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June 1, 2010

David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

RE: *In the Matter of the Amended Petition of Puget Sound Energy, Inc. For an Order
Authorizing the Use of the Proceeds from the Sale of Renewable Energy Credits and
Carbon Financial Instruments*
Docket UE-070725

Dear Mr. Danner:

Enclosed for filing in the above-referenced docket are the original and 10 copies of
Commission Staff's Petition for Reconsideration, and Certificate of Service.

Sincerely,

DONALD T. TROTTER
Assistant Attorney General

DTT:klg
Enclosures
cc: Parties

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Amended Petition of

PUGET SOUND ENERGY, INC.

For an Order Authorizing the Use of the
Proceeds from the Sale of Renewable
Energy Credits and Emission Reduction
Allowances for Renewable Resource
Research, Development, and Demonstration
Projects and the Associated Accounting
Treatment

DOCKET UE-070725

COMMISSION STAFF'S
PETITION FOR
RECONSIDERATION

1 Staff of the Washington Utilities and Transportation Commission (Commission) seeks reconsideration of the Commission's decision to allocate \$4.57 million of Renewable Energy Credit (REC) proceeds exclusively to low income conservation, for use during the period 2010-2011.¹ The portions of the record Staff relies upon are referenced in Staff's brief to the Commission.² Staff also relies on the Declaration of Charles Eberdt, filed May 28, 2010. RCW 80.28.090 is the legal support for this petition.

ARGUMENT

2 In reaching its decision to allocate \$4.57 million in REC proceeds exclusively to low income conservation, the Commission reasoned that, overall, the total REC monies were an "unallocated pool of revenue," and the Commission would "exercise its discretion" to allocate \$4.57 million in REC proceeds to cost-effective low income conservation.³

¹ Final Order (May 20, 2010) at 25-26, ¶¶ 59-61.

² Staff Brief at 22-28, ¶¶ 69-89, and material referenced therein.

³ Final Order at 25-26, ¶ 60.

3 There are two reasons why the Commission should reconsider that decision and
deny, or substantially reduce, that grant of an exclusive, low income share of REC proceeds.

4 **Undue Preference.** Staff acknowledges the Commission's broad discretion to
"regulate in the public interest" under RCW 80.04.040(3). However, that discretion is
constrained by RCW 80.28.090, which requires that the Commission not allow a company
to "make or grant any undue or unreasonable preference or advantage to any person ... or
subject any person ... to any undue or unreasonable prejudice or disadvantage in any respect
whatsoever."

5 While the Commission was concerned that some low income conservation might be
"stranded by a lack of funding,"⁴ that is not enough to avoid the statutory undue preference
prohibition.⁵ It is true that RCW 19.285.050(1) requires PSE to acquire "all available cost-
effective, reliable and feasible conservation,"⁶ but, there are appropriate means to fund that
effort; it is not necessary to provide an exclusive share of REC proceeds to a single group of
PSE customers in preference over other customers and other customer groups.

6 In sum, granting low income customers an exclusive \$4.57 million share of REC
proceeds constitutes an undue preference. The Commission should reconsider its decision to
allocate \$4.57 million of REC proceeds to benefit low income customers, and enter an order
rejecting that allocation.

7 **Failure to Disclose Material Facts.** In their direct testimony filed October 7, 2010,
Puget Sound Energy (PSE) and the low income advocates testified that funds for repairing
low income dwellings prior to weatherization were "inadequate," "diminishing," "subject to
increasing competition from other purposes," and in general, "insufficient to address the

⁴ Final Order at 25-26, ¶ 60.

⁵ See Staff's Brief at 22-28, ¶¶ 59-89.

⁶ See Final Order at 27, ¶ 67.

need.”⁷ In their rebuttal testimony, filed February 18, 2010, PSE and the low income advocates testified that “the availability of repair funding has decreased while at the same time being in greater demand state-wide.”⁸

8 In fact, however, as Mr. Eberdt explains in his declaration,⁹ PSE now has more than \$2 million from an Enron litigation settlement pool that is available to make repairs to low income dwellings. Staff believes PSE and the low income advocates were aware of this sizeable funding source no later than December 7, 2010, well before they filed rebuttal testimony (February 18, 2010), and well before hearing (March 5, 2010).¹⁰

9 PSE and the low income advocates had a duty to disclose to the Commission the material fact of this \$2.1 million funding for repairs to low income dwellings. Mr. Eberdt testifies in his declaration: “We did not know about the possibility of these funds at the time the Amended Petition and Joint Testimony were filed [on October 7, 2009].”¹¹ Staff does not question their lack of knowledge on the status of the Enron money as of October 7, 2009. However, when they became aware of the \$2.1 million funding in December 2009, they had a duty to disclose that information on the record, either by correcting their direct

⁷ Exh. No. Joint 1-T at 15:4 to 17:6.

⁸ Exh. No. Joint 2-T at 8:5-16.

⁹ Declaration of Charles Eberdt in Support of Petition for Reconsideration (May 27, 2010), filed May 28, 2010, at 3, ¶ 7.

¹⁰ Staff’s belief is based on a PSE press release dated December 7, 2009, in which PSE stated: “Low-income weatherization funds for qualifying PSE customers will more than double next year as a result of the utility receiving more than \$2.1 million from the 2005 Enron settlement reached with the Washington State Attorney General’s Office.” ... “We’re thrilled that PSE will be able use the funds from the Enron settlement to help more of our low-income customers weatherize their homes by making more significant repairs than we can generally offer,” said Cal Shirley, PSE vice president of Energy Efficiency Services. The additional program funds will now enable us to make extensive repairs to mechanical ventilation, floors, roofs, and electrical wiring that are often necessary before installing weatherization items like insulation, duct sealing and weather stripping.” http://newsroom.pse.com/article_display.cfm?article_id=388.

Though the Enron money was distributed to PSE and other utilities in this state by the Washington Attorney General’s Office, the undersigned was not aware of this funding until doing an Internet search on June 1, 2010, based on the information in Mr. Eberdt’s declaration, which he filed May 28, 2010. That search brought up the above December 7, 2009, PSE press release.

¹¹ Declaration of Charles Eberdt in Support of Petition for Reconsideration (May 27, 2010), filed May 28, 2010, at 3, ¶ 7, third sentence.

testimony prior to hearing, filing complete and accurate rebuttal testimony, or requesting Commission permission to supplement the record. At a minimum,¹² the Commission should offset the \$4.57 million amount by the full amount of Enron settlement monies PSE has received or will receive during the period 2009-2011.

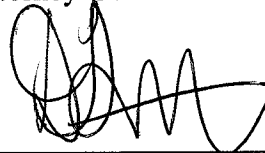
CONCLUSION

10 For the reasons stated above, the Commission should grant Staff's Petition for Reconsideration and reject as an undue preference the exclusive \$4.57 million allocation to low income customers. If the Commission does not find an undue preference, at a minimum, the Commission should offset that \$4.57 million by the full amount of Enron settlement monies PSE has received or will receive during the period 2009-2011.

Dated this 1st day of June 2010.

Respectfully submitted,

ROBERT M. MCKENNA
Attorney General



DONALD T. TROTTER
Assistant Attorney General
Counsel for Washington Utilities and
Transportation Commission Staff

¹² The Commission has discretion to reject the \$4.57 million allocation entirely, based on the apparent non-disclosure of material facts by PSE and the low income advocates.