

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint Application of
Puget Sound Energy, Ontario Teachers’
Pension Plan Board, and Macquarie
Washington Clean Energy Investment, L.P.

For an Order Authorizing Proposed Sales of
Indirect Interests in Puget Sound Energy

DOCKET U-210542

COMMENTS OF COMMISSION
STAFF

I. INTRODUCTION

Staff of the Washington Utilities and Transportation Commission (Commission) submits the following comments in response to the Commission’s Notice of Opportunity to File Written Comments and Notice of Item to be Heard at the Commission’s Regularly Scheduled Open Meeting of January 27, 2022.

II. BACKGROUND

On July 8, 2021, Puget Sound Energy (PSE) filed a Notice of Sale informing the Commission of the proposed sale of a 31.57 percent indirect ownership interest in PSE currently held by Canada Pension Plan Investment Board (“CPP Investments”) to new two investors. On August 13, 2021, PSE, the Ontario Teachers’ Pension Plan Board (OTPP) and Macquarie Washington Clean Energy Investment L.P. (“Macquarie Fund”) filed testimony, exhibits and a Joint Application for an Order Authorizing Proposed Sales of Indirect Interests in Puget Sound Energy (“Joint Application”). Puget Holdings LLC (“Puget Holdings”) indirectly holds 100 percent of the ownership interest in PSE. CPP Investments intends to sell all of its 31.57 percent interest in Puget Holdings to OTPP and Macquarie Fund (collectively, with PSE, the “Joint Applicants”).

The Docket was initially set to be heard by the Commission at its November 24, 2021 Open Meeting. However, during an all-party meeting on November 15, 2021, PSE announced that the Joint Applicants would affiliate using a Limited Partnership Agreement, rather than the Voting Agreement included in the August 13, 2021 documents. The Docket has been rescheduled twice and will now be heard at the January 27, 2022 Open Meeting. PSE and the Joint Applicants filed the Limited Partnership Agreement on December 10, 2021. The proposed Commitments were shared informally with Staff and the non-company parties on December 17, 2021. The parties met again on January 5, 2022, and verbally reached an agreement in principle on 64 of 65 of the Commitments. PSE agreed to informally share a revised version of the Commitments on January 6, 2022, for which the Company required written confirmation of agreement from each of the parties. Following this acknowledgement, PSE agreed to file the final version of the Commitments, along with all Exhibits referenced in the document.

CPP Investments will sell one-half, or 15.785 percent of its equity interest in Puget Holdings to OTPP and the other 15.785 percent to a group led by Macquarie Fund. OTPP is Canada's largest single profession plan and manages net assets of approximately \$C221 billion¹ (\$US167.2 billion). The Macquarie Fund group consists of three investors, each shown with their proposed ownership share of the 15.785 percent share of Puget Holdings:

¹ Rodriguez, Exh. AJR-1T at 8:14--9:2.

TABLE 1 – PARTNERS MAKING UP MACQUARIE FUND					
Proposed Owner	Primary business	Assets Under Management	US \$\$ equivalent	Ownership Share of 15.785 % of Puget Holdings²	Overall ownership of Puget Holdings**
Sunsuper	Australian pension fund manager	\$AUS90 billion ³	\$ 66 billion	30 percent	4.74 percent
National Pension Service of South Korea	South Korean national pension fund manager	₩434 billion ⁴	\$707 billion	33.33 percent	5.26 percent
MGIF Clean Energy, L.P.	Managing partner	\$AUS245.7 billion ^{5*}	\$182 billion*	36.67 percent	5.79 percent

*Amounts cited refer to Macquarie Group Limited, the parent of MGIF Clean Energy, L.P.

**Overall ownership equals 15.785 percent multiplied by the ownership share percentage

OTPP and Macquarie Fund will each hold a 15.785 percent total equity interest in Puget Holdings if the transaction is approved. These sales will be referred to collectively as the “Proposed Transactions.” Table 2 below summarizes Puget Holdings ownership before and after the Proposed Transactions.

Puget Holdings is currently owned by a consortium of investors. The Commission approved the current ownership structure when it approved the acquisition of PSE in 2008.⁶ Members of the consortium were updated in Docket U-180680, Order 06 (March 7, 2019) (Order 06). If the Proposed Transactions are approved, Puget Holdings will continue to be owned by a consortium of investors, which will consist of four of the current member

² Rubin, Exh. AR-1T at 13.

³ [Sunsuper 2020-21 Annual Report](#), retrieved 11/11/21. Sunsuper has reached a commitment to merge with QSuper, another Australian pension manager, which will bring total assets under management to approximately \$AU200 billion.

⁴ [National Pension Service 2020 Annual Report](#), retrieved 11/5/21.

⁵ [Macquarie FY 2021 Annual Report](#), retrieved 11/12/21.

⁶ *In the Matter of the Joint Application of Puget Holdings LLC and Puget Sound Energy, Inc., for an Order Authorizing Proposed Transaction*, Docket U-072375, Order 08 (Dec. 30, 2008).

entities (AIMCo, BCI, OMERS, and PGGM) and two new owners (OTPP and Macquarie Fund).

TABLE 2– SUMMARY OF PUGET HOLDINGS OWNERSHIP⁷			
Entities	Equity Interest Percentage	Equity Purchase and (Sale) Percentage	Proposed Equity Interest Percentage
Canada Pension Plan Investment Board	31.57	(31.57)	0.00
Ontario Municipal Employees Retirement System Administration Corporation (“OMERS”)	23.94	0.00	23.94
British Columbia Investment Management Corporation “BCI”)	20.87	0.00	20.87
Alberta Investment Management Corporation (“AIMCo”)	13.60	0.00	13.60
PGGM Vermogensbeheer B.V. (“PGGM”)	10.02	0.00	10.02
Ontario Teachers’ Pension Plan	0.00	15.785	15.785
Macquarie Washington Clean Energy Investment, L.P.	0.00	15.785	15.785
Total	100 percent	0.00 percent	100 percent

In Order 08 of Docket U-072375, the Commission approved a set of commitments that the applicants must comply with to protect the public interest. These Commitments were updated and confirmed in Order 06 of Docket U-180680. The Joint Applicants in this docket have proposed a set of Commitments based on the prior filings. The compilation of “Proposed Commitments” is intended to insulate stakeholders and ratepayers from harm and render the Proposed Transactions in the public interest.

III. DISCUSSION

Commission Staff (Staff) has concluded that the Commission should apply the “no harm” legal standard to its review of the Proposed Transactions. Below, Staff discusses the

⁷ Rodriguez, Exh. AJR-1T at 3-5, Tables 1-3.

legal standard and administrative process, describes Staff's examination of the transactions, and discusses the revised Commitments that the Joint Applicants filed on January 7, 2022.

Regarding the standard for review of the Proposed Transactions, the plain meaning of the law on property transfers requires the Commission, in an application for transfer of a noncontrolling interest, to consider whether a transaction is consistent with the public interest, and not whether there is a net benefit to customers. The Commission has established that under the "consistent with the public interest" standard, the proponent of the transaction must show that the transaction will not harm the public interest in order for the transaction to be approved. This "no harm" standard is appropriate in this proceeding because the interests proposed to be transferred do not amount to 50 percent, no owner will hold a 50 percent interest at the close of the transaction, and the governance structure defines a majority (or controlling) interest as 55 percent of member interest. Regarding administrative process, under authority of the Administrative Procedure Act (APA) and the Commission's own rules, the Commission can conduct its review of the Proposed Transactions through the open meeting process or through an adjudication, at its discretion.

Staff has undertaken a thorough review of the Joint Application. In particular, Staff focused on the governance structure of the ownership and on the fitness of the purchasers. The governance structure of Puget Holdings is not changing, has been functional to the best of Staff's knowledge, and, due in part to the dispersion of the CPP Investment interest to two new owners, the board will now include a more balanced apportionment of managers. The prospective purchasers of CPP Investment's interest have presented evidence of financial and managerial fitness, in that they have the financial resources to execute the transaction, they have experience in direct ownership of utility and infrastructure assets, and

they may be characterized as “patient capital.” Staff’s review in these areas did not reveal significant risk of harm.

With regard to the Commitments that the Joint Applicants proposed initially, Staff believed that some changes and additions needed to be made to adequately protect against risk. As noted above, the parties negotiated with the Company, which led to the revised Commitments filed January 7, 2022. Staff agrees with those revised commitments, with the exception of Commitment 43, as discussed below. Staff provisionally recommends that the Commission approve the Proposed Transactions. Staff will provide a final recommendation at the Open Meeting on January 27, 2022.

A. Legal Standard Applicable to the Proposed Transactions

Under chapter 80.12 RCW, the sale of a utility that is regulated by the Commission must be approved by the Commission, and unauthorized transfers will be void. PSE and the four buyers of the indirect interest in PSE seek approval from the Commission under RCW 80.12.020 of their acquisitions of noncontrolling indirect interests in PSE. RCW 80.12.020 reads as follows:

No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public . . . without having secured from the commission an order authorizing it to do so. The commission shall not approve any transaction under this section that would result in a person, directly or indirectly, acquiring a controlling interest in a gas or electrical company without a finding that the transaction would provide a net benefit to the customers of the company.

Pursuant to the Commission’s rules governing transfers of property, review of a proposed transaction considers whether the application is in the public interest: “If, upon the examination of any application and accompanying exhibits, or upon a hearing concerning the same, the Commission finds the proposed transaction is not consistent with the public

interest, it shall deny the application.”⁸ Taking the statute and rule together, if a transaction involves the transfer of a “controlling interest,” then the Commission will consider whether the transaction will “provide a net benefit” as well as whether it is consistent with the public interest. However, if a transaction does not involve a “controlling interest,” then the Commission will consider only whether the transaction is “consistent with the public interest.” The applicable legal standard remains the same regardless of whether the Commission considers a transfer of property application in an adjudicative proceeding or at an open public meeting. And the Commission has discretion to employ either process to make its determination on the Joint Application.

1. Controlling Interest

Neither chapter 80.12 RCW nor the Commission’s rules define the term “controlling interest.” A review of the legislative history concerning the amendment to RCW 80.12.020 that added the “controlling interest” standard, including all of the related legislative hearings and six bill reports did not reveal any indication that the legislature intended the term “controlling interest” to have a particular meaning in that statutory context.

However, the Commission has interpreted the statutory language in RCW 80.12.020 in previous cases. In Docket U-072375, the Commission stated that a 51 percent ownership interest was not a “controlling share” of Puget Holdings because the governance structure of that company required a vote of 55 percent of the shares to support any action.⁹ Puget Holdings’ governance structure has not changed substantively since Docket U-072375.¹⁰ Given that the Commission has previously determined that a 51 percent share was not

⁸ WAC 480-143-170.

⁹ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Docket U-072375, Order 08 at 17 (Dec. 30, 2008).

¹⁰ Rodriguez, Exh AJR-1T at 14.

“controlling,” the sale of a lesser 31.57 percent share would similarly not be “controlling.” None of the individual buyers in the Proposed Transactions will acquire even a 50 percent share in Puget Holdings if the transaction is approved. Therefore, the Proposed Transactions does not involve a “controlling interest” in the context of the sale of the interest, the acquisition of the interest, and prior Commission analysis. As such, the “no harm” standard applies to the Proposed Transactions before the Commission.

The Commission has previously applied the “no harm” standard in a transfer of property proceeding when the sale of a controlling interest was not at issue. In a proceeding involving the sale of a hydroelectric facility, the Commission made the following determination: “[T]he ‘net benefit’ test is inapplicable . . . since the transaction involves a sale of assets, not a sale of a controlling interest in the Company. The standard of review for the proposed transaction is the ‘no harm’ test.”¹¹ Consistent with this decision, the “no harm” standard rather than the “net benefit” standard applies when a transfer of property does not involve the transfer of a controlling interest.

2. No Harm Standard

As stated above, under WAC 480-143-170, the Commission must reject the Proposed Transactions if “the proposed transaction is not consistent with the public interest.” Or, conversely, “. . . the Commission will approve the transaction if it is shown to be consistent with the public interest.” The Commission has previously explained that this standard “is sometimes called the ‘no harm’ standard because . . . the transaction must not harm the public interest in order to be approved.”¹² The Commission has also reasoned:

To be “consistent with the public interest,” a transaction need not confer net benefits on customers or the public by making them better off than they would be absent the

¹¹ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-130617 et al., Order 10 at 13 (Oct. 9, 2014).

¹² *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy* Docket U-072375, Order 08 at 3 (Dec. 30, 2008).

transaction. It is sufficient if the transaction causes no harm. This determination must be made in each case, considering the context and circumstances. Among the factors that should be weighed in evaluating the transaction's effect on the public interest are whether there are commitments by the purchaser to important public service obligations such as customer service, safety, reliability, resource adequacy including energy efficiency and conservation, support for low-income customers, and environmental stewardship; whether customers are protected from rate increases that might result from the transaction and from financial distress that might occur as a result of the manner in which the purchase was financed or distress at other companies affiliated with the purchaser; whether the Commission's ability to regulate the utility in the public interest is fully protected, including preserving access to all necessary information; whether the purchaser has the financial and managerial fitness to own and operate the utility in fulfillment of its public service obligations; and last, but not least, whether the commitments made in the transaction are enforceable.¹³

When applying these factors, the Commission has also considered "the transaction's details, the risk of harm to the public interest, and whether a [potential] settlement's commitments are adequate to protect against those risks."¹⁴ Importantly, however, the Commission has recognized that "the approach for determining what is in the public interest varies with the form of the transaction and the attending circumstances"¹⁵ In conclusion, the appropriate legal standard for review of the Proposed Transactions is the "no harm" standard, guided by the factors identified in Order 08, Docket U-072375.

3. Procedure for Consideration of the Proposed Transactions

The Commission may consider the Joint Application at an open meeting or in an adjudicative proceeding. Under the APA, an agency has discretion whether to conduct an adjudication unless an adjudication is required by law (including a constitutional right).¹⁶ The transfers of property statute, Chapter 80.12 RCW, does not contain a requirement that

¹³ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy* Docket U-072375, Order 08 at 48-49 (Dec. 30, 2008).

¹⁴ *Id.*

¹⁵ *See e.g. In Re PacifiCorp and Scottish Power PLC*, Docket UE-981627, Third Supplemental Order on Prehearing Conference, p. 3 (April 2, 1999).

¹⁶ RCW 34.05.413(1)-(2).

the Commission hold an adjudication to consider an application for a property transfer. Rather, it requires only that the applicants “[secure] from the commission an order authorizing” the transaction¹⁷ and that the Commission “enter an order approving or denying a transaction . . . within eleven months of the date of filing.” The statute also clarifies that a transaction “...made without authority of the commission shall be void.”¹⁸ The statute does not address procedure.

The Commission rules governing transfers of property do address procedure, however, in that they specifically provide that an adjudication is discretionary. Pursuant to these rules, the Commission “will examine all applications for transfers and accompanying exhibits” and “*may* (emphasis added) set an application for hearing and require all parties to the transaction to appear and give testimony”¹⁹. In other words, the Commission has discretion to conduct an adjudication or employ another process, such as an open meeting, when considering a property transfer application.

The Commission has approved an application under the transfers of property statute using following the open meeting process. In Docket UG-170094, the Commission considered the application of a natural gas utility for Commission approval under RCW 80.12.020 to reorganize the ownership structure of the utility to a holding company structure. The Commission held an open meeting on December 28, 2017, during which it took comment and discussed the application. The Commission’s decision is memorialized in an order approving the application subject to conditions.²⁰ The previous PSE sale case in Docket U-180680 was also approved via the Open Meeting process.

¹⁷ RCW 80.12.020.

¹⁸ RCW 80.12.030.

¹⁹ WAC 480-143-160.

²⁰ *In the Matter of Northwest Natural Gas Company’s Application for Approval of Corporate Reorganization to Create a Holding Company*, Docket UG-170094, Order 01 (Dec. 28, 2017).

The Commission's transfers of property rules make clear that the Commission may consider the Joint Application at an open meeting as well as in an adjudicative proceeding. The Commission has considered many complex matters at open meetings. The important point, however, is that the consideration process the Commission employs does not affect the legal standard of review, which remains the "no harm" standard.

B. Staff's Examination of the Proposed Transactions

Staff carefully reviewed the Joint Application and its appendices, the testimony and exhibits of the Joint Applicants, and the Limited Partnership Agreement and revised Commitments. Staff also reviewed final orders in Dockets U-072375, UG-151663, UE-170033/UG-170034, and U-160680. Staff conducted informal discovery regarding the Joint Application and supporting materials. Through the informal discovery process, Staff examined the confidential Puget Holdings LLC agreement, the organizational structure of Puget Holdings incorporating the Joint Applicants, and a portion of PSE's most recent five-year business plan. As part of its review of the Joint Application, Staff reviewed the Purchase and Sale Agreement of each purchaser.²¹ Staff reviewed the application to the Committee on Foreign Investment in the United States (CFIUS) along with Confidential Exhibits 1-21 as attached to that application, as provided to Public Counsel. Staff also reviewed the Federal Energy Regulatory Commission (FERC) Order Authorizing Disposition of Jurisdictional Facilities, a public record, in which FERC concludes "...the Proposed Transaction is consistent with the public interest and is authorized..."²² Staff examined the publicly-available tax forms 990 for the Puget Sound Energy Foundation. Finally, Staff also studied the purchasing entities through review of publicly available

²¹ Parker, Exh. CP-3 (for OTPP) and Rubin, Exh. AR-3 (for Macquarie Fund).

²² *Federal Energy Regulatory Commission, Docket EC21-112-000, downloaded at <https://elibrary.ferc.gov/eLibrary/search> (issued October 27, 2021.)*

sources such as financial statements and annual reports published for members in the pension funds, as cited earlier in these Comments.

1. Governance

To Staff’s knowledge, the Puget Holdings LLC Agreement governance document has not changed substantially since the Macquarie acquisition was approved in 2008. What is changing is the membership composition of the Puget Holdings board which, subsequent to closure of the Proposed Transactions, would reflect the relative equity interests of the new owners. After the Proposed Transactions, no shareholder will own more than 23.94 percent equity interest. According to the Draft Voting Agreement, Macquarie Fund and OTPP will each separately designate one board member and will jointly appoint a third member of the ten board members²³ (or 25 percent of the directors). These Proposed Transactions represent a dilution of ownership which, in effect, reduces the influence of the most powerful shareholder.

The following tables identify the members of Puget Holdings, and illustrate the interest percentage and number of board managers.

TABLE 3 – CURRENT PUGET HOLDINGS BOARD		
Current Members	Proposed Equity Interest Percentage	Current Manager Count
Canada Pension Plan Investment Board	31.57	3
OMERS Administration Corporation	23.94	2
British Columbia Investment Management Corporation	20.87	2
Alberta Investment Management Corporation	13.60	1
PGGM Vermogensbeheer B.V.	10.02	1
PSE CEO	0.00	1
Independent Directors	0.00	2
Total	100 percent	12

²³ Rubin, Exh. AR-5.

TABLE 4 – PROPOSED PUGET HOLDINGS BOARD		
Proposed Members	Proposed Equity Interest Percentage	Proposed Number of Managers
OMERS Administration Corporation	23.94	2
British Columbia Investment Management Corporation	20.87	2
Alberta Investment Management Corporation	13.60	1
PGGM Vermogensbeheer B.V.	10.02	1
Ontario Teachers' Pension Plan	10.00	1
Macquarie Washington Clean Energy Investment, L.P. ("Macquarie Fund")	10.00	1
Ontario Teachers'/Macquarie Fund ²⁴	5.785 + 5.785	1
PSE CEO	0.00	1
Independent Directors	0.00	2
Total	100 percent	12

2. Fitness

An important aspect of determining whether a transaction causes no harm and is therefore in the public interest is evaluating the fitness of the purchasers. The proposed purchasers must show “the financial and managerial fitness to own and operate the utility in fulfillment of its public service obligations.”²⁵

Both purchasers of CPP’s interest have demonstrated through testimony their respective financial and managerial fitness. Further, Staff’s independent review of the purchasers did not uncover anything to contradict the evidence of the purchasers’ fitness. Both purchasers are investment entities that manage pension and or endowment funds for their respective client base. As a result, both purchasers focus on long-term investment

²⁴ The Amended and Restated Limited Partnership Agreement of Washington Clean Energy, LP, between the two purchasers, provides that each acquiring Party in this transaction gains the right to appoint one manager to the Board of Puget Holdings for each 10% and additionally, have the right to coordinate their Free Percentages (in each case, 5.785%) to jointly designate a manager to the Board of Puget Holdings.

²⁵ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Docket U-072375, Order 08 at 48-49 (Dec. 30, 2008).

stability with the implication that Puget Holdings is likely to benefit from long-term ownership stability. Consistent with that notion, neither of the purchasers has expressed a defined exit horizon for selling the entities' respective shares. Staff views ownership stability as a characteristic that reflects positively on the purchasers' overall fitness as owners and operators of PSE.

Regarding the financial fitness of the purchasers, Staff considered how the purchases will be funded, which is described in the respective testimony of each purchaser. Both purchasers state the entities have sufficient funds on hand to purchase the respective equity interest in Puget Holdings. This demonstrates that the purchasers are financially fit and have the ability to access capital. A financially healthy owner means less risk of harm to PSE, in that there is less risk that financial problems of a distressed owner would affect PSE's operations.

Another important element of fitness is the relevant experience of the purchasers, which each purchaser discusses in testimony. Both purchasers have experience directly investing in utilities and infrastructure, indicating that they are well-equipped to make informed decisions that impact Puget Holdings and PSE. All of the information that Staff has reviewed supports the fitness of these particular purchasers to acquire an interest in and provide sound direction through their board representatives to PSE.

C. Staff's Review of and Revisions to the Proposed Commitments

In Order 08, the Commission identified factors that weigh in favor of the public interest, with particular focus on the Commitments that emphasize public service obligations. The public service obligations identified by the Commission were customer service, safety, reliability, resource adequacy including energy efficiency and conservation, support for low-income customers, and environmental stewardship. With these factors in

mind, Staff reviewed the both the Proposed Commitments included in the Joint Application and the revised Commitments filed January 7, 2022 to determine whether they remain consistent with the public interest.

First and foremost, Staff evaluated whether the commitments approved in Docket U-072375, updated in Docket U-180680, and again in this Docket, -and deemed by the Commission as sufficient for addressing important public service obligations,- remain valid. The Commitments fall into several broad categories: Governance and Operations; Regulatory Issues; Ring-Fencing and Financial; Community and Low-Income Programs; Environmental; Energy Efficiency; Colstrip; Tacoma LNG; and Miscellaneous Commitments. Of special note, commitments prohibiting PSE from making loans to or pledging assets to Puget Energy and Puget Holdings, holding PSE harmless for financial risk associated with Puget Energy or Puget Holdings, maintaining the financial health of PSE, and restricting upward distributions from PSE are intact.

PSE, Staff, the Joint Applicants, and the non-company parties The Energy Project, Public Counsel, and the Association of Western Energy Consumers have met repeatedly to revise the Joint Applicants' Proposed Commitments as originally filed. As of January 6, 2022, the parties have reached agreement on all but one of the Commitments. Staff provides an in-depth analysis below for Commitment 43, which is still unresolved.

Staff believes the Joint Applicants' Proposed Commitments largely adhere to the public service obligation factors identified by the Commission, and continue to protect against financial risk. However, the Proposed Commitments require certain revisions before Staff can support the Proposed Transactions as meeting the "no harm" standard. PSE filed the revised Commitments, along with the Exhibits referenced throughout the Commitments, on January 7, 2022. Where Staff refers to all of the proposed owners, Staff uses the term

“Puget Holdings Owners” or “its Owners.” The edited Proposed Commitments which are intended to: 1) ensure all continuing and new owners are party to each of the Commitments in the current Docket (for example, proposed Commitments 64 and 65); 2) update the relevant benchmark of certain existing Commitments (see Commitment 42); and 3) reinforce the Commission’s authority to enforce the Commitments. Also, language has been updated to reflect changes contained in the Clean Energy Transformation Act.

Commitment 43

The issues surrounding Commitment 43 relate to shareholder contributions toward low-income energy efficiency programs. The Commitment currently in effect reads as follows, as agreed to in docket U-180680:

PSE agrees to continue to fund low-income weatherization programs that the low-income agencies inform PSE they can feasibly achieve with an annual base funding level of no less than \$4.43 million for low-income weatherization programs through December 31, 2022, which amount includes the following:

- (a) continued annual contributions of \$400,000 from shareholder funds for the Low-Income Weatherization Program and
- (b) continued annual contributions of \$500,000 to the Low-Income Weatherization Program for so long as decoupling adopted in Dockets UE-121697 and UG-121705 continues.

Low-income weatherization and conservation programs originated as part of the settlement in the general rate case Dockets UE-011570 and UG-011571. Attachment F to the Settlement Stipulation reads in part:

B. Duration and Future Review

2. This Agreement establishes a conservation program *with no sunset date* (emphasis added). If the Commission approves this, then the conservation program developed through this Agreement shall be reviewed no later than October 2007. At that time any party may petition the Commission for modifications to the program. If a general rate case occurs prior to that time, any party may petition the Commission for modifications to the conservation program as part of the general rate case proceeding....

K. Low Income Energy Efficiency

34. PSE will target low-income energy efficiency program funding at \$2.3 million annually. Rider and tracker funded programs will be targeted at \$1.2 million annually with the savings attributed to the Company's annual savings target; and non-tracker/rider funded programs will be targeted at \$1.1 million. (PSE will make available \$800,000 in C&RD funds* and \$300,000 in shareholder funds annually (emphasis added) for the non-tracker/rider programs, unless otherwise modified by the Company.)

*Conservation and Renewables Discount

Later, in Dockets UE-011570, UG-011571, and UE-100177 (consolidated), the Commission issued Amended Order 05, which vacated the previous Attachment F, maintained conservation programs indefinitely, and included the following language:

G. Low-Income Energy Efficiency

14. PSE will continue to honor Commitments 22 and 23 from U-072375 with regard to future funding levels for low-income energy conservation programs based on the 2010-2011 planning levels. PSE will continue to work with agencies to provide additional funding above that established by Commitment 22 if additional production through the existing or newly developed cost-effective programs warrants it. *In addition, PSE will continue to contribute a total of \$300,000 of shareholder funds annually for low-income weatherization regardless of fuel type.* (Emphasis added.)

The issue next arose in Order 07/06/06 of Dockets UE-121373 (the Centralia coal transition power docket), UE-121697/ UG-121705 (decoupling), and UE-130137/UG-130138 (an Expedited Rate Filing or "ERF"), where the Commission rejected a multiparty settlement reached among Staff, NWEA, and PSE. That settlement proposal, as noted in Order 07 in the final four Dockets listed above, included a section indicating that "...The settlement included an additional \$500,000 for low-income energy efficiency..." and that "...PSE's investors offered to provide \$100,000 per year for low-income energy efficiency funding..."²⁶ The Energy Project filed a Joinder in the Multiparty Settlement signed by PSE

²⁶ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-121697 and UG-121705 Order 07 / Dockets UE-130137 and UG-130138, Order 07 at 75, ¶ 178 (June 25, 2013).

in which the Company agreed to continue the additional \$100,000 through 2016. However, while rejecting the settlement and its offers, the Commission included a footnote:

²⁴⁵ We cannot order PSE's investors to follow through on their offer in the Multiparty Settlement to provide an additional \$100,000 per year for energy efficiency funding. Additional funding at this level, or more, remains an option for PSE to consider as a gesture of goodwill, not just to the low-income customers, but to the ongoing energy efficiency goals of the State of Washington.²⁷

The Commission ultimately ordered an ongoing \$500,000 in annual funding for low-income conservation programs tied to PSE's decoupling programs and an additional \$1 million for low-income energy assistance. The \$300,000 annual commitment for low-income weatherization that was part of the initial sale Commitments was not modified by the Commission at that time.

However, PSE appeared to have taken the Commission's comment regarding continuing the additional \$100,000 in shareholder funds "as a gesture of goodwill" to heart. According to a discovery response²⁸ in Docket U-180680 to The Energy Project's Data Request 5, PSE staff stated:

c. Attached as Attachment B to the Joint Applicants' Response to The Energy Project Data Request No. 005 is an MS Excel spreadsheet that provides shareholder contributions provided to weatherization for 2009-2018. There was an increase in 2014 (from \$300,000 to \$400,000) due to the decoupling commitment.

An accompanying spreadsheet, also attached as part of Staff's Attachment A, shows shareholder contributions of \$300,000 annually from 2009-2013 and \$400,000 from 2014-2018. This amount was in addition to the \$500,000 annual amount conditioned upon PSE's

²⁷ *Id.* at 78.

²⁸ Commission Staff's Attachment A, The Energy Project Data Request 5 Response from Docket U-180680, section c.

participation in decoupling. The Company's response to the data request appears to be in error as the shareholder funds were not tied to decoupling.

In Dockets UE-170033 and UG-170034, PSE's subsequent general rate case, a multiparty settlement was part of the resolution of the case. The Final Order in these dockets states, at paragraph 66:

66 Specifically benefitting low-income customers, the Settlement Stipulation recommends:

- Increased HELP bill assistance funding.
- Continuation of existing low-income weatherization funding commitments, *including a shareholder contribution.* (emphasis added.)
- \$2 million in increased low-income weatherization funding over current levels.
- HELP eligibility improvements.
- Establishment of a PSE Low-Income Advisory Committee.
- Consultation agreements regarding program modifications.

These components reflect PSE's long-standing commitment to its bill assistance and weatherization programs for low-income customers. This is reflected in the fact that many of the low-income provisions included in the Settlement were proposed by PSE in its initial filing in the case.

The settlement includes the following language at paragraph 110:

110. PSE shall continue annual \$100,000 shareholder contributions to low-income weatherization, *until the next general rate case* (emphasis added), consistent with the commitment that PSE made Multiparty Settlement Page 30 of 39 Stipulation and Agreement in the multi-year rate plan approved in Docket UE-121697. This term does not modify any other pre-existing obligation for shareholder funding.

Before the next rate case was filed, however, PSE filed a Joint Application for the proposed sale of a portion of the ownership of its parent, Puget Holdings, in Docket U-180860. The only testimony in that case filed by the Company or the Joint Applicants looking to purchase ownership interests was filed by David E. Mills, Senior Vice President of Policy and Energy Supply for PSE. Mr. Mills' testimony includes the following Q&A:

Q. Have each of PSE, Alberta Investment Management Corporation, British Columbia Investment Management Corporation, OMERS Administration

Corporation, and PGGM proposed commitments that will continue the commitments made in Docket U-072375 and subsequent proceedings?

A. Yes. Each of the Joint Applicants have acknowledged, affirmed, and accepted the commitments that have been made and approved by the Commission in the following proceedings, to the extent that those commitments remain effective:

- (i) the commitments set forth in in Docket U-072375, Attachments A and B to Order 08, *Approving and Adopting Settlement Stipulation; Authorizing Transaction Subject to Conditions* (the “2008 Acquisition Order”);
- (ii) the commitments intended to provide ring-fencing protections separating the operations and financing of PSE from the Puget LNG subsidiary set forth in Docket UG-151663, Order 10, Final Order Approving and Adopting Settlement Stipulation; Reopening Record and Amending Order 08 in Docket U-072375, dated November 1, 2016 (the “LNG Order”); and
- (iii) the commitments relating to the Colstrip generating facility set forth in the Multiparty Settlement Stipulation and Agreement, dated September 15, 2017, in Dockets UE-170033 & UG-170034, and authorized to be implemented in Order 08, *Final Order Rejecting Tariff Sheets; Approving and Adopting Settlement Stipulation; Resolving Contested Issues; and Authorizing and Requiring Compliance Filing*, dated December 5, 2017 (the “2017 GRC Order”).

These reaffirmed commitments that emphasize important public service obligations include:

- financial integrity commitments that protect PSE’s financial health;
- regulatory and ring-fencing commitments that protect PSE from any financial distress experienced by other companies within the holding company structure;
- staffing, management, governance, recordkeeping and reporting commitments that protect and promote the Commission’s ability to regulate PSE in the public interest;
- local presence commitments at the levels of directors, officers, line employees, and corporate headquarters;
- protections for customers from rate increases that might otherwise result from the proposed transactions;
- quality of service commitments;
- *low-income assistance commitments* (emphasis added); and
- environmental, renewable-energy, and energy efficiency commitments.

For the past decade, the commitments made in the 2008 Acquisition Order and reaffirmed in this proceeding have served PSE, its customers, and the Commission well. There will be no harm to customers as a result of the proposed transactions.

Staff notes there is no mention of changing low-income assistance Commitments, only a re-affirmation of those Commitments as they existed at that point in time, which was the 2017 general rate case version, including \$300,000 of shareholder funds and the \$100,000 in shareholder funds added after the consolidated decoupling and ERF²⁹ Dockets. Commitment 43, as approved in Docket U-180860, states:

43. PSE agrees to continue to fund low-income weatherization programs that the low-income agencies inform PSE they can feasibly achieve with an annual base funding level of no less than \$4.43 million for low-income weatherization programs through December 31, 2022, which amount includes the following:

(a) continued annual contributions of \$400,000 from shareholder funds for the Low Income Weatherization Program; and

(b) continued annual contributions of \$500,000 to the Low-Income Weatherization Program for so long as decoupling adopted in Dockets UE-121697 and UG-121705 continues.³⁰

PSE and the Joint Applicants filed joint testimony in support of the Multiparty Settlement Stipulation in Docket U-180680. There is no mention in this testimony regarding making any changes to the shareholder contribution toward low-income weatherization. There was some confusion regarding funding sources for low-income weatherization as the original Final Order 06 stated the following:

67 The new community and low-income commitments preserve financial and staffing resources, which have been updated since the 2008 Acquisition Order, for low-income customers. Commitment 43 requires PSE to continue funding low-income weatherization programs, including an annual \$500,000 from shareholder funds for as long as PSE's decoupling tariff remains in place.³¹

²⁹ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy* Dockets UE-121697 / UG-121705 (decoupling) and UE-130137/UG-130138 (ERF) Order 07 at 76, ¶ 178 (June 25, 2013).

³⁰ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy* Docket U-180680, Multiparty Settlement Stipulation and Agreement at 25 (Jan. 19, 2019).

³¹ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy* Docket U-180680, (original) Order 06 at 17 (March 7, 2019).

Within days of the Final Order 06 being issued in Docket U-180680, PSE and the Joint Applicants filed a Motion to Correct Order 06. The Motion reads, in part:

“...2. First, in Order 06, page 18, paragraph 67, in addressing proposed Commitment 43, it states that the \$500,000 annual contribution to low-income weatherization programs would be funded “from shareholder funds.” This statement is incorrect. As provided in Appendix A to the Multiparty Settlement Stipulation, attached to Order 06, proposed Commitment 43 stated that:

PSE agrees to continue to fund low-income weatherization programs that the low-income agencies inform PSE they can feasibly achieve with an annual base funding level of no less than \$4.43 million for low-income weatherization programs through December 31, 2022, which amount includes the following:

- a) continued annual contributions of \$400,000 from shareholder funds for the Low-Income Weatherization Program; and
- (b) continued annual contributions of \$500,000 to the Low-Income Weatherization Program for so long as decoupling adopted in Dockets UE-121697 and UG-121705 continues.

3. While subpart (a) of proposed Commitment 43 does provide that the \$400,000 in annual contributions will be from shareholder funds, the \$500,000 in annual contributions in subpart (b) will continue to be recovered through the conservation tariff, Schedule 120.

4. Accordingly, the Joint Applicants respectfully request that the Commission correct and clarify page 18, paragraph 67, of Order 06, as follows:

The new community and low-income commitments preserve financial and staffing resources, which have been updated since the 2008 Acquisition Order, for low-income customers. Commitment 43 requires PSE to continue funding low-income weatherization programs at an annual level of no less than \$4.43 million through December 31, 2022, including an annual \$500,000 from Schedule 120 from shareholder funds for as long as PSE’s decoupling tariff remains in place, and continued annual contributions of \$400,000 from shareholders. . . .”³²

The Commission did indeed issue a Corrected Final Order 06, also on March 11, 2019:

³² *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy* Docket U-180680, Motion to Correct Final Order 06, p. 1 (March 11, 2019).

67 The new community and low-income commitments preserve financial and staffing resources, which have been updated since the 2008 Acquisition Order, for low-income customers. Commitment 43 requires PSE to continue funding low-income weatherization programs at an annual level of no less than \$4.43 million through December 31, 2022, including an annual \$500,000 from Schedule 120 for as long as PSE's decoupling tariff remains in place, and continued annual contributions of \$400,000 from shareholders...³³

The issue was not addressed in the Company's general rate cases filed in Dockets UE-190529 and UG-190530, despite the direction to do so in the 2017 GRC Final Order. Finally, for perspective while considering the magnitude of the \$100,000 at dispute here, Staff notes that in the 2019 general rate case the Commission authorized a revenue increase of approximately \$29.5 million, which was reduced to approximately \$857,000 via extending the amortization of certain regulatory assets and the Company's decoupling deferral to mitigate the effects of the pandemic.³⁴

Staff wishes to point out that clearly at issue here is whether the December 31, 2022 sunset date applies solely to the floor of \$4.43 million in low-income weatherization or does the December 31, 2022 date apply to each of the components of that funding floor. The following excerpts from testimony filed in U-180680 appear to show support for the former, a sunset for the funding floor.

Staff witness Melissa Cheesman states:

Community and Low-Income Commitments 43, 44, 45, and 46 strengthen 5 PSE's support of its low-income weatherization program. Commitment 43 provides for an *annual base funding level of \$4.43 million through December 31, 2022 for low-income weatherization programs* (emphasis added). Commitment 46 requires Puget Holdings to make a one-time \$2 million shareholder contribution to the Low-Income Weatherization Program to be disbursed over a five-year period. These commitments protect the public interest by specifying PSE and Puget Holding's commitment to the

³³ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy* Docket U-180680, Corrected Final Order 06, p. 1 (March 11, 2019).

³⁴ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy* Dockets UE-190539 and UG-190530, UE-190274, UG-190275, UE-171225, UG-171226, UE-190991 & UG-190992, Final Order 08/05/03, p. 2 (July 8, 2020).

communities in which PSE operates and safeguarding assistance for the most vulnerable customers.³⁵

The Energy Project witness Shawn Collins included this in his supportive testimony:

The Settlement includes a number of important components that are in the public interest from the perspective of low-income customers. These include commitments to:

- Maintain existing low-income programs and to increase budgeted low-income weatherization funding at a level commensurate with increases in energy efficiency for other residential customer.
- Continue to work with low-income agencies to address issues of low-income customers.
- Continue bill assistance benefits under the HELP program, without precluding parties or the Commission from considering increases to HELP funding in future cases.
- *Continue to fund feasible low-income weatherization programs proposed by agencies, and to maintain a base-level of funding of no less than \$4.43 million through 2022.*
- *Continue existing annual shareholder contributions to weatherization of \$400,000, with an additional one-time shareholder contribution of \$2 million disbursed over a five year period.* (emphasis added).
- Continue the annual weatherization funding supplement of \$500,000 established in the initial decoupling order for as long as decoupling continues.
- Contribute financial and staff resources to a low-income needs assessment to evaluate energy affordability, including energy efficiency and weatherization needs.
- Maintain a project cost allowance of 30 percent for the delivery of low-income weatherization.
- Take reasonable steps to include equitable participation of low-income households in renewable energy programs available to residential customers.
- Continue to consult with the low-income advisory committee in the deployment of the Get To Zero initiative.³⁶

PSE's testimony in support of U-180680, written by PSE witness Jon Piliaris with the Joint

Applicants, include only the following comments pertinent to low-income funding:

The "Community and Low-Income" commitments relate to financial community contributions and support Puget Holdings and PSE agree to provide. Several of these commitments are reaffirmations of the commitments approved by the Commission in the 2008 Acquisition Order. However, there are several new or expanded commitments. These include additional commitments regarding bill

³⁵ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy* Docket U-180680, Staff Testimony Exh. MCC-1T at 17 (filed Jan. 18, 2019).

³⁶ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy* Docket U-180680, TEP Exh-SMC-1T at 4 (filed Jan. 18, 2019).

assistance to qualifying low-income customers and expanded funding for low-income weatherization programs-including a \$2 million one-time contribution by Puget Holdings to the Low-Income Weatherization Program.³⁷

The issue was not addressed in the 2019 general rate case, UE-190529, despite the order in the 2017 general rate stating calling for such an update.

PSE has had multiple opportunities to address the additional \$100,000 in annual funding from shareholder funds, but has not done so. The intent and Solomonic wisdom of the Commission regarding this amount must come into play in deciding this issue. While certainly a tiny amount in the overall context of this transaction, given the purchase price disclosed in the confidential documents, the annual \$100,000 does comprise a huge (25 percent) stake in the low-income weatherization program funded by shareholders.

Finally, to fairly present the complete picture, Staff must also acknowledge that in Commitment 46, which all parties have agreed to, PSE and the Joint Applicants agree to completing their pledge from Docket U-180680 for a one-time \$2 million contribution to low-income weatherization programs *and* to a new, one-time \$1.5 million contribution from shareholder funds to the weatherization program, *to be paid out by December 31, 2026*.³⁸ On balance, in the short-term, customers obviously benefit more from this contribution than from the ongoing additional \$100,000 annually. A changing consortium of foreign owners has held Puget Holdings for about a decade and a half. If we look out over another decade and a half, as we would expect that patient, long-term investors such as the Joint Applicants are doing, we begin to see another picture where the low-income customers begin to suffer as a result of dropping the ongoing \$100,000 annual contribution of shareholder funds.

³⁷ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy* Docket U-180680, PSE and Joint Applicants Exh-1JT at 9 (Jan. 18, 2019).

³⁸ Staff notes that the original Commitment was to be completed by December 31, 2022, but the COVID-19 pandemic has delayed weatherization programs.

IV. CONCLUSION

The consortium ownership structure that the Commission approved in 2008 is entering its fourteenth year. During the last decade and a half, the Commitments that the Commission approved in 2008 have been functioning well, with continued progress on public service obligations and sufficient protection against upstream financial risk. The Commitments have been followed and, where required, fulfilled. There have been no enforcement actions. Updating the Commitments ensures that they remain relevant and timely. Binding the Puget Holdings Owners to the Commitments, as the Owners continue to change, ensures that each investor will be responsive to the Commission.

In addition, the governance structure of the consortium has, to the best of Staff's knowledge, been functioning properly. The governance structure is not changing in its substance, and the character of the proposed new ownership does not present significant new risks. The proposed ownership structure and composition of the board represents a dilution of ownership power and promotes member diversity. The new buyers are investment funds, operated for the benefit of pensions and the public sector, and constitute the same type of entity as the current owners. They are all well-funded, have experience holding utility assets, and will maintain stability in ownership and direction. Staff's review thus far indicates that, with some updates and revisions to the Commitments that the applicants have proposed and that the parties have reached agreement on, the transaction is consistent with the public interest. Staff provisionally recommends that the Commission approve the Proposed Transactions including the Revised Commitments. Following Staff's review of the comments due to be filed in this docket by January 7, 2022, and the Revised Commitments and Exhibits to be filed by PSE and the Joint Applicants on January 7, 2022,

Staff will present a final recommendation to the Commission at the Open Meeting scheduled for January 27, 2022.