

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

Application of

PUGET SOUND ENERGY, INC.

For an Order Authorizing the Transfer of
White River Assets and an Order Waiving
Prior Approval of the Transfer of Surplus
Property

Docket No. UE-09_____

APPLICATION FOR AUTHORIZATION
TO TRANSFER ASSETS OF THE
WHITE RIVER HYDROELECTRIC
PROJECT

INTRODUCTION

1. In accordance with RCW 80.12.020 and WAC 480-143-120, Puget Sound Energy, Inc. ("PSE" or "the Company"), hereby respectfully requests the Commission to authorize PSE to sell certain assets related to the Company's White River Hydroelectric Project (the "Project") to the Cascade Water Alliance ("CWA"). The proposed sale is pursuant to the Lake Tapps Asset Purchase Agreement ("Agreement") executed by and between PSE and CWA on April 23, 2008. The parties anticipate closing the transaction no later than the third calendar quarter of 2009; therefore, PSE respectfully requests the Commission issue an order authorizing the transfer of these Project assets to CWA on or before May 15, 2009.¹

2. In addition to the Project assets being sold to CWA, PSE is negotiating with certain parties for the sale of surplus property associated with the Project, ("Surplus Property"), and PSE anticipates that the sale of the remainder of the Surplus Property will be completed within the next year. PSE requests that the Commission waive RCW 80.12.020

¹ Pursuant to Exhibit A to the Agreement, attached hereto, closing is to occur 45 business days following satisfaction of all conditions to closing. Commission approval is one of the conditions to closing.

and WAC 480-143-120 with regard to such Surplus Property because PSE is providing information regarding the planned disposal of the Surplus Property in this Application, and consistent with the Commission's order in Docket UE-032043, PSE will bring the issue of the application of proceeds from the sale and disposition of all Project proceeds—including the sale of Surplus Property—to the Commission for consideration in PSE's next rate case after the sale of all the Project assets and Surplus Property is completed.² In that proceeding, the Company will address the reasonableness of the sale and transfer of the Surplus Property.

3. PSE is engaged in the business of providing electric and gas service within the State of Washington as a public service company, and is subject to the regulatory authority of the Commission as to its retail rates, service, facilities and practices. Its full name and mailing address for purposes of this proceeding are:

Puget Sound Energy, Inc.
Attn: Karl R. Karzmar
Director of Regulatory Relations
P.O. Box 97034
Bellevue, Washington 98009-9734

PSE's representatives for purposes of this proceeding are:

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4. Statutes and rules that may be at issue in this Application include RCW 80.01.040, RCW 80.12.020, WAC Chapter 480-143 and WAC 480-07-370(e).

² See *In the Matter of the Petition of Puget Sound Energy, Inc., For an Accounting Order Authorizing Deferral and Recovery of Investment and Costs Related to the White River Hydroelectric Project*, Docket No. UE-032043 (consolidated), Order No. 6 at ¶¶251-253 (February 18, 2005).

BACKGROUND

5. PSE operated White River without a federal license from 1911 to 1983. Although the Project was believed to be exempt from the licensing requirements of the Federal Power Act; a jurisdictional determination was made by the Federal Energy Regulatory Commission ("FERC"), and the Company was required by FERC to apply for a license. In November 1983, PSE filed an Application for License with FERC, and from 1984 through 1997, White River operated under FERC jurisdiction pending issuance of a license. In December 1997, FERC issued an Original License for the Project, and PSE appealed based on economic consequences associated with implementing the license. In 1998, PSE joined with interested parties to form the Lake Tapps Task Force ("LTTF") to work collaboratively to develop an offer of settlement to FERC. The LTTF developed an extensive list of alternate ways to improve Project economics and achieve an acceptable settlement. The preferred alternative identified by the LTTF included a new FERC license for White River and the acquisition of an additional municipal water right, thereby allowing the Lake Tapps reservoir to be used both for hydropower and for an additional beneficial use as a regional municipal water supply.

6. In November 2003, in connection with its effort to obtain a new FERC license for the Project, NOAA Fisheries issued a Biological Opinion addressing the needs of certain aquatic species listed under the Endangered Species Act. The Biological Opinion contained mandatory terms and conditions (limiting flows available for hydropower production and other requirements) that rendered the ongoing operation of the Project as a hydropower facility uneconomic (compared to the cost of alternative resources). In December 2003, with no viable option to maintain hydropower operations, the Company rejected the FERC license. On January 15, 2004 the Company discontinued hydropower operations at White River.

7. As compared to the Project, a new municipal water supply project can operate with far less of a hydraulic demand on the river and the Lake Tapps reservoir (*e.g.*, peak withdrawal of water of 150 cubic feet per second ("cfs") for water supply, as compared to peak withdrawal of 2,000 cfs for hydropower). Due to these lesser demands, the limitations on flows and other requirements necessary to protect listed species do not render the municipal water supply project alternative uneconomic. A municipal water supply project remains a viable alternative for future use and development by a regional water purveyor.

8. The cities of Bellevue, Issaquah, Kirkland, Redmond and Tukwila, Covington Water District, Sammamish Plateau Water and Sewer District and Skyway Water and Sewer District formed CWA to develop a regional water supply and as a watershed management partnership that is established as a separate legal entity in the form of a nonprofit corporation organized under Chapter 24.06 RCW for the purpose, among other purposes, of acquiring constructing, owning, operating, maintaining and managing water supply facilities. PSE conducted an extensive review of potential purchasers of a new water right and ultimately entered into a memorandum of understanding with CWA to secure the water right and share the costs associated with this process.

9. PSE pursued efforts to recoup its investment in non-hydro alternatives and dispose of the White River assets in a manner consistent with the public interest. CWA agreed to purchase the Project assets but not the Surplus Property.

10. In Docket UE-032043, PSE advised the Commission that it had declined a FERC license for White River because certain provisions of the federal agency's approval made the Project uneconomic and that White River ceased operations on January 15, 2004.³ In that docket the Commission made a final determination authorizing deferred accounting treatment of the assets and the proceeds from the assets in a manner proposed by Commission Staff and agreed to by PSE. The Commission denied PSE's request to begin

³ *See id.* at ¶251.

amortization of the deferred accounts because the sale was pending, but ruled that it would consider the application of proceeds from the sale and disposition of any remaining balances in a future proceeding.⁴

DISPOSITION OF ASSETS

11. As a result of its efforts to identify options regarding transfer of White River assets, PSE has separated the assets into two parts. The first part involves the transfer of the Project assets and certain water rights to CWA, for which PSE is requesting approval through this Application. The second part involves the transfer of the Surplus Property. The Company is in, or is pursuing, negotiations with various parties for the sale or transfer of the Project's Surplus Property, and these negotiations are in varying degrees of completion. Accordingly, PSE requests in this Application authorization for the sale of the Project assets to CWA. Consistent with the Commission order in Docket UE-032043, PSE will provide additional details related to the transfer of the Surplus Property in the Company's subsequent rate case following the completion of all such transactions, and will seek Commission consideration of the application of the proceeds from these sales at that time.

12. PSE is not seeking an accounting order with this Application because the ratemaking treatment related to White River costs and sale proceeds was established in Docket UE-032043.⁵ Accordingly, PSE will defer the proceeds from the sale of White River assets, booking them to a separate 182.3 account and treat the return on this credit balance account through the power cost mechanism as a variable cost item.⁶

A. Transfer of Water Rights and Real Property to CWA

13. PSE and CWA executed the Agreement for the transfer of Project assets on April 23, 2008. A copy of the Agreement is attached hereto as Exhibit A. Pursuant to

⁴ See *id.* at ¶252-253.

⁵ See *id.*

⁶ See *id.* at ¶252.

Section 4.2(a) of the Agreement, one of the conditions to closing is Commission approval. At closing, CWA will acquire the Project assets, including the diversion dam, flow line properties, Lake Tapps Reservoir, the flowline works from Lake Tapps to the White River Powerhouse, the Powerhouse, and the tailrace. Please see Exhibit C-1, D-1, O, T, W and X to the Agreement for a list of the Project assets being transferred to CWA. The closing for the transaction is anticipated to occur no later than the third quarter of 2009. Pursuant to the Agreement, closing is to occur 45 business days following satisfaction of all conditions to closing as set forth in Section 4.2 of the Agreement. Commission approval of the sale of the Project assets to CWA is a condition to closing.

14. The sale price of the White River assets to CWA is \$30,000,000, as follows:
 - (1) \$25,000,000 in a single cash payment at closing.
 - (2) \$5,000,000 after satisfaction of either of the two following conditions:
 - (a) Issuance of the Municipal Water Rights with the Cascade Flow Regime⁷ or
 - (b) Issuance of the Municipal Water Rights with a flow regime acceptable to the Muckleshoot Indian Tribe and the Puyallup Tribe of Indians.

15. Ecology issued a Report of Examination (“ROE”)⁸ in June 2003, granting approval to develop the municipal water supply project under certain project requirements. This ROE was appealed by the Muckleshoot Indian Tribe, the Puyallup Tribe of Indians, and several municipal entities. In July 2004, the ROE was remanded to Ecology to evaluate the proposed project under non-hydropower conditions. CWA has reached settlement with both tribal entities regarding the municipal water right, and CWA proposed the settlement conditions to Ecology. PSE anticipates that Ecology will re-issue the ROE in light of the

⁷ See Exhibit A to Agreement for the definitions of Municipal Water Rights and Cascade Flow Regime.

⁸ The Agreement refers to the ROE as “Municipal Water Rights”. While there is a technical distinction between the terms ROE and Municipal Water Right, the Agreement applied these terms interchangeably.

settlement conditions proposed by CWA and the tribal entities. Issuance of the ROE is not a condition to closing but is merely a prerequisite to final payment.

B. Transfer of Surplus Property

16. The Surplus Property consists of approximately 2,400 acres of undeveloped real property along the White River--real property that PSE held during the pendency of the FERC licensing proceeding as wildlife mitigation lands. PSE has obtained preliminary assessment appraisals of the value of the Surplus Property and the value of the timber on the property. PSE entered into an agreement with the Cascade Land Conservancy to sell the Surplus Property, but such efforts proved unsuccessful and the agreement expired.

17. After the expiration of the Cascade Land Conservancy transaction, PSE considered expressions of interests in the Surplus Property from several regional entities. Two parties have come forward as potential purchasers: the City of Buckley ("Buckley"), potentially with Pierce County, and/or the Cascade Land Conservancy, and the Muckleshoot Indian Tribe ("MIT"). Buckley has expressed a desire to purchase certain parcels downstream of the diversion dam near Wolshlagal Basin for riparian management purposes. Buckley provided PSE with an initial term sheet for consideration, and negotiations are proceeding. PSE is prepared to initiate good faith negotiations with the Buckley, and PSE anticipates entering into a purchase and sale agreement with Buckley in 2009.

18. The MIT has expressed a desire to purchase the bulk of the remaining Surplus Property, which totals approximately 2,000 acres. In two letters to PSE, the MIT has stated its intention to complete a fair market value transaction for the properties. The Company is prepared to initiate good faith negotiations with the MIT, and PSE anticipates executing a purchase and sale agreement with the MIT in 2009.

LEGAL DISCUSSION

19. PSE is requesting Commission authorization to transfer the Project assets to CWA pursuant to RCW 80.12.020 and WAC 480-143-120. RCW 80.12.020 requires Commission approval before PSE can transfer any necessary or useful property:

No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public . . . without having secured from the commission an order authorizing it so to do.

RCW 80.12.020.

20. The Commission has set forth the ratemaking treatment for the Project assets in its order in Docket UE-032043. PSE will defer the proceeds from the sale to CWA consistent with the Commission order in that docket. Further, PSE will bring to the Commission for consideration the application of proceeds from the sale to CWA and the transfer or disposition of any remaining balances in its subsequent rate proceeding following the disposition of all remaining White River assets.

21. PSE further requests that the Commission waive the requirements of RCW 80.12.020 and WAC 480-143-120 with regard to the planned transfer of Surplus Property. WAC 480-143-100 allows such waiver. PSE has provided details of the planned sale of such Surplus Property in this application, and PSE will provide the details of such transfer to the Commission for consideration in PSE's next rate case after the sales of all the Project assets and property are completed.

22. Pursuant to WAC 480-143-120, please find PSE's most recent Form 10-K attached hereto as Exhibit B.

REQUESTED ORDER


23. PSE respectfully requests advance authorization under RCW 80.12.020 and WAC 480-143-120 to transfer certain water rights and assets related to the Project, pursuant to the terms of the Agreement by and between PSE and CWA.

24. PSE respectfully requests waiver of RCW 80.12.020 and WAC 480-143-120 with regard to the transfer of PSE's White River Project Surplus Land in light of the information provided above and PSE's commitment to bring information regarding the transfer of Surplus Property to the Commission for consideration in PSE's next rate case after the sale of all the Project property is completed.

25. PSE respectfully requests that the Commission enter an order in the form attached as Exhibit C to this Application.

DATED: March 13, 2009

PERKINS COIE LLP

By: 
Sheree Strom Carson WSBA No. 25349
Donna L. Barnett, WSBA No. 36794
Attorneys for Puget Sound Energy, Inc.

VERIFICATION

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

KARL R. KARZMAR, being first duly sworn, on oath deposes and says:

That he is Director of Regulatory Relations for Puget Sound Energy, Inc., that he has read the foregoing Application, that he knows the contents thereof, and that he believes the same to be true to the best of his knowledge and belief under penalty of perjury.

[Signature]
KARL R. KARZMAR

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

SUBSCRIBED AND SWORN to before me this 11th day of March, 2009



Tanya S. Uskuri
Print Name: Tanya Uskuri
Notary Public in and for the State of
Washington, residing at Bellevue, King County
My commission expires: 09/15/2009

VERIFICATION