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June 17, 2014

**SENT UTC WEB PORTAL AND ABC LMI**

Steven V. King  
Executive Director and Secretary  
Washington Utilities & Transportation Commission  
1300 S. Evergreen Pk. Dr. S.W.  
PO Box 47250  
Olympia, WA 98504-7250

Re: 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 UE-132027

Dear Mr. King:

Enclosed please find the original and twelve (12) copies of Public Counsel's Reply Brief,  
together with a Certificate of Service for filing in the above-referenced docket.

Sincerely,

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LG:cjb  
Enclosures

cc: Service List (U.S. Mail & E-mail)  
Dennis J. Moss, Administrative Law Judge (E-mail)

**CERTIFICATE OF SERVICE**

**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 UE-132027**

I hereby certify that a true and correct copy of *Public Counsel's Reply Brief* was sent to each of the parties of record shown below in sealed envelopes, via: U.S. Mail and E-Mail.

**SERVICE LIST**

**\*\* = Receive Highly Confidential; \* = Receive Confidential; NC = Receive Non-Confidential**

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DATED: June 17, 2014.



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**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of  
PUGET SOUND ENERGY, INC.

DOCKET NO. UE-132027

For an Accounting Order Approving the  
Allocation of Proceeds of the Sale of  
Certain Assets to Public Utility District #1  
of Jefferson County.

**REPLY BRIEF OF PUBLIC COUNSEL**

**June 17, 2014**

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## I. INTRODUCTION

1. Public Counsel files this reply to address particular arguments raised by Puget Sound Energy, Inc. (PSE) in its Brief. Public Counsel reaffirms the arguments and recommendations made in its Brief filed on June 10, 2014, and they are not repeated here to avoid undue duplication.
2. PSE has the burden of proof and persuasion regarding its requested accounting treatment in this case.<sup>1</sup> PSE has not met this burden. Notwithstanding Mr. Piliaris' claim that Parties have "failed to disprove" that remaining customers will benefit from the sale, Public Counsel, Commission Staff, and ICNU have provided the Utilities and Transportation Commission (Commission) with credible criticisms of PSE's presentation, along with information supporting an alternate distribution of the gain on sale.<sup>2</sup> The Commission should reject PSE's requested allocation and order an allocation that reflects the public interest and the equitable considerations present in this case.

## II. THE COMMISSION'S PRECEDENT ON GAIN ON SALE IS RELEVANT TO THIS CASE

3. PSE argues that the Commission's precedent on gain on sale is not relevant to this case.<sup>3</sup> This argument confuses the standards that the Commission has used in its prior cases. For example, when the Commission is required to evaluate a sale under RCW 80.12.020(1), the Commission must determine whether the sale would be in the public interest.<sup>4</sup> In doing this, the

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<sup>1</sup> See *US West Communications, Inc., v. WUTC*, 134 Wn.2d 48, 55 (1997) (results of the accounting petition will affect rates, invoking application of RCW 80.04.031(2)). In the instant case, the allocation of gain to ratepayers will ultimately affect rates paid by ratepayers.

<sup>2</sup> Post-Hearing Brief of Petitioner PSE at ¶ 14.

<sup>3</sup> Post-Hearing Brief of Petitioner PSE at ¶ 9.

<sup>4</sup> *In re PSE's Application for Approval of Sale of PSE's Share of the Colstrip Facilities and Authorization to Amortize Gain Over a Five-Year Period (PSE Sale of Colstrip)*, Docket UE-990267, Third Supplemental Order

Commission may look at the risks and benefits of the proposed transaction, but this is a different inquiry than evaluating who bore the risks with respect to the assets.<sup>5</sup>

4. In evaluating sales under RCW 80.12.020(1), the Commission may conclude that the sale would be in the public interest *only if* the gain is allocated to the ratepayers.<sup>6</sup> However, allocation of gain is not an integral part of the decision on whether a sale is in the public interest, but rather a separate inquiry the Commission must decide. Indeed, a sale may be in the public interest regardless of how gain is allocated. In those cases, the Commission evaluates the case in a two-step process: first, looking at whether the sale is in the public interest and second, looking at how the gain should be allocated based on equitable principles.<sup>7</sup> The Commission's determination of the allocation must also meet the public interest standard. It is the second step, determining the appropriate allocation of the sales proceeds, that applies to this case.

5. No party is proposing that the Commission conduct an analysis of the JPUD sale under the first step (determining whether the sale is in the public interest). Public Counsel and others are advocating that the Commission analyze allocation of gain from this sale consistent with the Commission's past orders regarding the second step.

### **III. THE COMMISSION HAS THE AUTHORITY TO DETERMINE ITS OWN POLICY REGARDING THE SALES PROCEEDS IN THIS CASE**

6. PSE's petition for accounting petition is properly before the Commission. PSE does not argue that the Commission lacks jurisdiction to decide the proper allocation of the gain. Rather,

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Approving Sale; Order Deferral of Gain and Deferral of Power-Cost Changes, p. 4 (September 1999); *In re Sale of Centralia Steam Plant*, Dockets UE-991255 (Avista), 991262 (PacifiCorp), 991409 (PSE), Second Supplemental Order (Order Approving Sale with Conditions) at ¶¶ 29-31 (March 6, 2000).

<sup>5</sup> *In re Sale of Centralia Steam Plant*, Second Supplemental Order (Order Approving Sale with Conditions) at ¶¶ 31-36.

<sup>6</sup> *PSE Sale of Colstrip*, Docket UE-990267, Third Supplemental Order Approving Sale; Order Deferral of Gain and Deferral of Power-Cost Changes, p. 2-3, 23 (Finding No. 7), 24 (Finding No. 10).

<sup>7</sup> *In re Sale of Centralia Steam Plant*, Second Supplemental Order (Order Approving Sale with Conditions) at ¶¶ 78-80.

PSE argues that the Commission should allocate the proceeds such that its shareholders receive the majority of the gain.

7. PSE asks the Commission to adopt a rule created by the California Public Utilities Commission.<sup>8</sup> Interestingly, PSE states that the rule treats proceeds in the same manner as would occur in a “total liquidation.” This is not entirely accurate as the rule advocated by PSE would allow for some sharing of proceeds with remaining ratepayers under certain circumstances.<sup>9</sup> In a total liquidation, there would be no opportunity to share with ratepayers because there would be no ratepayers left. In any event, by arguing that the Commission should adopt a certain rule, PSE acknowledges that the Commission has authority to decide this matter.
8. The rule for which PSE advocates turns this Commission’s policies on their head. In gain on sale cases evaluated by this Commission to date, the issue of ownership was irrelevant.<sup>10</sup> Rather, the Commission followed sound regulatory theory that an investor is fully compensated once the original investment is recouped.<sup>11</sup> If there is gain on sale, the Commission evaluates the equities in the case, including who bore the risks and burdens with regard to the property. The gain is then split according to the equities.<sup>12</sup>

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<sup>8</sup> Post-Hearing Brief of Petitioner PSE at ¶ 4.

<sup>9</sup> *Re Ratemaking Treatment of Capital Gains Derived from the Sale of a Public Utility Distribution System Serving an Area by a Municipality or Public Entity (Redding II)*, CA PUC, Decision 89-07-016, R. 88-11-041 (July 6, 1989).

<sup>10</sup> Public Counsel Brief at ¶ 24; *In re Petition of PSE for Order Authorizing Use of Proceeds from the Sale of RECs (In re PSE REC Petition)*, Docket UE-070725, Order 03 at ¶¶ 40-41, 46-47 (May 20, 2010).

<sup>11</sup> Public Counsel Brief at ¶ 14; *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 606 (1944). Mr. Bellemare’s argument on behalf of PSE disregards this regulatory theory. Mr. Bellemare argues that PSE should receive the majority of the gain on the sale because “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.” Bellemare, Exhibit RCB-1T at 3:1-3. This argument ignores the fact that, under regulation, shareholders have been compensated for the risk of municipalization through the authorized rate of return. Even if the Commission were to accept Mr. Bellemare’s argument that municipalization is rare, that has not precluded the related risk from being a factor included in the current authorized rates of return for Washington investor-owned utilities.

<sup>12</sup> See, *In re Sale of Centralia Steam Plant*, Second Supplemental Order (Order Approving Sale with Conditions), (citing *District of Columbia v. Washington Metropolitan Area Transit Commission*, 485 F.2d 786 (1973)).



9. PSE would have the Commission treat the sale to Jefferson County Public Utility District (JPUD) differently. PSE asks the Commission to focus on strict ownership, despite rejection of that argument by the Commission and the Commission's focus on risk.<sup>13</sup> The Company asks the Commission to establish a presumption that shareholders are entitled to gain, rather than weighing the equities and determining what allocation would best give effect to the regulatory compact. PSE requests that the Commission adopt a policy that gives shareholders an amount that far exceeds what the regulatory compact requires.

10. PSE concedes that the relevant standard is regulation in the public interest.<sup>14</sup> The Commission has recognized that sharing proceeds with ratepayers is in the public interest, yet it has also recognized that sharing gain with shareholders also meets the public interest standard.<sup>15</sup> This is particularly true in matters where the Commission wants to encourage the utility to pursue strategies that benefit both ratepayers and shareholders.<sup>16</sup> Public Counsel's recommendation, as well as those of Commission Staff and ICNU, are consistent with the Commission's policy decisions. PSE's recommendation is not.

11. The Commission's policies regarding gain on sale provide just and fair results in this case, and the Commission should reject PSE's request to adopt a new rule in Washington.

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<sup>13</sup> Public Counsel Brief at ¶ 24.

<sup>14</sup> Post-Hearing Brief of Petitioner PSE at ¶ 11.

<sup>15</sup> *In re Sale of Centralia Steam Plant*, Second Supplemental Order (Order Approving Sale with Conditions) at ¶¶ 78-86.

<sup>16</sup> *In re PSE REC Petition*, Docket UE-070725, Order 03 at ¶ 47 and n.56.

**IV. ALLOCATING A PORTION OF GAIN TO SHAREHOLDERS AS AN  
INCENTIVE APPROPRIATELY WEIGHS THE EQUITABLE  
CONSIDERATIONS IN THIS CASE**

12. PSE inaccurately criticizes Commission Staff, Public Counsel and ICNU for not considering the fact that PSE lost customers and service territory in the JPUD transaction.<sup>17</sup> Public Counsel specifically did consider the loss of customers and service territory in its analysis.<sup>18</sup> However, in weighing all of the equities in this case, Public Counsel gave little weight to this fact because (1) other equitable considerations outweighed this fact and (2) it was a risk for which PSE has been compensated for through its return on equity.<sup>19</sup> As discussed throughout Public Counsel's Brief, there were far more equities weighing in favor of ratepayers that warrant allocation of most of the gain to customers. Public Counsel (and indeed, Commission Staff and ICNU) arrive at an equitable allocation of the gain on sale in its recommendation.
13. PSE criticizes Commission Staff for not considering that PSE was an "unwilling seller."<sup>20</sup> As noted in Public Counsel's Brief, whether the sale was voluntary or involuntary is irrelevant.<sup>21</sup>
14. PSE also attempts equate (1) the policy of providing a portion of the gain to shareholders as an incentive with (2) the just compensation concept from condemnation proceedings.<sup>22</sup> This argument confuses the Commission's role in this matter. This matter is not a condemnation proceeding, but rather a regulatory proceeding. While RCW 80.12.020(2) exempts a sale to a municipality from obtaining prior approval from the Commission, it does not preempt the

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<sup>17</sup> Post-Hearing Brief of Petitioner PSE at ¶ 41.

<sup>18</sup> Dittmer, Exhibit JRD-1T at 14:12 to 15:2.

<sup>19</sup> Dittmer, Exhibit JRD-1T at 14:12 to 15:2, 39:17 to 41:10; Public Counsel Brief at ¶¶ 28-29.

<sup>20</sup> Post-Hearing Brief of Petitioner PSE at ¶ 41.

<sup>21</sup> Public Counsel Brief at ¶ 25.

<sup>22</sup> Post-Hearing Brief of Petitioner PSE at ¶¶ 41-42.

Commission's authority to regulate utilities in the public interest.<sup>23</sup> Rather, the Commission determines what allocation of gain is appropriate for ratemaking purposes under its authority to regulate utilities.

15. Moreover, PSE's shareholders achieve full recovery for their investment in the Jefferson County assets. Under the recommendations of Public Counsel, Commission Staff, and ICNU, they receive the net book value and transaction costs. Additionally, shareholders receive additional money consistent with the Commission's policies that balance equities specific to the case and acknowledge that an incentive to pursue strategies that benefit both ratepayers and shareholders may be appropriate.

16. Importantly, it is most logical that the Commission would like to incent strategies that benefit a utility's current ratepayers, not ratepayers the utility no longer has. This is because the former ratepayers are beyond the Commission's jurisdiction as they are no longer customers of an investor-owned utility. This reasoning is also consistent with the Asset Purchase Agreement, which required PSE to obtain certain confirmations from the UTC, including that the purchase price was "sufficient to fully compensate PSE *customers* for the sale of the assets."<sup>24</sup> Any reference in this case to departing ratepayers is a red herring.<sup>25</sup>

#### V. ASSUMPTIONS USED IN MR. PILIARIS'S ANALYSIS WERE CHALLENGED

17. PSE argues that Public Counsel, Commission Staff, and ICNU did not challenge the "facts" underlying Mr. Piliaris's analysis.<sup>26</sup> This is false, as Public Counsel presented information showing that fuel costs data used in Mr. Piliaris's analysis consists of projections

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<sup>23</sup> A policy reason for the exemption is that Superior Court has jurisdiction over condemnation proceedings, and to require prior approval of the sale would burden the condemnation process.

<sup>24</sup> Osborne, Exhibit SSO-3, p.10 (emphasis added).

<sup>25</sup> See, e.g., Post-Hearing Brief of Petitioner PSE at ¶¶ 4, 31.

<sup>26</sup> Post-Hearing Brief of Petitioner PSE at ¶ 13.

with a wide range of actual costs.<sup>27</sup> Additionally, Public Counsel pointed out that load estimates are likely to be incorrect.<sup>28</sup> Indeed, in its letter acknowledging PSE's Integrated Resource Plan, the Commission questioned PSE's load growth forecast from 2017 and beyond.<sup>29</sup> In this docket, Mr. Piliaris's analysis first indicates a benefit in power costs in 2018.<sup>30</sup>

18. If PSE's assumptions are inaccurate or incorrect – as Public Counsel has shown they likely are – the negative impact on remaining customers will likely extend beyond 2017, making PSE's calculated benefit suspect. Thus, these challenges, in conjunction with the criticisms regarding using the PSM III model to calculate a specific dollar valuation, provide the Commission with sufficient evidence for rejecting PSE's analysis of the potential benefit to remaining customers from the sale.

**VI. PUBLIC COUNSEL WITNESS, MR. DITTMER, DID NOT CHARACTERIZE THE ASSETS AS “OVER DEPRECIATED.”**

19. PSE states, “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.”<sup>31</sup> This misrepresents Mr. Dittmer's testimony, based on a single phrase taken out of context. The full paragraph reads:

This exposure to harm to remaining customers would indicate that the majority of the gain should be allocated to remaining PSE customers. *In comparing this case to the Commission's decision regarding the gain on sale of the Centralia Steam Generating Unit*, the exposure to harm would suggest that not only should ratepayers receive the portion of the gain that represents the “over depreciated” balance recorded in the Accumulated Depreciation Reserve, but also the majority of “appreciation” in the value of the plant sold that exceeds its original in service cost.<sup>32</sup>

<sup>27</sup> Piliaris, Cross Exhibit JAP-16CX.

<sup>28</sup> Dittmer, TR. at 222:10 to 223:3.

<sup>29</sup> Piliaris, Cross Exhibit JAP-19CX, p. 4.

<sup>30</sup> Post-Hearing Brief of Petitioner PSE at ¶ 19.

<sup>31</sup> Post-Hearing Brief of Petitioner PSE at ¶ 31.

<sup>32</sup> Dittmer, Exhibit JRD-1T at 38:1-8, emphasis added, citations omitted, quotes in original.

20. As Mr. Dittmer was noting, both the term “over depreciated” and “appreciation” are terms used by the Commission regarding the allocation of gain in the *Centralia* case.<sup>33</sup> The Commission used the term “over depreciated” as an analogy rather than holding that the assets had been over depreciated in the *Centralia* case.<sup>34</sup>

21. While PSE is correct that no Party argues that the depreciation rates applied to the JPUD assets were inappropriate, PSE is incorrect in arguing that Public Counsel characterized the assets as being “over depreciated.”<sup>35</sup> Mr. Dittmer simply used language specific to a previous Commission order to compare his recommendation with a methodology this Commission has used in multiple cases. Moreover, Mr. Dittmer’s recommendation does not calculate an “over depreciated” amount, “accumulated depreciation,” or “appreciation,” but rather divides the net gain between ratepayers and shareholders.<sup>36</sup>

## VII. CONCLUSION

22. Public Counsel continues to recommend that the Commission allocate 95 percent of the gain (\$56,871,097) to ratepayers and five percent of the gain (\$2,993,216) to PSE. This allocation appropriately weighs *all* of the equities present in the case, and acknowledges that the equities favor ratepayers overall. Public Counsel’s allocation also acknowledges PSE’s efforts in

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<sup>33</sup> *In re Sale of Centralia Steam Plant*, Second Supplemental Order (Order Approving Sale with Conditions) at ¶¶ 82-83.

<sup>34</sup> *In re Sale of Centralia Steam Plant*, Second Supplemental Order (Order Approving Sale with Conditions) at ¶¶ 82.

<sup>35</sup> Post-Hearing Brief of Petitioner PSE at ¶ 30.

<sup>36</sup> Dittmer, Exhibit JRD-1T at 38:10 to 41:10.

negotiating the purchase price and the Commission's policy that it is in the public interest that utilities pursue strategies that benefit both ratepayers and shareholders.

23. DATED this 17<sup>th</sup> day of June, 2014.

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