

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-13\_\_\_\_\_

PETITION FOR  
ACCOUNTING ORDER

**I. INTRODUCTION**

1. Puget Sound Energy, Inc. ("PSE" or "the Company"), hereby petitions the Washington Utilities and Transportation Commission ("WUTC" or "Commission") for an accounting order allocating the proceeds of the sale of PSE's Jefferson County assets and service territory to the Public Utility District No. 1 of Jefferson County ("JPUD") under threat of condemnation.

2. PSE is engaged in the business of providing electric and natural 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 are:

Puget Sound Energy, Inc.  
Attn: Ken Johnson  
Director, State Regulatory Affairs  
P.O. Box 97034  
Bellevue, Washington 98009-9734

PSE's representatives for purposes of this proceeding are:

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3. The following statutes may be brought into issue by this Petition: RCW 80.12.020, RCW 54.16.020 and RCW 54.16.040.

## II. SUMMARY

4. On April 1, 2013, JPUD began providing retail electric service to an area previously served by PSE for more than 96 years. JPUD was able to displace PSE as the service provider by acquiring PSE's transmission and distribution facilities in east Jefferson County under threat of condemnation. As a result, PSE's lost assets and future revenues associated with the inability to conduct its business in an established market.

5. In *In re Petition of Puget Sound Energy, Inc., For a Declaratory Order Regarding the Transfer of Assets to Jefferson County Public Utility District, Docket No. U-101217 (February 1, 2011)* (the "Declaratory Order"), the Commission determined that the transfer of assets in question was exempt from the requirements of RCW 80.12.020 and that no further action was required by the Commission to approve the transfer of these assets to JPUD. The Commission also found that the purchase price of \$103 million was sufficient to fully compensate PSE for the sale of the assets, and that the agreement reached between PSE and JPUD providing for transition of the service territory was sufficient and consistent with

PSE's public service obligations. The Commission did not, however, address the appropriate accounting treatment of the proceeds of this sale:

Thus, while we determine that the purchase price of \$103 million is an appropriate one and sufficient to fully compensate PSE for the sale of the assets, our determination does not affect the subsequent accounting treatment of the sale proceeds and does not affect an allocation of the sale proceeds as between PSE's customers and shareholders. Those questions will be finally determined in the context of a future proceeding, most likely one initiated via an accounting petition or in PSE's next general rate case.

*Declaratory Order* at 14. This Petition brings this unresolved question to the Commission for determination.

6. The accounting treatment to be applied in this case is unique and specific to the harsh circumstances resulting from the liquidation of an incumbent utility's entire business and assets in a given locality. The rule appropriately applied to these circumstances is that the gain or loss, net of costs of sales, realized from such a "sale" accrues to the utility and its shareholders, to the extent that the remaining customers are not adversely affected. The sale of PSE's assets and the severance of the service territory in Jefferson County did not adversely affect the cost, level, quality or reliability of service to PSE's remaining customers. Any risks or burdens to customers were borne by the departing customers and stay with the departing customers; any corresponding rewards or benefits due departing customers were left behind by the departing customers. As a matter of law, the interests of the departing customers are no longer subject to the Commission's jurisdiction.

7. The net gain on the forced sale of the assets is \$59,964,313. Consistent with the principles applicable to the *forced* liquidation of an incumbent utility's entire business and

assets in a given locality, PSE is proposing to allocate 75% of the gain to investors and 25% to the remaining customers. The proposed allocation of gain also fully comports with the rule that the Commission has applied to the disposition of gain in connection with *voluntary* sales (which this is not): that reward should follow risk and benefit should follow burden. The risks and burdens associated with this transaction fall primarily upon the Company's shareholders. Therefore, for the reasons more fully discussed below, PSE respectfully requests that the Commission issue an accounting order authorizing the Company to apply the proposed accounting treatment to the gain on the forced sale of its transmission and distribution facilities in east Jefferson County to JPUD.

### **III. FACTS**

#### **A. Jefferson County Voters Authorized JPUD To Take Over PSE's Jefferson County Service Territory**

8. PSE provided electrical service to its customers in east Jefferson County (the "Service Territory") for approximately 96 years. In April of 2013, JPUD acquired PSE's electric facilities and began providing retail electric service to PSE's former customers in the Service Territory. JPUD acquired PSE's facilities and the Service Territory under threat of condemnation. PSE opposed this acquisition and actively resisted JPUD's efforts until arriving at a favorable settlement that avoided protracted litigation and substantial risk to PSE and its remaining customers.

9. In the summer of 2008, a sufficient number of signatures were gathered in Jefferson County, Washington, to submit "Proposition No. 1" to the voters for consideration in the November general election. Proposition No. 1 authorized JPUD to "construct or acquire electric facilities for the generation, transmission or distribution of electric power."

Proponents of Proposition No. 1 advanced this proposal as a means to authorize JPUD to forcibly take over PSE's Service Territory.

10. Proposition No. 1 was a controversial ballot measure. There was open and vigorous public debate on the relative merits of "going public" as opposed to maintaining PSE as the preferred service provider. Proposition No. 1 was ultimately approved by the voters at the November election by a narrow margin. As a result of this election, RCW 54.16.020 now authorized JPUD to acquire PSE's assets and the Service Territory by eminent domain. Notwithstanding this newly acquired authority, JPUD was still a small water and sewer utility, with approximately 4,000 customers, and lacked the financing, expertise and resources necessary to go into the electric business. It was not clear in 2008 if the PUD would be able to acquire these resources. In this context, PSE advised JPUD that it was an "unwilling seller" and that PSE believed that it was still best suited to be the electric service provider in the Service Territory.

**B. Facing Condemnation By JPUD, PSE Negotiated the Transfer of its Service Territory Under Threat of Condemnation**

11. On June 3, 2009, the JPUD Commissioners approved a motion regarding the use of JPUD's condemnation authority to acquire PSE's electric facilities in Jefferson County. A further motion was approved by the JPUD Commissioners on September 2, 2009 authorizing the JPUD general manager to enter into negotiations with PSE regarding settlement and the purchase of PSE's electric utility facilities in lieu of condemnation.

12. PSE engaged in negotiations with JPUD regarding JPUD's possible purchase of the assets and the Service Territory, recognizing that a reasonable settlement might be a better alternative than extended litigation. However, the parameters for determining what might be "reasonable" under these circumstances were not clearly defined. Under

Washington law, a property owner is entitled to full and just compensation as a result of a taking for public use. Washington courts have not specifically endorsed any one method of valuation. With the assistance of outside experts, PSE considered a number of methodologies for valuing the assets, as did JPUD, but the parties were unable to reach an agreement.

13. On February 18, 2010, JPUD made its best and final offer to purchase PSE's assets and facilities in the Service Territory for \$103 million. The terms of JPUD's final offer were memorialized and accepted by PSE in a Letter of Intent dated April 30, 2010.

**C. PSE Negotiated Favorable Terms in the Asset Purchase Agreement**

14. The parties subsequently negotiated an Asset Purchase Agreement ("APA") to memorialize the proposed settlement. The APA was executed on June 11, 2010. In order to be made whole and to protect PSE's remaining customers and shareholders post closing, the APA included the following terms and conditions:

- a specific list of distribution assets and real property interests then in service to be transferred to JPUD at closing (the "Assets");
- a purchase price for the Assets of \$103 million;
- a mechanism to increase the purchase price to compensate PSE for the net book value of any additions to or betterments of the Assets placed in service after June 11, 2010 and prior to March 31, 2013 ("Transition Period");
- a condition that all Assets were to be transferred at closing by PSE and accepted by JPUD "as is, where is, with all faults and defects, and without warranty or representation of any kind;"

- terms reserving to PSE the unfettered discretion during the Transition Period, to construct, operate and maintain its facilities in Jefferson County at the same quality and level of service that PSE provides to its other customers;
- an indemnity from JPUD for any future liability arising from (a) existing environmental conditions that are reasonably expected in the ordinary course of utility operations, and (b) all environmental conditions arising after the closing date;
- an indemnity protecting PSE remaining customers from adjustments by the BPA for any overpayment of benefits, for the period October 1, 2001, through September 30, 2008 allocable to PSE's residential and small farm customers in Jefferson County;
- additional indemnities from JPUD covering matters related to the Assets or assumed liabilities that arise after closing;
- an express disclaimer of any warranties and representations with respect to the Assets, a waiver of consequential damages and a limitation of liability;
- provisions that allowed (as a condition of closing) PSE to require a customer transition agreement addressing the obligations and cost responsibilities of the parties concerning the transition of electric utility service obligations to JPUD;
- conditions to closing that allowed PSE to obtain all necessary regulatory approvals on terms and conditions satisfactory to PSE.

**D. The Commission Entered a Declaratory Order Regarding the Transfer of Assets**

15. Subsequent to the execution of the APA, PSE sought a declaratory order from the Commission in Docket U-101217, the Declaratory Order proceeding, to confirm that:

- The transfer of the Assets is authorized by RCW 80.12.020 (2) and no further action is required by the Commission to approve the transfer of the Assets for purposes of RCW 80.12.020.
- The amount of the purchase price is an amount that is sufficient to fully compensate PSE for the sale of the Assets.
- The provisions of the APA pertaining to PSE's transition of its responsibilities to provide electrical service to its customers in the Service Territory are sufficient and consistent with PSE's public service obligations.

16. Testimony filed by PSE in the Declaratory Order proceeding established the following:

- PSE's "all in" number for the Service Territory exceeded PSE's estimate of its value. This number was arrived at after consideration of various methodologies of valuing the Assets, and was significantly greater than the value of the Assets determined by JPUD.
- The compensation paid to PSE included the recovery of "going concern" damages.
- Settlement with JPUD eliminated a litigation risk to PSE and its remaining customers of approximately \$45,000,000.

17. In the Declaratory Order the Commission confirmed that:

- The transfer of Assets from PSE to JPUD was exempt from the requirements of RCW 80.12.020 and no further action was required by the Commission to approve the transfer of the Assets for purposes of RCW 80.12.020.



- The purchase price of \$103 million was sufficient to fully compensate PSE for the sale of the Assets.
- The provisions of the APA pertaining to PSE's transition of its responsibilities to provide electrical service to its customers in the affected service territory was sufficient and consistent with PSE's public service obligations under RCW chapter 80 and as otherwise provided by law.

*Declaratory Order* at 18.

**E. PSE Negotiated a Favorable Customer Transition Agreement**

18. During the Transition Period JPUD negotiated contracts with BPA to provide power and transmission services to JPUD. In April of 2012, the U.S. Department of Agriculture's Rural Utility Service agreed to guarantee a \$115.5 million loan to JPUD to purchase the Assets. Based upon this commitment, JPUD waived its financing contingency and commenced actions to close the transactions contemplated by the APA. To that end, JPUD and PSE cooperatively developed plans to transition the Service Territory to JPUD on or before April 1, 2013.

19. PSE and JPUD's obligations with respect to transitioning the Service Territory were memorialized in a Customer Transition Agreement, dated February 4, 2013 ("CTA"). In order to be made whole and to protect PSE's remaining customers and shareholders post closing, the CTA included the following terms and conditions:

- payment by JPUD of costs incurred by PSE in connection with the transition of the Service Territory (\$800,000);
- payment by JPUD of accounts receivable from March 10, 2013 to March 31, 2013 (\$1,966,080);

- payment by JPUD for "stores" (e.g., consumables and other incidental items) left behind in Jefferson County (\$44,429);
- non-recourse assignments of contracts, customers contracts, and permits "as is, where is and with all faults and defects," together with indemnities addressing prospective liabilities associated with such contracts, customers contracts, and permits;
- a non-recourse bill of sale for transfer of the Assets;
- full and unconditional releases by JPUD for environmental studies and other written materials provided to JPUD in connection with the transaction;
- indemnities from JPUD covering matters such as any faults or defects in the properties and services provided by PSE pursuant to the CTA and JPUD's use thereof, reliance thereon, and acts and omissions with respect thereto;
- an express disclaimer of any warranties and representations, a waiver of consequential damages and a limitation of liability.

20. On March 15, 2013, the JPUD Board of Commissioners passed a motion related to its use of condemnation authority, and clarifying and ratifying prior actions of the district, which states in relevant part:

Under the threat of condemnation, Puget Sound Energy and the District entered into the Asset Purchase Agreement providing for a Transition Period and purchase of the Assets of Puget Sound Energy, among other things, as further defined in the Asset Purchase Agreement on June 10, 2010, and the Amendment to the Asset Purchase Agreement approved simultaneously with this Motion.

Meeting Minutes, Special Meeting of the Public Utility District No.1 of Jefferson County, (March 15,2013).

21. On March 29, 2013, the parties executed an Amendment to the APA ("Amendment") that provided for an adjusted purchase price for the Assets due at closing of \$107,158,524.85. The Amendment also provided for a further and final adjustment of the purchase price by the Transition Advisory Committee ("TAC") to reflect additions to or betterments of the Assets, not previously accounted for, and to adjust for the accumulated depreciation of any Assets placed in service during the Transition Period. At closing, JPUD paid PSE \$107,158,524.85 for the Assets, subject to further adjustment on or before July 1, 2013.

22. On July 1, 2013, the TAC met to make the final adjustments to the purchase price. Having reviewed amounts due PSE for additions to or betterments of the Assets placed in service during the Transition Period, and adjusting for accumulated depreciation of any Assets placed in service during the Transition Period, the TAC determined that an additional \$1,203,726.19 was due and payable to PSE. As adjusted, the final purchase price for the Assets was \$108,362,251. On August 2, 2013, PSE received final payment from JPUD in the amount of \$1,203,726.19.<sup>1</sup>

**F. The Sale of the Assets Did Not Negatively Affect PSE's Remaining Customers**

23. The sale of the Assets and the severance of the Service Territory did not negatively affect the level, quality or reliability of service to PSE's remaining customers. The Assets are all located within the Service Territory. No assets located outside of Jefferson

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<sup>1</sup> JPUD has advised PSE that there are approximately \$416,000 in charges for Assets placed in service during the Transition Period that are still under review. PSE has agreed to review these charges to determine if any further adjustments are warranted. As of the date of this Petition, this matter is unresolved.

County were sold or affected by the sale. None of the Assets sold were used to provide service outside of Jefferson County. Unique characteristics of the configuration of PSE's system in Jefferson County provided for a complete separation from the remainder of PSE's system. Jefferson County is served by a radial transmission and distribution system originating primarily from the BPA Fairmount substation. There were no generation assets involved in or affected by this transaction. The Assets sold to JPUD served no function or purpose outside of the Service Territory. No electrical facilities of any significance were stranded or rendered uneconomic by reason of this sale.

24. The sale of the Assets and the severance of the Service Territory did not negatively affect PSE's remaining customers. The revenues paid by PSE's former customers covered their cost of service. There is a little or no effect on the delivery component of remaining customers' overall revenue requirements as a consequence of the loss of the service territory. Additionally, the estimated share of Power Cost Adjustment ("PCA") related revenue paid by PSE's former customers is roughly equivalent to their allocated share of power costs. Looking forward, PSE's customers are projected to receive a net benefit attributable to a reduction of incremental energy supply costs. PSE's former customers were fully funding their share of depreciation expenses related to the Assets at the time the Assets were transferred to JPUD. Transaction and transition costs incurred by PSE were fully recovered by monies collected from JPUD under the APA and the CTA.

#### **IV. ALLOCATION OF GAIN AND PROPOSED ACCOUNTING TREATMENT**

25. PSE is proposing to allocate 75% of the gain to investors and 25% to the remaining customers. This allocation would result in an allocation of \$44,973,235 to investors and an allocation of \$14,991,078 to remaining customers. PSE recommends that

the customer share of this gain be allocated to rate groups consistent with the way related plant is allocated for ratemaking purposes. This approach is illustrated in Exhibit No. \_\_\_(JAP-8). Consistent with the treatment of comparably sized regulatory assets and liabilities, PSE proposes to credit customers' share of the gain on the sale of the Assets over a four-year period.

26. As to the specific mechanism by which the Commission-approved share of the gain is to be returned to customers, PSE anticipates that different rate groups may have specific preferences in this regard. As such, PSE is willing to engage in discussions with interested stakeholders in this proceeding regarding the best approach for crediting each rate group's share of the gain on sale.

27. PSE respectfully requests that the Commission issue an accounting order authorizing the Company to:

- Transfer \$44,973,235 from FERC Account 25300061 and credit this amount to FERC Account 421.1, Gain on Disposition of Property, on the income statement; and
- Amortize \$14,991,078 from FERC Account 25300061 to FERC Account 407 over a period of 48 months.

## **V. DISCUSSION**

### **A. Determination of Gain**

28. Gain on the sale of an asset results when the sales price exceeds the net book value of the asset (*i.e.*, original cost less accumulated depreciation), plus any additional costs of the sale. *In re Application of Avista Corp. for Authority to Sell its Interest in the Coal-Fired Centralia Power Plant*, Docket No. UE-991255, et al., Second Supplemental Order

(March 6, 2000) ("*Centralia*") at 22. The final adjusted purchase price paid by JPUD for the Assets was \$108,362,251. All amounts bearing upon the calculation of gain on this sale are known, fixed and certain.<sup>2</sup>

**B. Net Book Value**

29. The net book value of the Assets sold to JPUD is the sum of the net book value of the Assets in service as of June 11, 2010, the day following execution of the APA, plus the net book value of additions and betterments added during the Transition Period. At closing, the net book value of the Assets in service as of June 11, 2010 was \$41,324,184. The net book value of additions to or betterments of the Assets placed in service during the Transition Period was \$5,362,251. The total net book value ("NBV") of the Assets is \$46,686,435.

30. The NBV reflects that portion of the shareholders' investment for which the shareholders have received no return of their investment. Following long standing principles of accounting and prior Commission precedent, the proceeds of sale in an amount equal to the NBV are to be returned to the Company's shareholders. *Centralia* at 28.

**C. Transaction Costs**

31. Transaction and transition costs incurred in connection with the negotiation and the closing of the transactions contemplated by the APA and the CTA totaled

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<sup>2</sup> As noted above, PSE is reviewing, at JPUD's request, charges in the amount of approximately \$416,000 to confirm that these charges were appropriately included in the \$108,362,251.04 purchase price.

\$2,510,407. These costs were fully recovered by monies collected from JPUD under the APA and the CTA.

**D. Gain on Sale**

32. The amount of the net gain on this sale is determined as follows:

Total Proceeds (APA and CTA):	\$109,373,196
Less NBV:	\$46,686,435
Less Transaction Costs	\$2,722,448
Net Gain on Sale:	\$59,964,313

**E. Allocation of Gain**

33. The APA is a settlement agreement entered into under threat of condemnation. This transaction was not a voluntary sale. The decision to enter into a settlement and sell the Assets was driven by an assessment of litigation risk, not by business opportunities. JPUD resolved and affirmatively took steps to exercise its authority to condemn the Assets pursuant to RCW 54.16.020. This transaction was a forced sale of Assets that deprives PSE and its shareholders of future revenues from approximately 18,000 customers and the future growth of that customer base.

34. There is unique harm associated with taking a utility's service area by eminent domain that is compensable and recoverable as "going concern" damages. *Kimball Laundry Co. v. United States*, 338 U.S. 1, 69 S.Ct. 1434, 93 L. 2d. 1765 (1949); *City of Omaha v. Omaha Water Co.*, 218 U.S. 180, 30 S.Ct. 615, 54 L. Ed. 991 (1910). Going concern entails the investment value to the business owner of the components of an active, up-and-running business and involves operating arrangements, rights, or conditions of value that attach to the

property. *City of Omaha*, 218 U.S. at 202; *In re City of Fresno*, 20 PUC 2d 502 (CA 1986).

This is more than asset value, a point succinctly made by Justice Lurton in *City of Omaha*:

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 goodwill as between such a plant and its customers.

*City of Omaha* at 202. This financial impact falls solely upon the Company's shareholders.

35. The unusual and extraordinary circumstances presented in this case are the unique and harsh circumstances of the liquidation of the entire business enterprise in a given locality. The rule generally applied to the allocation of gain under these circumstances has been stated by the California Public Utilities Commission:

[T]he capital gain or loss, net of costs of sales, realized from the sale of a distribution system, under the circumstances described in Ordering Paragraph 1, shall *accrue to the utility and its shareholders* to the extent that (1) the remaining ratepayers on the selling utility's system are not adversely affected, and (2) the ratepayers have not contributed capital to the distribution system.

*In re Ratemaking Treatment of Capital Gains from the Sale of a Public Utility Distribution System Serving an Area Annexed by a Municipality or Public Entity*, D.89-07-016 (CPUC 1989) ("*City of Redding II*").<sup>3</sup>

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<sup>3</sup> The California Public Utilities Commission notes as a policy underlying this rule:

The sale of a distribution system with customers attached represents a dissolution of a significant part of a utility's total operating system. The utility's business diminishes in terms of assets and customers. This loss of part of its customer base and ongoing business value is tantamount to a dissolution, although only a partial one. In such cases, we will recognize the right of the utility to the net capital gain resulting from the sale, a gain which can be distributed to shareholders, as well as the obligation of the utility to absorb any capital loss.



36. The circumstances to which this rule applies, which are all presented in this case, are described by the California Public Utilities Commission as follows:

- the distribution system of a public utility (i.e., gas, electric, or water utility) is sold to a municipality or some other public or governmental entity, such as a special utility district;
- the distribution system consists of part or all of the utility operating system (system) located within a geographically defined area;
- the components of the system are or have been included in the rate base of the utility; and
- the sale of the system is concurrent with the utility being relieved of and the municipality or other agency assuming the public utility obligations to the customers within the area served by the system.

*Id.* at Ordering Paragraph 1. This rule has been consistently applied in California since 1987 and has been applied in other jurisdictions that have considered total or partial liquidations.<sup>4</sup>

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*See id.* at § 1.

<sup>4</sup> *See, e.g., Application of Pac. Gas and Elec. Co. for Authorization to Sell Elec. Distribution and Certain Transmission Facilities*, D.03-04-032 (CPUC April 3, 2003) (applying *Redding II* to proposed sale of electric distribution assets to irrigation district; allocating all gain to shareholders); *In re Matter of the Applications of Pub. Serv. Co. of New Mexico and New Mexico Gas Co.*, 2008 N.M. PUC Lexis 86, ¶¶ 9–12 (N.M. PUC Dec. 11, 2008) (allocating all gain on sale of gas utility system to shareholders; emphasizing that "[t]here are sound reasons to differentiate the allocation of gain on the sale of utility assets based on whether the assets are being sold in the course of a utility providing utility service to its customers, or are instead being sold as part of a utility's sale of the utility business itself"); *In re: App. for Partial Transfer of Facilities in Marion Cty.*, 2003 Fla. PUC LEXIS 186, \*16 (Fla. PUC Mar. 10, 2003) (allocating all gain on sale of water utility system to shareholders; emphasizing that "[w]e have consistently acknowledged that where the utility is losing the revenue stream provided by the transferred customer base, it is reasonable for the shareholders to be compensated by receiving the gain on sale of the facility"); *In re Joint App. of Mo. Cities Water Co. and E. Cent. Mo. Water and Sewer Authority*, 1987 Mo. PSC LEXIS 23 (Mo. PSC July 28,

37. The *City of Redding II* expresses the appropriate accounting treatment to be applied in this proceeding. If so applied, the entire gain must be allocated to the investors. Instead, PSE is proposing to allocate 75% of the gain to investors and 25% to the remaining customers. This proposed allocation of gain is offered by PSE as a voluntary sharing of the proceeds of this sale. PSE's proposal also considers the equitable principles stated in *Democratic Central Comm. v. Wash. Metro Area Transit Comm'n*, 485 F.2d 786 (D.C. Cir. 1973) that apply to the disposition of gain in the context of a voluntary sale. These subjective principles are applied to determine fairness; prior decisions counsel that reasonable minds differ on what is or is not "fair" in a given case. In this case PSE did not willingly sell its Assets. Although the transaction occurred without causing harm to remaining customers, "fairness" to the Company or to its remaining customers was not a factor that influenced the entity that forcibly acquired the Service Territory. In the end, the results derived from the transaction were sufficient and avoided significant litigation risk. In offering to share a portion of the gain with its customers, the Company believes this to be fair, and in so doing, the Company seeks to bring prompt and final closure to a difficult matter that has extended over a period of five years.

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1987) ("In the case of a complete liquidation of the company, the proceeds would inure to the benefit of the shareholders. We are of the opinion that a partial liquidation should achieve the same results."); *Maine Water Co. v. Pub. Utils. Comm'n*, 482 A.2d 443 (Me. 1984) (reversing PUC allocation of gain on sale of water utility system to ratepayers due to PUC's failure "to recognize the critical difference between 1) the sale of isolated items of property in the course of a continuing utility operation and 2) the sale of a complete independent utility division along with a transfer of that division's customers").

**F. Accumulated Depreciation**

38. Accumulated depreciation reflects the amount that shareholders earned, through rates, as a return upon their investment in the Assets. The accumulated depreciation applied to the Assets was \$29,938,735.

39. The accumulated depreciation of the Assets was a financial burden borne by PSE's former customers in Jefferson County. *See* Exhibit No. \_\_\_(JAP-3). These former customers have no interest in the outcome of this proceeding; they have removed themselves from the Commission's jurisdiction. RCW 54.16.040 provides, in relevant part, that:

A district may purchase, within or without its limits, electric current for sale and distribution within or without its limits, and construct, condemn and purchase, acquire, add to, maintain, conduct, and operate works, plants, transmission and distribution lines and facilities for generating electric current, operated either by water power, steam, or other methods, within or without its limits, for the purpose of furnishing the district, and the inhabitants thereof and any other persons, including public and private corporations, within or without its limits, with electric current for all uses, with full and exclusive authority to sell and regulate and control the use, distribution, rates, service, charges, and price thereof, *free from the jurisdiction and control of the utilities and transportation commission, in all things*, together with the right to purchase, handle, sell, or lease motors, lamps, transformers and all other kinds of equipment and accessories necessary and convenient for the use, distribution, and sale thereof.

(Emphasis added.) To the extent accumulated depreciation is viewed as a burden of ownership it was a burden borne by PSE's former customers in Jefferson County who have now voluntarily departed from PSE's service territory.

40. Viewed prospectively, the risk of losing the return on this investment is borne entirely by shareholders. Under the principles articulated in *Redding II*, the entire \$59,964,313 should be returned to shareholders. The same result is reached by application of the rule that reward should follow risk and benefit should follow burden. Shareholders bear

all the risk going forward and PSE's remaining customers did not bear any of the burden of prior ownership.

**G. Taxes**

41. The APA provides at Section 2.8 that:

*JPUD shall be responsible for any sales, transfer, purchase, use or similar tax that may be payable by reason of the sale of all or a portion of the Assets or the Stores. PSE shall be responsible for paying any income and Washington State business and occupation taxes arising out of PSE's receipt of the Purchase Price. The Parties shall cooperate to minimize each Party's and their respective affiliates' taxes resulting from or arising with respect to the transactions contemplated under this Agreement.*

(Emphasis added.) All state and local taxes payable by reason of the sale of the Assets were paid by JPUD at closing. No Washington state business and occupation taxes were incurred by PSE as a result of this transaction.

42. With respect to federal income tax, PSE intends to treat the sale of the Assets as an involuntary conversion for purposes of the tax code. *See* 26 U.S.C. § 1033. For federal income tax purposes, any gain on this sale will be deferred, and the amount of the deferred tax will be subtracted from the rate base calculation. In order to avail itself of this treatment, on or before December 31, 2015, PSE will reinvest an amount equivalent to the proceeds of this sale in property that is similar or related in service or use to the property that was converted.

**H. Service**

43. None of the Assets sold to JPUD were used to provide service to the remaining customers. There are no out of Service Territory consequences associated with the sale that will affect the quality or reliability of service to PSE's remaining customers. The Commission stated in the Declaratory Order:

Staff confirmed that the sale of the Jefferson County Assets provides for a "clean break" with PSE's other assets that are used to provide service outside of Jefferson County. Transferring ownership of the Jefferson County Assets to JPUD will have no detrimental effect on PSE's ability to satisfy its public service obligations to customers located outside Jefferson County.

*Declaratory Order* at 16. This conclusion is still sound. Any risk of diminished service borne by the departing customers is a matter to be addressed by JPUD.

44. Exhibit No. \_\_\_(JAP-3) illustrates the impact of the loss of the Service Territory on the electric delivery revenue requirements of remaining PSE customers. This exhibit shows that this impact ranges from a \$3.2 million increase to a \$1.1 million reduction in the remaining customers' revenue requirements. With an overall electric revenue requirement (i.e., including power and property tax expenses) of roughly \$2 billion, this is essentially a neutral result, as the overall impact is less than +/- 0.15 percent.

45. Exhibit No. \_\_\_(JAP-6) illustrates that the former customers in Jefferson County were historically covering their fully allocated share of embedded power costs. The total power cost revenue derived from the Service Territory for the test period ending June 30, 2012 was \$19.8 million, or 1.41 percent of PSE's total power cost revenue for the period in question. Using the "peak credit" methodology to allocate power costs and the same peak credit energy and demand classifications derived in PSE's last general rate case, loads served in the Service Territory would rightfully be allocated 1.39 percent of the Company's power supply costs for this time period. Thus, the former customers in Jefferson County were paying an amount roughly equivalent to their allocated share of power costs for the historic period in question.

46. The loss of the Service Territory resulted in an immediate and permanent load reduction of approximately 33 aMW. Looking forward, Exhibit No. \_\_\_(JAP-7) shows that

over twenty years the net present value of the projected power supply-related benefits associated with PSE's reduction of load in Jefferson County is approximately \$83 million. This is a significant benefit to remaining PSE customers.

47. PSE's former customers in Jefferson County have borne the cost and the risk of electric service provided by the Company in the past. Going forward, these risks remain substantially on the departing customers. The remaining customers will not experience an increase in rates as a result of the loss of the Service Territory, and looking forward, the remaining customers are projected to receive the power supply-related benefits associated with an immediate and permanent load reduction of 33 aMW.

#### **I. Transaction Risks**

48. The forced sale of Assets presented three significant transaction risks: the sufficiency of the purchase price, the risk of collection, and the risk of post-closing liabilities.

49. With respect to the sufficiency of the purchase price, the Commission has already addressed this issue. The Declaratory Order states:

We turn next to the question whether the purchase price of \$103 million is sufficient to fully compensate PSE for the sale of the assets. Considering the detailed evidence of valuation presented by PSE and Staff's careful review of the fair value question, as discussed in Mr. Karzmar's and Mr. Keating's testimonies, and summarized above, we determine that \$103 million represents adequate compensation for the sale of these assets.

*Declaratory Order* at 13.

50. PSE has collected all of the Asset purchase price (\$108,362,251.04) from JPUD and all of the accounts receivable (\$1,966,080.00). A final payment of \$200,000 for transition costs is due PSE in April 2014. JPUD is a credit worthy counter-party with loans

backed by the federal government. As such, there is little or no collection risk to either PSE's shareholders or to its remaining customers presented by this transaction.

51. Nor are there any significant risks of post-closing liabilities presented by this transaction. The Assets and all transition goods and services were sold to JPUD on an "as is" and no recourse basis. There are multiple indemnities protecting PSE from JPUD's use of or reliance upon the Assets and the transition goods and services provided to JPUD under the APA and the CTA. There are waivers of consequential damages and limitations of liabilities that run to PSE's benefit. PSE also transferred responsibility to JPUD for existing environmental conditions occurring in the ordinary course of business as well as responsibility for all post closing environmental conditions. The risk to PSE's shareholders and to its remaining customers of harm due to post closing liabilities associated with this sale is slim to none.

**J. Other Factors**

52. In determining an equitable allocation of gain, this Commission has also considered the market, legislative and regulatory risks engendered by the transaction. In this case, the legislative risks are presented by the laws in place that allow public utility districts and municipalities to appropriate PSE's assets and service area and thereafter "compete" by taking advantage of preferential power rates offered to "new publics" by the BPA, and by taking advantage of low interest financing guaranteed by United States government. These risks are onerous and fall squarely on PSE's shareholders. The only significant market risk presented by this transaction is addressed above. A business owner's ability to conduct its business in an established market has been taken away against its will. That business owner loses a revenue source in addition to the loss of its assets.

53. Guided by the principles articulated in *Redding II* and consistent with the equitable principles that reward should follow risk and benefit should follow burden, PSE respectfully requests that the Commission adopt the accounting treatment set forth below.

#### VI. ACCOUNTING TREATMENT

54. Based upon the foregoing, PSE respectfully requests the following accounting treatment:


- Transfer \$44,973,235 from FERC Account 25300061 and credit this amount to FERC Account 421.1, Gain on Disposition of Property, on the income statement; and
- Amortize \$14,991,078 from FERC Account 25300061 to FERC Account 407 over a period of 48 months.

#### VII. PRAYER FOR RELIEF

55. PSE respectfully requests that the Commission issue an accounting order authorizing the Company to apply the foregoing accounting treatment to the gain on the sale of the Assets.

DATED: October 31, 2013.

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