

Agenda Date: January 27, 2022  
Item Number: A1

**Docket:** U-210542  
Company: Puget Sound Energy

Staff: Amy White, Regulatory Analyst  
Elizabeth O'Connell, Regulatory Analyst  
Andrew Roberts, Regulatory Analyst

### **Recommendation**

Staff recommends that the Commission issue an order authorizing the proposed sale and purchase of 31.57 percent direct interest in Puget Holdings LLC, and indirect interest in Puget Sound Energy, as filed on August 13, 2021, and subsequently supplemented, including the commitments filed January 20, 2022.

### **Background**

On July 8, 2021, Puget Sound Energy (PSE or Company) filed with the Washington Utilities and Transportation Commission (Commission) a Notice of Sale for the proposed sale of a 31.57 percent indirect ownership interest in PSE currently held by Canada Pension Plan Investment Board (CPP Investments) to two new investors. On August 13, 2021, PSE, the Ontario Teachers' Pension Plan Board (OTPP) and Macquarie Washington Clean Energy Investment L.P. (Macquarie Fund) filed testimony, exhibits, and a Joint Application for an Order Authorizing Proposed Sales of Indirect Interests in Puget Sound Energy (Joint Application). Puget Holdings LLC (Puget Holdings) indirectly holds 100 percent of the ownership interest in PSE.

The five current owners are:

- Alberta Investment Management Corporation (AIMCo);
- British Columbia Investment Management Corporation (BCI);
- Ontario Municipal Employees Retirement System Administration Corporation (OMERS);
- PGGM Vermogensbeheer B.V. (PGGM); and
- CPP Investments, the party selling its ownership interest in Puget Holdings.

CPP Investments intends to sell all of its interest in Puget Holdings to OTPP and Macquarie Fund (collectively, with PSE, the Joint Applicants). Macquarie Fund has three partners, as shown in Table 1 on the following page:

<b>TABLE 1 – PARTNERS MAKING UP MACQUARIE FUND</b>					
<b>Proposed Owner</b>	<b>Primary business</b>	<b>Assets Under Management</b>	<b>US \$\$ equivalent</b>	<b>Ownership Share of 15.785 % of Puget Holdings<sup>1</sup></b>	<b>Overall ownership percent of Puget Holdings**</b>
Sunsuper	Australian pension fund manager	\$AUS90 billion <sup>2</sup>	\$ 66 billion	30	4.74
National Pension Service of South Korea	South Korean national pension fund manager	₩434 billion <sup>3</sup>	\$707 billion	33.33	5.26
MGIF Clean Energy, L.P.	Managing partner	\$AUS245.7 billion <sup>4*</sup>	\$182 billion*	36.67	5.79

\*Amounts cited refer to Macquarie Group Limited, the parent of MGIF Clean Energy, L.P.

\*\*Overall ownership equals 15.785 percent multiplied by the ownership share percentage

The sales of CPP Investments’ interest to each of the proposed buyers are collectively referred to as the “Proposed Transactions.” Table 2 summarizes the proposed changes of ownership.

<b>TABLE 2– SUMMARY OF PUGET HOLDINGS OWNERSHIP<sup>5</sup></b>			
<b>Entities</b>	<b>Equity Interest Percentage Before the Proposed Transactions</b>	<b>Equity Purchase and (Sale) Percentage</b>	<b>Proposed Equity Interest Percentage After the Proposed Transactions</b>
CPP Investments	31.57	(31.57)	0.00
OMERS	23.94	0.00	23.94
BCI	20.87	0.00	20.87
AIMCo	13.60	0.00	13.60
PGGM	10.02	0.00	10.02
OTPP	0.00	15.785	15.785
Macquarie Fund	0.00	15.785	15.785
<b>Total</b>	<b>100 percent</b>	<b>0.00 percent</b>	<b>100 percent</b>

<sup>1</sup> Rubin, Exh. AR-1T at 13.

<sup>2</sup> [Sunsuper 2020-21 Annual Report](#), retrieved 11/11/21. Sunsuper has reached a commitment to merge with QSuper, another Australian pension manager, which will bring total assets under management to approximately \$AU200 billion.

<sup>3</sup> [National Pension Service 2020 Annual Report](#), retrieved 11/5/21.

<sup>4</sup> [Macquarie FY 2021 Annual Report](#), retrieved 11/12/21.

<sup>5</sup> Rodriguez, Exh. AJR-1T at 3-5, Tables 1-3.

In the past, the Commission has approved the Company's ownership changes with conditions. In Order 08 of Docket U-072375, the Commission approved a set of commitments that the Puget Holdings owners must comply with in order to protect the public interest. These commitments were updated and confirmed in Order 06 of Docket U-180680. The commitments fall into several broad categories: Governance and Operations; Regulatory Issues; Ring-Fencing and Financial; Community and Low-Income Programs; Environmental; Energy Efficiency; Colstrip; Tacoma LNG; and Miscellaneous Commitments.

On August 13, 2021, the Joint Applicants filed the transaction documents and proposed modifications to these commitments mentioned above. In their current iteration, there are 65 commitments. At an all-party meeting on November 15, 2021, PSE announced that the partners were restructuring how they were organized, which delayed the resolution of the filing. The revised transaction documents were filed on December 10, 2021, and the Company informally shared revised commitments on December 17, 2021. PSE filed a draft of the commitments on January 10, 2022, along with all associated exhibits as mentioned throughout those commitments. PSE filed the final version of the commitments on January 20, 2022.

The Company, Commission Staff (Staff) and the following organizations met repeatedly from November 2021 through January 2022 regarding the proposed transactions and the commitments:

- Alliance of Western Energy Consumers ("AWEC");
- The Public Counsel unit of the Washington State Attorney General's Office (Public Counsel); and
- The Energy Project (TEP).

The parties reached a nearly complete settlement on the draft commitments, agreeing on all commitments except commitment 43(a) during their last meeting on January 5, 2022. Commitment 43(a) refers to the status of an ongoing, annual requirement for a \$100,000 shareholder contribution to low-income weatherization programs, in addition to an undisputed \$300,000 in shareholder contributions. After all parties filed comments on January 7, 2022, stakeholders and the joint applicants agreed to the entirety of commitment 43, thus reaching a complete resolution of the commitments.

### **Comments**

On October 7, 2021, the Commission issued a Notice of Item to be Heard at the Commission's Regularly Scheduled Open Meeting and Notice of Opportunity to File Written Comments. Due to changes in the form of the transaction, as discussed in the Staff comments filed in this docket, these Notices were extended twice, on November 22 and December 3, 2021.

The Company provided notice to customers on its website concerning the Proposed Transactions as of November 9, 2021, and revised the notice on November 23, 2021. As of January 19, 2022, no customers had commented on the filing.

Each organization that filed for involvement in the docket, as well as Commission Staff, filed comments on January 7, 2022, which are briefly summarized below:

**AWEC** had "...not identified any issues of concern or objections to the proposed transaction as outlined in the Joint Application and supporting materials, including the updated Commitments of the Joint Applicants..."

**Public Counsel** expressed concerns over a perceived lack of transparency in the transaction,<sup>6</sup> an inability to express an opinion on whether the transaction is fairly priced or whether due diligence was undertaken by the purchasers. Public Counsel disagreed with PSE's position on Commitment 43(a), concerning the status of an annual, ongoing \$100,000 contribution by shareholders (out of a total \$400,000 shareholder contribution) to low-income weatherization programs, opining that at the very least, shareholders should continue the \$100,000 at dispute through at least December 31, 2025. Public Counsel did state its agreement with the remainder of the commitments as filed by PSE in draft form on January 10, 2022.

**The Energy Project** also expressed its disagreement with PSE's stance on Commitment 43(a). TEP believes that the \$100,000 at dispute should continue indefinitely with no end date.

**PSE** also filed comments defending its position that the \$100,000 annual commitment was not indefinite in nature. But, as previously mentioned, the company agreed to Commitment 43(a) on January 14, 2022.

**Commission Staff's** comments contained background information about this transaction and prior sales; a review of the "no harm" standard; and a history of the commitment 43(a) which pertained to an annual \$100,000 contribution by Puget Holdings shareholders to low-income weatherization programs.

## Discussion

### *Legal Standard*

As previously stated in Staff's comments filed on January 7, 2022,<sup>7</sup> Staff has concluded that the Commission should apply the "no harm" legal standard to the Proposed Transactions pursuant to RCW 80.12.020 and WAC 480-143-170. The plain meaning of the law on property transfers

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<sup>6</sup> Staff does not share Public Counsel's concern regarding transparency in this case. As noted below, Staff was able to perform a thorough review of the proposed transaction based on the no harm standard. Staff would not recommend approving the transaction if a lack of transparency had prevented Staff from making that assessment.

<sup>7</sup> *In the Matter of the Joint Application of Puget Sound Energy, Ontario Teachers' Pension Plan Board, and Macquarie Washington Clean Energy Investment, L.P., for an Order Authorizing Proposed Sales of Indirect Interests in Puget Sound Energy*, Docket U-210542, Staff Comments (January 7, 2022).

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. 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.<sup>8</sup>

### *Process*

On October 7, 2021, the Commission issued its Notice of Item to be Heard at the Commission's Regularly Scheduled Open Meeting and Notice of Opportunity to File Written Comments. In that notice, the Commission stated that it would address the proposed sale at the December 9, 2021, Open Meeting. The Notice has been revised twice and ultimately the matter was set for the January 27, 2022, 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 decide this matter at an open meeting.

### *Staff Review*

During its review, Staff carefully examined the filing, performed independent research, and issued informal discovery requests to PSE. PSE shared its responses to Staff's data requests with Public Counsel, the Alliance of Western Energy Consumers, and the Energy Project. Staff has performed a thorough review of the application, conducted discovery, and analyzed the materials associated with the Proposed Transaction to its satisfaction. As explained in Staff's comments filed on January 7, 2022, as well as in this memo below, Staff recommends that the Commission authorize the Joint Application.

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 after the closure of the Proposed Transaction, in that different people will serve on the boards and the number of seats will increase. However, the Proposed Transactions and the resulting changes in board composition represent a dilution of ownership that reduces the influence of any specific owner with the largest interest percentage.

Both purchasers of Macquarie's interest have demonstrated through testimony and discovery responses their respective financial and managerial fitness. Further, both 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 any potential harm from the Proposed Transactions. The proposed commitments are largely commitments carried forward from the

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<sup>8</sup> *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, ¶ 115 (Dec. 30, 2008).

previous acquisition docket (Docket U-180680) which were, at that time, considered by the Commission to meet the “no harm” standard.<sup>9</sup>

The proposed commitments ensure PSE’s customers will be no worse than they would if without the transaction. On January 5, 2022, all parties agreed to all proposed commitments except commitment 43(a). After stakeholders filed comments on January 7, the Joint Applicants and stakeholders reached an agreement that the \$100,000 shareholder contribution under commitment 43(a) would continue to be made indefinitely until the Commission orders otherwise, thus reaching agreement on the last disputed commitment. Of significant note, PSE has also made further commitments to continue its community involvement via an updated commitment 39, complete a \$2 million contribution to low-income weatherization programs from Docket U-180680, and to make an additional \$1.5 million contribution to those programs in commitment 46.

After carefully reviewing the commitments as filed, Staff and the parties proposed revisions to solidify the protections proposed by the Joint Applicants. The 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 redline version of Revised Commitments are appended as Attachment A to Staff’s memo. The final version of the Revised Commitments and their exhibits are also on file in the docket.

### **Conclusion**

Based on Staff’s review of this filing, as discussed above and in Staff’s comments filed on January 7, 2022, and taking into account the comments provided by other participants, Staff recommends that the Commission grant the Joint Application. The combination of the 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.

### **Recommendation**

Staff recommends that the Commission issue an order authorizing the proposed sale and purchase of 31.57 percent direct interest in Puget Holdings LLC, and indirect interest in Puget Sound Energy, as filed on August 13, 2021, and subsequently supplemented, including the commitments filed January 20, 2022.

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<sup>9</sup> *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, Order 06 (March 7, 2019).