

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	DOCKET UE-121373
)	
PUGET SOUND ENERGY, INC.,)	ORDER 02
)	
For Approval of a Power Purchase)	
Agreement for Acquisition of Coal)	PREHEARING CONFERENCE
Transition Power, as Defined in RCW)	ORDER; NOTICE OF HEARING
80.80.010, and the Recovery of Related)	(Set for December 11, 2012)
Acquisition Costs)	
.....)	

- 1 **NATURE OF PROCEEDING:** On August 20, 2012, Puget Sound Energy, Inc. (PSE or Company) filed with the Washington Utilities and Transportation Commission (Commission) a Petition 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 (Petition). The subject Coal Transition Purchase Power Agreement (Coal Transition PPA) is between PSE and TransAlta Centralia Generation LLC (TransAlta).

- 2 PSE requests an order: (1) approving the Coal Transition PPA, subject to and conditioned upon certain Commission determinations and findings specified in Section VI of the Petition; (2) approving PSE’s recovery of the equity component of the Coal Transition PPA as provided in RCW 80.04.570(6); (3) approving deferral of certain costs associated with the Coal Transition PPA 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.

- 3 **CONFERENCE/PRESIDING OFFICER.** The Commission convened a prehearing conference in this proceeding at Olympia, Washington on September 7, 2012, before Administrative Law Judge Dennis J. Moss, whom the Commission appoints as presiding officer in this proceeding.

4 **PARTY REPRESENTATIVES:** Sheree Strom Carson, Jason Kuzma and Donna Barnett, Perkins Coie, Bellevue, Washington, represent PSE. Simon ffitch and Lisa W. Gafken, Assistant Attorneys General, Seattle, Washington, represent the Public Counsel Section of the Washington Office of Attorney General (Public Counsel). Sally Brown, Senior Assistant Attorney General Olympia, Washington, represents the Commission's regulatory staff (Commission Staff or Staff).¹

5 Melinda Davison, Davison Van Cleve, Portland, Oregon, represents the Industrial Customers of Northwest Utilities (ICNU). Danielle Dixon, Senior Policy Associate, Northwest Energy Coalition (NVEC) represents her organization.

6 **PETITIONS FOR INTERVENTION.** ICNU and NVEC filed their respective petitions to intervene, which were unopposed. The Commission finds that the petitioners each have a substantial interest in this proceeding and that their participation will be in the public interest. The petitions to intervene are granted.

7 **MOTION FOR PROTECTIVE ORDER.** Concurrent with its Petition, PSE filed its Motion for Amended Protective Order with Highly Confidential Provisions. It is apparent that this proceeding will require scrutiny by the parties and the Commission of sensitive commercial information. The Commission will enter its standard form of Protective Order including Highly Confidential Provisions, as PSE requests, to expedite the exchange of such information among the parties and ensure its availability to the Commission, as provided in RCW 80.04.095 and WAC 480-07-420.

8 **MOTION TO EXPEDITE CONSIDERATION OF PETITION.** RCW 80.04.570(3) requires the Commission to enter a final order that approves or disapproves the Coal Transition PPA within 180 days after the date PSE filed its Petition. This means the Commission must enter a final order in this proceeding by February 19, 2013.² Concurrent with its Petition, PSE filed its Motion to Expedite

¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

² The 180th day following PSE's filing (excluding the first day and including the last day) is February 16, 2013, a Saturday. Under the Commission's rules the deadline is extended to the next business day, February 19, 2013. WAC 480-07-130.

Consideration of the Petition requesting the Commission to issue a final order no later than December 15, 2012.

- 9 PSE states that the evidence it presents in this proceeding shows that the Company has an existing and growing capacity need that can be met in part by the Coal Transition PPA beginning in December 2014. It is PSE's view that all of the evidence necessary to approve and issue a prudence determination regarding the Coal Transition PPA exists, and there is no need for delay. According to PSE:

Quick resolution of the uncertainty regarding the status of the Coal Transition PPA will facilitate PSE's efforts in projecting and meeting its capacity needs during the term of the Coal Transition PPA. Furthermore, TransAlta Centralia would like to know as soon as possible whether the Coal Transition PPA will go into effect so that it can proceed with plans to market its power.³

- 10 It appears from PSE's Motion to Expedite and Mr. Garratt's prefiled direct testimony in this proceeding that part of the reason for PSE's request is that TransAlta Centralia may terminate its Memorandum of Agreement with the State of Washington if, as of December 15, 2012, TransAlta Centralia or an affiliate has failed, despite the exercise of commercially reasonable efforts, to negotiate and execute one or more power purchase agreements for at least 500 megawatts of the baseload electrical output of the Centralia Transition Coal Facility.⁴ The Memorandum of Agreement further provides that during the five business day period following such notice of termination, the State of Washington and TransAlta Centralia may agree to extend the term of the Memorandum of Agreement for an additional year. Mr. Garratt states that resolution of the status of the Coal Transition PPA prior to December 15, 2012, would provide TransAlta Centralia and the State of Washington with additional information as to whether to continue, extend, or terminate the Memorandum of Agreement.

- 11 Staff answered PSE's Motion to Expedite, opposing it.⁵ Staff points out that the Coal Transition PPA is, in some respects, a case of first impression under a new

³ Motion to Expedite ¶ 4.

⁴ Motion to Expedite ¶ 3; Garratt prefiled direct testimony (marked for identification as Exhibit No. RG-1HCT) at 4:3-16.

⁵ Public Counsel confirmed during the prehearing conference that it opposes PSE's Motion to Expedite for the same reasons as those set forth by Staff.

statutory framework. This 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.
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.⁶

The Commission also is required to consider the long-term economic risks and benefits to the Company and ratepayers of the Coal Transition PPA.⁷ 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.⁸ Finally, Staff states the Company's request for approval of deferred costs, with interest, over the entire term of the Coal Transition PPA adds additional complexity to this matter.

12 Staff argues, for all of these reasons, that it would be “neither reasonable nor wise for the Commission to expedite the case schedule on a faster track than the already expedited [180 day] schedule allowed by statute.” PSE's and TransAlta's “planning needs,” according to Staff, should not take precedence over the need for a reasoned decision by the Commission based on a fully developed record.

13 Staff notes that while it is true that TransAlta may terminate the Memorandum of Agreement between the company and the state of Washington if TransAlta has failed to negotiate and execute one or more power purchase agreements by December 15, 2012, “the Coal Transition PPA between PSE and TransAlta

⁶ RCW 80.04.570(4).

⁷ *Id.*

⁸ RCW 80.04.570(6).

Centralia forecloses such termination.” Staff argues, therefore, that “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.”⁹

- 14 The Commission’s goals are to establish a procedural schedule that will allow Staff, Public Counsel and the Intervenors adequate time for discovery, careful analysis, and the production of a body of evidence critically examining the Coal Transition PPA as contemplated by RCW 80.04.570, while also keeping an eye to expediting the process to the extent reasonable. Having carefully considered PSE’s Motion to Expedite and Staff’s response prior to the prehearing conference, and hearing further discussion of the challenges the parties face, the Commission preliminarily determined that the parties should discuss establishing a procedural schedule targeting the week of December 10, 2012, for evidentiary hearings. The parties, following good faith discussions among themselves, proposed a schedule that the Commission adopts as set forth in Appendix A to this Order.¹⁰
- 15 **DISCOVERY.** Discovery will be conducted under the Commission’s discovery rules, WAC 480-07-400 – 425. The response time for data requests initially is seven (7) business days. After the date for response testimony, the time for responses to data requests will be five (5) business days.
- 16 To expedite the exchange of potentially relevant information, in addition to timely responses to discovery requests, all parties are required to provide all work papers,

⁹ In point of fact, since the Coal Transition PPA is for 380 MW, not 500 MW, Staff’s point is well-taken only if TransAlta has entered into one or more additional agreements that make up the 120 MW deficit relative to what the MOA provides. What this means, however, is that a Commission decision to grant or deny PSE’s Motion to Expedite has no definitive consequence relative to TransAlta’s termination right.

¹⁰ Public Counsel requested that the Presiding Officer not finally accept the proposed schedule until there was an opportunity for further internal discussions by the Commission and consideration of an alternative proposal by Public Counsel, endorsed by Staff, for an alternative that would extend the dates for response testimony and the evidentiary hearing by approximately one month relative to the proposed schedule. The Commission conducted such further internal discussions but elected to adopt the proposed schedule with the understanding that parties may bring to the Commission’s attention any issues in the conduct of discovery, or other matters, that might support a motion to extend the schedule, if needed, to ensure all parties are afforded due process in this formal adjudicative proceeding.

including model runs and source documents, at the time they prefile testimony and exhibits.

17 The Commission urges the parties to work cooperatively together to avoid having to bring discovery matters forward for formal resolution.

18 **PROCEDURAL SCHEDULE.** The Commission adopts the procedural schedule set forth in Appendix A to this Order.

19 **NOTICE OF HEARING.** The Commission will hold evidentiary hearings in this matter beginning **December 11, 2012, at 9:30 a.m.**, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Commission may alter this schedule by subsequent notice.

20 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file the original plus **10** copies of the unredacted versions of all pleadings, motions, briefs, and other prefiled materials. Parties must also file the original and one copy of any redacted version(s). These materials must conform to the format and publication guidelines in WAC 480-07-395 and WAC 480-07-460. The Commission prefers that materials be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.

21 All filings must be mailed or delivered to the Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.

22 An electronic copy of all filings must be provided through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by e-mail delivery to (records@utc.wa.gov). Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette or CD including the filed document(s). Parties must furnish electronic copies in MS Word 6.0 (or later) supplemented by a separate file in .pdf (Adobe Acrobat) format. Parties must follow WAC 480-07-140(5) in organizing and identifying electronic files.

- 23 **ELECTRONIC SUBMISSION OF DOCUMENTS.** The Commission grants a one-day extension of the paper-filing requirement under WAC 480-07-145(6), allowing electronic submission of documents with the Commission on the deadlines established by the procedural schedule. Parties must submit documents through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by e-mail to (records@utc.wa.gov), and file an original, plus **ten (10)** paper copies, of the documents with the Commission by the following business day. Parties must provide courtesy copies of their electronic submissions to the presiding administrative law judge and the parties to the proceeding.
- 24 The Commission requires parties to submit documents in adjudicative proceedings no later than 2:00 p.m. on the deadline date to give Records Center personnel adequate time to post and distribute them.
- 25 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission does have limited ability to provide dispute resolution services; if you wish to explore those services, please call the Director, Administrative Law Division, at 360-664-1355.
- 26 **NOTICE TO PARTIES: A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of the order in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective September 10, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge

APPENDIX A
PROCEDURAL SCHEDULE
DOCKET UE-121373

EVENT	DATE
Company Direct Testimony and Exhibits	August 20, 2012
Prehearing Conference	September 7, 2012
Staff, Public Counsel and Intervenor Response Testimony and Exhibits	November 2, 2012
Company Rebuttal Testimony and Exhibits	November 16, 2012
Issues Discussion/Settlement Conference (parties only)	T/B/D
Evidentiary Hearing	December 11, 2012 (continuing from day to day, as needed)
Simultaneous Post-Hearing Briefs	January 11, 2013
Order	T/B/D (no later than February 15, 2013)

APPENDIX B

PARTIES' REPRESENTATIVES
DOCKET UE-121373

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