

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In The Matter Of The Joint Application Of  
Puget Sound Energy, Ontario Teachers'  
Pension Plan Board, and Macquarie  
Washington Clean Energy Investment,  
L.P., For An Order Authorizing Proposed  
Sales Of Indirect Interests In Puget Sound  
Energy

DOCKET U-210542

COMMENTS OF THE ENERGY  
PROJECT

**REDACTED VERSION**

**I. INTRODUCTION**

1 Pursuant to the Notice of Opportunity To File Written Comments in this docket, issued  
December 3, 2021, The Energy Project (TEP) files these comments regarding the proposed  
transaction to transfer certain ownership interests in Puget Sound Energy (PSE).

2 On January 7, 2022, PSE and the Joint Applicants (hereafter "PSE") filed a set of  
Revised Commitments in support of their application. With the exception of Commitment 43,  
the Revised Commitments represent terms that have been agreed to by the parties, including  
terms that benefit the public interest and low-income customers in particular. The Energy  
Project supports the agreed Revised Commitments and recommends their approval.

3 Commitment 43 remains an unresolved issue and is the focus of these comments. The  
dispute is simply stated. PSE is now seeking to unilaterally rescind \$100,000 of its ongoing  
\$400,000 shareholder contribution commitment to low-income weatherization, in violation of the  
Commission's prior order in Docket UE-180680 adopting that commitment.

4 Commitment 43, addressing continued support of shareholder and ratepayer funding for  
low-income weatherization, was adopted by the Commission in the Macquarie Transfer Docket

UE-180680 in 2019.<sup>1</sup> Section (a) of the commitment, provides for “continued annual contributions of \$400,000 from shareholder funds for the Low-Income Weatherization Program.” This shareholder contribution began as a \$300,000 commitment in the 2001 PSE GRC, was increased to \$400,000 in 2014, and was reaffirmed and made permanent in the Macquarie Transfer Docket settlement.

5           In its initial filing in this docket, PSE indicated that “no change” was proposed to this commitment.<sup>2</sup> Later in the proceeding, PSE has now stated to the parties that it intends to terminate \$100,000 of this shareholder contribution in 2022, reducing the ongoing contribution to \$300,000. PSE relies on its own strained reading of the terms of the Commitment for this position but has provided no other support from the record for this position.

6           The record of the Macquarie Transfer Docket and the prior history of the shareholder commitment provide no evidentiary support for PSE’s argument. On the contrary, as discussed in more detail in these comments, the record fully supports TEP’s understanding that Commitment 43 represents an ongoing commitment of shareholder funds of \$400,000 per year, with no 2022 sunset provision for any portion of the commitment. PSE’s proposal is not in the public interest and will cause the transaction to result in harm to low-income and residential customers by reducing the current level of shareholder support for the low-income

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<sup>1</sup> *In the Matter of the Joint Application of Puget Sound Energy, Alberta Investment Management Corporation, British Columbia Investment Management Corporation, Omers Administration Corporation, and PGGM Vermogensbeheer B.V.*, Docket U-180680, Final Order 06 Corrected, ¶¶ 67-68, March 11, 2019 (Attachment A, Multiparty Settlement Stipulation and Agreement, p. 13)(hereafter *Macquarie Transfer Docket U-180680*).

<sup>2</sup> Third Exhibit To (Non-Confidential) To the Prefiled Direct Testimony (Non-Confidential) of Adrian J. Rodriguez, Exh. AJR-4, at 28.

weatherization program.<sup>3</sup> This would represent a unilateral violation of the Commission's Order and the underlying settlement agreement.

7 This is a significant transaction in financial terms. **[BEGIN CONFIDENTIAL]** [REDACTED]  
[REDACTED] **[END]**

**[CONFIDENTIAL]** Seen in that context, the \$100,000 shareholder contribution at issue here is beyond *de minimis* from the Joint Applicants' perspective. On the other hand, from the weatherization program perspective, it represents a significant contribution to funding. It is disappointing that PSE and its owners have elected to take this position, especially given the equity and clean-energy goals under CETA which PSE will be pursuing.

## II. COMMENTS REGARDING COMMITMENT 43

### A. Existing Commitment 43

8 Existing Commitment 43 was adopted by the Commission in its Order 06 approving the transfer of the Macquarie ownership interest in 2019. The Commitment provides:

PSE agrees to continue to fund low-income weatherization programs that the low-income agencies inform PSE they can feasibly achieve with an annual base funding level of no less than \$4.43 million for low-income weatherization programs through December 31, 2022, which amount includes the following:

- (a) continued annual contributions of \$400,000 from shareholder funds for the Low-Income Weatherization Program; and
- (b) continued annual contributions of \$500,000 to the Low-Income Weatherization Program for so long as decoupling adopted in Dockets UE-121697 and UG-121705 continues.

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<sup>3</sup> A reduction in shareholder support would have to be replaced by an increase in ratepayer support in order to maintain a given level of weatherization funding.

<sup>4</sup> **[BEGIN CONFIDENTIAL]** [REDACTED]  
[REDACTED] **[END CONFIDENTIAL]**

9           This Commitment has two basic components. The first paragraph commits to maintain an “annual base funding level of no less than \$4.43 million for low-income weatherization programs through December 31, 2022.” The second component, in sections (a) and (b), confirms and continues the existing annual shareholder commitments for \$400,000 and ratepayer commitments for \$500,000 respectively. In summary, this is a commitment to maintain a floor level of funding for the low-income weatherization program through December 31, 2022, while also reflecting, as part of the settlement, that the existing shareholder commitments would be “continued” on an ongoing basis.

**B. PSE’s Proposal**

10           In its initial filing, PSE recommended “no change” in this Commitment. However, during the later course of the proceeding, when parties requested confirmation of Commitment 43, PSE advised TEP and the other parties that it intends to reduce the \$400,000 annual shareholder contribution to \$300,000 after December 31, 2022, based on its own reading of the commitment. Under this interpretation, PSE is now arguing that the December 31, 2022 deadline for maintaining a floor funding level of \$4.43 million also applies to \$100,000 of the \$400,000 annual shareholder commitment, allowing it to terminate the \$100,000 annual payment.

11           The Energy Project strongly disagrees with this reading of the Commitment for the reasons set forth below in these comments.

## C. The History of the \$400,000 Shareholder Funding Commitments

### 1. The Origination of the Shareholder Commitments

12 It is not disputed that \$300,000 of the \$400,000 shareholder commitment in Commitment  
43(a) originated in a PSE commitment in the 2001 GRC settlement.<sup>5</sup> This is a permanent  
ongoing shareholder commitment and PSE does not assert that it is subject to a 2022 sunset date.  
There is no issue regarding these funds.

13 There is no dispute that the \$100,000 annual shareholder commitment at issue here  
originated in 2013. As part of TEP agreeing to join the settlement of the “K-Factor/ERF/Rate  
Plan” dockets, UE-121697 et al., PSE shareholders committed to contribute an added \$100,000  
per year for low-income weatherization in order to offset the impact of the rate plan increases.  
The settlement agreement provided that this additional annual contribution would terminate in  
2016, the year the rate plan ended.<sup>6</sup>

14 Although the Commission ultimately rejected the settlement for other primarily  
procedural reasons.<sup>7</sup> PSE continued to generally abide by the settlement terms and to make the

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<sup>5</sup> *Washington Utilities & Transportation Commission v. PSE*, Docket UE-011570/UG-011517, Twelfth Supplemental Order, Appendix A, Settlement Stipulation (2001 PSE GRC Settlement).

<sup>6</sup> Dockets UE-121373, UE-121697/UG-121705, UE-130135/UG-130138, The Energy Project Joinder in the Multiparty Settlement Re Coal Transition PPA and other Pending Dockets, ¶ 3; *Id.*, Initial Brief of PSE, ¶ 83 (May 30, 2013).

<sup>7</sup> *In the Matter of the Petition of Puget Sound Energy, Inc. and Northwest Energy Coalition*, Dockets UE-121697, et al. Order 07, ¶¶ 178-182. The Commission noted that absent the settlement it could not require PSE shareholders to make the \$100,000 payments, but spoke approvingly of such payments as beneficial both to low-income customers and the states’ energy efficiency goals. *Id.*, n.245. PSE may argue that there is some significance to the Commission’s rejection of the initial settlement and to PSE’s initially making the payments as a voluntary good will gesture. While TEP (and presumably other parties) appreciate PSE voluntarily standing by the settlement, this procedural history is no longer relevant for purposes of the issue in dispute. PSE subsequently reaffirmed and extended the \$100,000 commitment in two separate settlement agreements, both adopted by Commission final orders, as described below. The payments promised under those settlements and orders are no longer voluntary good will gestures but are binding obligations of PSE and its owners.

\$100,000 payments, along with the annual \$300,000 payments previously agreed. These facts are not in dispute.

15 At the conclusion of the K-Factor/ERF Rate Plan, in PSE’s 2017 General Rate Case, the Company signed a Multiparty Settlement Stipulation further extending the \$100,000 shareholder commitment.<sup>8</sup> The stipulation provided that shareholders would continue the \$100,000 annual shareholder contribution to low-income weatherization until the “next general rate case.” These facts are not in dispute.

**2. Adoption Of A Permanent Commitment - Sale of the Macquarie Ownership Interest in Docket UE-180680**

16 Prior to filing its next general rate case, however, PSE filed for approval of a transaction to transfer the ownership interests of Macquarie to new owners in Docket UE-180680. The Commission determined that the transaction represented a sale of a non-controlling interest, and was therefore to be reviewed under the “no harm” standard.<sup>9</sup> After extensive negotiations with multiple stakeholders, PSE and its owners agreed to a new set of Commitments intended to meet that standard. Included with several other new low-income commitments was Commitment 43, which has been set forth above.

17 Commitment 43 contains two agreements. First, PSE agrees to maintain a minimum budget floor for low-income weatherization of \$4.43 million per year “through December 31, 2022.” Maintaining an agreed floor for this support was important to TEP in order to confirm that no “harm” would result from funding weatherization reductions as a result of the transaction.

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<sup>8</sup> *Washington Utilities & Transportation Commission v. PSE*, Dockets UE-170044/UG-170034, Order 08, Appendix B, Multiparty Settlement Stipulation and Agreement, ¶ 110 (2017 PSE GRC).

<sup>9</sup> *Macquarie Transfer, Docket U-180680*, Order 01, Order 08 ¶ 11.

Secondly, the Commitment acknowledged and committed to continue existing shareholder contributions, \$400,000 under section (a), and ratepayer contributions of \$500,000 under section (b).<sup>10</sup>

18 PSE's linkage of the 2022 date to the shareholder contributions is strained at best. If PSE were correct that the 2022 date must be read as a sunset for shareholder or other weatherization contributions, then logically that should apply to all of the contributions mentioned in sections (a) and (b). Instead, PSE, in fact agrees that the 2022 date does not apply to most of the contributions referenced in sections (a) and (b), but only to a portion of the funds. The language of the Commitment does not say this. This interpretation defies logic and PSE has provided no record support that the PSE or any of the parties understood the provision in this way at the time. Moreover, there seems a tenuous connection between maintaining a \$4.43 million funding floor, and a \$100,000 commitment that is less than ten percent of that amount. It is hard to discern any logical or common-sense relationship nexus between the two.

19 Using a textual analysis, the 2022 date is included in the first paragraph of the Commitment which addresses the funding floor, not in separate sections (a) or (b) addressing existing contributions. The date is stated in the introductory clause as part of the floor commitment language, prior to any punctuation, in plain English tying the date to the floor commitment. The transitional phrase "which amount includes the following" does not aid PSE. The plain meaning is that the "amount", referring to the \$4.43 million, includes the \$900,000 in commitments referenced in (a) and (b), simply a clarification that these contributions count

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<sup>10</sup> The continuation of the \$500,000 ratepayer funding support while decoupling is in effect is not in dispute.

toward meeting the floor commitment. In other words, PSE would be not required to fund weatherization with an additional \$4.43 million over and above the existing contributions. This is a logical reading of the provision.

20 While PSE has pointed to nothing in the record beyond the Commitment language to support its position, TEP’s current position is consistent with record in the docket at the time, including the understanding reflected in the testimony of TEP Director Shawn in support of the settlement. His testimony separately describes, point by point, each of the “important components” of the low-income commitments. With respect to Commitment 43, he stated that the commitment would:

- “Continue to fund feasible low-income weatherization programs proposed by agencies, and to maintain a base-level of funding of no less than \$4.43 million through 2022.
- Continue existing annual shareholder contributions to weatherization of \$400,000, with an additional one-time shareholder contribution of \$2 million disbursed over a five-year period.<sup>11</sup>
- Continue the annual weatherization funding supplement of \$500,000 established in the initial decoupling order for as long as decoupling continues.”<sup>12</sup>

The \$4.43 million funding floor until 2022 is treated as an independent provision, separate from the continuation of existing shareholder or ratepayer contributions. Nowhere in Mr. Collins’ testimony is there any reference to a 2022 sunset date on the shareholder contributions.

21 The Commission own description of the settlement in Order 06 adopting the

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<sup>11</sup> The one-time contribution refers to Commitment 46. That Commitment was reaffirmed and enhanced in this docket, and is not in dispute.

<sup>12</sup> *Macquarie Transfer Docket U-180680*, Testimony of Shawn M. Collins in Support of Settlement Stipulation, Exh. SMC-1T, at 3:18-4:6.

Commitments is consistent with this reading and endorses Mr. Collins' testimony. The Order stated:

Mr. Collins continues: "As a package, these commitments provide assurances that PSE's existing programs will continue to be supported by [PSE] and its new owners." We agree. These additional commitments protect against harm that might result from the proposed transaction by ensuring that support for PSE's low-income programs prior to the proposed transactions is preserved.<sup>13</sup>

22 Staff's testimony at the time is also consistent with this reading. Staff witness Melissa

Cheesman also described Commitment 43 as follows:

Community and Low-Income Commitments 43, 44, 45, and 46 strengthen PSE's support of its low-income weatherization program. Commitment 43 provides for an annual base funding level of \$4.43 million through December 31, 2022 for low-income weatherization programs.<sup>14</sup>

23 Staff's testimony likewise does not contain any reference to the 2022 sunset of any part of the shareholder contributions. Testifying for the NW Energy Coalition (NVEC), witness

Wendy Gerlitz supported the settlement in part because:

PSE and Puget Holdings commitments to low-income customers include: (a) Continuing current levels of low-income weatherization funding, plus an additional commitment of \$2 million over 5 years.

Ms. Gerlitz does not reference any sunset dates on the weatherization funding.

24 PSE witness Jon Piliaris and others filed joint testimony in support of the Macquarie settlement. This joint testimony discusses the low-income commitments in general terms, referencing "new and expanded commitments" including "expanded funding for low-income weatherization

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<sup>13</sup> *Macquarie Transfer Docket U-180680*, Order 06 (Corrected), ¶ 68.

<sup>14</sup> *Id.*, Testimony of Melissa Cheesman, Exh. MCC-1T, at 15:5-8.

programs.” The joint testimony stated that “the Community and Low-Income commitments demonstrate that Puget Holdings and PSE are firmly committed to maintaining the level of corporate contributions and community support and that such programs will not be negatively impacted by the Proposed Transactions.”<sup>15</sup> Nowhere in this joint testimony do PSE or its owners state that any portion of the shareholder contributions would end in 2022, or otherwise make a record of the interpretation of Commitment 43 now asserted in this docket. Neither Mr. Piliaris or any other PSE witness took issue with or sought to correct the characterizations of the settlement in Mr. Collins’ or any other parties’ testimony.<sup>16</sup>

25 Further support for TEP’s position is found in the Joint Applicants’ Motion to Correct Order 06 in the Macquarie docket,<sup>17</sup> filed the day after Order 06 was issued. Joint Applicants, argued that the Order had not correctly described Commitment 43. Order 06 had omitted reference to the low-income weatherization funding level floor in place until 2022 and had erroneously described some ratepayer funding as coming from shareholders. The Commission corrected these points in Order 06, adopting PSE’s requested language as follows:

Commitment 43 requires PSE to continue funding low-income weatherization programs at an annual level of no less than \$4.43 million through December 31, 2022, including an annual \$500,000 from Schedule 120 shareholder funds for as long as PSE’s decoupling tariff remains in place, and continued annual contributions of \$400,000 from shareholders....<sup>18</sup>

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<sup>15</sup> *Id.*, Joint Testimony (Nonconfidential) Of Jon A. Piliaris, Ahmed Mubashir, Martijn J. Verwoest, Lincoln Webb, And Steven Zucchet, at 9:13-16.

<sup>16</sup> The transcript of the settlement hearing conducted on February 15, 2019, does not contain any specific discussion of Commitment 43.

<sup>17</sup> *Macquarie Transfer Docket U-180680*, Joint Applicants’ Motion to Correct Order 06, ¶¶ 2-5, March 8, 2019.

<sup>18</sup> *Id.*, Notice Of Correction Of Final Order, March 11, 2019 (underlining and strikeout in original).

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Thus, PSE’s and Joint Applicants’ own corrected description makes a clear distinction between the minimum funding commitment in place until 2022, the ongoing \$500,000 ratepayer funding commitment tied to decoupling, and the “continued annual contribution of \$400,000 from shareholders.” Nowhere in the Motion is there any reference to any termination date for any portion of the \$400,000 commitment.

Three months after Order 06 in the Macquarie Transfer Docket, PSE filed its 2019 General Rate Case.<sup>19</sup> Because the shareholder funding commitment had by this point been addressed in the Macquarie docket, the commitment was not raised or addressed in the 2019 GRC.

**D. The Transaction Does Not Meet The “No Harm Standard” If It Incorporates PSE’s Modification of Commitment 43.**

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The parties do not dispute that this transaction is to be reviewed under the “no harm” test, which is a formulation of the basic “public interest” standard that applies when no controlling interest in the Company is being transferred. The Commission has previously identified factors that weigh in favor of the public interest, including public service obligations related to customer service, safety, reliability, resource adequacy including energy efficiency and conservation, support for low-income customers and environmental stewardship.<sup>20</sup>

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PSE’s and Joint Applicant’s intention to reduce by \$100,000 per year its ongoing shareholder contribution to low-income weatherization is contrary to the terms of Commitment 43, to the Commission’s Order 06, and to the Multiparty Settlement Stipulation in Docket UE-

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<sup>19</sup> *Washington Utilities & Transportation Commission v. PSE*, Dockets UE-190529/UT-190530 et al.  
<sup>20</sup> Docket U-072375, Order 08, at ¶ 115.

180680. This clearly results in harm to ratepayers, low-income customers and the public interest and cannot, therefore, be approved under the “no harm” standard.

29 This is not a case where parties are asking the Commission, without more, to order shareholder contributions, which is not generally permissible. This case presents a different question. It is about enforcement of existing binding shareholder commitments which have become binding Commission orders, and proper application of the “no harm” standard.

### **III. THE ENERGY PROJECT SUPPORT FOR AGREED CHANGES TO LOW-INCOME COMMITMENTS**

30 With the exception of Commitment 43, TEP supports the Revised Commitments filed by PSE as a reasonable resolution of the parties’ respective interests. The Energy Project in particular notes certain commitments that are of value to low-income customers. Revised Commitment 39 appropriately extends the existing level of corporate contributions and community support through 2025. Revised Commitment 41 commits to work with low-income advisory groups, as well as agencies, to address low-income issues. Revised Commitment 42 appropriately updates the reference to the HELP Annual Report. Revised Commitment 46 reflects a one-time shareholder contribution that can be used either for low-income weatherization or for renewable energy projects that benefit low-income customers. Revised Commitment 48 provides that consultation with the low-income advisory committee will continue regarding the deployment and operation of Get-to-Zero and similar programs.

31 The listed Revised Commitments affecting low-income customers are in the public interest. In addition, TEP has no objection to the other Revised Commitments filed by PSE

today. Unfortunately, however, the transaction as a whole does not meet the “no harm” test if PSE’s proposal under Commitment 43 to sunset a portion of its shareholder contribution in 2022 is approved.

#### IV. THE ENERGY PROJECT RECOMMENDATION AND CONCLUSION

32 For the foregoing reasons, TEP respectfully recommends that the Commission enforce the provisions of Order 06 in U-180680, Commitment 43, and specifically condition approval of the Joint Application on Joint Applicant’s agreement to adhere to its commitment to continue \$400,000 in annual shareholder contributions with no 2022 sunset date.

33 If this condition is adopted, TEP agrees that the transaction, with the set of Revised Commitment filed January 7, 2022, is in the public interest,

34 Dated this 7<sup>th</sup> day of January, 2022.

*/s/ Simon J. ffitch, WSBA No. 25977*  
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