

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

No. UE-151871 and UG-151872
(Consolidated)

**PUGET SOUND ENERGY'S
OPPOSITION TO COMMISSION
STAFF'S MOTION FOR SUMMARY
DETERMINATION**

I. INTRODUCTION AND RELIEF REQUESTED

1 Commission Staff's Motion For Summary Determination ("Motion") should be denied by the Commission. Staff's Motion is not supported by legal authority or past Commission practice. Staff asks the Commission to rule as a matter of law that leasing of water heaters and HVAC equipment does not qualify as a utility service under Washington law, despite a Washington Supreme Court decision that authorizes the lease of water heaters as a regulated service. Staff's Motion would have the Commission overrule a Washington Supreme Court case and fifty years of Commission practice based on a four-page Commission order addressing a biomethane special contract. Most troubling is the fact that Staff fails to cite or even acknowledge the Washington Supreme Court case directly on point that is contrary to the position Staff argues in its Motion. Additionally, Staff's Motion asks the Commission to adopt a new standard that is inconsistent with past practice of the Commission—that utility service ends at the customer meter—yet cites no Commission authority for this standard, only a Staff witness' testimony that vaguely references unbundling of the telecommunication

industry by the Federal Communications Commission in the 1970s.¹ In summary, Staff's Motion lacks legal authority and should be denied.

2 Further, Staff's Motion should be denied because PSE has met its burden of proof, and its proposed tariffs are supported by substantial evidence. The additional commitments PSE offered on rebuttal—primarily related to reporting and quantifying benefits and an offer to refresh rates in a compliance filing—do not render PSE's filing deficient. In sum, there is a factual dispute before the Commission as to whether the rates and terms of the leasing service are fair, just, reasonable, and sufficient; the Commission should deny Staff's Motion and allow the case to be heard by the Commission.²

II. STATEMENT OF FACTS

A. PSE And Its Predecessors Begin Leasing End-Use Equipment In 1961

3 PSE and its predecessor companies have been leasing water heaters and other equipment as a regulated service for more than half a century. In 1961, one of PSE's predecessor companies, Washington Natural Gas ("WNG"), began renting natural gas conversion burners to homeowners so customers could convert their old, oil furnaces to natural gas without having to purchase the equipment outright as many customers could not afford the upfront equipment costs.³ As explained by the Commission, "the purpose [of the program was] to build load and gain gas customers and to give prospective gas customers who could not afford to purchase the necessary equipment the opportunity to have gas service within their means without the necessity of purchasing the appliances."⁴ Because of the success of the program,

¹ Cebulko, Exh. No. ___ (BTC-1THC), at 10.

² PSE's opposition to Staff's Motion does not address arguments made by other parties in responding to Staff's Motion, including SMACNA and Public Counsel. PSE reserves the right to respond to those filings separately.

³ Englert, Exh. No. ___ (EEE-3T) at 13-14.

⁴ *Cole v. Wash. Natural Gas Co.*, No. U-9621, at 17 (1968) ("Commission Proposed Order").

in 1964, WNG also began renting gas circulating heaters, furnaces, and water heaters to customers.⁵ The rental program yielded significant revenues and benefits for the company.⁶

4 In 1965, the equipment rental program was challenged by Staff and the oil heating industry as beyond the jurisdictional authority of WNG. Despite these challenges, the Commission and the Washington Supreme Court affirmed that the program was an appropriate, and indeed, a beneficial and entirely legitimate utility activity.⁷

5 WNG's equipment rental program continued uninterrupted until WNG's 1992 rate case. In that case, using similar arguments Staff makes today, Staff again argued that WNG's rental program should be terminated or separated from WNG's regulated business.⁸ On rebuttal, in response to criticisms by Staff and others, WNG proposed several modifications to the program, including increasing rates.⁹ The Commission rejected Staff's arguments, accepted WNG's additional proposals on rebuttal, and WNG's rental program continued.¹⁰

6 In 1997, WNG and Puget Sound Power & Light Co. merged, and PSE continued WNG's rental program. In 2000, PSE closed the program to new customers. However, over 33,000 customers continue to lease equipment from PSE.¹¹ PSE also continues to receive requests from customers that PSE again offer equipment leasing.¹²

7 Today, in addition to its equipment rental program, PSE provides a variety of other equipment leasing services to customers, including lighting fixtures and accessories.¹³

⁵ *Cole v. Wash. Utilities & Transp. Commission*, 79 Wn.2d 302, 304, 485 P.2d 71 (1971) (en banc).

⁶ *Id.*

⁷ Commission Proposed Order at 17, 31; *Cole*, 79 Wn.2d at 309-10.

⁸ Norton, Exh. No. ___ (LYN-1T), at 18-21.

⁹ *Id.* at 19, 21.

¹⁰ *Id.* at 21.

¹¹ Norton, Exh. No. ___ (LYN-1T), at 16, 24-25; Englert Exh. No. ___ (EEE-3T), at 22.

¹² Norton, Exh. No. ___ (LYN-1T), at 1-2, 29.

¹³ Englert, Exh. No. ___ (EEE-3T) at 25-26.

B. Market Research Demonstrates A Significant Market Gap

8 In 2011-12, the Northwest Energy Efficiency Alliance (“NEEA”) conducted a comprehensive study of energy efficiency in Northwest residential buildings.¹⁴ Field surveys were conducted on more than 1,850 sites across the Northwest, including more than 1,400 single-family homes.¹⁵ Using data from this study, PSE determined that as much as forty percent of residential water heating and HVAC equipment currently in use in the market had exceeded its useful life.¹⁶ The data revealed that many customers simply were not replacing aging water heating and HVAC equipment.¹⁷ In some cases, customers were using equipment that far exceeded its useful life.¹⁸

9 PSE determined that there are many reasons why customers do not always replace their equipment. Some customers are either unable to replace their equipment due to the significant financial costs of purchasing water heating or HVAC equipment, or choose not to because they do not want to purchase.¹⁹ Others are dissatisfied with current market options or are overwhelmed with the process.²⁰ Most homeowners have never purchased water heating or HVAC equipment before and are uninformed about the process.²¹ Unfortunately, this often leads to customers delaying replacement until the equipment fails.²² In addition to inconvenience, there are numerous potential dangers associated with the failure of water heating or HVAC equipment.²³

¹⁴ See <http://neea.org/resource-center/regional-data-resources/residential-building-stock-assessment>.

¹⁵ *Id.*

¹⁶ Teller, Exh. No. ___ (JET-1T), at 7-11; Letter from Ken Johnson to Steven J. King (Nov. 6, 2015).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 7-9.

²⁰ Wigen, Exh. No. ___ (AJW-1T), at 4-5.

²¹ *Id.* at 4.

²² Teller, Exh. No. ___ (JET-1T), at 7-9.

²³ *Id.*; Wigen, Exh. No. ___ (AJW-1T), at 3.

10 In 2014, PSE began evaluating possible solutions to this market gap. In May 2014, PSE conducted an online market survey with an established PSE residential customer panel.²⁴ Primary findings from this survey demonstrated that (i) up to thirty percent of customer are interested in leasing water heaters and HVAC equipment, (ii) customers value access to energy efficient equipment; and (iii) the peace of mind that comes with inclusive maintenance and repairs is desired by customers.²⁵ Between December 31, 2015 and January 11, 2016, PSE conducted a second online survey, to further evaluate customer interest in a possible leasing option and to better understand reasons why customers do not replace equipment, frequency of equipment maintenance, and interest in connectivity of equipment. Like the first survey, the second survey confirmed strong customer interest and need in an equipment leasing program and that eighty percent of customers are waiting for equipment to fail before considering replacement.²⁶ There is currently no water heater or HVAC leasing service offered in the region that is open to new customers.

11 Coupled with this information, PSE determined that leasing water heating and HVAC equipment could help the Company achieve several important objectives including (1) provide an affordable and comprehensive alternative energy equipment option to customers who may be dissatisfied with or unable to access current market options; (2) encourage customers to convert to up-to-date, energy efficient water heating and HVAC equipment without having to bear the significant up-front costs typical of water heating and HVAC equipment; (3) provide a platform for PSE and the Commission to test new technologies and to offer additional energy equipment in the future, including solar, batteries, and other emerging technologies;

²⁴ McCulloch, Exh. No. ___ (MBM-7THC), at 33; Exh. No. (MBM-18) (PSE Response to SMACNA Data Request No. 028).

²⁵ *Id.*

²⁶ *Id.*; McCulloch, Exh. No. ___ (MBM-19) (PSE Response to SMACNA Data Request No. 030).

and (4) establish an alternative way to further diversify Company revenue sources.²⁷ Initially, PSE determined that it would offer water heating and HVAC equipment and would consider additional offerings in the future.²⁸

C. PSE Files Tariff Revisions to WN U-60 Schedule 75 and WN U-2 Schedule 175.

12 On September 18, 2015, PSE filed tariff revisions to WN U-60 Schedule 75 and WN U-2 Schedule 175 to offer electric and natural gas equipment lease services to customers. For its equipment offering, PSE selected a reasonable set of equipment options that would provide an efficient solution for most customers.²⁹ For many customers, the process for acquiring new water heating and HVAC equipment is overwhelming and many prefer having a more straightforward selection of options.³⁰ The program was not designed to offer every piece of water heating or HVAC equipment in the marketplace, but rather, to provide a reasonable solution for most customers, with the option that additional equipment could be offered in the future.³¹

13 PSE's proposed program was also specifically designed to address the core concerns that Staff and other parties had raised regarding PSE's existing rental service, including the cross-subsidization issues that existed throughout the existing rental program.³² Under the proposed service, the lease rates will not be set as part of the Company's revenue requirement and the rate spread/rate design in a general rate case.³³ Rather, all costs associated with the leasing service will be paid for by only customers who actually lease the equipment; non-participating

²⁷ Teller, Exh. No. ____ (JET-1T), at 1-2; Norton, Exh. No. ____ (LYN-1T), at 3-8.

²⁸ Letter from Ken Johnson to Steven J. King (Nov. 6, 2015); McCulloch, Exh. No. ____ (MBM-7THC), at 10.

²⁹ McCulloch, Exh. No. ____ (MBM-7THC), at 5-7.

³⁰ *Id.*; Teller, Exh. No. ____ (JET-1T), at 2-11; Faruqui, Exh. No. ____ (AF-1T), at 3-11; Wigen, Exh. No. ____ (AJW-1T), at 4-6.

³¹ McCulloch, Exh. No. ____ (MBM-7THC), at 5-7; Teller, Exh. No. ____ (JET-1T), at 10-11.

³² Norton, Exh. No. ____ (LYN-1T), at 21.

³³ *Id.* at 21.

customers will not subsidize the program.³⁴ The program is entirely self-contained and if the rates set by PSE fail to fully recover the costs of the service, PSE and its shareholders alone will bear that cost.³⁵

14 On November 13, 2015, the Commission suspended the tariff. A prehearing conference was held on January 7, 2016. At the prehearing conference, in response to concerns expressed by stakeholders, PSE agreed to update its tariff on February 17, 2016.³⁶

D. PSE Files a Revised Tariff

15 On February 17, 2016, PSE filed a revised tariff updating the tariff with monthly lease rates and various other terms.³⁷ The monthly lease rates were calculated using actual equipment specifications, installation, and maintenance costs submitted by licensed Washington state HVAC contractors following a Request for Qualification (“RFQ”) issued by PSE.³⁸ These rates were then incorporated into PSE’s pricing model in which the monthly lease price charged to a customer is calculated based on discounted cash flow methodology.³⁹

E. PSE Files Direct Testimony Substantiating Tariff

16 In accordance with the procedural schedule, on February 25, 2016, PSE filed 87 pages of direct testimony from four PSE witnesses in support of its proposed leasing service. PSE’s direct testimony contained the results of a third-party market research survey conducted by the firm Cocker Fennessy in January 2016.⁴⁰ PSE retained Cocker Fennessy to survey PSE’s

³⁴ *Id.*; Faurqui Exh. No. ___ (AF-4T), at 1-2, 16-17.

³⁵ Norton, Exh. No. ___ (LYN-1T), at 21; McCulloch Exh. No. ___ (MBM-7THC), at 32.

³⁶ The tariff, as initially filed in September, did not include rates but proposed a two phased filing. A description of the rate methodology was filed as part of the September tariff filing. After the filing was approved, PSE planned to file updates to the tariff schedule with the monthly lease rates in accordance with the rate methodology. PSE Advice Letter (Sept. 18, 2015), at 5.

³⁷ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Dockets*, UE-151871 & UG-151872, Order 02 (Jan. 7, 2016) (Appendix B).

³⁸ McCulloch, Exh. No. ___ (MBM-1T), at 15-19; McCulloch, Exh. No. ___ (MBM-7THC), at 5-8.

³⁹ McCulloch, Exh. No. ___ (MBM-1T), at 15-19.

⁴⁰ McCulloch, Exh. No. ___ (MBM1T), at 4-8; McCulloch, Exh. No. ___ (MBM7THC), at 26-34.

customer base to further evaluate customer interest in PSE’s leasing proposal.⁴¹ Using carefully screened online panels, Cocker Fennessy surveyed PSE customers to evaluate customer interest in the program.⁴² The results confirmed PSE’s prior research. Twenty-five percent of respondents expressed interest in PSE’s program.⁴³ In addition, PSE filed direct testimony provided by Dr. Ahmad Faruqui from the Brattle Group. Dr. Faruqui—an expert in public utilities and rate design—quantified the benefits to all PSE customers that result from Lease Solutions.⁴⁴

17 On April 25, 2016,⁴⁵ PSE filed revisions to its direct testimony and exhibits to (1) correct a calculation error in its public benefits model consistent with a data request response provided to parties on March 25, 2016, and (2) to correct, as Staff notes, “minor” changes to its testimony. Neither Staff, nor any other party, objected to PSE’s revisions.

18 On Staff’s initiative, on April 27, 2016, PSE and the other parties consented to have the case heard before the entire Commission, which request the Commission granted.⁴⁶ In light of the “significant public policy issues” relating to PSE’s proposed service,⁴⁷ Staff believed that the Commission should determine the merits of the case and asked that the parties join its

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*; Teller, Exh. No. ____ (JET-1T), at 5.

⁴⁴ Faruqui, Exh. No. ____ (AF-1T); Faruqui, Exh. No. ____ (AF-4T).

⁴⁵ Staff incorrectly stated that PSE filed its revisions on March 25, 2016, which is the date of the data request response in which PSE notified parties of the correction. *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Dockets*, UE-151871 & UG-151872, Commission Staff’s Motion For Summary Determination, ¶ 5. In other words, parties were aware of this revision to the evidence since March 25 and did not object to PSE revising its testimony to reflect this change.

⁴⁶ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Dockets*, UE-151871 & UG-151872, Joint Motion Requesting the Commissioners Hear and Decide Case (Apr. 26, 2016).

⁴⁷ *Id.* ¶ 3.

motion “as it presents significant policy issues for resolution by the Commission.”⁴⁸ The Commission granted the motion and agreed to hear the case on August 1, 2016.⁴⁹

F. The Other Parties File Response Testimony

19 On June 7, 2016, Staff, Public Counsel, and the Intervenors filed 228 pages of testimony from nine witnesses, including three Staff witnesses, and over 700 pages of exhibits.⁵⁰

G. PSE Files Rebuttal Testimony

20 On July 1, 2016, PSE filed 164 pages of rebuttal testimony, a proportional response to Staff and the other parties’ lengthy testimony. As part of its testimony, PSE included a list of commitments as an offering to the Commission of proposed conditions that PSE would be willing to commit to, in addition to the terms set forth in Schedule 75.⁵¹ These commitments were not intended to be revisions to the actual tariff, but rather, additional commitments PSE would undertake if authorized to do so by the Commission in the final order.⁵² The only commitment that would involve a substantive change to the tariff is PSE’s offer to refresh the rates and potentially offer additional models of equipment upon final execution of service contracts.⁵³ Even if this offered commitment is accepted, PSE does not expect the refresh of rates to materially change the rates currently filed in the tariff.⁵⁴

III. STATEMENT OF ISSUES

21 1. Whether the Commission should deny Staff’s Motion because it (i) fails to address contrary Washington Supreme Court authority, (ii) seeks to overturn an existing Washington

⁴⁸ *Id.* ¶ 6.

⁴⁹ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Dockets*, UE-151871 & UG-151872, Notice of Revised Procedural Schedule (May 4, 2016).

⁵⁰ This does not include exhibits. The other parties filed over 700 pages of exhibits, totaling nearly 1,000 pages of response testimony.

⁵¹ Norton, Exh. No. ____ (LYN-1T), at 8-9; Exh. No. ____ (LYN-3T).

⁵² *Id.*

⁵³ *Id.*; McCulloch, Exh. No. ____ (MBM-7THC), at 8-10.

⁵⁴ McCulloch, Exh. No. ____ (MBM-7THC), at 10.

Supreme Court decision with an interpretive policy statement and a four-page order on a special contract, and (ii) is inconsistent with past practice of the Commission.

22 2. Whether the Commission should deny Staff’s Motion because PSE has offered sufficient evidence to support its burden of proof, and the additional commitments PSE offered in its rebuttal filing are consistent with past Commission practice, do not materially change PSE’s tariff, and do not render PSE’s case deficient in any way.

IV. EVIDENCE RELIED UPON

23 PSE relies upon the testimony, exhibits, and evidence filed in this docket in support of its tariff filings, including but not limited to direct and rebuttal testimony and exhibits, tariff filings, and advice letters.

V. STANDARD FOR SUMMARY DETERMINATION

24 Motions for summary determination are governed by WAC 480-07-380(2) and CR 56 of the Washington superior court civil rules. Thus, summary determination is appropriate only “if the pleadings, affidavits, depositions and admissions on file demonstrate that there is no genuine issue as to any material fact and the party bringing the motion is entitled to judgment as a matter of law.” *Sheehan v. Central Puget Sound Reg’l Transit Auth.*, 155 Wn.2d 790, 797, 123 P.3d 88 (2005) (citation omitted). The Commission is required to view “the evidence and the reasonable inferences therefrom in a light most favorable to the nonmoving party.” *Marquis v. City of Spokane*, 130 Wn.2d 97, 105, 922 P.2d 43 (1996). If there is a dispute as to any material fact, summary determination is improper. *Id.* The moving party bears the burden of demonstrating the absence of any genuine issue of material fact and entitlement to judgment as a matter of law. *Magula v. Benton Franklin Title Co.*, 131 Wn.2d 171, 182, 930 P.2d 307 (1997).

VI. ARGUMENT

25 Washington law provides controlling authority that leasing is an appropriate utility activity as a matter of law. Staff's total failure to acknowledge, much less address, on-point Washington law on equipment leasing discredits Staff's motion on this ground and renders it fatally deficient. Further, PSE's leasing program should be approved if the program is in the public interest and the rates charged are fair, just, reasonable, and sufficient. PSE has provided overwhelming evidence that there are significant public benefits that will result from PSE's leasing service and that the rates charged are fair, just, reasonable, and sufficient. Given that these are also material issues of fact in dispute, Staff's motion does not meet the standard for summary determination and must be denied.

A. Leasing Is A Legitimate Utility Function As a Matter of Law

26 Staff's argument, that leasing is not a legitimate utility function, as a matter of law, lies in direct contravention to numerous Washington State statutes, prior Commission decisions, and Washington Supreme Court precedent. Notably, in Staff's motion, Staff does not mention or address any of these controlling authorities, and instead, cites a Commission open-meeting decision on a special contract, whose circumstances and facts are so attenuated to the facts of this case that Staff's reliance on this case in light of the controlling authorities borders on frivolous. Staff's position also completely ignores the fact that PSE and its predecessors have leased equipment to customers for over fifty years, and PSE continues to do so today in a variety of contexts, including hot water heaters that are proposed to be leased as part of the current tariffs. Finally, Staff's "beyond the meter" delineation that it asks the Commission to adopt is a recycled argument Staff has argued for decades, but which the Commission has never adopted. Notably, in Staff's motion, it cites no authority whatsoever for this attempt to

make law. In sum, Staff’s argument that equipment leasing is not a legitimate utility service contradicts established law and decades of actual utility practice.

1. Washington Law, Prior Commission Decisions, and Washington Supreme Court Precedent, All Provide That Leasing Is Within the Jurisdictional Authority of a Public Utility

27 Staff’s argument that PSE’s leasing program fails as a matter of law because leasing is not a legitimate utility function is inconsistent with Washington state law, prior Commission decisions, and Washington Supreme Court precedent and must be rejected.

a. Washington State law grants public utilities the authority to lease and the Commission has expressly conferred this power to PSE.

28 There are several Washington statutes that provide jurisdictional authority for public utilities to implement a leasing service. For example, RCW 80.03.130 provides:

[W]henever any public service company shall file with the commission any schedule, classification, rule, or regulation, the effect of which is to change any rate, charge, **rental**, or toll theretofore charged, the commission shall have power, either upon its own motion or upon complaint, upon notice, to enter upon a hearing concerning such proposed change and the reasonableness and justness thereof.⁵⁵

29 Similarly, RCW 80.03.150 provides

Whenever the commission shall find, after hearing had upon its own motion or upon complaint as herein provided, that any rate, toll, **rental or charge** which has been the subject of complaint and inquiry is sufficiently remunerative to the public service company affected thereby, it may order that such rate, toll, **rental or charge** shall not be changed, altered, abrogated or discontinued, nor shall there be any change in the classification which will change or alter such rate, toll, **rental or charge** without first obtaining the consent of the commission authorizing such change to be made.⁵⁶

⁵⁵ RCW 80.04.130 (emphasis added).

⁵⁶ RCW 80.04.150 (emphasis added). In addition, RCW 80.28.010 and .100 each reference a charge for “**any other service** rendered or to be rendered in connection therewith.” (Emphasis added.)

30 These provisions demonstrate that the legislature expressly contemplated that “rentals” are an appropriate activity for a regulated utility. Staff’s motion fails to mention or address these controlling statutes in any way.

31 In addition, the Commission has also expressly confirmed that leasing is an appropriate jurisdictional activity. For example, the natural gas tariff on file with the Commission allows PSE to offer optional natural gas end-use equipment services to its customers, including rentals. In Rule No. 2 Definitions (Sheet No. 12-A), Gas Service is defined broadly to include “Rental of natural gas equipment.”⁵⁷ A tariff approved and on-file with the Commission has the force and effect of law.⁵⁸ Thus, Rule No. 2 makes rental of natural gas equipment intrinsically part of Gas Service as a matter of law. It is disingenuous for Staff to argue that leasing is not authorized by Washington law when the tariff currently on-file with the Commission specifically allows the rental of end-use equipment, including water heaters—the very same type of equipment PSE proposes to lease as part of the tariffs filed in this case.

32 Therefore, equipment leasing has already been accepted by the state legislature and this Commission as an appropriate activity for a public utility.

b. Prior Commission decisions and the Washington Supreme Court confirm that leasing is a legitimate utility function.

33 The Commission has at least twice rejected the arguments Staff makes in its motion. In both 1968 and 1992, the Commission affirmed that PSE’s predecessor, WNG, could rent equipment to customers as a regulated service, despite opposition from Staff and other parties. With respect to the 1968 case, in *Cole v. Washington Utilities & Transportation Commission*, 79 Wn.2d 302 (1971), the Washington Supreme Court affirmed the Commission’s decision

⁵⁷ See http://pse.com/aboutpse/Rates/Documents/gas_rule_02.pdf.

⁵⁸ *General Tel. Co. of N.W., Inc. v. City of Bothell*, 105 Wn.2d 579, 585, 716 P.2d 879 (1986).

that equipment rental was within the jurisdiction of a regulated utility.⁵⁹ Staff’s attempt to rewrite Washington law, decided by the highest court in the State of Washington, on the basis of a four-page Commission order rejecting a special contract and a Commission interpretive statement is not persuasive and is unlikely to withstand scrutiny by the courts. While interpretive statements are instructive for understanding Commission’s preferences in certain policy-related matters, they are advisory only and do not have the force of law.⁶⁰

34 Since at least 1962, the Commission has confirmed that leasing equipment is a legitimate utility activity. In early 1962, the Oil Heat Institute and the Association of Gas Utilities petitioned the Commission challenging WNG’s rental program. By letter dated April 10, 1962, the Commission affirmed the program since “[g]as conversion rental charges appear to be subject to Commission jurisdiction.”⁶¹

35 By 1964, the program had expanded to renting gas circulating heaters, furnaces, and water heaters.⁶² In 1965, several customers and the Oil Heat Institute challenged the legality of WNG’s rental program before the Commission.⁶³ Remarkably, Staff made arguments against WNG’s rental program in that case that are nearly identical to its arguments in the present case. Staff argued that the Commission should disallow the program and “find leasing

⁵⁹ 79 Wn.2d at 308-11.

⁶⁰ RCW 34.05.230(1) (“Current interpretive and policy statements are advisory only.”). As the Commission recently noted, “[s]uch statements generally set forth the Commission’s preferences or clear guidelines in certain policy-related matters after extensive deliberation in a workshop setting.” *In re Petition of PSE and NVEC For an Order Authorizing PSE To Implement Electric and Natural Gas Decoupling Mechanisms and To Record Accounting Entries Associated With the Mechanisms*, Dockets UE-121697 & UG-121705, Order 07 ¶ 95 (June 25, 2013). They do not set forth immutable doctrine. *Id.*

⁶¹ Englert, Exh. No. ____ (EEE-3T), at 16.

⁶² *Cole*, 79 Wn.2d at 304.

⁶³ *Id.*

to be a non-utility function subject to the law of the marketplace rather than regulatory jurisdiction.”⁶⁴

36 The Commission firmly rejected Staff’s arguments and upheld leasing as a legitimate utility practice. Notably, the Commission reviewed RCW 80.04.130 and 80.04.150 summarized above and explained that together the provisions “empower the Commission to determine the reasonableness and justness of any rate schedule,” including expressly “rentals.”⁶⁵ Thus, the Commission confirmed that RCW 80.04.130 and 80.04.150 provide that leasing is a statutorily-conferred power of a public utility.

37 On appeal, both the Thurston County Superior Court and the Washington Supreme Court affirmed the Commission’s determination that leasing is a legitimate utility function.⁶⁶ In particular, the Supreme Court confirmed the Commission’s holding that RCW 80.04.130 and 80.04.150 provide statutory authority for leasing:

Because no clause or individual words of a statute should be deemed superfluous . . . we assume that the legislature contemplated that public service corporations would engage in rental and leasing programs.⁶⁷

38 The Supreme Court was also strongly persuaded by a decision in *Department of Public Service v. Pacific Power & Light Co.*, 13 P.U.R.(n.s.) 187 (1936), where the Commission’s predecessor upheld a regulated utility’s promotional equipment sale program, “suggesting that the legislature early recognized the need for regulated utilities to engage in promotional activities similar to those which are challenged here.”⁶⁸ Ultimately, the Supreme Court found

⁶⁴ Englert, Exh. No. ___(EEE-6) (*Cole v. Wash. Natural Gas Co.*, No. U-9621, at 21 (1968) (Commission Staff Brief, at 21)).

⁶⁵ Commission Proposed Order at 14-15 (emphasis in original).

⁶⁶ *Cole*, 79 Wn.2d at 302, 308-11.

⁶⁷ *Id.* at 308.

⁶⁸ *Id.*

that “the commission and the trial court correctly found that the leasing program was legal, fully compensatory and of great benefit to the utility and to its consumers.”⁶⁹

39 Staff has tried at great lengths to distinguish *Cole* and render it a regulatory anomaly. In this case, Staff suggests that the circumstances in *Cole* are distinguishable because PSE’s current proposal is not motivated by load building as WNG’s program was.⁷⁰ First, neither the Commission, nor the Supreme Court, nor any statute or regulation, has ever placed the prerequisites on leasing that Staff is trying to impose. Load building is never mentioned in RCW 80.04.130 or 80.04.150, nor did the Commission or the Supreme Court in *Cole* place such a limitation on leasing. Second, Staff’s motion misrepresents PSE’s testimony,⁷¹ the Commission’s holding in *Cole*, and omits portions of the Commission’s decision. The Commission stated that the purpose of the WNG program was “to build load and gain gas customers *and to give prospective gas customers who could not afford to purchase the necessary equipment the opportunity to have gas service within their means without the necessity of purchasing the appliances.*”⁷² Staff’s motion entirely ignores this purpose of the WNG program, which was to increase customer accessibility to equipment that some customers could not afford due to upfront capital cost. Thus, load building was not the only purpose of WNG’s program. Like PSE’s proposal, there were several legitimate motivating justifications for the WNG program, including increasing customer access to equipment. And finally, the WNG program has been upheld by the Commission for decades during changing

⁶⁹ *Id.* at 309.

⁷⁰ Mot. at 10-11.

⁷¹ In its motion, Staff states “As the Company acknowledged on rebuttal in this case, ‘the purpose [of its legacy rental program was] to build load and gain gas customers’” Mot. at 10 (quoting Englert, No. ___ (EEE-3T), at 15). Staff only included half of Mr. Englert’s statement. The remainder stated (quoting the Commission Proposed Order): “and to give prospective gas customers who could not afford to purchase the necessary equipment the opportunity to have gas service within their means without the necessity of purchasing the appliances.” *Id.*

⁷² Commission Proposed Order at 17.

market conditions and continues today even when load building is no longer a Company objective. Staff made the same failed argument in the 1992 rate case that “the policy reasons that moved the Commission to approve the rental program are no longer present and valid because the conditions of the market environment have changed.”⁷³ The Commission did not accept Staff’s argument then nor should it now. Staff’s argument that load building is a prerequisite to leasing fails.

40 Staff argues further that to be permitted, the program must provide “compelling” “net benefits” to all ratepayers “by making the system more efficient.”⁷⁴ This argument fails for similar reasons. First, PSE does not know what Staff means by “compelling” or the requirement that leasing must make the system more “efficient,” and Staff cites no authority for these subjective terms. Again, no Washington law, Commission decision, or court decision, places these requirements on leasing, much less on any public utility proposal. Moreover, even if “compelling benefits” is the standard, which it is not, whether or not the benefits PSE demonstrates are “compelling” is an issue of fact that should not be decided on summary determination.

41 Second, PSE has proffered significant evidence that the program will provide benefits to all customers, which neither Staff nor any party has successfully refuted.⁷⁵ As explained by Dr. Faruqui, PSE’s leasing service is designed so that only participating customers pay for the service and enjoy the corresponding equipment benefits (no subsidization by non-participating customers), yet all PSE customers (non-participating and participating) will benefit from the service in terms of electric and gas energy conservation, avoided tons of CO₂-equivalent

⁷³ Norton, Exh. No. ____ (LYN-1T), at 19.

⁷⁴ Mot. at 10.

⁷⁵ See generally Faruqui, Exh. No. ____ (AF-1T); Faruqui, Exh. No. ____ (AF-4T).

emissions avoided, avoided generation and distribution capacity costs, as well as utility bill savings for participating customers.⁷⁶ Thus, PSE has demonstrated that the leasing program will “deliver benefits to the Company’s entire customer base.”⁷⁷ In *Cole*, the Commission and Supreme Court had the benefit of examining WNG’s program after it had been in operation for years. But Staff certainly has not provided any evidence that WNG was required to demonstrate net benefits before its program initiated. By demanding proof of net benefits now, Staff is improperly holding PSE’s program to a standard of proof that neither PSE, nor any party, could ever satisfy until the program is actually in operation. It is for this reason that PSE offered, in rebuttal, to provide reporting, in future years, quantifying the benefits of the program.⁷⁸ Regardless, by challenging the benefits of PSE program, Staff concedes there are issues of material fact that cannot be determined on a motion for summary determination.

42 Finally, PSE’s motivations for its lease proposal share important similarities to WNG’s program that are instructive. WNG proposed leasing in 1961 because the company had declining revenues due to too few customers using natural gas.⁷⁹ The company also needed to find a simple way to encourage customers with outdated energy equipment to transition to new technologies.⁸⁰ WNG turned to leasing as a tool increase company revenues, diversify its product offering, and provide an affordable solution to aid customers in acquiring new equipment.⁸¹ PSE’s motivations are equally legitimate if not more so. Like WNG, PSE is in “an era of low load growth, declining use-per customer, pre-determined revenue, and

⁷⁶ Faruqui, Exh. No. ___ (AF-1T), at 25-30 (Revised April 22, 2016); Norton, Exh. No. ___ (LYN-1T), at 21, 23-27.

⁷⁷ Mot. at 10.

⁷⁸ Norton, Exh. No. ___ (LYN-3), at 8-9.

⁷⁹ Englert, Exh. No. ___ (EEE-3T), at 14-15.

⁸⁰ *Id.*

⁸¹ *Id.*

customer-generation.”⁸² To address these issues, PSE’s leasing service will provide an additional revenue stream; an affordable way for customers to have a turn-key, energy-efficient water heating and HVAC equipment service; it will infuse the market with an affordable way to obtain energy efficient equipment; and will provide a platform for PSE to offer and test additional energy efficient products and services in the future.⁸³ These are all entirely legitimate reasons for PSE to use a statutorily-approved utility function.

43 Following *Cole*, WNG’s leasing program has operated continuously since 1961 and continued to be offered by PSE after the 1996 merger. Despite Staff’s repeated attempts to have the program terminated, the program has persisted in large part because of customer demand. While in 2000 PSE closed the program to new customers, approximately 33,000 customers choose to continue leasing equipment, demonstrating the strong, ongoing customer demand for the program.⁸⁴ Additionally, PSE receives numerous requests from customers who would like to lease water heaters and furnaces.⁸⁵ Thus, whatever “controversies” Staff believes the program presented, the fact remains that PSE has offered leasing as an optional service to customers for decades without interruption—through a variety of changing times and market conditions.

2. Staff’s “Beyond the Meter” Rule Finds No Support in the Law and Should Be Rejected

44 In response to PSE’s leasing proposal, Staff has resurrected a relic of the past—its novel “beyond the meter” argument. To be clear, this doctrine has never been adopted by the legislature, by the Commission, or any court and in fact, has been rejected repeatedly by

⁸² Cebulko, Exh. No. ___ (BTC-1THC), at 39.

⁸³ Teller, Exh. No. ___ (JET-1T), at 1-2; Norton, Exh. No. ___ (LYN-1T), at 3-11.

⁸⁴ Englert, Exh. No. ___ (EEE-3T), at 21-22. The tariffs were closed to new customers in 2000 because they were being subsidized by other customers. However, as Staff testifies, these existing rental customers are now subsidizing other customers. Cebulko, Exh. No. ___ (BTC-1THC), at 15 n.39.

⁸⁵ Norton, Exh. No. ___ (LYN-1T), at 1-2, 29.

Commission. It also ignores how PSE’s utility practices have operated for decades. Indeed, Staff’s suggestion that Commission precedent establishes this “general principle” is surprising since nowhere in its motion or its testimony does Staff actually cite any authorities supporting the alleged principle. For this reason, Staff concedes that “the Commission has not concisely articulated this general principle.”⁸⁶ As shown below, Staff’s theory is inconsistent with controlling legal precedent and PSE’s historic and current leasing practices.

45 In *Cole*, the opponents to WNG’s rental program raised this exact argument only to be soundly rejected by the Commission. In analyzing the scope of its jurisdictional authority in response to this argument in the specific context of leasing equipment, the Commission reviewed RCW 80.28.010, which provides that the Commission has jurisdiction over “[a]ll charges . . . by any gas company, electrical company . . . for gas, electricity. . . or for any service rendered or to be rendered in connection therewith.”⁸⁷ The Commission also reviewed RCW 80.28.020 and 80.28.100 and determined that both confirm that it has jurisdictional authority over leasing equipment services connected to gas and electric service, including “behind the meter” equipment:

It is clear that the Commission has, by statute, been given jurisdiction and power to regulate rates, charges, rentals for the sale of gas, or any service connected therewith. Certainly, the furnishing of rented conversion burners or other appliances using gas is a service directly connected with the sale of gas.⁸⁸

...

The Commission has statutory jurisdiction and general powers and the duty to regulate utility practices including and specifically rental charges and any service rendered in connection with gas sales.⁸⁹

...

⁸⁶ Mot. at 10.

⁸⁷ Commission Proposed Order at 15; RCW 80.28.010(1).

⁸⁸ Commission Proposed Order at 15.

⁸⁹ *Id.* at 20.

The Commission is given jurisdiction to regulate rates and charges for supply gas or for any service in connection therewith, including the service of renting gas appliances and rates and charges therefor. Therefore, the terms of the rental contract would fall within the Commission jurisdiction and responsibilities.”⁹⁰

46 The Commission ruled that it has jurisdictional authority over any service “connected” to gas and electric service, including expressly a “rental contract” for equipment.⁹¹ These statutes are also consistent with the definitions of electric and gas plant which provide that plant specifically includes:

[A]ll real estate, fixtures and personal property operated, owned, used or to be used for or in to facilitate the generation, transmission, distribution, sale or furnishing of electricity [or natural gas] for light, heat, or power for hire; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.⁹²

Thus, Staff’s “beyond the meter” theory lies in direct contravention to Washington statutes and controlling, factually on-point Commission authority that Staff totally fails to address.

47 Almost twenty-five years later, Staff tried this argument again. In the 1992 WNG rate case, in an attempt to terminate PSE’s existing leasing service and again without citing any authority for its hypothesis, Staff argued:

The appropriate test for the determination of a utility’s allowable costs for ratemaking purposes parallels the Commission’s jurisdiction, which ends at the meter Any activity beyond the meter is a competitive service, the costs of which should not be included in the utility’s operating or capital accounts.⁹³

As before, this argument was not accepted by the Commission and PSE’s existing program continued as a regulated service. Again, Staff fails to mention these authorities and does not provide any new authority in support of its argument.

⁹⁰ *Id.* at 45.

⁹¹ *Id.*

⁹² RCW 80.04.010(11), (15).

⁹³ Norton, Exh. No. ___ (LYN-1T), at 18-19 (citing *WUTC v. WNG*, Docket UG-920840, Russell, Exh. T-183, p. 10:16-22).

48 Staff's "beyond the meter" hypothesis is also inconsistent with decades of actual utility practice. As Staff has acknowledged, PSE has offered "behind the meter" leasing services to customers in a variety of contexts, including its existing leasing program that has operated for over fifty years and still currently has approximately 33,000 active customers. Other "behind the meter" equipment that PSE leases to customers includes PSE lighting equipment program.⁹⁴ Indeed, if there was any question as to whether the legislature believed that "behind the meter" equipment was within the jurisdiction of a public utility, the legislature's recent electric vehicle supply service statute expressly provides that public utilities may "deploy" electric vehicle equipment.⁹⁵ Notably, as conceded by Staff, other utilities in this region have also historically offered equipment leasing programs including another of PSE's predecessor companies, Puget Sound Power & Light Company.⁹⁶

49 Staff has tried, unsuccessfully, to carve out these programs as exceptions to its proposed rule. For example, Staff argues that PSE's existing leasing program is an exception to the "behind the meter" rule because the original purpose of the program was load building and the program benefited all customers.⁹⁷ But, as described above, load building is not a statutory prerequisite of leasing, nor did load building last as a motivating feature of that program, and PSE has demonstrated that its service will benefit all customers. Staff has also nonsensically tried to argue that PSE's lighting lease program should not count because in that service, PSE

⁹⁴ Englert, Exh. No. ___ (EEE-1T), at 3; Englert, Exh. No. ___ (EEE-3T), at 25-26.

⁹⁵ RCW 80.28.360.

⁹⁶ Cebulko, Exh. No. ___ (BTC-1THC), at 12.

⁹⁷ Mot. at 10.

owns the lighting equipment (the very role of a lessor)—just as it would under any of its lease programs, including its existing and proposed equipment lease services.⁹⁸

50 Finally, Staff’s “behind the meter” standard is a dangerous delineation because it would interfere with other legitimate objectives that PSE and other utilities may seek to pursue in the future.⁹⁹ To ask the Commission to adopt a bright line rule that is inconsistent with past utility practice, Washington statutes, and Commission precedent and could significantly impair future programs is shortsighted.¹⁰⁰ The Commission should not acquiesce to Staff’s request that it adopt its restrictive “behind the meter” theory.

3. Staff’s Reliance on the Biomethane Decision Is Misplaced

51 One of the scant authorities Staff relies on to support its theory that equipment leasing should no longer be treated as a regulated service is the Commission’s recent action at an open meeting rejecting a special contract relating to biomethane gas.¹⁰¹ That Commission decision differs from the current case in a myriad of ways. First, it appears that the only proposition Staff draws from the biomethane decision is that “not all services offered by a public service company are a utility service under Washington law.”¹⁰² While that may be true, PSE has never argued that every service a public service company might offer is a utility service under

⁹⁸ Englert, Exh. No. ___ (EEE-3T), at 25; Cebulko, Exh. No. ___ (BTC-1THC), at 19 (“PSE owns the pole and everything up to it, including meters where they exist.”).

⁹⁹ See Englert, Exh. No. ___ (EEE-3T), at 24.

¹⁰⁰ For example, Staff’s rule could impair PSE and other utilities’ ability to conduct safety and inspection services. In Rule No. 2 Definitions (Sheet No. 12-A), PSE is specifically allowed to conduct safety and inspection services for customers that occur on the customer side of the meter. See Rule 24,

http://pse.com/aboutpse/Rates/Documents/gas_rule_24.pdf. Notably, other utilities such as Avista and Northwest Natural Gas conduct similar natural gas appliance inspections on the customer side of the meter. See [https://www.nwnatural.com/uploadedFiles/AboutNWNatural/RatesAndRegulations/WashingtonTariffBook/GeneralRulesAndRegulations/6Sheet9.1\(1\).pdf](https://www.nwnatural.com/uploadedFiles/AboutNWNatural/RatesAndRegulations/WashingtonTariffBook/GeneralRulesAndRegulations/6Sheet9.1(1).pdf) and

<https://avistautilities.intelliresponse.com/index.jsp?interfaceID=1&requestType=NormalRequest&id=1245&source=9&question=appliance>.

¹⁰¹ *In the Matter of Puget Sound Energy’s Application for Approval of a Special Contract under WAC 480-80-143*, UG-160748, Order 01, ¶¶ 6-11 (July 7, 2016).

¹⁰² Mot. at 9.

Washington law. However, in this case, statutory authority, Washington Supreme Court precedent, past decisions of the Commission, and fifty years of service by PSE and its predecessors demonstrate that equipment leasing is an appropriate regulated service. The biomethane special contract certainly does not share any of these similarities.

52 Second, the Commission’s basis for rejecting the biomethane special contract was that PSE was offering the service only to specific individuals or entities and not to the general public.¹⁰³ That is not the case with PSE’s proposed leasing service, and Staff does not even attempt to argue that Lease Solutions resembles this aspect of the biomethane special contract.

53 Instead, Staff argues that leasing end-use equipment is not a utility service because PSE does not have a monopoly on water heating or HVAC equipment.¹⁰⁴ But WNG did not have a monopoly on this equipment in the 1960s when the Supreme Court ruled that rental of such equipment was within the jurisdiction of a regulated utility. And WNG did not have a monopoly on this equipment in 1993 when the Commission rejected Staff’s arguments and allowed WNG to continue to continue renting water heaters. Moreover, while it is true that there are unregulated contractors in the marketplace that *sell* water heating and HVAC equipment to customers, almost none *lease* water heating or HVAC equipment, and no entity offers a comprehensive service comparable to PSE’s offering.¹⁰⁵ Despite the strong market for leasing as evidenced by PSE’s existing program now over fifty years old, PSE is the only entity that leases such equipment to residential customers in this marketplace. A comprehensive leasing program requires a significant capital investment coupled with the

¹⁰³ *In the Matter of Puget Sound Energy’s Application for Approval of a Special Contract under WAC 480-80-143*, UG-160748, Order 01, ¶ 5.

¹⁰⁴ Mot at 9-10.

¹⁰⁵ There are some commercial lease options, but no comparable residential options. Fluetsch, Exh. No. ____ (BF-IT), at 5; McCulloch, Exh. No. ____ (MBM-7THC), at 22-23, 34-35.

ability to patiently recover capital costs over several years or even decades.¹⁰⁶ In many ways, this is the essence of what public utilities do—make large capital investments recovered over a lengthy time period to provide gas and electric related services to customers.¹⁰⁷

54 Further, PSE’s market analysis has demonstrated that there is a significant market gap that is not currently being addressed by the market.¹⁰⁸ Despite the number of contractors in the marketplace, as much as forty percent of customers are still using old, outdated water heating and HVAC equipment.¹⁰⁹ No party to this case has refuted this finding. One of the specific purposes of the proposed program is to infuse the market with updated, energy-efficient equipment.¹¹⁰ As explained by PSE witness Andrew Wigen, PSE is uniquely positioned to address this market gap because many customers cannot afford the significant up-front capital cost to purchase new equipment.¹¹¹ The current market is either unable or unwilling to address these significant market needs that PSE is uniquely positioned to help address. In short, the market space PSE operates in is a space where it has been the only player for decades and one of the express purposes of the program is to address a market gap that is not currently being addressed by contractors. Moreover, at minimum, the market gap and PSE’s unique ability to fill that gap are factual issues that cannot be resolved on a motion for summary determination.

55 In light of the numerous on-point Washington authorities providing that leasing is a legitimate utility function and the significant factual differences between the cases, Staff’s

¹⁰⁶ Englert, Exh. No. ___ (EEE-3T), at 18-19.

¹⁰⁷ *Id.*

¹⁰⁸ Teller, Exh. No. ___ (JET-1T), at 7-11; Letter from Ken Johnson to Steven J. King (Nov. 6, 2015).

¹⁰⁹ *Id.*

¹¹⁰ Norton, Exh. No. ___ (LYN-1T), at 4-11.

¹¹¹ Wigen, Exh. No. ___ (AJW-1T), at 5.

reliance on the biomethane decision—and total failure to address any of the other authorities above—is highly suspect and not persuasive and would not likely withstand judicial scrutiny.

4. Lease Solutions Fulfills Several Statutory Purposes Articulated In the Public Service Laws

56 Finally, Staff’s argument that PSE’s proposed service does not fulfill any statutory purpose articulated in the public service laws is not credible given the numerous on-point statutes, Washington Supreme Court authority, Commission precedent, and decades of actual utility practice that Staff ignores cited above. Staff’s argument that “PSE can cite to no public service law that expressly allows it to rate base HVAC equipment”¹¹² is simply wrong. Furthermore, not only does Staff again not cite any authority for its proposition that an express public service law is required for every public utility action, but Staff’s argument that some new law is required to “expressly” authorize PSE to offer leasing as a regulated service when it has done so for decades under the “express” authority of the Commission is inapposite.

B. PSE Provided Sufficient Evidence Establishing That Its Proposed Rates are Fair, Just, Reasonable, and Sufficient

57 Staff stretches beyond the bounds of reason to argue that PSE has not met its burden of proof. In fact, PSE has met its burden of proof, the rates proposed are fair, just reasonable and sufficient, and the additional commitments that PSE has offered—which are largely reporting obligations and do not change the actual tariff—do not erase the fact that PSE’s rates, as filed, are supported by substantial evidence. Further, Staff ignores that the Commission has previously, routinely allowed true ups and compliance filings, when new products or services are being offered, or to allow for more up to date information to be incorporated into rates, which is what PSE has proposed to do in this case. PSE’s offer to refresh the rates does not

¹¹² Mot at 12.

change the fact that the rates, as filed, are reasonable and supported by substantial evidence. Staff's argument on this point lacks merit and should be dismissed.

1. The Rates In the Tariff Are Based on Known Costs of Chosen Products

58 Staff's motion suffers from a gross misrepresentation of PSE's methodology in setting its proposed rates. First, as incorrectly stated by Staff, PSE's rates are not "cost estimates" nor are they "sample costs."¹¹³ Through the RFQ process, PSE's rates are derived from actual costs submitted by licensed Washington contractors for the actual services provided in the tariff, including the equipment, installation, and ongoing maintenance and repair.¹¹⁴ These prices were inputted into a pricing model where PSE calculated a monthly lease rate.¹¹⁵ Second, Staff states that PSE has not selected the specific equipment it plans to lease.¹¹⁶ This is incorrect. PSE has identified the precise equipment it plans to lease including "specific types of equipment based on product size, input capacity, efficiency, system capabilities, and performance qualifications."¹¹⁷ The RFQ prices submitted by contractors were based on these actual equipment specifications.¹¹⁸ Staff's statement that "PSE's rates are not tied to the actual bundled products and services that the customer would receive"¹¹⁹ is disingenuous and simply false. PSE's rates in its tariff are in fact tied directly to the actual products and services the customer will receive.¹²⁰ Moreover, to the extent Staff disagrees with PSE's methodology for setting rates, this is a factual issue and not grounds for dismissal on a motion for summary determination.

¹¹³ Mot. at 12-13.

¹¹⁴ McCulloch, Exh. No. ____ (MBM-1T), at 15-19; McCulloch, Exh. No. ____ (MBM-7THC), at 4-8.

¹¹⁵ *Id.*

¹¹⁶ Mot. at 12-13.

¹¹⁷ McCulloch, Exh. No. ____ (MBM-1T), at 19; McCulloch, Exh. No. ____ (MBM-7THC), at 4-5.

¹¹⁸ McCulloch, Exh. No. ____ (MBM-1T), at 19.

¹¹⁹ Mot. at 13.

¹²⁰ McCulloch, Exh. No. ____ (MBM-7THC), at 4-5.

2. PSE's Commitments To Undertake Additional Reporting and Piloting of Certain Features Do Not Materially Alter Its Proposed Tariffs

59 Again, Staff has misrepresented PSE's position. The proposed additional commitments PSE offered in its rebuttal testimony do not materially change the terms of the tariff schedules PSE filed. In fact, they do not propose to change the tariff at all. PSE stands by the provisions in its tariff as filed in February and that the rates and terms therein are fair, just, reasonable, and sufficient. The proposed commitments are simply terms above and beyond the tariff that PSE would be willing to also agree to, but are not required for the tariff as-filed to be approved or take effect.¹²¹

60 PSE's additional commitments fall into the following categories:

- Annual tracking and reporting obligations;
- Transition of customers from PSE's existing program to the new program;
- Evaluate how as part of the 2018-19 Biennial Conservation Plan process the leasing service might influence rebate target setting;
- Ways to use the leasing services as a platform for exploring demand response technologies, and for the viability of leasing customer generation and storage equipment such as batteries, both independently and in combination;
- Confirm final pricing with updated rates based on contract execution and the possible addition of equipment product offerings aligned to those already filed; and
- Use the program as a platform to evaluate the "utility of the future."¹²²

61 Staff's concerns about these commitments are unwarranted. First, all of PSE's commitments are additions; none of the current tariff provisions would be changed, much less

¹²¹ Norton, Exh. No. ____ (LYN-1T), at 8-9.

¹²² Norton, Exh. No. ____ (LYN-3).

“materially altered” as Staff suggests. The only exception to this is PSE’s offer to refresh the rates after contracts with service provider partners are finalized, rather than relying on the prices these contractors submitted in the RFQ ten months before rates go into effect. PSE offered to refresh these rates, based on the finalized contracts, in response to concerns raised by other parties.¹²³ But this offer does not change the fact that the filed rates are supported by substantial evidence. And PSE does not anticipate this would result in a material change to the final lease price or the equipment offer.¹²⁴ This is also not a new provision; all parties have known for months that final contract execution will be a necessary part of the process and that PSE cannot actually enter into contracts until the tariff is approved.¹²⁵ Second, most of the commitments are tracking and reporting obligations that PSE is willing to do to further demonstrate and report to the Commission the progress and status of the program. These types of commitments are common in utility filings and should not result in dismissal of the case, nor do they materially alter the tariff. Third, PSE’s commitments also contain proposals by which PSE would utilize its leasing program to develop emerging technologies such as demand response. PSE’s ongoing commitment to demand response is well-documented.¹²⁶ Again, this offering in no way alters PSE’s tariff.

62 Fourth, PSE’s offered commitments are not inconsistent with commitments offered in other cases before the Commission. For example, in the 1992 WNG rate case described above, in response to criticisms lodged by other parties in their direct testimony, including challenges to the regulated nature of the rental program by Staff, WNG offered several

¹²³ McCulloch, Exh. No. ____ (MBM-7THC), at 9-10.

¹²⁴ *Id.* at 10.

¹²⁵ Letter from Ken Johnson to Steven J. King (Nov. 6, 2015).

¹²⁶ *See* Dockets UE-160808 & UE-160809.

proposals on rebuttal, which the Commission accepted.¹²⁷ These included proposals such as further increasing the rental rate from the rate originally proposed in WNG’s direct filing; adding additional energy-efficient models beyond those included on the filed tariff schedule, with rates to be determined in a compliance filing; and eliminating a customer allowance for installation costs that was included on the tariff filed in WNG’s direct case.¹²⁸

63 More recently, in the 2007 PSE merger proceeding, the joint applicants’ rebuttal testimony included eight pages of significant, additional commitments that had not been offered in direct testimony addressing topics such as rate credits, low income assistance, service quality measures, and conservation.¹²⁹ Likewise, in *In re PacificCorp*, extensive commitments on rebuttal were offered and accepted by the Commission as “consistent with the public interest and that the terms and conditions are fair, just and reasonable.”¹³⁰ There are numerous other examples where rebuttal is used to offer additional commitments to facilitate case resolution as this is common in utility proceedings.¹³¹ Staff’s suggestion that adding commitments either unilaterally or multilaterally during a proceeding is never permissible is inconsistent with utility practice and not conducive to settlement and case resolution.

64 Finally, PSE’s additional commitments certainly do not constitute a request for preapproval. PSE has already filed a detailed tariff containing actual rates and specific terms.

¹²⁷ Norton, Exh. No. ____ (LYN-1T), at 19-20.

¹²⁸ See *id.*; *Washington Utilities & Transportation Commission v. Washington Natural Gas*, Docket UG-920840, Fourth Supp. Order, at 16-17 (September 27, 1993).

¹²⁹ See *In re Joint Application of Puget Holdings and PSE For an Order Authorizing Proposed Transaction*, Docket U-072375 (Rebuttal Testimony of Stephen P. Reynolds), at 1-9; *In re Joint Application of Puget Holdings LLC and Puget Sound Energy*, No. U-072375 (Dec. 30, 2008) (Order 08), at 26-42 (discussing the merger commitments proposed by the joint applicants on rebuttal and the further modifications of those commitments by the parties in settlement and by the Commission as part of the final order).

¹³⁰ *In re PacifiCorp*, No. UE-981627 (Oct. 14, 1999) (5th Supp. Order).

¹³¹ See, e.g., *Washington Utilities & Transportation Commission v. PacifiCorp*, No. UE-100749 (Mar. 25, 2011) (Order 06) (rebuttal testimony used to modify parties’ positions and facilitate settlement); *Washington Utilities & Transportation Commission v. Puget Sound Power & Light Co.*, No. UE-901183-T (Apr. 1, 1991) (“The company’s proposal as revised on rebuttal . . . should be implemented . . .”).

As demonstrated by the above, proposing additional terms on rebuttal is not a request for preapproval and the Commission has routinely allowed and accepted additional commitments offered on rebuttal. Further, the proposals in the cases cited above go far beyond the tangential commitments PSE has offered. As stated above, PSE stands by its tariff as filed and believes that it has demonstrated that the provisions and rates therein are fair, just, reasonable, and sufficient. The offer of these commitments does not materially change PSE's case and certainly do not justify dismissal on summary determination.

3. A Compliance Filing to Refresh Rates Is Consistent with Commission Past Practice and Should Not Be Viewed As a Failure of PSE to Meet its Burden of Proof

65 It is not uncommon for the Commission to order, or for a company to offer, to refresh rates at the conclusion of a contested case as PSE has done in this case. In general rate cases and power cost only rate cases, PSE routinely updates its power cost rates during rebuttal or in a supplemental filing, and also updates rates in a compliance filing at the conclusion of the case, based on more recent contract prices and gas prices.¹³²

66 Additionally, as discussed above, in the 1992 WNG rate case, when affirming WNG's right to offer water heaters and other equipment as a regulated service, the Commission accepted a proposal by WNG, made on rebuttal, to offer more energy efficient water heaters through its rental program. In doing so, the Commission ordered WNG to update its rates in a compliance filing to include rates for these new products—that had not been included in WNG's direct or rebuttal case—and to offer it at rates that would recover its costs.¹³³

¹³² See, e.g., *Washington Utilities & Trans. Commission v. Puget Sound Energy*, No. UE-111048, ¶ 8, Final Order (May 7, 2012); *Washington Utilities & Trans. Commission v. Puget Sound Energy*, No. UE-141141, ¶ 8, Final Order (Nov. 3, 2014).

¹³³ *Washington Utilities & Trans. Commission v. WNG*, No. UG-920840, Fourth Supp. Order at 17 (September 27, 1993).

Specifically, the Commission stated “the company is directed to file a revised tariff which contains a cost recovering rate for the new, efficient water heaters it proposes to lease”¹³⁴

The Commission’s order in the WNG rate case is directly on point with what PSE has proposed to do in the current case. As stated above, PSE is *willing* to update its costs after finalizing the contracts with its partners. However, even without updating the rates as PSE has proposed, PSE’s currently-filed rates are based on cost evidence from licensed contractors, providing sufficient evidence for PSE’s rates.

C. PSE Maintains Its Objection To Staff’s Violation of the Timing Requirement

67 For the reasons set forth in PSE’s Opposition to Commission Staff’s Motion for an Exemption to the Rule Establishing Timing for Motions for Summary Determination, PSE maintains its objection to the timing of Staff’s motion. Staff motion is based largely on arguments that could have been raised months ago yet it waits two and a half weeks before the hearing seeking expedited resolution of a complex case that has been ongoing for ten months. The timing of Staff’s motion is prejudicial to PSE and Staff’s motion should not have been permitted, particularly since Staff specifically requested the Commission hear this case.

VII. CONCLUSION

68 For the reasons set forth above, PSE respectfully requests that the Commission deny Staff’s Motion for Summary Determination.

¹³⁴ *Id.*

Respectfully submitted this 22nd day of July, 2016.

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