

**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)
_____)

Docket No. U-072375

INITIAL BRIEF OF NW ENERGY COALITION

September 24, 2008

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1. On December 17, 2007, the Joint Applicants filed with the Washington Utilities and Transportation Commission (the “Commission”) a Joint Application for an order authorizing the proposed transfer of ownership and control of Puget Energy, Inc. and its wholly owned subsidiary, Puget Sound Energy (“PSE”), to Puget Holdings LLC (the “Proposed Transaction”). On January 14, 2008, the Commission granted the NW Energy Coalition’s (“Coalition”) petition to intervene in this proceeding. The Coalition filed response testimony on June 18, 2008, and participated in numerous settlement discussions in mid-July, 2008.
2. The Coalition submits this Initial Brief pursuant to Judge Moss’s Notice dated August 28, 2008. The Notice established September 24, 2008 as the date by which briefs would be due concerning the Settlement Stipulation (“Stipulation”) that the Joint Applicants, Commission Staff, and several other parties -- including the Coalition -- filed on July 23, 2008.
3. For the reasons stated in this Initial Brief, the Coalition supports the Stipulation and asks the Commission to accept it as filed.

I. The Rules That Apply to the Stipulation

4. The Stipulation is a multi-party settlement under the Commission’s rules.¹ The Commission retains the discretion to accept a proposed settlement, impose conditions, or reject the settlement.²
5. A settlement will be approved when the settlement terms are “consistent with the public interest in light of all the information available to the commission.”³ The Commission

¹ WAC 480-07-730(3). With the exception of Public Counsel, all of the parties to this proceeding either support or do not oppose the Stipulation.

² WAC 480-07-750(2).

³ WAC 480-07-750(1).

applies a “no-harm” standard when it determines whether a proposed merger or acquisition is in the public interest.⁴

II. The Background to the Stipulation

6. The Commission scheduled several days in July for settlement discussions among the parties. Representatives of the Coalition participated in the discussions and attended the hearings that followed. The discussions and hearings concerned, in part, issues relating to energy efficiency, renewable energy resources, greenhouse gas emissions, and low-income energy services. Those issues are critically important to PSE’s customers and to the entire Pacific Northwest region. We focused on ensuring those issues received appropriate consideration during the settlement discussions and in any settlement agreement among the parties. There is no question that a change in ownership could significantly change the direction and commitment of a company toward investments in clean energy and low income energy services. With that perspective, we wanted to take the measure of the Investor Consortium (“Consortium”) -- to determine if Macquarie and its co-investors were committed to clean and affordable energy services and to the good work that PSE has accomplished in this area.

7. Based on our participation in the settlement discussions and hearings, we believe that the Stipulation represents a satisfactory resolution of the issues that concern the Coalition. We further believe that the Consortium appears committed in this proceeding to clean and affordable energy services. Of course, deeds matter more than words, and we will closely monitor the Consortium’s actions if the Commission accepts the Stipulation. But at this

⁴ *In the Matter of the Application of PacifiCorp and Scottish Power plc*, Docket No. UE-981672, Third Supplemental Order (April 2, 1999).

juncture and for purposes of this proceeding, we are satisfied with what we have heard and what the Stipulation provides with respect to such services.

III. The Stipulation Promotes Clean and Affordable Energy Services

8. The Stipulation contains several commitments that supplement the commitments the Joint Applicants made in their Application. In particular, Commitment Nos. 42 and 47 through 55 address the issues of energy efficiency, renewable energy resources, greenhouse gas emissions, and low-income energy services. We address each of these commitments below. (It is important to note that implementation of several of these commitments requires the Joint Applicants to appear before the Commission in the future to request approval of proposed programs and/or funding for those programs.⁵)

A. Energy Efficiency

9. The Coalition's Policy Director, Ms. Hirsh, discussed at length the benefits of energy efficiency in her prefiled testimony.⁶ She stated that energy efficiency is the "cleanest, cheapest and most abundant source of energy available."⁷ In particular, conservation measures help the region to avoid the construction of costly new power plants and transmission systems. These measures also represent a key step in reducing the greenhouse gas emissions that contribute to climate change. There is no question but that conservation is the best way to meet current and future load in the Pacific Northwest in a cost-effective, environmentally-friendly manner.

⁵ See, e.g., the explicit references in Commitment Nos. 50, 51, 54, and 55 to presenting information or proposals to the Commission. See also Tr. 512:18 – 513:2.

⁶ See generally Hirsh, Exh. No. 211T 8:6 – 9:8.

⁷ Hirsh, Exh. No. 211T 8:8.

10. Further, Washington has a long history of promoting energy efficiency and conservation. An exhibit that Ms. Hirsh sponsored⁸ highlights many of the state laws and policies that encourage the pursuit of energy efficiency. One recent law is the Energy Independence Act (or “Clean Energy Act”), which declares as state policy that “*increasing energy conservation ... will promote energy independence in [Washington] state and the Pacific Northwest region.*”⁹ To implement this policy, the Clean Energy Act requires qualifying utilities in Washington to pursue “*all available conservation that is cost-effective, reliable, and feasible.*”¹⁰

11. Consistent with the directive in the Clean Energy Act, and building upon a commitment that the Joint Applicants first made in their Application,¹¹ the Stipulation requires the Joint Applicants to take positive, concrete steps to expand PSE’s activities with respect to energy efficiency. These steps take the form of two new commitments:

- Commitment No. 47 requires PSE to perform a study -- in collaboration with the Coalition and other stakeholders – that will identify potential energy efficiency improvements with respect to the utility’s distribution, transmission, and generation assets. The improvements that the study identifies will be considered for potential inclusion as part of PSE’s energy efficiency portfolio. These efforts may result in additional opportunities to increase efficiency throughout PSE’s generation and delivery system.

⁸ Exh. No. 214.

⁹ RCW 19.285.020 (Emphasis added).

¹⁰ RCW 19.285.040(1) (Emphasis added).

¹¹ Commitment No. 7 states that “Puget Holdings commits to and supports PSE’s energy efficiency goals and objectives set forth in PSE’s May 2007 Integrated Resource Plan and its ongoing collaborative efforts to expand and enhance them.”

- Commitment No. 48 states that PSE will support increased funding for the Northwest Energy Efficiency Alliance (“NEEA”) in its upcoming budget cycle.¹² The commitment further provides that PSE will pay its pro rata share of the NEEA budget if certain conditions are met. PSE currently provides \$2.1 million annually to fund its share of NEEA’s budget – less than four percent of PSE’s total electric conservation budget.¹³ PSE’s share of the funding may ultimately increase, decrease or remain the same, depending on NEEA’s final budget and the number of participating utilities.¹⁴

With these commitments in place, the Stipulation will enhance the role and profile of energy efficiency as a necessary and important component of PSE’s system and energy supply portfolio. We ask the Commission to accept the Stipulation with these commitments intact.

B. Renewable Energy Resources

12. Ms. Hirsh testified that “renewable energy resources represent the lowest cost and lowest risk supply-side generation option in a carbon-constrained world.”¹⁵ These resources will thus play an increasingly important role in the Pacific Northwest’s energy future.
13. Similar to energy efficiency, state laws and policies in Washington emphasize the importance of developing and using renewable energy resources – to promote energy self-sufficiency, diversity, environmental protection, quality of life, and jobs. The exhibit that Ms. Hirsh sponsored highlights some of the relevant laws and policies that encourage the development and use of renewable energy resources.¹⁶ The Clean Energy Act exemplifies the state’s progressive approach to renewable energy development by declaring that

¹² NEEA encourages the marketplace to adopt cost-effective energy-saving technologies and services. Its efforts target the residential, commercial, and industrial sectors in the Pacific Northwest region. *See generally* www.nwalliance.org.

¹³ Joint Applicants’ Response to Bench Data Request No. 021 (b), Exh. No. 421.

¹⁴ Hirsh, Tr. 522:10 – 523:6.

¹⁵ Hirsh, Exh. No. 211T 19:10 – 11.

¹⁶ Exh. No. 214.

*“appropriately sited renewable energy facilities...will promote energy independence in the state and the Pacific Northwest region.”*¹⁷ The Clean Energy Act also adopts a Renewable Portfolio Standard or “RPS,” which requires utilities such as PSE to, in the future, meet certain specified percentages of their load with eligible renewable energy resources.¹⁸

14. Again similar to the provisions concerning energy efficiency, the Stipulation contains several new commitments from the Joint Applicants in the area of renewable energy resources:

- Commitment No. 49 provides that, if certain conditions are met, PSE will acquire renewable energy resources that will enable the company to meet its internal objective of serving 10% of load with such resources by 2013. This is an important commitment and a key part of the Stipulation. PSE’s internal objective for renewable energy resources exceeds the more modest requirement, under the RPS, that the company meet 3% of its energy needs by 2012 with eligible renewable energy resources.¹⁹ The Stipulation commits the Consortium to this objective rather than to the lesser statutory minimum under the RPS.
- Commitment No. 50 states that PSE supports the objective of increasing penetration of its Green Power Program (“Green Program”) to at least 2% of annual load or at least 5% of electric customers subscribed (within five years from closing of the proposed acquisition). This commitment is another important part of the Stipulation. The Green Program now permits PSE’s customers to purchase power that is generated

¹⁷ RCW 19.285.040(1) (Emphasis added).

¹⁸ *Id.*

¹⁹ Hirsh, Exh. No. 211T 22:10 – 13; Exh. No. 220.

from renewable energy resources.²⁰ All costs and benefits of this program accrue to those customers who voluntarily sign up to participate.²¹ Under Commitment No. 50, PSE will be incented to increase Green Program penetration through enhanced marketing and customer education and thereby expand customer purchases of renewable energy.

- Commitment No. 51 provides that PSE will (1) continue to offer customers an investment cost recovery incentive that is permitted by Washington law,²² and (2) dedicate resources to market and promote net metering. These provisions are important due to the features of PSE's Customer Renewables Program ("Renewables Program"), which serves customers who choose to generate renewable energy on a small scale. The Renewables Program focuses on net metering opportunities and providing customers with incentive payments for generating their own electricity with solar photovoltaics, wind, or anaerobic digesters. As such, the provisions of Commitment No. 51 help ensure that the Renewables Program will remain available to PSE's customers and an active and hopefully growing part of PSE's renewable energy program services.
- Finally, Commitment No. 52 provides that PSE will continue to actively participate in various forums regarding transmission issues, pricing policies, siting requirements, and interconnection and integration policies. These efforts are necessary so that the company can promote solutions in regional and national forums that will be critical to the development and use of renewable energy resources.

²⁰ Hirsh, Exh. No. 211T 18:17 – 20. The Green Program has been quite successful to date, with over 17,000 subscribers purchasing over 130,000 MWh of green power energy in 2006. Hirsh, Exh. No. 211T 21:18 – 19.

²¹ RCW 19.29A.090(5)

²² RCW 82.16.120.

15. These commitments all add significant value to the Stipulation and to the Proposed Transaction. We ask the Commission to accept the Stipulation with these commitments intact.

C. Greenhouse Gas Emissions

16. PSE states that it “recognizes and concurs with the growing concern that increased atmospheric concentration of greenhouse gases contributes to climate change.”²³ The company further states that “climate change is a very important issue that requires careful analysis and reasoned responses from policy makers.”²⁴ The Coalition agrees with PSE’s assessment. Climate change has become the issue of our time, and efforts to respond to climate change require as much vision and leadership as possible – from elected officials, from regulators, and from energy utilities such as PSE.
17. Washington State acknowledges the tremendous impact of climate change on the state’s economy and environment. The state has adopted a number of laws and policies to reduce greenhouse gas (“GHG”) emissions. For example, Governor Gregoire issued an Executive Order in February 2007 with specific emission reduction goals and timelines.²⁵ That same month, Washington joined four other states and one Canadian province in establishing the Western Climate Initiative (“WCI”), which has adopted a goal of reducing GHG emissions by 15% below 2005 levels by 2020 and continuing emissions reductions thereafter. More recently (in May 2007), the Washington Legislature established a GHG performance standard for fossil fuel power plants.²⁶

²³ Exh. No. 221.

²⁴ *Id.*

²⁵ *Washington Climate Change Challenge*, Executive Order No. 07-02 (February 7, 2007).

²⁶ Chapter 80.80 RCW.

18. The Stipulation recognizes the critical need to reduce GHG emissions in this region, by including the following commitments from the Joint Applicants:

- Commitment No. 53 provides that PSE will produce an annual GHG emissions report that includes an inventory of total emissions from various sources and business operations (including generation).²⁷ The report will be made available to the Coalition and other stakeholders. With this information at hand, we will be better positioned to know where GHG emissions are most prevalent in PSE's system and where the utility should focus its reduction efforts.
- Commitment No. 54 states that, within two years after the acquisition's closing, PSE will file a carbon-offset program that permits natural gas customers to offset the GHG emissions associated with their natural gas use.²⁸ Such a program will enlist individual gas customers in regional efforts to combat global warming and expand awareness of the importance of natural gas conservation efforts.
- Finally, Commitment No. 55 states that PSE will consider and report on the Oregon Public Utility Commission's ("OPUC") final recommendations in Docket No. UM 1302.²⁹ These recommendations were adopted in June 2008, and set forth utility guidelines for constructing the most likely regulatory compliance future for GHG emissions; testing various portfolios against different compliance scenarios; and assessing the cost, risks and benefits of different strategies and technologies involved in responding to GHG compliance requirements. We believe that it is important for

²⁷ These sources are listed in Table 2-1 of PSE's 2006 Greenhouse Gas Inventory Report (the Report that appears in PSE's most recent Integrated Resource Plan).

²⁸ Another natural gas utility -- Northwest Natural Gas Company -- has sought Commission approval for a carbon-offset program in Washington State (Docket Nos. UG-080519 and UG-080530). These proceedings are pending.

²⁹ *In the Matter of the Public Utility Commission of Oregon Investigation Into the Treatment of CO2 Risk in the Integrated Resource Planning Process*, Docket No. UM 1302, Order No. 08-339 (June 30, 2008).

PSE to consider this approach and methodology and to determine whether they add value to the IRP process that the utility conducts.

19. The actions that are contemplated by Commitment Nos. 53 through 55 should help PSE and its customers reduce their GHG emissions by some degree. Of course, we would ultimately like PSE to do much more – to become carbon-neutral at some point with respect to its operations. For now, though, the commitments represent a necessary first step towards achieving the ultimate objective of carbon neutrality and should be approved without change.

D. Low-Income Energy Services

20. Estimates indicate that 10 percent of PSE’s residential customers have income at or below 125% of poverty.³⁰ Almost three-fourths of PSE’s low-income households have an energy burden in excess of five percent, and almost half have an energy burden in excess of 10 percent.³¹
21. PSE’s low-income bill assistance program currently serves only 10-11 percent of the eligible low-income population.³² While PSE has substantially increased its energy efficiency budget in recent years, the funding for the low-income program has essentially remained level.³³ Yet increases in electric and gas rates as well as certain programmatic changes have reduced the number of homes that can be weatherized with this flat level of funding.³⁴ The utility’s total budget for low-income weatherization for 2008 is approximately \$2.1 million, including \$300,000 in shareholder funds, out of a total estimated conservation budget of \$68.3 million and a total residential budget of \$33.5 million.³⁵

³⁰ Alexander, Exh. No. 241T 37:16 – 17.

³¹ *Id.*, 36:21 – 37:4.

³² *Id.*, 37:17-19.

³³ *Id.*, 40:11-17.

³⁴ *Id.*, 40:18 – 41:21.

³⁵ Joint Applicants’ Response to Bench Data Request No. 021 (a), Exh. No. 421.

22. Low-income energy customers face significant difficulties in paying for and retaining essential utility services. These difficulties are exacerbated by the current economic climate. Customers are suffering from the effects of the credit and mortgage crisis; mounting job losses; and dramatic increases in gasoline, food, housing, medical, and other household costs. We can expect this suffering to continue as the effects of the recession reverberate through the regional economy.³⁶
23. Washington State has adopted several policies that recognize the vulnerability of low-income energy customers. As Ms. Hirsh testified, “the objective of these policies is to provide energy services at the lowest total cost, and ensure access to affordable energy services for all customers.”³⁷ The policies encourage and support the delivery of low-income energy services, including weatherization of low-income households and the provision of energy bill payment assistance by government, corporate, and non-profit programs.³⁸
24. The Stipulation recognizes the critical need to increase bill assistance and energy efficiency services provided to PSE’s low-income households:
- Commitment No. 22 provides that the budgeted funds for low-income energy efficiency services will increase at a level commensurate with increases in funding for PSE’s other residential energy efficiency programs. This will occur gradually due to infrastructure limitations that affect the ability of the community action agencies to hire staff and perform the necessary work.³⁹

³⁶ Hirsh, Exh. No. 211T 29:5 – 12; Alexander, Exh. No. 241T 38:1 – 8.

³⁷ Hirsh, Exh. No. 211T 28:20 – 21.

³⁸ *See generally* Exh. No. 214 for a listing of the relevant state laws and policies that support the delivery of low-income energy services.

³⁹ Eberdt, Tr. 511:9 – 17.

- Commitment No. 42 builds upon the assistance that PSE currently provides to low-income customers.⁴⁰ The commitment increases the total aggregate funding cap for PSE’s low income customer bill assistance program to approximately \$15 million per year from approximately \$10.25 million per year. The Coalition regards this 50% increase in program funding as a key feature and benefit of the Stipulation.

IV. The Stipulation Ensures That Puget Sound Energy Will Continue to Have a Strong Local Presence

25. The Stipulation helps resolve an uncertainty presented by the original Joint Application with regard to PSE continuing to have a strong local presence after the Proposed Transaction closes. PSE in its existing form is a known quantity to the Coalition, which has worked with the utility’s staff for many years.⁴¹ Yet the Consortium representatives lack direct experience in the Pacific Northwest and with regional energy issues.
26. The Consortium recognized this concern, and took steps to address it. PSE’s Board of Directors discussed the effect of any transaction on the local community, with an eye towards ensuring continued local presence.⁴² Through its experiences, the Consortium has learned that utilities can only be successful if they connect to their customers’ needs and if they are led by executives who are leaders in the communities that the utilities serve.⁴³ In his opening statement at the settlement hearings, Mr. Leslie with the Consortium emphasized “this business will be run locally by local personnel.”⁴⁴

⁴⁰ Ms. Hirsh describes in detail each of the services that PSE currently provides to its low-income energy customers. See Hirsh, Exh. No. 211T 29:13 – 30:14.

⁴¹ Hirsh, Exh. No. 211T 6:2 – 5.

⁴² Campbell, Tr. 1014:11 – 1015:15.

⁴³ Leslie, Tr. 466:22 – 467:1.

⁴⁴ Leslie, Tr. 467:3 – 4.

27. The Stipulation responds to the concerns expressed by the local community and intervenors in this case with regard to PSE's continued local presence:⁴⁵

- Commitment No. 17 guarantees that the corporate headquarters for PSE and Puget Energy will remain within PSE's service territory.
- Commitment No. 41 ensures that PSE's Board of Directors will include at least three residents of the region and Puget Energy's Board will include at least two directors who are residents of the region. PSE's Chief Executive Officer (CEO) will serve on both boards, and will be one of the in-region representatives. Current plans indicate that Mr. Steve Reynolds will continue as CEO⁴⁶; Mr. Bill Ayer, the Chairman and CEO of Alaska Airlines who resides in Washington, will chair both boards⁴⁷; and Mr. Herb Simon, who resides in western Washington, will remain on the Board of Directors of PSE.⁴⁸

V. Conclusion

28. For the above reasons, the Coalition respectfully requests that the Commission accept the Stipulation as filed.

DATED: September 24, 2008.

NW ENERGY COALITION



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⁴⁵ Leslie, Tr. 711:11 – 712:25.

⁴⁶ Reynolds, Tr. 577:21 – 578:4.

⁴⁷ Leslie, Tr. 467:9 – 10; Tr. 580:18 – 20.

⁴⁸ Leslie, Tr. 563:20; Tr. 583:2 – 11.