

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

PUGET SOUND ENERGY

For an Accounting Order Authorizing  
Accounting Treatment Related to Payments  
for Major Maintenance Activities

DOCKET UE-130583  
(Consolidated)

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WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY

Respondent.

DOCKET UE-130617  
(Consolidated)

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In the Matter of the Petition of

PUGET SOUND ENERGY

For an Accounting Order Authorizing  
Accounting the Sale of the Water Rights and  
Associated Assets of the Electron  
Hydroelectric Project in Accordance with  
WAC 480-143 and RCW 80.12..

DOCKET UE-131099  
(Consolidated)

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In the Matter of the Application of

PUGET SOUND ENERGY, INC.,

For an Order Authorizing the Sale of  
Interests in the Development Assets  
Required for the Construction and Operation  
of Phase II of the Lower Snake River Wind  
Facility.

DOCKET UE-131230  
(Consolidated)

STAFF RESPONSE TO  
COMMISSION NOTICE

**NOTE: THIS DOCUMENT CONTAINS INFORMATION DESIGNATED  
CONFIDENTIAL IN THIS DOCKET PER PROTECTIVE ORDER**

**REDACTED VERSION**

## SUMMARY

1           On July 2, 2014, the Commission issued a Notice of Opportunity to Respond to Amended Application (Notice), relating to the sale of the Electron plant by Puget Sound Energy, Inc. (PSE or Company) to Electron Hydro LLC (Electron Hydro). The materials included in the Amended Application reflect material changes to the transaction the Commission conditionally approved in Order 02 in this docket. The Notice set a deadline of July 11, 2014, for response to the Amended Application.

2           On July 11, 2014, Commission Staff advised the Commission that it required more time, and that it would file its response to PSE's Amended Application on or before July 18, 2014. Staff offers the following recommendation to the Commission.

3           Staff recommends the Commission approve:

- i. The sale of PSE's Electron Project to Electron Hydro under the originally filed Asset Purchase Agreement (Agreement) as amended in Exhibit F-5<sup>1</sup> of PSE's Amended Application; and
- ii. The proposed accounting and ratemaking treatment briefly described by the Company in the Amended Application on substitute page 11, paragraph 23 and outlined in detail in substitute Exhibit G.

## BACKGROUND

4           On June 6, 2013, PSE filed an application for approval of both the sale and ratemaking and accounting treatment of the sale of its Electron Project to Electron Hydro.

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<sup>1</sup> Amendment No. 4 to the Asset Purchase Agreement, dated as of June 4, 2014, by and between Electron Hydro, LLC and Puget Sound Energy, Inc.

5           On August 5, 2013, PSE and Electron Hydro entered into Amendment No. 1 to the Agreement, dated August 5, 2013, which extended the date by which parties must satisfy the conditions precedent in the Agreement from October 31, 2013, to December 31, 2013.

6           On October 23, 2013, the Commission entered a final order approving and adopting a settlement stipulation in Dockets UE-130583, UE-130617, UE-131099, and UE-131230 (Order 06).<sup>2</sup> Among other things, Order 06 approved the sale by PSE to Electron Hydro on condition there are no material changes to the terms of the Agreement filed on June 6, 2013. If material changes occurred to the Agreement, Order 06 required PSE to re-file its application for approval of the sale.

7           On December 31, 2013, PSE and Electron Hydro entered into Amendment No. 2 to the Agreement, dated December 31, 2013, which extended the date by which parties must satisfy the conditions precedent in the Agreement from December 31, 2013, to March 31, 2014.

8           On March 31, 2014, PSE and Electron Hydro entered into Amendment No. 3 to the Agreement, dated March 31, 2014, which extended the date by which parties must satisfy the conditions precedent in the Agreement from March 31, 2014, to May 31, 2014.

9           On June 4, 2014, PSE and Electron Hydro entered into Amendment No. 4 to the Agreement, dated June 4, 2014, which:

- i. Reduces the purchase price for PSE's Electron Project from \$13.7 million to \$8.4 million;

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<sup>2</sup> *Petition of Puget Sound Energy, Inc., for an Accounting Order Authorizing Accounting Treatment Related to Payments for Major Maintenance Activities*, Docket UE-130583, Order 02; *Utilities & Transp. Comm'n v. v. Puget Sound Energy, Inc.*, Docket UE-130617, Order 06; *Petition of Puget Sound Energy, for an Order Authorizing the Sale of the Water Rights and Associated Assets of the Electron Hydroelectric Project in Accordance with WAC 480-143 and RCW 80.12*, Docket UE-131099, Order 02; and *Petition of Puget Sound Energy, for an Order Authorizing the Sale of Interests in the Development Assets Required for the Construction and Operation of Phase II of the Lower Snake River Wind Facility*, Docket UE-131230, Order 02, Final Order Approving and Adopting Settlement Agreement (October 23, 2013).

- ii. Extends the date by which the parties must satisfy conditions precedent in the Agreement from May 31, 2014, to July 31, 2014;
- iii. Shortens the term of the Purchase Power Agreement (the “Electron PPA”) from a 20-year term to a term expiring on December 31, 2026; and
- iv. Establishes a Facility Operation Agreement that requires Electron Hydro to operate the Electron Project in compliance with the Resource Enhancement Agreement (REA) through its expiration on December 31, 2026.

10 As noted earlier, on June 20, 2014, PSE filed an Amended Application for approval of the sale of the Electron Project and approval of its ratemaking and accounting treatment for the sale (Electron Sale Amended Application), as required by Order 06.

#### DISCUSSION

11 In Staff’s analysis of the original Agreement, Staff compared PSE’s alternatives to selling the Electron Project. The alternatives included:

- Continued PSE ownership and operation of the Electron Project through 2026, which would require significant capital investment; and
- Retirement of the facility, which would require almost half as much capital as the continued ownership option.

Staff concluded that ratepayers were better off with the sale option, which required no outlay of capital and reduced by almost half the amount of unrecovered plant through proceeds of the sale.<sup>3</sup> In return, PSE would only be required to pay Electron Hydro for the net output of the Electron Project through 2033, via the Electron PPA.

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<sup>3</sup> *Petition of Puget Sound Energy, for an Order Authorizing the Sale of the Water Rights and Associated Assets of the Electron Hydroelectric Project in Accordance with WAC 480-143 and RCW 80.12*, Docket UE-130617, Direct Testimony of David C. Gomez, Staff Confidential Exhibit No. \_\_ CT (DCG-1CT), at 12:9-17.

Staff reviewed PSE's analysis using its Portfolio Screening Model (PSM) which included a sensitivity analysis to variations in sales price received for the Electron Project, along with variations in output delivered via the Electron PPA,<sup>4</sup> and concurred with PSE's findings showing that the sale of the Electron Project is in the best interest of ratepayers.<sup>5</sup>

12 While Amendment No. 4 makes material changes to the original Agreement, the sale of the Electron Project by PSE to Electron Hydro continues to remain in the best interest of ratepayers. The reduction in purchase price, along with the shorter term and the delivery of less power under the Electron PPA, do not alter the selection of the sale of the Electron Project as the best outcome for ratepayers compared to the other alternatives; continued operation or retirement.

13 The fact that Electron Hydro has not secured a new Resource Enhancement Agreement (REA) with the Puyallup Tribe of Indians (the Tribe) has not proven an insurmountable obstacle towards closing the sale with PSE. The approach taken by the Company and Electron Hydro to enter into a Facility Operation Agreement (FOA) is designed to preserve the commitment PSE made in 1997 with the Tribe to continue fishery and environmental enhancements and management along the Puyallup River through expiration of the REA in 2026.

14 The terms and conditions of the FOA do not change Staff's recommendation. Staff reviewed PSE's proposed accounting treatment of pass-through payments by Electron

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<sup>4</sup> Docket UE-130617, PSE Confidential Exhibit No. \_\_ (PKW-13C); *Petition of Puget Sound Energy, for an Order Authorizing the Sale of the Water Rights and Associated Assets of the Electron Hydroelectric Project in Accordance with WAC 480-143 and RCW 80.12.*

<sup>5</sup> See Staff's testimony cited in footnote 3, *supra*.

Hydro to PSE for operations and maintenance contributions and REA expenses, which have been memorialized in the Amended Application.<sup>6</sup>

15 Staff also reviewed the July 16, 2014, intervention petition of the Tribe. Overall, the Tribe alleges that PSE is breaching the terms of the REA by, among other things, allegedly assigning PSE's rights and responsibilities to Electron Hydro without first obtaining the Tribe's consent. As a consequence, the Tribe says the Amended Agreement will increase costs to PSE ratepayers.<sup>7</sup>

16 In response, it seems to Staff that PSE remains bound by the REA, and therefore, the Company retains all of its obligations to the Tribe. For example, the FOA states that "PSE will maintain the REA in full force and effect for the remainder of its term ..." <sup>8</sup> In any event, if PSE breaches the REA, and higher costs result, such costs would be imprudent and would not be borne by ratepayers.<sup>9</sup> Accordingly, even assuming a breach, that would not necessarily change the economics of the deal, from a regulatory perspective.

17 The same rationale applies if PSE has violated or will violate the Endangered Species Act, as the Tribe also alleges.<sup>10</sup> Ratepayers are not responsible for costs resulting from statutory violations, either, should such violations occur. Therefore, the resulting costs would not affect the economics of the deal, from a regulatory perspective.

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<sup>6</sup> The detailed accounting transactions for FOA related payments are contained in Substitute Exhibit G of the Amended Application.

<sup>7</sup> Petition to Intervene at 6-9, ¶¶ 6-11.

<sup>8</sup> Amended Application, Amendment No. 4, Exhibit 2, first page, third "Whereas").

<sup>9</sup> "A public utility will not be permitted to include negligent or wasteful losses among its operating charges." *West Ohio Gas. Co. v. Pub. Util. Comm'n*, 294 U.S. 62, 68, 55 S. Ct. 316, 79 L. Ed. 761 (1935); *See also Jewell v. Utilities & Transp. Comm'n*, 90 Wn.2d 775, 777, 585 P.2d 1167 (1978) (Expenses must contribute to "prompt, expeditious and efficient" service (using terms from RCW 80.36.080. Similar language applies under RCW 80.28.010, applicable to electric utilities: services shall be "safe adequate and efficient.")

<sup>10</sup> Petition to Intervene at 9-10, ¶¶ 12-14.

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The Tribe further alleges that PSE will receive less power from the Electron Project than PSE contemplates, thereby negatively impacting ratepayers.<sup>11</sup> However, as shown in Confidential Exhibit No. \_\_ (PKW-13C), filed in an earlier phase of this docket, a reduction in the power delivered through the Electron PPA [REDACTED] [REDACTED] from the sale of the Electron Project.<sup>12</sup>

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In sum, Staff recommends the Commission approve the Amended Application, as described in Paragraph 3 above.

DATED this 18<sup>th</sup> day of July 2014.

Respectfully submitted,

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Attorney General



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<sup>11</sup> Petition to Intervene at 10-11, ¶ 15.

<sup>12</sup> *Petition of Puget Sound Energy, for an Order Authorizing the Sale of the Water Rights and Associated Assets of the Electron Hydroelectric Project in Accordance with WAC 480-143 and RCW 80.12*, Docket UE-130617, PSE Confidential Exhibit No. \_\_ (PKW-13C) at 10.