

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint Application
of

PUGET HOLDINGS LLC

and

PUGET SOUND ENERGY, INC.

For an Order Authorizing Proposed
Transaction

WASHINGTON UTILITIES &
TRANSPORTATION
COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.

Respondent.

DOCKET NO. U-072375

DOCKET UE-072300

DOCKET UG-072301

JOINT PUBLIC COUNSEL AND
STAFF MOTION TO
CONSOLIDATE AND TO
CONTINUE PREHEARING
CONFERENCE

I. MOTION

The Public Counsel Section of the Washington State Attorney General's Office (Public Counsel) and the Staff of the Washington Utilities and Transportation Commission (Staff) jointly move to consolidate Puget Sound Energy, Inc.'s (PSE) application for approval of its proposed sale¹ with its current general rate case.²

¹ *In the Matter of the Joint Application of Puget Holdings LLC and Puget Sound Energy, Inc. For an Order Authorizing Proposed Transaction*, Docket No. U-072375 (hereinafter *Sale Case*). The application document is cited as *Sale Application*.

² *WUTC v. Puget Sound Energy, Inc.*, Docket No. UE-072300 and UG-072301 (hereinafter *Rate Case*).

The joint movants also respectfully request that the Commission postpone the prehearing conference in the Rate Case currently scheduled for January 9, 2008, so that it can be held on the same day as the prehearing conference in the Sale Case. The prehearing conference in the Sale Case has been scheduled for January 14.

II. MEMORANDUM

A. The Applicable Legal Standards

1. Consolidation

The Commission has discretion to consolidate proceedings if there are related facts and principles of law.³ The common issues in the Rate Case and the Sale Case satisfy the standard for consolidation. Moreover, consolidation is necessary to ensure that PSE's rates are fair, just, and reasonable⁴ and would promote judicial efficiency.

2. Continuance

The Commission has discretion to grant a continuance of a prehearing conference if the requesting party demonstrates good cause and a continuance will not prejudice any party or the Commission.⁵ The "good cause" standard is met here because a continuance will allow all parties and the Commission to efficiently consider the request for consolidation, a matter of

³ WAC 480-07-320 provides:

The commission, in its discretion, may consolidate two or more proceedings in which the facts or principles of law are related. Parties may request consolidation or may request the severance of consolidated matters by motion to the commission. The commission may act on its own motion to consolidate matters for hearing, or to sever consolidated matters.

See Cost Management Services, Inc. v. Cascade Natural Gas Corporation, Docket Nos. UG-061256 et al., Order 06, Order Consolidating Docket (Docket UG-070332, Order 03), ¶ 28.

⁴ *See WUTC v. Pacific Power and Light*, Docket No. UE-050684, Order 05, ¶5 (Finding consolidation proper where the Commission could not otherwise "determine that the requested . . . rate increase would result in fair, just, reasonable and sufficient rates").

⁵ WAC 480-07-385(2). Joint movants acknowledge the continuance motion is filed less than five business days prior to the Rate Case prehearing. However, the date of the Sale Case prehearing was not known until January 3. Joint movants do not believe any party is prejudiced by the timing.

significant importance, in a coordinated fashion. Delay of the Rate Case pre-hearing conference for three business days will not impede processing of that case. The Commission has already triggered discovery,⁶ and issued a protective order in the case.⁷ Petitions to intervene in the Rate Case have been filed but do not appear controversial. The parties may also engage in case scheduling discussions even with a delay in the Rate Case pre-hearing conference. Neither the Commission nor any party will be prejudiced.

B. The Rate Case and Sale Case Present Related Issues

1. Capital Structure and Cost of Capital

Capital structure and cost of capital are key overlapping issues between the two cases. The Macquarie Group has announced plans to add at least \$1.4 billion of new debt for Puget Energy,⁸ which already has a below investment grade bond rating from Moody's.⁹ The Commission will need to consider the effect of this increased debt on PSE's capital structure in the Rate Case. PSE's own testimony in the Rate Case reflects the interrelation of the cases. For example, Mr. Gaines' testimony provides a report of Standard & Poor's decision to place the ratings of both the holding company (Puget Energy, Inc.) and the utility subsidiary, PSE, "on CreditWatch with negative implications,"¹⁰ based on the announcement of the sale. The Commission will also have to consider the capital structure issue when determining whether the proposed ring-fencing measures are adequate in the sale docket.

⁶ Order 01, ¶15

⁷ Order 02

⁸ *Sale Application*, ¶37.

⁹ *Rate Case*, Prefiled Direct Testimony of Donald E. Gaines, pp. 28-29.

¹⁰ Exhibit No. ____ (DEG-7), p. 1. *See also*, Exhibit No. ____ (DEG-6) ("Moody's release on Puget Energy"), p. 1. The Moody's release places Puget Energy on review for possible downgrade, and changes the PSE rating outlook from positive to stable. Moody's also placed PSE's Prime-2 short-term rating for commercial paper under review for possible downgrade.

The interrelation of these cases is further reflected in the buy-down of short term debt in the Sale Case.¹¹ This buy-down will increase PSE's equity ratio, which is a fundamental issue in the Rate Case.¹² The proposed sale also has implications for the cost of equity in the Rate Case. Macquarie's decision to pay a 25 percent premium above market price for PSE stock casts doubt on the current allowed return on equity.¹³

The Commission has previously found that cost of capital issues arising in a sale or merger application are relevant to a concurrent rate case.¹⁴ In May 2005, Pacific Power & Light Company (PacifiCorp) filed a general rate case. Two months later, in July, PacifiCorp filed an application for approval of a proposed merger with MidAmerican Energy Holding Company (MEHC).¹⁵ The Commission determined that "the issues of ownership of the Company and the pending acquisition were material to determining a fair and just cost of capital for PacifiCorp in the rate case."¹⁶ The Commission requested that all parties supplement the record regarding the impact of the merger on the rate case.

2. Cost Savings

In their filing in the Sale Case, the joint applicants propose a commitment that "any net cost savings that may be achieved by PSE as a result of the Proposed Transaction will be

¹¹ *Sale Application*, ¶23.

¹² *Rate Case*, Prefiled Direct Testimony of Eric M. Markell, p. 5.

¹³ *Sale Application*, ¶23.

¹⁴ *WUTC v. PacifiCorp d/b/ Pacific Power and Light*, Docket No. UE-050684, Order 04, ¶18. The merger application and rate case were filed over two months apart and no motion to consolidate was made. Nevertheless, the Commission took up directly the issue of whether the merger raised cost of capital issues that impacted the rate case.

¹⁵ *In the Matter of the Joint Application of MidAmerican Energy Holding Company and PacifiCorp d/b/a Pacific Power and Light For an Order Authorizing Proposed Transaction*, Docket UE-051090.

¹⁶ *WUTC v. PacifiCorp d/b/ Pacific Power and Light*, Docket No. UE-050684, Order 04, ¶18.

reflected in subsequent rate proceedings, as such savings materialize.”¹⁷ While the joint applicants speak in terms of subsequent rate proceedings, if the sale is approved and savings can be quantified in this proceeding, they can and should be passed through in the current rate case. The identification and capture of cost savings from a merger or acquisition for the benefit of ratepayers is commonly done at the time of the merger proceeding.¹⁸

3. Customer Service

The Commission will also have to consider customer service issues, including service quality concerns, in both cases. In the Sale Case, the joint applicants commit to follow PSE’s current service quality measures.¹⁹ PSE currently has in place a service quality index (SQI) composed of eleven measures, with annual reporting and potential penalties.²⁰ In 2006, for example, PSE failed to meet the SQI non-storm power outages requirement, resulting in a \$1 million penalty.²¹ The adequacy of these measures is likely to be at issue in the Rate Case, which will directly affect any commitments or conditions adopted in the Sale Case. In addition, the PSE response to the 2006 windstorms is likely to be at issue, along with the request to recover over \$100 million in storm-related costs.²² While the deferrals associated with storm damage are largely a rate case issue, the broader issues related to PSE’s response to major storms

¹⁷ Exhibit No. ____ (CJL-2) at 2, ¶12; *see also* Prefiled Direct Testimony of Christopher J. Leslie, Exhibit No. ____ (CJL-1T), pp. 31-32.

¹⁸ *See e.g. In the Matter of the Application of PacifiCorp and Scottish Power*, Docket UE-981627, Attachment A (Main Stipulation), ¶¶ 4 and 5 (Annual \$3 million merger credit for four years to reflect merger savings; network expenditures required for service quality commitments funded from efficiency savings).

¹⁹ *Sale Application*, ¶37.

²⁰ *WUTC v. PSE*, Docket Nos. UE-011570 & UG-011571, Exhibit J to Settlement Stipulation, and as amended by UE-031946.

²¹ PSE 2006 Annual Service Quality Program Report, UE-011570 & UG-011571, submitted February 15, 2007.

²² *See Rate Case*, Prefiled Direct Testimony of Susan McClain, p. 5, and of Greg Zeller, pp. 11-12. *See generally*, Broom, Jack, “Windstorm prompts PSE changes”, *Seattle Times* (December 14, 2007).

are germane to the sale as well (e.g. restoration intervals, customer service, company preparedness). An issue in the Sale Case will be whether, and the extent to which, PSE (and its new owners) will make the necessary investments to improve customer service and the company's performance responding to major storms. There is also some overlap with respect to the Service Quality Index, for example, on the issue of call center responsiveness.

4. Energy Efficiency

PSE's energy efficiency and conservation programs will also be an issue in both cases. In the Sale Case, joint applicants have proposed four commitments related to renewable energy and efficiency.²³ The cost of meeting these goals will be a major issue in the Rate Case.²⁴

5. Low Income Energy Assistance

The Commission will have to consider low income assistance in both cases. PSE proposes increased funding in the Rate Case²⁵ and also proposes such funding as a commitment in the Sale Case.²⁶ Again, the treatment of low income assistance in the Rate Case will directly impact how the issue is treated in the Sale Case.

C. Consolidation Promotes Judicial Economy and Administrative Efficiency

Absent consolidation, the Commission will have to consider the common issues in these cases twice. The issues will have to be addressed in an artificially compartmentalized fashion, adding unnecessary confusion and complexity to the cases. The Commission has previously

²³ *Sale Application*, ¶¶40-43.

²⁴ *Rate Case*, Prefiled Direct Testimony of David E Mills, pp.11-19.

²⁵ *Id.*, Prefiled Direct Testimony of Eric M. Markell, pp. 36-38.

²⁶ *Sale Application*, ¶¶74-75.

ordered consolidation as a means to “address the issues together in one adjudicative proceeding.”²⁷ These cases lend themselves well to that approach.

PSE’s virtually simultaneous filing of the Rate Case and the Sale Case creates inevitable logistical challenges for the Commission, Staff, Public Counsel, and other interveners. The cases will likely involve nearly identical parties. Discovery, hearings, conferences, and deadlines are likely to fall close to one another if they are scheduled separately.²⁸ Testimony in both cases, preparation for and conduct of hearings, settlement conferences, briefing, and other deadlines are likely to overlap in an unmanageable fashion. Indeed, it is difficult to see how both cases can effectively be scheduled to run concurrently without consolidation.

PSE had the option of postponing the filing of the Rate Case until later in the year. PSE sought and was granted leave to delay filing this general rate case from December 1, 2007, until no later than April 15, 2008.²⁹ PSE justified its request expressly by citing the frequency of its recent rate case filings and the fact that “[g]eneral rate cases are expensive and time consuming not only for the Company, but also for Commission Staff, Public Counsel, and intervening parties.”³⁰ The Commission relied in large part on this reasoning in granting the motion.³¹ PSE has now chosen to reverse course, and file its rate case only two days after originally due, just prior to filing its Sale Case. PSE must accept the procedural consequences of that decision.

There are few if any drawbacks to consolidating these cases. Consolidation does not preclude the Commission from issuing separate orders addressing the Rate Case and the Sale

²⁷ See *WUTC v. PacifiCorp d/b/ Pacific Power and Light*, Docket No. UE-050684, Order 05 ¶6.

²⁸ PSE filed the Rate Case on December 3, 2007, and the Sale Case on December 17, 2007.

²⁹ *WUTC v. PSE*, Docket UE-070565, Order 04, ¶¶3, 13.

³⁰ *Id.*, PSE’s Motion For Extension of Time To File General Rate Case, ¶¶ 8-9.

³¹ *Id.*, Order 04, ¶11.

Case if it wishes. Likewise, parties can still resolve matters separately through stipulations addressing rate issues or sale matters, if they are able to do so. Finally, if unforeseen problems arise, the Commission's rules provide that it can sever the consolidated matters.³²

Consolidation would not cause confusion. There are no conflicting issues in the dockets. In both, PSE bears the burden of proof. On the contrary, handling these matters separately may create confusion, including in the public mind; both dockets will determine issues affecting PSE's cost of capital, investments, customer service and other matters going forward which PSE customers simply do not think of as separate issues.³³

III. SUMMARY

The Commission has discretion to consolidate proceedings if there are related facts and principles of law. As discussed above, the Rate Case and Sale Case require the review and resolution of important common issues. For the reasons stated above, Public Counsel and the Commission Staff respectfully move the Commission for an order consolidating PSE's application for approval of its sale proposal with its current general rate case.

Joint movants further respectfully request that the prehearing conference in the Rate Case be postponed so that it can be held concurrently with the Sale Case prehearing conference.

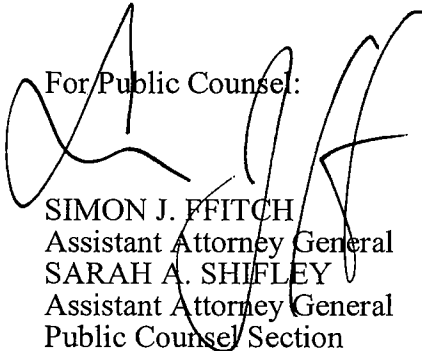
³² WAC 480-07-320.

³³ Public Counsel will be recommending that the Commission hold combined public comment hearings in the PSE service territory to allow customers to address the Rate Case and the Sale Case at the same hearing.

This will allow the parties and the Commission the opportunity to respond to the motion in an efficient and timely fashion without prejudice to the Commission or the parties.

DATED this 4th day of January, 2008.

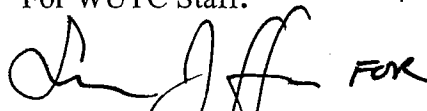
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