

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of  
PUGET SOUND ENERGY, INC.  
for (i) Approval of a Special Contract for  
Liquefied Natural Gas Fuel Service with  
Totem Ocean Trailer Express, Inc. and  
(ii) a Declaratory Order Approving the  
Methodology for Allocating Costs Between  
Regulated and Non-regulated Liquefied  
Natural Gas Services

Docket No. UG-151663

COMMISSION STAFF RESPONSE TO  
PUGET SOUND ENERGY'S PETITION  
FOR APPROVAL OF A SPECIAL  
CONTRACT AND DECLARATORY  
ORDER

**I. INTRODUCTION**

1 Commission Staff ("Staff") requests that the Washington Utilities and Transportation  
Commission ("Commission") convert Puget Sound Energy, Inc.'s ("PSE" or "Company")  
petition for approval of a special contract and to enter a declaratory order approving its requested  
cost allocation methodology to a formal adjudicative process.

2 PSE has requested approval of a special contract, a new class of customer, a major capital  
project, allocations between new and old regulated services and non-regulated operations, and  
several "related approvals under the terms and conditions."<sup>1</sup> PSE's petition is a complex and  
detailed filing that implicates a number of ratemaking issues, an interpretation of prior  
Commission orders, and the treatment of stranded investments made possible by the agreement

---

<sup>1</sup> *In the Matter of the Petition of Puget Sound Energy For Approval of a Special Contract for Liquefied Natural Gas Fuel Service with Totem Ocean Trailer Express, Inc., and a Declaratory Order Approving the Methodology for Allocating Costs Between Regulated and Non-regulated Liquefied Natural Gas Services*, Docket UG-151661 at 1 ¶ 1 (August 11, 2015).

predicating this filing. Plainly stated, Staff cannot provide meaningful review and recommendations to the Commission without additional time, information, and formal process.

## II. FACTUAL AND PROCEDURAL HISTORY

3 On August 11, 2015, PSE filed a petition seeking approval of a special contract to provide liquid natural gas fuel service to Totem Ocean Trailer Express, Inc. (Petition). PSE's service to Totem Ocean Trailer Express, Inc. (TOTE) would require it to construct a new liquid natural gas (LNG) compression and storage facility at the Port of Tacoma capable of delivering approximately 39.6 million gallons of LNG to TOTE.<sup>2</sup> To serve this new project, PSE will also be required to increase the capacity of certain distribution service lines.<sup>3</sup> Finally, PSE expects to operate an unregulated natural gas sales business on the LNG site. The capital investment necessary to accomplish these objectives is considerable, and may be the most expensive capital project PSE has ever attempted for its natural gas business in nominal dollars.

4 In the same filing, PSE asked the Commission to issue a declaratory order approving a specific methodology for the allocation of costs between PSE's regulated and unregulated operations at the Port of Tacoma site and any required improvements to PSE's natural gas distribution system.<sup>4</sup>

5 On August 13, 2015, the Commission issued its Notice Of Receipt Of Petition For Declaratory Order And Opportunity To Submit Statements Of Fact And Law And Notice Of Opportunity To File Response To Motion For Amended Protective Order. Staff responds to the Commission's Notice with this filing.

---

<sup>2</sup> *Id.* at ¶18.

<sup>3</sup> *Id.* at ¶¶ 7, 8, and 9.

<sup>4</sup> *Id.* at ¶ 31.

### III. APPLICABLE RULES AND REGULATIONS

6 Under Washington's Administrative Procedure Act ("APA"), an agency may commence an adjudicative proceeding at any time for matters within the agency's jurisdiction and scope of authority. RCW 34.05.413. Clearly, the Commission's authority encompasses PSE's natural gas distribution facilities, the Company's proposed accounting treatments for utility capital investments, and its regulated utility operations. *See, e.g.* RCW 80.01.040. Indeed, the Company's petition discusses the Commission's authority at length, and seeks the Commission's approval for a special contract with TOTE. Based on PSE's proposed treatment of its sales to TOTE, the service to be provided would be the basis for Commission jurisdiction.

7 PSE also seeks a declaratory order on its proposed accounting treatment. As noted above, PSE's contemplated capital project would implicate both its regulated gas operations and a possible unregulated business line. Specifically, PSE seeks to allocate the costs and benefits associated with the project's multiple purposes between TOTE, its system reliability needs, and its unregulated enterprise. PSE's proposes an allocation scheme and supports it with prior Commission orders addressing its merger with Northwest Natural Gas and its acquisition by an Investor Consortium. Given the scope of PSE's proposed project, Staff turns directly to the Commission's authority to convert PSE's petition to an adjudicative proceeding.<sup>5</sup>

8 The Commission's "conversion" authority is set forth in RCW 34.05.240(5)(b). Consistent with the statute, once a proceeding is "converted" to an adjudication any subsequent proceedings must be held within 90 days of PSE's initial filing. However, the statute's limited period for resolution can be extended for good cause.<sup>6</sup> Given the scope and complexity of PSE's

---

<sup>5</sup> Under RCW 34.05.240(5)(d), the Commission also has statutory authority to simply decline to enter a declaratory order in this case. However, this is not Staff's recommended outcome.

<sup>6</sup> *See* RCW 34.05.240(5)(b) and RCW 34.05.240(6).

filing, the Commission should convert this matter to an adjudication, and extend the period for review to accommodate the foreseeable needs attendant to litigation on the issues presented.

9           The Commission's rules support the authority to set PSE's petition for an adjudicative proceeding. Under WAC 480-07-305(3), the Commission has defined the types of pleadings that initiate adjudicative proceedings. Notably, section 3(b) speaks to petitions where the action sought requires adjudication, and 3(c) specifically addresses petitions for declaratory orders where the Commission determines an adjudicative process is necessary. Later in this pleading, Staff will address the need for an adjudicatory process in this instance, and the insufficiency of the 90-day period to effectively litigate the factual and legal questions presented by PSE.

10           In summary, the subject project envisioned by PSE falls squarely within the jurisdictional oversight of the Commission. However, the Commission is not bound to accept PSE's preferred process for disposing of the many issues it has presented for decision. To decide this case, the Commission would be better served by converting this matter for an adjudication. Such a "conversion" will allow Staff and other parties to also address the issues presented after discovery and analysis, creating a comprehensive and multi-faceted record from which a decision can be rendered.

11           Even though Staff has had little time to review PSE's initial pleading, its initial evaluation has revealed many important factual, ratemaking, and policy issues that it believes compel converting this matter to an adjudication. These issues are addressed below.

#### **IV. STAFF'S INITIAL REVIEW**

##### **A. PSE's proposed timeline is insufficient for substantive review**

12           PSE's requested timeline would allow Staff and other parties approximately 47 working days to formulate informed recommendations to the Commission. For Staff, this schedule is

unrealistic given current workloads and the time required for meaningful review. PSE has submitted hundreds of pages of testimony from eight separate witnesses with exhibits and work papers that contain complex, multi-worksheet formulae based on a number of different business scenarios. Staff simply cannot review and analyze such a significant volume of information within the Company's proposed time period.

13 PSE has been in complete control of the timing of this case. Given the complexity of the business arrangements proposed by PSE, it should be no surprise to find Staff and perhaps other parties arguing for additional process permitting a full analysis of the issues in play. No party should be pressured to set aside existing and scheduled work in order to accommodate PSE's preferred schedule.

14 Yogi Berra is known to have said: "it ain't over till it's over." Admittedly, he was discussing the season of baseball, but the sentiment holds true here; Staff will need sufficient time to thoroughly review and analyze PSE's TOTE filing. The Company requests approval of the TOTE proposal on or before November 3, 2015 - less than 90 days after its filing. This abbreviated schedule will not permit necessary discovery and analysis of its proposal - let alone time to conduct a hearing and brief the arguments. The Commission will then require time to analyze the evidence and issue an order. PSE's proposed timeline cannot reasonably accommodate these events.

15 In addition, Staff does not believe that PSE would be harmed by converting this matter to an adjudication. It is Staff's understanding the project is still in the permit development process, with its most recent event being the submittal of its Environmental Impact Statement for review and comment. Given this stage in the permitting process, Staff sees no harm in allowing the adjudication and permitting process to run concurrently.

16

By converting this matter to an adjudication, the Commission can set a schedule that will allow parties the opportunity to diligently pursue their respective interests in this case. Staff is not seeking to unnecessarily delay a decision by the Commission. It simply requests a reasonable opportunity to conduct discovery, analyze the issues, and present its work to the Commission. Staff commits to diligently pursue these objectives, without unreasonable process or delay.

**B. PSE's proposed allocations should be subject to thorough stakeholder review**

17

The gravitas of PSE's proposed allocation scheme is of significant concern to Staff. PSE's proposal will require allocating capital costs, ongoing operations and maintenance costs, and human resource costs between TOTE, system peaking requirements, and a largely undefined unregulated sales operation.

18

As noted above, the proposed LNG project may be PSE's largest capital investment on a single project built for its natural gas business. By the year 2018, PSE's proposed allocation methodology would add hundreds of millions of dollars to regulated rate base.<sup>7</sup> Given the size and novelty of PSE's proposal, Staff questions whether PSE's proposed allocation scheme is reasonable given the circumstances contemplated by the Company. For example, Staff's initial review shows that almost 40 percent of the budget for projected distribution system upgrades reflect contingencies,<sup>8</sup> and many of the capital and operational costs presented by the Company appear to be estimates. Certainly, these contingencies and estimates are not enough to base the Commission's decisions requested by PSE.

19

PSE cites two past cases for support of its proposed allocation scheme. However, Staff's initial review shows that these cases involved PSE's merger with Northwest Natural Gas and the

---

<sup>7</sup> See Docket UG-151661, Garratt, Confidential Exhibit No. \_\_\_ (RG-3C), Page 7 of 7 and Confidential Exhibit No. \_\_\_ (RG-4C), Page 1 of 1, % of Plant Included in Gas Ratebase.

<sup>8</sup> See Docket UG-151661, Garratt, Confidential Exhibit No. \_\_\_ (RG-3C), Page 6 of 7.

acquisition of PSE by the Investor Consortium led by Macquarie. Importantly, the approved allocation methodologies upon which PSE now relies do not address a new service or special contract. Rather, the cited cases involved the allocation of costs between electric and natural gas service, and the allocation of corporate and affiliate costs to PSE.

20 As noted, the present case involves natural gas facilities and the allocation of costs between a special contract, regulated operations, and any non-regulated operations. In short, the Company's proposal is clearly unique and PSE's own assurances on the adequacy of their allocations in testimony are not sufficient to limit the review process and should not substitute for robust stakeholder review.

21 In sum, the allocation methodology proposed by PSE must be based on facts - not contingencies or estimates, and a review of applicable law and policy, perhaps including the cases PSE's propounds to govern here. Staff may come to agree that these previously approved allocation methodologies fit the unique circumstances presented here, but it would be premature to recommend adoption of PSE's allocation scheme without further review.

**C. PSE's request for approval of a special contract requires review of the contract terms and conditions as well as its alternatives**

22 PSE's petition seeks an order approving the special contract by and between TOTE and PSE. The Company's petition appears to indicate that PSE could simply sell LNG to TOTE as a non-regulated service instead of pursuing approval of a special contract.<sup>9</sup> Proper review will require an analysis of the terms and conditions of the proposed agreement and an evaluation of its potential alternatives.

---

<sup>9</sup> *In the Matter of the Petition of Puget Sound Energy For Approval of a Special Contract for Liquefied Natural Gas Fuel Service with Totem Ocean Trailer Express, Inc., and a Declaratory Order Approving the Methodology for Allocating Costs Between Regulated and Non-regulated Liquefied Natural Gas Services*, Docket UG-151661 at ¶¶44-45.

23

Staff's initial review of the TOTE contract generated a number of questions and concerns. For example, Staff's initial examination of the agreement's termination clauses revealed certain commodity triggers based on price combinations. In addition, TOTE's Orcas Class ships will be dual-fueled and not solely reliant on PSE for fuel. Should TOTE terminate the contract because of fuel commodity prices, it does not appear that the termination fees paid by TOTE would fully compensate PSE for TOTE's share of the LNG plant investment. Staff will need additional time to properly assess the termination risk and implications for rate payers in the event TOTE cancels its contract and strands a significant portion of the asset.

24

Staff also needs additional time to understand the specific risks and costs to ratepayers associated with possible alternatives to PSE's current proposal. A comparative analysis of regulatory options is the appropriate way to determine whether the Company's proposal is the most cost-effective and useful option for ratepayers. Staff's concern is particularly true given that the Company's own petition acknowledges at least one alternative scenario that would be unregulated.

**D. PSE's petition states a need for peaking capacity but the Company's load forecasts appear to be outdated**

25

PSE's proposed schedule in this filing would not allow Staff sufficient time to examine whether the proposed LNG facility is necessary to meet peak demand. PSE has already filed a second request for an extension to file its 2015 Integrated Resource Plan (IRP).<sup>10</sup> In part, PSE requested the additional time to complete its analysis of resource adequacy and flexibility vital to its resource acquisition decisions.

---

<sup>10</sup> Dockets UG-141169 and UE-141170.



26

PSE's petition relies on the professed need for additional peaking capacity. Yet, near in time to the filing in this case, the Company acknowledged in a separate docket that it has not completed an updated analysis of its required load forecasts. Without accurate and up to date load forecasts, Staff cannot determine whether a peaking resource such as that contemplated by PSE will be needed. The Company's future IRP filing should inform this issue. Until then, ratepayers should not have to pay for a peaking resource supported only by outdated natural gas load forecasts.

**V. CONCLUSION**

27

PSE's TOTE proposal involves a special contract with significant financial implications, a professed need for a system peaking resource even though the need for it has not been revealed in PSE's 2015 IRP, and the potential for an unregulated business without an identified structure or even the benefit of a rudimentary business plan. As these multiple business lines are merged in one filing, the Commission would be required to allocate the project's costs, benefits and risks. PSE presents its preferred allocation scheme, but it is not yet clear that it would protect the ratepayers and avoid the cross-subsidization of PSE's contemplated unregulated business.

28

Staff cannot at this time provide the Commission meaningful recommendations on the factual, legal and policy issues presented by PSE's filing. Staff requests that the Commission convert PSE's filing to an adjudication. By taking this action, the Commission would provide Staff and other parties the time needed to conduct discovery and analysis, address the issues

//

//

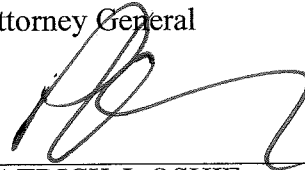
//

presented, and assist the Commission in developing a comprehensive record from which a decision can be rendered.

DATED this 27<sup>th</sup> day of August 2015.

Respectfully submitted,

ROBERT W. FERGUSON  
Attorney General



---

PATRICK J. OSHIE  
Assistant Attorney General  
Counsel for Washington Utilities and  
Transportation Commission Staff