

1
2

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

PUGET SOUND ENERGY, INC.

Petition for Approval of a Power Purchase Agreement for Acquisition of Coal Transition Power, as Defined in RCW 80.80.010, and the Recovery of Related Acquisition Costs

Docket No. UE-121373

NW ENERGY COALITION'S RESPONSE TO PUGET SOUND ENERGY'S PETITION FOR RECONSIDERATION AND MOTION TO REOPEN THE RECORD

3

I. INTRODUCTION

4 The NW Energy Coalition files this response in accordance with Order 06 in this
5 proceeding, which continued the deadline for parties to file answers to Puget Sound
6 Energy's ("PSE") petition for reconsideration and motion to reopen the record
7 ("petition"), filed on January 22, 2013. PSE's petition proposed amendments to the Coal
8 Transition Purchase Power Agreement ("Coal Transition PPA" or "PPA") and
9 submission of certain information concerning generation sources and local community
10 payments. The Coalition supports the proposed modifications to the PPA ensuring the
11 Commission's role in future decisions concerning continuance or termination of the
12 contract, and the additional reporting commitments reflected in the side agreement
13 between PSE and TransAlta.¹ Combined, these modifications help address key concerns
14 raised in our testimony and oral argument. These modifications are encapsulated within

¹ The Coalition did not take a position in testimony or closing argument with regard to the equity adder or cost deferral, and similarly does not take a position on those issues within the context of PSE's petition.

1 the multi-party settlement agreement (“settlement”), signed by the Coalition, PSE, and
2 WUTC Staff, and joined by The Energy Project and the Northwest Industrial Gas Users,
3 proposing to resolve all issues in this docket as well as docket numbers UE-121697 and
4 UG-121705 (“decoupling,” consolidated) and UE-130137 and UG-130138 (“expedited
5 rate filing,” consolidated).²

6 **II. THE PROPOSED AMENDMENTS TO THE PPA ADDRESS**
7 **CONCERNS RAISED IN ORDER 03 REGARDING REPORTING AND**
8 **THE ROLE OF THE COMMISSION IN FUTURE DECISIONS TO**
9 **CONTINUE OR TERMINATE THE PPA**

10 In Order 03 in this docket, the Commission recognized that it “may determine at
11 some point in the future that its expectations under the legal and policy environment
12 in which the concept of coal transition power resides are not being met. The
13 Commission may then evaluate whether to revisit some aspects of the Coal Transition
14 PPA.” (Order 03 at ¶ 7) Order 03 conditions approval of the PPA on an annual reporting
15 requirement, the content of which would enable the Commission to determine whether
16 the PPA had “lost its character as an agreement for the sale and delivery of coal transition
17 power due to changed circumstances in plant operations.” (Order 03 at p. 1) The
18 Commission may decide, based in part on data from those annual reports, to reexamine
19 the PPA under two circumstances: (1) TransAlta does not continue to operate the
20 Centralia coal plant and satisfy most of its delivery obligations from that plant, or (2)
21 TransAlta ceases to provide funding for local economic development and clean energy as

² The settlement agreement was filed on 3/22/2013; The Energy Project filed a joinder to the settlement agreement on 5/7/2013, and the Northwest Industrial Gas Users filed a joinder on 5/8/2013.

1 envisioned in the law and detailed in the MOA. (Order 03 at ¶ 6)

2 In its petition, PSE argues that elements of Commission Order 03 create an
3 unacceptable level of uncertainty that would lead PSE to reject the PPA.³ We sympathize
4 with the Company’s perspective and stated reluctance to enter a contract the continued
5 validity of which could at some future date be questioned. At the same time, we
6 understand the challenges faced by the Commission in reconciling its policies and
7 practices, the laws related to coal transition power, and the Memorandum of Agreement
8 (“MOA”) signed by the Governor’s office and TransAlta.

9 Ultimately, what is at risk here is more than simply a power purchase agreement
10 to serve load. TransAlta may terminate the MOA if it is unable to secure sufficient long-
11 term contracts for electricity (Exh. No. ___ (RG-8HC) at 441-442, 8(c)), leaving funding
12 for local community economic development and clean energy in jeopardy. The first
13 deadline (December 15, 2012) for securing those contracts already passed. TransAlta
14 committed to extend that deadline for one year, but has not made any such commitments
15 beyond that one-year period. (Exh. No. ___ (RG-14) at 2) A decision by PSE to forego
16 this PPA leaves TransAlta potentially much closer to a decision to terminate the MOA.
17 Order 03 provides a reopener clause in part because of a concern that TransAlta will not
18 continue to provide the financial assistance detailed in RCW 80.80.100 and
19 contractually memorialized in the MOA. (Order 03 at ¶ 6)

20 In its testimony and oral argument, the Coalition expressed concern about the
21 terms of the originally proposed PPA as they relate to the MOA. Specifically, the PPA as

³ See for example Petition at 2:24-29, 3:19-24, 4:14-26.

1 originally filed provided PSE with an option to terminate the PPA if the MOA was
2 terminated. (Exh. No. ____ (RG-3C) at §17.3) The role of the Commission in such an
3 event was unclear. (Exh. No. ____ (DOD-4C); *see also* Garratt, TR. 76:25 – 77:10;
4 Kuzma, TR. 330:5 – 331:3) The Coalition recommended approval of the PPA be
5 contingent on TransAlta committing to invest at least a designated minimum amount in
6 local economic development and clean energy. (Exh. No. ____ (DOD-1HCT) at 15:10-18)
7 That funding is an integral part of the law allowing for long-term contracts for coal
8 transition power. (Hirsh, TR. 311:21 – 313:20) Further, we recommended that either the
9 PPA be terminated if the MOA was terminated, or at a minimum, the PPA be brought
10 back to the Commission for reconsideration under those circumstances. (Hirsh, TR.
11 314:13-17) In conjunction with these recommendations, the Coalition recommended that
12 PSE be required to file annual reports detailing: (1) the status of TransAlta’s funding for
13 local economic development and clean energy (Hirsh, TR. 314:25 – 315:7), and (2) actual
14 sources of electricity supply delivered to PSE through this PPA (Hirsh, TR. 318:1-10).
15 PSE opposed any amendments to the PPA, arguing that the agreement was the result of
16 negotiations and any modifications could set the process back to the beginning. (Garratt,
17 TR. 77:11 – 78:5)

18 In Order 03 (at ¶ 69), the Commission expressed interest in the amount of
19 resupply power that may be utilized under the PPA. If the contract appeared to “lose its
20 identity as a coal transition agreement,” the Commission would initiate proceedings to
21 make such a determination and set potential consequences. The Commission further
22 ordered that any termination of the MOA would cause the Commission to initiate
23 proceedings to determine whether the PPA retained its identity as a coal transition power

1 agreement. (Order 03 at ¶ 78, ¶ 93) To facilitate the Commission’s continued
2 examination of the nature of the PPA, Order 03 (at ¶ 120) imposed an annual reporting
3 requirement as a condition of approval. The Commission directed PSE to work with Staff
4 to develop an annual report including details regarding facility operations, use of
5 resupply power and payments made under the MOA.

6 From our perspective, Order 03 reflects the Commission’s interest in finding a
7 middle ground – an ability to ensure that the PPA retains the elements that qualify it to be
8 considered “coal transition power” while not requiring the parties to the PPA to
9 renegotiate its contents and potentially undo the entire agreement. Order 03 luckily had
10 the unintended yet helpful effect of prompting PSE and TransAlta to renegotiate certain
11 provisions within the PPA to address the Commission’s concerns.

12 In its Petition, PSE proposes amending the PPA to accomplish two goals. First,
13 PSE can now terminate the PPA if generation ceases at the Centralia coal plant or
14 substantial layoffs occur, and PSE must seek Commission concurrence in its decision.
15 Second, if the MOA is terminated because TransAlta fails to make payments under the
16 MOA or does not secure sufficient long-term power purchase agreements, PSE must seek
17 Commission concurrence whether it decides to continue or terminate the PPA. (Garratt
18 Affidavit at ¶ 5; Petition at 9:34 – 10:4) Further, PSE accepts the obligation to provide
19 the Commission with annual reports (Petition at 2:24, 19:20-25). To this end, PSE and
20 TransAlta entered into a side agreement: TransAlta will provide PSE with data
21 concerning total monthly generation at the Centralia coal plant, energy delivered to PSE
22 from the Centralia coal plant on a monthly basis, energy delivered to PSE on a monthly
23 basis from other sources with those sources specified, annual payments made under the

1 MOA and the average annual number of FTEs at the Centralia coal plant. (Garratt
2 Affidavit at ¶¶ 7,8)

3 These amendments to the PPA address the concerns raised by the Coalition and
4 Order 03 while providing PSE with more certainty regarding the future of the contract.
5 The proposed multiparty settlement supports reopening the record and allowing into
6 evidence the Affidavit of PSE witness Roger Garratt and the amendments to the PPA.
7 (Settlement at ¶¶ 16-17) The Coalition believes the settlement is in the public interest
8 in part because it includes these modifications to the PPA. (Exh. No. ___ (NH-1T) at
9 3:4-12)

10 IV. CONCLUSION

11 The Coalition supports PSE's petition to the extent that it ensures the Commission
12 will receive data regarding operation of the Centralia coal plant and energy delivery to
13 PSE, and because it provides a clear role for the Commission if the MOA is terminated,
14 generation ceases at the Centralia plant, or substantial layoffs occur at the plant. We agree
15 with PSE that the proposed amendments to the PPA combined with the side agreement
16 with TransAlta provide a more direct way of addressing the Commission's concerns than
17 the reopener included in Order 03. These commitments are preserved in the proposed
18 settlement.

19 Respectfully submitted this 30th day of May, 2013

20 

21 Danielle Dixon, Senior Policy Associate

22 NW Energy Coalition