Service Date: November 9, 2018

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 ORDER 01 GRANTING AND DENYING PETITION FOR ADJUDICATION, IN PART

BACKGROUND

1 On September 5, 2018, Puget Sound Energy (PSE or Company) filed with the Washington Utilities and Transportation Commission (Commission) a joint application for the proposed sale of a 43.99 percent indirect ownership interest in PSE currently held by Macquarie Infrastructure Partners Inc. and Padua MG Holdings LLC, a Macquarie entity (collectively Macquarie) (Joint Application).

2 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).

3 According to the Joint Application, Macquarie proposes to sell 6.01 percent of its equity interest to existing shareholder Alberta Investment Management Corporation (AIMCo), which will increase its equity interest share to 13.60 percent; 4.01 percent of its equity interest to existing shareholder British Columbia Investment Management Corporation (BCI), which will increase its equity interest share to 20.87 percent; 23.94 percent of its equity interest to new shareholder OMERS Administration Corporation (OAC); and 10.02 percent of its equity interest to new shareholder PGGM Vermogensbeheer B.V. (PGGM).

4 On September 21, 2018, the Commission issued a Notice of Opportunity to File Written Comments by October 24, 2018, and Notice of Recessed Open Meeting scheduled for November 5, 2018. The Notice advised interested persons that the Commission would address the proposed sale and accept comments on the Joint Application from the public at the recessed open meeting.

5 The Commission received 18 written comments, including those filed by Commission staff (Staff) and the Joint Applicants.

6 On October 24, 2018, the Public Counsel Unit of the Attorney General's Office (Public Counsel), the Alliance of Western Energy Consumers (AWEC), The Energy Project (TEP), and the Washington and Northern Idaho District Council of Laborers (WNIDCL) (Joint Petitioners) filed a joint petition requesting that the Commission initiate an adjudicative proceeding to review the transaction described in the Joint Application (Joint Petition).

7 Joint Petitioners argue that (1) the Commission should apply the "net benefit" standard of review under RCW 80.12.020 to the proposed transaction because it involves the transfer of a "controlling interest," and (2) consistent with past practice, the Commission should commence an adjudicative proceeding to review the transaction. Joint Petitioners contend they will be prejudiced if the proceeding is not converted to an adjudication because they have no rights to conduct discovery, file testimony, or conduct cross-examination under the open meeting process. Joint Petitioners suggest that the adjudicative process need not be unduly burdensome.

8 On October 29, 2018, the Commission issued a Notice Establishing Deadline To Respond To the Joint Petition by November 5, 2018. The notice invited interested persons both to file written responses to the Joint Petition and present oral responses at the recessed open meeting.

9 Richard Lauckhart, energy consultant, Citizens for Sane Eastside Energy (CSEE), and the Coalition of Neighbors for Sensible Energy (CENSE) filed responses in support of the Joint Petition.

10 Joint Applicants filed a response opposing the Joint Petition. Joint Applicants argue that an adjudicative proceeding is unnecessary because Macquarie now proposes to transfer a non-controlling, indirect interest in PSE, which is significantly different than the transaction that occurred nearly 10 years ago when the Macquarie-led consortium acquired indirectly 100 percent of PSE's common stock, making it a privately held

company. Joint Applicants contend that because they do not propose to transfer a "controlling interest" within the meaning of RCW 80.12.020, the "no harm" standard of review applies to the proposed transactions. Joint Applicants assert that the proposed transactions are also distinguishable from other transactions that have been adjudicated by the Commission, all of which involved the transfer of a 100 percent ownership interest. Rather, Joint Applicants argue that this transaction involves the transfer of one minority shareholder's interest to four new shareholders whose individual minority interests will be significantly less than that held by Macquarie, and will have no impact whatsoever on PSE's management or day-to-day operations.

11 Staff also filed a response opposing the Joint Petition. Staff agrees with the Joint Applicants that the "no harm" standard is the proper standard of review because the proposed transactions do not involve the acquisition of a controlling interest in PSE or Puget Holdings. Staff argues that an adjudication is neither required as a matter of law nor necessary as a practical matter. If the Commission decides to conduct an adjudication, Staff submits that a full 11-month review is unnecessary, and urges the Commission to adopt a shorter timeframe. Finally, if the Commission elects to afford additional process, Staff requests that it decide the standard of review as a threshold matter.

DISCUSSION

12 We grant the Joint Petitioners' Petition for Adjudication insofar as we determine it is appropriate to afford additional process through a limited, expedited adjudicative proceeding. We decline, however, to review the Joint Application under the "net benefit" standard, finding instead that the public interest, or "no harm," standard should apply because the Joint Application proposes to transfer a non-controlling interest in Puget Holdings. We address separately below the standard of review and our process for going forward.

Standard of Review

13 The "net benefit" standard under RCW 80.12.020 applies by its terms only to the proposed sale or other transfer of a "controlling interest in a gas or electrical company." This language is straightforward and unambiguous.

14 Joint Petitioners, however, first argue that the legislative history and intent of the statute indicate that the net benefit standard applies "broadly to important changes in ownership of utility companies that result in the acquisition of substantial influence and effective

control by purchasers."[1] Among other things, Joint Petitioners argue that the legislature intended the Commission to interpret its merger statute consistent with Oregon's merger statute, which employs a "substantial influence" standard.

15 Conversely, Joint Applicants argue that application of the net benefit test here would be inappropriate because none of the purchasers will have a controlling interest in PSE or Puget Holdings. Quite to the contrary, the transferred ownership share will be diluted by division among four entities, each of whom will have less ability to influence Puget Holdings' decision making than the current shareholder.

16 We agree with Joint Applicants and Staff. The plain language of RCW 80.12.020 restricts the application of the net benefit standard to acquisitions of a "controlling interest" in a utility. Although the statute does not define "controlling interest," the term is unambiguous, and has a plain meaning. As the Joint Applicants correctly observe in their response, if a statute's meaning is plain on its face, "courts must give effect to its plain meaning as an expression of what the legislature intended."[2] Where 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."[3] In corporate law, the term "controlling interest" is well established and consistent with the definitions found in authoritative dictionaries. Staff relates, for example, that Black's Law Dictionary defines "controlling interest" as "sufficient stock ownership in a company to control policy and management; esp. a greater-than 50 [percent] ownership interest in an enterprise,"[4] and Webster's Dictionary defines it as "sufficient stock ownership in a corporation to exert control over policy, a person or group that possesses such interest."[5] These definitions are entirely consistent with those found in Washington state statutes.[6] Because the plain meaning of "controlling interest" is clear and readily confirmed by reference to authoritative sources that define the term, Joint Petitioners' arguments related to the statute's legislative history and Oregon law are unnecessary and not in the least persuasive.

---

[1] Joint Petition at ¶4.

[2] Joint Applicants' Response to Joint Petition at ¶31, citing *State Dep's of Ecology v. Campbell and Gwinn, L.L.C.,* 146 Wn.2d 1, 11 (2002).

[3] Staff's Response to Joint Petition, ¶10, citing *Filmore LLLP v. Unit Owners Ass'n of Centre Point Condominium*, 184 Wn.2d 170, 174 (2015).

[4] *Id.* at ¶13, citing Black's Law Dictionary 7th Edition (1999).

[5] *Id.*, citing Webster's Third International Dictionary (1968).

[6] *See* RCW 23B.01.400(4) and RCW 82.45.033.

17 Similarly, the Joint Petitioners' theory that RCW 80.12.020 is meant to capture any change in ownership that exposes the public to risk − and does not apply solely to those circumstances in which a majority share is acquired by a single entity − is contradicted by the statute's plain language, which uses the singular term *"a person"* in its description of those transactions to which the net benefit standard applies. As Joint Applicants observe in their response, "this language demonstrates that what the legislature is expressly concerned about is *one person* having the power to unilaterally control an electric or gas company, not multiple owners having non-controlling interests."[7] We determine, as a matter of law, that the transfer of approximately 44 percent of a utility's shares to four purchasers, none of whom hold an equity share that exceeds 24 percent, does not constitute a "controlling interest."

18 Second, Joint Petitioners argue that a change in control will result from the new owners acquiring veto power over PSE's decisions because any owner with at least a 20 percent equity share can block a supermajority decision. As Staff notes, PSE's bylaws require a vote of 80 percent of shareholders for supermajority approval of certain actions. Staff argues that the term "controlling interest" should not encompass minority shareholders whose participation would be necessary to achieve a supermajority, but who otherwise do not have sufficient interest to take unilateral board action. We agree. As Staff correctly observes, the only action a supermajority holdout shareholder could accomplish would be to maintain the status quo. Preventing a change from occurring is not the same as single-handedly effecting change. The latter, not the former, fits the definition of "controlling interest." As Joint Applicants argue in their response, the ability to block decisions requiring supermajority approval is a governance protection that ensures the continuity of PSE's operations rather than a tool that provides a means for exercising unilateral control.

19 Third, Joint Petitioners assert that the new consortium members will be in a position to collectively exert control to achieve their shared interests. We decline to indulge such speculation. Nothing in the record supports Joint Petitioners' theory that various current and prospective Canadian members of Puget Holdings are colluding to take control of the Company. To the contrary, the record amply demonstrates that each is an independent entity with its own management group and board of directors. Even so, a minority shareholder who forms a coalition with other minority shareholders to achieve common goals cannot come within the statutory meaning of "controlling interest." As Staff correctly observes, such an interpretation would render the word "controlling" meaningless because a shareholder can form a consortium with other shareholders

[7] Joint Applicants' Response to Joint Petition at ¶29.

regardless of the size of its equity share. Again, this interpretation ignores that RCW 80.12.020 requires "a person" – not a coalition of separate entities – to acquire a "controlling interest" before the net benefit standard applies.

20 Fourth, Joint Petitioners argue that the former Macquarie consortium will be effectively replaced by a new consortium that has not made any specific commitments. We disagree. As Joint Applicants' explain in their response, the proposed transactions represent the transfer of a non-controlling interest to two existing, well-qualified members of Puget Holdings and two new, well-qualified institutional investors, all of whom are recommitting to an existing set of commitments. In addition, PSE's access to capital is not limited to its shareholders. Commitment 35 of the settlement agreement the Commission approved in 2008 − which ensures that Puget Holdings has the ability to raise capital in public markets on PSE's behalf and that PSE has the ability to raise capital through hybrid, equity-like securities in the public market − will be maintained by the new and current shareholders. Finally, the Joint Applicants make clear in their pre-filed testimony that the new owners are long-term investors who have experience investing in regulated utilities, and that there will be no change to PSE's day-to-day operations or management.

21 Fifth, Joint Petitioners contend that PSE's gradual transfer of a majority ownership interest raises questions. We disagree. Macquarie's consolidation of its interests in October 2017, which did not result in any change of ownership interest, was unremarkable. Similarly, FSS Infrastructure's decision to transfer its 3.72 percent interest one month later raises no red flags. Macquarie never held a controlling interest in Puget Holdings, and reducing its interest by less than four percent did not render the Joint Application subject to a different standard of review than would have been applied had the 2017 transfer not occurred.

22 Finally, Joint Petitioners assert that there is no reasonable policy basis for concluding that the net benefit standard does not apply to the proposed transactions, and urges the Commission to choose "substance" over "form."[8] We decline the Joint Applicants' invitation to effectively rewrite the statute. Whether an entity is acquiring a controlling interest is, as Staff explains, "ascertainable by identifying the percentage of ownership interest being acquired and reviewing any governance documents pertaining to the entity subject to the transaction."[9] As we discussed in our Final Order authorizing Puget

[8] Joint Petition at ¶48.

[9] Staff's Response at ¶22.

Holdings to acquire PSE, Puget Holdings' governance structure requires the support of a 55 percent or more majority of the voting stock for all decisions.[10] As was the case in 2008 and remains the case today, "no single investor or group of affiliated investors holds a controlling stake in Puget Holdings."[11]

23 In its response, Staff proposes the Commission adopt the following, two-part definition of "controlling interest": 1) a "controlling interest" is presumptively 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 that threshold. We agree with Staff that this definition is consistent both with RCW 80.12.020 and the plain meaning of "controlling interest," and find it is a reasonable definition to adopt on a going-forward basis. This definition provides guidance to the parties, regulated companies, and other stakeholders related to the standard of review that will apply to proposed transfers of property brought before the Commission for approval.

Additional Process

24 Chapter 480-143 Washington Administrative Code (WAC), which governs transfers of property generally, provides that the Commission *may* set an application for hearing and require all parties to the transaction to appear and give testimony.[12] RCW 80.12.020 provides only that the Commission "shall enter an order approving or denying a transaction" within 11 months of the date of filing. Chapter 34.05 RCW, the Administrative Procedures Act, contains no requirement that transfers of property be addressed in an adjudicative proceeding. The Joint Petitioners concede that neither statute nor Commission rule requires the Commission to conduct an evidentiary hearing to resolve the Joint Application.

25 Nevertheless, we agree with Joint Petitioners that a limited adjudicative process is the best path forward. Accordingly, we exercise our discretion to set this matter for adjudication for the reasons discussed below.

---

[10] *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, ¶214 (December 30, 2018).

[11] *Id.* at ¶254.

[12] WAC 480-143-160. Emphasis added.

26 First, the Commission has not evaluated a proposed transfer of a non-controlling interest in a privately held company since RCW 80.12.020 was amended, if ever. For that reason, additional process may be helpful to the Commission in considering such a transaction for the first time. An evidentiary hearing will assist the Commission in its evaluation of any demonstrable risks the proposed transactions may pose to the Company and its customers.

27 Second, an adjudicative proceeding will provide increased transparency. We agree with Joint Petitioners that parties other than Staff should have access to the Company's business plan, Puget Holdings' LLC agreement, and the purchase and sale agreement for each transaction. Although this could be accomplished through individual non-disclosure agreements, the Commission's procedural rules provide an efficient process that will afford all parties the same access to information and procedural protections. We caution the parties, however, that we intend the discovery process to be narrowly defined and focused on the proposed transaction.

28 Prior to the prehearing conference, the parties should work together to agree on a fairly prompt procedural schedule that includes limited data requests; filing deadlines for responsive, rebuttal, and cross-answering testimony; a one-day hearing, and one round of simultaneous post-hearing briefs.

29 Parties are cautioned to stay focused on the "no harm" standard and its requirement for a showing that customers and the public will be no worse off if the transaction is approved and goes forward. Discovery should be focused solely on the potential harms that might arise as a result of the proposed transfer of interest. We are mindful of the fact that PSE's current ownership structure was vetted thoroughly in Docket U-072375, and approved in the Commission's final order in that proceeding, which included numerous commitments and conditions that the Commission determined fully protected PSE's customers and the public interest.

FINDINGS AND CONCLUSIONS

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

31 (2) PSE is an electric company, a natural gas company, and a public service company subject to Commission jurisdiction.

32 (3) On September 5, 2018, PSE, jointly with AIMCo, BCI, OAC, and PGGM, filed with the Commission an application for approval to sell Macquarie's 43.99 percent interest in Puget Holdings to the four entities.

33 (4) On October 24, 2018, Public Counsel, AWEC, TEP, and WNIDCL filed a Joint Petition requesting the Commission initiate an adjudicative proceeding to review the transaction described in the Joint Application under the "net benefit" standard set out in RCW 80.12.020.

34 (5) Under RCW 80.12.020, the Commission must not approve any transaction 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 customers of the company.

35 (6) Neither the 43.99 percent interest being transferred nor the interest shares being acquired by AIMCo, BCI, OAC, or PGGM, constitute a "controlling interest" within the plain meaning of the statute.

36 (7) Because PSE seeks to transfer a non-controlling interest in its parent company, Puget Holdings, the "net benefit" standard does not apply.

37 (8) The Commission should deny the Joint Petitioners' request to apply the net benefit standard to its review of the Joint Application.

38 (9) Under WAC 480-143-170, the Commission will deny an application for a property transfer if the proposed transaction is not consistent with the public interest.

39 (10) The Commission should evaluate the Joint Application under the public interest standard, which requires a showing that the proposed transactions will not harm the public interest.

40 (11) Neither Chapter 480-143 WAC, Chapter 80.12 RCW, nor Chapter 34.05 RCW require the Commission to set the Joint Application for an adjudicative proceeding.

41 (12) To ensure transparency, the opportunity for interested stakeholders and ratepayers to review relevant documents, and assist the Commission in its evaluation of the risks the proposed transactions may pose to both ratepayers and PSE, the Commission should exercise its discretion to grant the Joint Petitioners' request

for an adjudicative proceeding consistent with the schedule and procedural limitations described in paragraph 28, above.

ORDER

THE COMMISSION ORDERS:

42 (1) The Commission grants in part, and denies in part, the Joint Petition for an adjudicative proceeding filed by the Public Counsel Unit of the Attorney General's Office, the Alliance of Western Energy Consumers, The Energy Project, and the Washington and Northern Idaho District Council of Laborers.

43 (2) The Commission will evaluate the joint application for the proposed sale of a 43.99 percent indirect ownership interest in PSE currently held by Macquarie Infrastructure Partners Inc. and Padua MG Holdings LLC under the public interest standard set out in WAC 480-143-170.

44 (3) The Commission will give notice of, and hold, proceedings at such times and places as may be required.

45 (4) The Commission retains jurisdiction over the subject matter and the parties to this proceeding.

DATED at Olympia, Washington, and effective November 8, 2018.

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

Separate Statement of Commissioner Balasbas, Concurring in Part and Dissenting in Part

1 I agree with my colleagues on what legal standards are applicable to evaluating PSE's Joint Application for transfer of an upstream, non-controlling interest in the Company. However, I strongly disagree with the decision to hold an adjudicative proceeding in this docket. Today's Order sets a new and unwelcome precedent the Commission will regret in future matters.

2 My colleagues correctly conclude the Commission need only determine this transaction results in "no harm" to PSE ratepayers and is consistent with the public interest. It is not necessary to apply the "net benefit" standard set out in RCW 80.12.020 because the Joint Application does not result in a transfer of a "controlling interest" as the statute uses that phrase and it is commonly understood. I find the Joint Petitioners' argument to apply the "net benefit" standard here unpersuasive and an unreasonable interpretation of the statute. If the Legislature intended for the "net benefit" standard to apply to transfers like this, it would have either explicitly defined "controlling interest" or used a different term.

3 Under today's Order, a transfer of any type of minority ownership interest is now subject to additional administrative process that will needlessly complicate private business transactions, create additional burdens for Commission Staff, and require spending of scarce resources by other interested parties. But, more process in matters like this does not lead to a better outcome for ratepayers; rather, efficient process best serves ratepayers.

4 An adjudication is entirely unnecessary. I agree with the arguments by the Joint Applicants regarding the Commission's discretion on process and will not repeat them here.[13] The Joint Petitioners also conceded at the November 5, 2018, Recessed Open Meeting that Chapter 80.12 RCW does not dictate which process the Commission should use in considering transfers of property.

5 Suffice it to say, I find the Joint Petitioners' arguments for an adjudication unconvincing and flawed. At the November 5, 2018, Recessed Open Meeting, Joint Petitioners failed to articulate any valid reasons for not communicating with the Joint Applicants with respect to their questions or concerns. With the exception of AWEC, the Joint Petitioners also could not clearly state what goals and issues they want to explore in an adjudication.

[13] Joint Applicant's Response to Petition for Adjudication ¶ 15-18, 51

6 Over 60 days have passed since the Joint Application was filed, and over 45 days have lapsed since the Commission issued its notice to hold a Recessed Open Meeting to consider this matter. The September 21, 2018, notice should have been a clear signal to the Joint Petitioners of how the Commission would handle this docket, but they instead "assumed" the Commission would set this matter for adjudication. They should have paid attention on September 21, 2018, and engaged with the Joint Applicants rather than wasting time arguing for more administrative process. Discussions concerning the need for any additional commitments or conditions for Commission approval of the Joint Application could have commenced much sooner. I commend the efforts of Commission Staff, who conducted a thorough review of the Joint Application and made a recommendation in time for the November 5, 2018, Recessed Open Meeting.

7 Instead of an adjudication, my preferred way to proceed would be to extend the public comment period by another 60 days. During this time, Joint Petitioners and other interested persons could address questions and concerns with the Joint Applicants. Also, I would encourage all interested persons to provide in writing any proposals they wish to make to the Joint Applicants and the Commission for additional commitments or conditions they believe are necessary. The Commission would then set this matter for an Open Meeting in January 2019 and make a final decision then.

8 Ratepayers are best protected by the Commission using the most efficient process available to consider transactions of this nature. It is unfortunate we are embarking on an unnecessary adjudication in this matter. That said, I expect the Joint Petitioners and any other intervenor to proceed with all due haste in the process. I am hopeful we will conclude consideration of the Joint Application expeditiously and without further delay.

JAY M. BALASBAS, Commissioner