

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Formal Complaint by
Frontier Communications Northwest Inc.
against Puget Sound Energy, Inc. Regarding
Unjust and Unreasonable Utility Pole
Attachment Rates.

DOCKET NO. UE-151344

PUGET SOUND ENERGY, INC.'S
ANSWER TO COMPLAINT

I. INTRODUCTION

1. This is a straightforward commercial action to collect on a two-year old debt owed to Puget Sound Energy, Inc. (“PSE”) by Frontier Communications Northwest Inc. (“Frontier”). After several attempts to resolve the dispute, including contractually-mandated mediation, PSE followed the process required by the contract and filed a lawsuit in King County Superior Court to enforce its Pole Attachment Agreement (“Agreement”) with Frontier. Only then did Frontier make even a long overdue partial payment on the amount owed.

2. When PSE filed the Complaint for breach of contract in February 2015, Frontier said nothing about the WUTC’s jurisdiction—and in fact admitted in its Answer to the Complaint that the King County Superior Court has jurisdiction and is the proper venue for deciding the dispute.

3. Frontier's sudden about-face five months later in seeking to have the WUTC take jurisdiction is a thinly-veiled attempt to avoid having the Court consider the complete law and facts in the pleadings on file—which weigh heavily in PSE's favor—and to avoid paying contractually-mandated interest, attorneys' fees and costs that the Court may award if PSE prevails. In the event that PSE prevails on the merits but Frontier successfully moves the forum to the WUTC, PSE's costs of collecting the amounts owed from Frontier (according to their 2014 10-K, Frontier "is the largest communications company providing services mainly to rural areas and medium-sized towns and cities in the United States"), consistent with regulatory processes for utilities, would be passed on to other PSE customers.

4. The WUTC does not have primary jurisdiction because this is not a dispute about whether any rate is just or reasonable, but rather about the terms of a commercial contract the parties entered into 13 years ago and that Frontier now seeks to unilaterally revise. In sum, after paying PSE in full based on calculations counting each of its distribution poles as a "whole pole" for 11 years without protest, Frontier contacted PSE in April 2013 and demanded that PSE offset Frontier's outstanding bill for the difference Frontier could have charged if it had accounted for its fractional ownership in certain of its poles going back to 2002 when the contract began. Because Frontier's new method for calculating the rental rates is inconsistent with the parties' original understanding in 2002, inconsistent with the parties' course of performance, and inconsistent with their course of dealing for the past 11 years, PSE declined Frontier's demand and informed Frontier that its bill was due in full. Frontier refused and now owes PSE over \$700,000 in outstanding payments and interest, and has indicated it will not pay its \$1 million-plus invoice that will become due in October 2015.

5. Frontier argues that the WUTC should review this private dispute and evaluate back payments over 11 years simply because the WUTC *is considering draft rules* related to a similar issue. But, no rules have yet been implemented and, even assuming the draft rules are implemented, they offer no retroactive relief. Therefore, the proposed rules will effectively have no impact on this dispute. Yet, Frontier is leveraging this WUTC rulemaking process as a justification for the nonpayment of monies owed to PSE.

6. Frontier also deceptively quotes from the Agreement, claiming that it provides for WUTC jurisdiction when the opposite is true. The section it cites (Section 6.1.2) simply states that the WUTC may impose a revision to the rate formula, but Frontier neglects to mention that the Agreement at Section 16.16 provides that, in the event of a dispute, the matter should be resolved by mediation or a party “may initiate any and all appropriate legal action,” including in Superior Court. In another example of its deception, Frontier omits from its WUTC Complaint the fact that, even assuming it prevails, it would not be entitled to the relief it asks the WUTC to award—an alleged offset for 11 years of payments—because the State of Washington’s six-year statute of limitations applies to any breach of contract claims.

7. Frontier seeks to use the WUTC as a means to avoid its contractual obligations and to sidestep the parties’ 11-year course of contract performance and course of dealing. But, because the crux of Frontier’s WUTC Complaint is simply about interpretation of a private contract, PSE respectfully submits that the matter is properly left to the jurisdiction of the Superior Court. Moreover, while the Commission would undoubtedly be the proper forum for a legitimate dispute about rates, that is not this case. This is a simple case about a breach of contract between two private corporations, and PSE respectfully requests the Commission decline to assume jurisdiction.

PSE's representatives for purposes of this proceeding are:

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8. PSE answers the remaining allegations in the Complaint as follows:

II. ANSWER

A. Introduction and Relief Requested

9. Answering paragraph 1, PSE admits that PSE is a utility company, admits that a breach of contract case is currently pending before the Superior Court for King County to collect fees Frontier owes pursuant to a Pole Attachment Agreement (“Agreement”) between the parties, and states that the Agreement is a document that speaks for itself. PSE denies the remaining allegation in paragraph 1.

B. The Parties

10. Answering paragraph 2, PSE admits that Frontier is a Washington corporation with its principal place of business in Snohomish County, Washington. PSE admits that Frontier leases space on utility poles owned by PSE, and rents space to PSE on some of its poles. PSE lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 2 and therefore denies those allegations.

11. Answering paragraph 3, PSE admits the allegations.

C. Jurisdiction

12. Answering paragraph 4, PSE admits that Frontier and PSE transact business in Washington and are regulated by the WUTC.

13. Answering paragraph 5, PSE denies the allegations.

14. Answering paragraph 6, PSE denies the allegations.

15. Answering paragraph 7, PSE denies the allegations.

16. Answering paragraph 8, PSE denies the allegations.

17. Answering paragraph 9, PSE admits the allegations.

18. Answering paragraph 10, PSE denies the allegations.

19. Answering paragraph 11, PSE denies the allegations.

20. Answering paragraph 12, PSE denies the allegations.

21. Answering paragraph 13, PSE states that the draft rules speak for themselves and denies any characterization inconsistent with their terms.

22. Answering paragraph 14, PSE states that the draft rules speak for themselves and denies any characterization inconsistent with their terms.

23. Answering paragraph 15, PSE denies the allegations.

D. Statement of Facts

24. Answering paragraph 16, PSE admits the allegations.

25. Answering paragraph 17, PSE admits the allegations.

26. Answering paragraph 18, PSE lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies those allegations.

27. Answering paragraph 19, PSE admits the allegations.

28. Answering paragraph 20, PSE states that the Agreement is a document that speaks for itself and denies any characterization inconsistent with its terms.

29. Answering paragraph 21, PSE admits the allegations.
30. Answering paragraph 22, PSE admits the allegations.
31. Answering paragraph 23, PSE states that the Agreement is a document that speaks for itself and denies any characterization inconsistent with its terms.
32. Answering paragraph 24, PSE denies the allegations.
33. Answering paragraph 25, PSE lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies those allegations
34. Answering paragraph 26, PSE denies the allegations.
35. Answering paragraph 27, PSE denies the allegations.
36. Answering paragraph 28, PSE denies the allegations.
37. Answering paragraph 29, PSE admits that Frontier unilaterally determined it was entitled to offset certain payments to PSE and failed to make full payment owed to PSE. PSE denies the remaining allegations.
38. Answering paragraph 30, PSE admits the allegations.
39. Answering paragraph 31, PSE admits the allegations.

E. Relief Requested

40. Answering paragraph 32, PSE denies that Frontier is entitled to any relief.

III. DEFENSES AND AFFIRMATIVE DEFENSES

41. Frontier's Complaint is barred, in whole or in part, by lack of jurisdiction.
42. Frontier's Complaint is barred, in whole or in part, by the statute of limitations.
43. Frontier's Complaint fails to state a claim upon which relief can be granted.
44. Frontier's Complaint is barred, in whole or in part, by estoppel, waiver and/or ratification.

45. Frontier's Complaint is barred, in whole or in part, by the doctrine of laches.
46. Frontier's Complaint is barred, in whole or in part, by the doctrine of unclean hands.
47. Frontier's Complaint is barred, in whole or in part, by collateral estoppel or res judicata.

DATED this 7th day of July, 2015.

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