

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

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

ORDER 01

AUTHORIZING PROPOSED  
TRANSACTIONS WITH AGREED  
COMMITMENTS

**BACKGROUND**

- 1 Puget Holdings LLC (Puget Holdings) indirectly holds 100 percent of the ownership interest in Puget Sound Energy (PSE or Company).
- 2 On December 30, 2008, the Washington Utilities and Transportation Commission (Commission) entered Order 08 in Docket U-072375 (2008 Acquisition Order), which authorized Puget Holdings' acquisition of Puget Energy, Inc., (Puget Energy) and its wholly owned subsidiary, PSE, by approving a multi-party settlement agreement that contained numerous commitments, subject to conditions.<sup>1</sup> In particular, it conditioned approval of the settlement on Commission authorization of any sale or transfer of "any material part of PSE."<sup>2</sup> This requirement applies to the proposed transactions at issue in this case.

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<sup>1</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, Approving and Adopting Settlement Stipulation; Authorizing Transaction Subject to Conditions (Dec. 30, 2008) [hereinafter 2008 Acquisition Order]. The Commission authorized the acquisition subject to conditions of Puget Energy, Inc. (Puget Energy) and its wholly owned subsidiary, PSE, by Puget Holdings. At the time of the acquisition, Puget Holdings was owned by a consortium of six primary investors, two of whom were Macquarie Infrastructure Partners Inc. and Padua MG Holdings LLC, a Macquarie entity.

<sup>2</sup> The Commission defined a material part as "any sale or transfer of stock representing ten percent or more of the equity ownership of Puget Holdings or PSE."

3 On March 11, 2019, the Commission entered Order 06 (Corrected) in Docket U-180680,  
which authorized the transfer of a 43.99 percent interest in Puget Holdings to Alberta  
Investment Management Corporation (AIMCo), British Columbia Investment  
Management Corporation (BCI), OMERS Administration Corporation (OMERS), and  
PGGM Vermogensbeheer B.V. (PGGM), by approving a full multiparty settlement  
agreement, including 65 commitments, without condition.<sup>3</sup>

4 The current owners of Puget Holdings are AIMCo, BCI, OMERS, PGGM, and Canada  
Pension Plan Investment Board (CPP Investments).

5 On July 8, 2021, PSE filed a Notice of Sale informing the Commission of the proposed  
sale of a 31.57 percent indirect ownership interest in Puget Holdings held by CPP  
Investments to the Ontario Teachers' Pension Plan Board (OTPP) and Macquarie  
Washington Clean Energy Investment L.P. (Macquarie Fund).

6 On August 13, 2021, PSE, OTPP, and Macquarie Fund (collectively, with PSE, the Joint  
Applicants) filed with the Commission testimony, exhibits, and a Joint Application for an  
Order Authorizing Proposed Sales of Indirect Interests in PSE (Joint Application), which  
included proposed commitments based on the prior cases identified above.

7 The proposed transactions will result in the sale of one-half, or 15.785 percent, of CPP  
Investments' equity interest in Puget Holdings to OTPP and the other 15.785 percent to  
the Macquarie Fund. OTPP is Canada's largest single profession plan and manages net  
assets of approximately \$C221 billion (\$US167.2 billion). The Macquarie Fund is a  
limited partnership controlled and managed by Macquarie Energy Partners GP LLC,  
consisting of three investors, who will each own a portion of the Macquarie Fund's  
15.785 percent ownership share of Puget Holdings: Sunsuper Superannuation Fund  
(Sunsuper) will own 33.33 percent; the National Pension Service of Korea (NPS) will  
own 30 percent; and the Macquarie Group Limited (Macquarie Group) through MGIF  
Clean Energy, L.P., will own 36.67 percent.<sup>4</sup>

8 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

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<sup>3</sup> *In the Matter of the Joint Application of Puget Sound Energy, Alberta Investment Management Corp., British Columbia Investment Management Corp., OMERS Administration Corp., & PGGM Vermogensbeheer B.V. for an Order Authorizing Proposed Sales of Indirect Interests in Puget Sound Energy, Docket U-180680, Order 06 (Corrected) (Mar. 11, 2019).*

<sup>4</sup> This translates to an overall ownership share of Puget Holdings by Sunsuper of 5.26 percent; by NPS of 4.74 percent; and by the Macquarie Group of 5.79 percent.

Written Comments. Due to changes in the form of the transaction, these notices were extended twice, on November 22 and December 3, 2021.

- 9 On November 9, 2021, the Company provided notice to customers on its website concerning the proposed transactions, and subsequently revised that notice on November 23, 2021.
- 10 The Company and each organization that filed a petition to be involved in this docket – Commission staff (Staff), the Public Counsel Unit of the Washington Attorney General’s Office (Public Counsel), the Alliance of Western Energy Consumers (AWEC), and The Energy Project (collectively, the Stakeholders) – convened discussions repeatedly from November 2021 through January 2022 regarding the proposed transactions and commitments.
- 11 On December 10, 2021, the Joint Applicants filed with the Commission revised transaction documents with modifications to the Joint Applicants’ organization.
- 12 On January 5, 2022, the Stakeholders nearly reached complete agreement on the commitments that should be included with the Joint Application. The only commitment then in dispute was Commitment 43(a), which 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.
- 13 On January 7, 2022, the Stakeholders separately filed comments with the Commission.
- 14 On January 10, 2022, the Joint Applicants informally shared a draft of the agreed commitments, along with all associated exhibits as mentioned throughout those commitments.
- 15 On January 14, 2022, the Joint Applicants and all Stakeholders resolved the dispute over Commitment 43(a), resulting in an agreement that the Commission should authorize the proposed transactions in the Joint Application with the 65 agreed commitments filed on January 20, 2022, as corrected on January 25, 2022.
- 16 On January 25, 2022, the Joint Applicants filed with the Commission updated versions of the 65 agreed commitments with technical corrections.
- 17 This matter came before the Commission at its regularly scheduled Open Meeting on January 27, 2022.

18 No customers filed comments with the Commission regarding this matter.

### DISCUSSION AND DECISION

19 The Commission's authority and standards of review for transfers of property are found in Chapter 80.12 RCW and Chapter 480-143 WAC. If the proposed transactions had involved the transfer of a controlling interest in a gas or electrical company, the Commission would consider whether the proposed transactions provide a net benefit and are consistent with the public interest.<sup>5</sup>

20 The proposed transactions do not involve the transfer of a controlling interest. In an application for transfers of a non-controlling interest in a gas or electrical company, the Commission considers whether the proposed transactions are 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>6</sup> It is sufficient, therefore, if the proposed transactions result in no harm to PSE's customers and the public interest, and we evaluate the proposed transactions with the agreed commitments of the Stakeholders according to this "no harm" standard.<sup>7</sup>

21 The following table illustrates the ownership interests involved in the proposed transactions.

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<sup>5</sup> RCW 80.12.020; WAC 480-143-170.

<sup>6</sup> 2008 Acquisition Order at 48, ¶ 115.

<sup>7</sup> See RCW 80.12.020; WAC 480-143-170.

| <b>Summary of Puget Holdings Ownership<sup>8</sup></b> |                        |                               |                                 |
|--|------------------------|-------------------------------|---------------------------------|
| <b>Entity</b>  | <b>Equity Interest</b> | <b>Equity Purchase (Sale)</b> | <b>Proposed Equity Interest</b> |
| AIMCo  | 13.60%                 | -                             | 13.60%                          |
| BCI  | 20.87%                 | -                             | 20.87%                          |
| CPP Investments  | 31.57%                 | (31.57%)                      | -                               |
| Macquarie Fund   | -                      | 15.785%                       | 15.785%                         |
| OMERS  | 23.94%                 | -                             | 23.94%                          |
| OTPP   | -                      | 15.785%                       | 15.785%                         |
| PGGM   | 10.02%                 |                               | 10.02%                          |
| <b>Total</b>   | <b>100%</b>            | <b>-</b>                      | <b>100%</b>                     |

22 **Transparency and Procedure.** In its comments filed on January 7, 2022, Public Counsel expressed its concern for a perceived lack of transparency in this matter through the Commission’s open meeting process and an inability to express an opinion on whether the transaction is fairly priced or whether due diligence was undertaken by the purchasers.

23 The Commission has discretion whether to initiate an adjudication for transfers of property or to employ another process resulting in a determination of whether it authorizes an applicant’s proposed transaction.<sup>9</sup> The Commission may, therefore, consider the Joint Application at an open meeting as well as in an adjudicative proceeding. The complexity of the matter is not the determining factor for the Commission’s consideration of whether an adjudication is appropriate, as the Commission resolves many complex matters at open meetings. The appropriate legal standard is applied regardless of the process implemented by the Commission. Here, we apply the public interest standard, otherwise referenced as the “no harm” standard.

24 At the January 27, 2022, Open Meeting, Public Counsel stated that it was concerned with the amount of information that was shared by the Joint Applicants because it could not confidently represent that all risks had been identified and mitigated. Public Counsel argued that, as it relates to the no harm standard, unknown harms cannot be mitigated. Nevertheless, Public Counsel does not object to the transaction going forward and that,

<sup>8</sup> Rodriguez, Exh. AJR-1T at 3-5, Tables 1-3.

<sup>9</sup> RCW 34.05.413(1)-(2); RCW 80.12.020; WAC 480-143-160.

because of the agreed commitments, believes it is unnecessary to commence an adjudication for this matter.

25 PSE and the Purchasers argue that the concerns raised by Public Counsel related to the due diligence of the Purchasers' decision to invest in purchasing PSE, at the level of detail requested by Public Counsel, is beyond the scope of the Commission's evaluation, which should focus on whether the Purchasers are fit and whether their purchase of an ownership interest in PSE would harm customers. After a thorough review, Staff does not hold, and no other Stakeholder raises, reservations similar to Public Counsel's. We agree with Staff. We are comfortable with Staff's recommendation and the updated commitments agreed by the Joint Applicants and the Stakeholders.

26 We are similarly unpersuaded that the open meeting process for this Joint Application has lacked transparency or that any of the Stakeholders has not been afforded a reasonable opportunity to conduct a thorough review of the proposed transactions. The Joint Application was filed in August, more than five months prior. In that time, for purposes of illustration, Staff has:

- Reviewed the Joint Application and its appendices, the testimony and exhibits of the Joint Applicants, and the Limited Partnership Agreement and revised Commitments
- Reviewed the final orders in Dockets U-072375, UG-151663, UE-170033 and UG-170034, and U-180680
- Conducted informal discovery regarding the Joint Application and supporting materials
- Examined the confidential Puget Holdings LLC agreement, the organizational structure of Puget Holdings incorporating the Joint Applicants, and a portion of PSE's most recent five-year business plan
- Reviewed the Purchase and Sale Agreement of each purchaser
- Reviewed the application to the Committee on Foreign Investment in the United States (CFIUS) along with Confidential Exhibits 1-21 as attached to that application, as provided to Public Counsel
- Reviewed the Federal Energy Regulatory Commission (FERC) Order Authorizing Disposition of Jurisdictional Facilities, a public record
- Examined the publicly available tax forms 990 for the Puget Sound Energy Foundation, and

- Studied the purchasing entities through review of publicly available sources such as financial statements and annual reports published for members in the pension funds.<sup>10</sup>

27 In addition, the open meeting process provided all Stakeholders that petitioned to be involved in this proceeding participation in a series of conferences with the aim of collaboratively resolving any disputes. To the credit of the Stakeholders and their willingness to communicate and collaborate, the Joint Applicants and all Stakeholders were able to reach agreed commitments that protect customers from the risk of potential harm that could result from the proposed transactions.

28 **Fitness.** Purchasers of an ownership interest in a gas or electric utility must show “the financial and managerial fitness to own and operate the utility in fulfillment of its public service obligations.”<sup>11</sup> We are satisfied by OTTP’s and the Macquarie Fund’s demonstrations in the Joint Application, and through testimony and exhibits in support thereof, that they are financially and managerially fit to acquire an ownership interest in PSE. Testimony filed on behalf of the Joint Applicants describes how OTTP and the Macquarie Fund will fund their purchase of an ownership interest in PSE with both demonstrating their financial fitness and ability to access capital. We agree with Staff that a financially healthy owner, as OTTP and the Macquarie Fund have demonstrated to be, presents less risk that their acquisition of an ownership interest in PSE will contribute to financial difficulties affecting the operation of the utility.

29 In addition, OTTP and the Macquarie Fund have prior experience directly investing in utilities and infrastructure. Such experience reflects positively on the fitness of the purchasers. Lastly, Both OTTP and the Macquarie Fund are investment entities, like several other current owners of PSE, that manage pension or endowment funds with a focus on long-term investment stability. We agree with Staff that a long-term focus providing ownership stability for PSE reflects positively on OTTP’s and the Macquarie Fund’s fitness. Accordingly, we find that both OTTP and the Macquarie Fund have sufficiently demonstrated their fitness as potential owners of PSE.

30 **Commitments.** The agreed commitments are based upon the commitments previously approved by the Commission. Each of the Joint Applicants have acknowledged, affirmed, and accepted the commitments that have been made and approved by the Commission in

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<sup>10</sup> Staff’s Comments at 11-12.

<sup>11</sup> 2008 Acquisition Order at 48-49.

the prior proceedings, to the extent that those commitments remain effective. These reaffirmed commitments emphasize important public service obligations such as:

- Financial integrity commitments that protect PSE’s financial health
- Regulatory and ring-fencing commitments that protect PSE from any financial distress experienced by other companies within the holding company structure
- Staffing, management, governance, recordkeeping, and reporting commitments that protect and promote the Commission’s ability to regulate PSE in the public interest
- Local presence commitments at the levels of directors, officers, line employees, and corporate headquarters
- Protections for customers from rate increases that might otherwise result from the proposed transactions
- Quality of service commitments
- Low-income assistance commitments, and
- Environmental, renewable-energy, and energy efficiency commitments.

31 As it regards the low-income assistance commitments, Commitment 43(a) was the last to be resolved by the Joint Applicants and the Stakeholders. Ultimately, the Joint Applicants agree with the Stakeholders’ interpretation of the commitment that shareholders should continue the \$100,000 contribution to low-income weatherization programs annually and indefinitely with no end date.

32 Upon review and giving due consideration, we find that the agreed commitments based upon commitments previously authorized by the Commission adequately protect customers and address the risks of harm that may result from the proposed transactions. Accordingly, we determine that the Joint Application with the agreed commitments is consistent with the public interest and the proposed transactions should be authorized.

### FINDINGS AND CONCLUSIONS

33 (1) The Commission is an agency of the state of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including electric and natural gas companies.

34 (2) PSE 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 are otherwise used in Title 80 RCW. PSE is engaged in Washington in the business of supplying utility services and commodities to the public for compensation. PSE is



a wholly owned subsidiary of Puget Energy. Puget Energy is wholly owned by Puget Holdings, which is PSE's ultimate parent company.

- 35 (3) On August 13, 2021, the Joint Applicants filed the Joint Application, along with proposed commitments, regarding the proposed sale of a 31.57 percent indirect ownership interest in PSE currently held by CPP Investments to OTPP and the Macquarie Fund.
- 36 (4) Chapter 80.12 RCW requires public service companies, including PSE, to secure Commission approval before they can lawfully sell or otherwise dispose of the whole or any part of their franchises, properties, or facilities that are necessary or useful in the performance of their duties to the public. As described in the 2008 Acquisition Order, the transfer of an ownership interest in Puget Holdings LLC is, likewise, subject to Commission approval. Any sale or disposition made without Commission authority is void.
- 37 (5) WAC 480-143-170 governs the Commission's standard of review for the transfer of a non-controlling interest and requires a finding that the transaction is consistent with the public interest. To be consistent with the public interest, the transaction must not harm the public interest.
- 38 (6) OTPP and the Macquarie Fund will each acquire a 15.785 percent ownership interest portion from CPP Investments' 31.57 percent ownership interest.
- 39 (7) On January 20, 2022, the Joint Applicants filed agreed commitments resulting from discussions with the Stakeholders. The Joint Applicants filed corrected commitments on January 25, 2022.
- 40 (8) The Joint Applicants have acknowledged, affirmed, and accepted the agreed commitments filed with the Commission on January 10, 2022, as well as those that have been made and approved by the Commission in prior proceedings, to the extent that those commitments remain effective.
- 41 (9) The agreed commitments filed with the Commission on January 20, 2022, as corrected on January 25, 2022, are sufficient to protect PSE's customers and the public interest from the risks of harm associated with the proposed transactions.
- 42 (10) The proposed transactions, which grant new ownership interests to OTPP and the Macquarie Fund, will not impair, weaken, or change the Commission's regulatory control and oversight of PSE.

- 43 (11) The Commission should authorize, as consistent with the public interest, the proposed transactions resulting in the acquisition of CPP Investments' ownership interest in Puget Holdings, PSE's ultimate parent company, by OTPP and the Macquarie Fund on the terms provided by the Joint Application along with the agreed commitments filed with the Commission on January 20, 2022, as corrected on January 25, 2022.
- 44 (12) The Joint Application along with the agreed commitments filed with the Commission on January 20, 2022, and corrected on January 25, 2022, is consistent with the public interest and will not result in harm to PSE's customers.
- 45 (13) The Commission should retain jurisdiction over the subject matter to effectuate the terms of this Order.
- 46 (14) The Commission should authorize the Commission Secretary to accept all filings or submissions, with copies to all parties to this proceeding, which comply with the requirements of this Order.

**ORDER**

**THE COMMISSION:**

- 47 (1) Authorizes the proposed transactions outlined by the Joint Application along with the agreed commitments filed with the Commission by Puget Sound Energy, Ontario Teachers' Pension Plan Board, Macquarie Washington Clean Energy Investment, L.P., on January 20, 2022, as corrected on January 25, 2022.
- 48 (2) Authorizes Puget Sound Energy, Ontario Teachers' Pension Plan Board, Macquarie Washington Clean Energy Investment, L.P., to make any compliance filing and any other filing or submission necessary to effectuate the terms of this Order.
- 49 (3) Authorizes the Commission Secretary to accept all filings or submissions, with copies to all parties to this proceeding, which comply with the requirements of this Order.
- 50 (4) Retains jurisdiction to effectuate the terms of this Order.

DATED at Lacey, Washington, and effective January 27, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner

**ATTACHMENT A – SETTLEMENT STIPULATION COMMITMENTS AND EXHIBITS**