

**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 No. U-101217

PSE'S MEMORANDUM IN SUPPORT
OF SETTLEMENT STIPULATION

I. INTRODUCTION

1. Puget Sound Energy, Inc. ("PSE") hereby submits this memorandum in support of the settlement stipulation ("Settlement Stipulation") filed with the Washington Utilities and Transportation Commission ("Commission") on December 15, 2010. The Settlement Stipulation was executed by PSE, Commission Staff and Public Utility District #1 of Jefferson County ("JPUD").¹ At the prehearing conference in this proceeding on August 26, 2010, Judge Moss advised the parties to be mindful of certain legal issues bearing on PSE's Petition for Declaratory Order. Having considered these issues PSE now offers this Memorandum In Support of Settlement Stipulation.

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.

II. FACTUAL BACKGROUND

2. The facts relevant to matters addressed in this Memorandum In Support of Settlement Stipulation are set forth in the Settlement Stipulation and the testimony filed in this proceeding by PSE witness Karl R. Karzmar and Staff witness Edward J. Keating.

III. DISCUSSION

3. 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." RCW 80.01.040(3). The public service laws address PSE's public service obligations 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. RCW 80.04.250. The Commission has ample authority to reach the issues raised in this proceeding and to issue the declaratory order proposed by the Settlement Stipulation.

A. Transfer of Assets Is Authorized by Statute.

4. The transfer of the assets in question ("Assets")² is governed by RCW 80.12.020, which provides in full:

- (1) No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly, merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an

² The assets to be sold to JPUD are described in Exhibit A of the Asset Purchase Agreement (the "APA") entered into by PSE and JPUD, dated June 11, 2010.

order authorizing it to do so. The commission shall not approve any transaction under this section that would result in a person, directly or indirectly, acquiring a controlling interest in a gas or electrical company without a finding that the transaction would provide a net benefit to the customers of the company.

- (2) This section shall not apply to any sale, lease, assignment or other disposal of such franchises, properties or facilities to a special purpose district as defined in RCW 36.96.010, city, county, or town.

JPUD is a "special purpose district" for purposes of RCW 36.96.010. Therefore, as it relates to the Commission's authority to approve the transfer of the Assets to JPUD, by excepting this "sale" from the requirement to obtain the Commission's prior approval, RCW 80.12.020(2) authorizes PSE and JPUD to proceed to affect such transfer of the Assets without further action by the Commission.

5. PSE, both in its Petition for Declaratory Order in this proceeding³ and as a party to the Settlement Stipulation, does not request that the Commission approve or authorize the transfer of assets, but merely requests that the Commission interpret RCW 80.12.020 and find that the asset transfer falls within the exception of RCW 80.12.020(2). PSE made this request in its Petition for a Declaratory Order because WAC 480-100-248 requires an electric utility to obtain from the Commission an order authorizing a sale, lease or assignment of any of its property or facilities that are necessary or useful in the performance of its duties to the public. PSE understands that the WAC is limited by the jurisdictional restrictions in the RCW. PSE interprets WAC 480-100-248 to

³ See Petition for a Declaratory Order Regarding the Transfer of Assets to Jefferson County Public Utility District at ¶ 10.

incorporate the exclusion of RCW 80.12.020(2) with regard to special-purpose districts such as JPUD, but the Commission has not specifically ruled on that issue. Therefore, the Petition for a Declaratory Order and, subsequently, the Settlement Stipulation seek a declaration from the Commission confirming that the transfer of Assets from PSE to JPUD is authorized by RCW 80.12.020(2) and no further action is required by the Commission to approve the transfer of the Assets.

B. Purchase Price Is Fair, Reasonable and Sufficient.

6. The Settlement Stipulation asks the Commission to declare that the \$103 million purchase price sets a financial ceiling for subsequent ratemaking purposes. Settlement Stipulation at 5, ¶ 15. The Commission has the authority to ascertain and determine the fair value for ratemaking purposes of utility property used and useful for service in this state. RCW 80.04.250. The fact that this issue is raised in the context of a transfer of assets to a special purpose district does not eliminate the Commission's authority. The Commission may therefore enter an order declaring that the purchase price of \$103 million is fair, reasonable and sufficient for the purposes set forth in the Settlement Stipulation. This determination does not affect the subsequent accounting treatment of the sale proceeds and does not affect an allocation of the sale proceeds as between PSE's customers and shareholders. Rather, this determination establishes that PSE has no obligation to obtain more than \$103 million in connection with this transaction as a basis from which to subsequently determine an allocation of the sale proceeds as between PSE's customers and shareholders.

C. Satisfaction of Public Service Obligations.

7. The Commission has authority to regulate PSE during the transition period to ensure that PSE furnishes and supplies safe, adequate and efficient service and facilities. RCW 80.28.010(2). The Commission has such authority even when, as here, the issue is raised in the context of a pending transfer of asserts to a special purpose district.

8. The testimony of Mr. Karl R. Karzmar states:

A further condition of entering into these negotiations was that, until such time as JPUD took ownership of the system and assumed full responsibility to serve our customers, PSE was to have absolute and unfettered discretion to continue to serve its customers at substantially the same quality and level of service that PSE provides to its other customers, and to do so in accordance with the rules and regulations of the Washington Utilities and Transportation Commission

Exh. No. KRK-1CT at 4:3-10 (emphasis added). As further reflected in Mr. Karzmar's testimony, the APA includes provisions that incorporate these requirements. Mr. Karzmar also testifies that:

After 18 months, the decision to take over the responsibility to serve customers within the Service Territory lies with JPUD. To exercise this discretion, JPUD must close the transaction and take title and physical control of the Assets. At such time, JPUD will have both the means and the responsibility under state law to serve these customers and PSE will be unable to serve and will have no responsibility to do so.

Exh. No. KRK-1CT at 18:18-19:2 (emphasis added).

9. The APA does not limit PSE's ability to provide, during the transition period and until closing occurs, safe, adequate and efficient service and the facilities necessary to do so in accordance with the requirements of RCW 80.28.010. As reflected in the

testimony,⁴ the transfer of such facilities and responsibility to so serve will have no detrimental effect on PSE's ability to satisfy its public service obligations to customers located outside Jefferson County. However, at closing, PSE will have neither the facilities nor the ability to provide service to JPUD's customers. In recognition of these provisions of the APA, the Commission may enter an order declaring that the provisions of the Asset Purchase Agreement regarding transition of PSE's responsibilities to provide electrical service to its customers in the JPUD service territory are sufficient and consistent with PSE's public service obligations.

D. Declaratory Order.

10. PSE believes that the Commission has authority to issue the declaratory order proposed by the Settlement Stipulation. As stated in PSE's Petition for a Declaratory Order, pursuant to WAC 480-07-930 and RCW 34.05.240(1), the Commission has authority to enter a declaratory order upon a showing:

- (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;
- (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; and
- (e) That the petition complies with any additional requirements established by the agency under subsection (2) of this section.

⁴ See Exh. No. KRK-3 at 6:12-20.

The order requested by PSE and the Settlement Stipulation meet these requirements, as more fully explained in PSE's Petition for Declaratory Order. The questions raised in this proceeding require interpretation and application of Washington law and the Commission's rules. Interpretation and application of such rules are within the purview and expertise of the Commission's jurisdiction. The order would not be an advisory opinion because, as stated in PSE's Petition, the Settlement Stipulation resolves an actual controversy that, without resolution, would likely result in a condemnation proceeding that would adversely affect PSE and would be detrimental to the public interest. Further, the specific questions regarding the purchase price and PSE's service obligations fall within the general powers of the Commission to regulate in the public interest.⁵ Finally, resolution of the questions raised in PSE's Petition for Declaratory Order and the Settlement Stipulation will not result in any adverse effect to others or the general public. The public interest is served by avoiding the costs and uncertainty related to continued litigation or a condemnation proceeding.

IV. CONCLUSION

11. For the foregoing reasons and for the reasons provided in the Settlement Stipulation and supporting testimony of Karl R. Karzmar and Edward J. Keating, PSE respectfully requests that the Commission issue an order accepting and approving the Settlement Stipulation filed in this proceeding on December 15, 2010.

⁵ The Commission shall regulate in the public interest, as provided by public service laws, the rates, services, facilities and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation. RCW 80.01.040(3).

DATED: December 21, 2010

PERKINS COIE LLP

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