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 RESPONSE ON BEHALF OF COMMISSION STAFF TO JOINT PETITION TO INITIATE AN ADJUDICATIVE PROCEEDING

I. INTRODUCTION

1 Staff of the Washington Utilities and Transportation Commission (Commission) submits this response to the Joint Petition for Adjudication filed by Public Counsel, Alliance of Western Energy Consumers, the Energy Project, and the Washington and Northern Idaho District Council of Laborers (Joint Petition) pursuant to the Commission's October 29th Notice Establishing Deadline to Respond. The plain language of the transfers of property statute, as well as its legislative history, requires a showing of net benefits to customers only if a transfer involves a controlling interest. The transfers of interest in this case do not amount to a controlling interest. Accordingly, the applicable standard of review is whether the transactions are consistent with the public interest. In order to determine whether a transaction is consistent with the public interest, the Commission considers whether the transaction will cause harm to the public interest, and this consideration is well established at the Commission as the "no harm" standard.

2 Contrary to the arguments in the Joint Petition, an adjudication is not necessary. The laws and rules governing transfers of property do not require an adjudication, and, pursuant

to the Administrative Procedure Act (APA) as well as the Commission's procedural rules, the Commission has discretion whether to commence an adjudication or not. This means that the Commission can decide this matter at an open meeting or schedule additional process including an adjudicative proceeding. Staff has conducted a diligent review of the transactions at issue and has already presented its recommendation to the Commission. Not only is additional process not legally necessary, additional process is also not a practical necessity given that the application has been available for review for nearly two months and Staff has indeed performed a thorough examination of it during this period.

II. BACKGROUND

3 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").

4 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 current 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 current interest in Puget Holdings. These sales will be referred to collectively as the "Proposed Transactions."

5 On September 21, 2018, the Commission issued a 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 that open meeting scheduled for November 5, 2018, and invited interested persons to file comments by October 24, 2018. Joint Petitioners filed their Joint Petition for Adjudication by the comment deadline. Subsequently, the Commission issued its notice establishing a deadline for filing responses to the Joint Petition.

III. ARGUMENT

6 Joint Petitioners address two main issues in their petition: (1) the legal standard that the Commission should apply to its review of the Proposed Transactions, and (2) the process of the Commission's review. As Staff explained in its October 24 comments, the proper standard of review is the "no harm" standard, which is well established at the Commission and applies to the Proposed Transactions because they do not involve the acquisition of a controlling interest in PSE or its parent entities. As Staff also previously discussed in its comments, an adjudication is neither required as a matter of law, nor necessary as a practical matter. Not only have all interested persons had an opportunity to review the application since it was filed nearly two months ago, but also Staff has been able to perform a full examination of the application and provide a recommendation to the Commission.[1]

[1] Commission Staff notes that PSE shared its responses to Staff's informal data requests with Public Counsel and with representatives of industrial customers and low-income customers respectively.

A. The Standard Applicable to the Review of the Proposed Transactions

7 Pursuant to RCW 80.12.020, the sale of a utility must provide a net benefit to customers when the transaction results in the acquisition of a "controlling interest" in a gas or electrical company. Under a plain reading of the statutory language, a sale that does *not* result in a person acquiring a *controlling interest* is not subject to the net benefit standard.

8 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.

Joint Petitioners would have the Commission apply the net benefit standard without regard to the amount of interest acquired in the Proposed Transactions. Essentially, Joint Petitioners ask the Commission to disregard the plain language of RCW 80.12.020 that restricts application of the net benefit standard to acquisitions of a *controlling interest.* The Commission should reject the Joint Petitioners' proposed reading of the statute and should consider all of the words of RCW 80.12.020 and their ordinary meaning.

1. Principles of statutory interpretation.

9 Neither chapter 80.12 RCW nor chapter 480-143 WAC define the term "controlling interest." When interpreting a statute, the goal is to ascertain and carry out the legislature's intent. *Jametsky v. Olsen*, 179 Wn.2d 756, 761-62, 317 P.3d 1003 (2014). In interpreting a statute, a court will attempt to give effect to the plain meaning of a statute as an expression of legislative intent. *Id.* at 762.

10 To determine plain meaning, a court will consider the context of the entire act as well as any related statutes that disclose legislative intent about the provision in question. *Id.* at 762. If a statutory term is not defined, "the words of a statute are given their ordinary meaning, and the court may look to a 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) (internal quotation omitted). If a statute remains susceptible to more than one reasonable interpretation after considering plain meaning, then the statute is ambiguous. *Jametsky*, 179 Wn.2d at 762. If a statute is ambiguous, a court will resort to statutory construction, legislative history, and relevant case law to determine the legislature's intent. *Id.* at 762. Furthermore, if a statute is ambiguous "the construction placed upon the statute by an administrative agency charged with its administration and enforcement, while not absolutely controlling upon the courts, should be given great weight in determining legislative intent." *Hama Hama Co. v. Shorelines Hearings Bd.*, 85 Wn.2d 441, 448, 536 P.2d 157 (1975).

2. The meaning of "controlling interest."

11 The plain meaning of "controlling interest" can be ascertained from its dictionary definition. The arguments that Joint Petitioners advance regarding (1) the legislative finding and declaration, (2) a minority owner's potential to exert control through collusion with other owners, and (3) a minority owner's putative control through ability to veto a supermajority vote, are not persuasive, as discussed below.

12 Because the term has a plain meaning, it is not necessary to delve into the legislative history of RCW 80.12.020. Even if the legislative history is consulted, however, it does not yield a conclusive answer.

a. The plain meaning of controlling interest.

i. The plain meaning of "controlling interest" is in the dictionary.

13 RCW 80.12.020 states in part:

> 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. (emphasis added).

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 [percent] ownership interest in an enterprise."

ii. The legislative finding does not discuss "controlling interest."

14 When the legislature enacted RCW 80.12.020, it also made the following finding:

> The legislature finds and declares that the Washington utilities and transportation commission should require that a net benefit to customers be shown in order to approve the acquisition of the franchises, properties, or facilities owned by a gas or electrical company in the state and which are necessary and useful in the performance of the duties of a gas or electrical company, and that its decision to approve or deny such an acquisition be made within a prescribed period of time.

Laws of 2009, ch. 24 § 1. RCW 80.12.020 does require the Commission to apply the "net benefit" standard, subject to the legislative limitation to transactions resulting in a person acquiring a "controlling interest." The legislature's finding does not direct the Commission to use a liberal or narrow interpretation of the related statutes and does not discuss the

meaning of "controlling interest." Therefore, the legislative finding provides little assistance in determining the meaning of "controlling interest."[2]

iii. Cooperation among minority owners in the consortium does not equal control.

15 The fact that a minority shareholder may work together with other shareholders to control the company does not imply that a minority shareholder possesses a controlling interest in a company. Certainly a minority shareholder has an interest in a company, but any shareholder with any level of interest can work with a coalition of other shareholders to achieve shared goals. Therefore, to interpret "controlling interest" as encompassing a scenario involving a consortium of shareholders pooling their collective interest would render the word "controlling" in RCW 80.12.020 meaningless, because a shareholder with any level of interest could form a consortium. A court will not interpret a statute so as to render a portion of the statute meaningless or superfluous. *State v. Dennis*, 191 Wn.2d 169, 173, 421 P.3d 944 (2018). Therefore, the Commission should not interpret "controlling interest" to mean a collective consortium of interests.

iv. Blocking a supermajority vote is not the same as controlling a board.

16 Under PSE's bylaws, the votes of 80 percent of the shareholders are required for supermajority approval.[3] The same is true for Puget Holdings and its members. *See* Order 08 at 17. The Commission should not interpret "controlling interest" as including shareholders that cannot unilaterally control the actions of the company's board, but who would be

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[2] There has been some suggestion that the statements of Senator Brown, the prime sponsor of SB 5055, indicate that "controlling interest" was intended to have a broad meaning. However our Supreme Court has stated, "Statements by individual legislators do not show legislative intent." *Watson v. City of Seattle*, 189 Wn.2d 149, 162-63, 401 P.3d 1 (2017) (internal quotations and citations omitted).

[3] https://www.sec.gov/Archives/edgar/data/81100/000119312509027209/dex34.htm.

necessary for the purpose of supermajority approval (that is, a 21 percent shareholder) for two reasons. First, while a 21 percent shareholder may be able to influence other shareholders to the extent other shareholders contemplate actions requiring supermajority approval, the 21 percent shareholder still cannot unilaterally control the company. Second, the only action a supermajority holdout 21 percent shareholder could do would be to maintain the status quo, which involves no change or action at all, and therefore would generally not increase any preexisting risks associated with company management. Therefore, "controlling interest" should not encompass minority shareholders whose participation would be necessary to achieve a supermajority, but who do not have sufficient interest to take unilateral board action (that is, 21 percent).

b. Ambiguity.

17 Although Staff believes that the plain meaning of "controlling interest" supports its suggested definition, the Commission may find that the meaning of "controlling interest" is susceptible to other reasonable interpretations. If a statute is ambiguous, a court will consider statutory construction and legislative history to determine the legislature's intent. *Jametsky*, 179 Wn.2d at 762. In a judicial review of a Commission decision, the Commission likely would receive deference regarding its interpretation of an ambiguous statute that it administers. *See Hama Hama Co. v. Shorelines Hearings Bd.*, 85 Wn.2d 441, 448, 536 P.2d 157, 161 (1975).

18 Joint Petitioners argue that the legislative history of RCW 80.12.020 suggests that the law in Oregon and the Oregon Public Service Commission's interpretation of that law should control interpretation of the standard in RCW 80.12.020. The legislative history, however, does not show that this was the intent of the Washington Legislature.

i. The legislative history does not demonstrate that the legislative intent was to duplicate Oregon law and regulation.

19 Although the original bill report for SB 5055 (the bill that established the "net benefit" standard) mentions that Oregon uses a "net benefit" standard in the section discussing public testimony, it is not clear that the legislature modeled RCW 80.12.020 after a similar Oregon law. The comments that are specific to Oregon in the summary of public testimony appear to reflect the statements of Michael Early, the executive director of Industrial Customers of Northwest Utilities. At the public hearing on SB 5055 before the Senate Committee on Environment, Water and Energy, Mr. Early stated that Oregon had a net benefit standard and opined that the standard had worked well in Oregon.[4] Therefore, the mention of the Oregon standard in the summary of public testimony is likely related to Mr. Early's comments, but there is no evidence that this reference is an indication of legislative intent.

ii. If the statue is ambiguous, the courts will accord the Commission's interpretation deference.

20 If a statute is ambiguous, a court will afford great weight to an agency's interpretation of a statute that it enforces and administers. The Washington Supreme Court has explained:

> Finally, when a statute is ambiguous—as in the instant case—there is the well-known rule of statutory interpretation that the construction placed upon a statute by an administrative agency charged with its administration and enforcement, while not absolutely controlling upon the courts, should be given great weight in determining legislative intent.

[4] *Hearing before Senate Committee on Environment, Water & Energy*, Jan. 21, 2009, https://www.tvw.org/watch/?eventID=2009011178, at 49:35-49:50.

Hama Hama Co., 85 Wn.2d at 448, 536 P.2d at 161. More recently, our Supreme Court has reiterated that "[g]enerally, 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).

21 The Commission has previously suggested a definition of "controlling interest" in the last PSE transaction. In Docket U-072375, the Commission stated that a 51 percent share 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. *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 at 17, (Dec. 30, 2008) (Order 08). Insofar as "controlling interest" and "controlling share" are essentially synonymous, the Commission's previous definition aligns with Staff's proposed definition of "controlling interest" in this case, which requires sufficient interest to support an affirmative action by the board. A court is likely to afford deference to the Commission's definition of "controlling interest," particularly when the Commission's definition is consistent with the Commission's prior decisions. Therefore, the Commission should adopt Staff's interpretation of "controlling interest" and clarify that it is the correct understanding of the term.

c. Joint Petitioners' policy arguments should be rejected because they rewrite the statute.

22 Joint Petitioners assert that, for reasons of policy, the net benefit standard should apply to the Proposed Transactions. Specifically they argue that the net benefit standard should apply when "an ownership change of any amount has the potential to materially impact the utility's operations." Joint Petition at ¶ 48. They posit that because Macquarie is

divesting, "[i]t stands to reason that this significant change will have at least some impact on PSE and its operations." Joint Petition at ¶ 48. Joint Petitioners' interpretation of RCW 80.12.020, however, would essentially rewrite the statute. The plain language of the statute reads that the Commission "shall not approve any transaction . . . that would result in a person . . . acquiring a controlling interest . . . without a finding that the transaction would provide a net benefit to the customers of the company." It does not include the concept of "material impact;" nor does it discuss "potential" impact. Whether or not an acquiring person is in fact acquiring a controlling interest is ascertainable by identifying the percentage of ownership interest being acquired and reviewing any governance documents pertaining to the entity subject to the transaction. This Staff has done.

d. Conclusion on the meaning of controlling interest.

23 Based on the definitions discussed above, the Commission should determine that the plain meaning of "controlling interest" is sufficient ownership to unilaterally require the board to take action. This definition is best reflected in the Black's Law definition of controlling interest, which notes that a controlling interest is present especially when an entity has a greater than 50 percent ownership interest in a company. However, because the governance structure of some companies may require more or less than a simple majority for a board to take action, the Commission should adopt a two part definition of controlling interest: 1) that a "controlling interest" is presumptively a greater than 50 percent ownership interest, but 2) if a particular company requires a specific shareholder threshold to take affirmative board action based on its governing articles, then a "controlling interest" will be any share that meets or exceeds such threshold.

3. The Proposed Transactions constitute acquisitions of non-controlling interests.

24 The transfers, collectively, consist of less than half of the ownership interest of Puget Holdings, which is a good indication that the interest being transferred is not controlling. Of even greater significance, however, no single entity is acquiring the full amount of the ownership share that Macquarie is divesting. On their face, therefore, the Proposed Transactions do not, singly or jointly, constitute an acquisition of a controlling interest. Review of the governance provisions confirm this. As the Commission pointed out in its Order 08, board decisions require at least 55 percent of the votes, and some decisions require a supermajority of 80 percent. Order 08 at 17 and 90. Thus, these governance provisions require even more than the simple majority of 50 percent of the votes for board action. In order to acquire a controlling interest in Puget Holdings, a person would need to acquire an interest of at least 55 percent. Because the sale involves a 43.99 percent interest and none of the Joint Applicants are acquiring a controlling interest, the net benefit standard does not apply to the Proposed Transactions.

4. The appropriate standard is the "no harm" standard.

25 As discussed above, the plain language of RCW 80.12.020 indicates that application of the net benefit standard is restricted to transactions where a buyer acquires a "controlling interest" in a gas or electric company. In other types of transfers, such as transfers of property involving telecommunications companies, the net benefit test does not apply, and the Commission uses the public interest standard of WAC 480-143-170. Just as in those other types of transfers where the net benefit test is inapplicable, the Commission should review the Joint Application in the instant docket under the public interest standard of WAC 480-143-170.

26 The Commission has long applied the public interest standard by considering whether a transaction will harm the public interest. *See* Order 08 at 3 and at 48-49. This "no harm" standard has been well developed in prior Commission decisions and is appropriate for the Proposed Transactions; there is no need to invent another flavor of review. Because the Joint Application involves the acquisition of less than a controlling interest, the appropriate standard of review is the "no harm" standard.

B. Process

27 Joint Petitioners advance an assortment of arguments for initiating an adjudication. Because commencing an adjudication in this matter is discretionary, these arguments are just that: arguments; and they do not represent any authority requiring the Commission to commence an adjudication.

1. The Commission has authority to decide the Joint Application through the open meeting process or through another process.

28 The Commission may consider the Joint Application at an open meeting or in another process, such as 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.

29 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.

30 The Commission has recently approved an application under the transfers of property statute using 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.[5]

31 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 Commission may schedule consideration of a matter at multiple open meetings. In short, the Commission has discretion over the process it will use to make a determination on the Joint Application.

[5] *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).

2. Joint Petitioners' arguments do not demonstrate that an adjudication is required.

32 Joint Petitioners posit that determining whether a controlling interest is being transferred may be a factual as well as a legal determination and therefore additional process should be afforded all stakeholders. In this case, Commission Staff has examined the application, conducted discovery, reviewed all of the materials, and presented a recommendation to the Commission. This is the process that the Commission relies on to make many decisions at its open meetings. This process is also sufficient for a decision in this matter.

33 Joint Petitioners assert that an open meeting process is not sufficient to determine the legal standard of review for the Proposed Transactions. They argue that, if the Commission determines that the net benefit standard is not appropriate, the Commission will need to make a determination on the requirements of the public interest standard. The Commission has an established standard, however, the "no-harm" standard, to satisfy the analysis of whether a transaction is consistent with the public interest. The Commission has applied the "no harm" standard to many transactions over the years and there is no need for the Commission to depart from its own precedent.

34 Joint Petitioners argue that because the Proposed Transactions, taken together, are "material," which was defined in Order 08 as a transfer of greater than 10 percent, they constitute a "material issue" that is not routine and that cannot reasonably be examined in an open meeting process. Joint Petitioners, however, misconstrue the effect of the Commission's definition of a material transfer. The effect of the definition of "material" is that transfers of less than 10 percent interest require only notice to the Commission and not the Commission's approval. Transactions involving more than 10 percent of ownership

interest in Puget Holdings, however, require the Commission's approval under the transfers of property laws and rules. The Joint Application, with its supporting memorandum and testimony, set in motion the Commission's review of the Proposed Transactions. Indeed, Staff has actively examined and analyzed the Joint Application, conducted discovery and independent research, and has provided a recommendation to the Commission. Whether the Commission ultimately makes its decision at an open meeting or through another process, the Commission will have performed the review required for a decision on a transfer of a material interest in Puget Holdings.

35 Joint Petitioners argue for commencement of an adjudication based on the broad reach of the public interest standard, intimating that, in order to consider all of the issues in this type this case, including all of the factors in the "no harm" standard, an adjudication is necessary. As discussed above, however, an adjudication is not the only process that can accommodate consideration of complex matters. The Commission can, legally and practically, consider and decide all kinds of matters, including the Joint Application, at an open meeting as well as through an adjudicative process.

36 Another argument that Joint Petitioners advance in support of commencing an adjudication is that the Joint Applicants' Proposed Commitments should be reviewed further and Joint Petitioners require the process and longer timelines of an adjudication to conduct their review. In point of fact, the Proposed Commitments have been available for review for close to two months. To Staff's knowledge, Joint Petitioners have made no suggestions for any revisions to the Proposed Commitments and have not sought information from the Joint Applicants on any points.

37 Joint Petitioners object to consideration of the Joint Application at an open meeting because they cannot participate in the same way as in an adjudication. Specifically, they list conducting discovery, presenting evidence, presenting legal argument, and cross examining witnesses. Notably absent from the transfers of property statutes and rules, however, is any requirement that any person other than the Commission examine a property transfer application. It is true that RCW 80.12.030 provides the Commission with 11 months in which to grant or deny a property transfer application, and it is true that an adjudication can conclude within this time frame, but the Commission's rules make clear at WAC 480-143-170 that the Commission can make a decision on a property transfer application after a hearing, or without a hearing after the Commission has examined the application. In the latter case, that is "upon the examination of any application and accompanying exhibits," a decision made at an open meeting, after Commission Staff has made a thorough examination of the application, is fully consistent with the law and Commission rules.

IV. CONCLUSION

38 For the reasons discussed above, the appropriate legal standard to apply to the review of the Proposed Transactions is the "no harm" standard, and an adjudication is not required for the Commission to decide the Joint Application. As the Joint Petitioners conceded at the November 5th open meeting, the Commission has discretion to decide the Joint Application in an open meeting process. In the event, however, that the Commission elects to conduct further process before it makes a decision on the Joint Application, Staff submits that the full 11-month review period available under RCW 80.12.030 is not necessary, given that the Proposed Transactions involve the acquisition of only noncontrolling interests. The

Commission may set a shorter deadline for decision in this matter whether the Commission continues with the open meeting process or commences an adjudication.

39 Further, if the Commission elects to schedule additional process, the Commission should decide the standard of review as a threshold matter. Determination of the standard at the outset of any further process would greatly facilitate the efficiency of the process. All interested persons have had an opportunity to brief the standard. In fact, Joint Petitioners discussed the standard at length, devoting considerably more argument to the standard than to their request for an adjudication; Joint Applicants have addressed the standard in their response to the Joint Petition as well as in the Joint Application; and Staff has presented its analysis of the applicable standard in its comments of October 24th as well as in this response. The Commission has the requisite information for a decision on the standard, and, based on Staff's review of the Proposed Transactions, on the Joint Application as well.

Dated this 5th day of November 2018.

Respectfully submitted,

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