

**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

**BRIEF OF
PUGET SOUND ENERGY**

APRIL 15, 2016

PUGET SOUND ENERGY

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I. INTRODUCTION

1. Puget Sound Energy (“PSE”) respectfully requests that the Washington Utilities and Transportation Commission (the “Commission”) provide exemptions from or, in the alternative, approve amendments to Commitment 56 and Commitment 58 in Docket U-072375 that would, respectively, allow Puget Energy (i) to own and operate PSE and a Puget Energy subsidiary (referred to herein as Puget LNG) to be created to offer unregulated sales of liquefied natural gas (“liquefied natural gas” or “LNG”) from the Tacoma LNG Facility, for use as transportation fuel; and (ii) to use its existing credit facilities to finance, in part, the construction of the Tacoma LNG Facility. PSE further requests that the Commission allow an equal sharing of the portfolio benefits associated with the Tacoma LNG Facility between PSE investors and PSE natural gas sales customers.
2. PSE acknowledges that its request that the Commission authorize an equal sharing of the projected portfolio benefits associated with the Tacoma LNG Facility between PSE investors and PSE natural gas sales customers is unique. The nature of this request reflects the unique nature of the Tacoma LNG Facility and the many significant benefits that such facility could provide.
3. First, PSE’s natural gas sales customers would enjoy significant portfolio benefits (projected in PSE’s 2015 Integrated Resource Plan (“IRP”) at approximately \$98 million on a net present value basis) from the combined-use Tacoma LNG Facility. These portfolio benefits are possible only through the economies of scale achieved by PSE’s shareholder (Puget Energy) assuming greater business and financial risk through investing in a facility that will be used to make non-regulated sales and for which greater than one-quarter of the non-regulated capacity remains unsubscribed. Absent the assumption of such greater business and financial risk, the

Tacoma LNG Facility will not be built, and PSE's customers will not enjoy the portfolio benefits associated with the facility.

4. Second, PSE's customers would enjoy significant supply diversity benefits from the combined-use Tacoma LNG Facility. The Tacoma LNG Facility would provide PSE with on-system storage of a significant volume of natural gas. On-system LNG storage ensures that PSE will have natural gas available for peaking, whereas pipeline capacity only provides the physical capacity to deliver sufficient quantities of natural gas to PSE's system. The Tacoma LNG Facility also reduces reliance on PSE's sole-source pipeline, Northwest Pipeline ("NWP"), and provides gas supply diversification.

5. Third, the construction of the combined-use Tacoma LNG Facility would provide significant environmental benefits to the State of Washington and the Pacific Northwest region. Use of LNG as a transportation fuel eliminates the particulates and SO_x found in diesel and marine fuel oil and reduces carbon dioxide emissions (e.g., using LNG in long-haul trucking operations can result in a 25 percent reduction of CO₂ emissions). The development of an LNG facility to provide fuels for the transportation market is consistent with the regional and state efforts of the Puget Sound Clean Air Agency, the U.S. Environmental Protection Agency ("EPA"), and the Washington Department of Ecology, to establish strategies and programs aimed at reducing impacts to the Puget Sound air shed. Of particular note for the Tacoma LNG Facility is the North American Emissions Control Area, which establishes more stringent emissions standards within 200 nautical miles of the U.S. and Canadian coast. Vessel operators can meet the new standard by switching to lower sulfur diesel fuels, installing scrubbers, or transitioning to a cleaner fuel, such as LNG. Many operators, including TOTE, are finding that LNG is the preferred alternative. The Tacoma LNG Facility will provide additional

environmental benefits by helping to meet the demand of regional maritime customers for LNG as a fuel.

6. These benefits will not materialize if the Tacoma LNG Facility is not constructed. PSE's investors anticipate making a decision regarding moving forward with the Tacoma LNG Facility by the middle of this year. The investors have determined that they cannot proceed with the construction of the Tacoma LNG Facility without an equitable sharing of the costs and benefits of the facility between PSE's investors and customers. Therefore, PSE respectfully requests that the Commission make the policy decision in the first phase of this proceeding and authorize an equal sharing of the projected portfolio benefits associated with the Tacoma LNG Facility between PSE and its natural gas sales customers as an incentive to develop the facility. Without Commission authorization of an incentive of an equal sharing of the projected portfolio benefits in the first phase of this proceeding, PSE can no longer proceed with the Tacoma LNG Facility.

II. ISSUES

7. a. Should the Commission provide exemptions from or, in the alternative, approve amendments to Commitment 56 and Commitment 58 in Docket U-072375 that would, respectively, allow Puget Energy (i) to own and operate both PSE and Puget LNG and (ii) to use its existing credit facilities to finance, in part, the construction of the Tacoma LNG Facility?
- b. Should the Commission authorize an equal sharing of the projected portfolio benefits associated with the Tacoma LNG Facility between PSE investors and PSE natural gas sales customers?

III. BACKGROUND

A. Procedural History

8. PSE provides natural gas service to retail natural gas customers located in its service territory in western Washington in accordance with the rules and regulations of the Commission, including, but not limited to, PSE rates and tariffs on file therewith.¹

9. PSE initially proposed in this docket to develop at the Port of Tacoma an LNG facility (the “Tacoma LNG Facility”) capable of liquefying 250,000 gallons of LNG per day and storing approximately 8 million gallons of LNG on site.² The Tacoma LNG Facility would require nearly 21,000 MMBtu per day of natural gas when liquefying at nameplate capacity.³ Approximately 2,000 MMBtu per day would be used for the peaking resource and up to 19,000 MMBtu per day would be used to supply TOTE fuel sales and any non-regulated fuel sales.⁴ The Tacoma LNG Facility would be capable of injecting approximately 66,000 decatherms per day (“Dth/day”) of vaporized gas and diverting up to 19,000 Dth/day of gas into PSE’s distribution system to provide 85,000 Dth/day of peak-day supply.⁵ The Tacoma LNG Facility would also dispense LNG to other end-use customers via a tanker truck loading system and marine loading facilities located on the water.⁶

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, Petition of Puget Sound Energy for Commission Approval of a Special Contract for Providing LNG Service and a Declaratory Order Approving a Cost Allocation Methodology, filed August 11, 2015 at ¶ 6 (“PSE Petition”).

² Exh. No. ___(RG-1CT) at 21:13-14.

³ Exh. No. ___(CR-1CT) at 23:5-7.

⁴ *Id.* at 23:7-9.

⁵ Exh. No. ___(RG-1CT) at 21:14-17.

⁶ *Id.* at 21:17-19.

10. PSE's initial filing identified three functions to be performed by the Tacoma LNG Facility:

1. The Tacoma LNG Facility would serve as a peaking resource for PSE's core natural gas customers.⁷
2. 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.
3. The Tacoma LNG Facility would provide fuel for sales to other marine vessels or other purchasers.

PSE initially proposed that the first and second functions would be treated as part of PSE's regulated business, with the first function providing capacity to meet core retail natural gas customers' peak requirements at tariffed rates and the second function meeting the needs of TOTE under a special contract. PSE further proposed that the third function would be a separate, non-regulated business of PSE.

11. The Commission entered Order 04⁸ in this proceeding on December 18, 2015. In Order 04, the Commission determined that its "general jurisdiction under Title 80 RCW includes the authority, under appropriate circumstances, to regulate sales of liquefied natural gas by gas companies for use as transportation fuel."⁹ 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. Order 04 also determined that such order was provisional and

⁷ See, e.g., PSE Petition ¶¶ 11, 30, 32-33.

⁸ *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 (Denying Motion to Strike; Granting Motion to File Reply Brief; Provisionally Determining Jurisdictional Question; Establishing Further Process Including Briefing and Oral Arguments) (Dec. 18, 2015) ("Order 04").

⁹ *Id.* at ¶ 19.

provided parties additional formal opportunities to explore the question of jurisdiction specifically and the proposed project more generally:

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.¹⁰

Order 04 initially (i) allowed parties to file supplemental briefs by January 15, 2016, to address these questions,¹¹ and (ii) established a date for oral argument of January 29, 2016.¹²

12. The Commission entered Order 05 on January 11, 2016, extending 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.¹³ On January 25, 2016, the Commission issued Order 06, which granted an unopposed motion from Commission Staff to suspend the procedural schedule to allow parties additional time to engage in settlement discussions.¹⁴

¹⁰ Order 04 at ¶ 30.

¹¹ *Id.*

¹² *Id.* at ¶ 31.

¹³ *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 (Granting Motion to Revise Procedural Schedule) (Jan. 11, 2016).

¹⁴ *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 (Granting Motion to Suspend Procedural Schedule) (Jan. 25, 2016).

13. On March 4, 2016, PSE filed a motion requesting that the Commission establish a bifurcated proceeding to allow for review of an alternative business model PSE is proposing as contemplated by the Commission in Order 04.¹⁵ As discussed in greater detail below, PSE's alternative business model would treat all sales of LNG from the Tacoma LNG Facility for transportation fuel as non-jurisdictional sales and would establish a newly formed, non-regulated subsidiary of Puget Energy (PSE's parent corporation) as the business entity that would make such sales from the Tacoma LNG Facility to TOTE and others. The PSE Motion specifically proposed that the parties would brief and the Commission rule on the following two issues in the first phase of the bifurcated proceeding:

- 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.
- 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 proposed that the second phase of the bifurcated proceeding be conducted as an adjudicative proceeding, which would be subject to the requirements of RCW Chapter 34.05 and the Commission's procedural rules in WAC Chapter 480-07.¹⁶

14. In its Order 07, the Commission agreed that the question whether it should grant PSE an exemption to Commitment 56 in Docket U-072375 that would allow Puget Energy to own and

¹⁵ *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, PSE Motion to Establish a Bifurcated Proceeding, filed March 4, 2016 ("PSE Motion").

¹⁶ *See generally id.*

operate both PSE and Puget LNG is one that can be decided as a matter of policy.¹⁷ Order 07, however, suggested that it was not equally clear 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.¹⁸ Order 07 suggested that “[t]he determination of this issue may depend on material facts not yet presented and shown to be uncontroverted.”¹⁹ Notwithstanding this reservation, Order 07 recognized

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.²⁰

Order 07 additionally provided an opportunity for oral argument by the parties, and colloquy with the Bench on both issues, on May 26, 2016.²¹

B. PSE’s Proposed Alternative Business Model

15. After Order 04, PSE considered proceeding with the Tacoma LNG Facility under at least four alternative business models:

1. All Regulated. Under this alternative business model, PSE would own the entirety of the Tacoma LNG Facility and offer both peaking service and LNG fuel sales services pursuant to the jurisdiction of the Commission.²²
2. Hybrid Regulated/Non-Regulated. Under this alternative business model, PSE would own the entirety of the Tacoma LNG Facility and

¹⁷ Order 07 at ¶ 14.

¹⁸ *Id.* at ¶ 15.

¹⁹ *Id.*

²⁰ *Id.* at ¶ 18.

²¹ *Id.* at ¶ 19.

²² Declaration of Roger Garratt in Support of the Brief of Puget Sound Energy (“Garratt Decl.”) at ¶ 5.

offer (i) peaking service pursuant to the jurisdiction of the Commission and (ii) LNG fuel sales services on a non-regulated basis, subject to a Commission disclaimer of jurisdiction over such LNG fuel sales.²³

3. Smaller Tacoma LNG Facility. Under this alternative business model, which was similar to the “Hybrid Regulated/Non-Regulated” alternative business model, PSE would have developed a smaller version of the Tacoma LNG Facility and would offer only (i) the jurisdictional peaking service, and (ii) the non-regulated LNG fuel sales services to TOTE.²⁴
4. Non-Regulated Affiliate. Under this alternative business model, PSE would co-own the Tacoma LNG Facility as a tenant in common with a non-regulated affiliate. PSE would offer peaking service pursuant to the jurisdiction of the Commission, and PSE’s non-regulated affiliate would offer LNG fuel sales services on a non-regulated basis.²⁵

After consideration, PSE proposes to proceed with the Tacoma LNG Facility under the fourth alternative business model in which PSE would offer jurisdictional peaking service and a non-regulated affiliate of PSE (tentatively named “Puget LNG”) would offer sales of LNG from the LNG Facility for use as transportation fuel, and such non-regulated affiliate of PSE would *not* request that the Commission regulate such sales from the Tacoma LNG Facility.²⁶

16. PSE rejected the “All Regulated” alternative business model because PSE believed for a number of reasons that the “All Regulated” alternative business model was not feasible. For example, under the all-regulated model PSE would have offered a tariff service and would have likely renegotiated its agreement with TOTE. PSE believed it not be possible to get a determination under the all-regulated model by the summer of 2016, in time for PSE’s investors to make their mid-year decision regarding whether to move forward with the project.

²³ Garratt Decl. at ¶ 6.

²⁴ *Id.* at ¶ 7.

²⁵ *Id.* at ¶ 8.

²⁶ *Id.* at ¶¶ 8, 12.

17. PSE rejected the “Smaller Tacoma LNG Facility” alternative business model because PSE’s analysis determined that the cost savings associated with reducing the capacity of the plant were rather small as compared to the decrease in the plant’s capacity. The smaller LNG facility would have resulted in PSE’s core gas customers losing the benefit from the economies of scale offered by construction of the larger Tacoma LNG Facility, which can be used to meet PSE’s peaking needs, to provide fuel to TOTE and to provide transportation fuel to others at such a small percentage cost increase. This disparity between the cost savings and reduced plant capacity resulted in a facility that would not be cost-effective. Furthermore, PSE remains committed to the use of LNG as a transportation fuel source and believes that (i) the current uncertainty associated with decreases in global petroleum prices are a temporary phenomenon, and (ii) the phase in of additional regulations on ship emissions by the International Maritime Organization over the next decade will accelerate the marine industry’s conversion to LNG ships.²⁷

18. PSE considered the “Hybrid Regulated/Non-Regulated” and “Non-Regulated Affiliate” alternative business models to be substantially similar because each model would have resulted in regulated peak shaving services and non-regulated LNG fuel sales services. The sole difference between the two relates to the ownership structure associated with each service. Under the “Hybrid Regulated/Non-Regulated” alternative business model, PSE would own all of the Tacoma LNG Facility and would provide both regulated peaking services and non-regulated LNG fuel sales services. Under the “Non-Regulated Affiliate” alternative business model, PSE would own only those portions of the Tacoma LNG Facility (approximately 44%) necessary to provide regulated peaking services, and Puget LNG would own those portions of the Tacoma

²⁷ Garratt Decl. at ¶ 10; *see also* Exh. No. ____ (RG-1CT) at 29:16 – 30:10.

LNG Facility (approximately 56%) necessary to provide non-regulated fuel sales services. Ultimately, PSE elected to pursue the “Non-Regulated Affiliate” alternative business model because PSE believed that such a business model provided (i) better differentiation between regulated and non-regulated services, and (ii) better protection to core natural gas customers from the risks associated with the non-regulated LNG fuel services including the risks related to the approximately 26 percent of the capacity of the Tacoma LNG Facility that is unsubscribed and the risks related to providing an unregulated fuel sales service.²⁸

1. Ownership Interests Between PSE and Puget LNG

19. As previously mentioned, under PSE’s proposed alternative business model, all offers for sales of LNG from the Tacoma LNG Facility for use as transportation fuel would be made by an affiliate of PSE that would not be subject to the jurisdiction of the Commission. The PSE affiliate (tentatively named “Puget LNG”) would be a newly-formed, wholly-owned direct subsidiary of Puget Energy. Puget LNG would acquire an overall approximately 56% ownership share of the Tacoma LNG Facility and compensate PSE for Puget LNG’s percentage share of PSE’s then-existing development and construction costs for the Tacoma LNG Facility.²⁹ The Puget LNG ownership share of approximately 56% is based upon the allocation of projected closing costs (less AFUDC):³⁰

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

²⁸ Garratt Decl. at ¶¶ 11-12.

²⁹ *Id.* at ¶ 13.

³⁰ *See generally* Exh. No. ____ (RG-4C).

Under the alternative business model now proposed by PSE, the portion of capital costs previously allocated to TOTE sales would now be non-regulated fuel sales from the Tacoma LNG Facility:³¹

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

This proposed allocation methodology would result in (i) approximately 44% of the projected capital costs of the Tacoma LNG Facility being allocated to PSE for regulated services, and (ii) approximately 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.³²

20. These approximate capital cost allocations do not suggest that PSE will hold a 44% undivided interest and that Puget LNG will hold a 56% undivided interest in the facilities that comprise the Tacoma LNG Facility. Rather, each entity will hold an undivided interest in the facilities that comprise the Tacoma LNG Facility based upon the capital allocation factors between regulated peak shaving and non-regulated LNG fuel sales initially proposed by PSE in this proceeding. This allocation will ensure that (i) each entity will own an ownership interest in the facilities that is commensurate with such entity’s projected use of such facility, and (ii) neither entity will own an ownership interest in a facility that it will not use (e.g., PSE will have no need to use—and hold no interest in—the bunkering facility, and Puget LNG will have no need to use—and hold no interest in—the vaporization facility).³³

³¹ Garratt Decl. at ¶ 13.

³² *Id.* at ¶ 14.

³³ *Id.* at ¶ 15.

21. In its initial filing in this proceeding, PSE proposed the following capital allocation factors among regulated peak shaving, regulated fuel sales to TOTE, and non-Regulated fuel sales from the Tacoma LNG Facility:

Allocation Factor	Peak Shaving	TOTE	Non-Regulated Fuel Sales
Liquefaction	10%	44%	46%
Storage	79%	6%	15%
Bunkering	0%	100%	0%
Truck Loading	25%	0%	75%
Vaporization	100%	0%	0%
Common	46%	25%	30%

22. The alternative business model proposed by PSE would not alter these capital allocation factors between regulated peak shaving services and LNG fuel sales but would reassign to non-regulated fuel sales those capital allocation factors previously assigned to sales to TOTE:

Allocation Factor	Peak Shaving	Non-Regulated Fuel Sales
Liquefaction	10%	90%
Storage	79%	21%
Bunkering	0%	100%
Truck Loading	25%	75%
Vaporization	100%	0%
Common	46%	54%

In other words, PSE would own (i) a 10% undivided interest as a tenant-in-common in the liquefaction facilities, (ii) a 79% undivided interest as a tenant-in-common in the storage facilities, (iii) a 25% undivided interest as a tenant-in-common in the truck loading facilities, and (iv) a 46% undivided interest as a tenant-in-common in the common facilities. PSE would also own all of the vaporization facilities and none of the bunkering facilities. Conversely,

Puget LNG would own (i) a 90% undivided interest as a tenant-in-common in the liquefaction facilities, (ii) a 21% undivided interest as a tenant-in-common in the storage facilities, (iii) a 75% undivided interest as a tenant-in-common in the truck loading facilities, and (iv) a 54% undivided interest as a tenant-in-common in the common facilities. Puget LNG would also own all of the bunkering facilities and none of the vaporization facilities.

2. Puget LNG

23. Puget Energy has not yet created Puget LNG.³⁴ As discussed later in this Brief, Commitment 56 approved by the Commission in Docket U-072375³⁵ currently prohibits Puget Energy from operating or owning any business other than PSE, and PSE is requesting that the Commission provide a limited exemption to Commitment 56 that would allow Puget Energy to own Puget LNG in addition to PSE or, in the alternative, amend Commitment 56 to read as follows: 56. Puget Energy shall not operate or own any business other than PSE and Puget LNG.
24. The business and affairs of Puget LNG would be managed under the direction and control of a Board of Managers or Board of Directors. 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. It is not expected that Puget LNG would have employees or have any purpose other than to hold its interests in the Tacoma LNG Facility because 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, as discussed in more detail below.³⁶

³⁴ Garratt Decl. at ¶ 16.

³⁵ *In the Matter of the Joint Application of Puget Holdings LLC and Puget Sound Energy 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.”).

³⁶ Garratt Decl. at ¶ 16.

3. Ownership Agreement Between PSE and Puget LNG

25. 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. Under the Ownership Agreement, Puget LNG would acquire all of the bunkering facilities associated with the Tacoma LNG Facility and (i) a 90% undivided interest as a tenant-in-common in the liquefaction facilities, (ii) a 21% undivided interest as a tenant-in-common in the storage facilities, (iii) a 75% undivided interest as a tenant-in-common in the truck loading facilities, and (iv) a 54% undivided interest as a tenant-in-common in the common facilities. Puget LNG would compensate PSE for 56% of PSE's then-existing development and construction costs for the Tacoma LNG Facility. The Ownership Agreement would require a final accounting based on actual costs and a reassignment of interests based on that final accounting. The capital investment of each of Puget LNG and PSE would thereafter be in proportion to their respective ownership interests.³⁷

4. Operating Agreement Between PSE and Puget LNG

26. Puget LNG and PSE would also enter into an Operating Agreement under which PSE would have management responsibility for operating the Tacoma LNG Facility. 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. The Operating Agreement would provide generally that the costs of operating the Tacoma LNG Facility be shared by Puget LNG and PSE in proportion to the usage of the Tacoma LNG Facility based on the approved cost allocation methodology.³⁸

³⁷ Garratt Decl. at ¶ 17.

³⁸ *Id.* at ¶ 18.

5. Distribution System Transportation Service for Puget LNG

27. 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.³⁹

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

28. 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. PSE would also assign its obligations concerning the provision of short-term LNG supply to TOTE to Puget LNG.⁴⁰

C. Policy and Other Reasons for Developing the Tacoma LNG Facility

1. PSE Natural Gas Sales Customers Will Reap Portfolio Benefits of the Combined-Use Tacoma LNG Facility

29. The Tacoma LNG Facility would provide PSE natural gas sales customers with portfolio benefits as compared to other peak-day resource alternatives. As explained in PSE’s prefiled testimony in this proceeding, the primary purpose of the Tacoma LNG Facility is to provide peak-day supply for PSE’s retail natural gas customers.⁴¹ By using the Tacoma LNG Facility, PSE will avoid purchasing 365-day pipeline capacity to meet a peak demand for a few days that may only occur once every few winters.⁴² The peak-shaving component of the Tacoma LNG Facility requires significant storage and relatively small liquefaction capacity, while the marine, heavy-duty trucking and other fuel markets require significant, steady liquefaction and minimal

³⁹ Garratt Decl. at ¶ 19.

⁴⁰ *Id.* at ¶ 20.

⁴¹ *See, e.g.*, Exh. No. ____ (RG-1CT) at 5:3-5 (stating that “the primary purpose of the Tacoma LNG Facility is to provide peak-day 3 supply for PSE’s retail natural gas customers”).

⁴² *Id.* at 9:33 – 10:1.

storage.⁴³ By combining these complementary load profiles, PSE can optimize the Tacoma LNG Facility, minimize peaking-resource costs for PSE's retail natural gas customers and achieve portfolio benefits equal to those reduced peaking resource costs.⁴⁴

30. By spreading the fixed costs associated with an LNG facility across different customers (core gas customers, TOTE fuel sales, and other fuel-for-transportation sales), the Tacoma LNG Facility was determined to be a least-cost resource to provide peak-day capacity in PSE's analyses of resource alternatives.⁴⁵ PSE compared the cost of this peak-day resource in the 2013 IRP with other available peak-day resource alternatives and determined that the Tacoma LNG Facility is the most cost-effective resource option under a wide range of scenarios.⁴⁶ PSE's 2015 IRP further confirms that the Tacoma LNG Facility is the most cost-effective peaking resource option under all scenarios conducted, and the Base Case scenario specifically projects that the Tacoma LNG Facility will provide natural gas customer benefits of approximately \$98 million on a net present value basis.⁴⁷

31. These portfolio benefits to natural gas customers do not exist if the Tacoma LNG Facility does not offer LNG for use as a peaking resource and for use as a transportation fuel. A smaller stand-alone LNG facility designed to meet only PSE's peaking needs and fuel sales to TOTE would not be cost-effective and PSE would instead rely on the next best alternative to meet its core gas customer needs. That alternative is likely incremental pipeline capacity which is expected to be significantly more expensive than the combined-use Tacoma LNG Facility, given

⁴³ Exh. No. ____ (RG-1CT) at 5:7-12.

⁴⁴ *Id.* at 6:1-3.

⁴⁵ *Id.* at 4:19-22.

⁴⁶ *See generally* Exh. No. ____ (CR-1CT) at 3:13 – 13:17.

⁴⁷ *Puget Sound Energy 2015 Integrated Resource Plan*, Dockets UG-141169 & UE-141170, 2015 Integrated Resource Plan at 7-40 (Figure 7-26: Scenario Portfolio Benefit of the PSE LNG Project), filed on Nov. 25, 2015.

the economies of scale provided by the combined-use Tacoma LNG Facility.⁴⁸ Therefore, the Commission should decide the issues in the first phase of this proceeding as requested by PSE to ensure PSE's natural gas sales customers reap the portfolio benefits from the combined-use Tacoma LNG Facility.

2. The Tacoma LNG Facility Provides Advantages of On-System Storage that Reduce Risk to PSE's Natural Gas Sales Customers

32. The Tacoma LNG Facility will provide PSE with on-system storage of a significant volume of natural gas. The primary advantage of on-system LNG storage is that it provides physical natural gas.⁴⁹ In contrast, pipeline capacity only provides the physical capacity to deliver sufficient quantities of natural gas to PSE's system; it does not include the actual natural gas supply.⁵⁰
33. Another advantage of having on-system LNG storage is that it reduces reliance on PSE's sole-source pipeline, NWP, and provides gas supply diversification.⁵¹ This reduced reliance on NWP and diversity of gas supply will be particularly important when a peaking event occurs as well as during times of regional supply disruption.⁵² In sum, the benefits of having on-system storage significantly reduce customer risk by allowing PSE to avoid natural gas disruption and the need to purchase natural gas at a time when the market price for the commodity is high.⁵³

⁴⁸ *Puget Sound Energy 2015 Integrated Resource Plan*, Dockets UG-141169 & UE-141170, 2015 Integrated Resource Plan at 7-40 (Figure 7-26: Scenario Portfolio Benefit of the PSE LNG Project), filed on Nov. 25, 2015 (projecting that the Tacoma LNG Facility will provide benefits of approximately \$98 million on a net present value basis as compared to alternatives).

⁴⁹ Exh. No. ___(CR-1CT) at 13:1-2.

⁵⁰ *Id.* at 13:2-4.

⁵¹ *Id.* at 13:11-13.

⁵² *Id.*

⁵³ *Id.* at 13:14-15.

3. The Tacoma LNG Facility Provides Significant Environmental Benefits

34. When compared to diesel or marine fuel oil, LNG has significant environmental benefits.⁵⁴ Emissions from natural gas do not contain particulates or SO_x.⁵⁵ In addition, carbon dioxide emissions from LNG are also greatly reduced and using LNG in long-haul trucking operations can result in a 25 percent reduction of CO₂ emissions.⁵⁶ The development of an LNG facility to provide fuels for the transportation market is consistent with the regional and state efforts of the Puget Sound Clean Air Agency, the U.S. EPA and the Washington Department of Ecology, to establish strategies and programs aimed at reducing impacts to the Puget Sound air shed.⁵⁷ LNG has been embraced by the American Lung Association of the Upper Midwest as a “Clean Air Choice”.⁵⁸ The Tacoma LNG Facility will provide environmental benefits to the region by helping to meet the demand for LNG as a fuel by heavy duty trucking and industrial customers.⁵⁹

35. In addition, in 2010 the International Maritime Organization, a United Nations organization, approved the North American Emissions Control Area (“ECA”), establishing more stringent emissions standards within 200 nautical miles of the U.S. and Canadian coast.⁶⁰ The EPA is responsible for administering vessels operating in the North American ECA, and ships operating within the North American ECA were required to reduce the sulfur content of their

⁵⁴ Exh. No. ____ (RG-1CT) at 8:2-3.

⁵⁵ *Id.* at 8:3-4.

⁵⁶ *Id.* at 8:5-7.

⁵⁷ *Id.* at 10:9-13.

⁵⁸ *Id.* at 8:4-5.

⁵⁹ *Id.* at 10:8-9.

⁶⁰ *Id.* at 6:21 – 7:5.

fuel to one percent (1%) in August 2012 and to one-tenth of one percent (0.1%) by 2015.⁶¹

Vessel operators can meet the new standard by switching to lower sulfur diesel fuels, installing scrubbers, or transitioning to a cleaner fuel, such as LNG.⁶² Many operators, including TOTE, are finding that LNG is the preferred alternative.⁶³ The Tacoma LNG Facility will provide additional environmental benefits by helping to meet the demand of regional maritime customers for LNG as a fuel.

IV. ARGUMENT

A. The Commission Should Provide an Exemption to or, in the Alternative Amend, Commitment 56 and Commitment 58 in Docket U-072375 So That Puget Energy Can Own Both PSE and Puget LNG

36. In the Merger Order⁶⁴ approving the transfer of ownership and control of Puget Energy and its wholly owned subsidiary, PSE, to Puget Holdings, the Commission approved a Multi-Party Settlement Stipulation⁶⁵ that included 63 commitments by PSE and Puget Holdings. The 63 commitments addressed nine basic categories: (i) capital requirements; (ii) financial integrity; (iii) regulatory and ring-fencing; (iv) staffing, management and governance; (v) local presence; (vi) rates; (vii) quality of service; (viii) low-income assistance; and (ix) environmental, renewable energy, and energy efficiency.

⁶¹ Exh. No. ___(RG-1CT) at 7:6-10.

⁶² *Id.* at 7:10-12.

⁶³ *Id.* at 7:12-13.

⁶⁴ *In the Matter of the Joint Application of Puget Holdings LLC and Puget Sound Energy for an Order Authorizing Proposed Transaction*, Docket U-072375, Order 08 (Approving and Adopting Settlement Stipulation; Authorizing Transaction Subject to Conditions) (Dec. 30, 2008) (the “Merger Order”).

⁶⁵ The Commission included the Multiparty Settlement Stipulation as Attachment A to the Merger Order. Appendix A to the Multiparty Settlement Stipulation includes the 63 commitments. Attachment B to the Merger Order restates certain of the 63 commitments with clarifications made by the Commission as conditions to its approval of the Multiparty Settlement Stipulation and the underlying transaction.

37. Among these 63 commitments, only two—Commitment 56 and Commitment 58—are implicated by PSE’s proposed alternative business model. PSE is therefore seeking limited exemptions from or, in the alternative, amendments to, Commitment 56 and Commitment 58 that would allow Puget Energy (i) to be the sole owner or member of Puget LNG, which will be a special purpose entity that will exist solely to own an approximately 56% undivided interest in the Tacoma LNG Facility as a tenant-in-common with PSE, and (ii) to use its existing credit facilities to finance, in part, the construction of the Tacoma LNG Facility. Permitting the exemptions from, or amendments to, Commitment 56 and Commitment 58 will not alter any of the other 63 commitments in the Multiparty Settlement Stipulation, and PSE will continue to remain insulated from the risks of Puget Energy and its affiliate, including Puget LNG.

1. Ownership of Puget LNG by Puget Energy Will Not Alter or Eliminate the Capital Requirement Commitments in the Merger Order Other Than Commitment 56 and Commitment 58

38. The Multiparty Settlement Stipulation approved by the Merger Order contained numerous capital requirement commitments to provide PSE with assured access to the necessary capital infrastructure investments (e.g., generation, transmission and distribution facilities) to provide sufficient, reliable and safe supplies of electricity and natural gas. Included among these capital requirement commitments is Commitment 56, from which PSE now seeks a limited exemption or, in the alternative, amendment that would allow Puget Energy to be the sole owner or member of Puget LNG. Also included among these capital requirement commitments is Commitment 58, from which PSE now seeks a limited exemption or, in the alternative, amendment that would allow Puget Energy to use its existing credit facilities to finance, in part, the construction of the Tacoma LNG Facility.

39. Commitments 2 and 3 address Puget Holdings' commitment to meet PSE's capital requirements. Commitment 2 acknowledges PSE's need for capital to invest in its energy supply and delivery infrastructure and commits Puget Holdings to consider meeting these capital requirements to be a high priority by the boards of Puget Holdings and PSE.⁶⁶ Relatedly, Commitment 3 committed Puget Holdings to secure, and provide at closing, committed credit facilities for PSE and Puget Energy, including \$1.4 billion of facilities with a five-year term to support PSE's capital expenditure program as set forth in the summary of PSE's multi-year Business Plan, dated October 19, 2007.⁶⁷ The Commission conditioned to clarify that such commitment may be fulfilled with either committed credit facilities or additional equity investment by the Puget Holdings' investors.⁶⁸ Puget Energy's ownership of Puget LNG will neither alter nor diminish the commitments in Commitment 2 and Commitment 3. PSE's capital requirements will continue to be a high priority for the boards of Puget Holdings and PSE.

40. Commitments 10 and 35 address PSE's ability to issue securities to third parties. Commitment 10 provides that PSE (i) will maintain separate debt and preferred stock, if any, and (ii) will maintain its own corporate and debt credit rating, as well as ratings for long-term debt and preferred stock.⁶⁹ Commitment 35 commits that PSE will be permitted to issue certain hybrid securities to third parties, including public markets, and Puget Holdings, thereby leaving

⁶⁶ Merger Order, Attachment A, Appendix A at 1 (Commitment 2); *see also* Merger Order at ¶ 61.

⁶⁷ Merger Order, Attachment A, Appendix A at 1 (Commitment 3); *see also* Merger Order at ¶ 61.

⁶⁸ Merger Order at ¶ 61; *see also* Merger Order, Attachment B at 149 (Second Condition).

⁶⁹ Merger Order, Attachment A, Appendix A at 2 (Commitment 10); *see also* Merger Order at ¶ 62.

options for PSE to obtain additional financing on its own.⁷⁰ Puget Energy's ownership of Puget LNG will neither alter nor diminish the commitments in Commitment 10 and Commitment 35. PSE will continue to be able to issue securities to third parties consistent with these commitments.

41. Commitment 35 also addresses Puget Holdings' ability to issue equity to third parties. Commitment 35 provides that (i) Puget Holdings is not prohibited from issuing new equity to third parties, including public markets, and; (ii) Puget Holdings and PSE will not amend Puget Holdings' LLC Agreement or other transaction documents to prohibit Puget Holdings from issuing new equity to such third parties.⁷¹ Commitment 35 further provides that, if Puget Holdings makes a new equity issuance for the purpose of contributing the proceeds to Puget Energy or PSE through its subsidiaries, or applying the proceeds to purchase hybrid securities from PSE, the proceeds of any such new equity issuances by Puget Holdings must be used for such purpose.⁷² Puget Energy's ownership of Puget LNG will neither alter nor diminish these commitments in Commitment 35. Puget Holdings will continue to be able to issue equity to third parties consistent with these commitments.

42. Commitment 56 provides that Puget Energy will not own or operate any businesses other than PSE.⁷³ As previously mentioned, Commitment 56 is the sole commitment implicated by the alternative business model that would allow Puget Energy to own Puget LNG. None of the

⁷⁰ Merger Order, Attachment A, Appendix A at 7 (Commitment 35); *see also* Merger Order at ¶ 62.

⁷¹ Merger Order, Attachment A, Appendix A at 7 (Commitment 35); *see also* Merger Order at ¶ 63.

⁷² Merger Order, Attachment A, Appendix A at 7 (Commitment 35); *see also* Merger Order at ¶ 63.

⁷³ Merger Order, Attachment A, Appendix A at 12 (Commitment 56); *see also* Merger Order at ¶ 64.

Multiparty Settlement Stipulation, the testimony supporting the Multiparty Settlement Stipulation, or the Merger Order approving the Multiparty Settlement Stipulation provide a rationale for the prohibition against Puget Energy ownership of a business other than PSE. Presumably, the rationale for such prohibition is to limit Puget Energy's risk profile. As discussed in greater detail below, allowing a limited waiver from or, in the alternative, amendment to Commitment 56 that would allow Puget Energy to be the sole owner or member of Puget LNG would not increase Puget Energy's risk profile to business operations other than PSE. This is because (i) the Puget LNG business operations will be limited and relatively small in comparison to Puget Energy's total capitalization, and (ii) Puget Energy's risk profile would be identical if PSE were to pursue the "Hybrid Regulated/Non-Regulated" alternative business model mentioned above.

43. Finally, Commitment 57 and 58 include commitments to refinance then-current Puget Energy term loans and restrict then-current and future capital expenditure credit facilities to the financing of PSE capital needs. Commitment 57 affirms the objective of Puget Holdings and PSE to refinance the Puget Energy term loan using medium-term and/or long-term financing and commits them to develop a plan to achieve this objective and maintain records of their efforts to achieve such objective.⁷⁴ Puget Energy's ownership of Puget LNG will neither alter nor diminish Commitments 57. Puget Energy has already refinanced the then-current Puget Energy term loans.

44. Commitment 58 committed that the then-current and any future capital expenditure credit facilities at Puget Energy and PSE will, by their terms, limit the use of such funds only for

⁷⁴ Merger Order, Attachment A, Appendix A at 12 (Commitment 57); *see also* Merger Order at ¶ 65.

financing PSE capital expenditures.⁷⁵ As mentioned in paragraph 43, Puget Energy has refinanced its credit facilities, and Puget Energy no longer has a dedicated capital expenditure credit facility. Therefore, PSE is of the view that Commitment 58 no longer applies. In the event, however, that the Commission views Commitment 58 as applying to *any* credit facility—and not just dedicated capital expenditure credit facilities—at Puget Energy, then PSE respectfully requests an exemption from or, in the alternative, approve an amendment to Commitment 58 in Docket U-072375 that would allow Puget Energy to use its existing credit facilities to finance, in part, the construction of the Tacoma LNG Facility. Such an exemption or amendment would not alter the Commitment 58 with respect to PSE credit facilities, which will continue to be restricted to the financing of PSE capital needs.

2. Ownership of Puget LNG by Puget Energy Will Not Alter or Eliminate the Financial Integrity Commitments in the Merger Order

45. The Multiparty Settlement Stipulation approved by the Merger Order contained numerous financial integrity commitments to protect PSE’s financial health. No financial integrity requirement commitment is implicated by Puget Energy ownership of Puget LNG. Puget Energy’s ownership of Puget LNG will neither alter nor diminish these financial integrity commitments.

46. Commitment 35 provides that PSE will maintain a common equity ratio of not less than 44 percent at all times, except to the extent the Commission establishes a lower equity ratio for ratemaking purposes.⁷⁶ Commitment 36 prohibits PSE from declaring or making any distribution to Puget Energy unless, on the date of such PSE distribution, the PSE common equity ratio, after

⁷⁵ Merger Order, Attachment A, Appendix A at 12 (Commitment 58); *see also* Merger Order at ¶ 66.

⁷⁶ Merger Order, Attachment A, Appendix A at 7 (Commitment 35); *see also* Merger Order at ¶ 68.

giving effect to the distribution, remains at or above 44 percent, or any lower equity ratio established by the Commission for ratemaking purposes.⁷⁷ Puget Energy's ownership of Puget LNG will neither alter nor diminish these commitments in Commitments 35 and 36. PSE will continue to maintain a common equity ratio of not less than 44 percent at all times, except to the extent the Commission establishes a lower equity ratio for ratemaking purposes, and PSE's distributions to Puget Energy will continue to be limited by the requirement that PSE maintain such minimum equity ratio.

47. Commitment 40 commits that PSE will not declare or make any distribution unless, on the date of such distribution, either:

- (a) The ratio of PSE Earnings Before Interest, Taxes, Depreciation and Amortization ("EBITDA") to PSE interest expense for the most recently ended four fiscal quarter period prior to such date is equal or greater than 3.00 to 1.00, or;
- (b) PSE's corporate credit/issuer rating is investment grade at BBB- (or its then equivalent) or higher with Standard & Poor's Ratings Group ("S&P") and Baa3 (or its then equivalent) or higher with Moody's Investors Service, Inc. ("Moody's").⁷⁸

Commitment 40 further provides that, if PSE satisfies part (a) above but its corporate credit/issuer rating is downgraded to a level below BBB- (or its then equivalent) with S&P or Baa3 (or its then equivalent) with Moody's, then PSE must provide notice to the Commission of the downgrade within two business days of PSE's receipt of notice of such downgrade.

Following a downgrade, distributions by PSE to Puget Energy will be limited to an amount sufficient to service debt at Puget Energy, and to satisfy financial covenants in the credit

⁷⁷ Merger Order, Attachment A, Appendix A at 7 (Commitment 36); *see also* Merger Order at ¶ 68.

⁷⁸ Merger Order, Attachment A, Appendix A at 8 (Commitment 40); *see also* Merger Order at ¶ 69.

facilities of Puget Energy, and all distributions by Puget Energy to the special purpose entity Puget Equico LLC (“Puget Equico”) are prohibited.⁷⁹ If PSE seeks under these circumstances to make any distribution to Puget Energy greater than that required to service debt and satisfy financial covenants or if Puget Energy seeks to make any distribution to Puget Equico whatsoever, PSE and Puget Energy must file a petition with the Commission to show why either of these distributions should be allowed. Commission approval for any such distribution is required.⁸⁰ Puget Energy’s ownership of Puget LNG will neither alter nor diminish these commitments in Commitments 40. Dividends by PSE to Puget Energy and by Puget Energy to Puget Equico will continue to be restricted by the conditions specified in Commitment 40.

48. Commitment 37 provides that Puget Energy may not declare or make a distribution to Puget Equico or Puget Holdings, unless on the date of such distribution, the ratio of Puget Energy’s consolidated EBITDA to consolidated interest expense for the most recently ended four fiscal-quarter period prior to such date is equal or greater than 2.00 to 1.00.⁸¹ Puget Energy’s ownership of Puget LNG will neither alter nor diminish this commitments in Commitments 37. Dividends by Puget Energy to Puget Equico will continue to be restricted by the conditions specified in Commitment 37.

49. Commitment 39 requires Puget Energy and PSE to continue to be rated by both S&P and Moody’s.⁸² Commitment 39 further required Puget Energy and PSE to use their best efforts to

⁷⁹ Merger Order, Attachment A, Appendix A at 8 (Commitment 40); *see also* Merger Order at ¶ 70.

⁸⁰ Merger Order, Attachment A, Appendix A at 8 (Commitment 40); *see also* Merger Order at ¶ 71.

⁸¹ Merger Order, Attachment A, Appendix A at 7 (Commitment 37); *see also* Merger Order at ¶ 72.

⁸² Merger Order, Attachment A, Appendix A at 7 (Commitment 39); *see also* Merger Order at ¶ 74.

obtain and maintain from S&P confirmation of separation between the respective corporate credit rating for Puget Energy and PSE within 90 days after closing the transaction.⁸³ Puget Energy's ownership of Puget LNG will neither alter nor diminish this commitment in Commitments 39. Puget Energy and PSE will continue to be rated by both S&P and Moody's, and Puget Energy and PSE will continue to have separation between the respective corporate credit rating for Puget Energy and PSE.

50. Commitment 59 committed Puget Holdings and PSE to reduce the amount of the Puget Energy term loan at closing from \$1.425 billion to \$1.225 billion through an equity infusion of an additional \$200 million by Puget Holdings' investors.⁸⁴ Puget Energy's ownership of Puget LNG will neither alter nor diminish this commitment in Commitments 59. Puget Holdings' investors have already fulfilled this commitment at or before closing with an additional equity infusion of \$200 million.

3. Ownership of Puget LNG by Puget Energy Will Not Alter or Eliminate the Regulatory and Ring-Fencing Commitments in the Merger Order

51. The Multiparty Settlement Stipulation approved by the Merger Order contained numerous regulatory and ring-fencing commitments to protect PSE from any financial distress experienced by other companies within the holding company structure. No regulatory and ring-fencing commitment is implicated by Puget Energy's ownership of Puget LNG. Puget Energy's ownership of Puget LNG will neither alter nor diminish these regulatory and ring-fencing commitments.

⁸³ Merger Order, Attachment A, Appendix A at 7 (Commitment 39); *see also* Merger Order at ¶ 74.

⁸⁴ Merger Order, Attachment A, Appendix A at 12 (Commitment 59); *see also* Merger Order at ¶ 67.

52. Commitment 9 requires PSE to maintain separate books and records.⁸⁵ Furthermore, Commitment 19 requires Puget Holdings and PSE to make reasonable commitments, consistent with recent Commission merger orders, to provide (i) access to PSE's books and records; (ii) access to financial information and filings; (iii) audit rights with respect to the documents supporting any costs that may be allocable to PSE, and; (iv) access to PSE's board minutes, audit reports, and information provided to credit rating agencies pertaining to PSE.⁸⁶ Puget Energy's ownership of Puget LNG will neither alter nor diminish the books and records commitments in Commitments 9 and 19. PSE will continue to maintain separate books and records, and the Commission, Commission Staff, and Public Counsel will continue to have access to such books and records.

53. Additionally, Commitment 27 requires PSE and Puget Holdings to maintain the necessary books and records so as to provide an audit trail for all corporate, affiliate, or subsidiary transactions with PSE, or that result in costs that may be allocable to PSE. Commitment 27(b) provides that PSE will provide Staff and Public Counsel with access to books and records (including those of Puget Holdings or any affiliate or subsidiary companies) required to be accessed to verify or examine transactions with, or that result in costs that may be allocable to, PSE. Commitment 27(c) confirms that nothing in the Puget Holdings corporate structure will limit or affect the Commission's rights with respect to (i) inspection of accounts, books, papers and documents of PSE pursuant to RCW 80.04.070 or RCW 80.16.030 or (ii) inspection of accounts, books, papers and documents of Puget Holdings pursuant to RCW 80.16.030 to the

⁸⁵ Merger Order, Attachment A, Appendix A at 2 (Commitment 9); *see also* Merger Order at ¶ 75.

⁸⁶ Merger Order, Attachment A, Appendix A at 2 (Commitment 19); *see also* Merger Order at ¶ 75.

extent they pertain to transactions affecting PSE's regulated utility operations. Finally, Commitment 27(d) requires Puget Holdings and PSE to provide the Commission access to written information provided by and to credit rating agencies that pertains to PSE.⁸⁷ Puget Energy's ownership of Puget LNG will neither alter nor diminish the books and records commitments in Commitment 27. Indeed, the books and records commitments in Commitment 27 provide the Commission, Commission Staff, and Public Counsel with access to the books and records of Puget LNG to verify that costs are properly allocated between Puget LNG and PSE.

54. Commitment 9 also requires PSE to agree to prohibitions against loans or pledges of utility assets to Puget Energy or Puget Holdings without Commission approval and, generally, to hold PSE customers harmless from any business and financial risk exposures associated with Puget Energy, Puget Holdings and its other affiliates.⁸⁸ The Commission conditioned its Merger Order with respect to Commitment 9 by (i) clarifying that the prohibition against loans or pledges of utility assets without Commission approval applies to Puget Energy, Puget Holdings, or their subsidiaries or affiliates and (ii) requiring Puget Energy and Puget Holdings to file with the Commission, prior to closing of the transaction, a form of notice to prospective lenders describing the ring-fencing commitments and stating that these provisions provide no recourse to PSE assets as collateral or security for debt issued by Puget Energy, Puget Holdings, or their subsidiaries or affiliates.⁸⁹ Puget Energy's ownership of Puget LNG will neither alter nor

⁸⁷ Merger Order, Attachment A, Appendix A at 4 (Commitment 27); *see also* Merger Order at ¶¶ 76-78.

⁸⁸ Merger Order, Attachment A, Appendix A at 2 (Commitment 9); *see also* Merger Order at ¶ 79.

⁸⁹ Merger Order, Attachment B at 153-154 (Ninth Condition); *see also* Merger Order at ¶ 79.

diminish the regulatory commitments in Commitment 9. Indeed, the regulatory commitments in Commitment 9 ensure that Puget Holdings and PSE will hold the customers of PSE harmless from any business and financial risk exposures associated with Puget LNG.

55. As previously mentioned, Commitment 10 provides that PSE (i) will maintain separate debt and preferred stock, if any, and (ii) will maintain its own corporate and debt credit rating, as well as ratings for long-term debt and preferred stock.⁹⁰ Puget Energy's ownership of Puget LNG will neither alter nor diminish these commitments in Commitment 10. PSE will continue to be able to issue securities to third parties consistent with these commitments.

56. Commitment 8 required PSE and Puget Holdings to file a non-consolidation opinion with the Commission within 90 days of the transaction closing that concluded, subject to customary assumptions and exceptions, that the ring-fencing provisions are sufficient 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.⁹¹ The Commission conditioned its Merger Order with respect to Commitment 8 by clarifying that PSE's upstream owners must affirm they will not seek to include PSE in any bankruptcy filing without unanimous consent of PSE's directors.⁹² Puget Energy's ownership of Puget LNG will neither alter nor diminish this ring-fencing commitment in Commitment 8. Puget Holdings and PSE filed the required non-consolidation opinion with the Commission; Puget Energy's ownership of Puget LNG would not alter the conclusions reached in that non-consolidation opinion; and PSE's upstream owners have

⁹⁰ Merger Order, Attachment A, Appendix A at 2 (Commitment 10); *see also* Merger Order at ¶ 80.

⁹¹ Merger Order, Attachment A, Appendix A at 1 (Commitment 8); *see also* Merger Order at ¶ 81.

⁹² Merger Order, Attachment B at 149-150 (Third Condition); *see also* Merger Order at ¶ 82.

affirmed they will not seek to include PSE in any bankruptcy filing without unanimous consent of PSE's directors.

57. Commitment 16 requires that at least one director of PSE will be an independent director who is not a member, stockholder, director, officer, or employee of Puget Holdings or its affiliates (except as an independent director of PSE).⁹³ The Commission conditioned its Merger Order with respect to Commitment 16 by clarifying that PSE's upstream owners (*i.e.*, Puget Equico, Puget Energy, Puget Intermediate and Puget Holdings) will also include at least one independent member on their respective Boards of Directors.⁹⁴ Commitment 16 also required that PSE's organizational documents will not permit PSE, without the unanimous consent of all its directors, including the independent director, to consent to the institution of bankruptcy proceedings or the inclusion of PSE in bankruptcy proceedings.⁹⁵ Puget Energy's ownership of Puget LNG will neither alter nor diminish this ring-fencing commitment in Commitment 16. PSE and each of PSE's upstream owners (*i.e.*, Puget Equico, Puget Energy, Puget Intermediate and Puget Holdings) will continue to have at least one director that is an independent director (*i.e.*, a director that is not a member, stockholder, director, officer, or employee of Puget Holdings or its affiliates). Additionally, PSE's organizational documents will continue to prohibit PSE, without the unanimous consent of all its directors, including the independent director, to consent to the institution of bankruptcy proceedings or the inclusion of PSE in bankruptcy proceedings.

58. Commitment 20 provides that (i) PSE will file cost allocation methodologies used to allocate Puget Energy or Puget Holdings-related costs to PSE; (ii) PSE will propose methods and

⁹³ Merger Order, Attachment A, Appendix A at 2 (Commitment 16); *see also* Merger Order at ¶ 82.

⁹⁴ Merger Order, Attachment B at 151 (Fifth Condition); *see also* Merger Order at ¶ 82.

⁹⁵ Merger Order, Attachment A, Appendix A at 2 (Commitment 16); *see also* Merger Order at ¶ 82.

standards for treatment of affiliate transactions, and; (iii) there will be no cross-subsidization by PSE customers of unregulated activities.⁹⁶ The Commission conditioned the Merger Order with respect to Commitment 20 by clarifying that the cost allocation methodology to be filed by PSE would be a generic methodology that does not require Commission approval prior to its being proposed for specific application in a general rate case or other proceeding affecting rates.⁹⁷ Puget Energy's ownership of Puget LNG will neither alter nor diminish this affiliate cost-allocation commitment in Commitment 20. Indeed, each of Puget LNG and PSE will abide by the cost allocation methodology filed by PSE pursuant to such Commitment 20.⁹⁸

59. Commitment 26(a) provides that PSE's customers will be held harmless from the liabilities of any non-regulated activity of PSE or Puget Holdings and that the fair rate of return for PSE will be determined without regard to any adverse consequences that are demonstrated to be attributable to the non-regulated activities. Commitment 26(a) further provides that any new non-regulated subsidiary will be established as a subsidiary of either Puget Holdings, Puget Intermediate Holdings Inc., or Puget Energy rather than as a subsidiary of PSE and that measures providing for separate financial and accounting treatment will be established for each non-regulated activity.⁹⁹ Puget Energy's ownership of Puget LNG will neither alter nor diminish this regulatory commitment in Commitment 26(a). Indeed, Puget Energy's ownership of Puget LNG

⁹⁶ Merger Order, Attachment A, Appendix A at 3 (Commitment 20); *see also* Merger Order at ¶ 83.

⁹⁷ Merger Order, Attachment B at 151 (Sixth Condition); *see also* Merger Order at ¶ 83.

⁹⁸ *See generally* Exh. No. ____ (SEF-1T) (stating that PSE's existing, Commission-approved cost allocation methodology was first approved in Docket UE-960195 (i.e., the merger between Puget Sound Power & Light Company and Washington Natural Gas Company) and in Docket U-072375 (i.e., the merger into Puget Holdings) will be used in allocating costs between the regulated and non-regulated operations of the Tacoma LNG Facility).

⁹⁹ Merger Order, Attachment A, Appendix A at 3 (Commitment 26(a)); *see also* Merger Order at ¶ 84.

will be entirely consistent with Commitment 26(a) because (i) PSE will be held harmless from the liabilities of any non-regulated activity of Puget LNG; (ii) the fair rate of return for PSE will be determined without regard to any adverse consequences that are demonstrated to be attributable to Puget LNG; and (iii) Puget Energy and not PSE owning the non-regulated entity (Puget LNG).

60. Commitment 28(a) provides that PSE will advise the Commission within 30 days and will submit to the Commission a written document setting forth PSE's proposed corporate and affiliate cost allocation methodologies, if and when any subsidiary of PSE becomes a subsidiary of Puget Holdings, Puget Intermediate Holdings Inc., or Puget Energy.¹⁰⁰ Commitment 28(b) requires PSE to notify the Commission of any change in corporate structure that affects PSE's corporate and affiliate cost allocation methodologies and propose revisions to the cost allocation methodologies to accommodate such changes.¹⁰¹ Puget Energy's ownership of Puget LNG will neither alter nor diminish this regulatory commitment in Commitments 28(a) and 28(b). No subsidiary of PSE is becoming a subsidiary of Puget Holdings, Puget Intermediate Holdings Inc., or Puget Energy, and PSE has notified the Commission that the allocation of costs between regulated and non-regulated activities at the Tacoma LNG Facility will be governed by PSE's existing, Commission-approved cost allocation methodology.

61. In Commitment 26(b) requires Puget Holdings and PSE to notify the Commission subsequent to Puget Holdings' board approval and as soon as practicable following any public announcement of: (1) any acquisition of a regulated or unregulated business representing five

¹⁰⁰ Merger Order, Attachment A, Appendix A at 5 (Commitment 28(a)); *see also* Merger Order at ¶ 85.

¹⁰¹ Merger Order, Attachment A, Appendix A at 5 (Commitment 28(b)); *see also* Merger Order at ¶ 85.

percent or more of the capitalization of Puget Holdings or; (2) the change in effective control or acquisition of any material part of PSE by any other firm, whether by merger, combination, transfer of stock or assets.¹⁰² Commitment 26(c) further requires that neither PSE nor Puget Holdings will assert in any future proceedings that, by virtue of the Puget Holdings' corporate structure, the Commission is without jurisdiction over any transaction resulting in a change of control of PSE.¹⁰³ The Commission conditioned the Merger Order with respect to Commitments 26(b) and 26(c) by clarifying that the term "material part of PSE" means any sale or transfer of stock representing 10 percent of the equity ownership of Puget Holdings or PSE, and that any acquisition of a material part (*i.e.*, 10 percent or more) of PSE or any change in effective control of PSE requires Commission approval.

62. Puget Energy's ownership of Puget LNG will neither alter nor diminish these regulatory commitments in Commitments 26(b) and 26(c). Puget LNG does not exceed more than five percent or more of either Puget Energy or Puget Holdings. As previously mentioned, Puget LNG will invest approximately \$175 million to fund its 56% share of the Tacoma LNG Facility. As of December 31, 2015, the total capitalization of Puget Energy was approximately \$8.9 billion.¹⁰⁴ Thus, the projected \$175 million to be invested in Puget LNG represents slightly less than 2 percent of Puget Energy's current total capitalization of \$8.9 billion.¹⁰⁵ Additionally, Puget Energy's ownership of Puget LNG does not represent the change in effective control or acquisition of any material part of PSE by any other firm, whether by merger, combination,

¹⁰² Merger Order, Attachment A, Appendix A at 4 (Commitment 26(b)); *see also* Merger Order at ¶ 86.

¹⁰³ Merger Order, Attachment A, Appendix A at 4 (Commitment 26(c)); *see also* Merger Order at ¶ 86.

¹⁰⁴ Form 10-K for Puget Energy for the fiscal year ended December 31, 2015 (providing a total capitalization of \$8,897,108,000 for Puget Energy as of December 31, 2015).

¹⁰⁵ $\$174,282,082 \div \$8,897,108,000 = 1.96\%$.

transfer of stock or assets, and the Commission will continue to have jurisdiction over any transaction resulting in a change of control of PSE.

63. Commitments 31 and 33 provide that Puget Holdings and PSE are bound by their commitments contained in the Multiparty Settlement Stipulation and that the Commission has authority to enforce them in accordance with their terms.¹⁰⁶ The Commission conditioned the Merger Order with respect to Commitments 31 and 33 by clarifying that (i) their scope includes authority for the Commission to compel from Puget Holdings and Puget Energy the attendance of witnesses pertinent to matters affecting PSE; (ii) Puget Holdings and Puget Energy waive any claim they may have that such compulsory process is beyond the Commission's jurisdiction; (iii) the commitments binding on Puget Holdings and PSE are also binding on their successors in interest; and (iii) Puget Holdings must agree to submit to the jurisdiction of Washington state courts for the enforcement of Commission orders adopting these commitments and subsequent orders affecting PSE.¹⁰⁷

4. Ownership of Puget LNG by Puget Energy Will Not Alter or Eliminate Any Other Commitments in the Merger Order

64. The Multiparty Settlement Stipulation approved by the Merger Order contained numerous commitments in addition to the capital requirement commitments, the financial integrity commitments, and the regulatory and ring-fencing commitments discussed above. These additional commitments include local presence commitments, rate commitments, quality of service commitments, low-income assistance commitments, and environmental, renewable energy, and energy efficiency commitments. Rather than address each of these commitments in

¹⁰⁶ Merger Order, Attachment A, Appendix A at 6 (Commitments 31 and 33); *see also* Merger Order at ¶ 87.

¹⁰⁷ Merger Order, Attachment B at 155-56 (Eleventh and Twelfth Conditions); *see also* Merger Order at ¶ 87.

detail, PSE has provided a discussion in Appendix A to this Brief of how PSE's request in this proceeding does not implicate any of these commitments.

B. The Commission Should Authorize an Equal Sharing of the Projected Portfolio Benefits Associated with the Tacoma LNG Facility Between PSE Investors and PSE Natural Gas Sales Customers

65. As previously mentioned, the Tacoma LNG Facility would provide PSE natural gas sales customers with portfolio benefits as compared to other peak-day resource alternatives. Indeed, PSE's 2015 IRP Base Case scenario projects that the Tacoma LNG Facility will provide portfolio benefits of approximately \$98 million on a net present value basis. In addition, the Tacoma LNG Facility will provide PSE with on-system storage of a significant volume of natural gas, reduce PSE's reliance on its sole-source pipeline NWP, and provide gas supply diversification. Last, the Tacoma LNG Facility provides significant environmental benefits to Washington state and the Pacific Northwest region such as reduced air emissions from marine vessels and vehicles.

66. The Tacoma LNG Facility, however, cannot be constructed without Puget Energy assuming greater business and financial risk through investment in a facility that will be used to make a significant volume of non-regulated LNG sales for transportation fuel and for which greater than one-quarter of the non-regulated capacity remains unsubscribed. As of the date of this Brief, approximately 74% of the capacity of the Tacoma LNG Facility is subscribed for the foreseeable future, and approximately 26% of the capacity of the Tacoma LNG Facility is unsubscribed. In addition, Puget Energy will be creating a subsidiary, Puget LNG, to undertake the non-regulated LNG sales from the Tacoma LNG Facility for transportation fuel. Absent the assumption of this significant increase in business and financial risk by Puget LNG, the Tacoma LNG Facility will not be built, and PSE's customers will be unable to enjoy the

projected portfolio benefits associated with the Tacoma LNG Facility. Nor will PSE be able to take advantage of the benefits from the on-system storage the Tacoma LNG Facility would provide. Moreover, Washington state and the Pacific Northwest region will not enjoy the significant environmental benefits offered by the Tacoma LNG Facility. Therefore, PSE respectfully requests that the Commission authorize an equal sharing of the projected portfolio benefits associated with the Tacoma LNG Facility between PSE investors and PSE’s natural gas sales customers as an incentive to develop the facility. Without an incentive of an equal sharing of the projected portfolio benefits, PSE can no longer proceed with the Tacoma LNG Facility.

1. The Commission Has the Authority to Approve An Equal Sharing of the Portfolio Benefits Associated with the Tacoma LNG Facility Between PSE Investors and PSE Natural Gas Sales Customers

a. Washington State Policy Mandates the Use and Development of Clean Energy Sources, Including Natural Gas

67. The Washington State Legislature has expressly declared that “it is the policy of the state” to “(1) Preserve affordable natural gas and electric services to the residents of the state; and (2) Maintain and advance the efficiency and availability of natural gas and electric services to the residents of the state of Washington.”¹⁰⁸

68. Indeed, in 2010, the Legislature mandated a state energy strategy that included, among others, the following principles:

(c) Maintain and enhance economic competitiveness by ensuring an affordable and reliable supply of energy resources *and by supporting clean energy technology innovation, access to clean energy markets worldwide, and clean energy business and workforce development;*

(d) Reduce dependence on fossil fuel energy sources through *improved efficiency and development of cleaner energy sources, such as*

¹⁰⁸ RCW 80.28.074.

bioenergy, low-carbon energy sources, and natural gas, and leveraging the indigenous resources of the state for the production of clean energy;

(e) Improve efficiency of transportation energy use through advances in vehicle technology, increased system efficiencies, *development of electricity, biofuels, and other clean fuels*, and regional transportation planning to improve transportation choices;¹⁰⁹

69. Consistent with this statutory mandate, the State and the Governor have issued numerous proposals and initiatives surrounding the use of clean energy sources, including natural gas. For example:

- In December 2014, Governor Inslee announced various State actions to “transition Washington to increased energy independence through use of clean energy,” including proposing tax incentives exempting the purchase of natural gas vehicles from sales tax, requesting additional funds to promote the use of clean energy sources, and encouraging state electric utilities “to define a plan for reducing and ultimately eliminating the use of electrical power produced by coal. . . . We have affordable, reliable and cleaner alternatives at hand.”¹¹⁰
- The Washington State Ferries has been conducting analysis, evaluation and detailed studies on the viability of using LNG as a source of fuel for its fleet. In doing so, Washington State Ferries has recognized that the use of LNG in marine applications provides an opportunity to reduce fuel costs and better the environment by decreasing emissions.¹¹¹

PSE’s construction and operation of the Tacoma LNG Facility is entirely consistent with the State’s statutory mandate and the Governor’s directives for utilities to develop cleaner sources of

¹⁰⁹ RCW 43.21F.088(1)(c)-(e) (emphasis added); *see also* RCW 43.21F.010 (“[A] successful state energy strategy must . . . foster[] a clean energy economy . . . [and] [m]eet the state’s obligations to reduce greenhouse gas emissions”).

¹¹⁰ Governor Inslee, *Washington Carbon Pollution Reduction and Clean Energy Leadership*, Dec. 17, 2014, *available at* http://www.governor.wa.gov/sites/default/files/policy_briefs/pb_Carbon_pollution_reduction_2014.pdf (last accessed Apr. 9, 2016).

¹¹¹ Washington State Department of Transportation, Washington State Ferries, *Liquefied Natural Gas*, *available at* <http://www.wsdot.wa.gov/Ferries/Environment/LNG.htm> (last accessed Apr. 9, 2016).

energy and will help facilitate the State’s transition to cleaner sources of energy for both power production and transportation fuel. The Commission has an obligation to facilitate efforts by PSE to promote these state interests, including facilitating the development of the Tacoma LNG Facility.

b. State Law Authorizes the Commission to Provide Incentives and Benefit-Sharing for Developing Natural Gas Resources.

70. The State has declared that expanding natural gas resources and infrastructure is in the State’s interest and the Commission is required to adopt measures to encourage and incentivize the development of such resources.¹¹² Indeed, several Washington statutes provide the Commission with the authority and duty to incentivize utilities to invest in natural gas resources. For example, RCW 80.28.024 provides:

[T]he potential for meeting future energy needs through conservation measures, including energy conservation loans, energy audits, the use of appropriate tree plantings for energy conservation, and the use of renewable resources, such as solar energy, wind energy, wood, wood waste, municipal waste, agricultural products and wastes, hydroelectric energy, geothermal energy, and end-use waste heat, *may not be realized without incentives to public and private energy utilities*. The legislature therefore finds and declares that actions and incentives by state government to promote conservation and the use of renewable resources would be of great benefit to the citizens of this state by encouraging *efficient energy use* and a reliable supply of energy based upon renewable energy resources.¹¹³

These incentive-based principles are reflected further in the next section of RCW 80.28.025, which provides:

[In] establishing rates for each gas and electric company regulated by this chapter, *the commission shall adopt policies to encourage meeting or reducing energy demand through cogeneration ..., measures which improve the efficiency of energy end use*, and new projects which produce or generate energy from renewable resources ... These policies shall include but are not limited to allowing a return on investment in measures to improve the

¹¹² See RCW 80.01.040 (Commission required to “regulate in the public interest”).

¹¹³ RCW 80.28.024 (emphasis added).

efficiency of energy end use, cogeneration, or projects which produce or generate energy from renewable resources which return is established by adding an increment of two percent to the rate of return on common equity permitted on the company's other investment.¹¹⁴

Together, these statutes authorize the Commission to issue incentives and “adopt policies” for utilities to advance the use of efficient energy sources.

71. In addition to these general statutes requiring the Commission to provide incentives for utilities to invest in efficient energy sources, the Legislature has specifically identified LNG as an energy source in which the Commission should incent investment. For example,

RCW 80.28.280 provides

that compressed natural gas and liquefied natural gas [offer] significant potential to reduce vehicle and vessel emissions and to significantly decrease dependence on petroleum-based fuels. . . . *The legislature declares that the development of compressed natural gas and liquefied natural gas motor vehicle refueling stations and vessel refueling facilities are in the public interest.*¹¹⁵

RCW 80.28.290 provides further that the

commission shall identify barriers to the development of refueling stations for vehicles operating on compressed natural gas, and shall develop policies to remove such barriers. In developing such policies, *the commission shall consider providing rate incentives to encourage natural gas companies to invest in the infrastructure required by such refueling stations.*¹¹⁶

The Tacoma LNG Facility will directly advance the interests promoted in RCW 80.28.280 and RCW 80.28.290 by increasing the availability and use of LNG in the state as a transportation fuel, to reduce vehicle and vessel emissions and to significantly decrease dependence on petroleum-based fuels.

¹¹⁴ RCW 80.28.025 (emphasis added).

¹¹⁵ RCW 80.28.280 (emphasis added.)

¹¹⁶ RCW 80.28.290 (emphasis added.)

72. The Commission has the authority to approve incentives to encourage utilities to invest in a particular program: “Any utility may propose incentives and the Commission will consider them on a case-by-case basis.”¹¹⁷ Collectively, the provisions in Chapter 80.28 RCW regarding the advancement of efficient energy use and incentivizing natural gas facilities and refueling stations combined with the statutory requirement that the Commission regulate in the public interest vest the Commission with the authority to authorize an incentive program that facilitates the development of energy-efficient natural gas resources, such as the Tacoma LNG Facility.

2. Structuring An Incentive That Allocates Benefits and Risk to Both the Utility and Customers Is An Equitable Balancing of Risk

73. Since the Commission is required to promote and incentivize investments in natural gas, LNG and compressed natural gas facilities, structuring a benefit program that equitably allocates benefit and risk to PSE investors and to PSE customers, and that sufficiently incentivizes PSE to invest in the Tacoma LNG facility, is both appropriate and within the Commission’s jurisdiction.

As stated by the Commission:

The Commission is willing to explore proposals that provide greater incentives than the traditional rate base/rate of return paradigm that we currently employ As we have already noted, such proposals must include an equitable balancing of risk between ratepayers and shareholders. Mechanisms that simply shift risk from shareholders to ratepayers without compensating benefits do not meet this objective.¹¹⁸

74. But for the investment and risk associated with PSE’s construction of the larger, unregulated portion of the Tacoma LNG Facility, PSE natural gas sales customers would face a significantly higher portfolio cost for alternative resources. Without an equal sharing of those cost savings, PSE investors would carry the risks and costs while PSE natural gas sales

¹¹⁷ *In re Energy Independence Act*, Docket UE-061895, General Order R-546 at ¶ 44 (Nov. 30, 2007).

¹¹⁸ *Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Dockets UE-991606 & UG-991607, Third Supplemental Order at 52 (Sept. 29, 2000).

customers receive all of the benefits. As quoted above and further discussed below, such a structure is contrary to the Commission's own requirement that both risks and benefits should be borne by customers/ratepayers and investors/shareholders.

75. The case is similar to the situation the Commission addressed in its review of sales of renewable energy credits (RECs) and other carbon financial instruments (CFIs). In those orders, the Commission followed the principle that “benefits should follow burdens and rewards should follow risks” just as it should do here.¹¹⁹ By proposing to create an unregulated subsidiary to make sales of LNG for transportation fuel, Puget Energy is clearly taking on additional risk.¹²⁰

¹¹⁹ *Amended Petition of Puget Sound Energy for an Order Authorizing the Use of the Proceeds from the Sale of Renewable Energy Credits and Carbon Financial Instruments*, Docket UE-070725, Order 03 (Final Order Granting, in Part, and Denying in Part, Amended Petition; Determining Appropriate Accounting and Use of Net Proceeds from the Sales of Renewable Energy Credits and Carbon Financial Instruments) (May 20, 2010) (“May 2010 REC Order”), ¶ 38 (treatment of REC proceeds is faithful to the “benefit should follow burden” principle because the benefits of the RECs and CFIs follow the burden of cost responsibility), ¶ 39 (principle at the heart of Staff’s and the other parties’ arguments, is that benefits should follow burdens and rewards should follow risks).

¹²⁰ *In the Matter of Petition of Puget Sound Energy, Petitioner, for an Accounting Order Authorizing the Deferral of the Net Proceeds from the Sale of Biogas and Environmental Attributes and its Associated Accounting Treatment*, Docket UE-131276, Order 01 (Granting Accounting Petition) (Nov. 27, 2013) (“November 2013 REC Accounting Order”), ¶ 3 (Staff determined that the purchase and sale of biogas to third parties is more in the nature of a private, unregulated business venture and concluded the uncertainties associated with the purchase and sale of the biogas, along with the RIN and REC markets for such sales, are risks that PSE ratepayers should not bear).

The Commission has recognized that investors in unregulated markets face more risk than investors in regulated markets.¹²¹

76. In the current proceeding, PSE is proposing to retain the costs and risks of providing a regulated peaking resource service using the Tacoma LNG Facility. In contrast, the costs and risks of providing the nonregulated service, LNG sales for transportation fuel, will be taken on by a non-regulated affiliate. It is appropriate for the Commission to reward PSE investors for moving the risks of the non-regulated services into a non-regulated enterprise and shield PSE customers from that private business risk.¹²² It follows that the rewards of taking on that risk should accrue to PSE's investors. Indeed, in an analogous case, the Commission found it appropriate to approve a 50/50 allocation of a gain between utility investors and ratepayers when the utility was "proactively taking advantage of an opportunity that would benefit ratepayers."¹²³ In addition, in a case dealing with changes in the electric industry due to its transition to

¹²¹ *In the Matter of Petition of Puget Sound Energy for an Accounting Order Approving the Allocation of Proceeds of the Sale of Certain Assets to Public Utility District #1 of Jefferson County*, Docket UE-132027, Order 04 (Granting, in Part, and Denying, in Part, Petition for Accounting Order) (Sept. 11, 2014) ("JPUD Accounting Petition"), ¶ 38 (utility shareholders do not face the sort of risk that an investor in an unregulated market faces where there is no regulatory compact) and ¶ 40 (utility investor investments are not risk free, but the risks are slight relative to what investors bear in competitive enterprises because rates are set to be fully compensatory).

¹²² November Accounting Order, ¶ 3 (the Commission concurs with Staff's recommendation that the purchase and sale of RECs and RINs should be below-the-line finding that PSE's proposal will "shield electric service ratepayers from the essentially private business risk and opportunities associated with biogas"); *see also WUTC vs. Wash. Water Power Co.*, 45 P.U.R. 4th 61 (Nov. 25, 1981) (awarding utility higher return on equity for operations of unregulated subsidiary because it presented a "greater risk than respondent's electric utility operations").

¹²³ JPUD Accounting Order, ¶ 55 (the Commission explained that in the Centralia case, the utilities argued that they were proactively taking advantage of an opportunity that would benefit ratepayers which led to the allocation of 50 percent of the gain that exceeded the sum of original costs and transaction costs) (emphasis added); *see also* May 2010 REC Order, fn. 56 ("We exercise our discretion to allow PSE to retain a portion of this value, in part, because we have recognized the importance of utilities pursuing strategies that benefit both shareholders and ratepayers, and we again do so here.").

competitive wholesale generating markets, the Commission found that in situations that present uncertainty and opportunities for both shareholders and ratepayers

[The Commission] must be cautious not to apply precedent in a way that could inhibit utilities from pursuing opportunities beneficial to both ratepayers and shareholders. We must be flexible enough to allow managers of regulated utilities to exercise sound judgements regarding the restructuring of their portfolios of assets so as to maximize the value of their entire systems, minimize rates, and best serve both ratepayers and shareholders.¹²⁴

This is what PSE is asking the Commission to do here: address the policy question presented in this unique circumstance by exercising its discretion to approve an equal sharing of the portfolio benefits offered by PSE's proposed business model.

77. There are other examples of incentive mechanisms that provide for allocating risks and rewards and benefits and burdens among utilities and their customers. PSE's Power Cost Adjustment (PCA) Mechanism is itself an incentive mechanism designed, in part, to incentivize PSE to operate efficiently. The PCA Mechanism does this by employing (i) a "dead-band" within which all under-recovered power costs are absorbed by PSE and all over-recovered power costs are retained by PSE, and (ii) "sharing bands" that establish ranges in which PSE either collects from, or refunds to, customers in varying proportions any over- or under-recovery of power costs, thereby distributing risk between PSE and its customers.

¹²⁴ *In re the Matter of the Application of Avista Corporation for Authority to Sell Its Interest in the Coal-Fired Centralia Power Plant*, Docket UE-991255, Second Supplemental (Order Approving Sale with Conditions) at ¶ 54 (Mar. 6, 2000); *In re the Matter of the Application of PacifiCorp for an Order Approving the Sale of its Interest in (1) the Centralia Steam Electric Generating Plant, (2) the Rate Based Portion of the Centralia Coal Mine, and (3) Related Facilities; for a Determination of the Amount of and the Proper Rate Making Treatment of the Gain Associated with the Sale, and for an EWG Determination;*, Docket UE-991262, Second Supplemental (Order Approving Sale with Conditions) at ¶ 54 (Mar. 6, 2000); and *In re the Matter of the Application of Puget Sound Energy for (1) Approval of the Proposed Sale of PSE's Share of the Centralia Power Plant and Associated Transmission Facilities, and (2) Authorization to Amortize Gain over a Five-Year Period;* Docket UE-991409, Second Supplemental (Order Approving Sale with Conditions) at ¶ 54 (Mar. 6, 2000).

78. The use of sharing mechanisms is not limited to the balancing of risks of power cost volatility between utilities and their customers. For example, the Commission approved an earnings sharing mechanism for PSE, in which PSE shares equally with customers in any earnings above its authorized rate of return:

Accordingly, we determine that to the extent PSE's earnings exceed its currently authorized rate of return (ROR) of 7.80 percent (which will be adjusted slightly downward on its compliance filing due to lower long-term debt costs), [PSE] and consumers should share 50 percent each of such potential over-earning. The balance should be returned to customers over the subsequent 12-month period.¹²⁵

The earnings sharing mechanism is thus intended to (i) provide the incentive for PSE to continue to identify efficiencies in its cost structure, and (ii) allow investors and customers to share equally in any financial benefits from earnings in excess of PSE's authorized rate of return.

79. Other jurisdictions have similarly employed earnings sharing mechanisms. For example, the California Public Utilities Commission ("CPUC") has previously approved sharing mechanisms that share between the utility and its customers those earnings above the authorized rate of return.¹²⁶ In addition, *In re Rochester Gas & Electric Corporation*, the New York Public Service Commission approved a joint proposal that required Rochester Gas & Electric Corporation to share those earnings above certain return on equity thresholds equally between the utility and its customers.¹²⁷ In *Application of Commonwealth Gas Services, Inc.*, the Virginia State Corporation Commission approved an application for an incentive-based mechanism to

¹²⁵ See *In the Matter of the Petition of Puget Sound Energy, and Northwest Energy Coalition For an Order Authorizing PSE To Implement Elec. and Natural Gas Decoupling Mechanisms and To Record Accounting Entries Associated With the Mechanisms; WUTC v. Puget Sound Energy*, Dockets UE-121697 & UG-121705 (consolidated) and UE-130137 & UG-130138 (consolidated), Order 14 (Final Order on Remand), 322 P.U.R. 4th 265, at *54 (June 29, 2015).

¹²⁶ *In re S. Calif. Gas Co.*, Application 02-12-027, Application 02-12-028, Investigation 03-03-016, Decision 05-03-023 (Cal. Pub. Utils. Comm'n Mar. 17, 2005).

¹²⁷ *In re Rochester Gas & Elec. Corp.*, Dockets 03-E-0765, *et al.*, Order Adopting Provisions of Joint Proposals With Conditions (N.Y. Pub. Serv. Comm'n May 20, 2004).

share revenues derived from capacity release and off-system sales by a gas utility.¹²⁸ In *In re Long Island Lighting*, the New York Public Service Commission approved a gas excess earnings sharing mechanism designed to share gas excess equity earnings above an authorized return on equity equally between ratepayers and shareholders.¹²⁹

80. Other jurisdictions have also employed incentive sharing mechanisms for use under various unique circumstances. For example, the CPUC has previously approved an application by Southern California Edison Company for flexible pricing options. In its order, the CPUC ruled that Southern California Edison Company could proceed with its flexible pricing program provided that ratepayers obtain 50% of net increased sale revenue, with the exception of real-time pricing schedules.¹³⁰

81. Puget Energy will be assuming greater business and financial risk through investing in the Tacoma LNG Facility for which greater than one-quarter of the non-regulated capacity remains unsubscribed and owning and operating a non-regulated subsidiary (Puget LNG) under the alternative business model proposed by PSE. Puget Energy is willing to undertake this additional risk so that natural gas sales customers of PSE may enjoy the projected portfolio benefits associated with the Tacoma LNG Facility provided PSE shares in some of the portfolio benefits. PSE requests that the Commission recognize that PSE's natural gas sales customers will not reap the rewards from the portfolio benefits of the Tacoma LNG Facility unless Puget LNG assumes the financial and business risks associated with construction of the Tacoma LNG

¹²⁸ *Application of Commonwealth Gas Servs., Inc.*, Case No. PUE950033, Report of Howard P. Anderson, Jr. Hearing Examiner (Va. State Corp. Comm'n Mar. 20, 1997).

¹²⁹ *In re Long Island Lighting*, Case 97-M-1101, Filed Session of December 17, 1997 Approved as Recommended and so Ordered By the Commission (N.Y. Pub. Serv. Comm'n Jan. 5, 1998).

¹³⁰ *In Matter of Application of S. Calif. Edison Co.*, Application 93-12-025, Decision 96-08-025 (Cal. Pub. Utils. Comm'n Aug. 2, 1996).

Facility and ownership and operation of the expanded non-regulated operations. Therefore, it is necessary and entirely appropriate for the Commission to decide at this time to rebalance the asymmetrical balance of benefits and burdens and risks and rewards associated with PSE's alternative business model by allowing PSE investors and PSE natural gas sales customers to share equally in the projected portfolio benefits of the Tacoma LNG Facility. Without such an equal sharing, the Tacoma LNG Facility will not be built.

V. CONCLUSION

82. For the reasons set forth above, PSE respectfully requests that the Commission issue an order

- (a) providing for exemptions from or, in the alternative, amendments to Commitment 56 and Commitment 58 in Docket U-072375 that would allow Puget Energy (i) to own and operate both PSE and Puget LNG and (ii) to allow Puget Energy to use its existing credit facilities to finance, in part, the construction of the Tacoma LNG Facility; and
- (b) allowing an equal sharing of the portfolio benefits associated with the Tacoma LNG Facility between PSE investors and PSE natural gas sales customers.

DATED this 15th day of April, 2016.

Respectfully submitted

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APPENDIX A TO THE BRIEF OF PUGET SOUND ENERGY

83. The Brief of Puget Sound Energy addresses the impact (or lack thereof) of the ownership of Puget LNG by Puget Energy on the capital requirement commitments, the financial integrity commitments, and the regulatory and ring-fencing commitments in the Merger Order. In addition to the commitments in the Merger Order addressed in the Brief, Puget Holdings and PSE also committed to numerous that include local presence commitments, rate commitments, quality of service commitments, low-income assistance commitments, and environmental, renewable energy, and energy efficiency commitments. For the reasons set forth in this Appendix A, PSE's request in this proceeding does not implicate any of these commitments.

1. Ownership of Puget LNG by Puget Energy Will Not Alter or Eliminate the Staffing, Management, and Governance Commitments in the Merger Order

84. The Multiparty Settlement Stipulation approved by the Merger Order contained several commitments that protect and promote the Commission's ability to regulate PSE in the public interest. No staffing, management, governance, recordkeeping and reporting commitment is implicated by Puget Energy ownership of Puget LNG. Puget Energy's ownership of Puget LNG will neither alter nor diminish these staffing, management, governance, recordkeeping and reporting commitments.

85. In the Multiparty Settlement Stipulation approved by the Merger Order, Puget Holdings and PSE made several commitments with respect to PSE's staffing and management. Specifically, Puget Holdings and PSE committed to each of the following in Commitments 12, 13, 14, and 15, respectively:

- (i) honor PSE's labor contracts;¹³¹
- (ii) maintain PSE's pension funding policy in accordance with sound actuarial practice;¹³²
- (iii) maintain PSE staffing and presence in the communities in which PSE operates at levels sufficient to maintain the provision of safe and reliable service and cost-effective operations;¹³³ and
- (iv) seek to retain all current senior management of PSE. PSE will retain its current ability to determine its organizational structure and select and retain personnel best able to meet its needs over time.¹³⁴

Puget Energy's ownership of Puget LNG will neither alter nor diminish these staffing and management commitments in Commitments 12, 13, 14, and 15, and PSE will remain committed to abide with each of them.

86. Commitment 43 requires PSE to comply with the rules applicable to a registrant under the rules of the New York Stock Exchange, to the extent practical for a company that is no longer publicly traded.¹³⁵ Commitment 44 also requires Puget Energy and PSE to continue to meet the same Securities Exchange Commission (SEC) financial reporting and disclosure requirements pursuant to SEC sections 13(a) and 15(d), and disclosure requirements pursuant to PSE's indenture covenants.¹³⁶ Furthermore, Commitment 45 requires each of Puget Energy and

¹³¹ Merger Order, Attachment A, Appendix A at 2 (Commitment 12); *see also* Merger Order at ¶ 88.

¹³² Merger Order, Attachment A, Appendix A at 2 (Commitment 13); *see also* Merger Order at ¶ 88.

¹³³ Merger Order, Attachment A, Appendix A at 2 (Commitment 14); *see also* Merger Order at ¶ 88.

¹³⁴ Merger Order, Attachment A, Appendix A at 2 (Commitment 15); *see also* Merger Order at ¶ 88.

¹³⁵ Merger Order, Attachment A, Appendix A at 9-10 (Commitment 43); *see also* Merger Order at ¶ 88.

¹³⁶ Merger Order, Attachment A, Appendix A at 10 (Commitment 44); *see also* Merger Order at ¶ 88.

PSE to adhere to numerous requirements of the Sarbanes-Oxley Act.¹³⁷ Finally, Commitment 46 requires PSE to continue to meet all the applicable FERC reporting requirements with respect to annual reports (FERC Form 1) and quarterly reports (FERC Form 3).¹³⁸ Puget Energy's ownership of Puget LNG will neither alter nor diminish these governance commitments in Commitments 43, 44, 45, and 46, and Puget Energy and PSE, as applicable, will remain committed to comply with each of them.

2. Ownership of Puget LNG by Puget Energy Will Not Alter or Eliminate the Local Presence Commitments in the Merger Order

87. The Multiparty Settlement Stipulation approved by the Merger Order contained numerous local presence commitments at the levels of directors, officers, line employees, and corporate headquarters that protect and promote PSE's ability to maintain the provision of safe and reliable service and cost-effective operations. No local presence commitment is implicated by Puget Energy ownership of Puget LNG. Puget Energy's ownership of Puget LNG will neither alter nor diminish these local presence commitments.

88. Commitment 17 requires each of PSE and Puget Energy to keep its respective corporate headquarters in PSE's service territory.¹³⁹ Similarly, Commitment 41 requires local directors on the Boards of Directors of each of Puget Energy and PSE.¹⁴⁰ The Commission conditioned the Merger Order with respect to Commitment 41 by clarifying that the term "local" means resident

¹³⁷ Merger Order, Attachment A, Appendix A at 10-11 (Commitment 45); *see also* Merger Order at ¶ 88.

¹³⁸ Merger Order, Attachment A, Appendix A at 11 (Commitment 46); *see also* Merger Order at ¶ 88.

¹³⁹ Merger Order, Attachment A, Appendix A at 2 (Commitment 17); *see also* Merger Order at ¶ 89.

¹⁴⁰ Merger Order, Attachment A, Appendix A at 8 (Commitment 41); *see also* Merger Order at ¶ 89.

within Washington.¹⁴¹ Puget Energy's ownership of Puget LNG will neither alter nor diminish the local presence commitments in Commitments 17 and 41. PSE and Puget Energy will continue to keep their respective corporate headquarters in PSE's service territory, and the Boards of Directors of each of Puget Energy and PSE will continue to have local directors.

89. Commitment 18 requires PSE and the Puget Sound Energy Foundation to commit to maintain PSE's existing level of corporate contributions and community support in Washington for a period of five years after closing of the proposed transaction.¹⁴² The time period for this local presence commitment in Commitment 18 has since expired and has no further effect.

3. Ownership of Puget LNG by Puget Energy Will Not Alter or Eliminate the Rate Commitments in the Merger Order

90. The Multiparty Settlement Stipulation approved by the Merger Order contained numerous rate commitments, including beneficial rate credits, to protect PSE customers from rate increases that might otherwise have resulted from the transaction. No rate commitment is implicated by Puget Energy ownership of Puget LNG. Puget Energy's ownership of Puget LNG will neither alter nor diminish these rate commitments.

91. Commitment 11 required PSE to provide a mechanism for customers to realize any savings that result from the transaction.¹⁴³ Commitment 21 required PSE to protect its customers by committing not to seek (i) recovery of the acquisition premium in PSE's rates or (ii) recovery

¹⁴¹ Merger Order, Attachment B at 158 (Fourteenth Condition); *see also* Merger Order at ¶ 89.

¹⁴² Merger Order, Attachment A, Appendix A at 2 (Commitment 18); *see also* Merger Order at ¶ 90.

¹⁴³ Merger Order, Attachment A, Appendix A at 2 (Commitment 11); *see also* Merger Order at ¶ 91.

in PSE's rates of legal and financial advisory fees associated with the transaction.¹⁴⁴ The Commission conditioned its Merger Order with respect to Commitment 21 by clarifying that any bonuses or additional compensation tied to change of control that are paid to senior executives are not recoverable in rates.¹⁴⁵ Puget Energy's ownership of Puget LNG will neither alter nor diminish these rate commitments in Commitments 11 and 21.

92. Commitment 24 prevents PSE from advocating for a higher cost of debt or equity capital as compared to what PSE's cost of debt or equity capital would have been absent Puget Holdings' ownership.¹⁴⁶ The Commission conditioned the Merger Order by clarifying Commitment 24 as follows:

- (a) The determination of PSE's debt and equity costs will be no higher than such costs would have been assuming PSE's credit ratings by S&P and Moody's in effect on the day before the transaction closes and applying those credit ratings to then-current debt and equity markets, unless PSE proves that a lower credit rating is caused by circumstances or developments not the result of financial risks or other characteristics of the transaction.
- (b) PSE bears the burden to prove prudent in a future general rate case any prepayment premium or increased cost of debt associated with existing PSE debt retired, repaid, or replaced as a part of the transaction.
- (c) The determination of the allowed return on equity in future general rate cases will include selection and use of one or more proxy group(s) of companies engaged in businesses substantially similar to PSE, without any limitation related to PSE's ownership structure.¹⁴⁷

Puget Energy's ownership of Puget LNG will neither alter nor diminish this rate commitment in Commitment 24. PSE will continue to be prohibited from advocating for a higher cost of debt or

¹⁴⁴ Merger Order, Attachment A, Appendix A at 3 (Commitment 21); *see also* Merger Order at ¶ 91.

¹⁴⁵ Merger Order, Attachment B at 152 (Seventh Condition); *see also* Merger Order at ¶ 91.

¹⁴⁶ Merger Order, Attachment A, Appendix A at 3 (Commitment 24); *see also* Merger Order at ¶ 92.

¹⁴⁷ Merger Order, Attachment B at 152 (Eighth Condition); *see also* Merger Order at n.53.

equity capital as compared to what PSE's cost of debt or equity capital would have been absent Puget Holdings' ownership.

93. Commitment 34 requires PSE to provide rate credits of \$100 million (\$10 million per year for a ten-year period) beginning at the closing of the transaction.¹⁴⁸ Puget Energy's ownership of Puget LNG will neither alter nor diminish this rate commitment in Commitment 34. PSE will continue to provide the rate credits identified in Commitment 34 through the remainder of the ten-year period identified in such commitment.

94. Finally, the Multiparty Settlement Stipulation approved by the Merger Order contained several rate commitments, the terms of which have since expired. Commitment 60 prohibited PSE from making any proposals to materially change or affect industrial service under rate Schedule 449, including any change to the methodology used for calculating rates for Schedule 449 customers, during the five-year period commencing as of the date of the closing of the proposed transaction.¹⁴⁹ Commitment 61 required PSE to propose and support rates for Schedule 40 based on the then-current calculated rate methodology in PSE's next general rate case following the date of closing of the transaction.¹⁵⁰ Commitment 62 prohibited PSE from making any proposals regarding decoupling for gas industrial customers during the two-year period following the date of closing of the transaction.¹⁵¹ Similarly, Commitment 63 prohibited PSE from making any proposals regarding decoupling for electric industrial customers during the

¹⁴⁸ Merger Order, Attachment A, Appendix A at 6 (Commitment 34); *see also* Merger Order at ¶¶ 93-94.

¹⁴⁹ Merger Order, Attachment A, Appendix A at 13 (Commitment 60); *see also* Merger Order at ¶ 95.

¹⁵⁰ Merger Order, Attachment A, Appendix A at 13 (Commitment 61); *see also* Merger Order at ¶ 95.

¹⁵¹ Merger Order, Attachment A, Appendix A at 13 (Commitment 62); *see also* Merger Order at ¶ 95.

two-year period following the date of closing of the transaction.¹⁵² The time period for each of these rate commitments in Commitments 60, 61, 62, or 63 has since expired and have no further effect.

4. Ownership of Puget LNG by Puget Energy Will Not Alter or Eliminate the Quality of Service Commitments in the Merger Order

95. The Multiparty Settlement Stipulation approved by the Merger Order contained a quality of service commitment that protects and promotes PSE’s ability to maintain the provision of safe and reliable service and cost-effective operations. This quality of service commitment is not implicated by Puget Energy ownership of Puget LNG. Puget Energy’s ownership of Puget LNG will neither alter nor diminish this quality of service commitment.

96. Commitment 1 requires PSE to (i) maintain its then-current Service Quality Indices (“SQIs”), as such SQIs may be amended or modified; (ii) report to the Commission on its progress in meeting the SQI benchmarks; and (iii) remain subject to penalties if the benchmarks are not met.¹⁵³ Puget Energy’s ownership of Puget LNG will neither alter nor diminish this quality of service commitment in Commitment 1. PSE will continue to maintain its SQIs, as amended or modified; will continue to report to the Commission on its progress in meeting the SQI benchmarks; and will continue to remain subject to penalties if the benchmarks are not met.

5. Ownership of Puget LNG by Puget Energy Will Not Alter or Eliminate the Low-Income Assistance Commitments in the Merger Order

97. The Multiparty Settlement Stipulation approved by the Merger Order contained several commitments that promote PSE’s ability to maintain and increase PSE’s existing low-income

¹⁵² Merger Order, Attachment A, Appendix A at 13 (Commitment 63); *see also* Merger Order at ¶ 95.

¹⁵³ Merger Order, Attachment A, Appendix A at 1 (Commitment 1); *see also* Merger Order at ¶ 96.

programs. No low-income assistance commitment is implicated by Puget Energy ownership of Puget LNG. Puget Energy's ownership of Puget LNG will neither alter nor diminish these low-income assistance commitments.

98. Commitment 22 requires PSE to (i) maintain its existing low-income programs, subject to modification in any future proceeding, and (ii) increase the budgeted funding of low-income energy efficiency programs in future years to a level commensurate with increases in funding for energy efficiency programs for other residential customers through the CRAG (Conservation Resources Advisory Group) process.¹⁵⁴ Commitment 23 also requires PSE to continue to work with low-income agencies to address issues of low-income customers.¹⁵⁵ Puget Energy's ownership of Puget LNG will neither alter nor diminish and PSE will continue to be subject to, these low-income assistance commitments in Commitments 22 and 23.

99. Commitment 42 required PSE to increase bill assistance benefits for qualifying low-income customers by making the appropriate tariff filings in Dockets UE-072300 & UG-072301, a general rate case proceeding pending at the time the Settlement was filed.¹⁵⁶ Puget Energy's ownership of Puget LNG will neither alter nor diminish this low-income assistance commitments. Indeed, PSE has made the appropriate filings, and the Commission approved an increase in the total aggregate funding cap for PSE's low-income customer bill assistance program to approximately \$15 million per year from approximately \$10.25 million per year.¹⁵⁷

¹⁵⁴ Merger Order, Attachment A, Appendix A at 3 (Commitment 22); *see also* Merger Order at ¶ 97.

¹⁵⁵ Merger Order, Attachment A, Appendix A at 3 (Commitment 23); *see also* Merger Order at ¶ 97.

¹⁵⁶ Merger Order, Attachment A, Appendix A at 9 (Commitment 42); *see also* Merger Order at ¶ 98.

¹⁵⁷ *See* Merger Order at ¶ 98.

6. Ownership of Puget LNG by Puget Energy Will Not Alter or Eliminate the Environmental, Renewable Energy, and Energy Efficiency Commitments in the Merger Order

100. The Multiparty Settlement Stipulation approved by the Merger Order contained several commitments with respect to environmental, renewable energy, and energy efficiency issues. No environmental, renewable energy, and energy efficiency is implicated by Puget Energy ownership of Puget LNG. Puget Energy's ownership of Puget LNG will neither alter nor diminish these environmental, renewable energy, and energy efficiency commitments.

101. Commitment 49 required PSE to maintain its then-current goal of acquiring renewable resources that will enable PSE to meet its then-existing internal objective of serving 10 percent of load with renewable energy resources by 2013, to the extent such resources are reasonably commercially available and determined to be necessary to meet load, and are cost-effective under PSE's established IRP and resource evaluation and acquisition processes.¹⁵⁸ Puget Energy's ownership of Puget LNG will neither alter nor diminish the environmental, renewable energy, and energy efficiency commitment in Commitments 49. Indeed, PSE has achieved the commitment embodied in Commitment 49. For example, the 2015 Annual Renewable Portfolio Standard Report filed by PSE stated that PSE delivered 20,568,949 MWhs of electricity to retail customers and that PSE generated 2,422,140 MWhs of electricity from eligible renewable resources in calendar year 2014, thereby meeting slightly less than 12 percent¹⁵⁹ of load with renewable energy resources.¹⁶⁰

¹⁵⁸ Merger Order, Attachment A, Appendix A at 11 (Commitment 49); *see also* Merger Order at ¶ 99.

¹⁵⁹ $2,422,140 \text{ MWhs} \div 20,568,949 \text{ MWhs} = 11.87\%$.

¹⁶⁰ *See In the Matter of Puget Sound Energy's Renewable Energy Target Progress Report under RCW 19.285.070 and WAC 480-109-210*, Docket UE-151164, Annual Renewable Portfolio Standard Report, filed on June 1, 2015.

102. Additionally, various commitments required PSE to the following with respect to environmental, renewable energy, and energy efficiency issues:

- Commitment 50 required PSE to support the Green Power Program.¹⁶¹
- Commitment 51 required PSE to support net metering programs.¹⁶²
- Commitment 52 required PSE to participate in national and regional forums regarding transmission issues, pricing policies, facilities site evaluation requirements, and interconnection and integration policies.¹⁶³
- Commitment 53 required PSE to prepare annual greenhouse gas emissions inventory reports, including an inventory of total emissions from each of the sources listed in Table 2-1 of PSE's 2006 Greenhouse Gas Inventory Report.¹⁶⁴
- Commitment 54 required PSE to file a carbon-offset pilot program for its natural gas customers.¹⁶⁵
- Commitment 55 required PSE to consider within the context of its IRP the final recommendations of the Oregon Public Utility Commission regarding the treatment of CO₂ risk in integrated resource planning.¹⁶⁶

Puget Energy's ownership of Puget LNG will neither alter nor diminish the environmental, renewable energy, and energy efficiency commitments embodied in Commitments 50, 51, 52, 53, 54, and 55. Indeed, as discussed elsewhere in this Brief, the Tacoma LNG Facility will

¹⁶¹ Merger Order, Attachment A, Appendix A at 11 (Commitment 50); *see also* Merger Order at ¶ 100.

¹⁶² Merger Order, Attachment A, Appendix A at 12 (Commitment 51); *see also* Merger Order at ¶ 100.

¹⁶³ Merger Order, Attachment A, Appendix A at 12 (Commitment 52); *see also* Merger Order at ¶ 100.

¹⁶⁴ Merger Order, Attachment A, Appendix A at 12 (Commitment 53); *see also* Merger Order at ¶ 100.

¹⁶⁵ Merger Order, Attachment A, Appendix A at 12 (Commitment 54); *see also* Merger Order at ¶ 101.

¹⁶⁶ Merger Order, Attachment A, Appendix A at 12 (Commitment 55); *see also* Merger Order at ¶ 102.

support state policy, which mandates the use and development of clean energy sources, including natural gas. Furthermore, PSE will continue to be subject to each of these environmental, renewable energy, and energy efficiency commitments.