BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of **PUGET SOUND ENERGY, INC.** **For an Accounting Order Approving the Allocation of Proceeds of the Sale of Certain Assets to Public Utility District #1 of Jefferson County.**	**Docket No. UE-132027**

POST-HEARING BRIEF OF

PETITIONER PUGET SOUND ENERGY, INC.

JUNE 10, 2014

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I. INTRODUCTION

1. Petitioner Puget Sound Energy, Inc. ("PSE" or the "Company") seeks an accounting order allocating the proceeds of sale of PSE's Jefferson County assets ("Assets") and Jefferson County service area ("Service Area") to the Public Utility District No. 1 of Jefferson County ("JPUD") under threat of condemnation. The proceeds of sale are $109,273,196. The net book value of the Assets is $46,686,435 and the parties agree that these dollars should be returned to the shareholders. There is a modest disagreement as to the amount of transaction costs that should be applied against proceeds of sale; however, the parties agree that some amount of transaction costs should be applied against the purchase price. PSE's determination of the gain on sale is $59,864,235. The allocation of this gain is the primary issue in dispute in this proceeding. PSE is proposing that $44,898,235 of this gain be allocated to shareholders and $14,966,078 be allocated to customers. PSE's proposed allocation of gain equitably balances the interests of shareholders and customers, as such interests are affected by the facts and circumstances presented in this case.

II. SUMMARY

2. This matter comes before the Commission as a result of a hostile acquisition of PSE's Assets and Service Area by JPUD pursuant to RCW 54.16.040. PSE vigorously opposed JPUD's efforts to appropriate its property and business interests. In a settlement of threatened litigation, PSE obtained full and just compensation for the Assets *and for* the commercial value of its business in the Service Area as a going concern. This transfer occurred on April 1, 2013. The transfer of the Assets was deemed approved, as a matter of law, without regard to the impact of the transaction on the interests of PSE's shareholders or PSE's remaining customers. RCW 80.12.020(2).

3. This was not a transaction that arose in the ordinary course of business. PSE was compelled to sell its Assets and relinquish a customer base that it held for 96 years. As a result of PSE's efforts to achieve a fair and efficient transfer of the Service Area, PSE's remaining customers suffered no substantial harm. Rather, PSE's remaining customers will receive a $103 million net power cost *benefit* attributable to the loss of the Jefferson County load. PSE's shareholders, on the other hand, have been substantially harmed as a result of this transaction. The Company's ability to continue to conduct its business in an established market has been eliminated. Shareholders are harmed by a loss of customers and future revenues. Evidence before the Commission shows the value of this lost business opportunity to be at least $76 million. Absent any credible evidence of harm to the remaining customers, no equitable sharing of the gain can or should be considered until this demonstrable harm to shareholders has been fully compensated.

4. There are no Commission decisions addressing the legal and equitable principles that should guide the Commission's decision in this context. PSE urges the Commission to apply a rule specifically crafted and limited to this context by the California Public Utilities Commission ("CPUC"). The CPUC applies the same legal and equitable principles to a partial liquidation that it applies in a total liquidation, allocating 100 percent of the gain to shareholders *absent any harm to remaining customers*. This rule also recognizes that the departing customers paid the depreciation expense on the appropriated assets and that these departing customers are no longer within the jurisdiction of the Commission. This regulatory treatment leaves the remaining customers in the same position that they were in prior to the forced sale. In contrast, investors have lost a portion of their business, and absent any harm to remaining customers, it is the investors who should receive the gain from the forced sale of the service territory.

5. These are the principles of fairness that underlie PSE's proposed accounting treatment, principles that equitably balance the interests of the customers and the shareholders under the facts and circumstances presented in this case. This is not, for example, a case like the recent *Electron* decision,[1] where PSE elected to remove an uneconomical asset from service and, in so doing, achieve a financial result that is in the customers' best interests. Nothing presented or decided in this case need or should upset the principles that apply to other factual circumstances, or the equities that appropriately guide the Commission to regulate in the public interest under those circumstances.[2] There is no presumption by the Company, or a past practice, that customers bear losses for sales of property when the sale is below book value. Rather, when presenting any voluntary sale to the Commission for approval, PSE must demonstrate that the proposed sale is in the public interest.

6. Nor does this case involve factual circumstances typically associated with regulatory assets. Deferred accounting is a mechanism that provides benefits to customers and investors by allowing a means for recovery of prudently incurred costs that are necessary to

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[1] *In re the Application of Puget Sound Energy, Inc. for an Order Authorizing the Sale of the Water Rights and Associated Assets of the Electron Hydroelectric Project in Accordance with WAC 480-143 and RCW 80.12*, Docket UE-131099.

[2] The CPUC clearly drew this line of distinction:

> [T]he Redding II standard is continued because it should be applied in limited circumstances, not because it is generally applicable. Thus, the Commission was correct to hold: "We have not been presented with an adequate record to justify broadening or narrowing Redding II's scope." . . . That decision only governs situations where a municipal utility takes over a portion of an up-and-running public utility system relieving the public utility of its obligation to serve.

In Re Allocation of Gains from Sales of Energy, Telecommunications, and Water Utility Assets Rulemaking Proceeding, D. 04-09-003 (CPUC 2006) (citation omitted). Similarly, in this proceeding, the Commission is not being asked to reconsider or rewrite the rules it applies to asset transfers that occur in the ordinary course of business.

provide safe and reliable service to PSE's customers. Deferred accounting under those appropriate circumstances is not inconsistent with the proposed accounting treatment of gain on the involuntary sale of the Assets and the corresponding loss of the Service Area.

7. In striking an equitable balance in this case, the Commission must weigh the absence of harm to remaining customers. The Commission must also consider the substantial financial benefit that remaining customers will receive from a permanent reduction in load. The Commission must weigh the substantial harm to shareholders. This harm is not speculative, it has occurred, and has been shown to be at least $76 million by a qualified appraiser. Once that harm is remedied, only then do the equities begin to converge and only then is a sharing of the remaining $30 million appropriate. This is reflected in PSE's proposal to share $15 million with the remaining customers. This sharing of the gain is consistent with the public interest and is firmly supported by the policy articulated in *Redding II*, which seeks to equitably balance the interests of shareholders and remaining customers when a utility's property and service area are forcibly acquired by condemnation.

III. ARGUMENT

A. The Acquisition of PSE's Assets and Service Area Presents Unique and Extreme Circumstances

8. PSE provided electric service to its customers in Jefferson County for approximately 96 years.[3] While it is true, as Commissioner Goltz stated during the hearing, that PSE has seen several efforts by cities and public utility districts to explore the feasibility of forming their own utility and condemning PSE's assets,[4] these efforts rarely are successful. The

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[3] Osborne, Exh. No. SSO-1T 2:12-13.

[4] Goltz, Marcelia, TR. 119:3-122:17.

occurrence of successful take-over attempts are infrequent.[5] As stated by Mr. Marcelia at the hearing, referring specifically to PSE service territory:

> The fact that it's successful is unusual, as in when was the last one we dealt with here with PSE, it's been, I don't even know, *I was not even born then*.[6]

9. In the rare event that a public utility district successfully acquires PSE's business in a given area, the transfer is not subject to the Commission's review or approval. The transfer is deemed approved as a matter of law.[7] The question presented to the Commission in this proceeding therefore *does not* implicate the standard of review that the Commission applies in deciding whether to approve or reject a voluntary sale of assets. These cases, in which the Commission is called upon to address a legal question that is not presented in this proceeding under very different facts and circumstances, are inapposite and warrant no further discussion as applicable or relevant legal precedent.[8]

10. There are further distinguishing facts that set this case apart from an asset transfer in the ordinary course of business. PSE was forced to sell the Assets and Service Area under

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[5] Bellemare, Exh. No. RCB-1T 17:11-17.

[6] Marcelia, TR. 122:7-10 (emphasis added).

[7] *See* RCW 80.12.020(2); *Final Order Approving and Adopting Settlement Agreement, Granting Petition for Declaratory Judgment*, Docket UE-101217 (Feb. 1, 2011).

[8] *Cf. WUTC v. Avista Corp., et. al*, UE-991255 (allocating gain on the sale of the coal-fired Centralia Power Plant); *Qwest Corp. d/b/a Century Link QC, Order 01*, UT-120128 (allocating proceeds on the sale of land and a building); *WUTC v. Puget Sound Energy, Inc., Third Supplemental Order,* UE-990267 (allocating gain on the sale of the Colstrip Power plant)*; WUTC v. Puget Sound Power & Light Co., Second Supplemental Order,* Cause No. U-85-5 (allocating gain from the sale of surplus non-depreciable property); *WUTC v. Puget Sound Power & Light, Third Supplemental Order,* Dockets U-89-2688-T and U-89-2955-T (allocating gain from the sale of non-depreciable property during the time the property was in rate base); *WUTC v. Washington Water Power, Order Granting Application*, Docket U-87-1533-AT (allocating gain from the sale of a combustion turbine generator).

threat of condemnation.[9] PSE was an unwilling seller.[10] PSE's "choice" was to incur substantial litigation risk as to the amount of damages it might recover or to settle with JPUD.[11] The equities flowing from such circumstances are not the same as the voluntary sale of a power plant or office building.

11. PSE lost approximately 18,000 customers and its Service Area.[12] PSE's rate base and customer base have been permanently reduced by the loss of the Assets and customers within the Service Area. There are no future earning opportunities to make up for this loss, nor does this loss create a new investment opportunity for shareholders.[13] The accounting treatment requested in this proceeding is specific to these unique and harsh circumstances. This is the context within which the Commission, regulating in the public interest, is called upon to weigh the equities relative to the impact of this transaction upon PSE's shareholders and PSE's remaining customers.

12. There are no Commission decisions that address the facts presented in this case. However, the CPUC promulgated a rule specific to this context that provides sound guidance to the Commission. In *In re Rate-making Treatment of Capital Gains Derived from the Sale of a Public Utility Distribution System Serving an Area Annexed by a Municipality or Public Entity* (*"Redding II"*), D. 89-07-016, 32 CPUC 2d. 233 (1989), the CPUC determined that, in a forced sale, where the regulated utility loses a portion of its service territory as a result of a municipalization, 100 percent of the gain should be allocated

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[9] Osborne, Exh. No. SSO-1T 5:8-12.

[10] Osborne, Exh. No. SSO-1T 3:11-12.

[11] Osborne, Exh. No. SSO-1T 7:14-22.

[12] Marcelia, Exh. No. MRM-5T 32:4-9.

[13] Bellemare, Exh. No. RCB-1T 12:9-13.

to shareholders *absent any harm to remaining customers*. The CPUC's reasoning is straightforward and entirely consistent with the regulatory compact:

> We arrive at this conclusion through a two-step analysis. First, we should consider the welfare of the ratepayers whose service will now be provided by the acquiring municipal utility. . . . Here, the acquiring municipal utility is beyond our jurisdiction. However, the legislative scheme by which our jurisdiction is avoided presumes that public oversight, e.g., through the election of board members and/or local officials, will prove an effective substitute for our regulatory oversight. Where the purchasing utility is a municipality, *we are precluded from offering any particular protections to the ratepayers who are being transferred, but the statutory scheme provides them an alternate recourse to resolve any such issues*.
>
> Second, when we consider the welfare of ratepayers who remain with the privately-owned utility, we find that, in the circumstances of this rulemaking, *they will be in the same position before and after the transfer*. There have been many attempts to describe the regulatory compact between ratepayers and shareholders; probably no description is entirely satisfactory. There are many kinds of facilities and types of risk in utility service, and in future cases involving other types of sales of utility assets, we believe that risk analysis will always be pertinent to deciding how to allocate the gains or losses from these sales. *It is clear, however, that in the circumstances we address here, our allocation would not abridge the regulatory compact.* The ratepayers who remain with the privately-owned utility continue to be served through the same facilities before and after other facilities are transferred through municipalization. *Absent a showing of adverse impact on the remaining ratepayers, the intervening transfer should not change the relative risks previously assumed by ratepayers and shareholders regarding those facilities*. . . .
>
> Given that we will exercise our authority to protect the interests of the ratepayers who remain on the privately-owned utility system, and given that the interests of those ratepayers who have been transferred to a municipal utility are beyond our jurisdiction, *it is appropriate to allocate any gain (or loss) of this sale to the utility shareholders once full mitigation of any adverse impacts on remaining ratepayers has occurred*.[14]

[14] *Redding II*, 32 CPUC 2d 233 at 3 (Westlaw pagination) (emphasis added).

In *Redding II*, the CPUC applies the same legal and equitable principles to a partial liquidation that it applies in a total liquidation.[15] There is no rational reason to distinguish the regulatory treatment of a partial liquidation from a total liquidation, absent harm to remaining customers. It leaves the remaining customers in the same position that they were in before the transfer occurred and compensates shareholders for the confiscation of their assets and business interests.

B. Customers Not Harmed by the Loss of Assets and Service Area

13. No credible evidence has been presented that proves that PSE's remaining customers suffered any financial harm as a consequence of the loss of the Service Area. To the contrary, the evidence proves that PSE's remaining customers receive a substantial benefit attributable to the permanent reduction in load that occurred on April 1, 2013. The only *facts* presented in this proceeding indicative of potential burdens to remaining customers are facts presented in the analysis provided by Mr. Jon Piliaris on behalf of PSE.[16] WUTC Staff, Public Counsel and ICNU criticize Mr. Piliaris's analysis but do not contest the underlying facts.

14. PSE urges the Commission to discount interpretations of these facts that presume the

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[15] Commissioner Jones asked the question of Mr. Keating at the hearing: If a public utility district were to "take over the entire system, so there is nothing left" who would be entitled to gain on this sale to which Mr. Keating answered: "The shareholders keep it all." Absent any harm to remaining customers, there is no principled basis to distinguish a partial liquidation from a total liquidation. Jones, TR. 246:6-25.

[16] As Mr. Piliaris notes, the lack of any evidence to the contrary is telling:

> Q. Have the parties attempted to perform their own analyses to distinguish the cost of service for Jefferson County relative to PSE's overall system?
>
> A. No. In a series of data requests, PSE requested such analyses from each of the parties. In response, they indicated that they either relied solely on PSE's analysis or discounted the value in performing their own analysis.

Piliaris, Exh. No. JAP-9T 5:16-6:2.

occurrence of the extremes and to disregard interpretations of these facts that abandon long-standing and credible approaches to measure and assess impacts. In this regard, as Mr. Piliaris states:

> Despite the many criticisms of PSE's analysis and claims that its long-range projections are unreliable for purposes of this proceeding, the parties have failed to disprove that remaining customers will nonetheless benefit as a result of the loss of PSE's Jefferson County service area, primarily through avoided power costs. Even using Public Counsel's conservative assumptions related to future PCA rates, customers were projected to benefit by nearly $80 million, on a net present value basis, over the 20-year forecast horizon. This alone well exceeds the entire gain at issue in this proceeding.[17]

The analysis of a dissected service area is not an exact science, and the focus of the Commission should be on reasonable assumptions and probable outcomes.

1. Delivery System Revenue Requirements

15. WUTC Staff, Public Counsel and ICNU's criticisms of Mr. Piliaris's analysis of delivery system revenue requirements are weak and inconsistent. They pick extremes, ignore the middle, and undercut one another's conclusions. On behalf of Public Counsel, Mr. Dittmer, taking one extreme of Mr. Piliaris's analysis, testifies that approximately $3.2 million of annual contributions to common fixed costs that were being provided by Jefferson County customers will now be absorbed by remaining PSE customers.[18] Notably, on behalf of WUTC Staff, Mr. Keating characterizes the results that Public Counsel relies upon as "unreliable."[19] Instead, Mr. Keating relies upon the other bookend of Mr. Piliaris's analysis in order to "determine ERF related harm" and concludes that ratepayers will be

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[17] Piliaris, Exh. No. JAP-9T 35:5-12.

[18] Dittmer, Exh. No. JRD-1T 25:2-5.

[19] Keating, Exh. No. EJK-1T 30:7.

harmed "$1,142,941 per year through the end of 2017."[20] However, Mr. Keating does so without accounting for any portion of these costs that will not be incurred as a result of the loss of customers and Service Area.[21] Mr. Gorman, on behalf of ICNU, like Mr. Dittmer, accepts the other bookend of Mr. Piliaris's analysis (a temporary increase in revenue requirement to remaining customers of around $3.25 million per year), and goes on to question the reliability of the data relied upon by Mr. Keating.[22] These confusing and conflicting interpretations of Mr. Piliaris's analysis, while puzzling, fail to prove that the remaining customers suffered any harm whatsoever.

16. At best, the testimony of these witnesses establishes that it is possible to cherry-pick Mr. Piliaris's analysis and allege some small degree of harm to remaining customers derivative from Jefferson County's delivery system revenue requirements. While this is the allegation that is made, it is not credible. The Commission should not be persuaded by the selective use of facts by witnesses who have not taken the time to independently analyze the harm. This is especially true when such analyses are built on a range of assumptions that account for facts and circumstances that are not of a precision to support a single outcome. Mr. Piliaris notes:

> [My analysis] was meant to present bookends for the impacts to delivery system costs likely to occur from the loss of the Jefferson County service area. *These results can be thought of as the tail ends of a "bell shaped" curve, where the further you go from the middle, the more unlikely the*

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[20] Keating, Exh. No. EJK-1T 30:12-17.

[21] As Mr. Piliaris notes, a "very basic example" of avoided costs that Mr. Keating ignores is the cost of providing bills and other correspondence to 18,000 fewer customers. Piliaris Exh. No. JAP-9T 24:1-16. While it is difficult to estimate the precise level of cost savings, some adjustment is warranted as these savings are certain to occur.

[22] Gorman, Exh. No. MPG-1T 14:9-18.

results. Parties focus their claims of customer harm solely on these unlikely outliers and ignore the expected results.[23]

17. In sharp contrast to the interpretations offered by the other parties, and with due regard to a reasonable range of assumptions and the probability of outcomes, Mr. Piliaris's analysis shows no harm to customers:

> The results range from a $3.2 million increase to a $1.1 million reduction in the remaining customers' electric delivery revenue requirements. These results can be found on line 57 on each page of the exhibit. *Given that this range readily encompasses a neutral result and that the results using only directly assigned costs are a bit less realistic (i.e., I would give slightly more weight to the results on page two of the exhibit), it is reasonable to conclude that there is a negligible effect on the delivery component of remaining customers' overall revenue requirements.*[24]

Other than interpretations that presume the occurrence of the extreme case, there is no evidence supporting the conclusion that the loss of the Service Area harmed PSE's remaining customers. These extreme interpretations should be rejected. The reasonable interpretation of the facts presented in Mr. Piliaris's testimony is that there is a negligible effect on the delivery component of remaining customers' overall revenue requirements.

2. Power Costs

18. As with the evidence regarding delivery system revenue requirements, the facts in evidence regarding power costs are all derived from the testimony of Mr. Piliaris. Once again, the question before the Commission is a question of interpretation. The undisputed consequence of the loss of the Service Area is stated by Mr. Piliaris:

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[23] Piliaris, Exh. No. JAP-9T 21:5-10 (emphasis added).

[24] Piliaris, Exh. No. JAP-9T 8:9-16 (emphasis added).

> The loss of load in Jefferson County is *known and is permanent*. Therefore, the effects of this load loss will be felt through the entire 20-year horizon used in PSE's analysis, and beyond.[25]

Importantly, while WUTC Staff, Public Counsel and ICNU all seek to characterize this benefit as speculative, *this load reduction occurred* on April 1, 2013. As stated by Mr. Keating, PSE will no longer be serving the Jefferson County load. It is gone forever and PSE "will not get that back."[26]

19. The criticisms of Mr. Piliaris's power cost analysis focus upon the "net benefits" reported by Mr. Piliaris in Exhibit No. JAP-13.[27] These criticisms are without merit. Mr. Piliaris's analysis forecasts the amount of power costs that will be avoided by the load reduction (based upon a model most recently used in PSE's 2011 general rate case to evaluate the Company's development of Phase 1 of the Lower Snake River Project), and compares these avoided costs to power-related revenues from PSE's former Jefferson County customers. The analysis discounts results projected for later years to account for future uncertainties. It does so by following standard practices used by PSE, the Commission and the industry.[28] The results are as follows:

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[25] Piliaris, Exh. No. JAP-9T 7:17-19 (emphasis added).

[26] Keating, TR. 231:5-15.

[27] Piliaris, Exh. No. JAP-13 was a corrected version of Exh. No. JAP-7, which was provided by Mr. Piliaris in support of his direct testimony. The corrections were responsive to WUTC Staff criticism that Exh. No. JAP-7 should not have included line losses and used an "abnormally high" rate of load growth in the first year. Piliaris, Exh. No. JAP-13 makes both corrections, and as a result, the projected net power cost benefit *increased* from $83 million to $103 million.

[28] Piliaris, Exh. No. JAP-9T 14:18-20.

Year	Net Benefit
2014	$(10,639)
2015	$(10,108)
2016	$(10,070)
2017	$(9,447)
2018	$33,545
2019	$33,436
2020	$32,689
2021	$(12,319)
2022	$33,885
2023	$33,672
2024	$(15,798)
2025	$34,717
2026	$(16,665)
2027	$35,868
2028	$(17,833)
2029	$37,671
2030	$37,305
2031	$(21,313)
2032	$39,176
2033	$39,239
NPV	$102,565

20. As a result of the permanent and certain loss of the Jefferson County load, PSE's remaining customers will receive a power cost benefit of approximately $103 million.[29] The benefit is analogous to a 100 percent effective conservation program, as Mr. Piliaris points

[29] Piliaris, Exh. No. JAP-9T 17:17-19.

out:

> In fact, the financial benefits from the reduction of load related to Jefferson County that parties would have the Commission ignore in this proceeding are nearly identical in nature to the financial benefits of conservation-related load reductions that the Commission has relied upon, in part, for approving $112 million per year in PSE's conservation program funding.[30]

21. Public Counsel offers a different view of the net benefit, using very conservative assumptions regarding the escalation of PCA revenues:

> The results of such calculations, which are shown on Exhibit No. JRD-4, reflect that the correction or synchronization of "lost PCA revenues" *with forecasted power supply costs have the impact of lowering the net present value savings from $83,192,000 as calculated by PSE down to $57,973,000*.[31]

However, when this analysis is corrected for line losses and load growth assumptions, responsive to Mr. Keating's criticisms of Exhibit No. JAP-13, the net benefit calculated by Public Counsel increases from $58 million to $79 million.[32]

22. The fundamental interpretive difference between PSE and WUTC Staff is that WUTC Staff disregards any benefits associated with loss of the Jefferson County load after the first five years:

> Remaining customers are harmed because existing fixed production costs remain constant, while the number of ratepayers contributing to that fixed cost recovery has decreased with the departure of Jefferson County ratepayers from PSE's system. Exhibit No. ___ (EJK-4) shows that the nominal harm to remaining ratepayers is approximately $39 million over the five-year period immediately after the JPUD Sale. *This harm is constant and will continue in perpetuity*.[33]

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[30] Piliaris, Exh. No. JAP-9T 10:2-7.

[31] Dittmer, Exh. No. JRD-1T 33:5-9 (emphasis added).

[32] Piliaris, Exh. No. JAP-14.

[33] Keating, Exh. No. EJK-1T 26:1-6 (emphasis added).

It strains credibility to argue that this "harm" is "constant and will continue in perpetuity" when, by *year five*, the analysis Mr. Keating critiques shows a benefit of $34 million, and by *year six*, a benefit of another $33 million. A five-year window that looks exclusively to "nominal harm" because it "has a higher probability of occurring"[34] ignores reasonably foreseeable and predicable benefits that will occur as early as year five. This is arbitrary and capricious. As Mr. Piliaris states:

> Inexplicably, when parties are faced with a load reduction comparable in magnitude to one year's worth of PSE's conservation resource acquisition, and that costs roughly $100 million less to acquire, they would have the Commission believe that customers are somehow harmed by this form of load reduction. There is *simply no rational basis to support such a distinction in regulatory treatment of a load reduction that is absolute and certain to occur*, notwithstanding the criticisms of PSE's power supply analysis in Exhibit No.___(JAP-7).[35]

23. On behalf of ICNU, Mr. Gorman criticizes Mr. Piliaris's analysis for assuming an incremental power cost increase of "around 21% from 2017 to 2018, but an increase in JPUD-related PCA revenue of only 5%."[36] However, focusing solely on increases in incremental costs does not recognize the costs of PSE's existing generation resources, and when combined, this materially dilutes the impact of the incremental costs. Nor did Mr. Gorman account for reductions to PSE's generating rate base that will occur and are reflected in Mr. Piliaris's assumptions with respect to future PCA rates. And just as Public Counsel fails to offer in response any alternative set of reasonable assumptions demonstrative of actual harm to customers, neither does ICNU.

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[34] Keating, Exh. No. EJK-1T 27:8-10.

[35] Piliaris, Exh. No. JAP-9T 10:7-14 (emphasis added).

[36] Gorman, Exh. No. MPG-1T 14:25-15:1.

24. The Commission should assess the Jefferson County load reduction by applying long-range projections similar to what it consistently uses in analyzing generating resource acquisitions and conservation expenditures. So viewed, the evidence before the Commission shows that PSE's remaining customers will not be harmed. Rather, remaining customers will receive a substantial $103 million net benefit as a result of this loss of load. Even if the Commission chooses to take a nearer-term evaluation, as suggested by the other parties, remaining customers benefit from the load reduction beginning in year five, and will incur substantial benefits thereafter.

C. Accumulated Depreciation

25. Another question before the Commission is whether depreciation expense paid on the Assets should be refunded to PSE's remaining customers. The short answer to this question is that no legal or equitable claim to a refund arises in favor of a party for payments duly and appropriately made by someone else. There are some aspects of the discussion of depreciation as to which the parties agree; these are:

- depreciation is an accounting mechanism that allocates the original cost of an asset (less estimated salvage) over the estimated life of the asset;
- depreciation expense is determined by applying a depreciation rate to the original cost of the asset;
- depreciation rates are determined by a depreciation study (which, in this case, was completed and used in PSE's 2007 general rate case);
- depreciation expense is recoverable through rates and is included in revenue requirements;
- depreciation expense is paid by customers;
- accumulated depreciation is the amount of depreciation expense that has been allocated to depreciable assets over the course of such assets' service life; and

- the amount of the accumulated depreciation accounted for the Assets was $29,939,000.

26. What bearing does this $29,939,000 have on the Commission's decision with respect to the allocation of gain on sale? Under the facts presented in this case, the accumulated depreciation paid on the Assets by its former customers should have no bearing on the Commission's decision.

1. Why Do Customers Pay Depreciation Expense?

27. Customers pay depreciation expense and in so doing they pay for what they consume. Mr. Keating's testimony[37] reflects this principle by reference to *Democratic Central Committee v. Washington Metropolitan Area Transit Commission*, 485 F.2d 786, 808 (D.C. Cir. 1973):

> Ratepayers bear the expense of depreciation, including obsolescence and depletion, on operating utility assets through expense allowances to the utilities they patronize. It is well settled that utility investors are entitled to recoup from consumers the full amount of their investment in depreciable assets devoted to public service.

(Footnotes omitted.). The principle was also stated by Dr. Levin:

> Accumulated depreciation for the assets sold in this case represents money that PSE investors received in the past to compensate them for the decline in book value of the assets. In the context of regulated utilities, investors receive a return on and a return of their investment, and depreciation is the return of their investment.[38]

In effect, by paying depreciation expense, customers pay for what they use. Investors are compensated for the portion of the value of their assets that has been diminished by being placed in service.

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[37] Keating, Exh. No. EJK-1T 15:18-22.

[38] Levin, Exh. No. SLL-1T 7:22 through 8:3.

2. What Relationship Does Depreciation Expense Bear to the Fair Market Value of an Asset?

28. Other than a general recognition that "new items" tend to be more valuable than "used items," the degree to which an asset has been depreciated does not determine its fair market value. The sale of the Assets is a case in point. The fair market value of the Assets, as reflected by the price that JPUD was willing to pay, was $109,273,196.[39] The net book value (reflecting the accumulated depreciation) was $46,686,435. There is no relationship between the two. As Mr. Marcelia notes in his testimony:

> If I have a shirt with a hole in the elbow, that shirt has suffered wear and tear. If I sell that shirt for more than I paid for it, have I "double recovered" the hole in the elbow? Of course not. The hole is still there. In fact, I could have realized a higher price had the shirt been newer. The purchaser did not pay for the hole. The hole did not add value to the sale. The purchaser bought the shirt despite its accumulated depreciation. There are two different issues at play. One is the fact that the shirt is depreciating (suffering wear and tear). The other is its value to someone else. Often, the two issues have little or no correlation.[40]

29. In the context of a sale, the value of the asset is not derived from its prior use; rather, it is derived from what a third party might be willing to pay for such asset. The asset may be worth more or less than its net book value.

3. Does a Sale in Excess of Net Book Value Indicate that Customers Overpaid Depreciation and Are Entitled to a Refund?

30. If the depreciation rate of an asset is too high, then upon sale of the asset above net book value, customers could claim that they "overpaid" for what they used and would be entitled to a refund. These are not, however, the facts that have been presented to the Commission. As Mr. Marcelia testified, the Company's last depreciation study was

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[39] Marcelia, Exh. No. MRM-6.

[40] Marcelia, Exh. No. MRM-5T 18:1-9.

completed for the 2007 general rate case, based upon December 31, 2006 balances, and those depreciation rates have been in effect since that time. No one has claimed that the depreciation rates applied to the Assets were incorrect or inappropriate.[41] No claim has been made, nor is there an evidentiary basis to substantiate such a claim, that the Company's 2007 depreciation study was flawed and that customers "overpaid" for what they used and are therefore now entitled to a refund.

4. Who Paid the Depreciation on the Assets?

31. Notwithstanding Public Counsel's failure to contest the Company's depreciation rates and the basis upon which those rates are established, Mr. Dittmer argues that the Assets were "over-depreciated."[42] Even if this is assumed, *arguendo*, the evidence shows that the depreciation expense on the Assets was fully paid by *the departing customers*. This analysis is provided to the Commission as Exhibit No. JAP-3. Based upon this analysis, Mr. Piliaris concludes:

> As shown in this analysis, within a range, *the departing customers have generally been covering their share of costs, including their proportionate share of depreciation expense*. As with the recovery of the overall revenue requirement, you would not reasonably expect to find a perfect alignment between costs and the revenues received from a discrete portion of the Company's service area each and every year. There will be differences, but it is reasonable to assume that these differences are small and tend to offset each other over time.[43]

32. At the hearing, Mr. Keating confirmed that he had not undertaken such a study and he "deferred to Mr. Piliaris's testimony."[44] Mr. Keating is not alone in his failure to assess

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[41] Marcelia, TR. 112:3-5.

[42] Dittmer, Exh. No. JRD-1T 38:2-8.

[43] Piliaris, Exh. No. JAP-9T 15:3-9 (emphasis added).

[44] Keating, TR. 228:21-22.

this important issue. No such effort or analysis was presented by Mr. Dittmer on behalf of Public Counsel. Mr. Gorman was asked to provide all analyses undertaken by or on behalf of ICNU, or relied upon by ICNU, relating to determining or quantifying the amount of accumulated depreciation paid by PSE's former Jefferson County customers. He replied:

> Mr. Gorman has not attempted to estimate the amount of depreciation expense paid directly by Jefferson County customers. *Nor does he believe this to be a useful exercise, given that PSE's customers pay depreciation expense on a total-company basis.*[45]

If, as Mr. Gorman also states, "the Washington Utilities and Transportation Commission ('Commission') typically allocates gains based on risks and rewards, and benefits and burdens,"[46] PSE submits that it is a *very useful exercise* to discern who bore this burden. The only evidence before the Commission on this point is the testimony of Mr. Piliaris, which establishes that PSE's former customers fully paid their proportionate share of the depreciation expense.

5. How Should the Commission Address the Issue of Accumulated Depreciation in This Case?

33. The evidence before the Commission shows that PSE's former customers in Jefferson County fully paid their share of the depreciation expense. These customers paid a return of the shareholders' investment commensurate to their use of these Assets. This depreciation was paid pursuant to a depreciation rate, established by a depreciation study, that is uncontested in this case. These customers are not entitled to any refund. They should pay for the portion of the Assets that they consumed, and as former customers, their interest in connection with this sale (whatever that might be) is a matter beyond the jurisdiction of the

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[45] Gorman, Exh. No. MPG-4X.

[46] Gorman, Exh. No. MPG-1T 1:24 through 2:1.

Commission.[47]

34. The fact that the Assets had value beyond their net book value was not "value added" by PSE's customers. The asset value reflected in the purchase price was value to JPUD and was attributable to the income-producing value of the Assets. PSE's remaining customers have no legal or equitable claim to this value, absent harm that they might have suffered as a consequence of the sale. No such legal or equitable claim arises in favor of the remaining customers due to depreciation paid by someone else.

D. Harm to Investors

35. As a result of JPUD's hostile acquisition of the Assets and Service Area, PSE lost 18,000 customers and a reasonable expectation of future revenues. This fact is not in dispute. Mr. Keating conceded at the hearing that PSE will no longer receive revenues from Jefferson County customers.[48] Yet, in responding to the question of whether "PSE shareholders were harmed by the JPUD sale" Mr. Keating testified:

> No. True financial harm occurs only if PSE's shareholders suffered a capital loss. This does not occur under Staff's proposal. Shareholders receive all of the remaining NBV, plus an equitable share of the appreciation on the sale. They come out ahead under Staff's proposal.[49]

Similar statements are made by Mr. Dittmer[50] and Mr. Gorman.[51] Collectively, the parties in opposition all argue that PSE's former Jefferson County customers had zero value to PSE's shareholders.

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[47] RCW 54.16.040.

[48] Keating, TR. 231:5- 232:5.

[49] Keating, Exh. No. EJK-1T 32:19-22.

[50] "There are other extenuating facts and circumstances in this case that I believe should be given much more weight than focusing solely on the fact that PSE is experiencing a loss of customers concurrent with its sale of utility property." Dittmer, Exh. No. JRD-1T 14:17-20.

36. PSE disagrees. PSE's shareholders suffered harm attributable to the liquidation of the entire business enterprise in a given locality. A loss of customers equates to a loss of earnings and negatively impacts the value of the Company. This harm is not compensated by preexisting investment opportunities in the Company (albeit now with 18,000 fewer customers providing a return on this investment), nor may investors acquire a comparable investment at a price equivalent to the net book value of the Assets.

1. Reinvestment of the Net Book Value in the Company Does Not Make Shareholders Whole

37. WUTC Staff, Public Counsel and ICNU all argue that retuning the net book value of the Assets to shareholders for reinvestment in the Company makes shareholders whole.[52] This argument assigns no value to the 18,000 fewer customers that are providing shareholders a return on this investment. Mr. Marcelia's testimony highlights this critical distinction:

> PSE has suffered a permanent diminishment to its investment opportunity. Whatever investment opportunity lies within its remaining customer base is unchanged by the departure of the JPUD customers. It has in no way increased by the loss of JPUD customers. However, the investment opportunity that would have been provided by 18,000 former customers has been lost.[53]

In direct response to Mr. Gorman's arguments, Mr. Marcelia further elaborates:

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[51] "Shrinking the customers and sales base is a negative impact on the Company because it can limit growth at current rates. However, as noted above, this impact will likely only be temporary as the proceeds from the JPUD sale are reinvested to produce new revenues and profits." Gorman Exh. No. MPG-1T 8:13-16.

[52] Keating Exh. No. EJK-1T 32:19-22; Dittmer, Exh. No. JRD-1T 8:13-21; Gorman, Exh. No. MPG-1T 8:3-11.

[53] Marcelia, Exh. No. MRM-5T 32:4-9 (emphasis added).

> While PSE's remaining customer count may grow and even exceed that customer count at the time of the JPUD transaction, PSE has nevertheless suffered a loss of customers today. *Its earnings base is smaller and its investment opportunity has diminished. PSE's earning base will remain smaller and its investment opportunity will be diminished from what it would have been before the loss of Jefferson County service territory.* Today, the JPUD customers are gone. Whatever growth is to be had in the remaining customer base is unchanged and unaffected by the transaction.[54]

Mr. Marcelia's analysis is joined by that of Mr. Bellemare, who states:

> PSE's rate base has been permanently reduced by the departure and loss of Jefferson County assets and customers; therefore, there are no future earnings opportunity to make up for the loss of Jefferson County. *The sale of the Jefferson County service territory caused PSE to shrink in size, and there is no new opportunity created for investors by its departure*.[55]

Customers do have value to shareholders. A loss of customers equates to a loss of revenues that is not "made up" by selling the same service to fewer customers in a smaller service area. PSE shareholders were directly and substantially harmed by the loss of 18,000 customers and a reasonable expectation of future revenues from those customers.

2. Net Book Value Does Not Provide Comparable Investment Value

38. Mr. Gorman suggests that, as an alternative to reinvestment in the Company, the net book value of the Assets can be returned directly to the shareholders,[56] presumably for investment outside the Company. However, neither Mr. Gorman nor any of the other witnesses arguing that shareholders should receive no more than the net book value address how much it might cost to acquire a comparable investment. This analysis is, however, provided by Mr. Bellemare. His analysis demonstrates that "share value" is not necessarily

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[54] Marcelia, Exh. No. MRM-5T 32:11-19 (emphasis added).

[55] Bellemare, Exh. No. RCB-1T 12:9-13 (emphasis added).

[56] Gorman, Exh. No. MPG-1T 8:1-2.

the same as "book value" and that the market reflects the investment value of future earnings. Mr. Bellemare points out:

> Staff's analysis does not include the portion of stock value that is above book value. Investors aren't just losing assets, they are losing customers and all future earnings opportunities from those customers. Therefore, the loss of earnings has a measureable impact on stock value for the corporation.[57]

Mr. Bellemare determines the value of a comparable income-producing investment and concludes:

> My calculation indicates investors would, at a minimum, reasonably expect to receive at least $75.7 million in compensation before they would even entertain a sale of assets and service area such as PSE's Jefferson County service territory. In fact, the sale of a portion of a system would likely command even higher compensation because typical utility investors are normally interested in long-term consistent earnings, and are not seeking deals to sell off portions of their service area for a short-term, one-time [gain.][58]

39. This share value is the very reason that compensation is provided for "going concern damages" in the condemnation of a utility's service area. In the seminal case on this subject, *City of Omaha v. Omaha Water Co*., 218 U.S. 180, 202-03 (1910), Justice Lurton explains:

> The value, in equity and justice, must include whatever is contributed by the fact of the connection of the items making a complete and operating plant. The difference between a dead plant and a live one is a real value, and is independent of any franchise to go on, or any mere good will as between such a plant and its customers. That kind of good will, as suggested in Willcox v. Consolidated Gas Co. 212 U. S. 19, 53 L. ed. 382, 29 Sup. Ct. Rep. 192, is of little or no commercial value when the business is, as here, a natural monopoly, with which the customer must deal, whether he will or no. That there is a difference between even the cost of duplication, less depreciation, of the elements making up the water company plant, and the commercial value of the business as a going concern, is evident.

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[57] Bellemare, Exh. No. RCB-1T 5:5-8.

[58] Bellemare, Exh. No. RCB-1T 3:1-7.

Distinguishing cases in which "only the physical property has been condemned, leaving the owner free to move his business to a new location," the United States Supreme Court wrote in *Kimball Laundry Co. v. U.S.,* 338 U.S. 1 (1949):

> The situation is otherwise, however, when the Government has condemned business property with the intention of carrying on the business, as where public-utility property has been taken over for continued operation by a governmental authority. If, in such a case, the taker acquires going-concern value, it must pay for it. Since a utility cannot ordinarily be operated profitably except as a monopoly, investment by the former owner of the utility in duplicating the condemned facilities could have no prospect of a profitable return. The taker has thus in effect assured itself of freedom from the former owner's competition. The owner retains nothing of the going-concern value that it formerly possessed; so far as control of that value is concerned, the taker fully occupies the owner's shoes.

(Internal citations omitted.)[59]

40. PSE settled with JPUD. The settlement did not state the amount of "going concern damages" that was embedded in the $109 million purchase price. The amount of "going concern damages" incurred by PSE was a question for a jury to determine had this case gone to trial. However, the testimony of the late Mr. Karzmar references an amount of "going concern damages" derived from the *Utilipoint* study[60] to support a conservative assumption relied upon by PSE for purposes of settlement negotiations. Mr. Karzmar was not, however, an appraiser. In this proceeding, the Commission did hear from an appraiser,

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[59] This principle is restated in 7A Philip Nichols *et al.*, The Law of Eminent Domain § G14A.05[2], as follows:

> When a privately-owned public utility is condemned, the condemnor generally wishes to continue the same use. Typically, the utility owner cannot relocate because the entity is monopolistic within a prescribed service area. *Thus, the "business" is itself considered condemned, and it must be valued and paid for along with the real estate. It would be unfair to destroy such an asset without the owner's opportunity to recover this loss.*

(Emphasis added.)

[60] Osborne, Exh. No. SSO-5.

Mr. Bellemare, who was also the author of the *Utilipoint* study relied upon by Mr. Karzmar. Mr. Bellemare testified that his study considered a broad range of "going concern damages," extending from $15 million to $70 million (more than the entire gain on sale). This harm to investors is not speculative. It reflects a financial loss to shareholders attributable to the liquidation of their entire business enterprise in Jefferson County. It was embedded in the amount of the just compensation received by PSE for the appropriation of its business.

3. A "Broker's" Incentive Payment Does Not Address the Harm to Shareholders from the Forced Sale Under Threat of Condemnation

41. Rather than acknowledge and address this harm to investors, WUTC Staff and other parties propose that PSE retain a small percentage of the gain as a broker's fee--a percentage of the sale as an incentive for negotiating a good price for the Service Area. This approach fails to recognize the unique harm to investors associated with the forced sale of their business. Indeed, Mr. Keating admitted that he generally ignored the fact that PSE was an unwilling seller when analyzing and quantifying the gain.[61] A broker's commission is inadequate compensation when private property is forcibly taken for public use. PSE negotiated a sale of its Service Area under threat of condemnation. The buyer and seller agreed that the sale price constituted just compensation. Now WUTC Staff and other parties propose to give all but a small percentage of the net gain from the sale to customers, and "reward" PSE's shareholders with an "incentive" payment in the range of three to seven percent of the sales proceeds.[62] There is no legal precedent that warrants a substitution of this small "incentive" for the full amount of "just compensation" due a property owner for

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[61] Keating, TR. 246:1-4.

[62] Keating, Exh. No. EJK-1T 35:13-14.

the deprivation of its property by the exercise of the authority of eminent domain.

42. For this reason, PSE does not address "the relative percentages of an appropriate incentive payment" as Commissioner Goltz requested at the close of the hearing.[63] PSE urges the Commission not to go down such a road that is fraught with legal pitfalls. To pay owners a small percentage of the gain on sale, as an incentive for brokering a good sale price, would deny PSE's shareholders the just compensation that was negotiated by PSE under threat of condemnation.

E. Sale of Assets for Less than Book Value and Regulatory Assets

43. Commissioner Goltz also raised questions at the close of the evidentiary hearing with respect to PSE's understanding of how the Commission should treat the sale of an asset where the sale price is below net book value. Similarly, Commissioner Goltz inquired of PSE how the Company would want the Commission to address "stranded" costs associated with a production plant that is no longer economical to run and whose worth is below net book value.[64]

44. With respect to past or proposed *voluntary* sales of utility property, the Commission considers the equities of the proposed sale to determine who should bear the loss or gain associated with the sale. One example of a proposed sale of property below net book value is the Electron Hydroelectric Project ("Electron"). The proposed sale of this plant has been held up by some as inconsistent with PSE's position in this case. However, a closer look at the Commission's conditional approval of the proposed sale demonstrates that this treatment is completely consistent with the treatment PSE requests in this case. PSE negotiated a sale of the 109-year-old Electron facility that should result in significant savings as compared to

[63] Goltz, TR. 259:14-19.

[64] Goltz, TR. 260:2-11.

the other alternatives that PSE and its customers face with respect to the facility. Thus, although the sale of Electron is below its net book value, the Commission considered the several alternatives for Electron and ultimately determined that the proposed sale for less than book value and the related PPA for the output of Electron was in the public interest because customers benefit from the sale as compared to the costs that flow from the status quo:

> PSE has reached an Asset Purchase Agreement with Electron Hydro LLC to sell the Company's Electron Project and purchase the power through a Purchase Power Agreement (PPA). . . . PSE, in direct testimony, outlined the various options the Company considered for the future of this 109-year-old facility. Various portions of the plant date back to the original construction in 1904 and are in great need of repair or replacement. As a result, continued ownership of the Electron Project would require significant capital investment by PSE. Likewise, retirement of the facility would have also necessitated significant expense given "the complete demolition and removal of each of the diversion dam, intake gate, rock chutes, and fish ladder" required for retirement. The Company's decision to sell the plant obviates the need for either option's capital outlay. Staff testifies that the sale is in the public interest.
>
> The Settlement also recommends inclusion of the cost of the Electron Project in rates and its contribution to power production in the determination of power costs. The Commission finds the sale of the Electron Project to Electron Hydro LLC is in the public interest provided there are no material changes to the Asset Purchase Agreement as filed.[65]

There is no presumption by the Company, or a past practice, that customers bear losses for sales of property when the sale is below book value. Rather, when presenting any voluntary sale to the Commission for approval, PSE must demonstrate that the proposed sale is in the

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[65] *In re Petition of Puget Sound Energy, Inc. for an Order Authorizing the Sale of the Water Rights and Associated Assets of the Electron Hydroelectric Project in Accordance with WAC 480-143 and RCW 80.12*, Dockets UE-131099 et al., Order 02 (Oct. 23, 2013) ¶¶ 24-25 (citing testimony of PSE witness Paul K. Wetherbee, Exh. No. PKW-1CT 22:4-5, and Staff witness Mickelson, Exh. No. S-2T 11:14-18).

public interest. Without extenuating circumstances demonstrating customer benefit associated with a sale below net book value--as was the case in the Electron Petition--it is unlikely the Commission would allow the loss for the sale to be passed on to customers.

45. PSE respectfully disagrees with a similar line of questioning from Commissioner Jones suggesting that the $700 million in regulatory assets on PSE's balance sheet cuts against shareholders' keeping a significant portion of the net gain on the sale of the Service Area. Deferred accounting provides a mechanism by which PSE can accrue and ultimately recover prudently incurred costs necessary to provide electric service to its customers. Deferred accounting allows these costs to be spread out over an appropriate number of years to smooth out costs for PSE's customers. An examination of some of the larger regulatory assets reveals the benefits PSE's customers have received. For example, the $100 million regulatory asset the Commission approved in Docket UE-100882 involved the prepayment of transmission network upgrades necessary for the construction of PSE's Lower Snake River Wind Project, which facilitates PSE's and the State of Washington's move away from CO_2 emissions. Although PSE's customers paid for the network upgrades, they receive transmission credits from BPA that will repay customers in full, over time, for the cost of the network upgrades.[66]

46. The prepayment allowing PSE to purchase 20 years of low cost Mid-Columbia power from Chelan PUD comprises more than $100 million of the regulatory assets referenced by Commissioner Jones. The Commission considered the prudence of the PPA and found it to be in the public interest:

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[66] *In the Matter of the Petition of Puget Sound Energy for an Accounting Order Authorizing Deferred Accounting Treatment for the Costs Associated with the Transmission Network Upgrades to Meet Transmission Capacity Needs of the Region and Serve the Lower Snake River Wind Project*, Docket UE-100882, Order 01 (May 31, 2012).

> PSE's direct case includes substantial competent evidence showing the need and appropriateness of the Company's expenditures incurred in connection with . . . [t]he 20-year purchased power agreement and related transmission agreement between PSE and Public Utility District No. 1 of Chelan County, Washington (including recovery of interest at the net of tax rate of return) . . . . No party challenged the prudence of these expenditures. We determine that PSE's acquisition of each of the above-listed resources is prudent and find the associated costs are reasonable for recovery in rates.[67]

47. Approximately $78 million in regulatory assets on PSE's books is the result of the acquisition of new baseload or renewable electric plants, or upgrades for incremental hydro at existing plants, that qualify for deferral under RCW 80.80.060 and that allow PSE to supply power to its customers in a manner consistent with Washington State energy policy--including the greenhouse gas emissions performance standards, Chapter 80.80 RCW, and the Energy Independence Act, Chapter 19.285, RCW. The plants included in the regulatory assets include LSR, Mint Farm, Ferndale, Baker, and Snoqualmie.[68]

48. Similarly, the several storm deferrals that together constitute over $100 million in regulatory assets relate to operations and maintenance expense PSE incurred associated with repair to PSE's transmission and distribution system resulting from catastrophic storms over the past several years.[69] As Mr. Marcelia testified, the deferral is only available for O&M costs, not capital costs related to replacement of capital assets damaged in catastrophic

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[67] *WUTC v. Puget Sound Energy, Inc.* Dockets UE-060266 and UG-060267, Order 08 (Jan. 5, 2007) (citing Garratt, Exh. No. 153HC 3-27).

[68] *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-090704 and UG-090705, Order 11 (Apr. 2, 2010); *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-111048 and UG-111049, Order 08 (May 7, 2012) ; *WUTC v. Puget Sound Energy, Inc.*, Docket UE-130617, Order 06 (October 23, 2013).

[69] Catastrophic storm expense must exceed the annual $8 million threshold and meet a modified version of the Institute of Electrical and Electronics Engineers (IEEE) standard for catastrophic events. *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-111048 and UG-111049, Order 08, ¶ 290 (May 7, 2012).

storms. Also, the deferral mechanism benefits customers by ensuring that customers only pay for actual storm damage (not potential or theoretically possible storm damage). This arrangement has the benefit of keeping customer rates low, while still allowing the utility to recover legitimate costs to provide electric service to customers only after those costs have been incurred.[70]

49. In summary, deferred accounting provides benefits to customers and investors alike. It allows a means for recovery of prudently incurred costs that are necessary to provide safe and reliable service to PSE's customers. The regulatory assets are amortized over time, depending on the nature of the underlying asset, which allows customers and the Company to avoid rate volatility. Deferred accounting, however, does not justify giving the bulk of the net gain on the involuntary sale of a business to the customers of the business, rather than to the owners of the business.

IV. CONCLUSION

50. The hostile acquisition of the Assets and Service Area resulted in the liquidation of PSE's business in an established market. In response to threatened litigation, PSE agreed to a settlement that compensated PSE for Assets and for the value of its lost business. PSE's remaining customers were not harmed by this transaction; to the contrary, they will benefit from the elimination of the Jefferson County load. Shareholders, on the other hand, lost a business opportunity conservatively valued at at least $76 million. PSE's proposed allocation of gain equitably balances these interests. Recognizing the unique facts and circumstances presented in this case, PSE respectfully requests that the Commission issue an accounting order approving the following accounting treatment:

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[70] Marcelia, Exh. No. MRM-5T 23:4-19.

- Transfer $44,898,235 from FERC Account 25300061 and credit this amount to FERC Account 421.1, Gain on Disposition of Property, on the income statement; and
- Amortize $14,966,078 from FERC Account 25300061 to FERC Account 407 over a period of 48 months.

DATED this 10th day of June, 2014.

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