

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	DOCKET UE-121594
)	
PUGET SOUND ENERGY, INC.)	ORDER 02
)	
For a Determination of Emissions)	ORDER APPROVING AND
Compliance)	ADOPTING STIPULATION, AND
)	GRANTING PETITION FOR
)	EMISSIONS PERFORMANCE
)	DETERMINATION
.....)	

Synopsis: The Commission approves and adopts a stipulation supported by all parties to this proceeding. By this Order, the Commission determines that the Tenaska Ferndale Cogeneration Station, which PSE is under contract to purchase, subject to certain conditions precedent, complies with the greenhouse gas emissions performance standards currently effective in Washington State under Chapter 80.80 RCW, Greenhouse Gas Emissions.

SUMMARY

1 **PROCEEDING:** On October 3, 2012, Puget Sound Energy, Inc. (PSE) filed with the Washington Utilities and Transportation Commission (Commission) a petition for an Emissions Performance Determination (Petition). PSE requests an order determining that the Tenaska Ferndale Cogeneration Station (Ferndale Generation Station), which it intends to acquire, complies with the greenhouse gas emissions performance standards in Chapter 80.80 RCW, Greenhouse Gas Emissions.¹ PSE requests expedited process, asking that the Commission endeavor to enter an order by November 2, 2012, to meet the business needs of the Company and its counterparty, Tenaska Washington Partners LP, from whom it intends to acquire the Ferndale Generation Station.

¹ Consistent with the requirements of RCW 80.80.060(5), PSE states in its Petition that the Company is not requesting that the Commission address: (1) the prudence of PSE’s acquisition of the Ferndale Generation Station; or, (2) the final rate treatment for recovery of PSE’s revenue requirement related to the deferral of fixed costs, total net variable costs and carrying charges for the Ferndale Generation Station. PSE will present its case on these issues in its next rate proceeding.

2 The Commission gave notice on October 4, 2012, of hearing proceedings and conducted a preliminary hearing on October 12, 2012.² Staff subsequently, on October 26, 2012 filed a report in this docket explaining its analysis of the issues and concluding that the Commission should grant the relief sought in the Petition, subject to three conditions. On October 30, 2012, all parties filed a joint Stipulation that expresses their view that the Commission's file in this docket, including the Petition, Staff's report and the parties' Stipulation, provides a sufficient basis for the Commission to make a decision regarding the relief sought in the Petition.

3 **PARTY REPRESENTATIVES:** Jason Kuzma, Perkins Coie, Bellevue, Washington, represents PSE.³ Donald T. Trotter, Senior Assistant Attorney General, Olympia, Washington, represents Commission regulatory staff (Commission Staff or Staff).⁴ Danielle Dixon, Senior Policy Associate and Nancy Hirsh, Policy Director, Northwest Energy Coalition (NVEC), represent their organization. Thomas R. Wood, Stoel Rives LLP, Portland, Oregon, represents Tenaska Washington Partners L.P. (TWP). Public Counsel filed a letter stating its election not to participate in this proceeding.

4 **COMMISSION DETERMINATIONS:** The Commission determines based on the record developed in this proceeding that the Ferndale Generation Station complies with the currently effective greenhouse gas emissions standard of 1,100 pounds of CO₂ per MWh of production as provided under RCW 80.80.040(1). The Commission

² The Commission's notice contemplated preliminarily the use of a Brief Adjudicative Proceeding (BAP) process. Staff filed a motion to dismiss, arguing that RCW 34.05.482(1)(c) limits the use of the BAP process to matters specifically identified in WAC 480-07-610, thus prohibiting its employment in this docket. Acknowledging Staff's motion, the presiding officer, without objection, exercised the Commission's discretion to convert the proceeding as authorized under RCW 34.05.070 and WAC 480-07-940.

³ Sheree Strom Carson and Donna Barnett, Perkins Coie, Bellevue, Washington also appear on the pleadings for PSE.

⁴ In formal proceedings, such as this, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an "*ex parte* wall" separating the Commissioners, the presiding ALJ, and the Commissioners' policy and accounting advisors from all parties, including Staff. RCW 34.05.455.

also determines that it should approve and adopt the parties' Stipulation, the essential terms of which are set forth in the body of this Order.

MEMORANDUM

I. Background and Procedural History

5 PSE and TWP entered into an agreement on October 3, 2012, providing that PSE will acquire the Ferndale Generation Station upon the satisfaction of certain conditions precedent, including the condition that the Commission enters an order determining that the facility complies with the greenhouse gas emissions performance standards in Chapter 80.80 RCW.

6 The Ferndale Generation Station is an operating 270 megawatt (MW) natural gas thermal electric generation facility from which PSE has purchased power for many years. It is a dual-fueled,⁵ combined-cycle⁶ cogeneration facility located on an approximately 16-acre site,⁷ wholly within the boundaries of the approximately 850-acre Phillips 66 Refinery site near Ferndale, Washington. The Ferndale Cogeneration Station interconnects to Cascade Natural Gas Corporation's distribution system via a 6-mile pipeline just east of the Phillips 66 Refinery, and interconnects to PSE's 115 kilovolt transmission system through the Lake Terrell Substation.

7 The Ferndale Generation Station has been providing electricity to PSE since 1994. PSE and TWP entered into a long-term power purchase agreement (PPA) for 245 MW of firm electricity from the Ferndale Cogeneration Station beginning April 8, 1994. Effective June 1, 2001, TWP entered into an excess power agreement with PSE to share in the margins generated by PSE when the Ferndale Cogeneration Station generated energy in excess of the contracted capacity of 245 MW. At the same time, the Ferndale Cogeneration Station was enhanced with a gas turbine inlet

⁵ The primary fuel for the Ferndale Generation Station is natural gas and the backup fuel is No. 2 fuel oil.

⁶ The Ferndale Generation Station is a conventional combined cycle power plant with two combustion turbine generators and one steam turbine generator.

⁷ The total leased area for the site is approximately 16 acres. The Ferndale Cogeneration Station uses roughly 14 acres. A PSE substation and transmission line easement occupy the remaining two acres.

cooling system to increase summer capacity. The PPA terminated upon expiration of its term on December 31, 2011.

8 The Ferndale Generation Station was designed and intended to operate as a baseload power plant, capable of achieving an annual capacity factor greater than 60 percent.⁸ The Ferndale Generation Station is a firm resource, and is fully dispatchable, subject only to availability and ambient site conditions.⁹ From the time the plant commenced commercial operation under the PPA, the net availability factor¹⁰ over its term averaged approximately 99 percent.

9 The Ferndale Generation Station currently operates under authority of Air Operating Permit No. 006R2, issued by the Northwest Clean Air Agency on August 1, 2012. Carbon dioxide factors for the Ferndale Generation Station are 116.9 lbs./MMBtu for natural gas and 163.1 lbs./MMBtu for fuel oil. The Ferndale Generation Station's emissions over the past five years were as follows:

Year	2008	2009	2010	2011	2012 (YTD)
Pounds of GHG per MWh	999.83	1,005.87	1,016.51	1,012.61	1,083.44

10 In addition to the facts recited above, which are stated in PSE's Petition and uncontested, the Petition describes the engineering attributes of the facility, includes a copy of the Company's most recent integrated resource plan (IRP) and provides details concerning the operation of, and emissions from, the Ferndale Cogeneration Station for the period from the year 2000 until the present time.

11 Staff, before and during the hearing proceedings conducted on October 12, 2012, identified additional information it needed to fully evaluate PSE's Petition. Staff also

⁸ See *WUTC v. PSE*, Docket No. UE-090704, Order 11 at ¶ 359 (holding that "the design of a plant is the primary consideration, unless operations are specifically constrained by other factors, such as air permits"). Ferndale is not constrained by other factors.

⁹ See Petition, Exhibit C, Air Operating Permit – Final, for information regarding requirements surrounding ambient air quality.

¹⁰ Actual output plus available capacity expressed as a percentage of contract capacity for the period excluding scheduled outage.

consulted with the Department of Ecology, as required by RCW 80.80.060(7) and WAC 173-407-310 concerning whether the Ferndale Cogeneration Station meets the state's emissions standards.¹¹

- 12 The presiding officer, at the parties' suggestion, recessed the hearing to give the parties an opportunity to conduct a technical conference. Following the technical conference, the parties informed the presiding officer that they had agreed to a process by which PSE would provide additional information identified by Staff, in consultation with the Department of Ecology consulting engineer, as being necessary to a full evaluation of PSE's Petition.
- 13 On October 26, 2012, Commission Staff filed a six-page document entitled "Utilities and Transportation Commission Staff Report on Greenhouse Gas Emissions Performance Standard in the Context of PSE's Acquisition of the Ferndale Generation Station." The report summarizes Commission Staff's analysis of the greenhouse gas (GHG) emissions performance standard found in RCW 80.80.040 as it relates to PSE's acquisition of the Ferndale Generation Station. Staff concludes the Commission should grant PSE's Petition subject to three conditions:
1. Within 90 days after the date PSE acquires ownership of the Ferndale Generation Station, PSE shall install continuous parametric monitoring equipment in compliance with 40 C.F.R. Part 75, Appendix G at the Ferndale Generation Station to assure future compliance with the applicable GHG performance standard.
 2. PSE shall operate the Ferndale Generation Station so that it does not exceed the applicable GHG emissions performance standard.
 3. PSE must report measured GHG emissions at least annually to the local air authority and Department of Ecology Air Quality Program.

Briefly, the reason Staff proposes these conditions is that the question of whether the Ferndale Generation Station meets the GHG emissions performance standard depends on how it is operated.

¹¹ Mr. Alan R. Newman, Senior Air Quality Engineer, Washington State Department of Ecology, participated with the parties in a technical conference, described below, bringing his expertise to bear on this matter.

14 The more detailed bases for these proposed conditions are explained in the body of Staff's report. As set forth in Staff's Report:

Under its air quality permit, the Ferndale Generation Station is not required to meet the current GHG emissions limits. The plant is a dual fuel plant, able to use both natural gas and fuel oil in the combustion turbine. If the plant were run extensively with fuel oil, it would exceed the GHG emissions performance standard. We recognize it is not currently economic to run the plant with extensive use of fuel oil, but the economics can change, as can the plant's ability to access natural gas (e.g., pipeline disruption).

PSE has submitted an Excel spreadsheet (in PSE Petition Exhibit B) containing emission calculations, electrical generation, and steam output information for the facility for the years 2000 through 2012. The information contained in these calculations indicate that if operated as it has during this time period, the plant has the capability to operate and meet the GHG emission standard, whether it was a QF or not. (The Ferndale Generation Station was grandfathered into compliance with the GHG emission standard and has not been required to meet the current GHG emission limits).

To further analyze this issue (and other issues), Commission Staff consulted with Mr. Alan Newman of the Department of Ecology's Air Quality Program. Mr. Newman agrees with PSE that based on historical operation, the Ferndale Generation Station has demonstrated it can meet the GHG emission standard.

However, using the information in the 1991 air quality permit application for the plant, the plant's current air quality permit, as well as the plant's operating capabilities and history, Mr. Newman concluded that the plant can be operated in a manner that would exceed the 1,100 lb./MWh standard.

On the other hand, the design and historical operation of the Ferndale Generation Station indicate that PSE can operate the plant in a manner that would comply with that GHG performance standard. Historically, the plant has emitted less than 1,100 pounds of GHG emissions per megawatt hour on an annual basis. Moreover, the values shown in the PSE Petition Exhibit B demonstrate that this facility can meet the current GHG standard. These results indicate that if the facility is

operated in a manner similar to how it has operated since 2000, that the facility can meet the GHG emissions performance standard.

Mr. Newman confirmed the results of PSE's calculations through his own independent calculations. He concludes that the values shown in the PSE Petition Exhibit B were based on acceptable emission calculation methods for greenhouse gas emissions.

PSE has committed to installing continuous parametric monitoring equipment in compliance with 40 C.F.R., Part 75, Appendix G. This equipment will allow the Company to demonstrate going forward with standard methods that it will not exceed the current annual GHG emissions performance standard.

II. Stipulation

15 On October 30, 2012, the parties filed their Stipulation. They agree to the following:

1. PSE is subject to the current greenhouse gas (GHG) emissions standards of one thousand one hundred pounds of greenhouse gases per megawatt-hour in RCW 80.80.040(1) with respect to its acquisition of the Ferndale Generation Station because PSE is an electrical company per RCW 80.04.010; PSE's acquisition of the Ferndale Generation Station is a new ownership interest and thus is a "long-term financial commitment" per RCW 80.80.010(16); and the Ferndale Generation Station is "baseload electric generation" per RCW 80.80.010(4) because it is designed and intended to provide electricity at an annualized capacity factor of at least 60 percent.
2. The Ferndale Generating Station is a dual fuel plant, able to use either natural gas or fuel oil. Under normal operations, the plant can meet with the current GHG emissions performance standard in RCW 80.80.040(1) – One thousand one hundred pounds of greenhouse gases per megawatt hour, with compliance demonstrated based on the annual average GHG emission rate as measured using 40 CFR Part 75 emissions data as required under WAC 173-407-230.
3. It is possible (though currently uneconomic) for PSE to operate the plant in a manner that would cause the plant to exceed that GHG emissions performance standard. Therefore, the Parties agree the Commission should grant the relief sought in the Petition subject to the following three conditions:

- a. Within 90 days after the date PSE acquires ownership of the Ferndale Generation Station, PSE shall install continuous parametric monitoring equipment in compliance with 40 C.F.R. Part 75, Appendix G at the Ferndale Generation Station to assure future compliance with the applicable GHG performance standard.
 - b. PSE shall operate the Ferndale Generation Station in a manner consistent with the applicable GHG emissions performance standard of one thousand one hundred pounds of greenhouse gases per megawatt hour, unless otherwise authorized by existing statute (e.g., RCW 80.80.060(4)) or rule. The Parties acknowledge that, pursuant to RCW 80.80.040(13), the Department of Ecology is the primary agency responsible for the implementation and enforcement of the GHG emissions performance standard.
 - c. PSE must report measured GHG emissions at least annually to the local air authority and Department of Ecology Air Quality Program.
4. The Commission's determination of the plant's compliance with the GHG emissions performance standard is specific to PSE's purchase of the plant in 2012, and it does not constitute a ruling on the Ferndale Generation Station's compliance with the GHG emissions performance standard applicable to any future period nor any future long-term financial commitment.

III. Discussion and Decisions

16 RCW 80.80.060(1) provides that after June 30, 2008: "No electrical company may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse gases emissions performance standard." As it applies in this case, the GHG performance standard is "one thousand one hundred pounds of greenhouse gases per megawatt-hour."¹²

17 PSE is an "electrical company" for purposes of RCW 80.80.060(1) because that term means "a company owned by investors that meets the definition of RCW 80.04.010," which in turn defines electric companies subject to Commission regulation.

¹² RCW 80.80.040(1)(a).

- 18 “Baseload electric generation” is defined as a power plant “designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent.”¹³ The initial air quality permitting documents for this facility requested approval to operate continuously as a cogeneration plant producing electricity and steam with a capacity factor well over 60 percent. The Ferndale Generation Station is “baseload electric generation” within the meaning of the statute as it has been interpreted and applied in the Washington Administrative Code (WAC) and in various adjudicative proceedings.¹⁴
- 19 PSE’s acquisition of the plant will be a “long-term financial commitment” because that term includes a “new ownership interest.”¹⁵ PSE will have a new ownership interest in the Ferndale Generation Station as shown in the Final Asset Acquisition Agreement PSE filed in this docket on October 16, 2012.¹⁶ The transaction will be completed this year.
- 20 Given these facts, it is clear that PSE’s proposed acquisition of the Ferndale Generation Station is subject to Chapter 80.80 RCW. As the parties point out in their Stipulation, under RCW 80.80.040(13) the Department of Ecology is the primary agency responsible for the implementation and enforcement of the GHG emissions performance standard in Washington. The statute also provides, however, that PSE must obtain from the Commission a determination of compliance with the standard because PSE is subject to the Commission’s jurisdiction.¹⁷ The evidence in this record, developed with the cooperation of the parties and with participation by the Department of Ecology support such a determination.
- 21 We determine further that the conditions the parties propose through their Stipulation are appropriate for adoption because they address the fact that the Ferndale Generation Station’s compliance with the currently effective greenhouse gas

¹³ RCW 80.80.010(4).

¹⁴ See WAC 480-100-405 and WAC 173-407-110; See also, e.g., *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-090704 and UG-090705 (consolidated), Order 11 ¶¶357-361 (April 2, 2010).

¹⁵ RCW 80.80.010(16)(a).

¹⁶ Exh. No. B-1.

¹⁷ RCW 80.80.060.

emissions standard depends on how the plant is operated. The conditions are designed to ensure that the plant is operated in such a way as to keep emissions below 1,100 pounds of CO₂ per MWh.

FINDINGS OF FACT

- 22 Having discussed above the evidence received in this proceeding concerning all material matters, the Commission now makes and enters the following summary of facts, incorporating by reference pertinent portions of the preceding detailed findings:
- 23 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including electrical companies.
- 24 (2) Puget Sound Energy, Inc., (PSE) is a “public service company” and an “electrical company,” as those terms are defined in RCW 80.04.010 and RCW 80.80.010(13), and as those terms otherwise are used in Title 80 RCW. PSE is engaged in Washington State in the business of supplying utility services and commodities to the public for compensation.
- 25 (3) On October 3, 2012, PSE entered into an agreement to acquire from Tenaska Washington Partners, L.P. ownership of the Ferndale Generation Station.
- 26 (4) The Ferndale Generation Station is a baseload electric generation facility.
- 27 (5) Emissions from the Ferndale Generation Station have not exceeded 1,000 pounds of CO₂ per MWh during the past five years and the plant can be operated in a fashion consistent with the conditions to which the parties stipulate so that this standard is not exceeded in the future.

CONCLUSIONS OF LAW

- 28 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

- 29 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 30 (2) PSE's agreement to acquire ownership of the Ferndale Generation Station from Tenaska Washington Partners, L.P. , is a "long term financial commitment" as that term is defined in RCW 80.80.010(16)(a) and otherwise used in Chapter 80.80 RCW.
- 31 (3) PSE cannot enter into this long-term financial commitment unless the baseload electric generation supplied complies with the greenhouse gases emissions performance standard of one thousand one hundred pounds of greenhouse gases per megawatt-hour applicable at this time under RCW 80.80.040(1)(a).
- 32 (4) The Ferndale Generation Station meets the Greenhouse Gas Emissions Performance Standard of 1,100 pounds of CO₂ per MWh under RCW 80.80.040(1)(a) and as otherwise applicable for purposes of Chapter 80.80 RCW.

ORDER

THE COMMISSION ORDERS THAT:

- 33 (1) The Ferndale Generation Station meets the Greenhouse Gas Emissions Performance Standard of 1,100 pounds of CO₂ per MWh under RCW 80.80.040(1)(a) and as otherwise applicable for purposes of Chapter 80.80 RCW.
- 34 (2) PSE is subject to the three conditions to which the parties stipulated, as follows:
- a. Within 90 days after the date PSE acquires ownership of the Ferndale Generation Station, PSE shall install continuous parametric monitoring equipment in compliance with 40 C.F.R. Part 75, Appendix G at the Ferndale Generation Station to assure future compliance with the applicable GHG performance standard.
 - b. PSE shall operate the Ferndale Generation Station in a manner consistent with the applicable GHG emissions performance

standard of one thousand one hundred pounds of greenhouse gases per megawatt hour, unless otherwise authorized by existing statute (e.g., RCW 80.80.060(4)) or rule. The Parties acknowledge that, pursuant to RCW 80.80.040(13), the Department of Ecology is the primary agency responsible for the implementation and enforcement of the GHG emissions performance standard.

- c. PSE must report measured GHG emissions at least annually to the local air authority and Department of Ecology Air Quality Program.
- 35 (3) The Commission's determination of the plant's compliance with the GHG emissions performance standard is specific to PSE's purchase of the plant in 2012, and it does not constitute a ruling on the Ferndale Generation Station's compliance with the GHG emissions performance standard applicable to any future period or any future long-term financial commitment.

DATED at Olympia, Washington, and effective November 2, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.