a “customer convenience program,” designed to assist consumers who are taking up residence in a new home with ordering other services.
- 7 After confirming the customer’s service, Allconnect markets a range of other services to the customer. If the customer purchases any of these services, Allconnect shares this information with the third-party service provider chosen by the PSE customer and retains for itself the customer’s personal information which it may use for subsequent marketing contacts with the customer.
- 8 In return for transferring its customers’ calls and their personal information to Allconnect, PSE receives a quarterly payment from Allconnect. The amount of the payment depends on the percentage of eligible customers that PSE transferred during the period, the number of PSE customers that used the PSE Connections service, and the amount of revenue Allconnect generated from this use. Over the life of the program, PSE Connections generated \$95,000 in revenue for PSE.
- 9 When PSE began transferring customer calls to Allconnect at the start of the program in November 2001, PSE telephone representatives used script options that included a brief description of the PSE Connections program. In addition, each of the three script options included an opportunity for the customer to opt out of transferring to PSE Connections.
- 10 In October 2005, however, PSE changed the scripts significantly. The scripts no longer explained the PSE Connections service and only one script allowed the customer to decline the service confirmation.

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11 During operation of the PSE Connections program from November 2001 to March 2006, PSE transferred a total of 65,260 customers to Allconnect. These transfers represent approximately 11 percent of all customers eligible under the program to be transferred to Allconnect.

12 PSE voluntarily suspended the PSE Connections program on a temporary basis pending completion of the investigation.

13 Staff alleged in a complaint filed concurrently with this agreement that PSE violated WAC 480-90-153 or WAC 480-100-153 each time it transferred a customer's call to Allconnect. The complaint requests penalties of \$949,600, based on the number of customer calls transferred. Following completion of Staff's investigation, PSE and Staff negotiated a full settlement for penalties totaling \$700,000 (seven hundred thousand dollars). In addition, the Company agreed to donate the \$95,000 (ninety five thousand dollars) representing the revenue PSE realized from the PSE Connections program, to PSE's Warm Home Fund. On October 26, 2006, Public Counsel filed an appearance in the docket to evaluate the basis for the Settlement and, if appropriate, seek a higher penalty amount and additional privacy protections.

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### III. AGREEMENT

14 The Parties have reached agreement on the issues raised in the above docket and wish to present their agreement for the Commission's consideration and approval. The Parties therefore adopt the following Agreement, which the Parties enter into voluntarily to resolve the matters in dispute between them and to expedite the orderly disposition of this dispute.

15 PSE admits to violating WAC 480-90-153 or WAC 480-100-153 a total of 65,260 times, representing the number of customer calls transferred during the operation of the PSE Connections program from November 2001 to March 2006.

16 The Parties agree that PSE will pay a penalty totaling \$900,000 (nine hundred thousand dollars). The amount of the penalty (nine hundred thousand dollars) shall be paid to the Commission no more than 15 (fifteen) calendar days after the date the Commission issues the order approving this Agreement.

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17 Furthermore, PSE agrees to donate an additional \$95,000 (ninety-five thousand dollars) to PSE's Warm Home Fund. PSE also pledges to complete the donation to the Warm Home Fund no more than 15 (fifteen) calendar days after the Commission issues the order approving this Settlement Agreement.

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18 The Parties agree that PSE will mail to its residential customers a notice informing customers of their rights and PSE's obligations under Commission rules with respect to the disclosure of private consumer information. PSE may enclose this Notice with each

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SETTLEMENT AGREEMENT

Page 3 of 6

customer's bill or send it to each customer as a separate mailing. In addition, PSE agrees to post the Notice on its website with a link directly to the Notice that appears on its homepage, at www.pse.com, and on the "My PSE Account" login page. In addition, PSE agrees to add the Notice to the web page on which the company's privacy policy resides. PSE will also place the Notice on a "bridge page" that will appear when a PSE customer logs in to "My PSE Account" either from the login page or from elsewhere on PSE's website. Customers will be able to click through the bridge page to close the page and enter "My PSE Account." PSE agrees to begin to mail out the Notice as discussed above and to electronically post the Notice on its website as well as activate the links and bridge page as discussed above within 15 (fifteen) calendar days of the date the Commission issues the order approving this Agreement, and to complete dissemination of the Notice within 60 (sixty) calendar days of such date. PSE further agrees that the Notice will consist of the text that appears in Attachment A. The bridge page shall be active for 120 (one hundred twenty) calendar days after the date the Commission issues the order approving this Agreement, but need only appear following the first login of each customer during the 120-day period. The Notice shall be maintained on PSE's website so long as WAC 480-90-153 and WAC 480-100-153 remain in effect, but the links to the notice may, at PSE's discretion, be placed on a web page other than the home page and the "My PSE Account" login page after 120 (one hundred twenty) calendar days from the date the Commission issues the order approving this Agreement.

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19 PSE shall develop a separate Privacy Policy (Policy) for inclusion in the Company's Corporate Policy Manual. The Policy shall address the protection of customer information, including the process for identifying who may access the information, how the information is stored and transmitted, what safeguards exist for protecting information, what the Company's response is upon an intentional or inadvertent release, or any other provision the Company requires to protect customer information. The Board of Directors must approve the Policy and file it with the Commission within six (6) months from the date the Commission issues the order approving this Agreement. PSE will file any subsequent changes to the Policy with the Commission. PSE will also appoint one of its employees to ensure Company-wide compliance with the Policy.

20 PSE shall incorporate the Policy into its Corporate Ethics and Compliance Code and Training Program. All new and existing employees shall receive periodic training on the Policy as part of the Ethics and Compliance Training Program. In addition, new and existing customer service center employees shall receive more frequent and specific training to understand and implement the Policy.

21 For two years, beginning in 2007, PSE agrees that it will file yearly reports with the Commission identifying all instances in which the Company released customer information to a third party for the purposes of marketing services or product offerings, including how written consent was obtained. The reports will be filed on February 15, 2008 and February 15, 2009, each addressing the prior year.

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22 | PSE agrees that it will not seek recovery through rates of the penalties, donations, or other costs paid pursuant to any provision of this Agreement.

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23 | Finally, PSE agrees to permanently discontinue the PSE Connections program.

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#### IV. GENERAL PROVISIONS

24 | The Parties agree that this Agreement is a settlement of all contested issues between them in this proceeding. The Parties understand that this Agreement is not binding unless and until accepted by the Commission.

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25 | The Parties agree to cooperate in submitting this Agreement promptly to the Commission for acceptance. The Parties agree to support adoption of this Agreement in proceedings before the Commission through testimony or briefing. No party to this Agreement or its agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission's adoption of this Agreement.

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26 | The Parties agree (1) to provide each other the right to review in advance of publication any and all announcements or news releases that the other party intends to make about the Agreement (with the right of review to include a reasonable opportunity to request changes to the text of such announcements) and (2) to include in any news release or announcement a statement that Staff's recommendation to approve the settlement is not binding on the Commission itself.

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27 | Nothing in this Agreement shall limit or bar any other person or entity from pursuing legal remedies against PSE or PSE's ability to assert defenses to such claims.

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28 | The Parties have entered into this Agreement to avoid further expense, inconvenience, uncertainty, and delay. The Parties recognize that this Agreement represents a compromise of the Parties' positions. As such, conduct, statements, and documents disclosed during negotiations of this Agreement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Agreement or any Commission order fully adopting those terms. This Agreement shall not be construed against any party because it was a drafter of this Agreement.

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29 | The Parties have negotiated this Agreement as an integrated document to be effective upon execution. This Agreement supersedes all prior oral and written agreements on issues addressed herein. Accordingly, the Parties recommend that the Commission adopt this Agreement in its entirety.

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30 | The Parties may execute this Agreement in counterparts and as executed shall constitute one agreement. Copies sent by facsimile are as effective as original documents.

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SETTLEMENT AGREEMENT

Page 5 of 6

31 | The Parties shall take all actions necessary as appropriate to carry out this Agreement.

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32 | In the event the Commission rejects all or any portion of this Agreement, each party reserves the right to withdraw from this Agreement by written notice to the other party and the Commission. Written notice must be served within 10 calendar days of the Order rejecting part or all of this Agreement. In such event, neither party will be bound or prejudiced by the terms of this Agreement, and either party shall be entitled to seek reconsideration of the Order. Additionally, the Parties will jointly request a pre-hearing conference be reconvened for purposes of establishing a procedural schedule to complete the case.

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WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

PUGET SOUND ENERGY, INC.

ROB MCKENNA  
Attorney General

JENNIFER CAMERON-RULKOWSKI  
Assistant Attorney General  
Counsel for the Utilities and  
Transportation Commission

TOM DeBOER  
Director - Rates & Regulatory Affairs

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Dated: \_\_\_\_\_, 2006.

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ROB MCKENNA  
Attorney General

JUDITH KREBS  
Assistant Attorney General  
Public Counsel Section

Dated: \_\_\_\_\_, 2006.

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