[Service Date October 9, 2014]

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of PUGET SOUND ENERGY For an Accounting Order Authorizing Accounting Treatment Related to Payments for Major Maintenance Activities	)	DOCKET UE-130583 ORDER 06
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND ENERGY, Respondent.	)	DOCKET UE-130617 ORDER 10
In the Matter of the Petition of PUGET SOUND ENERGY For an Accounting Order Authorizing Accounting the Sale of the Water Rights and Associated Assets of the Electron Hydroelectric Project in Accordance with WAC 480-143 and RCW 80.12.	)	DOCKET UE-131099 ORDER 06
In the Matter of the Petition of PUGET SOUND ENERGY For an Order Authorizing the Sale of Interests in the Development Assets Required for the Construction and Operation of Phase II of the Lower Snake River Wind Facility	)	DOCKET UE-131230 ORDER 06

ORDER GRANTING PUGET SOUND ENERGY'S AMENDED APPLICATION AND AUTHORIZING THE SALE OF THE ELECTRON HYDROELECTRIC FACILITY TO ELECTRON HYDRO LLC

1 **BACKGROUND.** On October 23, 2013, the Washington Utilities and Transportation Commission (Commission) entered a final order approving and adopting a settlement stipulation in Dockets UE-130583, UE-130617, UE-131099, and UE-131230 (Order 06).[1] Among other things, Order 06 approved the sale by Puget Sound Energy (PSE or Company) of the Electron Hydroelectric Facility (Facility)[2] to Electron Hydro LLC (Electron LLC) as in the public interest, on condition there were no material changes to the Asset Purchase Agreement (Purchase Agreement) as filed.[3] On June 25, 2014, PSE filed an Amended Application containing revisions to the Purchase Agreement, including a waiver of the condition precedent requiring Electron LLC to enter into its own agreement with the Puyallup Tribe (Tribe) to replace the existing Resource Enhancement Agreement (REA)[4] PSE has with the Tribe.[5] PSE requests that the Commission: (1) find that the Facility is not necessary or useful pursuant to RCW 80.12.020 and WAC 480-143-180, or, in the alternative, approve the transfer of the Facility pursuant to WAC 480-143-120, and

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[1] *In the Matter of the Petition of Puget Sound Energy, Inc., for an Accounting Order Authorizing Accounting Treatment Related to Payments for Major Maintenance Activities,* Docket UE-130583, Order 02; *WUTC, Complainant, v. Puget Sound Energy, Respondent,* Docket UE-130617, Order 06; *In the Matter of the Petition of Puget Sound Energy, for an Order Authorizing the Sale of the Water Rights and Associated Assets of the Electron Hydroelectric Project in Accordance with WAC 480-143 and RCW 80.12,* Docket UE-131099, Order 02; and *In the Matter of the Petition of Puget Sound Energy, for an Order Authorizing the Sale of Interests in the Development Assets Required for the Construction and Operation of Phase II of the Lower Snake River Wind Facility,* Docket UE-131230, Order 02, Final Order Approving and Adopting Settlement Agreement (October 23, 2013).

[2] The Facility "is located on the Puyallup River in Pierce County, Washington, approximately 23 miles southeast of Tacoma." Wetherbee, Exh. No. PKW-1CT at 22:5-6.

[3] Order 06, ¶¶ 25, 77.

[4] The REA obligates PSE to, among other things, either upgrade and license the facility or retire it by 2026. The Tribe's Petition, ¶ 3.

[5] *Id.*, ¶ 11.

(2) approve the accounting and ratemaking treatment proposed in the Amended Application.[6]

2 **SUMMARY.** We approve the sale of the Facility by PSE to Electron LLC, on condition that there are no material changes to the Asset Purchase Agreement (including exhibits) filed on June 25, 2014, and revised on July 17, 2014. We also approve the requested accounting treatment and, since the filing is not a rate case, defer the issue of ratemaking treatment to the power cost only rate case (PCORC) proceeding in Docket UE-141141.

3 **PROCEDURAL HISTORY.** On July 16, 2014, the Tribe filed a Petition to Intervene and for Leave to File Response to PSE's Amended Application (Tribe's Petition). On July 25, 2014, the Commission granted the Tribe's Petition, but limited the involvement to the narrow issue of Electron LLC's financial capacity to carry out the transaction. At that time, the Tribe also confirmed that it does not intend to raise any issues associated with its Endangered Species Act claims against PSE or PSE's responsibilities under the REA within this matter.[7] The Tribe filed its response (Tribe's Response) to PSE's Amended Application on August 28, 2014. PSE and Staff filed replies to the Tribe's Response on September 11, 2014.

4 **PARTY REPRESENTATIVES.** Sheree Strom Carson and Jason T. Kuzma, Perkins Coie LLP, Bellevue, Washington, represent PSE. Simon J. ffitch, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Division of the Washington Office of Attorney General (Public Counsel). Sally Brown, Senior Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Staff).[8] Jesse E. Cowell, Davison Van Cleve, Portland, Oregon, represents the Industrial Customers of Northwest Utilities (ICNU).[9] P. Stephen

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[6] *Id.*, ¶ 2.

[7] DiJulio, TR 75:3-76:9.

[8] 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.

[9] On August 8, 2014, ICNU filed a Petition for Accounting Order (ICNU's Petition) requiring PSE to: 1) refund to customers the amounts collected by the Company in rates between the

DiJulio and Jeremy Eckert, Foster Pepper PLLC, Seattle, Washington, represent the Tribe.

MEMORANDUM

5 **PSE's Amended Application.** On October 23, 2013, the Commission conditionally approved the sale of the Facility by PSE to Electron LLC, finding the transaction to be in the public interest, so long as there were no material changes to the Purchase Agreement as filed. In part, the as-filed Purchase Agreement provided that:

> [Electron LLC] has executed a Renewable Resource Agreement with [The Tribe], in form and substance satisfactory to [Electron LLC] in its sole discretion; and [PSE] has received the consent of [The Tribe] to the termination of the current [REA] between [PSE] and [the Tribe]."[10]

6 After four extensions of the transaction's closing date, originally October 31, 2013, [11] it became apparent that negotiations between Electron LLC and the Tribe for an agreement replacing the REA, to fulfill the above condition precedent, had reached a stalemate.[12] With its Amended Application, PSE proposes that it remain a party to the REA "until such time as the [Tribe] would consent to an assignment or enter into a new operating agreement with Electron [LLC]."[13]

7 PSE and Electron LLC have agreed to Amendment No. 4 to the Purchase Agreement (Amendment No. 4) which provides that:

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effective date of its tariffs filed in accordance with the Final Order in Dockets UE-130617 et al and the date of ICNU's Petition that were in excess of fair, just, reasonable, and sufficient rates; and 2) defer, beginning from the date of ICNU's Petition, amounts the Company is currently collecting in rates that are in excess of fair, just, reasonable, and sufficient rates. ICNU's Petition, ¶ 1. ICNU's Petition will not be addressed in this Order.

[10] Purchase Agreement, ¶ 4.2.2.

[11] PSE's Amended Application, ¶ 17.

[12] *Id.*, ¶ 9.

[13] *Id.*, ¶ 11.

- The purchase price for the Facility is reduced from $13.7 million to $8.4 million.
- The date by which the parties must satisfy conditions precedent in the Purchase Agreement has been extended.[14]
- The term of which PSE will purchase power produced from the Facility has been shortened from 20 years to a term expiring December 31, 2026.[15]
- PSE and Electron LLC have entered into a Facility Operation Agreement (FOA) under which Electron LLC would be obligated to operate the Facility in compliance with the REA's terms and conditions, including making payments to the Tribe for annual operations and maintenance (O&M) contributions through PSE.[16]

8 PSE requests that the Commission find that the Facility is not necessary or useful pursuant to RCW 80.12.020 and WAC 480-143-180(1).[17] In the alternative, if the Commission finds the Facility necessary and useful, the Company requests approval of the transaction with Electron LLC pursuant to RCW 80.12.020 and WAC 480-143-120.[18]

9 PSE states that the net book value for the Facility is approximately $23.6 million.[19] The sale, according to PSE, will result in an after-tax loss.[20] The Company proposes to defer the unrecovered plant cost in FERC Account 182.2, Unrecovered Plant and Regulatory Study Costs, which will be amortized over a period to be determined in Docket UE-141141, the Company's PCORC.[21] The Company requests that the

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[14] *Id.*, ¶¶ 14-15.

[15] *Id.* Under the PPA, PSE would purchase the entire net electrical output of the Facility, which has a total plant nameplate rating of 25.5 megawatts (MW). Wetherbee, Exh. No. PKW-1CT at 22:13. However, PSE has limited the amount of water allowed to enter the Facility's old wood flume "to prevent more frequent failures but this, in turn, has limited plant output to 8 MW, or [less than] one-third of full operating capacity." PSE's Reply Brief, ¶ 6.

[16] *Id.*, ¶¶ 14, 15, and 23.

[17] PSE's Amended Application, ¶ 20.

[18] *Id.*, ¶ 22.

[19] *Id.*, ¶ 23.

[20] *Id.*

[21] *Id.*

monthly depreciation expense that will continue to be included in rates be applied against the deferred unrecovered plant balance from the date of closing until the implementation of new rates in Docket UE-141141.[22]

10 **The Tribe's Opposition.** The Tribe argues that the transaction as proposed will harm the public interest as it "'will have substantial rate impacts and risks' resulting from a failed project and PSE's remaining obligations under the [REA] with the Tribe."[23] The Tribe asserts that the Company's obligations include:

- Notifying the Tribe no later than 2018 whether PSE will either upgrade or retire the Facility by 2026;
- Making annual payments to the Tribe for O&M, contributions for trap and haul facilities, and additional costs associated with the fish ladders; and
- Maintaining commercial general liability insurance of not less than $5 million and, at the request of the Tribe, name the Tribe as an Additional Insured on the policy.[24]

11 The Tribe maintains that there are two legal standards which must be met for approval of the transaction: the "no harm" test and the "net benefit" test. The Tribe argues that the sale of any utility property, regardless of its usefulness, must be in the broader public's interest.[25] This standard the Tribe characterizes as the "no harm" test.[26]

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[22] *Id.*

[23] The Tribe's Opposition, ¶ 3 (quoting the EES Report at p. 7).

[24] *Id.*, ¶¶ 12-14. The Tribe also argues that these obligations are not assignable "without prior written consent of the other [p]arty." *Id.*, ¶ 15 (quoting Wetherbee, Exh. No. PKW-9C, ¶ 18.1). The Tribe asserts that, by entering into a Facility Operation Agreement (FOA) with Electron LLC which requires Electron LLC to "operate [the Facility] in compliance with [REA] requirements and to make required payments to the [Tribe] (through PSE)," PSE's Amended Application, ¶ 11.

[25] *Id.*, ¶ 44.

[26] *Id.*, ¶ 46.

12 *No harm test.* Pursuant to WAC 480-143-170:

> If, upon examination of any application and accompanying exhibits, or upon a hearing concerning the same, the [C]omission finds that the proposed transaction is not consistent with the public interest, it shall deny the application.

The Tribe asserts that this "public interest" test has, historically, been treated as a "no harm" standard, so that, "the Commission will 'deny the application if the transaction is not consistent with the public interest, but will approve it, if the applicant demonstrates that the transaction, on balance, at least does not harm.'"[27] In order to do "no harm," the Tribe indicates a four prong test must be satisfied. The Tribe indicates that PSE has failed to satisfy two of these prongs:

- The transaction should not harm customers by causing rates or risks to increase, or by causing service quality and reliability to decline, compared to what could reasonably be expected to have occurred in the absence of the transaction.
- The transaction, with conditions required for its approval, should strike a balance among the interests of customers, shareholders, and the broader public that is fair and that preserves affordable, efficient, reliable and available service.[28]

13 The Tribe contends that the transaction puts PSE's customers at risk for harm "because if lacks sound economic fundamentals, thereby increasing rates and increasing risk for PSE's customers."[29] Specifically, the Tribe argues that Electron

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[27] *Id.*, ¶ 46 (citing *In re the Matter of the Application of Avista Corporation, PacifiCorp, and Puget Sound Energy, Inc., for approval of the sale of their interest in Centralia Power Plant,* Docket Nos. UE-991255, UE-991262, and UE-991409, ¶ 29).

[28] *Id.*, ¶¶ 47-49. The remaining two prongs, that the transaction should not distort competitive markets and that the jurisdictional effect should be consistent with the Commission's role and responsibility to protect the interests of Washington customers, were not contested by the Tribe. *Id.*, ¶¶ 50-51.

[29] *Id.*, ¶ 57.

LLC is projected to lose money in the transaction,[30] making PSE the insurer and guarantor of Electron LLC should the latter become unable to perform its obligations under the FOA. If PSE were to absorb Electron LLC's financial obligations, "there is nothing to preclude PSE from passing these costs of compliance (with the legitimate REA) onto its customers."[31] The Tribe rejects any suggestion that Electron LLC's commercial liability insurance coverage, in the amount of $2 million, will be sufficient to cover this situation.[32] PSE will, according to the Tribe, become Electron LLC's guarantor and will likely pass any and all costs onto ratepayers.[33] This results in harm to PSE's customers by increasing risk and rates.[34]

14 In addition, the Tribe asserts that the transaction "fails to strike a balance between the interests of customers, shareholders, and the broader public."[35] The Tribe cites to environmental costs associated with the transaction, including the lack of any evidence that Electron LLC has or will hire personnel with the requisite ecological or biological expertise to protect the salmonid species at the project site.[36] Adding to these potential environmental costs, the Tribe explains that the FOA requires PSE obtain the permission of Electron LLC prior to communicating with the Tribe.[37] As the Tribe indicates, restrictions on the ability to timely confer with PSE, and vice versa, on sensitive environmental matters "will undoubtedly multiply [Endangered Species Act violations] without constant care, communication, and maintenance."[38] The Tribe argues that this results in harm to the broader public and "undermines the public interest in an 'efficient and environmental compliant' operation."[39]

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[30] *Id.* ("Because Electron LLC's projected losses are not "negligent" or "wasteful losses" of PSE…").

[31] *Id.*

[32] *Id.*, ¶¶ 18, 63.

[33] *Id.*, ¶¶ 57, 63.

[34] *Id.*, ¶ 64.

[35] *Id.*, ¶ 65.

[36] *Id.*, ¶¶ 66, 68.

[37] *Id.*, ¶ 69. See FOA, section 2.

[38] *Id.*

[39] *Id.*

15 *Net benefit standard.* With regard to the "net benefit" test, the Tribe contends that the Commission may not approve the proposed sale of any property found necessary or useful absent a finding of net benefit to the customers of the utility.[40] Pursuant to RCW 80.12.020(1):

> The [C]omission 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 electric company without a finding that the transaction would provide a net benefit to the customers of the company.

The Tribe argues that the Facility is not useful or necessary but is, instead, obsolete.[41] That said, should the Commission find that the Facility is necessary and useful, the Tribe asks that the Commission deny PSE's Amended Application since the Company failed to "provide adequate information for the Commission to determine whether PSE has satisfied the 'net benefit' standard."[42]

16 **PSE's Reply.** PSE begins by reiterating that the Facility it proposes to sell to Electron LLC is over 110 years old.[43] While its four generators carry a nameplate capacity of 25.5 MW, the wood flume at the Facility needs to be replaced, and PSE has restricted the amount of water flow that can be channeled through the flume.[44] Thus, the energy output for the Facility has become limited to 8 MW or less.[45] This, PSE explains, is only one example of the deteriorating condition of the Facility which will require "significant capital investment" in order to continue operating.[46]

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[40] The Tribe's Opposition, ¶ 43.

[41] *Id.*, ¶ 74 ("In contrast to PSE's argument, the facts demonstrate that the Electron Dam is obsolete under WAC 480-143-180(3)).

[42] *Id.*, ¶ 75.

[43] PSE's Reply, ¶ 3. It "was built by a predecessor of PSE and began generating electricity on April 12, 1904." *Id.*

[44] *Id.*, ¶ 4.

[45] *Id.*, ¶ 6.

[46] *Id.*

17 PSE states that it had three options to deal with the aging Facility: short- or long-term extension of the life of the Facility, retirement of the Facility, or sale of the Facility.[47] Of these options, the Company identified several benefits to selling the Facility including: (1) avoidance of operational risks and retirement costs; (2) mitigation of potential economic loss associated with retirement; (3) transference of REA obligations to the purchaser; (4) transference of debris removal obligations to buyer; and (5) even if the sale is unsuccessful, other options remain available.[48]

18 With PSE's Amended Application, the Company would not assign its interest under the REA, and PSE admits that it would "remain primarily obligated and responsible to [the Tribe] under that agreement."[49] In turn, PSE maintains that it will enter an FOA with Electron LLC that would require Electron LLC to operate the Facility in accordance with the REA, including making the annual O&M payments to the Tribe through PSE.[50]

19 The Company asserts that the appropriate legal standard for evaluating the transaction is found in WAC 480-142-170 and requires that the transaction "must not harm the public interest in order to be approved."[51] This "no harm" test, according to PSE, is not confined to the four prong test suggested by the Tribe.[52] Even so, PSE argues that the Tribe is incorrect when it states that the transaction violates the first and second prongs.[53] Further, PSE states that the "net benefit" test is inapplicable since Electron LLC would not acquire a controlling interest in the Company.[54]

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[47] *Id.*, ¶¶ 9-16.

[48] *Id.*, ¶ 16.

[49] *Id.*, ¶ 24.

[50] *Id.*

[51] *Id.*, ¶ 29.

[52] *Id.*, ¶ 30.

[53] *Id.*

[54] *Id.* PSE argues that the Tribe has misunderstood the fundamental use of the "net benefit" test. *Id.*, ¶ 60. The Company contends that the plain language of RCW 80.12.020(1) provides for the application of the "net benefit" standard "to any transaction that 'would result in a person, directly or indirectly, acquiring a controlling interest in a gas or electrical company….'" *Id.*, ¶ 61 (quoting RCW 80.12.020(1)).

20 The Company contends that the Tribe's first argument, that the transaction potentially harms ratepayers by causing rates or risks to increase, is unsubstantiated. According to PSE, the transaction save ratepayers over $2 million by reducing the Company's revenue requirement by $5,086,563, the benefit of which is slightly reduced by $2,814,770 in projected power purchases from Electron LLC, resulting in a net reduction in revenue requirement of $2,271,793 beginning December 1, 2014.[55] Further, the sale of the Facility and the execution of the purchase power agreement (PPA) "produced the lowest 20-year levelized cost, the lowest net cost per kilowatt-year, the smallest portfolio benefit, the highest benefit ratio, and the highest portfolio benefit per kilowatt-year."[56] While these benefits were based on the original Application, PSE conducted further analyses based on the revised transaction and "projected net portfolio cost savings under the proposed alternative as compared to the original terms of the [agreement]."[57]

21 PSE disagrees with the Tribe that the Company will be "responsible for [Electron LLC] losses of the magnitude suggested, even in the unlikely event that such significant losses were to materialize."[58] The transaction, as revised, "neither increases nor decreases PSE's obligations imposed by the [REA] because PSE has those obligations regardless of the outcome of the proposed transaction."[59] As PSE states, "[e]ven if one were to assume that [Electron LLC] were to default on its reimbursement obligations under the [FOA] (a speculative assumption at best), the purchase price of $8.4 million exceeds all reasonable projections of [annual O&M and environmental] payments required by PSE."[60] PSE customers are still in a better position under the transaction, even if Electron LLC defaults, because they "will have an additional $8.4 million in the purchase price to be paid by [Electron LLC at

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[55] *Id.*, ¶¶ 32-33. The amounts referenced by PSE were agreed to by the settling parties in the Company's 2014 power cost only rate case, Docket UE-141141. The matter, which addresses, among other things, the extent of responsibility related to the unrecovered plant costs that the ratepayers are proposed to assume, is also under consideration by the Commission.

[56] *Id.*, ¶ 35.

[57] *Id.*, ¶ 36.

[58] *Id.*, ¶ 38.

[59] *Id.*

[60] *Id.*, ¶ 41.

closing]."[61] As for the issue of retirement of the Facility, PSE also explains that the REA only requires the Company remove the diversion dam and headworks from the Puyallup River channel.[62] The cost for this obligation is $845,000, compared to the total cost of retirement of the Facility, which is projected at $28.9 million.[63]

22 Further, the Company attacks the Tribe's second prong argument, that the transaction does not strike a balance between the interests of customers, shareholders, and the broader public. PSE asserts that Electron LLC will give the Facility a much needed refurbishing, leaving the Company able to utilize its limited capital on other, higher priorities.[64] Customers will receive power at a reasonable price, and the Tribe "will continue to receive the benefits of the [REA] and commitment that PSE will remain the party responsible for the obligations thereunder."[65]

23 With regard to the qualifications of Electron LLC, PSE asserts that the individuals behind Electron LLC "have a proven record with PSE and have committed to operate the [Facility] in a manner consistent with PSE's obligations under the [REA]."[66] The companies behind Electron LLC, namely Tollhouse Energy Company, its subsidiary, Whitewater Engineering Corporation, "are comprised of professional engineers, fish and environmental resource scientists, hydrologists and often collaborate with other professionals on an as-needed basis."[67] Further, Electron LLC intends to begin repairs and maintenance to the Facility as soon as possible following the closing of the sale.[68] PSE states that:

> [o]peration of the [Facility] will be automated such that there will be flow level sensors in the Puyallup River above and below the diversion, every mile along and inside the flume, and in the forebay. Intake

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[61] *Id.*, ¶ 43.

[62] *Id.*, ¶ 39.

[63] *Id.*, ¶ 15.

[64] *Id.*, ¶ 45-6.

[65] *Id.*, ¶ 46.

[66] *Id.*, ¶ 47.

[67] *Id.*, ¶ 49.

[68] *Id.*, ¶ 56.

> valves will also be automated. These automation improvements will give [Electron LLC] the ability to control the plant and monitor environmental aspects of the project in real time, both locally and remotely, giving [Electron LLC] the ability to respond quickly to any detected or potential issues.[69]

24 **Staff's Reply.** Staff asserts that the basic foundation of the original transaction is still in place and that the Amended Application does not "materially reduce the economic benefits resulting from the sale."[70] Staff argues that the Tribe is incorrect in its argument that any losses sustained by Electron LLC will fall to PSE ratepayers.[71] As indicated in its Response to Commission's Notice, Staff contends that "if PSE breaches the REA, and higher costs result, such costs would be imprudent and would not be borne by ratepayers."[72] Staff argues that, even if Electron LLC fails to make payments to the Company in fulfillment of the FOA, "it would not materially affect the overall benefit [including the almost immediate $2.27 million reduction in revenue requirement] to ratepayers arising from the transaction."[73]

25 **Decision.** PSE and Staff are correct that the "net benefit" test is inapplicable to PSE's Amended Application since the transaction involves a sale of assets, not a sale of a controlling interest in the Company. The standard of review for the proposed transaction is the "no harm" test.

26 Pursuant to WAC 480-143-170, "[i]f, upon the examination of any application and accompanying exhibits, or upon a hearing concerning the same, the [C]omission finds the proposed transaction is not consistent with the public interest, it shall deny the

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[69] *Id.* Although the Company defends Electron LLC against the accusations made by the Tribe that Electron LLC is unfit to manage and operate the Facility, PSE still requests that the Commission not "opine on the financial and managerial fitness of an entity over which the Commission does not and will not have jurisdiction." *Id.*, ¶ 59.

[70] Staff's Reply, ¶ 3.

[71] *Id.*, ¶ 5.

[72] Staff's Response to the Commission's Notice, ¶ 16 (July 18, 2014) (citation omitted). As Staff correctly illustrated, the REA is a private agreement between PSE and the Tribe, and the Commission has no jurisdiction over its enforcement. Staff's Response to the Tribe's Late-Filed Intervention, ¶ 10 (July 23, 2014).

[73] *Id.*, ¶¶ 6-7.

application." We have interpreted this as an examination of whether the transaction will do "no harm." We find that PSE has met this standard.

27 The immediate effect of the sale will net ratepayers an $8.4 million purchase price and lower the Company's revenue requirement by $2.27 million during the 2014 PCORC rate period beginning December 1, 2014. At the same time, ratepayers and the Company have divested themselves of an aging plant in need of extensive repairs and maintenance. PSE has chosen the least cost option for addressing the future of this aging asset.

28 While it disagreed with the basic premise that we should examine Electron LLC's operational fitness, PSE also provided the Commission with evidentiary support of its successor's environmental and managerial capabilities. Even in the event of a failure by Electron LLC to either fulfill its obligations under the REA or the PPA, which is speculative at best, our approval of the proposed transaction is not a guarantee that PSE would recover any of its associated costs of compliance with these contracts. Prior to any recovery from ratepayers, the Company would make a rate request in an adjudicated rate case where we would examine the evidence presented. Recovery from ratepayers should not be assumed *a fait accompli*. As further assurance, PSE has required Electron LLC to purchase a $2 million commercial liability insurance policy.

29 Customers will continue to receive power from a hydroelectric, carbon-neutral source, while also receiving the benefits of the sale of an aging plant. The Tribe will receive continued compliance from PSE with the terms of the REA. We find that the transaction as amended is in the public interest provided there are no material changes to the Purchase Agreement as filed in PSE's Amended Application. If material changes occur, the Company must re-file its application for approval of the sale.

30 With regard to PSE's requested accounting and ratemaking treatment, we find reasonable both the deferral of the unrecovered plant balance and the offsetting of the deferred unrecovered plant balance by the Facility's depreciation expense for the few months until rates become effective in the Company's power cost only rate case, likely by December 1, 2014. We approved the same accounting treatment in Order 06. Nothing within the Amended Application has diminished the appropriateness of

this decision, nor has the Tribe raised specific objections to this request. We approve the requested accounting treatment and, since the filing is not a rate case, defer the issue of ratemaking treatment to the PCORC proceeding in Docket UE-141141.

FINDINGS OF FACT

31 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 the preceding detailed findings:

32 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates, rules, regulations, practices, accounts, securities, transfers of property and affiliated interests of public service companies, including electrical and gas companies.

33 (2) Puget Sound Energy (PSE or the Company) is a "public service company," an "electrical company" and a "gas company," as those terms are defined in RCW 80.04.010 and as those terms otherwise are used in Title 80 RCW. PSE is engaged in Washington State in the business of supplying utility services and commodities to the public for compensation.

34 (3) On October 23, 2013, the Commission entered a final order approving and adopting a settlement stipulation in Dockets UE-130583, UE-130617, UE-131099, and UE-131230, which, among other things, conditionally approved the sale by PSE of the Electron Hydroelectric Facility (Facility) to Electron Hydro LLC (Electron LLC) as in the public interest, provided there were no material changes to the Asset Purchase Agreement (Purchase Agreement) as filed.

35 (4) The Purchase Agreement provided a condition precedent whereby Electron LLC would enter into its own agreement with the Puyallup Tribe (Tribe) to

replace the existing Resource Enhancement Agreement (REA) PSE has with the Tribe.

36 (5) PSE filed an Amended Application on June 25, 2014, stating that it had modified the Purchase Agreement with Electron LLC such that the Company will remain a party to the REA with the Tribe, and Electron LLC would enter into a Facility Operations Agreement with PSE obligating Electron LLC to operate the Facility consistent with the terms of the REA.

37 (6) PSE will receive $8.4 million to transfer ownership of the Facility to Electron LLC and will purchase power produced by the Facility until December 31, 2026.

38 (7) The transaction will result in a $2.27 million reduction in PSE's revenue requirement over the 2014 power cost only rate case rate period.

CONCLUSIONS OF LAW

39 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, incorporating by reference pertinent portions of the preceding detailed conclusions:

40 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.

41 (2) Pursuant to WAC 480-143-170, the Commission will approve an application for authority to transfer property unless, upon examination of the application and exhibits, or upon a hearing concerning the same, the Commission finds that the proposed transaction is not in the public interest. This is commonly referred to as the "no harm" standard.

42 (3) The transaction, as proposed in PSE's Amended Application, is in the public interest and should be approved on condition that there are no material changes to the Purchase Agreement.

43 (4) The accounting treatment as proposed in the Amended Application is reasonable.

ORDER

THE COMMISSION ORDERS THAT:

44 (1) The sale of Puget Sound Energy's Electron Hydroelectric Project to Electron Hydro LLC is approved on condition that there are no material changes to the Asset Purchase Agreement (including exhibits) filed on June 25, 2014, and revised on July 17, 2014.

45 (2) The accounting treatment requested by PSE in its Amended Application is approved.

46 (3) The Commission retains jurisdiction over the subject matters and parties to this proceeding to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective October 9, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

JEFFREY D. GOLTZ, 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.