

Agenda Date: November 5, 2018  
Item Number: D1

**Docket:** U-180680  
Company: Puget Sound Energy

Staff: Melissa Cheesman, Regulatory Analyst

### **Recommendation**

Staff recommends that the commission issue an order authorizing the proposed sale and purchase of 43.99 percent direct interest in Puget Holdings LLC, and indirect interest in Puget Sound Energy, conditioned on the Joint Applicants' acceptance of staff's revised commitments.<sup>1</sup>

### **Background**

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).

The four different buyers are: (1) current owner Alberta Investment Management Corporation (AIMCo); (2) current owner British Columbia Investment Management Corporation (BCI); (3) new proposed owner OMERS Administration Corporation (OAC); and (4) new proposed owner PGGM Vermogensbeheer B.V. (PGGM). Current owner Canada Pension Plan Investment Board (CPPIB) is not a party to the application and is not increasing its current equity interest in Puget Holdings.<sup>2</sup> The sales of interest to each of the proposed buyers are collectively referred to as the "Proposed Transactions." The table at the top of the next page summarizes the proposed change of ownership in Puget Holdings.

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<sup>1</sup> Link to [Staff's Proposed Revised Commitments](#), Attachment A to Staff's Comments, filed Oct. 24, 2018.

<sup>2</sup> In Exhibit KJH-3, CPPIB provided a letter of support for the Proposed Transactions and expresses its support of the commitments proposed in the application.

**TABLE 1 – SUMMARY OF PUGET HOLDINGS OWNERSHIP**

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

See Attachments 1 through 6 for additional information regarding the Proposed Transaction. The attachments include information regarding base purchase prices, corporate structure, the composition of the respective boards (Puget Holdings, Puget Energy, and PSE), Committee on Foreign Investment in the United States (CFIUS) review, and the investors’ access to capital. Puget Holdings and PSE have the same individuals serving on each board, with the exception that PSE’s board includes one additional independent director who is not on the Puget Holdings board.

**Comments**

On September 21, 2018, the commission issued a Notice of Opportunity to File Written Comments in this docket. As of October 30, 2018, the commission had received 18 filed comments, including those from staff and the Joint Petitioners:<sup>3</sup>

- Number in support, with amended commitments<sup>4</sup> – 1
- Number of Strictly Opposed – 3
- Number of Opposed, requests further review – 7
- Number of Opposed, proposes commitments – 7

The comments in opposition are predominantly requests for additional process for review of the transaction. In addition, several commenters have proposed commitments for the commission to consider. Please see Attachment 6, for staff’s summary of the comments filed in this docket.

<sup>3</sup> Collectively, the Joint Petitioners are the Washington Attorney General’s Office (Public Counsel), Alliance of Western Energy Consumers (AWEC), the Washington and Northern Idaho District Council of Laborers, and the Energy Project (TEP).

<sup>4</sup> Staff is the only party who “supports, with amended commitments.” Attachment 6, Summary of Comments, does not include a summary of staff’s comments.

## **Discussion**

### ***Legal Standard***

As previously stated in staff's comments filed on October 24, 2018,<sup>5</sup> staff has concluded that the commission should apply the "no harm" legal standard to the Proposed Transactions. The plain meaning of the law on property transfers requires the commission, in an application for transfer of a non-controlling interest in a gas or electrical company, to consider whether a transaction is consistent with the public interest, and not whether there is a net benefit to customers.

### ***Notes on Process***

On September 21, 2018, the commission issued its Notice of Recessed Open Meeting to be held on November 5, 2018. In that notice, the commission stated that it will address the proposed sale at the November 5, 2018, Open Meeting. At its discretion, the commission may take up a filing such as the Joint Application at an open meeting or can process it through adjudication. As staff discussed in its comments, the transfers of property laws and rules do not contain a requirement that the commission hold an adjudication, while the Administrative Procedure Act and the commission's administrative rules specifically provide that an adjudication is discretionary. In short, the commission is well within its authority to make a decision on this matter at an open meeting.

Because the commission scheduled the Joint Application for consideration at an open meeting rather than setting a prehearing conference, staff understood the commission's notice to mean that staff must complete its review of the application in time to make a recommendation at the open meeting. This is the typical process for the many matters that the commission decides through the open meeting process, except that in this instance the time available for review (two months from the filing date) was substantially longer than the time generally available for review of other filings. Accordingly, staff conducted its review in the specified timeframe.

### ***Staff Review***

During its review, staff carefully examined the filing, performed independent research, and issued informal discovery to PSE. PSE shared its responses to staff's data requests with Public Counsel, the Alliance of Western Energy Consumers, and the Energy Project.<sup>6</sup> Because staff has been able to perform a thorough review of the application, has conducted discovery, has analyzed the materials associated with the Proposed Transaction to its satisfaction, and has explained its conclusions in this memo together with the comments, staff is comfortable recommending that the commission make a decision on the Joint Application at the Open Meeting on November 5, 2018.

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<sup>5</sup> Link to [Comments of Commission Staff](#) on the Commission's website.

<sup>6</sup> Confidential responses were provided to Public Counsel and were provided in redacted form to the other two entities.

The governance of Puget Holdings LLC has not changed substantially since the Macquarie acquisition was approved in 2008. The composition of both Puget Holdings and PSE's boards will change subsequent to the closure of the Proposed Transaction, in that different people will serve on the boards and the number of seats will increase. Essentially, though, the Proposed Transactions and the resulting changes in board composition represent a dilution of ownership that reduces the influence of the owner with the largest interest percentage.

All four purchasers of Macquarie's interest have demonstrated through testimony and discovery responses their respective financial and managerial fitness. Further all four purchasers have demonstrated that they are financially fit and have the ability to access capital. The Joint Applicants have proposed commitments that are intended to insulate stakeholders and ratepayers and protect the public interest from the risk of harm from the Proposed Transactions. The proposed commitments are largely commitments carried forward from the previous acquisition docket (Docket U-072375) which were, at that time, considered by the commission to meet the "no harm" standard.

After carefully reviewing the commitments, staff proposed revisions to solidify the protections proposed by the Joint Applicants. Staff's proposed revisions do not attempt to create new requirements; the edits are meant to clarify enforcement and refine requirements that already exist. After review of the comments filed in this docket, staff does not believe that additional commitments are necessary for the Proposed Transactions to meet the no harm standard. The inclusion of additional commitments may be appropriate under a "net benefit" standard. However, under a "no harm" standard, commitments generating net benefits for individual commenters are inappropriate and are inconsistent with a "no harm" legal standard, given that the "no harm" standard does not require the demonstration of net benefits of the transaction.

### **Conclusion**

Based on staff's review of this filing, as discussed above and in staff's comments filed on October 24, 2018, and taking into account the comments provided by other participants, staff recommends that the commission grant the Joint Application on condition that the Joint Applicants accept the revised commitments appended to staff's comments. The combination of staff's revised commitments along with the Joint Applicants' testimony and discovery responses regarding financial and managerial fitness demonstrates that the Proposed Transactions are consistent with the public interest. Because staff is satisfied by its review that the Proposed Transactions, with the revised commitments, will not harm the public interest, staff recommends that the commission approve the Proposed Transactions without further process.

Staff recommends that the commission issue an order authorizing the proposed sale and purchase of a 43.99 percent direct interest in Puget Holdings LLC, and indirect interest in Puget Sound Energy, conditioned on the Joint Applicants' unequivocal and unconditional acceptance of the revised commitments proposed by staff.

In the event the commission determines that additional process is warranted, staff recommends that the commission direct the parties to conduct their evaluations under a "no harm" legal standard.

**Attachments**

*Attachment 1 – Base Purchase Prices*

*Attachment 2 – Corporate Structure*

*Attachment 3 – Board Compositions*

*Attachment 4 – CFIUS Review*

*Attachment 5 – Investors’ Access to Capital*

*Attachment 6 – Summary of Comments*