

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of:

PUGET SOUND ENERGY

for (i) Approval of a Special Contract for Liquefied Natural Gas Fuel Service with Totem Ocean Trailer Express, Inc. and (ii) a Declaratory Order Approving the Methodology for Allocating Costs Between Regulated and Non-regulated Liquefied Natural Gas Services

DOCKET UG-151663

MOTION TO ESTABLISH A
BIFURCATED PROCEEDING

1. Pursuant to WAC 480-07-375, Puget Sound Energy (“PSE”) respectfully requests that the Commission establish a bifurcated proceeding in Docket UG-151663 to allow for review of an alternative business model PSE is proposing as contemplated by Commission Order 04.¹
2. In Order 04, the Commission found that it could, under appropriate circumstances, regulate sales of liquefied natural gas (“LNG”) by gas companies for use as transportation fuel but it could not regulate PSE’s proposed sales to Totem Ocean Trailer Express, Inc. (“TOTE”) under the contract PSE entered with TOTE on October 27, 2014 (the “TOTE Fuel Supply Agreement”) because PSE did not intend to offer sales of LNG to the general public for use as transportation fuel.²

¹ *In the Matter of the Petition of Puget Sound Energy for (i) Approval of a Special Contract for Liquefied Natural Gas Fuel Service with Totem Ocean Trailer Express, Inc. and (ii) a Declaratory Order Approving the Methodology for Allocating Costs Between Regulated and Non-regulated Liquefied Natural Gas Services, Docket UG-151663, Order 04 (Dec. 18, 2015)*

² Order 04 at ¶¶ 19 and 28.

3. The Commission also suggested in Order 04 that alternative business models for using or providing LNG under a structure within its jurisdiction could be considered:

THE COMMISSION GIVES NOTICE THAT parties may file supplemental briefs by January 15, 2016, to address whether there may be alternative business models with structures that would fall under the Commission's jurisdiction. Such argument should consider whether other factors considered in the Commission's 2014 Interpretive Statement, such as the presence or absence of monopoly and the presence or absence of a need for consumer protection, need to be analyzed even if the business is structured so as to be offered to the public generally. To the extent a party identifies a model, or models, that legally could be subject to our jurisdiction, they should address, among other things, the question whether the Commission should regulate LNG sold as an end-use commodity such as vehicular fuel.

4. In lieu of filing supplemental briefs as contemplated by Order 04, PSE filed an agreed motion for extension of time with the Commission, pursuant to which the parties to the proceeding agreed to extend the time for filing supplemental briefs from January 15, 2016 to January 29, 2016. In Order 05, the Commission granted the agreed motion, extended the date for filing supplemental briefs from January 15, 2016 to January 29, 2016, allowing an opportunity for parties to file reply briefs on February 15, 2016, and rescheduling oral argument.³

5. On January 22, 2016, Commission Staff filed a motion to suspend the procedural schedule to allow parties additional time to engage in settlement discussions. In Order 06, the Commission granted the motion to suspend the procedural schedule.⁴

6. The parties have engaged in discussions and ongoing process related to PSE's proposal to develop the Tacoma LNG Facility. These discussions included further inquiry into the three

³ *In the Matter of the Petition of Puget Sound Energy for (i) Approval of a Special Contract for Liquefied Natural Gas Fuel Service with Totem Ocean Trailer Express, Inc. and (ii) a Declaratory Order Approving the Methodology for Allocating Costs Between Regulated and Non-regulated Liquefied Natural Gas Services*, Docket UG-151663, Order 05 (Jan. 11, 2016).

⁴ *In the Matter of the Petition of Puget Sound Energy for (i) Approval of a Special Contract for Liquefied Natural Gas Fuel Service with Totem Ocean Trailer Express, Inc. and (ii) a Declaratory Order Approving the Methodology for Allocating Costs Between Regulated and Non-regulated Liquefied Natural Gas Services*, Docket UG-151663, Order 06 (Jan. 25, 2016).

functions to be performed by the Tacoma LNG Facility: (i) serving as a peaking resource for PSE's natural gas sales customers; (ii) supplying fuel to TOTE under the TOTE Fuel Supply Agreement; and (iii) providing fuel for sales to other marine vessels or other purchasers.

7. After consideration, PSE is proposing to proceed with the Tacoma LNG Facility under a business model in which a non-regulated affiliate of PSE (tentatively named "Puget LNG") would offer sales of LNG for use as transportation fuel, and such non-regulated affiliate of PSE would *not* request that the Commission regulate such sales.⁵ Since PSE is no longer seeking to offer the LNG fuel supply to TOTE as a regulated service, PSE is no longer requesting an order from the Commission approving the TOTE Fuel Supply Agreement as a special contract pursuant to and consistent with the requirements of WAC 480-80-14.

I. PROPOSED BIFURCATED PROCEEDING

8. PSE has briefly outlined its alternative business model and proposal for a bifurcated proceeding to the parties and is now amending its request for Commission action in this proceeding. As further discussed in this motion, PSE is requesting that the Commission establish bifurcated procedures that would provide a record upon which the Commission could take the following actions:

- (i) issue an order to provide a limited exemption to Merger Commitment 56 in Docket No. U-072375, that would allow Puget Energy to own and operate both PSE and Puget LNG;
- (ii) issue an order authorizing a regulatory incentive that would allow PSE investors and PSE natural gas sales customers to share equally in the projected portfolio benefits associated with the construction and operation of the Tacoma LNG Facility;

⁵ PSE and Puget Energy are aware of the requirement in Washington law regarding rates charged by a natural gas company that serves a private customer operating marine vessels and the Washington state ferries and would believe the alternative business model can be implemented consistent with that law if the Washington state ferry system would seek LNG fuel service in the future. *See*, RCW 80.280.280.

- (iii) conduct a proceeding to determine (a) the methodology for calculation of the projected portfolio benefits associated with the Tacoma LNG Facility, and (b) the projected portfolio benefits associated with the next best resource alternative to the Tacoma LNG Facility (likely incremental pipeline capacity) as a baseline against which the projected portfolio benefits associated with the Tacoma LNG Facility would be compared; and
- (iv) issue a declaratory order approving PSE's proposed methodology for allocating the costs of the Tacoma LNG Facility, which is consistent with the current cost allocation methodology approved by the Commission in Docket Nos. UE-960195 and U-072375, for use with respect to the allocation of costs and revenues associated with the regulated services that PSE would provide from the Tacoma LNG Facility and the non-regulated services that Puget LNG would provide from the Tacoma LNG Facility.

A. Proposed First Phase of the Bifurcated Proceeding

9. PSE proposes that, in the first phase of the bifurcated proceeding, the parties would brief and the Commission would rule on two limited issues:

- (i) whether the Commission would provide a limited exemption to Merger Commitment 56 in Docket No. U-072375, that would allow Puget Energy to own and operate both PSE and Puget LNG; and
- (ii) whether the Commission would authorize an equal sharing of the projected portfolio benefits associated with the Tacoma LNG Facility between PSE investors and PSE natural gas sales customers for consideration in this proceeding.

PSE believes each of these issues presents a policy question for the Commission, and neither requires extensive factual investigation.

10. PSE proposes that the Commission conduct the first phase of the proceeding in accordance with a supplemental briefing schedule and oral argument similar to the schedule the Commission appeared to contemplate in Order 04. PSE respectfully requests that the Commission conduct the first phase in an expedited manner that would allow the Commission to

issue an order by early June 2016 so that PSE knows whether it can proceed with the development and construction of the Tacoma LNG Facility.

B. Proposed Second Phase of the Bifurcated Proceeding

11. PSE proposes that the second phase of the bifurcated proceeding would follow the traditional methods of administrative adjudication (e.g., testimony, discovery, hearing, briefing) and would be used to establish:

- (i) the methodology for calculation of the projected portfolio benefits associated with the Tacoma LNG Facility;
- (ii) the projected portfolio benefits associated with the next best resource alternative to the Tacoma LNG Facility (likely incremental pipeline capacity) as a baseline against which the projected portfolio benefits associated with the Tacoma LNG Facility would be compared in a later proceeding when the actual costs of the Tacoma LNG Facility are available; and
- (iii) a methodology for the sharing of portfolio benefits determined in the proceeding.

12. PSE expects that the second phase of the proceeding would also address the methodology for allocating the costs of the Tacoma LNG Facility to PSE and the regulated services that PSE would provide from the Tacoma LNG Facility and to Puget LNG and the non-regulated services that Puget LNG would provide from the Tacoma LNG Facility.

II. DESCRIPTION OF PSE'S PROPOSED NEW BUSINESS MODEL

13. Under PSE's proposed new business model, all offers for sales of LNG for use as transportation fuel would be made by an affiliate of PSE that would not be subject to the jurisdiction of the Commission. Declaration of Roger Garratt in Support of the Motion to Establish a Bifurcated Proceeding ("Garratt Decl.") at ¶ 9. The PSE affiliate (tentatively named "Puget LNG") would be a newly-formed, wholly-owned direct subsidiary of Puget Energy. *Id.*

14. Puget LNG would acquire a 56% ownership share of the Tacoma LNG Facility and compensate PSE for 56% of PSE’s then-existing development and construction costs for the Tacoma LNG Facility. Garratt Decl. at ¶ 10. This 56% ownership share has been determined based upon the allocation of projected closing costs (less AFUDC) presented in the Third Exhibit to the Prefiled Direct Testimony of Roger Garratt, Exhibit No. ___(RG-4C):

	Peak Shaving	TOTE	Unregulated Fuel Sales	Total
Closing Costs Less AFUDC	\$136,422,724	\$92,885,438	\$81,396,644	\$310,704,805

Garratt Decl. at ¶ 10. Under the proposal now considered by PSE, the portion of capital costs previously allocated to TOTE would now be unregulated fuel sales:

	Peak Shaving	Unregulated Fuel Sales	Total
Closing Costs Less AFUDC	\$136,422,724	\$174,282,082	\$310,704,805

Garratt Decl. at ¶ 11. This proposed allocation would result in (i) 44% of the projected capital costs of the Tacoma LNG Facility being allocated to PSE for regulated services and (ii) 56% of the projected capital costs of the Tacoma LNG Facility being allocated to Puget LNG for non-regulated sales of LNG for use as transportation fuel. Garratt Decl. at ¶ 12. As discussed below, the final ownership interests would be reassigned based on a final accounting of actual capital costs

A. Puget LNG

15. Puget Energy has not yet created Puget LNG. Garratt Decl. at ¶ 9. Merger Commitment 56 approved by the Commission in Docket U-072375 currently prohibits Puget

Energy from operating or owning any business other than PSE.⁶ Therefore, PSE requests that the Commission provide a limited exemption to Merger Commitment 56.

16. The business and affairs of Puget LNG would be managed under the direction and control of a Board of Managers or Board of Directors. Garratt Decl. at ¶ 13. Puget Energy, the sole member or shareholder of Puget LNG, would designate each of the members of the Board of Managers or Board of Directors. *Id.* It is not expected that Puget LNG would have employees. *Id.*

B. Arrangements Between PSE and Puget LNG

17. The rights and obligations of each of PSE and Puget LNG would be set forth in two agreements between the two entities—an Ownership Agreement and an Operations Agreement. Consistent with Chapter 80.16 RCW and WAC 480-90-245, PSE would file each of the Ownership Agreement and the Operations Agreement prior to the effective date of those agreements. PSE is prepared to file each of the Ownership Agreement and the Operations Agreement in this proceeding if the Commission approves the exemption to Merger Condition 56 and after the creation of Puget LNG.

1. Ownership Agreement Between PSE and Puget LNG

18. After its creation, Puget LNG and PSE would enter into an Ownership Agreement that would provide generally for the rights and obligations of each of Puget LNG and PSE with regard to the Tacoma LNG Facility. Garratt Decl. at ¶ 14. Under the Ownership Agreement, Puget LNG would acquire a 56% ownership share of the Tacoma LNG Facility and compensate PSE for 56% of PSE's then-existing development and construction costs for the Tacoma LNG

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, Attachment A (Multiparty Settlement Stipulation), Appendix A at page 12 (“56. Puget Energy shall not operate or own any business other than PSE.”).

Facility. *Id.* The Ownership Agreement would require a final accounting based on actual costs and a reassignment of interests based on that final accounting. *Id.* The capital investment of each of Puget LNG and PSE would thereafter be in proportion to their respective ownership interests. *Id.*

2. Operating Agreement Between PSE and Puget LNG

19. Puget LNG and PSE would also enter into an Operating Agreement under which PSE would have management responsibility for operating the Tacoma LNG Facility. Garratt Decl. at ¶ 15. Pursuant to the terms and conditions of the Operating Agreement, PSE would serve as the operator of the Tacoma LNG Facility, and Puget LNG would compensate PSE for its portion of the costs of operating the plant. *Id.* The Operating Agreement would provide generally that the costs of operating the Tacoma LNG Facility would be shared by Puget LNG and PSE in proportion to the usage of the Tacoma LNG Facility based on the approved cost allocation methodology. *Id.*

3. Distribution System Transportation Service for Puget LNG

20. Puget LNG would take distribution system transportation service to the Tacoma LNG Facility pursuant to a PSE rate schedule or a special contract with PSE, either of which would be subject to the jurisdiction of this Commission. Garratt Decl. at ¶ 16.

C. Assignment of the TOTE Fuel Supply Agreement from PSE to Puget LNG

21. After the creation of Puget LNG, PSE would assign the TOTE Fuel Supply Agreement to Puget LNG pursuant to section 21.2 of that agreement. Garratt Decl. at ¶ 17. PSE would also assign its obligations concerning the provision of short-term LNG supply to TOTE to Puget LNG. *Id.*

III. ARGUMENT IN SUPPORT OF MOTION

22. PSE is requesting that the Commission resume the proceeding in order to ensure timely resolution of questions related to development and operation of the Tacoma LNG Facility. PSE is prepared to propose an alternative business model consistent with direction in Order 04. In order to get Commission review of the proposed alternative business model requires that the proceeding be resumed. PSE and the parties have engaged in discussions and related process. At this time, however, PSE is seeking direction from the Commission as to whether the proposed business model is consistent with the authority of the Commission.

23. As explained in the testimony PSE filed at the outset of this proceeding, PSE projects that the Tacoma LNG Facility would provide natural gas sales customers with portfolio benefits. The level of portfolio benefits does not exist if the Tacoma LNG Facility does not offer LNG for sale for use as transportation fuel. The economies of scale afforded by a combined-use facility make the Tacoma LNG Facility a cost-effective resource for PSE's natural gas sales customers. A smaller, standalone LNG facility designed to meet PSE's peaking needs alone would not be a cost-effective resource, and PSE would have to rely on the next best alternative, likely incremental pipeline capacity, to meet customer needs.

24. Authorization of an equal sharing of the portfolio benefits associated with the Tacoma LNG Facility between PSE investors and PSE natural gas sales customers would create sufficient risk distribution to allow Puget Energy to be willing to make the investment and facilitate the development of the Tacoma LNG Facility. Puget Energy would be making the investment in Puget LNG to achieve the economies of scale to provide the projected portfolio benefits to PSE's natural gas sales customers. In doing so, Puget Energy and its investors would be deviating from their preferred investment profile that would focus on regulated infrastructure;

the investment of approximately \$175 million in Puget LNG represents a marked change in risk. An equal sharing in portfolio benefits between PSE investors and PSE natural gas sales customers would help mitigate the increased risk created by the investment in Puget LNG and incentivize the construction of the Tacoma LNG Facility, which would provide value to PSE's natural gas sales customers.

25. At this time, PSE does not have a definitive proposal as to how a regulatory incentive identified by the Commission would be shared between PSE investors and PSE natural gas sales customers. PSE expects that such proposals would be put forth for evaluation in the second phase of the proceeding.

26. As described above, PSE is proposing that in the second phase of the bifurcated proceeding, the Commission determine: (a) the methodology for calculation of the projected portfolio benefits associated with the Tacoma LNG Facility; and (b) the projected portfolio benefits associated with the next best resource alternative to the Tacoma LNG Facility (likely incremental pipeline capacity) as a baseline against which the projected portfolio benefits associated with the Tacoma LNG Facility would be compared. In a future proceeding in which PSE seeks to include the costs of its portion of the Tacoma LNG Facility in rates, the Commission would use the actual development and construction costs to calculate the portfolio benefits (if any) for sharing between PSE investors and PSE natural gas sales customers.

27. PSE is proposing a bifurcated proceeding because the issues to be determined in the first phase are foundational. If the Commission were to determine in the first phase of the proceeding that the answer to either question is in the negative, then PSE would not proceed with the Tacoma LNG Facility, and the second phase would be unnecessary. If, however, the Commission were to determine in the first phase of the proceeding that the answer to both

questions is in the affirmative, then PSE would proceed with the Tacoma LNG Facility, and the second phase would be necessary to determine the methodology and baseline for determining a sharing of the projected portfolio benefits.

IV. REQUESTED ORDER

28. PSE respectfully requests the following:

- (1) an order resuming the proceeding in Docket UG-151663; and
- (2) an order establishing bifurcated procedures to allow for review of the alternative business model PSE is proposing, including:
 - (a) that the first phase of the bifurcated proceeding would be completed in June 2016 and answer the questions (i) whether the Commission would provide a limited exemption to Merger Commitment 56 in Docket No. U-072375, that would allow Puget Energy to own and operate both PSE and Puget LNG, and (ii) whether the Commission would authorize an equal sharing of the projected portfolio benefits associated with the Tacoma LNG Facility between PSE investors and PSE natural gas sales customers for consideration in this proceeding; and
 - (b) that the second phase of the bifurcated proceeding would be used to establish (i) the methodology for calculation of the projected portfolio benefits associated with the Tacoma LNG Facility, (ii) the projected portfolio benefits associated with the next best resource alternative to the Tacoma LNG Facility (likely incremental pipeline capacity) as a baseline against which the projected portfolio benefits associated with the Tacoma LNG Facility would be compared in a later proceeding when the actual costs of the Tacoma LNG Facility are available; and (iii) a methodology for the sharing of portfolio benefits determined in the proceeding.

DATED this 4th day of March, 2016.

PERKINS COIE LLP

By: 

Jason T. Kuzma, WSBA No. 31830
Pamela J. Anderson, WSBA No. 37272
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Telephone: 425-635-1400
Facsimile: 425.635.2400
Email: JKuzma@perkinscoie.com
PJAnderson@perkinscoie.com

Attorneys for Puget Sound Energy