

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)

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY

Respondent.

DOCKET UE-130617
(Consolidated)

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)

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)

COMMISSION STAFF
CONFIDENTIAL RESPONSE TO
THE PUYALLUP TRIBE'S BRIEF
IN OPPOSITION TO PUGET
SOUND ENERGY'S PROPOSED
SALE OF THE ELECTRON
HYDROELECTRIC PROJECT

CONFIDENTIAL PER PROTECTIVE ORDER
Redacted Version

1 On August 28, 2014, the Puyallup Indian Tribe (Puyallup Tribe) filed with the
Utilities and Transportation Commission (Commission) its brief in opposition to Puget
Sound Energy's (PSE or Company) proposed sale of the Electron Hydroelectric Project
(Electron or Project) to Electron Hydro LLC (Electron Hydro). The Puyallup Tribe is
asking the Commission to deny PSE's proposed sale of Electron. In the alternative, it asks
the Commission, to affirm its order in Docket UE-131099, subject to Electron Hydro
entering into a separate agreement with the Puyallup Tribe to replace the Resource
Enhancement Agreement (REA) currently in effect between the Puyallup Tribe and PSE.¹

2 I. STAFF'S ANALYSIS OF THE PROPOSED SALE OF ELECTRON

In its brief, the Puyallup Tribe contends that Commission Staff's analysis of the
Amended Asset Purchase Agreement for the Electron Dam, dated June 2014 (Amended
Agreement), is deficient.² Citing only the passage of time, the Puyallup Tribe argues that
Staff cannot not rely on its assessment³ of PSE's initial Asset Sale and Purchase Agreement
of the Electron properties (Initial Agreement) as support for the Amended Agreement.⁴ The
Puyallup Tribes' argument misses the mark.

3 Staff's initial assessment of the Project's sale concluded that the sale of Electron to
Electron Hydro conveyed benefits to PSE's ratepayers. These same benefits became the
foundation for the Commission's order approving the sale. In Staff's opinion, the basic
structure of the Initial Agreement has not been materially changed by the Amended

¹ Wash. Utils. & Transportation Commn. v. Puget Sound Energy, Inc., Dockets UE-131099, et al., Order 06 at ¶ 77 (Oct. 23, 2013).

² Wash. Utils. & Transportation Commn. v. Puget Sound Energy, Inc., Dockets UE-131099, et al., Intervener's Brief in Opposition to Puget Sound Energy's Proposed Sale of the Electron Hydroelectric Project, ¶ 5.

³ See Wash. Utils. & Transportation Commn. v. Puget Sound Energy, Inc., Dockets UE-131099, et al., Testimony of David C. Gomez, Exhibit No. __ CT (DCG-1T).

⁴ See UTC Staff Response to Commission Notice, dated July 18, 2014.

Agreement.⁵ Thus, the benefits to ratepayers resulting from the performance of the Initial Agreement will hold true under the terms of the Amended Agreement.⁶ Admittedly, the contemplated contractual relationship between the Puyallup Tribe and Electron Hydro may be altered by the Amended Agreement, but this modification should not materially reduce the economic benefits resulting from the sale. In short, the simple passage of time is not sufficient to undermine the economic analysis that supported the Commission's approval of the sale.

4 The Puyallup Tribe goes on to assert that the operation of the Project by Electron Hydro will result in significant economic losses and could harm the species affected by its operation. It offers the declarations of Mr. Gary Saleba of ESS Consulting, Inc. and Mr. Russell Ladley, the Puyallup Tribe's Resource Protection Manager, to support its assertions. Essentially, the Puyallup Tribe attacks the fitness of Electron Hydro to operate the Electron facility economically and in keeping with the requirements of the Endangered Species Act and the REA. Even if the Commission were to assume the negative projections predicted by Mr. Saleba and Mr. Ladley would come true, the Puyallup Tribe cannot effectively tie Electron Hydro's economic future with the interests of PSE's ratepayers.

5 The analysis performed by ESS Consulting, Inc. (ESS Report) concludes there are only two possible outcomes resulting from Electron Hydro's operation of the Project. Under its Scenario #1, the ESS Report predicts net present value losses to Electron Hydro of \$ [REDACTED]. Under Scenario #2, the net present value losses to Electron Hydro would escalate substantially to \$ [REDACTED]. In an effort to link Electron Hydro's future operations to the welfare of PSE's ratepayers, the Puyallup Tribe asserts that the sale to Electron Hydro will

⁵ See Wash. Utils. & Transportation Commn. v. Puget Sound Energy, Inc., Dockets UE-131099, et al., Amended Application of Puget Sound Energy, Inc., Page 6, ¶ 11; Page 7, ¶¶ 12, 13 and 14; and Page 8, ¶¶ 15, 16 and 17, provides a summary of the impact of the Amended Agreement.

⁶ Ibid, Exhibits C and D.

have unacceptable “substantial rate impacts and risks.”⁷ The Puyallup Tribe’s conclusion that Electron Hydro’s predicted economic losses would somehow land at the feet of PSE’s ratepayers is simply incorrect. As pointed out earlier by Staff, any losses that may be sustained by Electron Hydro will not be recoverable in rates charged to PSE’s customers.⁸

6 Staff’s analysis concluded that the sale resulted in a \$2.27 million reduction in revenue requirement in PSE’s Power Cost Only Rate Case (PCORC) in Docket UE-141141.⁹ This immediate and positive outcome for ratepayers was detailed in an adjustment based upon the sale of Electron to Electron Hydro. Further, Staff’s analysis showed the sale resulted in a continued overall positive portfolio benefit.¹⁰ In Staff’s opinion, the net positive portfolio benefits alone offer sufficient evidence to warrant continued support for the sale.

7 Staff also examined the risks posed to ratepayers as a result of PSE’s continued assignment of the obligations under the REA. The risk assumes, of course, the unlikely event that Electron Hydro would not make its payments to PSE as required by the Facility Operating Agreement. Even if PSE were required to make ongoing annual payments under the REA without Electron Hydro’s support, it would not materially affect the overall benefit to ratepayers arising from the transaction. Nor would the estimated \$845,000 in one-time costs associated with the removal of Electron’s diversion dam and headworks from the channel of the Puyallup River upon the Project’s retirement. Given these facts, Staff continues to conclude that ratepayer exposure post-sale is limited to the requirements under the REA until such time as the Puyallup Tribe and Electron Hydro agree on a new REA. The Puyallup Tribe has provided no evidence to the contrary.

⁷ Wash. Utils. & Transportation Commn. v. Puget Sound Energy, Inc., Dockets UE-131099, et al., Intervener’s Brief in Opposition to Puget Sound Energy’s Proposed Sale of the Electron Hydroelectric Project, ¶ 3.

⁸ Staff outlined this position clearly in its July 18, 2014, response to the Commission’s Notice in this docket.

⁹ Wash. Utils. & Transportation Commn. v. Puget Sound Energy, Inc., Dockets UE-141141, Prefiled Supplemental Direct Testimony of Katherine J. Barnard, Exhibit No. ___ (KJB-9T), Page 5, at 3.

¹⁰ Mullally, Exhibit No. ___ (MM-1HCT) at 66:Table 5.

8 As noted above, the Puyallup Tribes' brief attacks the fitness of Electron Hydro to operate the Electron facility economically. To counter this assertion, Staff points the Commission to evidence presented by PSE in filings related to this docket. Therein, PSE represented how it performed its due diligence to screen offers for the sale of the project and weighed the results of the solicitation against at least seven alternatives to the sale which included retirement. PSE selected Electron Hydro as the most responsive and responsible bidder and chose them based on their experience and ability to successfully perform to both the Power Purchase Agreement (PPA) and the Facility Operating Agreement. As a result, Staff concludes that PSE has staked shareholder risk on the outcome of Electron Hydro being successful in this business venture. It is unlikely that PSE would risk shareholder dollars by underestimating Electron Hydro's ability to perform its obligations under the Amended Agreement.

II. CONCLUSION

9 The Puyallup Tribe's principal argument against the sale of Electron revolves around two central issues: 1) Whether Electron Hydro is both financially and operationally able to operate Electron successfully; and 2) alleged unlawful assignment of contract rights from PSE to Electron Hydro LLC.

10 With regard to the first issue, PSE has demonstrated to the satisfaction of Staff that the sale relieves PSE of any need to incur future retirement or reconditioning costs, which would be additions to PSE's current revenue requirement. Staff evaluated all of the options presented by PSE and found the chosen option of selling the plant as the best one.¹¹ PSE has demonstrated that it has selected a competent entity willing and able to run the facility in

¹¹ The other options have PSE maintaining ownership of the plant and either repairing the plant to a serviceable condition, or retiring and removing the plant altogether. Both of those options cause greater costs and risks to ratepayers.

both a financially and environmentally sound manner. Nothing the Puyallup Tribe presented in its brief alters Staff's conclusion that the sale is in the public interest.

11 As to the second issue, the Puyallup Tribe objects to PSE's assignment of the REA. This is no reason to derail the sale. Even if the Puyallup Tribe offered actual facts as to PSE's breach of the agreement, the Commission is not the proper venue to resolve the matter, and should not be placed in the position of having to interpret or determine the rights of the Puyallup Tribe under the REA. If the Puyallup Tribe believes PSE has breached the agreement, then it should turn to the dispute resolution provisions found in the REA.¹²

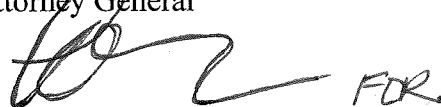
12 In conclusion, Staff recommends the Commission reaffirm its decision to approve:

- The sale of PSE's Electron Project to Electron Hydro under the originally filed Asset Purchase Agreement (Agreement) as amended in Exhibit F-5 of PSE's Amended Application; and
- 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.

DATED this 11th day of September 2014.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

A handwritten signature in black ink, appearing to read 'R. Ferguson', is written over a horizontal line. To the right of the signature, the letters 'FOR' are written in a similar cursive style.

SALLY BROWN
Senior Assistant Attorney General
Counsel for Washington Utilities and
Transportation Commission Staff

¹² REA's Section 15, Formal Dispute Resolution, goes into great detail the procedures available to the Tribe to seek relief. These procedures do not involve the Commission.