

123 FERC ¶ 61,050
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinohoff.

Puget Energy, Inc.,
Puget Holdings LLC,
Macquarie Infrastructure Partners,
Macquarie Capital Group Limited,
Canada Pension Plan Investment Board,
British Columbia Investment Management Corp.,
Alberta Investment Management and Their
Public Utility Affiliates

EC08-40-000

ORDER CONDITIONALLY AUTHORIZING THE MERGER AND
DISPOSITION OF JURISDICTIONAL FACILITIES

(Issued April 17, 2008)

1. Puget Energy, Inc. (Puget Energy) on behalf of itself and its public utility affiliates (together, Puget Applicants), Puget Holdings LLC (Puget Holdings), Macquarie-Affiliated Applicants,¹ the Canadian Pension Plan Investment Board (CPPIB), British Columbia Investment Management Corporation (bcIMC), and Alberta Investment Corporation (AIM)² (collectively, Applicants) filed an application seeking authorization under section 203 of the Federal Power Act (FPA)³ for the disposition of jurisdictional facilities resulting from a merger

¹ Macquarie-Affiliated Applicants is comprised of Macquarie Infrastructure Partners (MIP), Macquarie-FSS Infrastructure Trust (MFIT), and Macquarie Capital Group Limited (MCGL).

² Macquarie-Affiliated Applicants, together with CPPIB, bcIMC, and AIM with their public utility affiliates, are collectively referred to as the “Investor Consortium.”

³ 16 U.S.C. § 824b (2000), *amended by* Energy Policy Act of 2005, Pub. L. No. 109-58, § 1289, 119 Stat. 594, 982-83 (2005) (EPAAct 2005).

transaction. In the proposed transaction, the Investor Consortium will buy Puget Holdings and thus become the new indirect owners of Puget Energy and its public utility subsidiaries, as described further below.

2. The Commission has reviewed the merger under the Merger Policy Statement⁴ and the Supplemental Policy Statement⁵ and will authorize it with minor conditions as consistent with the public interest, as discussed below.

I. Background

A. Description of the Parties

1. Puget Applicants

a. Puget Energy

3. Puget Energy is an energy services holding company incorporated in the state of Washington in 1999. It owns and conducts all of its operations through its subsidiary, Puget Sound Energy, Inc. (PSE), a public utility company. Puget Energy is also the parent corporation for the Puget Sound Energy Foundation, a nonprofit corporation.⁶

b. PSE

4. PSE, a direct wholly-owned subsidiary of Puget Energy, is a public utility organized under the laws of the state of Washington and regulated by both the

⁴ See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement).

⁵ See also *FPA Section 203 Supplemental Policy Statement*, 72 Fed. Reg. 42,277 (Aug. 2, 2007), FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008). See also *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001). See also *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

⁶ Application at 6.

Commission and the Washington Utilities and Transportation Commission (Washington Commission). PSE purchases, transmits, generates, distributes and sells electric power and natural gas. PSE's electric transmission system includes approximately 2,671 miles of transmission lines, with 324 miles at 230 kilovolts (KV) and 1,711 miles at 115 KV.⁷ Also included in the 2,671 miles of transmission facilities are 495 miles of a 500 KV line between Colstrip, Montana and Garrison, Montana. The generation owned or controlled by PSE includes the capacity of four hydro projects totaling 257 megawatts (MW), eight simple cycle combustion turbines plus one diesel generator totaling 725.8 MW, three combined cycle gas-fired plants totaling 581 MW, portions of four coal plants totaling 747.4 MW, and two wind plants totaling 380 MW.⁸

5. PSE owns the following operating subsidiaries: (1) Hydro Energy Development Corporation (HEDC), which, via its only subsidiary Black Creek, operates a single small hydroelectric project with a capacity of 3.7 MW; (2) WNG CAP I, a Washington corporation that markets surplus natural gas pipeline capacity on behalf of PSE; and (3) Puget Western Inc., a real estate investment and development company. PSE also owns PSE Funding, Inc.⁹ Black Creek is a wholly-owned subsidiary of HEDC, which, in turn, is a direct, wholly-owned subsidiary of PSE. Black Creek owns and operates a 3.7 MW hydroelectric facility in King County, Washington.

2. Puget Holdings and the Investor Consortium

6. Puget Holdings is a Delaware limited liability company, the members of which are wholly-owned, indirect subsidiaries of: (i) MIP (31.8 percent ownership); (ii) MCGL (15.9 percent ownership); (iii) MFIT (3.7 percent ownership); (iv) CPPIB (28.1 percent ownership); (v) bcIMC (14.1 percent ownership); (vi) AIM (6.3 percent ownership).

a. Overview of Macquarie Group

i. Macquarie-Affiliated Applicants

7. Macquarie Group Limited (MGL) is a non-operating holding company and the ultimate listed parent for the Macquarie Group. In the United States, public utility and energy-related interests managed by members of the Macquarie Group

⁷ Application at 7-8.

⁸ Application at 8.

⁹ Application at 11.

include: The Gas Company, a Hawaiian full-service gas company; Duquesne Light Holdings, Inc. (DLH); and Thermal Chicago and Northwind Aladdin, energy businesses located in Chicago and Las Vegas, respectively. The Gas Company and the public utility subsidiaries of DLH are discussed in greater detail below. In addition, Macquarie Group affiliates own a 23 percent share in AltaLink (an independent transmission company in Alberta), and interests in a small amount of generation in the eastern provinces of Canada (10 MW in Quebec and 272 MW in Ontario), as well as 28 MW of generation in Alberta and 19 MW of generation in British Columbia.

8. Macquarie Cook Power (MCP) is a wholly-owned subsidiary of MGL engaged in the marketing and trading of electric capacity and energy at wholesale in the U.S. MCP does not own or control any electric generation, transmission or distribution assets in the PSE control area.

9. Macquarie Cook Energy, LLC (MCE) is a member of the Macquarie Group and is engaged in natural gas trading and marketing. Applicants state that MCE does not own or control any generation, transmission, or distribution assets, and does not control any source of fuel supply or other inputs to generation in the PSE control area.

ii. Macquarie Infrastructure Partners

10. MIP owns several non-energy related assets as well as a 22.1 percent interest in DLH, as discussed below. Other than this 22.1 percent interest in DLH, MIP does not have a controlling interest in any energy company or assets in the U.S.¹⁰ In addition, MIP recently acquired an indirect, non-controlling interest in Puget Energy (3 percent of Puget Energy's shares in the aggregate), purchased pursuant to a Stock Purchase Agreement (Agreement) between Puget Energy and a subsidiary or subsidiaries of each of the Investor Consortium members.¹¹ Applicants state that MIP has no control over Puget Energy other than the right to vote its shares.

iii. MFIT

11. MFIT is an Australian infrastructure trust managed by Macquarie Specialised Asset Management Limited, a member of the Macquarie Group. MFIT holds interests in non-energy related infrastructure investments as well as a

¹⁰ Application at 13.

¹¹ Application at 14.

6.6 percent interest in DLH. Applicants state that MFIT does not have a controlling interest in any energy companies or assets in the U.S. Like other Investor Consortium members, MFIT acquired an indirect non-controlling interest in Puget Energy pursuant to the Agreement, representing 0.4 percent of Puget Energy's common stock.

iv. **MCGL**

12. MCGL is an operating company for the non-banking operation of the Macquarie Group Limited, and is a wholly-owned, direct subsidiary of MGL. Applicants state that MCGL recently acquired an indirect non-controlling interest in Puget Energy pursuant to the Agreement, representing 1.5 percent of Puget Energy's common stock. MCGL does not own or control any electric generation, transmission, or distribution assets in the U.S. or Canada.

3. **Public Utility and Other Energy Affiliates of the Macquarie-Affiliated Applicants**

a. **Duquesne Light Holdings and its Subsidiaries**

13. In 2007, several members of the Macquarie Group led a group of investors in acquiring all of the outstanding common stock of DLH. DLH is a public utility holding company that owns various regulated and unregulated subsidiaries, including Duquesne Light Company, Duquesne Power, Duquesne Generation Company, and Duquesne Light Energy, LLC. All of DLH's utility operations are in the Eastern interconnection.

b. **CPPIB**

14. Applicants state that CPPIB owns some investments in energy companies that qualify as passive investments pursuant to Commission precedent because neither CPPIB nor any of its affiliates own a 5 percent or greater voting share in, or otherwise control, any energy-related company in the U.S. or Canada. CPPIB recently acquired a 2.7 percent stake in Puget Energy's common stock, pursuant to the Agreement.¹²

¹² Application at 19.

c. **British Columbia Investment Management Corporation (bcIMC)**

15. Like the other members of the Investor Consortium, bcIMC acquired 1.4 percent of Puget Energy's common stock pursuant to the Agreement. Applicants state that bcIMC and its subsidiaries do not own a controlling interest in any additional energy assets in the Pacific Northwest region, although bcIMC's subsidiaries do hold equity positions in American Electric Power, Cinergy Corp., CMS Energy Corp., Consolidated Edison Inc., Constellation Energy Group, DTE Energy Company, Duke Energy Corp., E.ON AG, Entergy Corp., among others. Applicants state that bcIMC's interests in these companies are either passive or do not exceed 5 percent voting interest.

d. **AIM**

16. Applicants state that AIM acquired a 0.6 percent share of Puget Energy's common stock pursuant to the Agreement. Applicants further state that neither AIM nor any of its affiliates own a non-passive, 5 percent or greater voting share, or otherwise control, any generation, distribution or transmission assets, or any natural gas transportation or gas distribution assets in the U.S.

B. Applicants' Description of the Transaction

17. Upon closing, Puget Energy will be indirectly held by the Investor Consortium in the following proportions: (1) MIP will own 31.8 percent; (2) MFIT will own 3.7 percent; (3) MCGL will own 15.9 percent (assuming no sell-down has occurred); (4) CPPIB will own 28.1 percent; (5) bcIMC will own 14.1 percent; and (6) AIM will own 6.3 percent.¹³

18. Under the Merger Agreement, the Investor Consortium will acquire all of the outstanding shares of Puget Energy for \$30 per share in cash, representing over a 25 percent premium based upon Puget Energy's closing share price on the last day prior to the merger announcement. Applicants state that the Investor Consortium will also assume approximately \$3.2 billion of Puget Energy's redeemable securities and outstanding debt obligations. The transaction will be funded by \$3.2 billion in shareholder capital provided by the Investor Consortium,

¹³ Application at 25.

\$1.6 billion in newly issued debt, and \$2.6 billion in existing debt, giving the transaction a total enterprise value of \$7.4 billion.¹⁴ Upon completion of the transaction, Puget Energy common stock will cease to be publicly traded.

II. Notice of Filing and Responsive Pleadings

19. Notice of the application was published in the *Federal Register*, 73 Fed. Reg. 10,021 (2008), with interventions and protests due on or before February 21, 2008. The Cogeneration Coalition of Washington filed a timely motion to intervene, raising no substantive issues.

III. Discussion

A. Procedural Issues

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁵ the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding.

B. Section 203 Analysis

1. Standard of Review

21. FPA section 203(a)(4) requires the Commission to approve a transaction if it determines that the transaction will be consistent with the public interest. Under the Commission's regulations, its analysis of whether a transaction will be consistent with the public interest generally involves considering three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.¹⁶ Section 203 also requires the Commission to find that the transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."¹⁷ The Commission's

¹⁴ Application at 26, n. 51.

¹⁵ 18 C.F.R. § 385.214 (2007).

¹⁶ See Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

¹⁷ 16 U.S.C. § 824b(a)(4) (2000).

regulations establish verification and informational requirements for applicants that seek a determination that a transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.¹⁸

2. Effect on Competition

22. Applicants argue that the transaction does not raise any horizontal market power concerns, as it involves the transfer of control over Puget Energy to new owners that do not own or control any generation assets in the PSE market. Applicants state that the only generation, transmission or distribution assets in the continental United States owned or controlled by the Investor Consortium members or any affiliate thereof are the generation, transmission, and distribution facilities owned by the subsidiaries of DLH, which are all located in the PJM Interconnection, LLC market. While the Macquarie-Affiliated Applicants are affiliated with a power marketer, MCP, it does not own any generation, transmission or distribution assets in the PSE market, nor has it entered into any contract that would confer control over such assets.

23. Applicants assert that none of the other Investor Consortium members have affiliates with generation or other energy-related assets that need to be considered in a competitive analysis of the transaction. While the provincial government of British Columbia has created two other Crown Corporations that own electric utility assets – British Columbia Hydro and Power Authority (BC Hydro) and British Columbia Transmission Corporation (BCTC) – neither of these entities is under common control with bcIMC. Applicants state that the statutes under which bcIMC operates ensure that bcIMC operates independently from the British Columbia government, and the British Columbia government will not exercise control over Puget Energy or PSE. Instead, bcIMC's chief investment officer (CIO) will make all decisions to sell bcIMC's ownership interest in Puget Energy. Applicants attest that no bcIMC employee or agent, including bcIMC's CIO and investment management team, is authorized or obliged to provide any non-public information with respect to investments, including investments in Puget Energy, to the British Columbia Government. Applicants assert that no day-to-day operational information regarding Puget Energy or PSE is at risk of being disclosed by bcIMC to Powerex, BC Hydro or BCTC, and likewise Powerex, BCTC and BC Hydro do not engage in any non-public exchanges of information with bcIMC regarding their operations.

24. Applicants argue that the transaction raises no vertical competition concerns. They state that none of the Investor Consortium members owns or controls more than a 5 percent or greater voting interest in fuel delivery or supply

¹⁸ 18 C.F.R. § 33.2(j) (2007).

facilities, or any other input to generation, in the relevant market. Applicants therefore assert that the transaction will not create or enhance the ability or incentive of the Applicants, or any affiliate, to exercise vertical market power.

25. Based on the lack of market overlap of the jurisdictional facilities involved, we are satisfied that the transaction will not result in either horizontal or vertical market power. Thus, we find that the transaction will not harm competition.

3. Effect on Rates

26. Applicants argue that the transaction will not have an adverse effect on rates. They commit that they will not seek to recover any acquisition premium, legal costs or financial advisory costs incurred to consummate the transaction from any of PSE's transmission customers or any of its cost-based wholesale power customers. Applicants further state that PSE's cost-based wholesale power and transmission rates are fixed, and that the rates cannot be changed without making a separate filing with the Commission pursuant to FPA section 205.

27. We find that Applicants have shown that the transaction will not adversely affect wholesale rates.¹⁹ We accept Applicants' hold harmless commitment, which we interpret to include all merger-related costs, not only costs related to consummating the transaction.²⁰ If Applicants seek to recover any merger-related costs in a subsequent section 205 filing, they must show quantifiable offsetting benefits.

4. Effect on Regulation

28. Applicants argue that the transaction will not diminish the Commission's regulatory jurisdiction over Puget Energy, PSE or Black Creek, or over the Investor Consortium members or their public utility affiliates. Applicants assert that the transaction will not modify the state of Washington's jurisdiction and authority over the Puget Applicants' state-regulated utility operations, and that the

¹⁹ Applicants' argument that any rate effects will be mitigated because they will have to be approved in a future section 205 proceeding is immaterial to our inquiry under section 203. As we recently noted in *Startrans IO*, "[o]ur analysis of rate effects under section 203 of the FPA differs from the analysis of whether rates are just and reasonable . . . [o]ur focus [under section 203] is on the effect that the Transaction itself will have on rates. . . ." See *Startrans IO, L.L.C.*, 122 FERC ¶ 61,307, P 25 (2008).

²⁰ See, e.g., *National Grid*, 117 FERC ¶ 61,080, at P 54 (2006).

Washington Commission will have the opportunity to address any potential concern as part of its own review of the transaction. Applicants argue that applicable requirements of Washington law and the books and records access requirements of Public Utility Holding Company Act of 2005 (PUHCA 2005)²¹ will further ensure that Washington state regulators have the information necessary to oversee the state-jurisdictional rates of the Puget Applicants' utility subsidiaries. We note that no state commission intervened.

29. When a controlling interest in a public utility is acquired by another company, whether a domestic company or a foreign company, the Commission's ability to protect public utility customers against inappropriate cross-subsidization may be impaired unless it has access to the parent company's books and records. Section 301(c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility.²² Further, under sections 1264 and 1265 of EAct 2005, the Commission and state commissions have the authority to gain access to books and records of companies within a holding company and holding companies.²³ Accordingly, as a condition of approval, the Applicants and any entities which acquire an interest pursuant to the blanket authorization contained in this order are required to make available books and records for examination, if necessary, to the Commission and the respective state commissions.²⁴

²¹ EAct 2005, Pub. L. No. 109-58, §§ 1261 *et seq.*, 119 Stat. 594 (2005).

²² 16 U.S.C. § 825(c) (2000), as amended by EAct 2005. *See PacifiCorp*, 87 FERC ¶ 61,288, at 62,152 (1999); *NorthWestern Corp.*, 117 FERC ¶ 61,100, at P 51 (2006) (*NorthWestern*).

²³ *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, 70 Fed. Reg. 75,592 (Dec. 20, 2005), FERC Stats. & Regs. ¶ 31,197, at 31,109 (2005), *order on reh'g*, Order No. 667-A, 71 Fed. Reg. 28,446 (May 16, 2006), FERC Stats. & Regs. ¶ 31,213, *order on reh'g*, Order No. 667-B, 71 Fed. Reg. 42,750 (July 28, 2006), FERC Stats. & Regs. ¶ 31,224 (2006), Order No. 667-C, 118 FERC ¶ 61,133 (2007). We note that Applicants seem to aver that PUHCA will apply to the members of the Investor Consortium. *See Application* at 31, n. 63.

²⁴ *PacifiCorp*, 87 FERC ¶ 61,288 at 62,152; *NorthWestern*, 117 FERC ¶ 61,100 at P 51.

5. Cross-subsidization and Encumbrance of Utility Assets

30. Applicants state that the transaction will not result in the cross-subsidization or pledge or encumbrance of utility assets. Applicants argue that in the FPA Section 203 Supplemental Policy Statement,²⁵ the Commission explicitly recognized three safe harbor categories of transactions unlikely to raise cross-subsidization concerns. One of the classes of transactions granted safe harbor status is those that are subject to review by a state commission. In these cases, the Commission will defer to state commissions where the state adopts or has in place ring-fencing measures to protect customers against inappropriate cross-subsidization or the encumbrance of utility assets for the benefit of the “unregulated” affiliates.

31. Applicants add that under this safe harbor, the Commission’s requirements to protect against cross-subsidization could be satisfied if the transaction complies with specific state regulatory protections against inappropriate cross-subsidization by captive customers. Applicants submit that the transaction is subject to comprehensive review by the Washington Commission to protect against inappropriate cross-subsidization by captive customers and should therefore be entitled to safe harbor status in accordance with the Supplemental Policy Statement. In the December 17, 2007 application filed with the Washington Commission seeking approval of the transaction (Washington Commission Application), Applicants offered a series of proposed commitments to satisfy the Washington Commission’s requirements. Among the commitments offered by the Applicants are some designed to insulate PSE and its customers from any risk related to the financial activities of its affiliates as a result of the transaction.

32. In particular, Applicants made two ring-fencing commitments. First, within 90 days of the closing of the transaction, PSE and Puget Holdings will file a non-consolidation opinion with the Washington Commission that concludes, subject to customary assumptions and exceptions, that the ring-fencing provisions are sufficient such that a bankruptcy court would not order the substantive consolidation of the assets and liabilities of PSE with those of Puget Energy or its affiliates or subsidiaries. Second, Applicants proposed in their Washington Commission Application that PSE will: (1) maintain separate books and records; (2) agree to prohibitions against loans or pledges of utility assets to Puget Energy or Puget Holdings without Washington Commission approval; and (3) generally hold PSE customers harmless from any business and financial risk exposures associated with Puget Energy, Puget Holdings, and other affiliates.

²⁵ Supplemental Policy Statement, FERC Stats. & Regs. ¶ 31,253 at P 16.

33. Applicants state that these ring-fencing commitments are designed to insulate PSE's customers from the financial activities associated with the new holding company structure and to isolate PSE's regulated utility operations from any negative financial impacts flowing from unregulated units. Applicants assert that these ring-fencing commitments are expressly intended to allow PSE to maintain its credit rating and attract capital; prevent cross-subsidization of non-regulated ventures; and ensure that the Washington Commission has access to timely and accurate information relating to PSE's operations.

34. In the Washington Commission Application, Applicants also explained additional commitments they were making to protect PSE's financial integrity, as follows: (1) PSE will maintain separate debt and preferred stock, if any; and (2) PSE will commit to a common equity ratio for PSE of not less than 50 percent at closing or shortly thereafter, and not less than 44 percent thereafter unless a lower equity ratio is established for ratemaking purposes by the Washington Commission. Applicants assert that these commitments provide further assurances to customers that PSE will remain financially strong and independent, and that PSE will not be highly leveraged with debt.

35. Applicants state that their commitments are consistent with the ring-fencing provisions offered and approved in recent merger and reorganization proceedings before the Washington Commission. They argue that consistent with the safe harbor identified in the Supplemental Policy Statement, the Commission should defer to the Washington state-adopted protections that the Applicants have proposed in the Washington Commission Application. Applicants commit that, if the Commission issues an order concerning the transaction while the proceeding before the Washington Commission is still pending, they will make an informational filing in the instant Commission docket concerning any subsequent orders issued by the Washington Commission.

36. We find that the Applicants' safe harbor qualifies under the Supplemental Policy Statement, with one condition. Applicants have proposed to the Washington Commission substantial ring-fencing measures to ensure that PSE's customers will be insulated from the financial activities associated with the new holding company structure, and that PSE's regulated utility operations will be isolated from any negative financial impacts flowing from unregulated units. Thus, we find that the applicants qualify for the safe harbor in the Supplemental Policy Statement, with one exception. In the Supplemental Policy Statement, we indicated that state approval would provide a safe harbor.²⁶ Here, however, the transaction is still under review at the Washington Commission. Accordingly,

²⁶ Supplemental Policy Statement, FERC Stats. & Regs. ¶ 31,253 at P 18.

consistent with the Supplemental Policy Statement, we are conditioning our approval in this order on the Applicants submitting an informational filing in this docket within ten days of the Washington Commission's approval of the proposed ring-fencing provisions.²⁷

6. **Blanket Authority for Transactions in Secondary Markets**

37. Applicants state that MCGL may transfer all or a portion of its expected ownership interest in Puget Holdings to other investors (New Investors) prior to the close of the transaction. Applicants state that certain of these future transfers may not require approval by the Commission under section 203 because of the limited ownership interest being transferred.²⁸ However, MCGL may also seek to transfer more than a 9.99 percent interest in Puget Holdings to a single New Investor, and they therefore seek a two-year blanket authorization under FPA sections 203(a)(1) and 203(a)(2) for certain transfers to specific kinds of New Investors.

38. First, Applicants seek pre-authorization for future transfers by MCGL of all or a portion of its ownership interest to another Macquarie-managed fund or another Macquarie Group member, if such transfer would occur within two years from issuance of an order in this proceeding. Applicants argue that such future transfers to Macquarie Group members would have no effect on the Commission's analysis of the competitive effects of the transaction, given that all of the Macquarie Group affiliates' energy assets and energy-related companies have been identified and considered as part of the instant application.²⁹

39. Second, Applicants request blanket authorization for future transfers to third-party investors, if the transfers occur within a two-year period from issuance of the requested order for blanket authorizations and meet the following criteria:

- The New Investor is an infrastructure or institutional investor, financial institution, or other related entity not primarily engaged in energy-related business activities, and is not affiliated with a traditional utility with captive customers;
- The New Investor will not hold more than a 20 percent voting interest or more in Puget Holdings;

²⁷ *Id.* P 26.

²⁸ Application at 36.

²⁹ Application at 37.

- The New Investor will not own, when combined with the interests of any affiliate, a five percent or more voting interest in any public utility that has interests in any generation facilities or engages in jurisdictional activities within the Northwest Power Pool region, provided that such restriction on jurisdictional activities does not apply to a power marketing affiliate that does not own or control generation or transmission facilities.³⁰

40. Applicants commit to comply with the notice and filing requirements commonly imposed by the Commission in granting such requests for blanket authorizations, for all future transfers for which the Commission grants blanket authorization. Applicants accordingly commit as follows:

1. Applicants will report any transfer of MCGL's interest in Puget Holdings within 10 days and include a statement of other generating or power marketing interests directly or indirectly owned by the buyer or its affiliates, irrespective of the market or region of the country in which such interests are operated;
2. Applicants will submit, both in a compliance filing within 30 days of the closing of the initial sales transaction, and in any subsequent notification of holding company equity sales transactions, the following information:
 - The identity of both pre-and post-transaction equity holders (and percentage ownership) of the holding company;
 - Any contracts for (or a summary of) power purchase agreements, energy management services, asset management services, and any fuel supply services provided to PSE or any other public utility affiliate of Puget Energy by or with the New Investor or any of its affiliates, including the contract counterparty, and any affiliation between that counterparty and post-transaction equity holders; and
 - The identity of any parties acquiring equity interests that are subject to the Commission's Code of Conduct rules as a result of acquiring these equity interests.³¹

³⁰ Application at 37-39.

³¹ Application at 38-39.

41. We approve Applicants' request for a two-year blanket authorization, subject to the condition that the Applicants and any entities which acquire an interest pursuant to the blanket authorization make available books and records for examination, if necessary, to the Commission and the respective state commissions.³² We find it consistent with the Commission's Supplemental Policy Statement and with blanket authorizations approved by the Commission in *Entegra Power Group, LLC*³³ and *Boston Generating, LLC*.³⁴ We also accept Applicants' commitment to comply with the Commission's notice and filing requirements for such requests.

7. Analysis of Proposed Accounting

42. The Investor Consortium's acquisition of Puget Energy will constitute a business combination, as the Investor Consortium will acquire Puget Energy pursuant to the Merger Agreement.³⁵ The acquisition will be recorded on the books of Puget Energy. The Applicants do not propose to push down the related acquisition premium or goodwill to the books of PSE or Black Creek. Further, the Applicants state that the accounting to record the proposed merger transaction will only have a minor effect on the regulatory books and records of PSE, as any difference between the purchase price and book value of the company will be kept at the non-jurisdictional, parent company level.

43. The Applicants indicate that certain long-term debt of PSE will be redeemed in the transaction. However, the Applicants did not provide proposed journal entries showing the accounts affected by the redemption of debt. Premature redemptions of long-term debt must be accounted for consistent with the instructions of General Instruction No. 17, Long-term Debt: Premium, Discount and Expense, and Gain or Loss on Reacquisition.³⁶ Accordingly, the

³² *PacifiCorp*, 87 FERC ¶ 61,288 at 62,152; *NorthWestern*, 117 FERC ¶ 61,100 at P 51.

³³ *Entegra Power Group, LLC*, 115 FERC ¶ 62,038 (2006).

³⁴ *Boston Generating, LLC*, 119 FERC ¶ 61,147 (2007).

³⁵ The Financial Accounting Standards Board's Statements of Financial Accounting Standards No. 141, *Business Combinations*, states that a business combination occurs when an entity acquires net assets that constitute a business or acquires equity interests of one or more other entities and obtains control over that entity or entities.

³⁶ 18 C.F.R. Part 101 (2007).

Applicants are directed to provide all merger-related accounting entries made to the books and records of PSE and Black Creek along with appropriate narrative explanations describing the basis for the entries. The Applicants must submit their final accounting for the proposed transaction within six months after the merger is consummated.³⁷

The Commission orders:

(A) The proposed merger, disposition of jurisdictional facilities, and two-year blanket authorization are hereby approved, as discussed in the body of this order.

(B) Applicants must inform the Commission of any change in circumstances that is a departure from the facts the Commission relied upon in granting the application.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Applicants shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the proposed merger.

(G) Applicants shall submit their proposed accounting for the transaction within six months after the transaction is consummated. The accounting submission shall provide all merger-related accounting entries made to the books and records of Applicants' public utility operating subsidiaries, along with appropriate narrative explanations describing the basis for the entries.

³⁷ Account 102, Electric Plant Purchased or Sold, 18 C.F.R. Part 101 (2007).

(H) Applicants shall notify the Commission within 10 days of the date on which the merger and disposition of jurisdictional facilities is consummated.

(I) Applicants shall make an informational filing within 10 days of the date on which the Washington Commission approves the proposed ring-fencing measures, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.