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BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

BERNICE BRANNAN, et al., Complainants, v. QWEST CORPORATION, Respondent.	DOCKET NO. UT-010988
BERNICE BRANNAN, et al., Complainants, v. SANITARY SERVICE COMPANY, INC., Respondent.	DOCKET NO. TG-010989
BERNICE BRANNAN, et al., Complainants, v. PUGET SOUND ENERGY, INC., Respondent.	DOCKET NO. UE-010990

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TERRY McNEIL, et al., Complainants, v. PUGET SOUND ENERGY, INC., Respondent.	DOCKET NO. UE-010995
TERRY McNEIL, et al., Complainants, v. VERIZON NORTHWEST, INC., Respondent.	DOCKET NO. UT-010996
WASHINGTON UTILITIES AND TRANSPORATION COMMISSION, Complainant, v. WASTE MANAGEMENT OF WASHINGTON, INC., d/b/a RURAL SKAGIT SANITATION. G-237, Respondent.	DOCKET NO. TG-011084 (CONSOLIDATED) MEMORANDUM OF LAW OF PUGET SOUND ENERGY, INC.

1. Pursuant to the Commission’s “Notice of Extension of Filing Date” issued October 19, 2001 in the above-referenced dockets (the “Notice”), Puget Sound Energy, Inc. ("Puget") hereby submits this Memorandum of

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Law regarding Puget’s position as to whether the Commission has jurisdiction over the complaints filed in these dockets. Puget’s address is One Bellevue Center, 411 – 108th Avenue, NE, Suite 300, Bellevue, Washington 98004.

2. The rules or statutes that may be brought into issue by this Memorandum of Law include RCW 80.04.110 and WAC 480-100-178.

I. BACKGROUND

3. The Commission has consolidated complaints filed by Bernice Brannan, Terry McNeil and other individuals against a number of companies subject to the Commission’s general jurisdiction. The complaints request that the Commission remove from such companies’ respective tariffs the provisions of such tariffs that set forth the pass-through of certain tribal utility taxes to the extent such taxes are passed through to non-tribal members located on fee land within the tribal reservations. Specifically, the taxes that are the subject of the complaints are the Lummi Utility Business Activities Tax and the Swinomish Utility Business Activity Tax.

4. The Commission has also instituted its own complaint against Waste Management of Washington, Inc. and consolidated this complaint with those filed by Ms. Brannan, et al.

5. The Notice states that “[l]egal memoranda from parties who argue that the Commission does have jurisdiction over the complaints” is due October 19, 2001. Notice at 3 (emphasis in the original).

II. LEGAL MEMORANDUM

6. In these proceedings, Puget has assumed that the Commission has continuing jurisdiction over this matter following the Commission’s Second Supplemental Order in WUTC v. US West Communications, Inc., Docket No. UT-911306 (Second Supplemental Order, 1992) (“US West”), which concerned the prudence of US West’s recovery of a gross receipts tax levied by the Lummi Indian Tribe

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upon telephone service revenues generated within the boundaries of the Lummi Indian Reservation. There, the Commission adopted the holding of the Administrative Law Judge that the “Commission has jurisdiction over the parties and subject matter of this proceeding.” WUTC v. US West Communications, Inc., Docket No. UT-911306 at 7 (First Supplemental Order, 1992) (the “First Supplemental Order”).

7. In that proceeding, the Commission also concluded that taxes levied upon public service companies by tribes are proper expenses for such companies to recover through rates. First Supplemental Order at 4; see also State ex rel. Pac. Tel. and Telegraph Co. v. Dep’t of Pub. Serv., 19 Wn. 2d 200, 275-76 (1943). The Commission held that US West’s tariff to recover Lummi utility tax expenses from both tribal members and non-tribal members living on fee land within the boundaries of the reservation was “just, fair, reasonable and sufficient” and that “[a]ll residents of the Lummi reservation should bear the increased rates.” First Supplemental Order at 7.

8. To the extent the current proceedings address the utilities’ recovery, through rates, of tribal utility taxes from non-tribal members living on fee-owned land within the Lummi and Swinomish reservations, the Commission held in US West that it has jurisdiction to determine whether such rates are “fair, just, reasonable and sufficient.” First Supplemental Order at 4.

9. Puget was a party to the US West proceeding and did not challenge the Commission’s jurisdiction in that proceeding, nor does Puget contest the Commission’s jurisdiction in this proceeding. Because the holding of US West has not been modified or overturned, Puget’s tariff has been, and continues to be, consistent with the Commission’s holding in US West and the Commission’s exercise of jurisdiction therein.

10. While Puget does not challenge the Commission’s jurisdiction to hear these

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complaints, Puget reserves the right to comment on any legal challenge to the Commission's jurisdiction raised by any other party to this proceeding.

DATED: October 19, 2001.

PERKINS COIE LLP

By _____
Steven C. Marshall
William R. Maurer
Attorneys for Puget Sound Energy, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by first class mailing with postage prepaid to:

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Dated at _____, Washington, this _____ day of _____, 2001.

Pam Iverson

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