

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

In the Matter of the Petition of

PUGET SOUND ENERGY, INC.

For a Declaratory Order Regarding the
Transfer of Assets to Jefferson County
Public Utility District.

DOCKET U-101217

COMMISSION STAFF MEMORANDUM
IN SUPPORT OF SETTLEMENT
STIPULATION

I. INTRODUCTION

1 On July 15, 2010, Puget Sound Energy, Inc. (“PSE”) filed with the Washington Utilities and Transportation Commission (“Commission”) a petition for a declaratory order concerning the transfer of assets from PSE to Public Utility District #1 of Jefferson County (“JPUD”). On December 15, 2010, a Settlement Stipulation regarding the petition was filed with the Commission by PSE, Commission Staff and JPUD (collectively, the “Parties”).¹

The Settlement Stipulation asks the Commission to enter an order declaring that:

1. The transfer of Assets from Puget Sound Energy, Inc. to Public Utility District #1 of Jefferson County is authorized by RCW 80.12.020(2) and no further action is required by the Commission to approve the transfer of the Assets for purposes of RCW 80.12.020;²
2. The purchase price of \$103 million is fair, reasonable and sufficient;
and

¹ Public Counsel has not joined the Settlement Stipulation, but has authorized the remaining parties to state that it does not oppose the Settlement Stipulation.

² PSE clarified at hearing that this declaration means simply that the transfer of assets from PSE to JPUD does not require Commission approval. Tr. 8:23-25.

3. The provisions of the Asset Purchase Agreement regarding transition of PSE's responsibilities to provide electrical service to its customers in the Service Territory are sufficient and consistent with PSE's public service obligations.

2 There are several legal issues bearing on the Settlement Stipulation that are addressed by this memorandum. Further support for the Settlement Stipulation is presented in the testimony of Staff witness Edward J. Keating.

II. FACTUAL BACKGROUND

3 PSE currently provides retail electrical service in Jefferson County, Washington subject to the jurisdiction of the Commission. JPUD is a public utility district organized under the laws of Washington State.³ The Commission does not regulate JPUD.⁴

4 In November 2008, the citizens of Jefferson County voted to approve Proposition 1, authorizing JPUD to construct or acquire facilities for the generation, transmission or distribution of electric power in Jefferson County.⁵ JPUD initiated settlement negotiations with PSE in July 2009 to acquire PSE's transmission and distribution assets within Jefferson County.⁶ PSE entered these negotiations as an "unwilling seller" under threat of condemnation by JPUD.⁷ These negotiations led to a tentative settlement agreement that was memorialized in a Letter of Intent ("LOI"), dated April 30, 2010.⁸

³ RCW Title 54.

⁴ RCW 54.16.040.

⁵ JPUD is authorized to take such actions under RCW 54.16.040.

⁶ Exh. No. KRK-1CT at 3:16-19.

⁷ Exh. No. KRK-1CT at 3:19-20 and 4:8-11. RCW 54.16.020 authorizes JPUD to acquire PSE's assets in Jefferson County by eminent domain.

⁸ Exh. No. KRK-10.

5 On June 11, 2010, PSE and JPUD entered an Asset Purchase Agreement (“APA”) as the final agreement contemplated by the LOI.⁹ The assets (“Jefferson County Assets”) to be sold to JPUD are described in Exhibit A of the APA. None of the Jefferson County Assets are used to provide electrical service to PSE customers located outside of Jefferson County.¹⁰ The geographical area (“Service Territory”) to be served by JPUD is depicted in Exhibit G to the APA.

6 The purchase price for the Jefferson County Assets is \$103 million. PSE states that this purchase price constituted JPUD’s “best and final” offer.¹¹

7 The APA identifies regulatory approvals PSE and JPUD have agreed must be met as conditions precedent to closing the transaction. These approvals include an order from the Commission declaring that: (1) by operation of RCW 80.12.020(1), Commission approval is not required prior to the transfer of the Jefferson County Assets to JPUD; (2) the amount of the purchase price is sufficient to fully compensate PSE customers for the sale of the Jefferson County Assets; and (3) the provisions of the APA pertaining to PSE’s transition of its responsibilities to provide electrical service to its customers in the Service Territory are sufficient and consistent with PSE’s public service obligations.¹² Despite some differences between the APA and the Settlement Stipulation, PSE confirmed that the Settlement Stipulation requests Commission declarations that will allow PSE to advise JPUD that the required regulatory approvals have been obtained.¹³

⁹ Exh. No. KRK-3.

¹⁰ Exh. No. KRK-1CT at 6:9-14.

¹¹ Exh. No. KRK-1CT at 5:10-11.

¹² Exh. No. KRK-3 at 10, ¶ 1 (“WUTC Confirmations”) and 23, ¶ 7.2. All page references in Exh. No. KRK-3 are to the exhibit pages in the lower right-hand corner of each page.

¹³ Exh. No. KRK-14T at 3:11-14.

8 Unless the APA is terminated, the sale of the Jefferson County Assets will close between 18 months and 36 months from June 11, 2010, the date the APA was entered.¹⁴ Prior to closing, the APA confirms that PSE will continue to provide electrical service in the Service Territory subject to all applicable Commission laws and rules.¹⁵ The APA also allows the purchase price to be adjusted by any necessary plant additions or deletions made before closing in the Service Territory.¹⁶ At closing, the APA confirms that full and complete responsibility shifts from PSE to JPUD to provide electrical service to PSE's former customers in the Service Territory.¹⁷

III. DISCUSSION IN SUPPORT OF SETTLEMENT AGREEMENT

A. Sale of the Jefferson County Assets Does Not Require Commission Approval

9 In general, no public service company may sell, lease, assign or otherwise dispose of any part of its properties or facilities that are necessary or useful in the performance of its duties to the public without first having secured from the Commission an order authorizing the transfer.¹⁸

10 However, there is an exception when the public service company transfers property or facilities to a "special purpose district" as defined by RCW 36.96.010.¹⁹ RCW 36.96.010(1) defines a special purpose district to include a public utility district. Therefore, Commission approval of PSE's sale of the Jefferson County Assets to JPUD is not required. Declaration 1, as set forth in the Settlement Stipulation, is fully supported by the law.

¹⁴ Exh. No. KRK-3 at 25, ¶ 9.1.

¹⁵ Exh. No. KRK-3 at 19, ¶ 5.1.

¹⁶ Exh. No. KRK-3 at 15, ¶ 2.11.

¹⁷ Exh. No. KRK-3 at 25, ¶ 9.3.

¹⁸ RCW 80.12.020(1).

¹⁹ RCW 80.12.020(2).

B. The Commission Has Authority to Issue the Requested Declarations and May Exercise that Discretion Under RCW 34.05.240

11 Entry of declaration 1 means merely that the transfer of the Jefferson County Assets to JPUD does not require prior Commission approval. It does not negate the Commission's authority to issue the remaining declarations requested in the Settlement Stipulation.

12 The Commission is empowered to "regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging in the business of supplying any utility service or commodity to the public for compensation."²⁰ The public service laws address PSE's public service obligations, which are discussed below, and the Commission's authority to ascertain and determine the fair value for ratemaking purposes of utility property used and useful for service in this state.²¹ The remaining declarations requested by the Parties implicate these laws.

13 As a preliminary matter, the Commission must ensure that the standards set forth in RCW 34.05.240(1) are satisfied:

Any person may petition an agency for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency. The petition shall set forth facts and reasons on which the petitioner relies to show:

- (a) That uncertainty necessitating resolution exists;
- (b) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion;
- (c) That the uncertainty adversely affects the petitioner;

²⁰ RCW 80.01.040(3).

²¹ RCW 80.04.250. The Parties ask the Commission to declare that the \$103 million purchase price sets the ceiling for ratemaking purposes even though the ultimate allocation of that amount between ratepayers and shareholders should not be determined at this time. Settlement Stipulation at 5, ¶ 15.

- (d) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested.²²

14 Each of these requirements is fulfilled under the circumstances of this proceeding.

First, whether the requested declarations are satisfied is an uncertainty that needs to be resolved under the APA. Resolving that uncertainty requires the Commission to apply the public service laws to the particular circumstances at hand.

15 Second, there is an actual controversy arising from the uncertainty because failure to obtain the declarations means that a condition precedent of the APA will not be met, which may place PSE under threat of condemnation by JPUD. It is true that this controversy is the making of PSE and JPUD. However, the important point is that a declaratory order in this case would not simply be an advisory opinion; a declaratory order would satisfy a condition precedent of the APA and allow the sale to proceed without further litigation.

16 Indeed, further litigation would likely be protracted and expensive, and would expose PSE to the risk of obtaining less than the \$103 million it obtained through negotiations with JPUD. Thus, the uncertainty adversely affects PSE and, ultimately, PSE's ratepayers outside of Jefferson County if they are required to bear the cost of that litigation and/or receive less gain on the transfer. Likewise, the uncertainty effects adversely PSE's existing ratepayers within the Service Territory, who also may bear the cost of that litigation and see delayed the implementation of their approval of Proposition 1.

17 In sum, the general public is served by issuing the requested declarations. Not resolving the uncertainty by not issuing the requested declaratory order effects adversely all relevant interests.

²² RCW 34.05.240(1)(e) also requires declaratory order petitions to comply with any additional requirements established by the agency under subsection RCW 34.05.240(2). The Commission has adopted WAC 480-07-930 to implement RCW 34.05.240. However, the rule does not set additional requirements for petitions.

C. The Provisions of the APA Related to PSE's Transition of Electrical Service to JPUD Are Sufficient and Consistent with PSE's Public Service Obligations

18 At the time the sale closes, PSE will no longer be an “electrical company” in the Service Territory since it will no longer “own, operate or manage any electric plant for hire” in the Service Territory.²³ Its public service obligations to existing customers in the Service Territory will end and JPUD will assume full and complete responsibility for providing electrical service to those customers. PSE and JPUD acknowledge this result in the APA.²⁴

19 Prior to closing, however, PSE will continue to serve customers in Jefferson County. The Parties agree to a declaration from the Commission that the APA will allow PSE to satisfy its public service obligations during that interim period. Those public service obligations are established by statute. They include the obligation to charge only the just, fair, reasonable and sufficient rates contained in the published and effective tariffs on file with the Commission.²⁵ They also prohibit PSE from granting any undue or unreasonable preference or advantage to any person, corporation, locality or service.²⁶ Nor may PSE engage in rate discrimination between customers for like or contemporaneous service under the same or substantially similar circumstances or conditions.²⁷

20 PSE must provide safe, adequate and efficient service and the facilities necessary to do so.²⁸ Any person or corporation reasonably entitled to electrical service from PSE that applies for such service must be provided service and all necessary facilities.²⁹

21 Nothing in the APA relieves PSE from any of these obligations prior to closing. PSE commits during the transition period to:

²³ RCW 80.01.010 (definitions of “electric plant” and “electrical company”).

²⁴ Exh. No. KRK-3 at 25, ¶ 9.3.

²⁵ RCW 80.28.010(1) and RCW 80.28.080.

²⁶ RCW 80.28.090.

²⁷ RCW 80.28.100.

²⁸ RCW 80.28.010(2).

²⁹ RCW 80.28.110.

[C]onstruct, operate and maintain the Assets, and provide electric service to its customers in the Service Territory, at substantially the same quality and level of service that PSE provides to its other customers, and to so construct, operate, maintain and serve in accordance with the rules and regulations of the WUTC (including, but not limited to, PSE rates and tariffs on file therewith).³⁰

Thus, PSE will remain subject to full supervision by the Commission until closing. Closing of the transaction will not foreclose Commission enforcement action against any failure by PSE to comply with all regulatory requirements, even if the failure occurred before closing.

22 The APA also creates a Transition Advisory Committee (“TAC”) to facilitate the transfer of service responsibility from PSE to JPUD.³¹ The TAC is comprised of three members appointed by PSE and two members appointed by JPUD. The TAC is authorized to adjust the purchase price by any plant additions or deletions PSE needs during the transition to provide safe, adequate and reliable electrical service to its existing Jefferson County customers.³² This insures that PSE will have no financial disincentive to make all necessary investments for its Jefferson County customers during the transition. It also protects PSE’s customers outside Jefferson County by placing responsibility on JPUD for the cost of any plant additions.

23 Finally, Staff confirmed that the sale of the Jefferson County Assets provides for a “clean break” with PSE’s other assets that are used to provide service outside of Jefferson County.³³ Transferring ownership of the Jefferson County Assets to JPUD will have no detrimental effect on PSE’s ability to satisfy its public service obligations to customers located outside Jefferson County.

³⁰ Exh. No. KRK-3 at 19, ¶ 5.1(a).

³¹ Exh. No. KRK-3 at 15, ¶ 2.11.

³² Exh. No. KRK-3 at 12, ¶ 2.4 and 15, ¶ 2.11(d).

³³ Exh. No. EJK-1T at 8:4-23.

IV. CONCLUSION

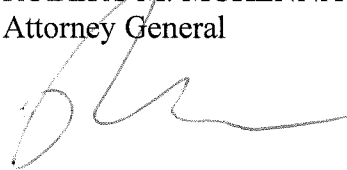
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For the reasons set forth above, Staff recommends that the Commission adopt and approve the Settlement Stipulation in its entirety by issuing an order containing the three requested declarations. There are no legal impediments to that declaratory order. All applicable legal standards have been satisfied.

DATED this 21st day of December 2010.

Respectfully submitted,

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