

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	DOCKET U-101217
)	
)	ORDER 03
PUGET SOUND ENERGY, INC.,)	
)	FINAL ORDER APPROVING
)	AND ADOPTING
For a Declaratory Order Regarding the)	SETTLEMENT AGREEMENT;
Transfer of Assets to Jefferson County)	GRANTING PETITION FOR
Public Utility District)	DECLARATORY JUDGMENT
)	
.....)	

1 **SYNOPSIS.** *The Washington Utilities and Transportation Commission (Commission) approves and adopts an unopposed Settlement Stipulation filed by the Commission’s regulatory Staff,¹ Puget Sound Energy, Inc. (PSE or the Company), and Public Utility District #1 of Jefferson County (JPUD) in full resolution of the issues in this proceeding. The Commission grants PSE’s Petition for a Declaratory Order determining, among other things, that its transfer of assets to JPUD is exempt from the Commission’s statutes governing transfers of property and that the purchase price of \$103 million is sufficient to fully compensate PSE.*

SUMMARY

2 **PROCEEDINGS.** On July 15, 2010, Puget Sound Energy, Inc., filed with the Commission a petition for a declaratory order concerning the proposed transfer of certain assets from PSE to Public Utility District #1 of Jefferson County (JPUD). The

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.

transfer is proposed as a result of a November 2008 election in which the citizens of Jefferson County voted to approve Proposition 1, authorizing JPUD to construct or acquire electrical facilities for the generation, transmission or distribution of electric power in Jefferson County. JPUD is authorized do so under RCW 54.16.040 and is empowered to acquire PSE's assets by eminent domain under RCW 54.16.020.

3 In July of 2009, JPUD initiated settlement negotiations with PSE to acquire the Company's transmission and distribution assets within Jefferson County under threat of condemnation. On June 11, 2010, PSE and JPUD entered into an Asset Purchase Agreement (APA). If consummated, the APA will constitute a settlement between the parties and a disposal of utility property by PSE to a special purpose district pursuant to RCW 80.12.020(2).

4 On July 15, 2010, PSE filed a petition with the Commission seeking a declaratory order concerning the proposed transfer of assets to JPUD. PSE asks the Commission to enter an order declaring that:

1. Transfer of the assets 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. The amount of the purchase price is an amount that is sufficient to fully compensate PSE for the sale of the assets.
3. The provisions of the Asset Purchase Agreement pertaining to PSE's transition of its responsibilities to provide electrical service to its customers in the affected service territory are sufficient and consistent with PSE's public service obligations.

5 On December 15, 2010, the Commission's regulatory Staff (Commission Staff or Staff) filed on behalf of itself, PSE and JPUD a "multiparty" Settlement Stipulation (Stipulation) entered into pursuant to WAC 480-07-730(3) for the purpose of resolving all issues in this proceeding. According to the Stipulation, the only other party, the Public Counsel Section of the Washington Office of Attorney General, has elected not to sign the agreement, but does not oppose it. The Commission, by Notice issued January 19, 2011, suspended the procedural schedule and canceled the hearing

previously scheduled for February 9, 2011. The Commission here resolves this proceeding on the basis of the prefiled testimony and exhibits, and memoranda filed in support of the Stipulation.

- 6 **PARTY REPRESENTATIVES.** Sheree Strom Carson, Perkins Coie, Bellevue, Washington, represents PSE. Arthur A. Butler and Joel R. Paisner, Ater Wynne LLP, Seattle Washington, and Kirk H. Gibson, attorney, Portland, Oregon, represent JPUD. Robert D. Cedarbaum, Senior Assistant Attorney General, Olympia, Washington, represents Commission Staff. Simon ffitch and Sarah A. Shifley, Assistant Attorneys General, Seattle, Washington, represent the Public Counsel Section of the Washington Office of Attorney General (Public Counsel).
- 7 **COMMISSION DETERMINATION.** The Commission, having considered the terms of the Stipulation, the prefiled evidence accompanying the Company’s initial filing and the Stipulation, and memoranda filed by Staff and PSE in support of the Stipulation, finds and concludes that it is in the public interest to approve and adopt it. The Commission accordingly determines it should grant PSE’s Petition for a Declaratory Order.

MEMORANDUM

I. Background and Procedural History

- 8 In November 2008, the citizens of Jefferson County approved Proposition 1, authorizing JPUD to construct or acquire electrical facilities for the generation, transmission or distribution of electric power in Jefferson County. JPUD is authorized to do pursuant to RCW 54.16.040.² Under RCW 54.16.020, JPUD has

² As discussed below, JPUD is a “special purpose district” as defined in RCW 36.96.010. RCW 54.16.040 provides, in relevant part, that:

A district may purchase, within or without its limits, electric current for sale and distribution within or without its limits, and construct, condemn and purchase, purchase, acquire, add to, maintain, conduct, and operate works, plants, transmission and distribution lines and facilities for generating electric current, operated either by water power, steam, or other methods, within or without its limits, for the purpose of furnishing the district, and the inhabitants thereof and any other persons, including public and private corporations, within or without its

authority to acquire by eminent domain PSE's assets that currently provide service to Jefferson County customers. JPUD, pursuant to that authority, initiated settlement negotiations with PSE in July 2009 to acquire PSE's transmission and distribution assets within Jefferson County under threat of condemnation. These settlement negotiations led to a tentative settlement agreement memorialized in a Letter of Intent ("LOI") dated April 30, 2010.

9 On June 11, 2010, PSE and JPUD entered into an Asset Purchase Agreement ("APA") as the definitive settlement agreement contemplated under the LOI. If consummated, the APA will constitute a settlement between the parties and a disposal of property to a special purpose district pursuant to RCW 80.12.020(2). This, among other things, eliminates the risks PSE would face in a condemnation proceeding.

10 The APA identifies certain regulatory approvals that must be obtained as conditions precedent to closing. Three of these implicate the Commission's jurisdiction over PSE generally and the transfer of assets specifically. PSE, in response to its obligations in this regard, filed on July 15, 2010, a Petition for Declaratory Order seeking Commission affirmation that:

- The transfer of the assets is authorized by RCW 80.12.020(2).³
- The purchase price of \$103 million is sufficient to fully compensate PSE for the sale of the assets.
- 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 consistent with PSE's public service obligations.

limits, with electric current for all uses, with full and exclusive authority to sell and regulate and control the use, distribution, rates, service, charges, and price thereof, free from the jurisdiction and control of the utilities and transportation commission, in all things, together with the right to purchase, handle, sell, or lease motors, lamps, transformers and all other kinds of equipment and accessories necessary and convenient for the use, distribution, and sale thereof.

³ The Company clarified during the prehearing conference on August 26, 2010, that this final declaration means simply that the transfer of assets from PSE to JPUD does not require Commission approval under RCW 80.12.020(1). Tr. 8:23-25. PSE confirmed this point in its memorandum filed in support of the Stipulation, as discussed below at ¶ 15.

II. Settlement Stipulation

- 11 On December 15, 2010, Staff, PSE and JPUD filed their Stipulation, which they ask the Commission to approve and adopt to resolve all issues in this proceeding. According to the Stipulation, the only other party, Public Counsel, has elected not to sign the agreement, but does not oppose it. Paragraph 14 of the Stipulation states the parties' agreement to the three affirmations PSE seeks from the Commission.
- 12 Staff and PSE each filed a memorandum in support of the Stipulation, with supporting testimony from Mr. Keating for Staff and Mr. Karzmar for PSE.⁴ Addressing first the question of the Commission's authority in this matter, PSE states that the Commission can reach the issues raised in this proceeding and enter the proposed declaratory order because it is empowered under RCW 80.01.040(3) 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." PSE states further that 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.⁵
- 13 PSE and Staff also argue that pursuant to WAC 480-07-930 and RCW 34.05.240(1), the Commission has authority to enter a declaratory order upon a showing that:
- (a) Uncertainty necessitating resolution exists.
 - (b) There is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion.
 - (c) The uncertainty adversely affects the petitioner.

⁴ Mr. Karzmar also filed testimony and exhibits at the time of PSE's initial filing on July 12, 2010. These constitute part of the record considered by the Commission in resolving this matter.

⁵ RCW 80.04.250.

- (d) 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.
- (e) The petition complies with any additional requirements established by the agency.

We agree, as discussed and determined in the next section of this Order, that the Commission has the appropriate authority to enter a declaratory order under the circumstances this case presents.

- 14 These analyses by Staff and PSE provide the necessary legal basis for proceeding with a declaratory order under RCW 34.05.240(1) and WAC 480-07-930 despite the fact that JPUD is a “special purpose district” for purposes of RCW 36.96.010 and the statute governing the Commission’s authority over transfers of property by jurisdictional utilities does not apply to PSE’s transfer of assets to such a special purpose district.⁶
- 15 Nevertheless PSE’s Petition and the Stipulation request a declaration that “the transfer of the assets is *authorized* by RCW 80.12.020(2),” while the statute expressly *exempts* the transaction. In this connection, PSE states in its memorandum of support that:

⁶ RCW 80.12.020 provides:

- (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 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.

It 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 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.⁷

Thus, PSE clarifies that its use of the term “authorized” does not imply, as it ordinarily might, a request for Commission affirmation of the propriety of the transfer following review. Instead, what PSE requests is confirmation that the Commission shares the Company’s view of the statute and rule, as quoted above, that the transfer is exempt from Commission scrutiny and affirmative approval.

16 On the question of fair value, Mr. Karzmar presents detailed testimony and supporting exhibits concerning the assets to be sold and the Company’s evaluations of their value.⁸ Although many of the details remain confidential, Mr. Karzmar testifies concerning the results obtained using various approaches including consideration of the assessed value of the subject assets and the net book value of the assets as of April 30, 2010. PSE, assisted by outside experts, also conducted evaluations using familiar approaches to property valuation including the “income approach,” “comparable sales” and “market sales.” PSE’s evaluation team also valued the assets using the

⁷ PSE Memorandum in Support of Stipulation ¶5.

⁸ Exhibit KRK-1CT at 5:18 – 14:15; 14:19 – 16:19.

reproduction cost less depreciation method (RCLD) and the replacement cost new less depreciation (RCNLD) method. The RCLD approach takes the original equipment cost less depreciation, or book value, and applies an inflation factor (the Handy Whitman Index) to estimate the cost to reproduce the distribution system at today's prices. The RCNLD method is similar, but uses in lieu of reproduction costs, "replacement cost new," which is the cost of construction at current prices using modern materials and construction methods.

17 Mr. Karzmar testifies further that JPUD conducted its own analyses of the asset values, using some of the same techniques employed by the Company. The confidential data show that the range of valuations determined by PSE and JPUD brackets the \$103 million offer, which Mr. Karzmar describes as "JPUD's best and final offer."⁹ According to Mr. Karzmar: "PSE chose to accept this offer, in part, because we determined that for settlement purposes \$103 million fully and fairly compensates PSE for its investments in Jefferson County."¹⁰

18 Mr. Keating discusses in his testimony Staff's evaluation of the \$103 million purchase price provided under the terms of the APA.¹¹ Mr. Keating testifies that "\$103 million is a 'fair' and 'reasonable' purchase price because it is a price that might be reasonably expected to result between a willing buyer and a willing seller, *i.e.*, a fair market value."¹² In addition, he states, "\$103 million is a 'sufficient' price because it appears to be the maximum PSE was able to obtain in this transaction under the threat of condemnation by JPUD."¹³

19 Mr. Keating testifies that Staff reviewed various appraisals obtained by PSE that bracket the \$103 million purchase price.¹⁴ While Staff does not necessarily agree

⁹ *Id.* 12:14.

¹⁰ *Id.* 12:14 – 17.

¹¹ PSE provided evidentiary support for the amount in the form of testimony and exhibits from Mr. Karzmar that accompanied its Petition.

¹² Exhibit EJK-1T at 4:19-21.

¹³ *Id.* at 4:21-23.

¹⁴ The precise amounts of these estimates are proprietary and are afforded confidential treatment consistent with RCW 80.04.090 and Order 01 – Protective Order, entered in this proceeding on July 30, 2010.

with any one of these appraisals, according to Mr. Keating, they lend support for the \$103 million purchase price. Staff also independently reviewed the fair value question using three approaches, as follows:

- **Comparable Forced Sales:** Staff compared recent “takeovers” in the Northwest to the sale of the Jefferson County Assets. While not a direct match, the 2001 purchase of PacifiCorp assets by the City of Hermiston, Oregon was examined. There, PacifiCorp was an unwilling seller, yet eventually agreed to a final price, just as PSE has done. Measuring nominal purchase prices between the two transactions is not a valid comparison. Staff, therefore, used price to book multiples as a basis of comparison. The City of Hermiston’s purchase of PacifiCorp’s assets realized an amount in excess of two times PacifiCorp’s net book value of the purchased assets.¹⁵ The price to book multiple for the purchase of PSE’s Jefferson County Assets exceeds two times (approximately 2.14) using the net book value of the assets at the time the APA was entered (\$48.2 million) and the purchase price of \$103 million.
- **Market Sales:** Staff also examined the price to book multiple that Macquarie paid for PSE in the recent acquisition, along with the stock prices of a select group of publicly traded utilities in the Northwest, including Avista Corporation, MDU Resources Group, Inc., Northwest Natural Gas, IdaCorp., Inc., and Portland General Electric Company. Although none of these companies are identical to PSE in size or composition of assets, their stock prices indicate what investors are willing to pay for a Northwest utility in daily market transactions. Staff calculated a high and low price to book multiple for each company, along with an average for the group over a one year period beginning September 30, 2009, and ending September 30, 2010. The average price to book multiple for all of

¹⁵ *In the Matter of the Application of PacifiCorp for Approval of the Sale and Transfer of Electric Properties and Transfer of Service Territory to the City of Hermiston*, 2001 WL 1335742 (Or. P.U.C.).

the companies throughout the year was 1.25. Macquarie paid 1.5 times book to acquire PSE. In comparison, PSE is expected to receive approximately 2.14 times book value for the sale of the Jefferson County Assets. That is reasonable given the premiums generally paid for mergers or acquisitions and the improvements in the financial markets over the last two years.

- **Assessed Value:** This methodology was the final approach Staff reviewed. The latest assessed valuation by the Washington State Department of Revenue (“DOR”) for the Jefferson County Assets was approximately \$23 million for the Service Territory for 2009. 2010 valuations are not yet available. The tax assessed value was derived by DOR using three approaches: cost, income and market. The cost and income approaches look at total costs and total income of the Company as a whole and then allocate to each individual district. The market-based approach looks at stock prices and debt to equity. The three numbers are then reconciled to arrive at the final tax assessed value. The tax assessed value does not likely represent a fair market price for the Jefferson County Assets. Nevertheless, it is substantially below the price agreed upon by PSE and JPUD. It would also be presented to a jury in a condemnation proceeding. Because of this, failure to execute the transaction with JPUD may put PSE at risk of receiving much less than the \$103 million it did achieve without condemnation.

Considering all of the available evidence, Staff concluded \$103 million represents fair value for the assets PSE proposes to sell to JPUD.

- 20 Concerning PSE’s public service obligation, Staff’s memorandum in support of the Stipulation states that once the sale closes, PSE will no longer be an “electrical company” in the Jefferson County Service Territory because it will no longer “own, operate or manage any electric plant for hire” in the Service Territory. Accordingly, PSE’s public service obligations to existing customers in Jefferson County will end at closing, and JPUD will assume full responsibility for providing electrical service to

those customers. The APA acknowledges, however, that prior to closing PSE retains its public service obligations and commits during the transition period to:

[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).¹⁶

21 Under the terms of the APA and the Stipulation, PSE will remain subject to full supervision by the Commission until closing to ensure it continues to meet its statutory public service obligations, which include requirements that it:

- Charge only the just, fair, reasonable and sufficient rates contained in the published and effective tariffs on file with the Commission.¹⁷
- Not grant any undue or unreasonable preference or advantage to any person, corporation, locality or service.¹⁸
- Not engage in rate discrimination between customers for like or contemporaneous service under the same or substantially similar circumstances or conditions.¹⁹
- Provide safe, adequate and efficient service and the facilities necessary to do so.²⁰
- Provide service to any person or corporation reasonably entitled to electrical service from PSE that applies for such service.²¹

¹⁶ Exhibit KRK-3 at 19, ¶ 5.1(a).

¹⁷ RCW 80.28.010(1); RCW 80.28.080.

¹⁸ RCW 80.28.090.

¹⁹ RCW 80.28.100.

²⁰ RCW 80.28.010(2).

²¹ RCW 80.28.110.

Moreover, 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.

III. Discussion and Determinations

- 22 The issues raised by PSE’s Petition require interpretation and application of Washington law and the Commission’s rules. In particular, we are asked to construe RCW 80.12.020 and WAC 480-100-248 and apply our interpretation of the statute and rule to the facts before us. Interpretation and application of these are within the Commission’s purview and expertise. A declaratory order in this context is not 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. Such a proceeding could adversely affect PSE and its customers, and lead to results that are 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.²² Finally, resolution of the questions presented by PSE’s Petition in the manner proposed by the 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.
- 23 The first substantive question for the Commission is whether the proposed transfer of assets is “authorized” in the sense the PSE and the other parties use that term, first in PSE’s Petition and, second, in the Stipulation. RCW 80.12.020 states:
- (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

²² 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).

facilities with any other public service company, without having secured from the commission an 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.

No one disputes that JPUD is a “special purpose district” for purposes of RCW 36.96.010. Applying the familiar principle of statutory interpretation that we first look to the plain meaning of a statute’s language,²³ we determine that RCW 80.12.020(2) unambiguously exempts this “sale” from the requirement of prior approval set forth in RCW80.12.020(1). Thus, it is not necessary for PSE to obtain the Commission's prior approval. RCW 80.12.020, considered as a whole, effectively authorizes PSE and JPUD to complete the proposed transfer of assets without further action by the Commission.

24 We turn next to the question whether the purchase price of \$103 million is sufficient to fully compensate PSE for the sale of the assets. Considering the detailed evidence of valuation presented by PSE and Staff’s careful review of the fair value question, as discussed in Mr. Karzmar’s and Mr. Keating’s testimonies, and summarized above, we determine that \$103 million represents adequate compensation for the sale of these assets.

25 In the context of having made this determination, we find significant the provision in the Stipulation that provides:

²³ *Dep’t of Ecology v. Campbell & Gwinn LLC*, 146. Wn.2d 1, 9-10, 43 P.3d 4 (2002) (“If the statute’s meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.”).

A determination that the purchase price of \$103,000,000 is “fair, reasonable and sufficient” does not and is not intended to affect the accounting treatment of the sale proceeds, and is not and does not affect an allocation of the sale proceeds as between PSE's customers and shareholders. The Parties understand and agree that such accounting treatment and allocation of the sale proceeds as between PSE's customers and shareholders are matters to be determined by the Commission in a subsequent proceeding. For avoidance of doubt, the \$103,000,000 purchase price sets a ceiling for ratemaking purposes, without prejudice to any subsequent allocation of such sale proceeds to be recommended by any party or to be ordered by the Commission as between PSE's customers and shareholders.²⁴

26 We emphasize that the Stipulation asks the Commission to determine *only* that the \$103 million purchase price sets a financial ceiling for subsequent ratemaking purposes. Thus, while we determine that the purchase price of \$103 million is an appropriate one and sufficient to fully compensate PSE for the sale of the assets, our 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. Those questions will be finally determined in the context of a future proceeding, most likely one initiated via an accounting petition or in PSE's next general rate case.

27 Finally, we turn to the question whether the provisions of the Asset Purchase Agreement pertaining to PSE's transition of its responsibilities to provide electrical service to its customers in the affected service territory are sufficient and consistent with PSE's public service obligations under RCW chapter 80 and as otherwise provided by law. The Commission, as provided by various provisions in RCW Chapter 80, retains its authority to regulate PSE during the transition period, up to the time the transaction is closed and the assets are actually transferred to JPUD. There is nothing in the APA or the Stipulation that raises any concerns regarding the Commission's ability to continue regulating PSE in the interim period. Thus, we

²⁴ Stipulation ¶ 15.

retain the ability to ensure that PSE furnishes and supplies safe, adequate and efficient service and facilities as required by statutes and the Commission's rules.

28 Mr. Karzmar's testimony for PSE confirms this point from the Company's perspective:

A further condition of entering into these negotiations [with JPUD] 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.²⁵

29 Indeed, the APA provides that PSE commits during the transition period to:

Construct, 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).²⁶

30 Thus, both as a matter of law and express commitments made in connection with the proposed transaction, PSE's operations within the boundaries of the JPUD will continue to be subject to the Commission's ratemaking and other authority during the transition period. This means, among other things, that PSE must continue to charge only the just, fair, reasonable and sufficient rates contained in the published and effective tariffs on file with the Commission.²⁷ The prohibitions against granting any undue or unreasonable preference or advantage to any person, corporation, locality or

²⁵ Exhibit KRK-1CT at 4:3-10.

²⁶ Exhibit KRK-3 at 19, ¶ 5.1(a).

²⁷ RCW 80.28.010(1) and RCW 80.28.080.

service will continue to apply to PSE.²⁸ PSE continues to be under an obligation to not engage in rate discrimination between customers for like or contemporaneous service under the same or substantially similar circumstances or conditions.²⁹ PSE remains obligated during the transition period to provide safe, adequate and efficient service and the facilities necessary to do so.³⁰ Any person or corporation reasonably entitled to electrical service from PSE that applies for such service must be provided service and all necessary facilities.³¹

31 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.³² 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.

32 Considering these factors, we are satisfied that PSE will continue to fulfill its public service obligations under RCW chapter 80 and as otherwise provided by law pending the close of this transaction and the transfer of assets and responsibilities to JPUD. Nor, it appears, will there be any adverse impact on PSE’s other customers either before or after closing.

FINDINGS OF FACT

33 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of Order 05:

²⁸ RCW 80.28.090.

²⁹ RCW 80.28.100.

³⁰ RCW 80.28.010(2).

³¹ RCW 80.28.110.

³² Exhibit EJK-1T at 8:4-23.

- 34 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including electrical companies.
- 35 (2) Puget Sound Energy, Inc. is engaged in Washington State in the business of supplying utility services and commodities to the public for compensation.
- 36 (3) The amount of the purchase price that PSE will receive from JPUD, \$103 million, is sufficient to fully compensate PSE for the sale of the assets that are the subject matter of the APA between PSE and JPUD.

CONCLUSIONS OF LAW

37 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law:

- 38 (1) The Commission has jurisdiction over the parties to, and the subject matter of, this proceeding.
- 39 (2) Puget Sound Energy, Inc., is a “public service company” and an “electrical company” as those terms are defined in RCW 80.04.010 and as those terms otherwise are used in Title 80 RCW.
- 40 (3) PSE Public Utility District #1 of Jefferson County is a “special purpose district” as defined in RCW 36.96.010.
- 41 (4) The Commission has the authority, pursuant to RCW 80.04.250, to ascertain and determine the fair value for ratemaking purposes of utility property used and useful for service in this state.
- 42 (5) The transfer of assets from PSE to JPUD is exempt from the requirements of RCW 80.12.020 and no further action is required by the Commission to approve the transfer of the assets for purposes of RCW 80.12.020.

- 43 (6) The provisions of the Asset Purchase Agreement pertaining to PSE's transition of its responsibilities to provide electrical service to its customers in the affected service territory are sufficient and consistent with PSE's public service obligations under RCW chapter 80 and as otherwise provided by law.

ORDER

THE COMMISSION ORDERS:

- 44 (1) The unopposed Settlement Stipulation filed in this proceeding on December 15, 2010, which is attached as an appendix and incorporated into this Order by this reference, is approved and adopted in full resolution of the issues in this proceeding. Puget Sound Energy, Inc.'s Petition for Declaratory Order is accordingly granted, consistent with the terms of this Order. The Commission determines and declares that:
- The transfer of assets from PSE to JPUD is exempt from the requirements of RCW 80.12.020 and no further action is required by the Commission to approve the transfer of the assets for purposes of RCW 80.12.020.
 - The purchase price of \$103 million is sufficient to fully compensate PSE for the sale of the assets.
 - The provisions of the Asset Purchase Agreement pertaining to PSE's transition of its responsibilities to provide electrical service to its customers in the affected service territory are sufficient and consistent with PSE's public service obligations.
- 45 (2) PSE is required to maintain such separate accounts and accounting entries as are necessary to preserve fully the Commission's opportunity to consider in an appropriate proceeding the disposition of proceeds of sale and rate treatment of this transaction. As expressly provided in the Settlement Stipulation, the

\$103 million purchase price sets a ceiling for ratemaking purposes, without prejudice to any subsequent allocation of such sale proceeds to be recommended by any party or to be ordered by the Commission as between PSE's customers and shareholders.

- 46 (3) The Commission retains jurisdiction to enforce the terms of this Order.

DATED at Olympia, Washington, and effective February 1, 2011.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.

**APPENDIX
SETTLEMENT STIPULATION**