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June 15, 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 Response to The Energy Project'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  
RESPONSE TO THE ENERGY  
PROJECT'S PETITION FOR  
RECONSIDERATION

1           The Energy Project's Petition for Reconsideration (Petition)<sup>1</sup> requests the  
Commission reconsider its decision to grant an exclusive, \$4.57 million share of proceeds  
from sales of Renewable Energy Credits (RECs) to be spent only on additional conservation  
for low income customers, during the current 2010-11 program period. The Energy Project  
wants the Commission to grant a two year extension of that funding period, through  
December 31, 2013.

2           For the reasons stated below, the Commission should deny The Energy Project's  
Petition.<sup>2</sup>

**I.     FACTS**

3           In Order 03,<sup>3</sup> the Commission created an exclusive \$4.57 million share of REC  
proceeds which PSE must only use to increase funding for low income energy efficiency

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<sup>1</sup> The Energy Project Petition for Reconsideration (May 28, 2010).

<sup>2</sup> Staff has filed a Petition for Reconsideration asking the Commission to eliminate the use of REC proceeds to fund \$4.57 million in additional low income conservation. In other words, the Commission should fully implement Conclusion of Law No. 3, that "PSE's retail customers should share the proceeds of the RECs and CFIs on the same basis as the Commission allocates the costs of these resources in the rate making process." Order 03 at 30, ¶ 84. Nothing in this response should be construed as Staff support for any other result.

over “the 2010-2011 program period.”<sup>4</sup> The Commission’s choice of the 2010-2011 time period was deliberate: “we find it appropriate to exercise our discretion in this matter by using part of the currently available REC funds to enhance or accelerate the Company’s acquisition of additional cost-effective conservation in the 2010-2011 program period that might otherwise be stranded for lack of funding.”<sup>5</sup> The Commission emphasized its decision was based on “two facts,” one of which was that “[c]urrent program funding is inadequate.”<sup>6</sup> The “current program” covers the 2010-2011 period.<sup>7</sup>

## II. ARGUMENT

4           The Energy Project provides two reasons to support its request to extend the funding period two years: (1) the extension will help the low income agencies stabilize their operations; and (2) the extension will help them manage \$2 million<sup>8</sup> which the “low income agencies received unexpectedly” and which must be spent by year-end 2010.<sup>9</sup>

5           These reasons are insufficient as a matter of law, because The Energy Project’s interests in stabilizing its operations and managing the \$2 million windfall are not interests the Commission is empowered to consider. *See Cole v. Utilities & Transp. Comm’n*, 79 Wn.2d 302, 306, 485 P.2d 71 (1971) and *Wash. Indep. Tel. Assoc. v. Telecomm. Ratepayers Assoc. for Cost-Based and Equitable Rates*, 75 Wn. App. 356, 368, 880 P.2d 50 (1994).<sup>10</sup> Notably, The Energy Project cites no legal authority that would support Commission

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<sup>3</sup> Final Order Granting in Part, and Denying, in Part, Amended Petition: Determining Appropriate Accounting and Use of Net Proceeds from the Sales of Renewable Energy Credits and Carbon Financial Instruments (May 20, 2010).

<sup>4</sup> Order 03 at 26, ¶ 61.

<sup>5</sup> Id. at 25, ¶ 60.

<sup>6</sup> Id. at 26, ¶ 60.

<sup>7</sup> The 2010-2011 program period is also referenced in Exhibit No. Joint-4, which the Commission referenced in Order 03 at 26, footnote 78. The Commission approved that program in Dockets UE-091859 & 091860.

<sup>8</sup> In Staffs’ Petition for Reconsideration, we identify the correct amount as \$2.1 million.

<sup>9</sup> Petition at 1, ¶ 3, and at 2, ¶ 4.

<sup>10</sup> These cases are discussed in the Brief on Behalf of Commission Staff (March 17, 2010) at 24-28, ¶ 76-86. We adopt that discussion by this reference.

consideration or resolution of issues regarding The Energy Project's internal management and decision making.

6 In any event, The Energy Project cannot now claim this \$2 million funding is "unexpected." As Staff pointed out in its June 1, 2010, Petition for Reconsideration, PSE and the low income advocates knew this \$2 million was available six months ago, and well before they testified in front of the Commission in this docket.

7 Furthermore, The Energy Project's Petition impeaches their testimony at hearing that existing funding sources are "inadequate," "diminishing," "subject to increasing competition from other purposes," and that the current program's \$300,000 level for funding for energy-related repairs "is quickly exhausted."<sup>11</sup> The Petition refutes that testimony by finally acknowledging that some two million additional dollars are in PSE's hands. In particular, the \$300,000 repair budget they assured the Commission is "quickly exhausted" has, in fact, been rejuvenated seven-fold to address the very problem the low advocates told the Commission could be remedied only by using REC dollars: repairs to low income dwellings.

8 A final and even more fundamental reason why the Commission should deny the requested extension date is because that request undermines the very basis for the Commission's grant of \$4.57 million in REC proceeds: to address low income conservation that would otherwise be "stranded" *due to lack of funding over the 2010-2011 period*. It is unmistakably clear the Commission contemplated and thus ordered PSE to synchronize the additional REC-related funding of low income conservation with the current funding level for low income conservation. Again, the Commission's articulated concern was about low

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<sup>11</sup> Exhibit No. Joint-1T at 15:4-5.

income conservation that “might otherwise be stranded by a lack of funding,”<sup>12</sup> which the Commission tied specifically to the same 2010-2011 period.<sup>13</sup>

9 It is eminently sensible for the Commission to synchronize the two funding sources (i.e., the current 2010-2011 program funding and the \$4.57 million grant of REC proceeds) in this manner, because no one knows what the level of program funding will be in 2012-2013, or whether there will be any “stranded” conservation during that period, and if so, how much. Indeed, it not only would contradict Order 03, but it would be unwise for the Commission to commit REC funds to a later period.

10 In sum, if the Commission decides to confirm its decision to grant \$4.57 million in funding for low income conservation using an exclusive share of REC proceeds,<sup>14</sup> the Commission should stay the course and require the \$4.57 million to be applied over the 2010-2011 period the Commission identified and justified in its order.


### III. CONCLUSION

11 For the reasons stated above, the Commission should deny the Petition.

Dated this 15<sup>th</sup> day of June 2010.

Respectfully submitted,

ROBERT M. MCKENNA  
Attorney General

  
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<sup>12</sup> Order 03 at 25, ¶ 60.

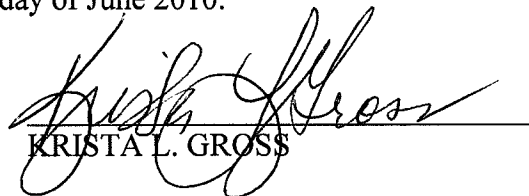
<sup>13</sup> See footnote 7, *supra*.

<sup>14</sup> See footnote 2, *supra*.

Docket UE-070725  
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the attached document upon the persons and entities listed on the Service List below by depositing a copy of said document in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

DATED at Olympia, Washington this 15<sup>th</sup> day of June 2010.



KRISTA L. GROSS

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**C=Confidential**

**NC=Non-Confidential**

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