



Rob McKenna

# ATTORNEY GENERAL OF WASHINGTON

Utilities and Transportation Division

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April 12, 2012

David W. Danner, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. SW  
P.O. Box 47250  
Olympia, Washington 98504-7250

RE: *Puget Sound Energy Federal Incentive Tracker*  
Docket UE-120277

Dear Mr. Danner:

Enclosed for filing in the above-referenced docket are the original and 12 copies of the Stipulation of Facts and Certificate of Service.

Sincerely,

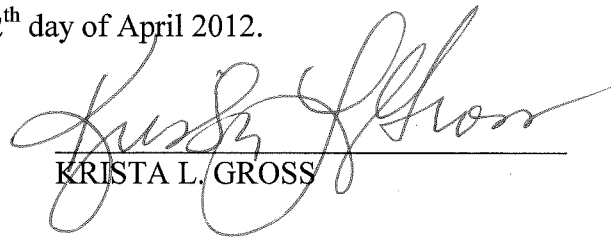
ROBERT D. CEDARBAUM  
Assistant Attorney General

RDC:klg  
Enclosures  
cc: Parties

Docket  
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the attached document upon the persons and entities listed on the Service List below via e-mail and by depositing a copy of said document in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

DATED at Olympia, Washington this 12<sup>th</sup> day of April 2012.



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BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

DOCKET UE-120277

STIPULATION OF FACTS

The Staff of the Washington Utilities and Transportation Commission ("WUTC Staff"), and Puget Sound Energy, Inc. ("PSE" or "the Company"), hereby submit the following Stipulation of Facts:

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**I. FEDERAL LAW AND PROCEDURAL DEVELOPMENTS**  
**RELATING TO TREASURY GRANTS**

**A. Federal Law Authorizing Treasury Grants and Amendment to**  
**Normalization Requirement**

1. Section 1603 of the American Recovery and Reinvestment Act of 2009 ("ARRA") was enacted into law on February 17, 2009. Section 1603 of the ARRA requires the Department of Treasury ("Treasury") to provide a nontaxable cash grant ("Treasury Grant") equal to thirty percent (30%) of a qualifying renewable investment.
2. Section 1603(f) of the ARRA requires the Treasury to apply rules similar to the rules of section 50 of the Internal Revenue Code ("IRC").

In making grants under this section, the Secretary of the Treasury shall apply rules similar to the rules of section 50 of the Internal Revenue Code of 1986. In applying such rules, if the property is disposed of, or otherwise ceases to be specified energy property, the Secretary of the Treasury shall provide for the recapture of the appropriate percentage of the grant amount in such manner as the Secretary of the Treasury determines appropriate.

3. Subsection 50(d)(2) of the IRC requires the application of "rules similar to the rules" of section 46(f). IRC section 50(d)(2) states the following:

(d) Certain rules made applicable.

For purposes of this subpart, rules similar to the rules of the following provisions (as in effect on the day before the date of the enactment [11/5/90] of the Revenue Reconciliation Act of 1990) shall apply:

...  
(2) Section 46(f) (relating to limitation in case of certain regulated companies).

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4. In July 2009, the Treasury issued guidelines (“Treasury Guidance”<sup>1</sup>) on the Treasury Grants. In reference to normalization, the Treasury Guidance states in Part VIII. F, “Applicability of Normalization Rules”

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Payments received under the Section 1603 program must be normalized. See former §46(f).

5. Normalization under section 46(f) allows PSE to provide customers with either (1) an offset to rate base for the unamortized balance of the Treasury Grant or (2) the amortization of the Treasury Grant as a reduction to cost of service. Normalization only allows one or the other, not both. PSE used Method 2 – provide customers with the benefit of amortization of the Treasury Grant as part of cost of service.
6. In May 2011, an amendment to Section 1603 of ARRA to eliminate the normalization requirement was included in the National Defense Authorization Act for Fiscal Year 2012 (“NDAA”). On December 31, 2011, the amendment was signed into law as section 1096 of the NDAA. The amendment states:

(a) In General – The first sentence of section 1603(f) of the American Recovery and Reinvestment Tax Act of 2009 is amended by inserting “other than subsection (d)(2) thereof” after “section 50 of the internal Revenue Code of 1986”.

(b) The amendment made by this section shall take effect as if included in section 1603 of the American Recovery and Reinvestment Tax Act of 2009.

7. Attached as Attachment A to this Stipulation is page 71, line 11 through page 75, line 2 of the rebuttal testimony of Mr. Matthew Marcellia that was admitted into evidence in Dockets UE-111048 and UG-111049. Commission Staff neither disputes nor agrees with the assertions made therein regarding the Company’s legislative efforts.

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<sup>1</sup> Formally titled “Payments for Specified Energy Property in Lieu of Tax Credits under the American Recovery and Reinvestment Act of 2009”, U.S. Treasury Department, Office of the Fiscal Assistant Secretary, July 2009/Revised March 2010/Revised April 2011.

1 **B. Application For Treasury Grants For Wild Horse Expansion**  
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- 3 8. Commercial operation of the Wild Horse Expansion Project ("WH Expansion  
4 Project") began on November 9, 2009.  
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6 9. PSE applied for a Treasury Grant for the WH Expansion Project on December 22,  
7 2009.  
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9 10. The Treasury approved PSE's grant application on February 19, 2010. PSE  
10 received a \$28,674,664 million Treasury Grant for the WH Expansion Project on  
11 February 23, 2010.  
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14 **II. STATE PROCEEDINGS RELATING TO WILD HORSE**  
15 **EXPANSION PROJECT**  
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17 **A. Accounting Petition**  
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20 11. On September 30, 2009 PSE filed a petition for an accounting order in Docket UE-  
21 091570 requesting authorization of the appropriate tracking of Treasury Grants  
22 received under ARRA associated with the WH Expansion Project.  
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24 12. In its petition in Docket UE-091570, PSE proposed that upon receipt, the Treasury  
25 Grant would be recorded as a liability in Account 228.4, Accumulated  
26 Miscellaneous Operating Provisions. The accounting petition provided for  
27 normalization, and PSE requested that the grant be amortized over ten years through  
28 Account 242, Miscellaneous Current and Accrued Liabilities. The amortized  
29 amount would be credited to customers through Schedule 95A.  
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31 13. Commission Staff recommended the Commission issue an order authorizing the  
32 proposed accounting and normalization treatment requested by PSE.  
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34 14. On December 10, 2009, the Commission issued Order 01 in Docket UE-091570,  
35 granting PSE's accounting and normalization treatment.  
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37 15. PSE submitted the Commission Order granting PSE's accounting and normalization  
38 treatment with its Treasury Grant application to demonstrate that PSE had  
39 Commission approval to apply the normalization methodology for the Treasury  
40 Grant.  
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1 **B. Schedule 95A Filings**  
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- 5 16. On October 29, 2010, in Docket UE-101767, PSE filed a revision to Schedule 95A  
6 to pass-through \$5,750,205 of the WH Expansion Project Treasury Grant as a bill  
7 credit. This amount represented 23 months (February 23, 2010-December 31, 2011)  
8 of amortization to be passed through over the 12 months of 2011. The tariff filing  
9 included a change in the title of the tariff from Production Tax Credit Tracker to  
10 Federal Incentive Tracker to reflect the inclusion of Treasury Grants. The WH  
11 Expansion Project Treasury Grant was the only item in Schedule 95A since the  
12 pass-through of Production Tax Credits was set to a zero rate effective July 1, 2010.  
13 PSE submitted substitute tariff sheets on November 5, 2010 at the request of Staff.  
14 The tariff was not disputed and went into effect on January 1, 2011.  
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18 17. On October 31, 2011, in Docket UE-111877, the Company filed a revised Schedule  
19 95A to pass-through \$4,620,963, on a normalized basis, of the WH Expansion  
20 Project Treasury Grant as a bill credit over the 12 months in 2012. The tariff was  
21 not disputed and went into effect on January 1, 2012.  
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24 18. On February 29, 2012, in Docket UE-120277, PSE filed a revision to Schedule 95A,  
25 with an effective date of April 1, 2012, which was subsequently re-filed with an  
26 effective date of June 1, 2012. The revision would increase the credit as a result of  
27 the elimination of the normalization requirements for the WH Expansion Project  
28 Treasury Grant. The proposed increase represents \$2,405,683 of interest based on  
29 the average unamortized balance of the Treasury Grant for the period January 1  
30 through December 31, 2012, times 6.9 percent, the net of tax overall rate of return  
31 from the Company's 2009 general rate case, Docket UE-090704 ("2009 GRC"),  
32 grossed up for income taxes and revenue sensitive items.  
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35 19. Commission Staff contested this calculation as insufficient and took the position  
36 that the interest should be calculated from the time the WH Expansion Project  
37 Treasury Grant was received, February 23, 2010, through December 31, 2011, in  
38 addition to the year 2012 as proposed by PSE. Staff's calculation of interest is  
39 \$7,994,310 based on the average unamortized balance of the Treasury Grant for the  
40 period February 23, 2010 through December 31, 2012, times the net of tax overall  
41 rates of return from the Company's 2009 GRC (6.9 percent) and 2007 general rate  
42 case (7.0 percent), grossed up for income taxes and revenue sensitive items.  
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1 **C. Other Proceedings Relating to the WH Expansion Project**

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- 3 20. On October 27, 2009, in Docket UE-091702, PSE filed with the Commission
- 4 pursuant to RCW 80.80.060(6) a notice of intent to defer costs associated with the
- 5 WH Expansion Project. The WH Expansion Project is a renewable resource
- 6 eligible for deferral of costs under that statute.
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- 8
- 9 21. On April 2, 2010, the Commission issued Order 11 in Docket UE-090704 ("2009
- 10 GRC") determining that PSE's acquisition of the WH Expansion Project was
- 11 prudent.
- 12
- 13 22. New rates in the 2009 GRC took effect April 8, 2010. These rates included the
- 14 following recovery of the WH Expansion Project: (1) Construction Work in
- 15 Progress ("CWIP) costs through September 2009; and (2) deferred costs once the
- 16 plant became operational on November 9, 2009. This deferral ended when the 2009
- 17 GRC rates took effect.
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- 20 23. In the 2009 GRC, the Commission authorized a rate of return for PSE of 8.10
- 21 percent pre-tax, or 6.9 percent net of tax. Prior to the 2009 GRC, the Company's
- 22 authorized pre-tax rate of return was 8.25 percent, or 7.0 percent net of tax, pursuant
- 23 to Order 12 in Docket UE-072300, the Company's 2007 general rate case.
- 24
- 25
- 26 24. In the Company's pending 2011 general rate case, Dockets UE-111048 and UG-
- 27 111049, filed June 13, 2011, PSE calculated the investor-supplied working capital
- 28 allowance treating the WH Expansion Project Treasury Grant 2010 test year balance
- 29 (\$25 million) as investor-supplied capital. This treatment is pursuant to the
- 30 normalization requirement for the Treasury Grant that existed prior to the enactment
- 31 of NDAA and that was in effect at the time of PSE's 2011 general rate case filing.
- 32 PSE neither directly reduced electric rate base nor proposed to credit customers with
- 33 interest on the test year Treasury Grant balance because doing so would violate the
- 34 normalization requirement that was in effect at the time, prior to the enactment of
- 35 NDAA.
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38 **DATED this 12th day of April, 2012.**

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40 **PUGET SOUND ENERGY, INC.**

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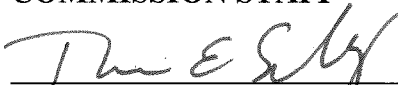
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45 JOHN H. STORY

46 Director, Cost and Regulation

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**COMMISSION STAFF**

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50 THOMAS E. SCHOOLEY

51 Assistant Director – Energy Regulation



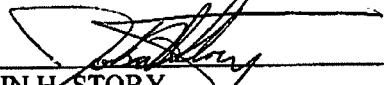
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**C. Other Proceedings Relating to the WH Expansion Project**


- 20. On October 27, 2009, in Docket UE-091702, PSE filed with the Commission pursuant to RCW 80.80.060(6) a notice of intent to defer costs associated with the WH Expansion Project. The WH Expansion Project is a renewable resource eligible for deferral of costs under that statute.
- 21. On April 2, 2010, the Commission issued Order 11 in Docket UE-090704 ("2009 GRC") determining that PSE's acquisition of the WH Expansion Project was prudent.
- 22. New rates in the 2009 GRC took effect April 8, 2010. These rates included the following recovery of the WH Expansion Project: (1) Construction Work in Progress ("CWIP) costs through September 2009; and (2) deferred costs once the plant became operational on November 9, 2009. This deferral ended when the 2009 GRC rates took effect.
- 23. In the 2009 GRC, the Commission authorized a rate of return for PSE of 8.10 percent pre-tax, or 6.9 percent net of tax. Prior to the 2009 GRC, the Company's authorized pre-tax rate of return was 8.25 percent, or 7.0 percent net of tax, pursuant to Order 12 in Docket UE-072300, the Company's 2007 general rate case.
- 24. In the Company's pending 2011 general rate case, Dockets UE-111048 and UG-111049, filed June 13, 2011, PSE calculated the investor-supplied working capital allowance treating the WH Expansion Project Treasury Grant 2010 test year balance (\$25 million) as investor-supplied capital. This treatment is pursuant to the normalization requirement for the Treasury Grant that existed prior to the enactment of NDAA and that was in effect at the time of PSE's 2011 general rate case filing. PSE neither directly reduced electric rate base nor proposed to credit customers with interest on the test year Treasury Grant balance because doing so would violate the normalization requirement that was in effect at the time, prior to the enactment of NDAA.

**DATED this 12th day of April, 2012.**

**PUGET SOUND ENERGY, INC.**

  
**JOHN H. STORY**  
Director, Cost and Regulation

**COMMISSION STAFF**

  
**THOMAS E. SCHOOLEY**  
Assistant Director – Energy Regulation

**ATTACHMENT A**

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**EXHIBIT NO. \_\_\_(MRM-14T)  
DOCKET NOS. UE-111048/UG-111049  
2011 PSE GENERAL RATE CASE  
WITNESS: MATTHEW R. MARCELIA**

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,**

**Complainant,**

**v.**

**PUGET SOUND ENERGY, INC.,**

**Respondent.**

**Docket No. UE-111048  
Docket No. UG-111049**

**PREFILED REBUTTAL TESTIMONY (NONCONFIDENTIAL) OF  
MATTHEW R. MARCELIA  
ON BEHALF OF PUGET SOUND ENERGY, INC.**

**JANUARY 17, 2012**

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**B. Normalization of the Treasury Grants.**

**Q. Please provide some background on the normalization requirements of the Section 1603 Treasury Grants.**

A. The American Recovery and Reinvestment Act of 2009 (the "ARRA" or the "Stimulus") was passed in February 2009. Section 1603 of the Stimulus allows a Treasury Grant of 30% of the eligible cost of a qualifying renewable investment. For example, a wind farm would be a qualifying investment. Congress's intent in enacting section 1603 was to stimulate investment in renewable energy. However, in drafting the new law, Congress instructed the U.S. Treasury to

1 “apply rules similar to the rules of section 50 of the Internal Revenue Code”.  
2 ARRA §1603(f).

3 Section 50 of the IRC can be described as a “catch-all”. It provides numerous  
4 administrative provisions on the taxation of the investment tax credit (“ITC”),  
5 including such things as recapture provisions and required tax basis adjustments.  
6 PSE identified one such provision as being potentially problematic: IRC  
7 section 50(d)(2), which invoked the ITC normalization provisions. Generally, the  
8 ITC normalization provisions decrease the value of benefit that can be passed on  
9 to customers by restricting the ratemaking treatment of the unamortized balance  
10 of the ITC.

11 At the time, PSE believed that Congress’s invocation of the ITC normalization  
12 rules was an unintended consequence of its citation to Section 50 and antithetical  
13 to concept of a stimulus plan. The ITC normalization rules would have the effect  
14 of significantly reducing the value of the Section 1603 Treasury Grants to PSE’s  
15 customers by restricting the regulatory treatment of the unamortized balance of  
16 such grants.

17 In May 2009, PSE and its representative met with tax normalization teams from  
18 the IRS and U.S. Treasury to explain why tax normalization would be

1 inappropriate for section 1603 Treasury Grants. This meeting was held prior to  
2 the issuance of the Treasury Guidance<sup>2</sup> which ultimately occurred in July 2009.

3 Unfortunately, when the Treasury issued the Guidance in July, it expressly  
4 required ITC-style normalization of the Section 1603 Treasury Grants, contrary to  
5 PSE's wishes but well within Treasury's authority. *See* Part VIII (F) of the  
6 Treasury Guidance.

7 PSE continued to believe that normalizing Section 1603 Treasury Grants was  
8 inappropriate and not beneficial to customers. So, PSE began a legislative effort  
9 to expressly prevent the normalization of Section 1603 Treasury Grants.

10 **Q. Did PSE's efforts yield any results?**

11 A. Yes. PSE's efforts were absolutely successful, even if it took a full thirty-three  
12 months from the time the Stimulus was enacted. Various members of Congress  
13 supported PSE's position and introduced corrections into twelve separate pieces  
14 of legislation. On December 31, 2011, PSE's correction was signed into law as  
15 Section 1096 of the National Defense Authorization Act of 2012.

16 Legislative victories of this magnitude do not "just happen". They are the result  
17 of the persistent, tireless effort of numerous dedicated individuals within PSE. In  
18 addition, such efforts are not without monetary costs. The cost of this effort was

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<sup>2</sup> Officially titled as follows: Payments for Specified Energy Property in Lieu of Tax Credits under the American Recovery and Reinvestment Act of 2009, US Treasury Department, Office of the Fiscal Assistant Secretary, July 2009/Revised March 2010/Revised April 2011.

1 significant and extended beyond the dollars involved in the effort. Indeed, PSE's  
2 federal legislative team mustered a coalition of Washington State elected officials  
3 from both sides of the aisle to work collaboratively to support PSE's customers.

4 This was a situation where PSE saw Congress and the U.S. Treasury invoking the  
5 normalization provision in a situation where normalization did not belong. PSE  
6 selflessly rose to the challenge and ultimately got the correction across the finish  
7 line. Congress finally arrived at the right answer, the same answer that PSE  
8 explained to U.S. Treasury and IRS officials at the May 2009 meeting.

9 **Q. What does this mean?**

10 A. It means that Section 1603 Treasury Grants become a much more valuable  
11 reduction to customer rates. Technically, this change will allow PSE to reduce  
12 the rate base calculation by the unamortized portion of the Section 1603 Treasury  
13 Grants. Prior to the law change, the normalization rules prevented this treatment.  
14 Now customers will enjoy not only the amortization but a rate base offset  
15 associated with the unamortized balance.

16 **Q. How will customers receive this benefit that PSE just won?**

17 A. This benefit will completely flow to customers. Section 1603 Treasury Grants are  
18 not part of general rates and, consequently, not part of this general rate case.  
19 They are rightly reflected in a tracker, as the balance of the benefit changes over  
20 time. The Commission has already approved this treatment. The Section 1603

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Treasury Grants and the newly won rate base offset will be reflected in Tariff  
95A, when that Tariff is next updated.