



March 18, 2021

VIE EMAIL

Commissioners Rendahl, Danner, and Balasbas
Washington Utilities & Transportation Commission
PO Box 47250,
Olympia, WA 98504-7250

Sent via email to:

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RE: UG-210111 – Affiliated Interest Contract between Puget Sound Energy & Puget LNG

Dear Commissioners Rendahl, Danner, and Balasbas:

Earthjustice submits these comments on behalf of Advocates for a Cleaner Tacoma, the Sierra Club, Washington Environmental Council, Physicians for Social Responsibility-Washington, and Stand.earth (collectively “ACT”).¹

We are writing to request an investigation and public hearing regarding Filing No. UG-210111, to ensure that the affiliated interest contract between Puget LNG and Puget Sound Energy serves the public interest. The Washington Utilities and

¹ Advocates for a Cleaner Tacoma is a Tacoma-based non-profit focused on ensuring and improving clean air, water, and land in Tacoma. The Sierra Club is a national nonprofit organization with 67 chapters and about 780,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth’s ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Washington Environmental Council is a nonprofit, statewide advocacy organization that has been driving positive change to solve Washington’s most critical environmental challenges since 1967, and has over 1,200 individual donors, 34,000 members, and reaches over 50,000 individuals through our communications and social media platforms. Washington Physicians for Social Responsibility (WPSR) is a 40-year-old, health professional-led advocacy organization based in Seattle, that is working to create a healthy, just, peaceful and sustainable world. Stand.earth is a Bellingham-based international nonprofit, created to challenge corporations and governments to treat people and the environment with respect, because our lives depend on it.

Transportation Commission (“UTC”) has the authority to amend a contract between affiliates to ensure the contract serves the public interest. This contract between Puget LNG and Puget Sound Energy is not in the public interest because it would allow operations to proceed at the Tacoma LNG facility despite safety risks and an inadequate SEPA review. We ask that the UTC notice this filing as an agenda item for an open public hearing, and conduct further proceedings to determine whether the project serves the public interest.

A. The UTC has authority to amend contracts between affiliates to protect the public interest

The UTC has broad authority to amend contracts between affiliated entities to ensure they benefit the public. The UTC has the authority to “institute an investigation and disapprove the contract, arrangement, modification or amendment thereto if *the public service company has failed to prove that it is reasonable and consistent with the public interest.*” RCW 80.16.020 (emphasis added). The UTC has “continuing supervisory control over the terms and conditions [of contracts between affiliated entities] so far as necessary to protect and promote the public interest.” RCW 80.16.050. The Supreme Court has held that the UTC has the statutory authority to “exercise jurisdiction and examine all [transactions between affiliated entities] to determine whether or not they are in the public interest.” *US W. Commc’ns, Inc. v. Wash. UTC*, 134 Wn. 2d 74, 94–95 (1997), as corrected (Mar. 3, 1998). The Court held that the UTC has the power to “disallow or disapprove payments made pursuant to any such contract if they are unreasonable,” and authorizes the UTC to “revise or amend terms and conditions of contracts if, when and as necessary to protect and promote the public interest.” *Id.* Accordingly, the UTC has a broad authority, and a statutory duty, to investigate and evaluate contracts between affiliated entities to ensure they protect and promote the public interest.

ACT respectfully requests that the UTC conduct an investigation into the contract between Puget LNG and PSE to determine whether it serves the public interest. An investigation is especially appropriate here because PSE unlawfully delayed in its filing. The statute requires PSE to file its proposed contract with an affiliated interest *before* the effective date of the contract. RCW 80.16.020. The effective date of the contract between PSE and Puget LNG is February 1, 2021. However, PSE only filed notice with the UTC regarding this contract several weeks later on February 18, 2021.

B. Safety risks and lack of material disclosure by Puget Sound Energy harms the public interest and merits delaying the effective date of the contract.

ACT previously submitted to the Board expert testimony describing unexamined siting and safety risks at the Tacoma LNG Facility. PSE redesigned the facility, and added new equipment that handles hazardous or flammable materials—including a pipeline that

traverses the length of the facility. Yet, it never prepared a revised siting and safety study to evaluate safety hazards posed by the redesign that allowed the facility to receive and process feed gas with a much higher content of potentially explosive hydrocarbons.

PSE's reliance upon outdated designs to prepare its Siting and Safety Studies, and its Fire Protection Evaluation amounts to material lack of disclosure. PSE submitted near final design plans to the UTC in its application for Form 18 approval. However, the Fire Protection Evaluation and the Siting and Safety Studies it submitted for the Form 18 approval process were based on an outdated and old design of the facility. PSE prepared the Fire Protection Evaluation in April 2017, several months before it redesigned the facility to accept feed gas with a much higher content of ethane and propane. The Siting and Safety Study was prepared in 2015, several years before the facility redesign. PSE never revised its Fire Protection Evaluation, even though it redesigned the facility. Thus, both the Siting and Safety Studies, and the Fire Protection Evaluation fail to disclose the risks associated with new pipelines and equipment that carry hazardous and flammable materials, increased offsite trucking of heavy hydrocarbons, and a greater throughput of flammable and potentially explosive hydrocarbons.

PSE must revise its Siting and Safety Study and its Fire Protection Evaluation before the facility is allowed to operate. The facility has serious unexamined safety hazards, and lacks an up to date siting and safety study that accounts for changes to the design of the project. **Accordingly, ACT respectfully requests that the UTC delay the effective date of the Puget LNG and PSE contract until after PSE revises these necessary safety hazard assessments.**

C. Inadequate environmental review merits denial of the contract.

Further, ACT is litigating a challenge against the Tacoma LNG Project before the Pollution Control Hearings Board for failure to conduct environmental review, and the public interest would be served by a delay in the effective date of the contract to allow for resolution of this legal challenge. The public interest favors resolution of legal challenges before a project is operational. *King County v. Wash. State Boundary Review Bd.*, 122 Wn.2d 648, 664 (1993) (decrying "snowball" effect: "decisionmakers need to be apprised of the environmental consequences before the project picks up momentum, not after"); *Merkel v. Port of Brownsville*, 8 Wn. App. 844, 851-52 (1973) ("The coercive effect the construction of one segment would have upon the other is obvious... Irreparable damage would flow from allowing any portion of this project to proceed without full compliance..."). A short delay in the effective date of the contract would benefit the public interest by allowing resolution of pending legal challenges. The trial before the Pollution Control Hearings Board is scheduled for April 12-23, and a decision on the merits is expected by mid-summer. **Accordingly, ACT respectfully request that the UTC delay the effective date of the contract until after September 1, because the parties will likely have resolved their legal challenges against the facility by that date.**

D. PSE would not be harmed by delaying the effective date of the contract.

PSE does not anticipate using LNG stored at the facility until mid-winter of 2021, and thus will not be harmed in a short delay of the contract's effective date. The purpose of the Tacoma LNG Project is to store LNG for use during peak winter demands, and to sell LNG to marine vessels. Using LNG for peak-shaving will not occur until at least December 2021 or January 2021, because it is only needed during periods of high demand in the coldest winter months.

Further, there is no demand for LNG for fueling marine vessels until next year. PSE has only one vessel fueling contract, and that contract is with TOTE Marine. TOTE needs to retrofit its ships to receive and run on LNG, and thus would not purchase LNG from the Tacoma LNG until the first quarter of 2022 at the earliest. Littauer Dep., Dec. 16, 2020, at 18-22. PSE has no other vessel fueling contracts or marine vessel customers besides TOTE. *Id.* At 20-22.

Since PSE has no commercial purpose for stored LNG gas until the winter, it will not be harmed by a short delay in the effective date, until after September 1, 2021, to allow for resolution of legal challenges, and preparation of updated siting and safety studies. Moreover, PSE's unlawful delay in filing its affiliated interest contract with the UTC further merits a stay of the contract's effective date.

E. Conclusion

In conclusion, ACT respectfully requests that the UTC conduct further proceedings to determine if the contract between Puget Sound Energy and Puget LNG serves the public interest. ACT argues that given outstanding safety risks of the facility, material lack of disclosure by PSE, and inadequate environmental review for the facility, the public interest would benefit from a short delay in the effective date of the contract to allow for resolution of these concerns. ACT further requests that the UTC conduct additional proceedings to determine whether delaying the effective date of the contract would cause any harm to Puget Sound Energy.

Sincerely,



Jaimini Parekh
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