

**BEFORE THE WASHINGTON  
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

ORDER 07

GRANTING MOTION TO  
CONDUCT BIFURCATED  
PROCEEDING, ESTABLISHING  
SCHEDULE FOR PRELIMINARY  
BRIEFS, SETTING ISSUES FOR  
ORAL ARGUMENT

NOTICE OF HEARING  
(Set for May 26, 2016, at 1:30 p.m.)

**MEMORANDUM**

**Motion, Response, and Reply**

1 This docket concerns a proposal by Puget Sound Energy (PSE or the Company) to develop at the Port of Tacoma a liquefied natural gas (LNG) facility capable of receiving nearly 21,000 Decatherms per day (Dth/day) of natural gas from which it can produce approximately 250,000 gallons of LNG when liquefying at nameplate capacity.<sup>1</sup> The facility will be capable of storing approximately 8 million gallons of LNG.<sup>2</sup> PSE identifies three functions the facility is planned to perform:

- The Tacoma LNG Facility would supply fuel to Totem Ocean Trailer Express, Inc. (TOTE), under a contract PSE entered with TOTE on October 27, 2014.

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<sup>1</sup>PSE Petition ¶ 13. According to PSE witness Riding, “PSE’s largest gas supply resource is transported on firm pipeline capacity on Williams-Northwest Pipeline with a total of 532.9 MDth/day of capacity to PSE’s service territory. About half of the gas supply moved on NWP capacity is from British Columbia and about half of the gas supply is from Alberta and the Rockies.” Riding, Exh. No. CR-1HCT at 4:8-12.

<sup>2</sup> PSE Petition ¶ 13.

- The Tacoma LNG Facility would provide fuel for sales to other marine vessels or other purchasers.
- The Tacoma LNG Facility would serve as a peaking resource for PSE's core natural gas customers.<sup>3</sup>

PSE initially proposed that the first and third functions should be treated as part of the Company's regulated business, the first meeting the needs of a single customer, TOTE, under a "special contract" and the third providing capacity to meet core retail natural gas customers' peak requirements at tariffed rates.<sup>4</sup> PSE proposed that the second function would be a separate, unregulated business.

2 The Washington Utilities and Transportation Commission (Commission) established a briefing schedule and, considering the parties' arguments, entered Order 04 in this proceeding on December 18, 2015. In Order 04, the Commission determined that it has "general jurisdiction under Title 80 RCW to regulate sales of liquefied natural gas by gas companies for use as transportation fuel." However, the Commission also determined that it lacked authority to exercise its jurisdiction over sales of liquefied natural gas by PSE to TOTE as originally proposed by PSE.

3 The Commission also said in Order 04 that:

While the structure of the business PSE proposes, as described in its Petition and accompanying submittals in this docket, is one over which we cannot lawfully assert our jurisdiction, we make that determination here provisional and will carry the question forward with the case for the time being. We accordingly will afford the parties two additional formal opportunities to explore the question of jurisdiction specifically, and the proposed project more generally, to learn whether there may be alternative business models with structures that would fall under the Commission's jurisdiction if this is somehow critical to the success of this project. Parties may file supplemental briefs by January 15, 2016, to address this question.<sup>5</sup>

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<sup>3</sup> See PSE Petition ¶¶ 11, 30, 32-33.

<sup>4</sup> According to PSE: "This peaking resource would allow PSE to avoid purchasing 365-day pipeline capacity to meet a few days of peak demand that may only occur once every few winters." Garratt, Exh. No. RG-1CT at 9:19 – 10:23.

<sup>5</sup> Order 04 ¶ 30.

4 The Commission entered Order 05 on January 11, 2016, extending the date for filing supplemental briefs from January 15, 2016 to January 29, 2015, allowing an opportunity for parties to file reply briefs on February 15, 2016, and rescheduling oral argument. On January 25, 2016, in Order 06, the Commission granted an unopposed motion from its regulatory staff (Commission Staff or Staff) to suspend the procedural schedule to allow parties additional time to engage in settlement discussions.

5 On March 4, 2016, PSE filed a motion requesting 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. PSE's alternative business model would treat all sales of LNG for transportation fuel as non-jurisdictional. The Company proposes to establish a newly formed, unregulated subsidiary of Puget Energy (PSE's parent corporation) as the business entity that would make such sales to TOTE and others.

6 PSE, by its motion, proposes specifically that in the first phase of the bifurcated proceeding, the parties would brief and the Commission would rule on two issues:

- Whether the Commission would provide an exemption to Merger Commitment 56 in Docket U-072375 that would allow Puget Energy to own and operate both PSE and Puget LNG.<sup>6</sup>
- 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 describes these issues as “foundational” and believes they present only policy questions for the Commission, thus requiring no extensive factual investigation prior to a decision.

7 PSE proposes that the second phase of the bifurcated proceeding be conducted as an adjudicative proceeding, which would be subject to the requirements of RCW Chapter

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<sup>6</sup> In the referenced docket, the Commission approved, with conditions, the acquisition of PSE by an investment consortium led by the Macquarie Group. *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 (December 30, 2008). The merger condition as to which PSE seeks an exemption is in Attachment A (Multiparty Settlement Stipulation) to the cited order, Appendix A, page 12 (“56. Puget Energy shall not operate or own any business other than PSE.”).

34.05 and the Commission's procedural rules in WAC Chapter 480-07. In phase two, according to PSE, the Commission would establish:

- The methodology for calculation of the projected portfolio benefits associated with the Tacoma LNG Facility.
- 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.
- A methodology for the sharing of portfolio benefits determined in the proceeding.
- 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.

8 PSE states in its motion that:

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.

9 On March 11, 2016, Staff, the Public Counsel Unit of the Washington Attorney General's Office, and the Northwest Industrial Gas Users filed a Joint Response to Motion to Establish a Bifurcated Proceeding (Joint Response). In the Joint Response, the parties recommended that the Commission exercise its discretion to bifurcate the proceeding consistent with the terms of the Joint Response. PSE, with one exception, agrees to the

terms proposed by the Joint Response, which recommends the following procedural schedule for this first phase of the proceeding:

Event	Date
Initial Brief submitted by PSE	no later than April 15, 2016
Response Brief submitted by each of the Joint Parties	no later than May 16, 2016
Commission Order (First Phase)	June 2016

- 10 The Joint Response, as agreed to by PSE, also requests that the Commission issue a notice of opportunity that would allow parties to Docket U-072375 that are not parties to this proceeding<sup>7</sup> to submit briefs limited to the first question to be briefed in phase one of the proceeding (*i.e.*, whether the Commission would provide a limited exemption to the Merger Commitments set forth in Docket U-072375 for the purpose of allowing Puget Energy to own and operate both PSE and an unregulated affiliate).
- 11 The Joint Response supports PSE's proposal that phase two of these proceedings, if necessary, should be conducted as an adjudicative proceeding.
- 12 Finally, the Joint Response states that all parties to this docket discussed, but did not agree to, a procedural schedule for phase two, recognizing the need for Commission input. The Joint Response accordingly requests that the Commission schedule a prehearing conference at its earliest convenience after the first phase for the purpose of establishing a schedule for the second phase of this bifurcated proceeding.
- 13 PSE filed a reply stating that it does not agree to this procedural suggestion. PSE requests that the Commission convene a prehearing conference at its earliest convenience prior to the conclusion of phase one because PSE has concerns that if the Commission waits until the conclusion of the first phase of the proceeding phase two could be unnecessarily delayed due to scheduling conflicts. Therefore, "PSE strongly prefers to establish a second phase of the proceeding as soon as practicable, recognizing that such schedule can be cancelled if there is, in fact, no second phase to the proceeding."

### Discussion and Decisions

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<sup>7</sup> Parties to Docket No. U-072375 that are not parties to this proceeding are (i) the Industrial Customers of Northwest Utilities, (ii) the Kroger Co., on behalf of its Fred Meyer Stores and Quality Food Centers divisions, (iii) the Federal Executive Agencies, (iv) the Energy Project, (v) Northwest Energy Coalition, and (vi) the Cogeneration Coalition of Washington.

14 The Commission agrees that the question whether it should grant PSE an exemption to Merger Commitment 56 in Docket U-072375 that would allow Puget Energy to own and operate both PSE and Puget LNG is one that can be decided as a matter of policy. We are prepared to set this issue for briefing and decision on the schedule the parties suggest. In this connection, however, we will afford all parties to Docket U-072375, in addition to the parties in this docket, an opportunity to file briefs on this question.

15 It is not equally clear, however, that the question 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, or a sharing on some other basis, is ripe for consideration in this proceeding. The determination of this issue may depend on material facts not yet presented and shown to be uncontroverted.

16 PSE's motion recognizes that it is necessary to conduct evidentiary proceedings in a second phase that might inform a decision whether an equal sharing or some other sharing basis is more appropriate. PSE's motion expressly identifies three issues that must be resolved:

- The methodology for calculation of the projected portfolio benefits associated with the Tacoma LNG Facility.
- 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.
- A methodology for the sharing of portfolio benefits determined in the proceeding.

17 The assertion that the Commission can decide on the basis of briefs alone that an "equal sharing" (*i.e.*, a straightforward 50/50 split) is the appropriate methodology for the sharing of portfolio benefits appears at odds with the proposal that the Commission determine the methodology for sharing of the benefits in an evidentiary hearing. Further, the parties propose that the Commission decide whether an "equal sharing" is an appropriate methodology before determining in an evidentiary proceeding how those benefits may be calculated, and whether such benefits, if any, compare favorably to "the next best resource alternative to the Tacoma LNG Facility," which itself is not identified with certainty although PSE suggests this would "likely" be "incremental pipeline capacity."

18 We recognize, on the other hand, that it may be possible for the parties to brief and for the Commission to determine this question, if not fully, at least in part, or conditionally, subject to the outcome of the issues PSE identifies for determination on a fully developed record in the second phase of the proceeding. Subject to this reservation, the Commission is also prepared to accept briefs on this question on the schedule the parties suggest. This question does not appear to directly implicate Docket U-072375; we will accept briefs on this question only from the parties to this docket, unless a party to Docket U-072375 demonstrates a nexus between issues in that proceeding and this one, and shows good cause to allow a brief to be filed.

19 We will provide, in addition, for oral argument by the parties, and colloquy with the Bench on both issues. This can be done on May 26, 2016, at 1:30 p.m., in the Commission's hearing room.

20 On the question whether to conduct a prehearing conference in the near term to establish a procedural schedule for phase two that will not be initiated for several months at least, and may not be necessary at all, we decline. The Commission is, by nature, a reactive agency. We can never be sure, in advance, what filings will or will not be made. We face deadlines, both statutory and practical, in many of our cases. Emergencies can, and do, present themselves and require immediate, sometimes significant amounts of attention from Commission personnel. Additional demands on the Commission's resources include rulemaking proceedings and efforts to support the Governor's office and the legislature. In sum, it is not appropriate for us to schedule matters involving a substantial number of procedural deadlines that extend for months into the future and the efforts of a considerable number of Commission employees when doing so may interfere with our ability to schedule and address other matters. If and when we determine concretely the need for phase two of these bifurcated proceedings, we will conduct an early prehearing conference and establish a schedule that will provide for efficient resolution of the issues.

### **ORDER**

21 THE COMMISSION ORDERS THAT PSE's Motion To Establish a Bifurcated Proceeding, filed on March 4, 2016, is GRANTED, subject to the conditions and determinations discussed in the body of this Order.

### **NOTICE OF HEARING**

- 22 **THE COMMISSION GIVES NOTICE THAT it will conduct a hearing beginning at 1:30 p.m. on May 26, 2016, in the Commission's hearing room, Room 206, Richard Hemstad Building, Olympia, Washington, for the purpose of oral argument and colloquy with the Bench concerning the issues discussed in the body of this Order.**

Dated at Olympia, Washington, and effective March 29, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS  
Senior Review Judge