

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

PUGET SOUND ENERGY, INC.,

For Approval of a Power Purchase Agreement for Acquisition of Coal Transition Power, as Defined in RCW 80.80.010, and the Recovery of Related Acquisition Costs

DOCKET UE-121373

COMMISSION STAFF'S RESPONSE TO PUGET SOUND ENERGY'S MOTIONS TO EXPEDITE CONSIDERATION OF PETITION AND FOR AMENDED PROTECTIVE ORDER WITH HIGHLY CONFIDENTIAL PROVISIONS

**I. INTRODUCTION**

On August 20, 2012, Puget Sound Energy, Inc. (PSE or Company) filed, pursuant to RCW 80.04.570, a Petition for an Order from the Washington Utilities and Transportation Commission (Commission):

1. Approving a Coal Transition Power Purchase and Sale Agreement (Coal Transition PPA) between PSE and TransAlta Centralia Generation LLC (TransAlta Centralia);
2. Approving the equity component of the Coal Transition PPA;
3. Approving deferral of certain costs associated with the Coal Transition PPA, with interest, throughout the entire term of the Coal Transition PPA including later volume and pricing changes; and
4. Finding that the Coal Transition PPA is prudent, regardless of whether the term of the Coal Transition PPA terminates upon its expiration or is terminated prior to its expiration.

In conjunction with the Petition, PSE filed a Motion to Expedite Consideration of the Petition and a Motion for Amended Protective Order with Highly Confidential Provisions.

The Commission required responses to the motions in advance of a pre-hearing conference on September 7, 2012. For the reasons set forth below, Commission Staff has no objection to the Motion for Amended Protective Order with Highly Confidential Provisions. However, Commission Staff opposes the Motion to Expedite Consideration of the Petition.<sup>1</sup>

## **II. STAFF'S RESPONSE TO MOTION FOR AMENDED PROTECTIVE ORDER WITH HIGHLY CONFIDENTIAL PROVISIONS**

Staff has confirmed that the Amended Protective Order with Highly Confidential Provisions, as proposed by the Company, is identical to protective orders the Commission has issued previously in recent general rate cases of PSE where the acquisition of new generation resources was at issue. As is the case with those prior cases, the Company's proposal in the current case will grant internal Commission Staff the same access to highly confidential documents, under the same conditions, as Staff has for less sensitive confidential documents.<sup>2</sup>

Therefore, Staff does not object to issuance of the requested Amended Protective Order with Highly Confidential Provisions. Staff reserves the right to contest the Company's designation of any document as either highly confidential or confidential, on a case by case basis as the need arises.

## **III. STAFF'S RESPONSE TO MOTION TO EXPEDITE CONSIDERATION OF PETITION**

PSE asks the Commission to issue a final Order in this proceeding no later than December 15, 2012. This proposal drastically accelerates by one-third the 180-day time

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<sup>1</sup> Public Counsel has reviewed the Staff position on both motions and supports Staff for the reasons stated herein.

<sup>2</sup> Motion for Protective Order with Highly Confidential Provisions, at ¶ 26 and Protective Order With "Highly Confidential" Provisions, at ¶ 15.

frame allowed the Commission under RCW 80.04.570(3). The 180-day time frame allowed by law would not require a Commission final Order until February 16, 2013.

PSE justifies its request for expedited treatment based on the following reasons:

1. All of the evidence necessary for the Commission to make its decision regarding the Coal Transition PPA has been provided in the Company's pre-filed direct testimony and exhibits, so there is no need for delay;
2. PSE requires an expedited Order so it can have certainty in planning and meeting its capacity needs during the term of the Coal Transition PPA; and
3. TransAlta Centralia Generation LLC would like an expedited decision so that it can proceed with its plan to market the balance of power from its generation facility.<sup>3</sup>

None of these reasons justifies the more expedited treatment requested by PSE. The Commission should reject the Company's attempt to diminish the rights of other parties, especially given the complexity of the case and the novelty of the statutory framework under which the Company's petition must be analyzed.

First, Company documentation upon which PSE made its decision to enter the Coal Transition PPA assumed full use of the 180-day statutory time frame and admitted expressly that that time frame already constitutes an "expedited" proceeding.<sup>4</sup> Clearly, PSE expected the full 180-day case schedule when planning to meet its capacity needs during the term of the Coal Transition PPA. It should not be heard to argue that an even more accelerated time frame is necessary for any purpose including resource planning.

Second, when a petition for approval of any agreement for the purchase of coal transition power is filed with the Commission, the Commission is required to provide notice

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<sup>3</sup> Motion to Expedite Consideration of Petition, at ¶ 4.

<sup>4</sup> Exhibit RG-7HC, at 12. This document contains the presentation and minutes of the Company's Energy Management Committee (EMC) upon which the EMC approved and recommended to the Board of Directors that the Company enter the Coal Transition PPA. Exhibit RG-1HCT, at 22:10-13 (Garratt). This particular page has not been designated by PSE as highly confidential or confidential.

to all potentially affected parties and to set the matter for hearing under the Administrative Procedure Act, RCW 34.05.<sup>5</sup> Clearly, the statute requires a full airing of the issues raised by the petition, with the participation of all interested parties that wish to participate. It is insufficient, and, quite frankly, offensive to those parties and the Commission itself, for the Company to suggest that a final decision can be made solely on the basis of the Company's direct evidence with, apparently, little or no need for discovery or carefully considered responsive testimony from Commission Staff and other parties.

Third, the Coal Transition PPA is presented to the Commission for approval as a case of first impression under a new and untested statutory framework. That statutory framework requires the Commission to make specific determinations that:

1. The terms of the agreement provide adequate protection to ratepayers and to the company during the term of the agreement or in the event of early termination;
2. The resource is needed by the company to serve its ratepayers; and
3. The resource meets that need in a cost-effective manner under the lowest cost resource standards of RCW 19.280, including the cost of the agreement plus the equity component the company is allowed to earn on the agreement.<sup>6</sup>

The Commission also is required to consider the long-term economic risks and benefits to the Company and ratepayers of the Coal Transition PPA.<sup>7</sup> For purposes of determining the equity component that will be added to the Company's revenue requirement, the Commission must consider and determine the cost of an equivalent plant defined as a least cost purchased or self-built electric generation facility with equivalent capacity.<sup>8</sup>

Admittedly, some of these factors are part and parcel of any prudence review of a new generation acquisition. However, other factors are just as clearly novel and add

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<sup>5</sup> RCW 80.04.570(3).

<sup>6</sup> RCW 80.04.570(4).

<sup>7</sup> *Id.*

<sup>8</sup> RCW 80.04.570(6).

additional layers of complexity to the typical prudence review. Adding to the complexity of the case is the Company's request for approval of deferred costs, with interest, over the entire term of the Coal Transition PPA. It is neither reasonable nor wise for the Commission to expedite the case schedule on a faster track than the already expedited schedule allowed by statute. The planning interests of PSE and TransAlta should not take precedence over the need for a reasoned decision by the Commission that will affect all of the Company's ratepayers and the general public interest.<sup>9</sup>

Finally, the Company already is the beneficiary of the Power Cost Only Rate Case (PCORC) mechanism, which allows PSE to seek approval and recovery of new resource acquisitions on an accelerated basis. The PCORC mechanism has been in place since the Company's 2001 general rate case in Docket UE-110570. However, the mechanism came up for review as part of a 2007 general rate case. There, Commission Staff proposed that the Commission extend the expected procedural schedule of a PCORC from 5 to 6 months. The Company *agreed* with Staff's proposed modification,<sup>10</sup> which the Commission approved, stating:

We find that extending the contemplated period for completing a PCORC to six months strikes an appropriate balance by alleviating certain burdens the parties identified while maintaining the underlying goal of expedited power cost review.<sup>11</sup>

The complexity and novelty of the issues presented by the Company's Coal Transition PPA exceeds those presented by a PCORC request for expedited review of a new

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<sup>9</sup> The Company notes that TransAlta Centralia may terminate the Memorandum of Agreement executed on December 23, 2011, by TransAlta Centralia and Governor Christine Gregoire on behalf of the State of Washington, if TransAlta Centralia has failed to negotiate and execute one or more power purchase agreements by December 15, 2012. Motion to Expedite Consideration of Petition, at ¶¶ 3-4. The Coal Transition PPA between PSE and TransAlta Centralia forecloses such termination. Thus, a Commission decision after December 15, 2012, will not have any legal consequences that could jeopardize the Coal Transition PPA if ultimately approved by the Commission.

<sup>10</sup> *WUTC v. Puget Sound Energy, Inc.*, Docket UE-072300, Order 15, at ¶ 41 (January 15, 2009).

<sup>11</sup> *Id.*, at ¶¶ 39-44.

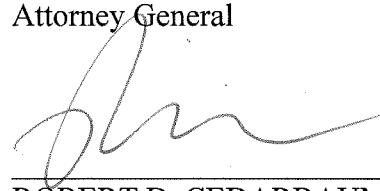
resource acquisition. It simply is not realistic for Commission Staff and the Commission to process their review of the Coal Transition PPA on a faster time frame than a PCORC. Nor is such expedited and abbreviated treatment warranted.

For the reasons set forth above, the Commission should deny the Company's Motion to Expedite Consideration of Petition. The Commission should grant the Company's Motion for Amended Protective Order with Highly Confidential Provisions.

DATED this 5th day of September 2012.

Respectfully submitted,

ROBERT M. MCKENNA  
Attorney General



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ROBERT D. CEDARBAUM  
Assistant Attorney General  
SALLY BROWN  
Senior Assistant Attorney General  
Counsel for Staff of the Washington Utilities  
and Transportation Commission