

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

IN THE MATTER OF THE JOINT  
APPLICATION OF PUGET SOUND  
ENERGY, ONTARIO TEACHERS'  
PENSION PLAN BOARD, AND  
MACQUARIE WASHINGTON CLEAN  
ENERGY INVESTMENT, L.P., FOR AN  
ORDER AUTHORIZING PROPOSED  
SALES OF INDIRECT INTERESTS IN  
PUGET SOUND ENERGY

DOCKET U-210542

**INITIAL COMMENTS OF PUBLIC COUNSEL**

**January 7, 2022**

**SHADED INFORMATION IS DESIGNATED  
CONFIDENTIAL PER WAC 480-07-160**

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- Attachment 1 Educational Background, Research, and Related Business Experience of Dr. J. Randall Woolridge
- Attachment 2 Joint Applicant's Response to Public Counsel Informal Data Request No. 13
- Attachment 3 Exhibit JRW-4 (Docket U-180680) and Joint Applicant's Response to Public Counsel Informal Data Request No. 3 (Docket U-210542)
- Attachment 4 Joint Applicant's Response and Supplemental Response to Public Counsel Informal Data Request No. 4
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- Attachment 17C Equity Commitment Letter of Macquarie and Equity Commitment Letter of Ontario (Confidential)

## I. INTRODUCTION

1. The Public Counsel Unit of the Washington State Attorney General’s Office (“Public Counsel”) files these comments pursuant to the Washington Utilities and Transportation Commission’s (“Commission”) Notice of Opportunity to File Written Comments dated October 7, 2021, and amended Notice dated November 22, 2021. Puget Sound Energy (“PSE”), Ontario Teachers Pension Plan Board (“Ontario”), and the Macquarie Washington Clean Energy Investment Fund (“Macquarie”) (collectively, “Joint Applicants”), seek Commission approval of a proposed transaction in which Ontario and Macquarie will obtain non-controlling indirect ownership of PSE.
2. A corporate transaction such as the one proposed in this docket poses risks—no transaction is risk-free. Public Counsel requested detailed information from the Joint Applicants to evaluate risks posed by the proposed transaction. Public Counsel also reviewed the Joint Applicant’s proposed commitments, which were intended to mitigate the risks. Lastly, Public Counsel participated in several meetings with the Joint Applicants, Commission Staff, The Energy Project, and the Alliance of Western Energy Consumers (AWEC) (collectively, “stakeholders”) to discuss the case.
3. Public Counsel appreciates the efforts made by the stakeholders throughout the proceeding. The Joint Applicants have filed a revised set of commitments that reflects consensus among the stakeholders on all but one commitment. The remaining commitment— Commitment 43<sup>1</sup>—remains in dispute and will be addressed by each stakeholder individually.

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<sup>1</sup> References to the commitment number will be to both the number assigned in the commitments made in Docket U-180680 and, where appropriate, the proposed commitment number used in the Joint Applicants’ Exhibit AJR-4.

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4. Despite the progress made by stakeholders in this case, Public Counsel remains concerned about the level of detail the Joint Applicants were willing to provide. While Public Counsel appreciates the willingness of the Joint Applicants to engage with stakeholders, we have a fundamental disagreement about the appropriate level of detail. From Public Counsel’s perspective, the level of detail provided by the Joint Applicants falls short of what is necessary to evaluate risk and determine whether the transaction meets the applicable legal standard. To remedy this, the Commission could set this matter for adjudication to develop a more complete record. In the alternative, because stakeholders reached consensus on a majority of the commitments, adjudication may not be necessary. The Commission could approve the commitments on which the stakeholders reached consensus and modify Commitment 43.

## II. PROPOSED TRANSACTION AND HISTORY

5. PSE has been a privately-held company rather than a publicly-traded company since 2009.<sup>2</sup> PSE’s owners consist of a consortium of investors who are members of Puget Holdings,<sup>3</sup> a Delaware limited liability company and PSE’s parent company. The investment consortium own shares of Puget Holdings, resulting in indirect ownership of PSE.<sup>4</sup>

6. PSE’s largest indirect owner, the Canada Pension Plan Investment Board (“CPP”), executed purchase and sales agreements with two buyers to sell its 31.57 percent interest in

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<sup>2</sup> *In re: Joint Application of Puget Holdings and Puget Sound Energy for an Order Authorizing Proposed Transaction*, Docket U-072375, Order 08 (Dec. 30, 2008) [hereinafter “2008 Transaction”].

<sup>3</sup> Direct Testimony of Adrian J. Rodriguez, Exh. AJR-1T at 2:17–18.

<sup>4</sup> *In re: Joint Application of Puget Sound Energy, et al., for an Order Authorizing Proposed Sales of Indirect Interests in Puget Sound Energy*, Docket U-180680, Final Order 06 (Corrected), ¶ 1 (Mar. 11, 2019) [hereinafter “2018 Transaction”].

Puget Holdings (proposed transaction).<sup>5</sup> The two purchasers, Ontario and Macquarie, will each buy one-half of CPP’s interest, resulting in each holding a 15.785 percent interest in Puget Holdings.<sup>6</sup> If the proposed transaction is approved and completed, CPP will no longer hold an ownership interest in Puget Holdings or an indirect ownership interest in PSE.<sup>7</sup>

7. After the proposed transaction, ownership shares in Puget Holdings, and indirectly of PSE, would be as follows:

OMERS Administration Corporation	23.94%
British Columbia Investment Management Corporation	20.87%
Ontario Teachers’ Pension Plan Board	15.785%
Macquarie Washington Clean Energy Investment, L.P.	15.785%
Alberta Investment Management Corporation	13.60%
PGGM Vermogensbeheer B.V.	10.02%
<b>Total</b>	<b>100.0%</b>

8. PSE experienced a similar transaction in 2018, when Macquarie Infrastructure Partners, Inc. and Padua MG Holdings, LLC (a Macquarie entity) sold their 43.99 percent indirect ownership interest in PSE to four entities, which included two existing owners and two new owners. The Commission considered the transaction in Docket U-180680 (“2018 Transaction”). CPP was the only owner not a party to the 2018 Transaction, and its share in Puget Holdings was not altered by the sale.<sup>8</sup>

### III. JOINT APPLICANTS MUST ESTABLISH NO HARM

9. PSE must seek Commission approval of sales or transfers of, (1) any part of PSE that would give a new or existing member of Puget Holdings effective control of PSE, or (2) any

<sup>5</sup> Rodriguez, Exh. AJR-1T at 3:3–4.

<sup>6</sup> Rodriguez, Exh. AJR-1T at 3:7 to 4:2.

<sup>7</sup> Rodriguez, Exh. AJR-1T at 3:4-6.

<sup>8</sup> 2018 Transaction, Docket U-180680, Final Order 06 (Corrected), ¶ 23.

material part of PSE, defined as at least 10 percent ownership.<sup>9</sup> Transfers of a controlling interest in PSE would trigger the net benefit standard in RCW 80.12.020. The proposed transaction involves a material interest in PSE, but not a controlling interest. Thus, the transaction must meet the public interest standard expressed in WAC 480-143-170.<sup>10</sup>

10. The no-harm public interest standard requires that the sale of minority, non-controlling interests not harm ratepayers. The no-harm standard does not require that the transfer leave ratepayers better off than they would be absent the transaction.<sup>11</sup> The determination of no harm must be made in each case, weighing the specific context and circumstances.<sup>12</sup> The Commission evaluates the following factors:

1. Whether there are commitments by the purchaser to important public service obligations such as customer service, safety, reliability, resource adequacy including energy efficiency and conservation, support for low-income customers, and environmental stewardship;
2. Whether customers are protected from rate increases that might result from the transaction and from financial distress that might occur as a result of the manner in which the purchase was financed or distress at other companies affiliated with the purchaser;
3. Whether the Commission's ability to regulate the utility in the public interest is fully protected, including preserving access to all necessary information;

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<sup>9</sup> *2018 Transaction*, Docket U-180680, Final Order 06 (Corrected), Settlement Stipulation, Appendix A at 4.

<sup>10</sup> *2018 Transaction*, Docket U-180680, Final Order 06 (Corrected), ¶ 11.

<sup>11</sup> *2008 Transaction*, Docket U-072375, Order 08, ¶ 115.

<sup>12</sup> *Id.*

4. Whether the purchaser has the financial and managerial fitness to own and operate the utility in fulfillment of its public service obligations; and
5. Whether the commitments made in the transaction are enforceable.<sup>13</sup>

#### **IV. LACK OF TRANSPARENCY HINDERS THE ABILITY TO EVALUATE RISK**

11. Public Counsel engaged Dr. J. Randall Woolridge to review the proposed transaction.<sup>14</sup>

Dr. Woolridge also reviewed the 2018 Transaction in Docket U-180680. Dr. Woolridge is a Professor of Finance and the Goldman, Sachs & Co. and Frank P. Smeal Endowed University Fellow in Business Administration at the University Park Campus of Pennsylvania State University. He is also the Director of the Smeal College Trading Room and President of the Nittany Lion Fund, LLC. A summary of Dr. Woolridge's educational background, research, and related business experience is included with these comments as Attachment 1.

12. Transfer of ownership introduces change and uncertainty. In this case, similar to the 2018 Transaction, PSE's largest equity holder is selling its interest, and the sale will introduce two new entities into PSE's ownership structure. The number of owners will increase from five to six as a result of this transaction. Each new owner will hold approximately a 15 percent interest, and combined they hold nearly 32 percent.

13. Potential risks include ownership and corporate governance risk, financial risk, portfolio risk, and capital investment risk. In addition, large corporate transactions require due diligence by each party prior to commencing the transaction. Because the initial filing did not provide

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<sup>13</sup> *Id.*

<sup>14</sup> Dr. Woolridge has signed a nondisclosure agreement with the Joint Applicants similar to the confidentiality agreements required under the Commission's standard protective orders. As such, Dr. Woolridge has had access to all materials provided by the Joint Applicants in this matter, including confidential materials.

adequate transparency, Public Counsel asked questions related to transactional risk and the corporate due diligence performed by CPP and the buyers. While the Joint Applicants provided some responses and additional information, Public Counsel did not receive the level of transparency needed to fully identify and evaluate risk. As a result, it is impossible to conclusively evaluate the proposed transaction's potential risks to customers, which hinders the ability to conclusively state whether the transaction meets the no harm standard. Each risk, due diligence, and transparency are discussed in the sections below.

**A. Ownership and Corporate Governance Risk**

14. Any change in corporate ownership can directly impact the governance and oversight of a corporate enterprise. Although the interest being transferred in the proposed transaction is not a controlling interest, the selling stockholder is Puget Holdings' largest equity holder. In this regard, this case presents a similar circumstance as the 2018 Transaction.
15. How an owner approaches decision-making informs whether the owner poses significant corporate governance risk. The applicants in the 2018 Transaction provided information about their decision-making process, including information about engaging multiple legal and financial advisors prior to entering into the purchase agreement.<sup>15</sup> The Joint Applicants in this case did not provide similar information. As a result, Public Counsel cannot with confidence conclude that the corporate governance risks are mitigated to meet the no harm standard.

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<sup>15</sup> Settlement Testimony of J. Randall Woolridge, Exh. JRW-1T at 9:16–10:9, *2018 Transaction*, Docket U-180680 (filed Jan. 22, 2019).

**B. Financial Risk**

16. Financial risk involves the impact that change of ownership has on PSE's financial integrity. The financial integrity of the owners impacts PSE's access to capital. If the owner's financial integrity is questionable, PSE's access to capital at reasonable prices could be impaired. Macquarie, for example, is investing in Puget Holdings as a consortium of three investors, including itself, through MGIF Clean Energy, L.P. The Joint Applicants have provided only overview information for Sunsuper Superannuation Fund and the National Pension Service of Korea, the other two Macquarie consortium investors. Their potential risk should have been considered by Macquarie in choosing to create the fund for this investment.
17. To evaluate financial integrity and risks, Public Counsel asked for copies of presentations and reports by investment advisers related to this transaction. The Joint Applicants refused to provide this information, preventing Public Counsel's ability to conclude that financial risks are not present. The Joint Applicants' Response to Public Counsel Informal Data Request No. 13 is provided in Attachment 2.

**C. Portfolio Risk**

18. Portfolio risk focuses on the risks involved with an owner's portfolio and encompasses two elements. The first element is the risk and diversification of the owner's portfolio fund holdings. The second element is the size of the owner's investment in PSE relative to the size and diversity of the owner's portfolio fund holdings.
19. In the 2018 Transaction, Public Counsel asked the applicants to provide details of purchasers' portfolios, including: (1) the total size of the fund, (2) the asset breakdown of the Fund (cash, money market, fixed income, private equity, public equity, etc.), (3) the 20 biggest

holdings of the Fund and the dollar amount of each of these holdings, (4) the Fund's total investment in PSE and where the size of the Fund's PSE holding ranks compared to the Fund's other holdings, and (5) any other measures used by Fund management to assess the risk level of the fund.<sup>16</sup> In the current case, Public Counsel asked for the same information in Public Counsel Informal Data Request No. 3. The Joint Applicants' Response to Public Counsel Informal Data Request No. 3 and Exhibit JRW-4 from Docket U-180680 are attached hereto as Attachment 3, and a close examination of both documents highlights the difference in level of information shared by the Joint Applicants in each matter. More information was shared in the prior case.

20. In the 2018 Transaction, the applicants provided detailed responses to almost all questions asked in Public Counsel Informal Data Request No. 3, including providing copies of their risk management policies. In the current docket, we were simply told that each of the Joint Applicants "operate consistent with industry standard risk management practices."<sup>17</sup> Without evidence, such as a written policy, to verify this claim, the integrity of the Joint Applicants cannot be confirmed.

21. Both Macquarie and Ontario consist of funds that were newly formed to acquire each buyer's share of Puget Holdings.<sup>18</sup> Puget Holdings is the only asset for both funds. As Public Counsel argued in Docket U-180680, lack of diversification can pose risks to ratepayers. Specifically, if Macquarie and Ontario face cash flow pressures to meet their investment obligations, they may not be able to provide additional equity capital for PSE, or they may be forced to liquidate some of their holdings in Puget Holdings. In other words, these two new

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<sup>16</sup> Woolridge, Exh. JRW-1T at 17:5–11, *2018 Transaction*, Docket U-180680 (filed Jan. 22, 2019).

<sup>17</sup> Attachment 3 at 10 (Joint Applicants' Response to Public Counsel Data Request No. 3, Item (f)).

<sup>18</sup> Attachment 3 at 9–10 (Joint Applicants' Response to Public Counsel Data Request No. 3, Item (a)).

investors' lack of diversification presents a situation where they will be dependent on PSE to provide their entire return.

22. Public Counsel requested information regarding regulatory oversight of the purchasers and information regarding insurance purchased to secure the fund's pension liabilities. A copy of the Joint Applicants' Response to Public Counsel Informal Data Request No. 4 is attached hereto as Attachment 4. Neither fund is required to purchase insurance to secure pension liabilities, and neither is subject to significant oversight. While Public Counsel acknowledges the Joint Applicants' claim that these new investors are large investors with experience in infrastructure stocks, the lack of oversight for these two funds, and the lack of insurance to cover potential pension claims, could pose risks for PSE's customers.

23. Public Counsel requested a copy of the Investment Policy Statement for Macquarie and Ontario, the performance attribution benchmarks used by each fund, actual performance for the past five years, and the up-side and down-side capture metrics for the past five years. The Joint Applicants' Response to Public Counsel Informal Data Request No. 5 is attached hereto as Attachment 5. The Joint Applicants responded that there "is no such 'Investment Policy Statement' for either Macquarie Fund or the Teachers' Fund." Rather, the response identified other documents that govern the funds, including a board-approved "code of conduct" for Macquarie and a "statement of investment policies and procedures" for Ontario. Neither provided information about operating history or financial performance, although both provided some information about their parent companies.

24. Macquarie's code of conduct, attached hereto as Attachment 15, could be described as an employee manual. It does not provide insight to the specific investment decision rules Public

Counsel requested, but rather describes the cultural norms expected of Macquarie employees.<sup>19</sup> By contrast, Ontario's statement of investment policies and procedures includes instructions regarding investment parameters, risk management tools, and other critical fund management parameters. A copy of Ontario's statement of investment policies and procedures is attached hereto as Attachment 16. The lack of operating history and financial performance for Macquarie and Ontario and the lack of information regarding the investment policies of Macquarie make it difficult to assess their investment strategy and portfolio risk.

25. Public Counsel requested information about the buyer's experience with energy investments to gauge how well-suited the investors would be in assessing and managing PSE as an investment. The Joint Applicants' Response to Public Counsel Informal Data Request No. 15 is attached hereto as Attachment 6. The Joint Applicants provided no information that would suggest that the two purchasers possess significant positive experience with energy investments.
26. Public Counsel requested information regarding the overall return on each fund, the percentage payout of the Fund's assets to pensioners if a pension fund, and the management fees required for fund operation. The Joint Applicants' Response to Public Counsel Informal Data Request No. 16 is attached hereto as Attachment 7. The Joint Applicants provided documents which only addressed the overall returns of the purchasers' parent companies. As such, there is no overall assessment of Macquarie and Ontario's operating history and financial performance, and the lack of operating history poses a risk to PSE's ratepayers.

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<sup>19</sup> Attachment 15.

27. Based on the Joint Applicants' responses, Public Counsel cannot conclusively conclude that portfolio risk is mitigated.

**D. Capital Investment Risk**

28. Change in ownership could impact the capital investment program of the underlying entity, namely PSE. If that impact is negative, investment or access to capital may be restricted, shareholders may be unwilling to commit to investment, or investors may choose to deploy capital elsewhere. Public Counsel has requested access to any agreements proposed between the buyers and Puget Holdings who want or need to sell their equity and the pricing and pricing methodology of those potential sales. The Joint Applicants' Response to Public Counsel Informal Data Request No. 6 is attached hereto as Attachment 8. The Joint Applicants responded that there are no such agreements. The Joint Applicants' response does not establish that the Joint Applicants reviewed PSE's potential need for capital investment or equity infusion, which is a basic component of the due diligence that the Joint Applicants should have done in evaluating whether to enter into the proposed transaction.

29. Public Counsel requested information regarding Puget Holdings' ability to raise capital from investors. These questions sought to understand the evaluation process that would be used if PSE requested its investors increase their stake in the Company or another investor or company sought to buy PSE. The Joint Applicants pointed to Articles III–IV of the Second Amended and Restated Limited Liability Agreement of Puget Holdings, LLC in their Response to Public Counsel Informal Data Request No. 7, attached hereto as Attachment 9. To Public Counsel's understanding, this document only outlines member rights in these events, and not the

specific analyses and evaluation the Joint Applicants would perform, which would mitigate capital investment risk.

30. Public Counsel also asked for information surrounding the buyer Joint Applicants' investment losses to assess risk. The Joint Applicants' Response to Public Counsel Informal Data Request No. 12 is attached hereto as Attachment 10. The Joint Applicants did not provide this information.

31. Based on the Joint Applicants' responses, Public Counsel cannot conclusively conclude that capital investment risk is mitigated.

#### **E. Due Diligence**

32. Public Counsel asked a number of questions specifically addressing the due diligence performed by the Joint Applicants to evaluate the proposed transaction. While the transfer is not a majority ownership share, 15.79 percent of Puget Holdings is significant. [REDACTED]

[REDACTED].<sup>20</sup> Any established investor would perform sufficient analyses to ensure sound investment with this degree of capital. Likewise, a company such as Puget Holdings should perform its own evaluations of the buyers to protect its stakeholders, and ultimately PSE's customers, from risk. This due diligence is critical in ensuring prudent investment and management.

33. Public Counsel sought to understand why CPP is selling their 31.5 percent, and why the purchasers view PSE as an attractive investment by asking for detailed analyses of the purchase. We have asked for meeting minutes and presentations to the Joint Applicants' respective boards.

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<sup>20</sup> Equity Commitment Letters of Ontario and Macquarie (Confidential), attached hereto as Attachment 17C.

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The Joint Applicants' Response to Public Counsel Informal Data Request No. 2 is attached hereto in Attachment 11. Instead of providing these minutes and presentations, the Joint Applicants provided a generic response that does not provide insight to the due diligence performed. Additionally, the Joint Applicants provided a brief response regarding CPP's reasons for selling, but did not provide any insight into the analysis CPP conducted. Attached hereto in Attachment 12C is the Joint Applicants' Response to Public Counsel Informal Data Request No. 19 (Confidential).

34. Public Counsel asked for evidence of studies, analyses, and internal reports used in evaluating PSE as an investment, again attempting to examine the due diligence undertaken by the Joint Applicants. The Joint Applicants' Response to Public Counsel Informal Data Request No. 20, attached hereto as Attachment 13, directed Public Counsel to a set of documents in the data room they established to share documents related to the proposed transaction. The documents in the folders referenced in Attachment 13 were:

- Macquarie Fitch rating document
- Macquarie code of conduct
- Macquarie FY2019, FY2020, and FY2021 annual reports
- Macquarie FY21 ESG report
- Macquarie consolidated annual report
- Macquarie Moody's rating
- Macquarie S&P rating
- Ontario 2019 & 2020 annual reports
- Ontario annual responsible investment and climate change report
- Ontario DBRS rating
- Ontario Moody's rating
- Ontario climate change milestones
- Ontario statement of investment policies and procedures
- Ontario S&P rating

Most of the documents referred to in Attachment 13 involve the buyers' own credit ratings, but they do not indicate a robust undertaking to evaluate PSE as an investment. The Joint

Applicants' Response to Public Counsel Informal Data Request No. 21, attached hereto as Attachment 14, did not provide analysis or reports, but rather pointed to Macquarie's structural characteristics.

35. Information related to the Joint Applicants' due diligence would inform the Commission about risks and issues that customers should be concerned about. No investment fund makes significant investment decisions without a detailed due diligence and evaluation to justify the decision, but the Joint Applicants have not demonstrated that due diligence occurred with respect to the proposed transaction.
36. All else equal, the higher the price paid in a given transaction, the higher the risk for the investor. Public Counsel asked questions related to how shares were priced in the proposed transaction to assess how the Joint Applicants evaluated risk. However, this information was not provided.<sup>21</sup> In this case, two newly-formed investments funds will hold their sole investment, Puget Holdings. The Joint Applicants have not provided information to indicate whether the price paid by Macquarie and Ontario is comparable to similar transactions. Such comparable analysis is standard due diligence in transactions such as the proposed transaction. If the price paid in this transaction was high compared to similar transactions, the new owners will have more pressure to generate a competitive rate of return. This pressure could lead them to pressure PSE to produce higher returns in ways that could pose a risk to ratepayers.
37. Based on the responses, Public Counsel cannot conclusively state whether the appropriate due diligence was taken in this case.

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<sup>21</sup> See Attachment 8.  
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**F. Transaction Transparency**

38. Investors who pose greater risks may result in a utility that is less reliable and financially secure. This ultimately harms customers, who are entitled to safe, reliable, and affordable utility service. As a result, adequate transparency is necessary to evaluate whether risks exist and whether they are appropriately mitigated such that the transaction satisfies the no harm standard.
39. If PSE were a publicly traded company, the sale of the largest stockholder's share would create significant concern for all stakeholders, including investors, customers, and the broader community.<sup>22</sup> In this case, it is not clear whether or to what extent the Joint Applicants engaged in due diligence. No prudent, established investor makes such large transactions without thorough analysis of the risks, and if they do, ratepayers would be particularly vulnerable to the consequences.
40. Throughout their answers, the Joint Applicants inconsistently provided information. In some instances they chose to provide relevant information for the respective parent companies, as in the Joint Applicants' Response to Public Counsel Informal Data Request No. 16 (Attachment 7). In others, they simply did not answer the question. Because of that inconsistency and the resulting lack of transparency, it is difficult to assess the risks posed by this transaction. Without the ability to accurately assess the risks, it is difficult to assess whether the transaction meets the no harm public interest standard. While the Commission could commence an adjudication to develop a more complete record on which to evaluate the transaction, Public Counsel acknowledges the broad consensus reached on the proposed commitments in this case.

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<sup>22</sup> In addition, for public companies, investors who accumulate five percent of a company's stock are required to file a SEC Form 13-D in which they indicate how much stock they have acquired, and what their intentions are.

Therefore, if the Commission wishes to decide this matter on the current record, the Commission should approve the modifications to the commitments agreed to by the stakeholders and require modifications to Commitment 43.

**V. THE MODIFIED PROPOSED COMMITMENTS INCLUDE MANY CHANGES NECESSARY TO ADDRESS THE PUBLIC INTEREST WHILE LEAVING ONE COMMITMENT IN CONTROVERSY**

41. Public Counsel reviewed the proposed commitments to determine whether they mitigate the known risks posed by the transaction. The commitments proposed in this case are based on the commitments made in Docket U-180680, and it is reasonable to update the prior commitments to address the current transaction. Public Counsel agrees that the modifications filed by the Joint Applicants in this docket on January 2, 2022, reflect the consensus reached by stakeholders on all commitments other than Commitment 43. Additional modifications to Commitment 43 are necessary to meet the public interest standard.

**A. Commitment 43 Should Be Extended Beyond the Prior Commitment to Mitigate Current Risks.**

42. The Joint Applicants initially proposed to continue Commitment 43 from Docket U-180680 unchanged. Renumbered as Commitment 42 in Exh. AJR-4, the commitment provides that PSE will continue to provide low-income weatherization funding at a level no less than \$4.43 million through December 31, 2022. This amount includes \$400,000 annually from shareholders and \$500,000 that will continue as long as decoupling continues.

43. An issue arose regarding the \$400,000 annual shareholder contribution and whether that amount would continue after December 31, 2022. The Joint Applicants assert that only \$300,000

would continue after 2022, whereas The Energy Project believes the entire \$400,000 would continue.

44. Shareholder funding was established in PSE’s 2001 general rate case. The amount set in that case was \$300,000 and no sunset was established.<sup>23</sup> In 2013, the Commission rejected a settlement that would have increased shareholder funding to \$400,000.<sup>24</sup> Even though the Commission rejected the settlement, PSE voluntarily implemented the term and began providing \$400,000 in annual shareholder low-income weatherization funding. The additional \$100,000 was initially intended to mitigate the impact of the K-factor and multi-year rate plan, and it would continue until 2016.

45. In PSE’s 2017 general rate case, the \$100,000 commitment was extended until the next rate case.<sup>25</sup> Before the next rate case was filed, PSE initiated Docket U-180680 seeking approval of the 2018 Transaction. Commitment 43 continued the entire \$400,000 shareholder contribution. PSE’s next rate case occurred in 2019 and did not address either the \$100,000 commitment or \$300,000 commitment. Public Counsel believes it is likely that the issue was not addressed because it had been addressed in Docket U-180680.

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<sup>23</sup> *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-011570 and UG-110571 (*consol.*), Twelfth Supplemental Order, App. A Settlement Stipulation, Exh. F at ¶ 34 (June 20, 2002) (the Settlement Stipulation was originally filed on June 6, 2002) (“PSE will make available \$800,000 in C&RD funds and \$300,000 in shareholder funds annually for the nontracker/rider programs, unless otherwise modified by the Company.”).

<sup>24</sup> *In re: the Petition of Puget Sound Energy for Approval of a Power Purchase Agreement for Acquisition of Coal Transition Power, as Defined by RCW 80.80.010, and the Recovery of Related Acquisition Costs*, Dockets UE-121373 et al., Order 06 & Order 07 (June 25, 2013); *In re: the Petition of Puget Sound Energy and NW Energy Coalition for an Order Authorizing PSE to Implement Elec. & Nat. Gas Decoupling*, Dockets UE-121697 et al., Order 07 at 182, n.245 (June 25, 2013).

<sup>25</sup> *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-170033 & UG-170034 (*consol.*), Final Order 08, ¶ 66 (Dec. 5, 2017); *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-170033 & UG-170034 (*consol.*), Final Order 08, App. B, ¶ 110 (Dec. 5, 2017).

46. Regardless of whether the additional \$100,000 commitment was intended to continue in perpetuity or whether an end date was established in Docket U-180680, leaving Commitment 43 / 42 unchanged in the current case is unsatisfactory. Under similar circumstances, the applicants in Docket U-180680 committed to extending low income weatherization funding in the amount of \$400,000. While the circumstances in the prior case were similar to those presented here, it is not sufficient to rely on the prior commitment, designed to mitigate risk from the prior case. Commitments in this case must mitigate risk and harm from the current transaction.

47. Further, it is unclear why this commitment should not be extended to address the current proposed transaction. It was appropriate in the prior docket addressing the 2018 Transaction, which took place after PSE's K-Factor and rate plan ended. Because of the similarities between the 2018 Transaction and the current docket, Public Counsel believes it is appropriate for the Joint Applicants to make a similar commitment here. As a result, Public Counsel recommends that the commitment be extended for an appropriate time to address the current transaction and suggests that the Commission consider a time period of no shorter than December 31, 2025.

**B. Certain Modifications Made through Stakeholder Consensus Contribute to the Public Interest in This Case.**

48. Public Counsel believes that several of the modifications to the proposed commitments filed on January 7, 2022, are important and contribute to the public interest in this case.<sup>26</sup>

49. Commitment 36. The Joint Applicants initially proposed to delete Commitment 36, which required PSE and Puget Holdings to file a non-consolidation opinion with the Commission within 90 days of closing, which concludes that the ring fencing provisions are

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<sup>26</sup> Some of the modifications are clerical in nature, and while Public Counsel agrees that they are necessary, we do not address those modifications in these comments.

sufficient so a bankruptcy court would not order the substantive consolidation of the assets and liabilities of PSE with those of Puget Energy or its affiliates or subsidiaries. PSE and Puget Holdings did file a non-consolidation opinion with the Commission as required, but that opinion applies to the 2018 Transaction.

50. From Public Counsel's perspective, the current transaction requires a non-consolidation opinion that applies to it. The Joint Applicants have agreed to provide a new non-consolidation opinion.
51. Commitment 39 / 38. Commitment 39 from Docket U-180680 provided that Puget Holdings and PSE would maintain its existing level of corporate contributions and community support in the state of Washington through December 31, 2022. The commitment was designed to mitigate the possibility of new, non-local owners diminishing PSE's focus on the local community. Renumbered in this case as Commitment 38 in Exh. AJR-4, the Joint Applicants initially proposed to carry the commitment forward, but did not extend the time period.
52. From Public Counsel's perspective, the current proposed transaction involves similar potential harm as the 2018 Transaction because it introduces two additional, new non-local owners. However, the harm present in this case is not simply a continuation of the harm identified in the 2018 Transaction; it is a new harm unique to this transaction. It is not sufficient to rely on the prior commitment, designed to mitigate risk from a prior case, to mitigate risk and harm from the current proposed transaction. The modified commitments filed on January 7, 2022, recognizes this and extends the time period through December 31, 2025. This modification is in the public interest, as it mitigates the risk posed by this transaction.

53. Commitment 41 / 40. The Joint Applicants propose to carry forward Commitment 41 from the 2018 Transaction, which provided that PSE and Puget Holdings would continue to work with low-income agencies to address issues of low-income customers. Public Counsel generally views Commitment 41 / 40 favorably, but also believes that the low-income advisory group should be included along with low-income agencies. The Joint Applicants have modified the commitment to require PSE and Puget Holdings to continue to work with low-income agencies and PSE’s low-income advisory group to address issues of low-income customers. This modification captures current practices and ensures that healthy engagement continues after the proposed transaction.

54. Commitment 42 / 41. Commitment 42 from Docket U-180680 has been renumbered as Commitment 41 in the current case. The Joint Applicants initially proposed to replace the term “increases” with “changes” such that the commitment would “not preclude parties from requesting or the Commission from approving changes to HELP funding in future proceeding based on modified or additional components or methodologies.” Using the term “changes” would allow HELP funding to decrease in a future proceeding, and Public Counsel would view a decrease in HELP funding negatively. As a result, Public Counsel believes that the commitment should retain the word “increases.” The modified commitments filed on January 7, 2022, retains the term “increases.”

55. Commitment 46 / 45. In Docket U-180680, Commitment 46 provided that Puget Holdings would make a one-time contribution from shareholder funds of \$2 million to the Low-Income Weatherization Program and that the funds would be distributed over a five-year

period. The Joint Applicants initially propose to complete the commitment and that the funds would be disbursed until 2024.

56. Public Counsel is generally aware that weatherization funds have not been spent as quickly as initially anticipated due to the COVID-19 pandemic. Public Counsel believes that Puget Holdings should complete the commitment made with respect to the 2018 Transaction, but that an additional commitment should be made regarding to the current proposed transaction.

57. Commitment 46 / 45 falls squarely into the Commission's no harm factor evaluating whether the commitments by the purchaser address important public service obligations, such as support for low-income customers.<sup>27</sup> Just as the commitment was important to ensuring that the 2018 Transaction met the no harm standard, a similar commitment is needed with respect to the current proposed transaction. Joint Applicants propose to modify the commitment to require fulfillment of the prior commitment and a new one-time contribution of \$1.5 million to be disbursed by December 31, 2026. Moreover, the funds may be used for low-income weatherization or renewable energy projects benefiting low income, vulnerable populations, and highly impacted communities. This modification is appropriate.

58. Commitment 48. Joint Applicants propose deleting Commitment 48, which required that PSE continue to consult with the low-income advisory committee regarding the deployment of the Get to Zero initiative. Although Get to Zero has now launched, it remains important that PSE engage the low-income advisory committee on the continued deployment and ongoing operation of Get to Zero and other similar customer-facing systems and initiatives. The Joint Applicants'

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<sup>27</sup> 2008 Transaction, Docket U-072375, Order 08 ¶ 115.

January 7, 2022, modification reflects an ongoing commitment to engage with the low-income advisory committee on such matters.

59. Commitment 51 / 49. Joint Applicants updated Commitment 51, which is renumbered as Commitment 49, to reflect a commitment to comply with the Clean Energy Transformation Act. Public Counsel believes this is a reasonable and appropriate update to the commitment.
60. Commitment 54. Commitment 54 from the 2018 Transaction provided that PSE would accelerate its business case review of an on-bill repayment program for customer investments in energy efficiency. PSE would work collaboratively with the CRAG on cost effectiveness and whether such a program would serve customers' best interest. The Joint Applicants initially proposed to delete this commitment. Public Counsel believes that a commitment to continue evaluating on-bill repayment programs should be retained because customer eligibility is being redefined (i.e., 80 percent of Area Median Income). On-bill repayment programs may be beneficial for customers who are not eligible for programs that cover the entire cost of improvement. Joint Applicants appropriately reinstated and modified this commitment.
61. Commitment 55 / 52. Joint Applicants propose to carry forward Commitment 55 from Docket U-180680, which is renumbered as Commitment 52. Commitment 55 / 52 provides that PSE will work with Northwest Energy Efficiency Council (NEEC) and the CRAG to adaptively manage and modify PSE's "Pay for Performance" pilot to attract more participants with the goal of having a successful whole-building pilot that significantly reduces energy use intensity by 40 percent in at least five (5) large commercial or industrial buildings (over 50,000 sq ft). The commitment has been modified to reflect that the Pay for Performance pilot is now a permanent program.

62. Commitment 64 / 61. Commitment 64 provided, in part, that Puget Holdings would file with the Commission prior to closing an affidavit affirming that it will submit to the jurisdiction of Washington courts for enforcement by the Commission of orders adopting these Commitments and subsequent orders affecting PSE. Joint Applicants initially proposed to remove this requirement from Commitment 64, which has been renumbered Commitment 61.
63. Puget Holdings filed the affidavit with the Commission as required in the 2018 Transaction. However, the ownership was different than it will be if the proposed transaction closes. The Joint Applicants have appropriately modified the proposed commitment to retain the affidavit requirement.
64. Commitment 65 / 62. Commitment 65 from the 2018 Transaction provided that each Owner of Puget Holdings is supportive of the commitments made in that case and that each owner would file an affidavit with the Commission affirming its support. The Joint Applicants modify their proposal to require Puget Holdings and each new owner to file an affidavit supporting the proposed commitments in this case. It is important to Public Counsel that each Puget Holdings owner, both existing and new, affirm support of the commitments resulting from this case. The modification to include proof of each existing owner's vote on the Puget Holdings resolution satisfies Public Counsel's concern.

## **VI. PUBLIC COUNSEL'S RECOMMENDATION TO THE COMMISSION**

65. The Joint Applicants' initial filing fails to establish that the proposed transaction meets the no harm standard. Public Counsel continues to have concerns about whether the transaction meets the no harm standard due to the lack of transparency even after informal discovery.

However, the stakeholders have reached consensus on most of the proposed commitments, and the agreed modifications are in the public interest.

66. Public Counsel evaluated transactional risks and investigated whether the Joint Applicants conducted the appropriate corporate due diligence prior to commencing the proposed transaction. The information provided by the Joint Applicants indicates that no substantial analysis was done; however, this is contrary to how large transactions, such as this one, are accomplished. Public Counsel is left with two possible conclusions. Either, the companies failed to conduct corporate due diligence, and if that is the case, the proposed transaction is not prudent. Or, the companies undertook due diligence actions, but did not to provide information. In that case, the companies' lack of transparency is troubling.

67. The Commission could commence an adjudication to establish an appropriate evidentiary record. Given the stakeholder consensus on the majority of commitments, adjudication may not be necessary to resolve this case. Therefore, if the Commission approves the transaction on the record before it, Public Counsel recommends that the Commission approve the commitments modified by stakeholder consensus and modify Commitment 43 as discussed in Section V.A. above.

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68. Public Counsel appreciates the opportunity to submit these comments. Please contact Lisa W. Gafken at [Lisa.Gafken@atg.wa.gov](mailto:Lisa.Gafken@atg.wa.gov) or Shay Bauman at [Shay.Bauman@atg.wa.gov](mailto:Shay.Bauman@atg.wa.gov) with questions about these comments. Ms. Gafken, Ms. Bauman, and Dr. Woolridge will be present at the January 27, 2022, Open Meeting to offer comments and answer questions.

Dated this 7th day of January, 2022.

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