

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

WASHINGTON UTILITIES AND	)	
TRANSPORTATION COMMISSION,	)	
	)	DOCKET NO. UE-010526
Complainant,	)	
	)	
v.	)	
	)	ORDER DENYING
PUGET SOUND ENERGY, INC.,	)	APPLICATION FOR
	)	MITIGATION OF PENALTIES
Respondent.	)	
.....	)	

**BACKGROUND**

- 1      On January 8, 2001 and January 22, 2001, respectively, Puget Sound Energy, Inc. (PSE) signed master service agreements with Pilchuck Contractors, Inc. and Quanta Services, Inc. to perform construction and maintenance activities for PSE. Attached to these master service agreements were terms and conditions for the sale of PSE vehicles and equipment valued at approximately \$4.4 million.
  
- 2      On June 4, 2001, PSE filed an application in Docket No. UE-010824 for approval of these property transfers (no less than 133 days after the signing of the master service agreements). On October 11, 2001, in Docket No. UE-010526, the Commission assessed a penalty in the amount of \$13,300 for violating the requirements of RCW 80.12.020 and WAC 480-143-180. The penalty was assessed pursuant to RCW 80.04.405.
  
- 3      On October 26, 2001, PSE filed with the Commission an Application for Mitigation of Penalties, asking that the penalty be reduced to zero (\$0). PSE argues that there was no “sale” or “disposition” given the terms and conditions contained within the master service agreements. PSE argues that under Section 14.11 of the master service agreements the agreements are “contingent upon the Parties obtaining any required regulatory approval.” PSE further argues that the vehicle and equipment purchase and sales agreements state that the sales “are expressly subject to Section 14.11 of the master service agreements,” PSE argues, then, that there was technically no sale or disposition of the property in January 2001, because the proper regulatory approvals had not even been requested until June 4, 2001.
  
- 4      The Commission notes based on the staff investigation, that all monies owed under the master service agreements have been paid in full to PSE and all legal title to the

equipment purchased under the agreements has been transferred to purchasers. Puget's argument that the agreements were no more than contingent agreements awaiting Commission approval is belied by the transfer of title and full payment. The sale of property by PSE was in fact completed without Commission approval, though it may be void, under RCW 80.12.030, until approval is obtained.

5 RCW 80.12.020 requires that, "No public service company shall sell, lease, assign or otherwise dispose of ... property...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."

6 WAC 408-143-180 requires that, "A public service company must not dispose of any property necessary or useful to perform its public duties unless it applies for, and obtains, written authority from the commission."

7 Approval sought after the transaction is effectively consummated defeats the purpose of this law and the Commission's rule.

8 For purposes of calculating the penalty, the effective date of the transfer will be from the effective date of the master service agreement with Quanta Services, Inc. (January 22, 2001). The law and rules require Commission approval prior to the transfer, and therefore, utilities seeking approval of transfers should file for timely approval in order that the Commission can determine whether the transaction is in the public interest.

### FINDINGS

9 (1) PSE is a public service company subject to the jurisdiction of the Commission.

10 (2) PSE is in violation of WAC 480-143-020 or RCW 80.12.020 for the period January 22, 2001, through June 3, 2001.

11 (3) The Application for Mitigation of Penalties should be denied.

### O R D E R

#### THE COMMISSION ORDERS:

12 (1) The Application for Mitigation of Penalties is denied.

DATED at Olympia, Washington, and effective this      day of January, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner