

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint Application of

Puget Sound Energy, Alberta Investment
Management Corporation, British Columbia
Investment Management Corporation,
OMERS Administration Corporation, and
PGGM Vermogensbeheer B.V.

For an Order Authorizing Proposed Sales of
Indirect Interests in Puget Sound Energy

DOCKET U-180680

COMMENTS OF
COMMISSION STAFF

I. INTRODUCTION

1 Staff of the Washington Utilities and Transportation Commission (Commission)
submits the following comments in response to the Commission’s Notice of Opportunity to
File Written Comments and Notice of Recessed Open Meeting scheduled for November 5,
2018.

II. BACKGROUND

2 On September 5, 2018, Puget Sound Energy (PSE) filed a joint application for the
proposed sale of a 43.99 percent indirect ownership interest in PSE currently held by
Macquarie Infrastructure Partners Inc. (MIP) and Padua MG Holdings LLC, a Macquarie
entity (collectively “Macquarie”) (“Joint Application”). Puget Holdings LLC (“Puget
Holdings”) indirectly holds 100 percent of the ownership interest in PSE. Macquarie intends
to sell all of its 43.99 percent interest in Puget Holdings to four different buyers
(collectively, with PSE, “Joint Applicants”).

3 First, Macquarie will sell 6.01 percent of its equity interest in Puget Holdings to
Alberta Investment Management Corporation (AIMCo), which will have a 13.60 percent
total equity interest in Puget Holdings if the transaction is approved. Second, Macquarie will

sell 4.01 percent of its equity interest in Puget Holdings to British Columbia Investment Management Corporation (BCI), which will have a 20.87 percent total equity interest in Puget Holdings if the transaction is approved. Third, Macquarie will sell 23.94 percent of its equity interest in Puget Holdings to OMERS Administration Corporation (OAC), which does not have any existing interest in Puget Holdings. Fourth, Macquarie will sell 10.02 percent of its equity interest in Puget Holdings to PGGM Vermogensbeheer B.V. (PGGM), which does not have any existing interest in Puget Holdings. These sales will be referred to collectively as the “Proposed Transactions.” The following table summarizes Puget Holdings ownership before and after the Proposed Transactions.

TABLE 1 – SUMMARY OF PUGET HOLDINGS OWNERSHIP

Entities	Equity Interest Percentage	Equity Purchase and (Sale)	Proposed Equity Interest
Macquarie, collectively	43.99 percent	(43.99) percent	0.00 percent
Canada Pension Plan Investment Board	31.57 percent	0.00 percent	31.57 percent
OMERS Administration Corporation	0.00 percent	23.94 percent	23.94 percent
British Columbia Investment Management Corporation	16.86 percent	4.01 percent	20.87 percent
Alberta Investment Management Corporation	7.59 percent	6.01 percent	13.60 percent
PGGM Vermogensbeheer B.V.	0.00 percent	10.02 percent	10.02 percent
Total	100 percent	0.00 percent	100 percent

4

Puget Holdings is currently owned by a consortium of investors. The Commission approved the current ownership structure when it approved the acquisition of PSE in 2008. *In the Matter of the Joint Application of Puget Holdings LLC and Puget Sound Energy, Inc., for an Order Authorizing Proposed Transaction*, Docket U-072375, Order 08, (Dec. 30, 2008) (Order 08). If the Proposed Transactions are approved, Puget Holdings will continue

to be owned by a consortium of investors, which will consist of three of the current member entities (AIMCo, BCI, and the Canada Pension Plan Investment Board¹) and two new ones (OAC and PGGM).

5 In Docket U-072375, the Commission approved a set of commitments that the applicants must comply with to protect the public interest. The Joint Applicants in the instant docket have compiled a set of commitments based on the commitments approved in Order 08 as well as on commitments required of PSE in subsequent orders. The compilation of “Proposed Commitments” is intended to insulate stakeholders and ratepayers from harm and render the Proposed Transactions in the public interest.

III. DISCUSSION

6 Commission Staff (Staff) has concluded that the Commission should apply the “no harm” legal standard to its review of the Proposed Transactions. Below, Staff discusses the legal standard and administrative process, describes Staff’s examination of the transactions, and proposes revisions to the commitments that the Joint Applicants present in their application.

7 Regarding the standard for review of the Proposed Transactions, the plain meaning of the law on property transfers requires the Commission, in an application for transfer of a noncontrolling interest, to consider whether a transaction is consistent with the public interest, and not whether there is a net benefit to customers. The Commission has established that under the “consistent with the public interest” standard, the proponent of the transaction must show that the transaction will not harm the public interest in order for the

¹ The Canada Pension Plan Investment Board (“CPPIB”) is not a party to the application but has provided a letter of support for the Proposed Transactions, contained in Exh. KJH-3, in which it expresses support for the commitments proposed in the application.

transaction to be approved. This “no harm” standard is appropriate in this proceeding because the interests proposed to be transferred do not amount to 50 percent, no owner will hold even a 50 percent interest at the close of the transaction, and the governance structure defines a majority (or controlling) interest as 55 percent of member interest. Regarding administrative process, under authority of the Administrative Procedure Act (APA) and the Commission’s own rules, the Commission can conduct its review of the Proposed Transactions through the open meeting process or through an adjudication, at its discretion.

8 Staff has undertaken a thorough review of the Joint Application. In particular, Staff focused on the governance structure of the ownership and on the fitness of the purchasers. The governance structure of Puget Holdings is not changing, has been functional to the best of Staff’s knowledge, and, due in part to the dispersion of the Macquarie interest to multiple owners, the board will now include a more balanced apportionment of managers. The prospective purchasers of Macquarie’s interest have presented compelling evidence of financial and managerial fitness, in that they have the financial resources to effect the transaction and they have experience in direct ownership of utility and infrastructure assets. In short, Staff’s review in these areas did not reveal significant risk of harm.

9 With regard to the commitments that the Joint Applicants propose, Staff believes that some changes and additions must be made to adequately protect against risk. Staff has provided its proposed revisions in legislative format in Attachment A to these comments. With the addition of Staff’s revised commitments, Staff provisionally recommends that the Commission approve the Proposed Transactions. Staff will provide a final recommendation, however, at the Open Meeting on November 5, 2018.

A. Legal Standard Applicable to the Proposed Transactions

10 Under chapter 80.12 RCW, the sale of a utility that is regulated by the Commission must be approved by the Commission, and unauthorized transfers will be void. PSE and the four buyers of the indirect interest in PSE seek approval from the Commission under RCW 80.12.020 of their acquisitions of noncontrolling indirect interests in PSE. RCW 80.12.020 reads as follows:

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 . . . 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.

11 Pursuant to the Commission’s rules governing transfers of property, review of a proposed transaction considers whether the application is in the public interest: “If, upon the examination of any application and accompanying exhibits, or upon a hearing concerning the same, the Commission finds the proposed transaction is not consistent with the public interest, it shall deny the application.” WAC 480-143-170. Taking the statute and rule together, if a transaction involves the transfer of a “controlling interest,” then the Commission will consider whether the transaction will “provide a net benefit” as well as whether it is consistent with the public interest. However, if a transaction does not involve a “controlling interest,” then the Commission will consider only whether the transaction is “consistent with the public interest.” The applicable legal standard remains the same regardless of whether the Commission considers a transfer of property application in an adjudicative proceeding or at an open public meeting. And the Commission has discretion to employ either process to make its determination on the Joint Application.

1. Controlling Interest

12 Neither chapter 80.12 RCW nor the Commission’s rules define the term “controlling
interest.” A review of the legislative history concerning the amendment to RCW 80.12.020
that added the “controlling interest” standard, including all of the related legislative hearings
and six bill reports did not reveal any indication that the legislature intended the term
“controlling interest” to have a particular meaning in that statutory context.

13 Generally, when a statutory term is not defined, “the words of a statute are given
their ordinary meaning, and [a] court may look to the dictionary for such meaning.” *Filmore
LLLP v. Unit Owners Ass’n of Centre Point Condominium*, 184 Wn.2d 170, 174, 355 P.3d
1128 (2015). Furthermore, “Generally, an agency’s definition of an undefined term is given
great weight where the agency has the duty to administer the statute.” *Thorpe v. Inslee*, 188
Wn.2d 282, 290, 393 P.3d 1231 (2017).

14 Webster’s Third International Dictionary (1968) defines “controlling interest” as
“sufficient stock ownership in a corporation to exert control over policy, a person or group
that possesses such an interest.” Additionally, Black’s Law Dictionary 7th Edition (1999)
defines “controlling interest” as “sufficient ownership of stock in a company to control
policy and management; esp. a greater-than-50% ownership interest in an enterprise.”
Furthermore, a “controlling interest” is commonly considered to mean an ownership interest
in a corporation with enough voting stock shares to prevail in any stockholders’ motion. *See*
Investopedia.com, <https://www.investopedia.com/terms/c/controllinginterest.asp> (accessed
Oct. 22, 2018) (“Controlling interest is when a shareholder, or a group acting in kind, holds
a majority of a company's stock”; however “a person or group can achieve controlling

interest with less than 50% ownership in a company if that person or group owns a significant proportion of its voting shares”).

15 Regardless of which of the collective definitions of “controlling interest” prevails, the Proposed Transactions is not a transfer of a controlling interest for three reasons. First, in Docket U-072375, the Commission stated that a 51 percent ownership interest was not a “controlling share” of Puget Holdings because the governance structure of that company required a vote of 55 percent of the shares to support any action. Order 08 at 17. Puget Holding’s governance structure has not changed substantively since Docket U-072375. *Joint Application* at 19. Given that the Commission has previously determined that a 51 percent share was not “controlling,” the sale of a lesser 43.99 percent share would similarly not be “controlling.” Second, if “controlling interest” is determined to mean “greater than 50 percent,” the sale of a 43.99 percent interest does not meet the threshold for a controlling interest. Third, none of the individual buyers in the Proposed Transactions will acquire even a 50 percent share in Puget Holdings if the transaction is approved. Therefore, the Proposed Transactions does not involve a “controlling interest” in the context of the sale of the interest, the acquisition of the interest, and prior Commission analysis. As such, the “no harm” standard applies to the Proposed Transactions before the Commission.

16 The Commission has previously applied the “no harm” standard in a transfer of property proceeding when the sale of a controlling interest was not at issue. In a proceeding involving the sale of a hydroelectric facility, the Commission made the following determination: “[T]he ‘net benefit’ test is inapplicable . . . 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.” *Wash. Utils. & Transp. Comm’n v. Puget*

Sound Energy, Dockets UE-130617 et al., Order 10 at 13 (Oct. 9, 2014). Consistent with this decision, the “no harm” standard rather than the “net benefit” standard applies when a transfer of property does not involve the transfer of a controlling interest.

2. No Harm Standard

17 As stated above, under WAC 480-143-170, the Commission must reject the Proposed Transactions if “the proposed transaction is not consistent with the public interest.” Stated differently, “the Commission will approve the transaction if it is shown to be consistent with the public interest.” Docket U-072375, Order 08 at 3. The Commission has previously explained that this standard “is sometimes called the ‘no harm’ standard because . . . the transaction must not harm the public interest in order to be approved.”

Docket U-072375, Order 08 at 3. The Commission has also reasoned:

To be “consistent with the public interest,” a transaction need not confer net benefits on customers or the public by making them better off than they would be absent the transaction. It is sufficient if the transaction causes no harm. This determination must be made in each case, considering the context and circumstances. Among the factors that should be weighed in evaluating the transaction’s effect on the public interest are 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; 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; whether the Commission’s ability to regulate the utility in the public interest is fully protected, including preserving access to all necessary information; whether the purchaser has the financial and managerial fitness to own and operate the utility in fulfillment of its public service obligations; and last, but not least, whether the commitments made in the transaction are enforceable.

Order 08 at 48-49.

18 When applying these factors, the Commission has also considered “the transaction’s details, the risk of harm to the public interest, and whether a [potential] settlement’s

commitments are adequate to protect against those risks.” Docket U-072375, Order 08 at 49. Importantly, however, the Commission has recognized that “the approach for determining what is in the public interest varies with the form of the transaction and the attending circumstances.” Order 08 at 47, citing *Puget Sound Power & Light Company and Washington Natural Gas Company*, Docket Nos. UE-951270 and UE-960195, 14th Supplemental Order, (February 5, 1997) pp. 15-20 and Orders cited therein at p.16. In conclusion, the appropriate legal standard for review of the Proposed Transactions is the “no harm” standard, guided by the factors identified in Order 08.

3. Procedure for Consideration of the Proposed Transactions

19 The Commission may consider the Joint Application at an open meeting or in an adjudicative proceeding. Under the APA, an agency has discretion whether to conduct an adjudication unless an adjudication is required by law (including a constitutional right). RCW 34.05.413(1)-(2). The transfers of property statute, chapter 80.12 RCW, does not contain a requirement that the Commission hold an adjudication to consider an application for a property transfer. Rather, it requires only that the applicants “[secure] from the [C]ommission an order authorizing” the transaction (RCW 80.12.020) and that the Commission “enter an order approving or denying a transaction . . . within eleven months of the date of filing.” The statute also clarifies that a transaction “made without authority of the commission shall be void” (RCW 80.12.030). The statute does not address procedure.

20 The Commission rules governing transfers of property do address procedure, however, in that they specifically provide that an adjudication is discretionary. Pursuant to these rules, the Commission “will examine all applications for transfers and accompanying exhibits” and “*may* set an application for hearing and require all parties to the transaction to

appear and give testimony” WAC 480-143-160 (emphasis added). In other words, the Commission has discretion to conduct an adjudication or employ another process, such as an open meeting, when considering a property transfer application.

21 The Commission has recently approved an application under the transfers of property statute using following the open meeting process. In Docket UG-170094, the Commission considered the application of a natural gas utility for Commission approval under RCW 80.12.020 to reorganize the ownership structure of the utility to a holding company structure. The Commission held an open meeting on December 28, 2017, at which it took comment and discussed the application. The Commission’s decision is memorialized in an order approving the application subject to conditions.²

22 The Commission’s transfers of property rules make clear that the Commission may consider the Joint Application at an open meeting as well as in an adjudicative proceeding. The Commission has considered many complex matters at open meetings. The important point, however, is that the consideration process the Commission employs does not affect the legal standard of review, which remains the “no harm” standard.

B. Staff’s Examination of the Proposed Transactions

23 Staff carefully reviewed the Joint Application and its appendices, and the testimony and exhibits of the Joint Applicants. Staff especially appreciated the completeness of PGGM’s testimony and exhibits, which include an explanation of the purpose and relationship of the PGGM entities. In addition, Staff reviewed final orders in Dockets U-072375³, UG-151663, and UE-170033/UG-170034, and conducted informal discovery

² *In the Matter of Northwest Natural Gas Company’s Application for Approval of Corporate Reorganization to Create a Holding Company*, Docket UG-170094, Order 01 (Dec. 28, 2017).

³ Staff also fully reviewed the Commitments approved in Docket U-072375.

regarding the Joint Application and supporting materials.⁴ Through the informal discovery process, Staff examined the confidential Puget Holdings LLC agreement,⁵ the organizational structure of Puget Holdings incorporating the Joint Applicants,⁶ and a portion of PSE's most recent confidential five-year business plan.⁷ Staff also investigated the purchasing entities through review of publically available sources.

1. Governance

24 To Staff's knowledge the Puget Holdings LLC Agreement governance document has not changed substantially since the Macquarie acquisition was approved in 2008. What is changing is the membership composition of the Puget Holdings board which, subsequent to closure of the Proposed Transactions, would reflect the relative equity interests of the new owners. Whereas Macquarie's current collective equity interest is approximately 44 percent, after the Proposed Transactions no shareholder will own more than 32 percent equity interest. Additionally, while Macquarie currently designates three of the ten board members (or 30 percent), the largest post-acquisition shareholder would designate three of the 12 board members (or 25 percent). Therefore, these Proposed Transactions represent a dilution of ownership which, in effect, reduces the influence of the most powerful shareholder.

25 The following tables identify the members of Puget Holdings, and illustrate the interest percentage and number of board managers.

⁴ PSE's confidential responses to discovery were provided to the Public Counsel Unit of the Attorney General's Office (Public Counsel) as well as to Staff, and nonconfidential responses were provided not only to Staff and Public Counsel but also to the other two customer parties that customarily participate in general rate case proceedings before the Commission.

⁵ Confidential PSE Response to Staff Informal Data Request 1(e).

⁶ PSE Response to Staff Informal Data Request 1(a), (b), (c).

⁷ Confidential PSE Response to Staff Informal Data Request 1(d). Staff observes that, consistent with Proposed Commitment 13, PSE will need to explicitly state and itemize the level of corporate contributions and community support in its next five-year business plan or restate the current plan. Alternatively, the Joint Applicants may consider revising Commitment 13 to explicitly state the level of corporate contributions and community support.

TABLE 2 – CURRENT PUGET HOLDINGS BOARD

Members	Equity Interest Percentage	Number of Managers
Macquarie, collectively	43.99 percent	3
Canada Pension Plan Investment Board	31.57 percent	2
British Columbia Investment Management Corporation	16.86 percent	1
Alberta Investment Management Corporation	7.59 percent	1
PSE CEO	0.00 percent	1
Independent Directors	0.00 percent	2 ⁸
Total	100 percent	10

TABLE 3 – PROPOSED PUGET HOLDINGS BOARD

Proposed Members	Proposed Equity Interest Percentage	Proposed Number of Managers
Canada Pension Plan Investment Board	31.57 percent	3 ⁹
OMERS Administration Corporation	23.94 percent	2
British Columbia Investment Management Corporation	20.87 percent	2
Alberta Investment Management Corporation	13.60 percent	1
PGGM Vermogensbeheer B.V.	10.02 percent	1
PSE CEO	0.00 percent	1
Independent Directors	0.00 percent	2 ¹⁰
Total	100 percent	12

26

As part of its review of the Joint Application, Staff reviewed the respective Purchase and Sale Agreement of each purchaser.¹¹ Two of these documents include a Voting

⁸ Puget Holdings and Puget Energy have two independent managers/directors respectively. PSE has a third independent director.

⁹ CPPIB currently has rights to three managers, one for each 10% of interest held, but has only appointed two managers to date. At some point after the transactions close, CPPIB is expected to appoint a third manager.

¹⁰ Puget Holdings and Puget Energy have two independent managers/directors respectively. PSE has a third independent director.

¹¹ Exh. Webb, LW-03; Mubashir, Exh. AM-03; Zucchet, Exh. SZ-03; and Verwoest, Exh. MJV-03.

Agreement between AIMCo and PGGM.¹² The Voting Agreement, which is between the two smallest proposed interest holders, provides for some protection to ensure that the smaller interest holders have a voting-voice on unanimous and supermajority matters.¹³

2. Fitness

27 An important aspect of determining whether a transaction causes no harm and is therefore in the public interest is evaluating the fitness of the purchasers. The proposed purchasers must show “the financial and managerial fitness to own and operate the utility in fulfillment of its public service obligations.” Order 08 at 48-49.

28 All four purchasers of Macquarie’s interest have demonstrated through testimony their respective financial and managerial fitness. Further, Staff’s independent review of the purchasers did not uncover anything to contradict the evidence of the purchasers’ fitness. All four purchasers are investment entities that manage pension and or endowment funds for their respective client base. As a result, all four purchasers focus on long-term investment stability with the implication that Puget Holdings is likely to benefit from long-term ownership stability. Consistent with that notion, none of the purchasers have expressed a defined exit horizon for selling the entities’ respective shares. Staff views ownership stability as a characteristic that reflects positively on the purchasers’ overall fitness as owners and operators of PSE.

¹² Exh. AM-03, AIMCo Transaction Document, at 77–84 (Exhibit D to Purchase and Sale Agreement); Exh. MJV-03, PGGM Transaction Document, at 101–108 (Exhibit F to Purchase and Sale Agreement).

¹³ The proposed agreement would result in approximately 23.62 combined equity interest (AIMCo 13.60 percent plus PGGM 10.02 percent).

29 Regarding the financial fitness of the purchasers, Staff considered how the purchases will be funded, which is described in the respective testimony of each purchaser.¹⁴ All of the purchasers state the entities have sufficient funds on hand to purchase the respective equity interest in Puget Holdings. Only PGGM has indicated that the Base Purchase Price can increase due to certain contingencies, in which case PGGM would draw from a line of credit.¹⁵ This demonstrates that the purchasers are financially fit and have the ability to access capital. A financially healthy owner means less risk of harm to PSE, in that there is less risk that financial problems of a distressed owner would affect PSE's operations.

30 Another important element of fitness is the relevant experience of the purchasers, which each purchaser discusses in testimony.¹⁶ All of the purchasers have experience directly investing in utilities and infrastructure, indicating that they are well-equipped to make informed decisions that impact Puget Holdings and PSE. All of the information that Staff has reviewed supports the fitness of these particular purchasers to acquire an interest in and provide sound direction through their board representatives to PSE.

C. Staff's Review of and Revisions to the Proposed Commitments

31 In Order 08, the Commission identified factors that weigh in favor of the public interest, with particular focus on the commitments that emphasize public service obligations. The public service obligations identified by the Commission were customer service, safety, reliability, resource adequacy including energy efficiency and conservation, support for low-income customers and environmental stewardship. With these factors in

¹⁴ Direct Testimony of Lincoln Webb, Exh. LW-1T at 5:7-13; Direct Testimony of Ahmed Mubashir, Exh. AM-1T at 6:7-10; Direct Testimony of Steven Zucchet, Exh. SZ-1T at 7:1-5; Direct Testimony of Martijn J. Verwoest, Exh. MJV-1T at 8:15 - 9:3.

¹⁵ Verwoest, Exh. MJV-1T at 8:20 - 9:3.

¹⁶ Webb, Exh. LW-1T at 4:12- 6:8; Mubashir, Exh. AM-1T at 4:1-18, 6:11 - 7:12; Zucchet, Exh. SZ-1T at 7:12 - 8:2, 9:9 - 10:8; Verwoest, Exh. MJV-1T at 11:17 - 12:23.

mind, Staff reviewed the Proposed Commitments included in the Joint Application to determine whether they remain consistent with the public interest.

32 First and foremost, Staff evaluated whether the commitments approved in Docket U-072375, and as such deemed by the Commission as sufficient for addressing important public service obligations, remain intact. After review of the Proposed Commitments, Staff has determined that the previously approved commitments demonstrating a focus on these public service obligations still exist in the Joint Applicant's Proposed Commitments. Specifically, there are commitments regarding service quality (Commitment 1), reliability (Commitments 2 and 10), renewable energy (Commitment 4), carbon footprint reduction (Commitment 5)¹⁷, energy efficiency (Commitment 17), and low-income support (Commitments 18).

33 In addition to confirming the continued presence of commitments related to the public service obligations identified by the Commission, Staff confirmed the continued presence of commitments related to financial risk. Specifically, there continue to be commitments prohibiting PSE from making loans to or pledging assets to Puget Energy and Puget Holdings (Commitment 6), holding PSE harmless for financial risk associated with Puget Energy or Puget Holdings (Commitment 6), maintaining financial health of PSE (Commitment 19), and restricting upward distributions (Commitments 28, 29 and 32).

34 Although Staff believes the Joint Applicants' Proposed Commitments largely adhere to the public service obligation factors identified by the Commission, and continue to protect against financial risk, the Proposed Commitments require certain revisions before Staff can support the Proposed Transactions as meeting the "no harm" standard. Attached as

¹⁷ Staff has revised Commitment 5 and asks the Joint Applicants to define the level by which PSE will reduce its carbon footprint.

Attachment A – Staff’s Proposed Revised Commitments (“Revised Commitments”) are Staff’s proposed revisions to the commitments that the Joint Applicants presented in their application. Staff’s Attachment A uses Appendix 1 from the Joint Application as the starting point and presents revisions in legislative format so that the Commission can easily identify Staff’s proposed changes. Where Staff refers to all of the proposed five owners, Staff uses the term “Puget Holdings Owners” or “its Owners.”

35 Staff’s proposed edits to the Proposed Commitments are intended to 1) clarify to whom each commitment applies (that is, PSE, Puget Holdings, the Puget Holdings Owners, or a combination of those entities), 2) clarify the relevant benchmark of certain existing commitments (see Commitments 5 and 40), 3) update components that appeared to be missing (see Commitments 36 and 50), and 4) reinforce the Commission’s authority to enforce the commitments. Staff’s proposed edits to the commitments do not attempt to manufacture new requirements; the edits are meant to clarify enforcement and refine requirements that already exist.

36 Staff also reviewed all of the commitments that have expired or have been otherwise satisfied. Staff agrees that these expired or satisfied commitments should be removed. For example, the previous commitment number 42 was related to increasing the bill assistance program funding to \$15 million. PSE’s current bill assistance program funding is approximately \$24 million, and so the previous commitment has been fully satisfied and is no longer relevant. Other examples include commitments regarding conservation. Previous commitment 47 required the development of a study to identify potential energy efficiency improvements in PSE’s distribution, transmission, and generation assets. PSE has satisfied this commitment and has made this part of its daily

operations. Previous commitment 49 sets the objective to acquire renewable resources to meet 10 percent of PSE's load by 2013. This commitment has been satisfied and has since expired. Currently, PSE's renewable resource obligation is defined by WAC 480-109-200, which requires PSE to use renewable resources to meet 15 percent of its load by 2020.

37 The commitments from Docket U-072375, and in particular the ring-fencing commitments, have served PSE's customers well for a decade and will continue to serve PSE's customers if approved by the Commission. In that time there have been no enforcement proceedings at the Commission concerning violations of these commitments, and Staff is not aware of any allegations of wrongdoing concerning any of the consortium investors or Puget Holdings. This is evidence that the commitments work and are in the public interest. However, to provide additional assurance that the commitments will continue to be adhered to going forward, Staff has added Staff Proposed Commitment 51. In the event PSE or Puget Holdings, or its Owners fail to meet any of the Revised Commitments, Staff Proposed Commitment 51 requires timely reporting of non-compliance with any of the Revised Commitments and a plan to correct the failure. The commitment also requires the owners to submit to the jurisdiction of the Commission and Washington courts for enforcement of the commitments.

38 Staff also recommends a few revisions to existing financial commitments. Staff Proposed Commitment 50 ensures that none of the purchasers' costs of the Proposed Transactions can be recovered through PSE's rates. In Proposed Commitment 36, Staff adds additional Sarbanes-Oxley Act sections to strengthen controls over PSE and Puget Energy's financial reporting. Specifically, Staff recommends adding Section 303, which prohibits officers and directors from taking any action to coerce an external auditor's opinion; Section

402, which explicitly prohibits providing personal loans to directors or executive officers (or the equivalent thereof); and Section 409, which requires real-time disclosures to the public with regard to material changes to PSE's financial condition or operations.

39 The remainder of Staff's revisions update the Proposed Commitments with relevant information or directly bind the Puget Holdings Owners as well as PSE or Puget Holdings to the Revised Commitments. Updating the commitments ensures that they remain relevant and timely. Binding the Puget Holdings Owners to the commitments, as appropriate, ensures that each investor will be responsive to the Commission.

IV. CONCLUSION

40 The consortium ownership structure that the Commission approved in 2008 has been operating for ten years. During the last decade, the commitments that the Commission approved in 2008 have been functioning well, with continued progress on public service obligations and sufficient protection against upstream financial risk. The commitments have been followed and, where required, fulfilled. There have been no enforcement actions.

41 In addition, the governance structure of the consortium has, to the best of Staff's knowledge, been functioning properly. The governance structure is not changing in its substance, and the character of the proposed new ownership does not present significant new risks. The proposed ownership structure and composition of the board represents a dilution of ownership power and promotes member diversity. The new buyers are investment funds, operated for the benefit of the public sector, and constitute the same type of entity as the current owners. They are all well-funded, have experience holding utility assets, and will maintain stability in ownership and direction. Staff's review thus far indicates that, with some updates and revisions to the commitments that the applicants have

proposed, the transaction is consistent with the public interest. Staff provisionally recommends that the Commission approve the Proposed Transactions including Staff's Revised Commitments. Following Staff's review of the comments due to be filed in this docket by October 24, 2018, Staff will present a final recommendation to the Commission at the Open Meeting scheduled for November 5, 2018.