

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of
PUGET SOUND ENERGY, INC.
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 10

FINAL ORDER APPROVING AND
ADOPTING SETTLEMENT
STIPULATION; REOPENING
RECORD AND AMENDING
ORDER 08 IN DOCKET U-072375

- 1 ***Synopsis:** The Commission approves and adopts a Settlement Stipulation filed and supported by all parties to this proceeding on September 30, 2016, finding that its terms effect results that are in the public interest. The parties to the Settlement Stipulation represent that our action here provides Puget Sound Energy (PSE) such regulatory approval as the Company requires to allocate costs, benefits, and liabilities between PSE's gas customers and shareholders of PSE and its wholly-owned subsidiaries, and thereby proceed with its planned Tacoma LNG Facility.*

- 2 *The Tacoma LNG Facility will be capable of receiving nearly 21,000 Decatherms per day (Dth/day) of natural gas from which it can produce approximately 250,000 gallons of LNG when liquefying at nameplate capacity. The facility will be capable of storing approximately 8 million gallons of LNG. PSE identifies three functions the facility is planned to perform. The Tacoma LNG Facility would:*
 - *Supply fuel to Totem Ocean Trailer Express, Inc. (TOTE).*
 - *Provide fuel for sales to other marine vessels or other purchasers.*
 - *Serve as a peaking resource for PSE's core natural gas customers.*

- 3 *Commission approval of the Settlement Stipulation allows Puget Energy to form a wholly-owned subsidiary named Puget LNG and use credit facilities that would otherwise be unavailable to finance the Tacoma LNG Project. The terms of the Settlement Stipulation provide for allocation of the capital costs of the Tacoma LNG Facility between PSE and Puget LNG so that each entity can properly account for its ownership shares of each component of the Tacoma LNG Facility.*

- 4 *The Commission determines that the terms of the Settlement Stipulation adequately protect PSE's ratepayers and allow PSE to go forward with a shared peaking facility that has the potential to provide to ratepayers beneficial synergies and cost savings relative to alternatives. The Settlement Stipulation only provides the terms and conditions under which PSE has the opportunity to pursue the Tacoma LNG Facility. The Commission's approval of the Settlement Stipulation is not an approval of the project; the Settlement Stipulation expressly reserves the Settling Parties' rights to challenge the financial prudence and reasonableness of the Tacoma LNG Facility in future Commission proceedings. Moreover, the Commission's actions today do not in any way indicate a position on the merits of any application or proceeding before any other agency or tribunal that may be required for the project to move forward.*

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SUMMARY

- 5 **PROCEEDINGS:** On August 11, 2015, Puget Sound Energy, Inc. (PSE) filed with the Washington Utilities and Transportation Commission (Commission) a Petition for Approval of a Special Contract for Liquefied Natural Gas Fuel Service with Totem Ocean Trailer Express, Inc., and a Declaratory Order Approving the Methodology for Allocating Costs between Regulated and Non-regulated Liquefied Natural Gas Services. The Commission gave notice of PSE’s Petition to all persons required by law and such other persons as deemed appropriate, as required by RCW 34.05.240 and WAC 480-07-930. The Commission’s notice invited all interested persons to submit a statement of fact and law on the issues raised by the Petition.
- 6 On August 27, 2015, PSE, the Commission’s regulatory staff (Staff), and Northwest Industrial Gas Users (NWIGU) jointly with the Public Counsel Unit of the Washington Attorney General’s Office (Public Counsel), filed their respective statements of fact and law recommending that the Commission initiate an adjudicative proceeding to consider PSE’s request for approval of a special contract and asked the Commission to convert the form of PSE’s requested declaratory order proceeding, treating the matter instead as an adjudicative proceeding under part III, subpart A of the Commission’s procedural rules.¹
- 7 Consistent with the requirements of RCW 34.05.240 and WAC 480-07-930, the Commission, on September 1, 2015, issued a Notice of Prehearing Conference to be held on September 8, 2015. The Notice, among other things, stated that the Commission agreed that it could not resolve the issues presented based on the facts provided to date and that an adjudicative proceeding would be required to provide an opportunity for a more balanced and appropriate level of review than would be possible without such a proceeding. Accordingly, the Commission initiated an adjudicative proceeding in this docket.
- 8 Following additional formal and informal process, including settlement negotiations among the parties and, later, settlement negotiations facilitated by a mediator agreed to by the parties and supported by independent expert consultants, all parties to this proceeding² filed a full Settlement Stipulation on September 30, 2016. The Settling

¹ See WAC 480-07-305 and WAC 480-07-930; see also RCW 34.05.413 and RCW 34.05.240(5)(b).

² PSE, Staff, Public Counsel, NWIGU, and ICNU, hereafter referred to collectively as “Settling Parties.”

Parties, on October 7, 2016, filed joint testimony and testimony from consultants who provided technical support in support of the Settlement Stipulation.³ The record, in addition, includes relevant prefiled testimony and exhibits from PSE witnesses submitted at the time PSE filed its Petition in this docket.

9 The Commission conducted an evidentiary hearing on October 17, 2016, and a public comment hearing on October 19, 2016.

10 **PARTY REPRESENTATIVES:** Jason Kuzma, Perkins Coie, Bellevue, Washington, represents Puget Sound Energy (PSE). Lisa W. Gafken, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Unit of the Washington State Attorney General's Office (Public Counsel). Brett P. Shearer and Jeff Roberson, Assistant Attorneys General, Olympia, Washington, represent the Commission's regulatory staff (Staff).⁴

11 Chad M. Stokes and Tommy A. Brooks, Cable Huston, Portland, Oregon, represent the Northwest Industrial Gas Users (NWIGU). Tyler Pepple, Davison Van Cleve, P.C., Portland, Oregon, represents the Industrial Customers of Northwest Utilities (ICNU).

12 **COMMISSION DETERMINATIONS:** The Commission approves and adopts the Settlement Stipulation filed by all parties to this proceeding on September 30, 2016. The Commission will reopen the record in Docket U-072375⁵ for the limited purposes of amending Merger Commitments 56 and 58, reaffirming Merger Commitments 1-55, 57, and 59-63, and adding supplemental Commitments 64-68. The amendments to Merger

³ Exhibit No. JT-1T (Joint Testimony by Carla Colamonici for Public Counsel, Edward A. Finklea for NWIGU, Roger Garratt for PSE, and David C. Gomez for Staff); Exhibit No. JCW-1T (Wright prefiled testimony); Exhibit No. JCW-2CT ([Brown, Williams, Moorehead & Quinn, Inc.] BWMQ Final Report on PSE Tacoma LNG Project for Mediation Parties, September 29, 2016).

⁴ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See*, RCW 34.05.455.

⁵ In the referenced docket, the Commission approved, with conditions, the acquisition of PSE by an investment consortium led by the Macquarie Group and certain Canadian pension funds. *In the Matter of the Joint Application of Puget Holdings LLC and Puget Sound Energy, Inc., for an Order Authorizing Proposed Transaction*, Docket U-072375, Order 08 (December 30, 2008) (Merger Order).

Commitments 56 and 58 will allow Puget Energy to form or cause to be formed an unregulated subsidiary, Puget LNG, which will be a tenant in common with PSE in developing and operating the planned Tacoma LNG Facility, and allow Puget Energy and PSE to use their respective credit lines to finance the debt component of the investments in the Tacoma LNG Facility by Puget LNG and PSE. Puget LNG and PSE anticipate using retained earnings to finance their equity investments in the Tacoma LNG Facility.

- 13 The reaffirmation of Merger Commitments 1-55, 57, and 58-63, and the addition of new Commitments 64-68 provide ring-fencing and other protections that insulate PSE's customers from adverse financial conditions that may arise at Puget LNG or Puget Energy. These Commitments, individually and collectively, provide protection to PSE's customers from liabilities that may arise from its co-tenancy with Puget LNG in the Tacoma LNG Facility.
- 14 The Settlement Stipulation provides the terms and conditions under which PSE has the opportunity to pursue the Tacoma LNG Facility, including the joint ownership shares and cost allocators for each component of the LNG facility under which PSE may participate as a fully regulated utility. With our approval of this Stipulation, PSE must now decide how and whether to move forward with the project. The Settlement Stipulation expressly reserves the Settling Parties' rights to challenge the financial prudence and reasonableness of the Tacoma LNG Facility in future Commission proceedings.

INTRODUCTION

- 15 Utilities in Washington and, indeed, throughout the United States, face new and greater business challenges today than was the case through much of their history. Historically, utility revenues grew reliably, if not steadily, because load growth was significant year over year and typically equal to or greater than increasing capital and operating costs. These conditions are no longer present in many places. Despite low commodity prices for natural gas, load growth is minimal to flat and many government policies, particularly aggressive conservation policies, actively discourage load growth. At the same time, natural gas utilities such as PSE must continually maintain and upgrade their facilities in order to fulfill their responsibility to provide safe and reliable service at reasonable prices.
- 16 One result of these changing circumstances is that utilities may alter their traditional business model, seeking both new opportunities for growth and financial success, and

synergies that will provide benefits to both new types of customers and traditional residential, commercial, and industrial natural gas customers. The Tacoma LNG Project that PSE proposes in this docket is a reflection of this type of change.

- 17 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.⁶
- 18 PSE's 2013 Integrated Resource Plan (2013 IRP) identified sufficient peak resources for PSE to meet peak day need in its service territory until the winter of 2016-17 and a need for additional peak day resources beginning in the winter of 2017-18.⁷ The 2013 IRP identified a regional LNG peaking plant (titled PSE LNG Peaking Project) in the gas resource plan as one alternative to meet this need.⁸ With an LNG peaking plant, PSE would have sufficient resources to supply loads until the winter of 2021 to 2022.⁹
- 19 Although an important purpose of the LNG storage facility contemplated by PSE was to provide peak-day supply for PSE's retail natural gas customers, the Company realized that the project's benefits could be enhanced by building and operating a facility that could serve additional markets, such as the transportation fuel market.¹⁰ LNG facilities are capital intensive and, therefore, costs for all customers are reduced when the facilities' cost can be distributed across a larger customer base.¹¹ The peaking component of an LNG storage facility requires significant storage and relatively small liquefaction capacity.¹² Conversely, the marine, heavy-duty trucking and other fuel markets require significant, steady liquefaction and minimal storage.¹³

⁶ Petition of Puget Sound Energy, Inc. for Commission Approval of a Special Contract for Providing LNG Service and a Declaratory Order Approving a Cost Allocation Methodology, dated August 11, 2015, filed in Docket No. UG-151663, at ¶ 6 ("PSE Petition").

⁷ Riding, Exhibit No. CR-1CT at 5: 7-9; *see also* Riding, Exhibit No. CR-3 (providing a depiction of PSE's need identified in the 2013 IRP).

⁸ Riding, Exhibit No. CR-1CT at 5: 13-16.

⁹ *Id.* at 6 Fig. 1.

¹⁰ PSE Petition at ¶ 9.

¹¹ *Id.* at ¶ 9.

¹² *Id.* at ¶ 9.

¹³ *Id.* at ¶ 9.

- 20 Totem Ocean Trailer Express, Inc. (TOTE) is a shipping company that transports approximately 30 percent of all consumer goods shipped to Alaska.¹⁴ TOTE operates two Orca class ships between the Port of Tacoma and the Port of Anchorage on a regimented schedule of sailings departing from Tacoma every Wednesday and Friday evening.¹⁵ TOTE selected PSE pursuant to a competitive bidding process to provide LNG as marine fuel for use in these cargo ships.¹⁶ PSE therefore determined to construct an LNG storage facility at the Port of Tacoma (the Tacoma LNG Facility).
- 21 In addition to providing a peaking resource to its core natural gas customers and providing TOTE with fuel for ships that are being converted from diesel to cleaner-burning natural gas, PSE will market otherwise unused capacity in the Tacoma LNG Facility to provide fuel to other marine shippers and other types of shippers such as trucking companies.¹⁷ Using LNG will allow TOTE to exceed new, stricter emission standards in the maritime shipping industry.¹⁸ More broadly, the Tacoma LNG Facility will promote the public interest as recognized by the legislature in RCW 80.28.280, which states:

Compressed natural gas—Motor vehicle refueling stations—Public interest.

(1) The legislature finds that compressed natural gas and liquefied natural gas offers [offer] significant potential to reduce vehicle and vessel emissions and to significantly decrease dependence on petroleum-based fuels. The legislature also finds that well-developed and convenient refueling systems are imperative if compressed natural gas and liquefied natural gas are to be widely used by the public. 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. Except as provided in subsection (2) of this section, nothing in this section and RCW [80.28.290](#) is intended to alter the regulatory practices of the commission or allow the subsidization of one ratepayer class by another.

¹⁴ Garratt, Exhibit No. RG-1CT at 6:10-11.

¹⁵ *Id.* at 6: 11-13.

¹⁶ *Id.* at 14: 1-3.

¹⁷ Garratt, Exhibit No. RG-1CT at 14: 3-4.

¹⁸ *Id.* at 14: 4-6.

(2) When a liquefied natural gas facility owned by a natural gas company serves both a private customer operating marine vessels and the Washington state ferries or any other public entity, the rate charged by the natural gas company to the Washington state ferries or other public entity may not be more than the rate charged to the private customer operating marine vessels.

22 Chapter 80 RCW establishes the Utilities and Transportation Commission and delineates its responsibilities with respect to the regulation of public utilities such as PSE. In this connection, it is important to understand that the Commission principally is an economic regulator. The Commission's focus in this connection is to "[r]egulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation."¹⁹ While identifying interests outside our core mission, such as promoting development of infrastructure that may yield the environmental benefits identified in RCW 80.28.280, is something the legislature may do, as in this statute, the legislature is careful to recognize that this is not our core mission and should not be allowed to interfere with "the regulatory practices of the Commission."

MEMORANDUM

I. Background and Procedural History

23 This docket concerns a proposal by PSE to develop at the Port of Tacoma, Washington an LNG facility capable of receiving nearly 21,000 Decatherms per day (Dth/day) of natural gas from which it can produce approximately 250,000 gallons of LNG when liquefying at nameplate capacity.²⁰ The facility will be capable of storing approximately 8 million gallons of LNG.²¹ PSE identifies three functions the facility is planned to perform. The Tacoma LNG Facility would:

¹⁹ RCW 80.01.040(3).

²⁰ PSE Brief ¶ 10; PSE Petition ¶ 13. According to PSE witness Riding, "PSE's largest gas supply resource is transported on firm pipeline capacity on Williams-Northwest Pipeline with a total of 532.9 MDth/day of capacity to PSE's service territory. About half of the gas supply moved on NWP capacity is from British Columbia and about half of the gas supply is from Alberta and the Rockies." Riding, Exh. No. CR-1HCT at 4:8-12.

²¹ PSE Petition ¶ 13.

- Supply fuel to Totem Ocean Trailer Express, Inc. (TOTE), under a contract PSE entered with TOTE on October 27, 2014.
- Provide fuel for sales to other marine vessels or other purchasers.
- Serve as a peaking resource for PSE’s core natural gas customers.²²

24 PSE originally proposed that the first and third functions would be treated as part of the Company’s regulated business, the first meeting the needs of a single customer, TOTE, under a “special contract” and the third providing capacity to meet core retail natural gas customers’ peak requirements at tariffed rates.²³ PSE proposed that the second function would be a separate, unregulated business.

25 With respect to the Company’s proposal to supply fuel to TOTE, PSE discussed in its Petition that:

TOTE is a shipping company that transports approximately 30 percent of all consumer goods shipped to Alaska. TOTE operates two Orca class ships between the Port of Tacoma and the Port of Anchorage on a regimented schedule of sailings departing from Tacoma every Wednesday and Friday evening. TOTE selected PSE pursuant to a competitive bidding process to provide LNG as marine fuel for use in two Tacoma, Washington-based Orca class cargo ships. PSE therefore determined to construct an LNG storage facility at the Port of Tacoma (the “Tacoma LNG Facility”). PSE will provide TOTE with fuel for ships that are being converted from diesel to cleaner-burning natural gas. Using LNG will allow TOTE to exceed new, stricter emission standards in the maritime shipping industry.²⁴

PSE entered into a contract with TOTE dated October 27, 2014.²⁵

26 Concerning the Company’s proposal to provide fuel for sales to other marine vessels in the West coast region, it does not appear that Puget Energy has contracted with any such

²² See PSE Petition ¶¶ 11, 30, 32-33.

²³ According to PSE: “This peaking resource would allow PSE to avoid purchasing 365-day pipeline capacity to meet a few days of peak demand that may only occur once every few winters.” PSE Brief ¶ 17 (citing PSE witness Garratt, Exh. No. RG-1CT at 9:19 – 10:23).

²⁴ PSE Brief ¶ 6 (internal citations to PSE witness Garratt, Exh. No. RG-1CT omitted).

²⁵ PSE Brief ¶ 1.

customers at this time. PSE discussed with respect to its original proposal that such sales would be from “the unsubscribed capacity of the Tacoma LNG Facility (*i.e.*, the capacity not associated with either peak shaving or sales to TOTE of LNG as marine fuel).”²⁶

27 PSE stated in its Petition that its proposed use of the Tacoma LNG facility to provide peak capacity for its current natural gas service to retail natural gas customers located in its service territory in western Washington is an alternative discussed in the Company’s 2013 Integrated Resource Plan (IRP), which “demonstrated that PSE would have a need for peaking resources beginning in 2017.”²⁷ PSE states that the LNG facilities’ use for peak shaving should “be regulated as part of the bundled distribution service PSE currently provides” and that “[t]here is no reason for this activity to be treated any differently than PSE’s current operation of [its] Gig Harbor LNG Satellite Plant.”²⁸

28 The Commission convened a prehearing conference in this docket at Olympia, Washington, on September 8, 2015, before Administrative Law Judge Dennis J. Moss. Commission Staff, Public Counsel, and NWIGU appeared and participated as parties.²⁹ The Commission adopted a preliminary procedural schedule including technical conferences on September 18 and 21, and October 8, 2015. The parties agreed to reconvene in prehearing to discuss their progress on the afternoon of October 13, 2015.

²⁶ PSE Petition ¶ 30.

²⁷ *Id.* ¶ 7. PSE’s 2013 IRP states that PSE was “considering development of a mid-scale LNG liquefaction and storage facility to serve the growing demand for LNG as a marine and vehicle transportation fuel.” The Company’s IRP suggests “the possibility of enhancing the design of the facility to substantially increase storage capacity and add vaporization equipment” so the facility could serve in addition as “a peaking resource for the PSE gas system.” The enhanced design was planned at that time to allow for diversion of the 20,000 Dth/day of natural gas required to meet “the daily liquefaction requirements of LNG transportation customers” and the vaporization of up to 30,000 Dth/day of stored LNG, to meet peak demands on PSE’s gas distribution system by providing up to 50,000 Dth/day of peak-day supply. PSE would keep transportation customers whole on peak days by supplying them with stored LNG.

PSE’s discussions of plant operations in its Petition in this docket are consistent with those in its IRP, but provide for expanded storage and vaporization capacity. According to the Petition: “[the facility] will require nearly 21,000 Dth/day of natural gas when liquefying at nameplate capacity. Approximately 2,000 Dth/day will be used for the peaking resource and up to 19,000 Dth/day will be used to supply TOTE fuel sales and any other fuel sales.” PSE Petition ¶ 13. However, “[t]he Tacoma LNG Facility will be capable of injecting 66,000 Dth/day of vaporized natural gas and diverting up to 19,000 Dth/day of natural gas into PSE’s distribution system to provide 85,000 Dth/day of peak-day supply.” *Id.* ¶ 7.

²⁸ PSE Petition ¶ 43.

- 29 Counsel for PSE, Staff, Public Counsel, and NWIGU each commented favorably during the second prehearing conference on the progress made during the three technical conferences and in additional communications, including discovery, during the September and early October time frame. The parties identified and were working to resolve issues of law and policy that raised threshold questions, the resolution of which could be determinative. The parties agreed to continue seeking common ground and either to report success in this regard, or to file simultaneous briefs on November 20, 2015, stating their respective positions on issues that did not involve contested facts.
- 30 The Commission entered Order 03, its second prehearing conference order, on October 15, 2015. Order 03 stated that if issues remained after November 20, 2015, that could not be resolved on stipulated facts, then the Commission would establish early dates for response and rebuttal testimony, if needed, considering a planned January 29, 2016, hearing date.
- 31 PSE, Staff, and Public Counsel, following a short continuance granted in response to a request by Public Counsel, filed briefs on November 24, 2015. NWIGU filed a letter with the Commission on November 23, 2015, stating the organization elected not to brief “the threshold matters identified in the Prehearing Conference Order (Order 03).” PSE filed on December 3, 2015, its “Motion to Strike Portions of Staff Brief on Issues of Law and Fact or In the Alternative Motion to File Reply Brief and Reply Brief of Puget Sound Energy.”
- 32 The Commission entered Order 04 on December 18, 2015. In Order 04 the Commission denied PSE’s Motion to Strike, granted PSE’s alternative Motion to File Reply Brief, ruled provisionally on the question whether the Commission can exercise jurisdiction over the subject matter of PSE’s Petition that initiated this docket, and established further process including opportunities for supplemental briefing and oral argument. The Commission, among other things, determined that “PSE’s service to TOTE as [initially] proposed is not within the Commission’s jurisdiction to regulate.” The Commission also concluded, however, “that the legislative finding in RCW 80.28.280 that the development of liquefied natural gas vessel refueling facilities is in the public interest requires that we take our inquiry further.” The Commission gave notice of additional public process to consider the matter.

²⁹ ICNU became a party this docket later in the proceedings, as discussed below.

33 The Commission gave the parties two additional formal opportunities to explore the question of jurisdiction specifically, and the proposed project more generally, to learn whether there might be alternative business models with structures that would fall under the Commission's jurisdiction, if such jurisdiction were somehow critical to the success of this project.³⁰ The Commission allowed the parties to file supplemental briefs by January 15, 2016, to address this question.

34 The Commission set January 29, 2016, as the date on which it would hear oral argument and engage with the parties to discuss the subject of jurisdiction. The Commission said that it also wished to hear PSE's plans with respect to the approach and timing it anticipated with respect to the need to resolve the important question whether this project truly represents the least cost alternative for the Company to gain the peak shaving capacity its 2013 IRP indicates PSE will need beginning in 2017. In addition, the Commission stated that it wished to learn more concerning PSE's proposed cost allocation methodology and, beyond that, how PSE proposed to recover its costs in rates. The Commission identified as a major concern the question how to determine and ensure an appropriate balance of risks between shareholders and ratepayers for a project of this magnitude.

³⁰ We note that PSE's Petition and Brief both were very tentative on the questions of Commission jurisdiction over LNG as a commodity and delivery of LNG as a service. The Company did not argue that its sales of, or the delivery of, LNG are squarely within the Commission's jurisdiction. Indeed, quoting PSE witness Garrett's pre-filed testimony in this docket, PSE stated in its Petition that "PSE could seek to offer sales of LNG to TOTE as a non-regulated service, but PSE's core gas customers would not receive some of the benefits of regulated fuel sales to TOTE, including, for example, the short-term contract premium to be paid by TOTE under the TOTE Special Contract." PSE Petition ¶ 32 (citing Garratt, Exh. No. RG-1CT at 31: 9-17).

PSE argued that the LNG facilities' use for peak shaving should "be regulated as part of the bundled distribution service PSE currently provides" and that "[t]here is no reason for this activity to be treated any differently than PSE's current operation of the Gig Harbor LNG Satellite Plant." PSE Petition ¶ 43. The Company argued in addition that "the delivery by PSE of LNG to a container ship as contemplated under the TOTE Special Contract *could* also be regulated by the Commission as part of PSE's distribution service." *Id.* ¶ 44 (emphasis added). Yet, PSE asserts "[a]t the same time, the LNG services other than peak-shaving and those to be provided under the TOTE Special Contract *can* be provided as non-regulated services." *Id.* (emphasis added). PSE offers no explanation of how we could legally treat its sales and delivery of LNG to fuel TOTE's container ships as jurisdictional while simultaneously treating such sales and delivery of LNG to fuel other container ships, other marine vessels, or into a tank truck for delivery to other industrial end-users as non-jurisdictional.

- 35 The Commission entered Order 05 on January 11, 2016, extending the date for filing supplemental briefs from January 15, 2016, to January 29, 2015, allowing an opportunity for parties to file reply briefs on February 15, 2016, and rescheduling oral argument. On January 25, 2016, in Order 06, the Commission granted an unopposed motion from its regulatory staff (Commission Staff or Staff) to suspend the procedural schedule to allow parties additional time to engage in settlement discussions.
- 36 On March 4, 2016, PSE filed a motion requesting that the Commission establish a bifurcated proceeding in Docket UG-151663 to allow for review of an alternative business model PSE proposed as contemplated by Commission Order 04. PSE's alternative business model would treat all sales of LNG for transportation fuel as non-jurisdictional. The Company proposed to establish a newly formed, unregulated subsidiary of Puget Energy (PSE's parent corporation) as the business entity that would make such sales to TOTE and others.
- 37 PSE, by its motion, proposed specifically that in the first phase of the bifurcated proceeding, the parties would brief and the Commission would rule on two issues:
- Whether the Commission would provide an exemption to Merger Commitment 56 in Docket U-072375 that would allow Puget Energy to own and operate both PSE and Puget LNG.³¹
 - 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 described these issues as “foundational” and stated that they presented only policy questions for the Commission, thus requiring no extensive factual investigation prior to a decision. Staff, Public Counsel, and NWIGU filed a Joint Response to PSE's motion and recommended that the Commission exercise its discretion to bifurcate the proceeding consistent with the terms of the Company's motion and their Joint Response.

³¹ In the referenced docket, the Commission approved, with conditions, the acquisition of PSE by an investment consortium led by the Macquarie Group. *In the Matter of the Joint Application of Puget Holdings LLC and Puget Sound Energy, Inc., for an Order Authorizing Proposed Transaction*, Docket U-072375, Order 08 (December 30, 2008) (Merger Order). The merger condition as to which PSE seeks an exemption is in Attachment A (Multiparty Settlement

38 The Commission entered Order 07 granting PSE's motion and established a bifurcated process for considering certain "threshold" issues in phase one, with other issues to be determined in a subsequent phase two, if necessary.³² Order 07 established dates for initial and response briefs to be filed, and for oral argument, in phase one. On May 9, 2016, Public Counsel filed a motion requesting a brief extension of time for parties to file their phase-one response briefs to Puget Sound Energy's (PSE) brief filed in phase one on April 15, 2016. The Commission granted Public Counsel's motion in Order 08 on May 9, 2016.

39 On May 26, 2016, the Commission convened a hearing before the Commissioners and the presiding Administrative Law Judge. The Commission considered preliminarily a request by PSE that the oral argument scheduled for the hearing be continued in favor of providing an opportunity for the parties to engage in mediated settlement negotiations. Following discussion on the merits of PSE's proposal, the Commissioners expressed their willingness to provide the opportunity PSE requested. As summarized briefly by the presiding Administrative Law Judge, it seemed to the Commission that the parties were "willing to engage in good faith in a mediated process with open minds, creative thinking, out-of-the-box thinking; whatever may be required to try to accommodate the various interests that were expressed at high levels today."³³

Stipulation) to the cited order, Appendix A, page 12 ("56. Puget Energy shall not operate or own any business other than PSE.").

³² PSE stated in its motion that:

PSE is proposing a bifurcated proceeding because the issues to be determined in the first phase are foundational. If the Commission were to determine in the first phase of the proceeding that the answer to either question is in the negative, then PSE would not proceed with the Tacoma LNG Facility, and the second phase would be unnecessary. If, however, the Commission were to determine in the first phase of the proceeding that the answer to both questions is in the affirmative, then PSE would proceed with the Tacoma LNG Facility, and the second phase would be necessary to determine the methodology and baseline for determining a sharing of the projected portfolio benefits.

³³ TR. 120:5-11. PSE, Commission Staff, Public Counsel, NWIGU, and ICNU entered into mediation on May 29, 2016. The Settling Parties retained Mr. Donald Trotter to serve as an independent mediator and the energy consulting firm Brown, Williams, Moorhead & Quinn, Inc. to serve as an independent technical consultant. Mediated conferences were held in Olympia, Washington, on June 16 and 17, 2016; on August 9 and 26, 2016; and on September 15, 16, and 26, 2016. Telephonic mediation conferences occurred on June 29, 2016; on July 11, 13, and 21, 2016; and on September 27, 2016. Additionally, the mediator conducted one or more conferences with parties individually.

- 40 The Commission set September 9, 2016, as the date by which the parties would complete the mediation process. The Commission subsequently granted in Order 09 the parties' joint request for a continuance until September 30, 2016.
- 41 On September 30, 2016, the parties filed their proposed Settlement Stipulation for the Commission's approval. On October 7, 2016, PSE and "Joint Parties" (PSE, Staff, Public Counsel, and NWIGU) filed evidence in support of the Settlement Stipulation.³⁴
- 42 The Commission held an evidentiary hearing and provided an opportunity for oral statements concerning the merits of the parties' proposed settlement on Monday, October 17, 2016, at 9:30 a.m. The Commission provided an opportunity for the public to comment on the Petition and the proposed settlement on October 19, 2016, at 6:00 p.m. The Commission closed the record to further public comment at 5:00 p.m. on October 20, 2016, to allow Public Counsel an opportunity to compile and file by October 28, 2016, a single exhibit incorporating all written public comments received as of the record closing date.

II. Settlement Stipulation

- 43 This proceeding initially focused on the jurisdictional question posed by PSE's contract with TOTE and a business model that proposed to treat regulated and unregulated activities in a manner the Commission determined in Order 04 to be outside its jurisdictional authority.³⁵ In Order 04, however, the Commission provided parties the opportunity to explore alternative corporate structures and business models within the scope of the Commission's authority that would enable PSE to proceed with the development of the Tacoma LNG Facility.³⁶ The Settlement Stipulation now before the Commission is the result of more than nine months of collaborative effort by the parties that followed from Order 04. The parties now support an alternative form of corporate organization and a business plan different than that originally proposed. The Settling Parties now propose that Puget Energy will form and wholly own a new subsidiary, Puget LNG, LLC (Puget LNG) to be a tenant in common with PSE. Each subsidiary, Puget

³⁴ ICNU's members are not natural gas customers of PSE. The organization's participation in this proceeding was for the limited purpose of protecting its interests relative to the proposed amendments to the numerous merger commitments and clarifying commitments included in the Commission's Order 08 in Docket U-072375.

³⁵ Order 04 ¶ 15.

³⁶ Order 04 ¶ 30.

LNG and PSE, will own a share of the Tacoma LNG Facility. Puget LNG will pay the capital and operating costs allocated to it under the agreement based on its proposed use of the facility to produce and sell LNG as transportation fuel without being subject to the Commission’s jurisdiction under Title 80 RCW.³⁷ PSE will pay the capital and operating costs allocated to it under the agreement based on its proposed use of the facility as a peaking resource for its core natural gas customers. PSE’s participation in the Tacoma LNG Facility will be subject to the Commission’s jurisdiction as a “gas company” and “public service company” as defined in RCW 80.04.010(14) and (23).

A. Terms and Conditions

1. Summary

44 The basic engineering, design, and functionality of the Tacoma LNG Facility under the Settlement Stipulation remain the same as when PSE originally presented its proposal to the Commission on April 11, 2015. In terms of design, the Facility will be capable of (i) receiving nearly 21,000 Decatherms per day (Dth/day) of natural gas, (ii) producing approximately 250,000 gallons of LNG when liquefying at nameplate capacity, and (iii) storing approximately 8 million gallons of LNG. In terms of functions the facility is planned to perform, these continue to be as follows:

- The Tacoma LNG Facility would supply fuel to Totem Ocean Trailer Express, Inc. (TOTE).
- The Tacoma LNG Facility would provide fuel for sales to other marine vessels or other purchasers.
- The Tacoma LNG Facility would serve as a peaking resource for PSE’s core natural gas customers.

What is fundamentally changed under the Settlement Stipulation is the corporate structure and business model under which these functions will be performed.

³⁷ Pipeline facilities built and operated to facilitate operations at the Tacoma LNG facility, whether related to activities serving Puget LNG or PSE, will be subject to Chapter 81.88 Gas and Hazardous Liquids Pipelines, the intent of which is “to protect the health and safety of the citizens of the state of Washington and the quality of the state’s environment.” RCW 81.88.005(1).

- 45 As stated above, PSE initially proposed that the first and third functions identified above would be treated as part of PSE’s regulated business—the first function meeting the needs of a single customer, TOTE, under a “special contract” and the third function providing capacity to meet PSE’s core retail natural gas customers’ peak requirements at tariffed rates. PSE proposed that the second function would be a separate, unregulated business.
- 46 Under the Settlement Stipulation PSE’s parent corporation, Puget Energy, will form or cause to be formed a wholly-owned subsidiary named Puget LNG. Puget LNG will be a special purpose limited liability company formed by Puget Energy solely for the purposes of owning, developing, and financing the Tacoma LNG Facility as a tenant-in-common with PSE. Puget LNG will not be subject to the Commission’s jurisdiction under Title 80 RCW. Puget LNG’s sales of LNG as marine fuel to TOTE³⁸ and other sales of LNG as transportation fuel will not be regulated by the Commission.
- 47 The Tacoma LNG Facility would serve as a peaking resource for PSE’s core natural gas customers. PSE’s ownership interest in, and financial commitments to, the Tacoma LNG Facility will be subject to the Commission’s full regulatory authority, pursuant to RCW Title 80 and related rules. The Settlement Stipulation, for example, expressly reserves questions of prudence and cost recovery in rates for future review and determination by the Commission. The parties to the Settlement Stipulation expressly reserve their rights to take any position they elect to take concerning those matters when brought before the Commission.
- 48 The corporate structure and business model proposed by the Settlement Stipulation do not suffer from the jurisdictional challenges present in PSE’s original proposal, as discussed in Order 04 in this docket. There is, however, a regulatory barrier to the establishment of this corporate structure and business model that arises from certain commitments by the “Joint Applicants” to the proceeding concluded in December 2008 in which the

³⁸ Concurrently with the execution of a required Joint Ownership Agreement (JOA) between PSE and Puget LNG, PSE will assign to Puget LNG all of PSE’s right, title and interest in, to and under the TOTE Fuel Supply Agreement, as well as that certain letter agreement, dated July 9, 2015 and as amended, between PSE and TOTE pertaining to the interim supply of LNG to TOTE pending the commencement of commercial operations of the Tacoma LNG Facility. Settlement Stipulation, Attachment B at 2.

Commission majority approved, with clarifying conditions, the acquisition of PSE by an investment consortium led by the Macquarie Group.³⁹

49 Among the 63 commitments agreed to by the Joint Applicants as part of a broader settlement among most of the parties that the Commission approved in the Merger Order,⁴⁰ two are critically important here. In Commitment 56 Joint Applicants agreed that Puget Energy will not own or operate any businesses other than PSE. In Commitment 58, Joint Applicants agreed 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 financing PSE capital expenditures. Both of these commitments were attempts by the settling parties and the Commission to ensure that PSE would focus on management of its core regulated business and that it would make adequate capital expenditures to ensure that it offered safe, reliable, and affordable electricity and gas services.

50 Considering the Settlement Stipulation's proposal that Puget Energy will form, or cause to be formed, a second subsidiary named Puget LNG, the Settling Parties request that the Commission amend Commitment 56 in the Merger Order⁴¹ to read as follows (underscoring indicates new language added to the Commitment):

56. Puget Energy shall not operate or own any business other than PSE and Puget LNG, LLC ("Puget LNG"). Puget LNG shall be a special purpose entity formed by Puget Energy solely for the purposes of owning, developing, and financing, as a tenant-in-common with PSE, an LNG facility at the Port of Tacoma (the "Tacoma LNG Facility").

³⁹ *In the Matter of the Joint Application of Puget Holdings LLC and Puget Sound Energy, Inc., For an Order Authorizing Proposed Transaction*, Docket U-072375, Order 08 (Dec. 30, 2008) (Merger Order). Commissioner Jones filed a dissenting opinion. By way of brief summary, Puget Holdings LLC (Puget Holdings) and PSE filed with the Commission on December 17, 2007, a joint application for an order authorizing the transfer of ownership and control of Puget Energy, and its wholly owned subsidiary, PSE, to Puget Holdings. Puget Holdings is a Delaware limited liability company, with its principal offices in New York, formed expressly for the purpose of acquiring, through wholly owned subsidiaries, all of the outstanding shares of common stock issued by Puget Energy. The transfer of ownership ultimately approved in Order 08 was one step in a financial transaction that ultimately resulted in Puget Energy no longer being a publicly traded company. Puget Energy and PSE now are privately owned by Puget Holdings, which is an investor consortium comprised of several members of the Macquarie group or funds, and three Canadian pension funds. [Dennis' original language is just fine with me.]

⁴⁰ *See supra* n.31.

⁴¹ Merger Order, Attach. A, Appx. A at 12.

Considering the proposed capitalization of the Tacoma LNG Project, as discussed in more detail later in this Order, the Settling Parties also request that the Commission amend Commitment 58 in the Merger Order⁴² to read as follows:

58. Joint Applicants commit that the current and any future capital expenditure credit facilities will by their terms limit the use of such funds only for financing PSE capital expenditures of PSE and Puget LNG, LLC. Quarterly officer certificates under each of the credit facilities of Puget Energy and PSE will be made available to the Commission and other interested parties, upon request and subject to the protective order in Docket No. U-072375.

The Settlement Stipulation provides in addition that all other Merger Commitments, namely Numbers 1 through 55, 57, and 59 through 63 will continue in full force and effect and without amendment.

- 51 The Settlement Stipulation includes five principal and a number of subsidiary provisions referred to collectively as “ring-fencing provisions” that protect PSE’s ratepayers from the unregulated activities of Puget Energy and Puget LNG. First, as previously mentioned, Puget Energy will form, or caused to be formed, a new subsidiary, Puget LNG,⁴³ that will be separate from PSE with the two corporate entities having obligations and liabilities that are several and not joint or collective.⁴⁴ Each entity, or “Owner” will be individually responsible for the performance of its own obligations. In general, all risk, loss and damage arising out of the ownership, construction, operation or maintenance of any portion of the Tacoma LNG Facility will be borne by each Owner in proportion to its capital cost allocation set forth in Attachment D (“Tacoma LNG Facility Ownership Shares”) to the Settlement Stipulation.
- 52 Second, mirroring a commitment approved in 2008 in the Merger Order, within sixty (60) days of the formation of Puget LNG, PSE will file a non-consolidation opinion with the Commission that concludes, 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, including Puget LNG. If PSE cannot obtain a non-

⁴² *Id.*

⁴³ Settlement Stipulation ¶ 9.

⁴⁴ Settlement Stipulation ¶ 15.

consolidation opinion based on the ring-fencing provisions in the Settlement Stipulation, PSE will propose additional ring-fencing provisions. If PSE cannot then obtain the opinion, “PSE will seek guidance from the Commission.”⁴⁵

53 Third, the Settlement Stipulation provides that PSE’s customers will be held harmless from the liabilities and financial losses of any non-regulated activity of the Tacoma LNG Facility, including any non-regulated activity of Puget LNG. Puget Energy guarantees and will hold PSE’s customers harmless from all liabilities and financial losses of Puget LNG resulting from:

- Any non-regulated activity of the Tacoma LNG Facility, including the sale or assignment of the assets of Puget LNG to a third party.
- Circumstances in which Puget LNG or any successor to Puget LNG (a) becomes insolvent or is unable to pay its debts when due, (b) files a petition in bankruptcy, reorganization or similar proceedings (and if filed against, such petition is not removed within 90 days), (c) discontinues its business, or (d) a receiver is appointed or there is an assignment for the benefit of creditors of Puget LNG.

54 Fourth, PSE and Puget LNG will enter into a Joint Ownership Agreement (JOA) and file it with the Commission for approval under RCW 80.16.020 within 60 days after the creation of Puget LNG. The Settlement Stipulation provides that “nothing contained in the Joint Ownership Agreement will be construed to create an association, joint venture, trust or partnership.”⁴⁶ The terms and conditions of the Joint Ownership Agreement will reflect the terms and conditions set forth in Attachment B to the Settlement Stipulation. In general terms, the Settlement Stipulation and Attachment B provide that:

- There will be a Board of Managers consisting of four managers, two designated by PSE and two designated by Puget LNG. The Board will manage the PSE’s and Puget LNG’s interests in the Tacoma LNG Project. One Manager appointed by PSE and one Manager appointed by Puget LNG will constitute a quorum for the transaction of business at any Board meeting. Regular Board meetings will be held each quarter and Special meetings may be called on seven days prior notice.

⁴⁵ Settlement Stipulation ¶ 10.

⁴⁶ Settlement Stipulation ¶ 15.

- PSE will operate the Tacoma LNG Facility.
- Puget LNG will pay, and Puget Energy will guarantee, Puget LNG's assigned percentage allocation of annual operating costs and will do so without subsidy from PSE ratepayers.⁴⁷
- In the event that Puget LNG ceases operating as a going concern and another entity does not succeed Puget LNG's obligations under the Joint Ownership Agreement or similar agreement, the JOA will terminate or expire in accordance with its terms.⁴⁸
- Puget LNG's and PSE's respective obligations and liabilities with respect to the Tacoma LNG Facility are intended to be several and not joint or collective, and nothing contained in the JOA will be construed to create an association, joint venture, trust or partnership. Each Owner will be individually responsible for the performance of its own obligations. Neither Owner will have a right or power to bind the other Owner without its express written consent, except as expressly provided in the Joint Ownership Agreement or in an ancillary agreement.
- All risk, loss and damage arising out of the ownership, construction, operation or maintenance of any portion of the Tacoma LNG Facility will be borne by each Owner in proportion to its capital cost allocation set forth in Attachment D to the Settlement Stipulation. To the extent

⁴⁷ Settlement Stipulation ¶ 13. Refer to Attachment B, the proposed term sheet for the JOA, specifically the header "O&M Services." According to these terms, Puget LNG and PSE will enter into an Operations and Maintenance Contract ("O&M Contract" or "O&M Services") providing that PSE will provide the employees to operate and maintain the Tacoma LNG Project. Puget LNG and PSE each will pay its allocable share of the costs and expenses associated with the operation and maintenance of the Tacoma LNG Project. Operations and maintenance costs will be allocable generally on the basis of ownership interest.

⁴⁸ Settlement Stipulation ¶ 14. The Settlement Stipulation provides further that under these circumstances some of the fixed operating costs associated with the Tacoma LNG Facility may shift to PSE because Puget LNG or a successor will not be available to share in those fixed operating costs. Attachment C to the Settlement Stipulation provides "a representative list of such costs and the agreement provides that PSE will use commercially reasonable efforts to minimize the fixed operating costs shifted to PSE and mitigate the impacts of any such shift on PSE. PSE will bear the burden of demonstrating to the Commission that any such fixed operating costs are prudent and reasonable for recovery in rates by PSE. Each of the Settling Parties reserves its right to challenge such fixed operating costs, if any, in future rate proceedings.

that any loss or damage is caused by actions performed exclusively for Puget LNG or exclusively for PSE, then the Owner on whose behalf the actions were exclusively performed will be fully responsible for the loss or damage. If either Owner is called upon to make any payment or incur any obligation in excess of its proportionate Ownership Share, then the other Owner shall have the obligation to pay and reimburse, regardless of cost, such Owner proportionately to the extent of any such excess by tendering payment upon thirty (30) business days' notice of such payment in excess of its Ownership Share.

- Puget Energy and its affiliates will adequately insure non-regulated activity at the Tacoma LNG Facility. The nominal value of such insurance coverage must reasonably reflect the size, value, and scope of the Tacoma LNG Facility and its operations.
- Either Puget LNG or PSE may temporarily use the Tacoma LNG Facility in excess of its ownership share. The overusing entity will compensate the other entity for such over-usage. If PSE is the overusing entity, though, PSE cannot recover payments to Puget LNG in rates without Commission approval. Commission approval and the corresponding Commission Staff audit provides another layer of protection for ratepayers.

55 Fifth, PSE commits that it will notify the Commission of any potential sale or transfer of all or substantially all of the assets of the Tacoma LNG Facility or the potential sale or transfer of Puget LNG's non-regulated operations as soon as practicable. The JOA will include restrictions on transfer. Those restrictions will, among other requirements, require as a condition of sale any transferee to assume the transferor's obligations in the JOA and to demonstrate financial capability to own and operate the applicable portion of the Tacoma LNG Facility. In other words, any new owner or buyer for the Tacoma LNG Facility's unregulated operations would still have to abide by the joint ownership agreement and would have adequate debt and equity capital to fund its share of the Facility's capital and operating costs. Those requirements would also continue to apply to future transfers.

56 In addition to modifying two ring-fencing Commitments established in 2008 under the Merger Order and establishing additional ring fencing specifically designed to protect PSE's customers from financial obligations and liabilities related to the unregulated

activities of Puget LNG, the Settlement Stipulation establishes the parameters that will govern the allocation of the Tacoma LNG Facility's capital and operating costs. The Settling Parties agree to the following capital cost allocators with respect to the Tacoma LNG Facility:

- a. Liquefaction Allocator. The liquefaction allocator allocates capital costs associated with liquefaction, which include the costs of facilities used to receive natural gas, treat the gas, cool the gas below its boiling point and deliver the gas to onsite storage.
- b. Storage Allocator. The storage allocator allocates capital costs associated with storage, which include the costs of the site-erected full containment cryogenic storage tank as well as the costs of foundations and other supporting facilities.
- c. Bunkering Allocator. The bunkering allocator allocates capital costs associated with bunkering, which include facilities used to move the LNG from the onsite storage tank to the marine loading facility, which will be located at TOTE's berthing location.
- d. Truck Loading Allocator. The truck loading allocator allocates capital costs associated with truck loading, which include facilities used to move the LNG from the onsite storage tank to tanker trucks or ISO containers
- e. Vaporization Allocator. The vaporization allocator allocates capital costs associated with vaporization, which include facilities used to vaporize the gas and inject it into PSE's distribution system.
- f. Common Allocator. The common allocator allocates common project costs, which include facilities that cannot be allocated to any individual service (e.g., facility development, civil and site work, site utilities, etc.).

57 Applying these factors results in the Ownership Shares portrayed below in Table One, to which the Settling Parties agree.⁴⁹

⁴⁹ Settlement Stipulation ¶¶ 25-26, Attach. D.

TABLE ONE
Ownership Shares in the Tacoma LNG Facility

Component Ownership Share	PSE	Puget LNG
Liquefaction	10%	90%
Storage	79%	21%
Bunkering	0%	100%
Truck Loading	5%	95%
Vaporization	100%	0%
Common	43%	57%

58 According to the Settling Parties' Joint Testimony, these allocations are based on a detailed examination of PSE's cost model for the facility, which includes estimates of both peak-shaving and LNG fuel sales requirements.⁵⁰ Some of the allocations are straightforward. Marine Bunkering, for example, is 100 percent allocated to Puget LNG because ship fueling operations are completely unrelated to peak-shaving operations for core gas operations. Vaporization, a function related only to peak shaving, is allocated entirely to ratepayers. The allocation of Liquefaction is based on a mathematical calculation derived by examining the design capacity of the Tacoma LNG Facility's liquefaction train against the operational requirements of both regulated and unregulated operations.⁵¹

59 The remaining cost allocators were extensively reviewed and modified based in part on technical expert opinion provided by independent consultants the Settling Parties engaged to assist in their evaluation of project, namely Brown, Williams, Moorehead & Quinn, Inc. (BWMQ).⁵² One allocator, Truck Loading, was decreased for the PSE share during negotiations considering the actual historical operations of PSE's Gig Harbor LNG Satellite facility.⁵³

⁵⁰ Exhibit No. JT-1T at 33:10-11.

⁵¹ Id. at 33:12-18.

⁵² Exhibit No. JCW-1T; Exhibit No. JCW-2C at 17-18.

⁵³ According to the consultant's report:

60 The independent consultant's report recommended, and the Settling Parties agreed that Ownership Shares for the common cost allocator would be based on the weighted costs of the liquefaction, storage, bunkering, truck loading, and vaporization allocation factors.⁵⁴ Attachment D to the Settlement Stipulation for the projected Ownership Shares of common items of the Tacoma LNG Facility.

61 Within 90 days after the establishment of Puget LNG, PSE will assign Puget LNG's Ownership Shares of the components of the Tacoma LNG Facility to Puget LNG and pay PSE an amount equal to the product of (a) PSE's total capital expenditures for the Tacoma LNG Facility as of the assignment date and (b) Puget LNG's projected common capital costs allocation of fifty-seven percent (57%).⁵⁵ Based on current projected costs, the allocation of costs between Puget LNG and PSE is as portrayed below in Table Two.⁵⁶ There may be some deviation from these allocated costs depending on the final actual capital costs. The Settlement Stipulation provides that:

In the general rate case proceeding in which PSE seeks to include PSE's Ownership Shares of the Tacoma LNG Facility in general rates, PSE shall (i) identify the final actual capital costs associated with each component of the Tacoma LNG Facility and (ii) calculate the common allocator for each of PSE and Puget LNG.⁵⁷

PSE supports an allocation of 25 percent of trucking capital costs to the LDC Peak Shaving customers, explaining that LNG trucking will be used to support the Gig Harbor LNG facility and mobile LNG operations that support PSE gas system operations. Subsequent to PSE's allocation proposal, discussions between the Mediation Parties have found agreement that a 5 percent allocation of the trucking costs to LDC Peak Shaving customers is appropriate. Seeing that there is an understanding between the parties on this particular allocation, BWMQ will not make a recommendation.

Exhibit No. JCW-2C at 18.

⁵⁴ *Id.*

⁵⁵ Exhibit JT-1T at 19:9-20:2.

⁵⁶ Settlement Stipulation Attach. D. *See* TR.252:18-23 (Garratt).

⁵⁷ Settlement Stipulation ¶ 28; *see also* Exhibit JT-1T at 20:3-8.

TABLE TWO
Tacoma LNG Facility Ownership Shares

Component Ownership Share	PSE	Puget LNG	Projected Capital Expenditures (No AFUDC)	Projected Capital Expenditures Allocated to PSE	Projected Capital Expenditures Allocated to Puget LNG
Liquefaction	10%	90%	\$88,546,234	\$8,854,623	\$79,691,611
Storage	79%	21%	\$96,237,245	\$76,027,424	\$20,209,821
Bunkering	0%	100%	\$29,671,922	\$0	\$29,671,922
Truck Loading	5%	95%	\$6,229,252	\$311,463	\$5,917,789
Vaporization	100%	0%	\$17,135,822	\$17,135,822	\$0
Common	43%	57%	\$72,884,330	\$31,340,262	\$41,544,068
TOTAL	N/A	N/A	\$310,704,805	\$133,669,593	\$177,035,212

62 In addition to ring-fencing provisions and cost allocation matters, the Settlement Stipulation includes agreements concerning costs associated with certain natural gas distribution facility upgrades. These facilities require:

- The installation of the new 16-inch line from the existing North Tacoma high pressure line beginning near the intersection of 20th Street East and 62nd Avenue East in Fife, Washington, and terminating at the intersection of Taylor Way and East 11th Street at the Port of Tacoma (the “16-Inch Line”).
- The installation of improvements to the Bonney Lake lateral (currently expected to consist of the installation of approximately 2.1 miles of 12-inch high pressure line) that will be required to accommodate (i) the increase of injection requirements of the Tacoma LNG Facility from 50 million cubic feet per day to 66 million cubic feet per day, and (ii) the reduction of pressure out of the North Tacoma Gate Station by

approximately 20 pounds per square inch (the “Bonney Lake Lateral Improvements”).⁵⁸

The Settling Parties acknowledge and agree that the costs of distribution system upgrades associated with the Tacoma LNG Facility should be allocated in accordance with the principle of cost causation.⁵⁹

63 PSE and NWIGU believe these facilities would not be necessary but for the Tacoma LNG Facility. However, other parties do not share this belief.⁶⁰ The Settling Parties resolved this matter by including provisions in the Settlement Stipulation with respect to these facilities that do not bind any of the Settling Parties other than PSE. Staff, Public Counsel, and NWIGU retain their rights to contest PSE’s cost of service studies’ treatment of the 16-Inch Line and the Bonney Lake Lateral Improvements in future proceedings.

64 PSE will separately identify the costs associated with each of the 16-Inch Line and the Bonney Lake Lateral Improvements and record these costs in respective subaccounts of FERC Account 376.⁶¹ In all future retail class cost of service studies used to set retail gas sales and transportation delivery tariff rates, PSE will propose to allocate the costs of the 16-Inch Line and the Bonney Lake Lateral Improvements in a manner consistent with the interclass allocation of the costs of the Tacoma LNG Facility. PSE will support the interclass allocation of the Tacoma LNG Facility costs to only sales customers on the basis of their contribution to PSE’s total retail design day system peak demand (Dth/day).⁶²

65 PSE also agrees not to propose to allocate any costs associated with either the 16-Inch Line or the Bonney Lake Lateral Improvements to transportation customers, subject to the exception that if a retail natural gas transportation customer of PSE (*e.g.*, Puget LNG) takes retail natural gas transportation service along the 16-Inch Line, then PSE agrees to propose rates to be paid by the specific retail natural gas transportation customer or customers that will recover a portion of the costs associated with the 16-Inch Line. This proposed portion of costs will be based on the following:

⁵⁸ Exhibit JT-1T at 20:18-21:5.

⁵⁹ Exhibit JT-1T at 20:12-15.

⁶⁰ Exhibit JT-1T at 20:16-17.

⁶¹ Exhibit JT-1T at 21:6-9.

⁶² Exhibit JT-1T at 21:10-20.

- (a) The design day peak (Dth/day) for that retail natural gas transportation customer(s), divided by
- (b) The sum of:
 - (i) the design day peak (Dth/day) for that retail natural gas transportation customer(s), plus
 - (ii) the design day peak (Dth/day) for all retail natural gas sales customers.⁶³

66 If the Tacoma LNG Facility were to no longer be included in the rate base used to set retail natural gas rates for PSE, the manner in which PSE proposes to allocate the costs of either the 16-Inch Line or the Bonney Lake Lateral Improvements would remain unchanged for the remaining useful life of the 16-Inch Line or the Bonney Lake Lateral Improvements, respectively, unless and until PSE demonstrates the 16-Inch Line is used and useful in providing natural gas distribution service.⁶⁴

B. Discussion

67 We begin our discussion of whether to approve the Settlement Stipulation with a quote from the Joint Testimony of Mr. Gomez, who summarizes the essence of the settlement, as follows:

The Settlement Stipulation could be viewed as PSE's request for amendments to Merger Commitments 56 and 58 in exchange for a guarantee from PSE and its parent to hold ratepayers harmless from any losses or liabilities created by non-regulated operations at the Tacoma LNG Facility, a re-affirmation of the remaining merger commitments, and the ability to share a peaking facility's costs with an unregulated entity. Commission approval of the Settlement Stipulation [would enable] PSE to proceed with development of the Tacoma LNG Facility.⁶⁵

This brief description provides a useful framework for our discussion of the evidence offered in support of the Settlement Stipulation.

⁶³ Exhibit JT-1T at 21:21-22:9.

⁶⁴ Exhibit JT-1T at 22:10-16.

⁶⁵ Exhibit No. JT-1T at 25:12-18.

1. Merger Commitments 56 and 58

68 Prior to executing the Settlement Stipulation, the Settling Parties spent several months in mediated settlement discussions addressing the issues previously raised in this proceeding. During the mediated settlement discussions, PSE identified two issues that were critical to resolve for it to proceed with the development of the Tacoma LNG Facility. First, PSE required a waiver to, or revision of, Commitments 56 and 58 of the Merger Order that would allow Puget Energy to form a wholly-owned subsidiary, Puget LNG, and use the capacity in the credit facilities of both PE and PSE to finance the Tacoma LNG Project. Second, PSE required an allocation of the capital costs, both by function and by common costs, of the Tacoma LNG Facility between PSE and Puget LNG so that each entity could properly account for its ownership shares of each component of the Tacoma LNG Facility. We discuss the first issue here and in section 2 below. We discuss the cost allocation issue in section 3.

69 Commitments 56 and 58⁶⁶ are components of the ring-fencing approved in Order 08 in Docket U-072375 to protect PSE and its ratepayers from any potentially adverse financial consequences arising from the Company's acquisition by an investor consortium that would take the company private in 2009.⁶⁷ Order 08 ¶ 64 states "[i]n Commitment 56 Joint Applicants agree that Puget Energy will not own or operate any businesses other than PSE. Under the *status quo* there is no such limitation on Puget Energy."

70 Order 08 ¶ 66 states that in Commitment 58:

Joint Applicants agree that the 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 financing PSE capital expenditures. Quarterly officer certificates under each of the credit facilities of Puget Energy and PSE will be made available to the Commission and other interested parties, upon request and subject to the protective order. Under the *status*

⁶⁶ See Merger Order ¶¶ 64, 66 (December 30, 2008).

⁶⁷ Ring-fencing is a term of art in the world of mergers and acquisitions and regulatory practice. It refers to financial and corporate structuring in a transaction that results in a newly acquired company being isolated from the parent or holding company of its new owners and, thus insulating the regulated, ring-fenced entity from any financial harm or distress at the holding company level. Ring-fencing is used in a variety of industries and sectors, such as energy, utilities, finance and others, where the regulatory body believes there is a strong public interest in protecting consumers and holding them harmless from relatively riskier financial transactions at the holding company level.

quo there is no limitation on Puget Energy issuing debt and no limitation on the use of funds derived from any such debt.

71 Order 08 ¶ 57 discusses that the investors acquiring PSE arranged for a \$1.0 billion credit facility for Puget Energy and a \$0.4 billion credit facility for PSE, both of which would be available to PSE for the exclusive purpose of funding utility infrastructure expansion and improvements over the next several years following the acquisition. Neither of these credit facilities was to be drawn upon at closing. Future balances on the \$1.0 billion credit facility were to be recorded on Puget Energy's books, not PSE's, as the facility was drawn on to fund capital improvements at PSE. Here again, ring-fencing provisions in the Merger settlement shield PSE's ratepayers from liability for debt recorded on Puget Energy's books.

72 The Settlement Stipulation, as already discussed, would allow Puget Energy to establish Puget LNG as a subsidiary and would allow Puget Energy to use its credit facility to finance the debt portion of Puget LNG's investment in the Tacoma LNG Facility while using retained earnings to finance its equity investment. At hearing, Mr. Kuzma stated that he expects that Puget Energy will maintain its current debt-equity ratio of roughly 60 percent to 40 percent when financing the capital expenditures of Puget LNG, while PSE will maintain its more conservative debt-equity ratio of about 52 percent to 48 percent. Both PE and PSE appear to have ample capital to deploy to this project, while still maintaining their current capital structures. Nevertheless, new ring-fencing provisions are required to give PSE's ratepayers the same level of protection from liability for debt recorded on Puget Energy's books as afforded by the un-amended Commitment 58.

a. New Ring-Fencing Provisions

73 Modification of Merger Commitments 56 and 58 are unacceptable to Staff, Public Counsel, NWIGU, and ICNU unless new ring-fencing provisions can be approved that accomplish the purpose of the original Commitments. This is essential to Commission Staff's and other parties' support for the proposed Settlement Stipulation. Staff's witness, Mr. Gomez, testifies that "[s]imply put, Commission Staff would not support any agreement that placed undue economic risk on regulated ratepayers."⁶⁸ Ms. Colamonici testifies similarly that "[f]rom Public Counsel's perspective, insulating PSE ratepayers

⁶⁸ Exhibit No. JT-1T at 26:12-14 (Gomez).

from the risk of the unregulated activity at the Tacoma LNG Facility is key to meeting the public interest standard in this case.”⁶⁹ Mr. Finklea, testifying for NWIGU, states that:

It is important to NWIGU that the Settlement Stipulation requires PSE to hold its customers harmless from the liabilities and financial losses of any non-regulated activity of the Tacoma LNG Facility. This includes the sale or assignment of the assets of Puget LNG to a third party and circumstances in which Puget LNG or any successor to Puget LNG becomes insolvent or is unable to pay its debts when due, discontinues its business or files a petition in bankruptcy, reorganization or similar proceedings.⁷⁰

We previously have summarized briefly in this Order the new ring-fencing provisions that the Settling Parties propose.⁷¹ Here we examine the evidence offered in support of these provisions, to which we will assign numbers consistent with Appendix A to the settlement stipulation the Commission approved in Order 08 in Docket U-072375, the so-called Merger Order that we are called upon in this proceeding to amend.

74 **Commitment 64: Creation of Puget LNG, LLC**

Within thirty (30) days of issuance of an order by the Commission approving the Settlement Stipulation consistent with its terms and its conditions, Puget Energy will form or will cause to be formed a wholly-owned subsidiary of Puget Energy named Puget LNG, LLC (“Puget LNG”). Puget LNG will be a special purpose limited liability company formed by Puget Energy solely for the purposes of owning, developing, and financing the Tacoma LNG Facility as a tenant-in-common with PSE.⁷²

75 Mr. Gomez testifies on behalf of the Joint Parties that under this Commitment:

Puget Energy will create a subsidiary called Puget LNG, LLC. Puget LNG will be unregulated and will house the unregulated assets and operations associated with the Tacoma LNG Facility. This settlement term is

⁶⁹ Exhibit No. JT-1T at 37:17-19 (Colamonici).

⁷⁰ Exhibit No. JT-1T at 43:2-8 (Finklea).

⁷¹ See *supra* ¶¶ 50-54.

⁷² Exhibit No. J-5 (Settlement Stipulation) at 4 (section III.A.1).

important because it creates two separate legal entities under the utility holding company for regulated and unregulated portions of the facility, respectively. If PSE decides to pursue the Tacoma LNG Facility project, Commission Staff and other Settling Parties want non-regulated operations to be isolated from PSE's regulated operations as soon as possible.⁷³

We agree with BWMQ's suggestion that it would be in the best interest of the PSE ratepayers if the cost assignment issue could be settled before PSE brings forward any request to recover costs of the LNG facilities from ratepayers.⁷⁴

76 **Commitment 65: Non-Consolidation Opinion**

Within sixty (60) days of the formation of Puget LNG, PSE will file a non-consolidation opinion with the Commission which concludes, 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, including Puget LNG. If the ring-fencing provisions are insufficient to obtain a non-consolidation opinion, PSE will promptly undertake the following actions:

- (i) Notify the Commission of this inability to obtain a non-consolidation opinion;**
- (ii) Propose and implement, upon Commission approval, such additional ring-fencing provisions around PSE as are sufficient to obtain a non-consolidation opinion subject to customary assumptions and exceptions;**
- (iii) Obtain a non-consolidation opinion based on the additional ring-fencing provisions and customary assumptions and exceptions; and**
- (iv) If PSE cannot obtain a non-consolidation agreement based on the proposed additional ring-fencing provisions, PSE will seek guidance from the Commission.⁷⁵**

77 Mr. Gomez testifies that this Commitment protects PSE's customers, because PSE must obtain and file a bankruptcy expert's opinion that a bankruptcy court would not

⁷³ Exhibit No. JT-1T at 26:16-27:2 (Gomez).

⁷⁴ Exhibit JCW-2C at 17.

⁷⁵ Exhibit No. J-5 (Settlement Stipulation) at 4 (section III.A.2).

consolidate PSE's and Puget LNG's assets and liabilities in one or the other's bankruptcy proceeding. He says that the Commitment protects the Settling Parties procedurally, because it establishes the process and potential scenarios for obtaining and filing such an opinion. Finally, Mr. Gomez testifies that if the bankruptcy expert's opinion is that a court would consolidate the assets and liabilities of Puget LNG and PSE in a bankruptcy, then PSE must notify the Commission and propose an alternate corporate structure or other ring-fencing provisions that protect ratepayers in the event of bankruptcy.⁷⁶

78 Counsel for PSE stated during our evidentiary hearing that the Company is "pretty confident that [it] will be able to get a non-consolidation opinion."⁷⁷ This confidence is based on the fact that the Settlement Stipulation:

[I]ncorporates pretty much all of the ring-fencing provisions that are in the current merger order, with the exception of 56 and 58, which have the amendment with respect to the creation of Puget LNG.

So there isn't a lot of change with respect to the current commitments within the merger order, and quite frankly there is -- there is the ability to work with the non-consolidation opinion in mind, in creating Puget LNG and the operating agreement, or the LLC agreement, and the joint ownership agreement.

So we will work with the counsel that will be doing the non-consolidation opinion, as far as what types of elements would be looked for by that counsel, and try to incorporate them at the outset, so that we can try to work and make sure that we do what is necessary to obtain the non-consolidation opinion and protect the Company from a substantive consolidation in the event of any bankruptcy of Puget Energy.⁷⁸

79 **Commitment 66: PSE Customers Held Harmless**

PSE's customers will be held harmless from the liabilities and financial losses of any non-regulated activity of the Tacoma LNG Facility, including any non-regulated activity of Puget LNG. Puget Energy guarantees and will hold PSE's customers harmless from all liabilities and financial losses of Puget LNG resulting from:

⁷⁶ Exhibit No. JT-1T at 27:5-13 (Gomez).

⁷⁷ TR. 190:20-21.

⁷⁸ TR. 19023-191:15.

(i) any non-regulated activity of the Tacoma LNG Facility, including the sale or assignment of the assets of Puget LNG to a third party; and

(ii) circumstances in which Puget LNG or any successor to Puget LNG (a) becomes insolvent or is unable to pay its debts when due, (b) files a petition in bankruptcy, reorganization or similar proceedings (and if filed against, such petition is not removed within 90 days), (c) discontinues its business, or (d) a receiver is appointed or there is an assignment for the benefit of creditors of Puget LNG.⁷⁹

80 Mr. Gomez identifies this Commitment as what “might be the most important language in the entire Settlement Stipulation.”⁸⁰ In his view this Commitment makes clear that:

PSE’s customers will be held harmless, and the parent company, Puget Energy, will guarantee any liabilities and losses from Puget LNG. That means PSE and Puget Energy guarantee that PSE’s regulated ratepayers will not be asked to assume the costs of any capital write-offs or losses, operating costs, or any other type of financial loss or liability tied to non-regulated LNG sales.⁸¹

81 Mr. Gomez testifies that Staff is satisfied that Puget Energy and PSE will actually hold PSE’s customers harmless for three reasons. First, Puget Energy and Puget LNG have obligated themselves in the Settlement Stipulation, in no uncertain terms, to guarantee ratepayers will not pay for liabilities and losses associated with unregulated operations. Thus, considered together with other commitments, Puget Energy, Puget LNG, and their shareholders willingly assume the risk of any losses and unrealized returns associated with unregulated LNG fuel sales and operations.⁸²

82 Second, Mr. Gomez asserts that Puget Energy and its owners have the financial resources to absorb such losses without having to jeopardize the financial health of the regulated utility. Not only is Puget Energy capitalized to an amount several times the cost of the Tacoma LNG Facility, Puget Energy also has access to large amounts capital through

⁷⁹ Exhibit No. J-5 (Settlement Stipulation) at 4 (section III.A.3).

⁸⁰ Exhibit No. JT-1T at 27:15-16 (Gomez).

⁸¹ Exhibit No. JT-1T at 27:16-21 (Gomez).

⁸² Exhibit No. JT-1T at 28:4-10 (Gomez).

credit markets, existing equity holders, and insurance policies.⁸³ On the question of insurance, Mr. Gomez testified that:

In discussions with the Settling Parties, PSE representatives discussed a combination of property insurance up to approximately \$650 million and liability insurance up to approximately \$200 million. Commission Staff has reviewed the engineering cost estimates and consulted with technical experts about the initial size, value, and projected scope of operations for the Tacoma LNG Facility, and Commission Staff believes the terms and amounts in PSE's above discussions would meet the requirements for "adequate insurance."⁸⁴

83 Third, Mr. Gomez states, "Commission Staff has the continuing ability to audit the affiliate interest transactions between PSE and Puget LNG." Thus, Staff has the "ability to track any abnormal charges from Puget LNG to PSE that might be triggered as a means of recovering possible losses incurred by Puget LNG."⁸⁵

84 Ms. Colamonici, Public Counsel's witness, testifies to the importance of this Commitment to its support of the Settlement Stipulation. She paraphrases the Commitments principal components and concludes that "[t]hese strong hold harmless provisions protect PSE ratepayers and are consistent with the merger commitments in Docket U-072375."⁸⁶

85 Ms. Colamonici also discusses that the Settlement Stipulation provides, in the event Puget LNG fails to operate as a going concern and another entity does not succeed in Puget LNG's obligations, the Joint Ownership Agreement will terminate. She states that in such circumstances "an exception to the hold harmless provision may occur, where specific fixed operating costs may shift to PSE ratepayers."⁸⁷ The costs subject to this exception are the shared operating costs between PSE and Puget LNG, not costs borne

⁸³ Exhibit No. JT-1T at 28:10-15 (Gomez).

⁸⁴ Exhibit No. JT-1T at 30:11-17 (Gomez).

⁸⁵ Exhibit No. JT-1T at 28:16-20 (Gomez).

⁸⁶ Exhibit No. JT-1T at 36:12-37:2 (Colamonici).

⁸⁷ Exhibit No. JT-1T at 37:5-7 (Colamonici).

solely by Puget LNG.⁸⁸ PSE's customers are protected under these circumstances because PSE will bear the burden to prove that these shared costs are reasonable and prudent for recovery in rates. Ms. Colamonici points out that "Public Counsel and other parties have expressly reserved the right to challenge such costs if they are sought to be included in rates in a future rate proceeding."⁸⁹ Importantly, she says, "no costs will automatically shift from Puget LNG to PSE ratepayers without Commission review and approval."⁹⁰

86 **Commitment 67: Joint Ownership Agreement**

Within sixty (60) days of the formation of Puget LNG, PSE will file a Joint Ownership Agreement between Puget LNG and PSE for approval by the Commission pursuant to RCW 80.16.020. The terms and conditions of the Joint Ownership Agreement will reflect the terms and conditions set forth in Attachment B to this Settlement Stipulation.

a. Operating Costs Under the Joint Ownership Agreement

Operating Costs During the Term of the Joint Ownership Agreement. Puget LNG will pay, and Puget Energy will guarantee, Puget LNG's assigned percentage allocation of annual operating costs and will do so without subsidy from PSE ratepayers.

Operating Costs Upon the Expiration or Termination of the Joint Ownership Agreement. In the event that Puget LNG ceases operating as a going concern and another entity does not succeed Puget LNG's obligations under the Joint Ownership Agreement or similar agreement, the Joint Ownership Agreement will terminate or expire in accordance with its terms. The Settling Parties acknowledge that some of the fixed operating costs associated with the Tacoma LNG Facility may shift to PSE because Puget LNG will not be available to share in those fixed operating costs. Attachment C to this Settlement Stipulation is a representative list of fixed operating costs associated with the Tacoma LNG Facility that may shift to PSE. PSE will use commercially reasonable efforts to minimize the fixed operating costs shifted to PSE and mitigate the impacts of any such shift on PSE. PSE will bear the

⁸⁸ Ms. Colamonici says that "[e]xamples of the fixed operating costs that may be subject to this clause include: maintenance, staff, incremental insurance, allocated corporate overheads, and costs of the lease." Exhibit No. JT-1T at 39:16-18 (Colamonici).

⁸⁹ Exhibit No. JT-1T at 37:12-14 (Colamonici).

⁹⁰ Exhibit No. JT-1T at 37:14-16 (Colamonici).

burden of demonstrating to the Commission that such fixed operating costs, if any, are prudent and reasonable for recovery in rates by PSE. Each of the Commission, Staff, Public Counsel, NWIGU, and ICNU reserves its right to challenge such fixed operating costs, if any, in future rate proceedings.

b. Liabilities Under the Joint Ownership Agreement

The obligations and liabilities of Puget LNG and PSE (each, an “Owner”) with respect to the Tacoma LNG Facility are intended to be several and not joint or collective, and nothing contained in the Joint Ownership Agreement will be construed to create an association, joint venture, trust or partnership. Each Owner will be individually responsible for the performance of its own obligations. Neither Owner will have a right or power to bind the other Owner without its express written consent, except as expressly provided in the Joint Ownership Agreement or in an ancillary agreement.

87 Except as otherwise provided, all risk, loss and damage arising out of the ownership, construction, operation or maintenance of any portion of the Tacoma LNG Facility shall be borne by each Owner in proportion to its capital cost allocation set forth in Attachment D to this Settlement Stipulation, all or portions of which shall be insured; *provided, however, that*, to the extent that any loss or damage is caused by actions performed exclusively for Puget LNG or exclusively for PSE, then the Owner on whose behalf the actions were exclusively performed will be fully responsible for the loss or damage. If either Owner, by reason of joint liability, shall be called upon to make any payment or incur any obligation in excess of its proportionate Ownership Share, then the other Owner shall have the obligation to pay and reimburse, regardless of cost, such Owner proportionately to the extent of any such excess by tendering payment upon thirty (30) business days’ notice of such payment in excess of its Ownership Share.

c. Insurance Requirements Under the Joint Ownership Agreement

Puget Energy and its affiliates will adequately insure non-regulated activity at the Tacoma LNG Facility. The term “adequately insure” means that the nominal value of such insurance coverage must reasonably reflect the size, value, and scope of the Tacoma LNG Facility and its operations.

d. Usage Fees Under the Joint Ownership Agreement

The Settling Parties acknowledge that, notwithstanding the Ownership Shares identified for components of the Tacoma LNG Facility set forth in this Settlement Stipulation, it may be necessary for an Owner to use more than its Ownership Share of components of the Tacoma LNG Facility. For example, Puget LNG may desire to use more than its Ownership Share of the storage facility during the summer, when PSE does not require as much storage capacity for peaking service. Conversely, PSE may desire to use more than its Ownership Share of the truck loading facility if PSE were to build and operate LNG satellite peaking facilities in addition to that in Gig Harbor. The opportunity for each Owner to charge the other Owner to compensate for usage in excess of Ownership Shares will be included in the Joint Operating Agreement.

PSE will maintain sufficient records to support any such usage charge and report any such usage charge for a calendar year in the affiliated interest and subsidiary transaction report filed annually with the Commission pursuant to WAC 480-90-264. In the event PSE receives payment from Puget LNG in excess of its Ownership Share, such benefits shall flow to PSE customers. PSE will bear the burden of demonstrating to the Commission that any charges in excess of its Ownership Shares are prudent and reasonable for recovery in rates by PSE. Each of the Commission Staff, Public Counsel, NWIGU, and ICNU reserves its right to challenge such charges in excess of PSE Ownership Shares, if any, in future rate proceedings.

88 Within 60 days after the formation of Puget LNG, PSE will file a Joint Ownership Agreement (JOA) between itself and Puget LNG that will be subject to approval by the Commission under RCW 80.16.020, which provides that companies must obtain Commission approval prior to finalizing affiliated interest transactions. The terms and conditions of the JOA will reflect the terms and conditions set forth in Attachment B to the Settlement Stipulation.

89 Responding to questions from Commissioner Jones focusing on the requirement for Commission approval of the JOA under RCW 80.16.020, PSE's counsel, Mr. Kuzma represented at hearing that the parties intend to continue working together "as far as putting together a joint ownership agreement."⁹¹ Mr. Kuzma discusses further that the

⁹¹ TR. 210:1-5.

Settlement Stipulation includes as an attachment a term sheet stating expectations for the terms to be established in the JOA. He states that the parties have reviewed the proposed term sheet and commented on it. Going forward, the parties will endeavor to work out a JOA that all the Settling Parties can confirm and bring forward to the Commission for review and approval.⁹² Both Staff and Public Counsel anticipate that this could be done in an open meeting.

90 Further questions on this point from Chairman Danner elicited a detailed response from Mr. Kuzma. Briefly, Mr. Kuzma stated that the parties already have discussed, and agreed in principle to many of the critical terms that will be included in the JOA. He believes any remaining details can be resolved within the 90 day window after Puget LNG is formed.⁹³

91 Responding to questions concerning the Commission's continuing ability to monitor transactions between Puget LNG and PSE following approval of a JOA, Mr. Gomez, confirmed by Mr. Garratt, testified that:

[O]n an ongoing regular basis the Company files its -- on an annual basis required to file its affiliated interest transactions. I believe it's with regards to the amount and the type, and they are identified in -- in individual annual reports. And then there is the inclusion of those costs within an actual rate case, or a tariff revision is before the Commission, a normal rate case.

In those cases, the general rate case, where the staff would -- where Staff would bring it to the Commission would be is if there was something in the affiliated interest transaction report, on an annual basis, there was an issue or problem. But there's really no action that occurs, other than Staff investigates those transactions.

Now, if we go into a rate case, then -- then we utilize those reports, and others, to look at the Company's case and how it is filed and determine whether or not the cost that's being -- the ratepayer is being asked to cover, with regards to the Tacoma LNG plant, would be included in the rates or not included in the rates.

⁹² TR. 210:6-18.

⁹³ TR. 214:14-215:12.

So it's a two -- two separate, but it's also ongoing examination over time.⁹⁴

Mr. Garratt added that, from a practical rather than a legal perspective, he does not “necessarily see there being a lot of transactions between PSE and Puget LNG.”⁹⁵ Mr. Garratt agreed with Commissioner Rendahl’s observation that:

[T]he bulk of the interactions between Puget LNG and PSE would be “accounting [allocations], as to the workings of the LNG plant under the joint ownership agreement, and then the affiliated interest transactions, so to speak, that would be reported would be anything outside of that differ -- that would be different from the allocations identified in the joint ownership agreement.”⁹⁶

92 Another feature of the JOA is the establishment of a governance or management structure for the Tacoma LNG Facility. Again, in Attachment B, under “Board Composition”, it states::

It is the Parties’ expectation that a board of managers (the “**Board**”), consisting of four managers (each, a “**Manager**”), two of whom shall be designated by PSE and two of whom shall be designated by Puget LNG, shall be established to manage the Parties’ interest in the Tacoma LNG Project.

Mr. Kuzma stated in response to questions from Chairman Danner that “Puget Energy will appoint the members of . . . a board of [managers that is] effectively the same as a board of directors.”⁹⁷ Asked whether the executive officers of Puget LNG would be Puget employees, Mr. Kuzma responded that “[it] does not need to be, but it's likely that they might be members of Puget Sound Energy or employees of Puget Sound Energy, or Puget Energy.”⁹⁸

93 In response to questions from Commissioner Jones, Mr. Kuzma stated for the Company that the language in the Term Sheet captures PSE’s “expectation at this time, that there would be a board of four, two of [whom] would be appointed by PSE and two appointed

⁹⁴ TR. 227:11-228:15.

⁹⁵ TR. 229:17.

⁹⁶ TR. 230:14-231:5.

⁹⁷ TR. 196:2-15. Mr. Kuzma also explained that while corporations have a board of directors, “[i]t’s called a board of members when it’s an LLC.”

⁹⁸ TR. 197:12-15.

by Puget LNG. ... There hasn't been any formation at this time.”⁹⁹ In response to further inquiry concerning the potential need for one or more independent board managers, Mr. Kuzma observed that the original Merger Commitments required two independent directors to fill two distinct roles. One would have no duties except for having a vote in the event a voluntary bankruptcy was contemplated.¹⁰⁰ The other requires an “independent director [who] is a full participating board member [who] brings diversity of opinion and expertise to the board.”¹⁰¹

94 Mr. Kuzma, again responding to questions from Chairman Danner, explained that Puget LNG “will not have employees.”¹⁰² There will be an Operations and Maintenance (O&M) Services Agreement between Puget LNG and PSE, as distinct from the JOA.¹⁰³ Mr. Kuzma confirmed that the O&M Services Agreement also falls within the definitions in RCW 80.16.020, and so, it would also have to be brought to the Commission for approval. It is also PSE’s understanding that any amendments to such agreement also would have to be brought to the Commission for approval.

95 **Commitment 68: Notice to the Commission**

PSE will notify the Commission of any potential sale or transfer of all or substantially all of the assets of the Tacoma LNG Facility or the potential sale or transfer of Puget LNG’s non-regulated operations. PSE must give this notice as soon as practicable.

⁹⁹ TR. 202:3-7.

¹⁰⁰ Merger Commitment 16 provides:

At least one director of PSE will be an Independent Director who is not a member, stockholder, director (except as such Independent Director of PSE), officer, or employee of Puget Holdings or its affiliates. The organizational documents for PSE 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. The Chief Executive Officer of PSE will be a member of the board of PSE.

¹⁰¹ TR. 202:22-203:2. *See* Merger Commitment 43 with respect to which the Company agreed that “Puget Energy/PSE’s Board will include at least two (2) independent directors (based on NYSE’s independence standards) and one (1) director who is unaffiliated with the Macquarie Consortium,” as set forth in Exhibit EMM-11 filed as part of Mr. Markell’s rebuttal testimony in Docket U-072375.

¹⁰² TR. 196:16.

96 This section requires PSE to notify the Commission of a potential sale as soon as practicable because Puget Energy could sell Puget LNG to another operator. In that situation, PSE's regulated operations would be partnered under the joint operating agreement with an unaffiliated entity. The Commission should be in the loop about any sale transaction before that transaction actually takes place to make sure the ring fencing and other commitments made by PSE remain in effect.¹⁰⁴

97 In addition, the joint ownership agreement will include transfer restrictions that will, among other things, require as a condition of sale the requirement that any transferee will assume the transferor's obligations in the joint ownership agreement and demonstrate financial capability to own and operate the applicable portion of the Tacoma LNG Facility. In other words, any new owner or buyer for the Tacoma LNG Facility's unregulated operations would still have to abide by the joint ownership agreement and would have to be adequately-capitalized. Those requirements would also continue to apply to future transfers.¹⁰⁵

b. Re-affirmation of Existing Ring-Fencing Provisions

98 Paragraph 38 of the Settlement Stipulation provides that:

The Settling Parties agree that nothing in this Settlement Stipulation shall be deemed to constitute a waiver of any Settling Party's right to argue, and the Commission's ability to find, in any subsequent proceeding that PSE's affiliation with Puget LNG, or its joint ownership or operation of the Tacoma LNG Facility, or any actions incidental thereto, violates, or is in contradiction with, any Merger Commitment.

Mr. Gomez testifies in this connection that "paragraph 38 is an all-encompassing reservation of the Settling Parties' rights to argue that PSE, Puget Energy, or, to the extent applicable, Puget LNG, violated Merger Commitments. The Settlement Stipulation is not a waiver."¹⁰⁶ He testifies in addition that "[t]he modifications proposed in the Settlement Stipulation to these two merger commitments [i.e., Commitments 56 and 58]

¹⁰³ See TR. 196:16-197:8.

¹⁰⁴ Exhibit No. JT-1T at 32:2-7 (Gomez).

¹⁰⁵ Exhibit No. JT-1T at 32:9-16 (Gomez).

¹⁰⁶ Exhibit No. JT-1T at 35:16-18 (Gomez).

and reaffirmation of the others leave ratepayers better protected than they would be if they remained unchanged.¹⁰⁷

99 Ms. Colamonici testifies, too, that a “notable term” of the Settlement Stipulation “is that the remaining merger commitments are reaffirmed and will continue to apply unchanged under in the Settlement Stipulation.”¹⁰⁸ She opines in addition that the Settlement Stipulation’s “strong hold harmless provisions protect PSE ratepayers and are consistent with the merger commitments in Docket U-072375.”¹⁰⁹

c. Commission Determination

100 Considering both the new ring-fencing provisions and the re-affirmation of existing ring-fencing provisions, PSE’s ratepayers will continue to have similar protection from financial liability that might result from Puget Energy owning an unregulated subsidiary, or from the risks related to PSE’s ownership and operating interests in Puget LNG, LLC. Puget LNG. We accordingly find that the Commission should amend Commitments 56 and 58 as the Settling Parties request. Considering the context of our finding, it will be appropriate to reopen the record in Docket U-072375 for the limited purposes of making these amendments, reaffirming Commitments 1-55, 57, and 59-63, and adding new ring-fencing Commitments, as discussed and numbered above.

2. Cost Sharing by PSE to Secure a Peaking Resource

101 Among the reasons Staff supports the proposed Settlement Stipulation is that PSE’s current projections show that its natural gas customers need the Company to acquire approximately 111,000 dekatherms/day of peak capacity by 2018-2019.¹¹⁰ The Tacoma LNG Facility is designed to satisfy over 60 percent of this requirement. By building and sharing the costs of that facility with an unregulated affiliate, PSE and its customers could save tens of millions of dollars.¹¹¹ According to Staff witness Gomez, “[a] shared

¹⁰⁷ Exhibit No. JT-1T at 31:13-15 (Gomez).

¹⁰⁸ Exhibit No. JT-1T at 42:1-2 (Colamonici).

¹⁰⁹ Exhibit No. JT-1T at 37:1-2 (Colamonici).

¹¹⁰ Exhibit No. JT-1T at 23:20-23 (Gomez).

¹¹¹ *Id.* at 24:4-5. Mr. Gomez testifies that:

Staff’s reference to “tens of millions” reflects the range of possible savings for the project which are dependent on the different assumptions of the cost of acquiring additional gas pipeline transmission capacity, the final actual costs for

peaking facility appears to be a cost-effective way to meet customers' peaking requirements." Mr. Gomez cautions, however, that:

The Settlement Stipulation only provides the terms and conditions under which PSE has the opportunity to pursue the Tacoma LNG Facility. It is PSE, and PSE alone, that must decide how and whether to move forward. The Settling Parties are not approving a project, and the Settlement Stipulation expressly reserves the Settling Parties' rights to challenge the financial prudence and reasonableness of the Tacoma LNG Facility in future Commission proceedings.¹¹²

Mr. Gomez testifies that "Staff also investigated a stand-alone peaker sized to meet core gas customer requirements and sited elsewhere in PSE's service territory and found it not to be cost effective when compared to the planned facility at the Port of Tacoma."¹¹³

102 BWMQ, analyzed among other things, pipeline transportation costs to the PSE geographic market and the costs of a stand-alone LNG peaker plant as alternatives to PSE's estimated costs for the Tacoma LNG Project. BWMQ reviewed and used PSE's cost model to analyze ten different pipeline rates, based on information provided by Northwest Pipeline and Westcoast Energy.¹¹⁴ They also interviewed the two major interstate pipeline operators in order to update the technical and cost assessments of PSE's modelling of incremental pipeline capacity in today's environment. Subject to the caveat that "[c]onsiderable uncertainty exists regarding the cost of incremental natural gas pipeline capacity,"¹¹⁵ BWMQ found that:

the facility, and the degree to which Puget LNG is successful in marketing the remaining unsubscribed balance of the Tacoma LNG Facility. *Id.* at 24:19-25:2.

¹¹² *Id.* at 25:21-26:5 (Gomez).

¹¹³ *Id.* at 25:6-9 (Gomez). Although Public Counsel's witness, Ms. Colamonici, does not elaborate on the point, she testifies that "the Tacoma LNG Facility appears to present 'the least cost alternative for PSE Core Gas Customers' based on the information available in this proceeding." *Id.* at 36:8-11 (Colamonici).

¹¹⁴ Exhibit No. JCW-2C at 2.

¹¹⁵ *Id.* at 5. BWMQ explains that this uncertainty exists "because there are no recently authorized FERC natural gas pipeline projects nor pending greenfield or expansion projects in the Pacific Northwest market that are relevant to this examination. Further, the need for additional capacity is subject to a myriad of factors." Indeed, BWMQ observes that "PSE utilized transportation rates for incremental pipeline capacity on Westcoast and Northwest that are higher than incremental pipeline capacity should cost on those two systems." *Id.* at 11.

Under each scenario tested, the Tacoma LNG cost model demonstrates that the LNG Project has a cost advantage over a pipeline expansion alternative for the PSE Core Gas Customers. Two additional scenarios demonstrate that the LNG Project has a cost advantage for PSE's Core Gas Customers over a pipeline expansion alternative even if the capacity for third party LNG fuel sales is unsubscribed.¹¹⁶

This finding is based on a comparison of the 25-year and 40-year net present value of the PSE core gas customers' allocated costs of the Tacoma LNG Facility to the projected cost of incremental pipeline capacity assumed in BWMQ's scenarios.

103 BWMQ's findings with respect to the comparative costs of a stand-alone LNG peaker facility depend in part on two analyses prepared, respectively, by consulting firms Mott MacDonald and Northstar Industries. They evaluated the costs of a plant with design criteria comparable in scope to the proposed Tacoma LNG Facility and, separately, a plant based on the following criteria: a 6.3 million gallon LNG storage tank versus 8.0 million for Tacoma LNG, liquefaction scaled down from the Tacoma LNG Facility, regasification capacity of 66,000 Dth per day, truck loading facility (1 rack), and no cryogenic line or associated facilities to serve the marine fuel market.¹¹⁷

104 PSE's expected share of the costs of the Tacoma LNG Facility, as shown above in Table Two, is \$133.7 million. Mott MacDonald's estimate for a stand-alone facility is \$138.8 million and Northstar Industries estimate is \$154.1 million. BWMQ, however, cautions that these cost estimates are not rigorous and are more generic in nature than precise.¹¹⁸

¹¹⁶ *Id.* It appears from Appendix D to BWMQ's report, however, that "unsubscribed" capacity is exclusive of the capacity required to serve TOTE.

¹¹⁷ *Id.* at 3, 12.

¹¹⁸ According to BWMQ:

The Mott MacDonald and Northstar estimates show great variance from the [PSE] estimate, especially regarding major cost items. BWMQ believes that the estimates it received from Mott MacDonald and Northstar Industries are not reasonable comparisons to the CB&I/PSE estimate of the Tacoma LNG facility, given the short timeframe and the paucity of data that BWMQ was able to furnish to the two parties due to confidentiality concerns.

Id. at 13.

While this part of BWMQ's analysis is not definitive,¹¹⁹ it does lend support to the joint testimonies of Mr. Gomez and Ms. Colamonici that the Tacoma LNG Facility appears to present a cost-effective means to provide a peaking resource to PSE's customers relative to the costs of a stand-alone peaker.

105 Again, Mr. Gomez cautions in his testimony, quoted above, that the prudence of PSE's decision to proceed with construction of the Tacoma LNG Project as a least-cost alternative to meet its customers need for peak capacity resources is a question that the Commission must determine at a later date with full participation by the Settling Parties and others who may intervene in the general rate case or other proceedings in which the question is presented. This reservation of rights militates in favor of our approving the Settlement Stipulation even though the record falls short of being definitive on the question of prudence, including the question whether a shared peaking facility, as proposed, is the least-cost alternative to meet PSE's customers' peaking requirements.

3. Cost Allocation

106 BWMQ reviewed the filed Cost of Service, Capital Cost Allocations, and Operating Cost Allocations for the Tacoma LNG Project. BWMQ finds that PSE followed its Commission approved cost allocation methodology from Docket Nos. UE-960195 and U-072375 and BWMQ finds this cost allocation methodology to be consistent with traditional regulatory definitions of just and reasonable. However, BWMQ believes that Puget LNG should bear the risk for the capacity related to the TOTE contract and capacity for other LNG fuel sales. Thus, BWMQ recommended that PSE's filing should be revised and the Washington Commission's accepted cost allocation methodology employed after the PSE LNG Project costs are assigned to jurisdictional service and non-jurisdictional service (TOTE LNG fuel sales and third party LNG Fuel sales).¹²⁰

107 BWMQ's analysis of these questions elaborates on these points. Specifically, BWMQ states its belief that principles of cost causation and cost incurrence require Puget LNG to be responsible for the TOTE capacity and any sales to third parties. This is particularly

¹¹⁹ Mott MacDonald's estimate of the costs of the Tacoma LNG Facility is \$173.3 million and Northstar Industries' estimate is \$233.8 million, which should be compared to the CB&I/PSE's estimate of \$310.7 million to gain some sense of just how imprecise their estimates may be relative to PSE's own estimate of the total costs of the Tacoma LNG Facility. We note, however, that Mott MacDonald's and Northstar Industries' estimates appear to be conservative and most likely understate the costs of a stand-alone facility.

¹²⁰ Exhibit JCW-2C at 5-6.

true BWMQ says, because the proposed LNG facility is designed not just to meet PSE's need for a peaking resource, it is designed in significant part to serve the incremental loads associated with providing LNG transportation fuel services. BWMQ describes the proposed PSE LNG Project as a creative and worthwhile project, but observes that it carries a level of risk to PSE's jurisdictional ratepayers that is substantially higher than a pipeline capacity expansion investment.

108 The higher risk of unsubscribed capacity for the LNG facility and the risk of the TOTE contract should be borne solely by Puget LNG. There is no evidence that PSE has secured any additional contracts for the capacity identified since this proceeding began as being "unsubscribed." Moreover, now that the TOTE contract is being treated as a non-jurisdictional service, if the TOTE contract is prematurely terminated or TOTE goes into bankruptcy, Puget LNG would be at risk for cost recovery assigned to TOTE. BWMQ therefore states that in the best interest of the PSE ratepayers, the cost assignment issue should be settled before approval of the LNG facilities. We agree with its analysis and recommendations on this point.¹²¹

109 In assisting the Settling Parties to evaluate PSE's proposed allocation of the Tacoma LNG Project's capital costs, BWMQ found the cost allocators PSE supported through its prefiled testimony to be reasonable with the exceptions of the assignment of Truck Loading and Common Capital costs.¹²²

110 As previously noted, PSE initially supported an allocation of 25 percent of trucking capital costs to PSE, on the basis that LNG trucking will be used to support the Gig Harbor LNG facility and mobile LNG operations that support PSE gas system operations.¹²³ However, in discussions during the mediated phase of the Settling Parties' negotiations, they agreed that a 5 percent allocation of the trucking costs to PSE is appropriate.¹²⁴

111 PSE initially used the weighted costs of liquefaction and storage to allocate common costs. BWMQ, however, recommended that PSE should allocate the common capital costs based on the weighted costs of liquefaction, storage, bunkering, truck loading and

¹²¹ Exhibit No. JCW-2C at 17.

¹²² Exhibit No. JCW-2C at 17.

¹²³ See *supra* n.54.

¹²⁴ Exhibit No. JCW-2C at 18.

vaporization. This allocation of common costs, to which the Settling Parties agreed, reduces the PSE's cost responsibility from 46 percent to 43 percent.¹²⁵

112 Also based in part on BWMQ's analysis, the Settling Parties agreed to use the capital cost allocators to allocate O&M costs, including maintenance, labor, lease, insurance, electricity, and similar costs.¹²⁶

113 Mr. Finklea testifies that is very important to NWIGU that the Settling Parties acknowledge and agree that the costs of certain distribution system upgrades associated with the Tacoma LNG Facility should be allocated in accordance with the principle of cost causation.¹²⁷ As previously discussed, NWIGU and PSE agree that the 16-Inch Line and the Bonney Lake Lateral Improvements are required only because of the Tacoma LNG Facility. Because other parties do not agree with this proposition, the Settling Parties agreed that provisions in the Settlement Stipulation concerning the treatment of these costs will bind only PSE. Other parties expressly reserve their rights to take any position they wish in future proceedings that consider the treatment of these costs.

114 PSE agrees that in all retail class cost of service studies used to set retail gas sales and transportation delivery tariff rates, the Company will propose to allocate the costs of each of the 16-Inch Line and the Bonney Lake Lateral Improvements identified and recorded in the subaccount of FERC Account 376 in a manner consistent with the interclass allocation of the costs of the Tacoma LNG Facility.¹²⁸ PSE will support the interclass allocation of the Tacoma LNG Facility costs only to sales customers on the basis of their contribution to PSE's total retail design day system peak demand (Dth/day).¹²⁹ If, however, a retail natural gas transportation customer of PSE, such as Tacoma LNG, takes retail natural gas transportation service along the 16-Inch Line, then PSE will propose rates to be paid by the specific retail natural gas transportation customer or customers that will recover a portion of the costs associated with the 16-Inch Line.¹³⁰

¹²⁵ Exhibit No. JCW-2C at 18.

¹²⁶ Exhibit No. JCW-2C at 18. *See also* Settlement Stipulation, Attachment B, Joint Ownership Agreement Term Sheet at 2, Operating Costs and Expenses.

¹²⁷ Exhibit No. JT-1T at 43:18-20 (Finklea).

¹²⁸ Exhibit No. JT-1T at 44:5-10 (Finklea).

¹²⁹ Exhibit No. JT-1T at 44:10-12 (Finklea).

¹³⁰ Exhibit No. JT-1T at 44:12-16 (Finklea).

4. Public Interest Standard

115 It is fair to observe that once preliminary discussions among the parties after the Company's initial filing failed, PSE faced stiff opposition to the idea of a shared LNG facility that would serve both PSE's regulated core gas customers and other customers on an unregulated basis. Indeed, after reviewing PSE's brief in support of the Company's proposal and other parties' briefs opposing PSE, the Commission rejected PSE's original proposal in Order 04 in this docket. The Commission, however, recognizing that the potential benefits of an LNG project that could serve PSE's core customers' peaking needs and promote the Legislature's stated finding in RCW 80.28.280¹³¹ that the development of liquefied natural gas vessel refueling facilities is in the public interest, expressly provided the parties an opportunity to explore further whether there might be alternative business models with structures that would fall under the Commission's jurisdiction. The Commission recognized that while its core function in regulating gas and electric companies is as an economic regulator, it also has authority, and a responsibility in certain circumstances such as in reviewing integrated resource plans, to consider environmental externalities, including non-energy benefits, , affected by its decisions.¹³²

¹³¹ RCW 80.28.280 states:

Compressed natural gas—Motor vehicle refueling stations—Public interest.

(1) The legislature finds that compressed natural gas and liquefied natural gas offers [offer] significant potential to reduce vehicle and vessel emissions and to significantly decrease dependence on petroleum-based fuels. The legislature also finds that well-developed and convenient refueling systems are imperative if compressed natural gas and liquefied natural gas are to be widely used by the public. 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. Except as provided in subsection (2) of this section, nothing in this section and RCW [80.28.290](#) is intended to alter the regulatory practices of the commission or allow the subsidization of one ratepayer class by another.

(2) When a liquefied natural gas facility owned by a natural gas company serves both a private customer operating marine vessels and the Washington state ferries or any other public entity, the rate charged by the natural gas company to the Washington state ferries or other public entity may not be more than the rate charged to the private customer operating marine vessels.

¹³² See RCW 19.280.030; RCW 19.280.020(11). In reviewing whether a utility's integrated resource plan meets statutory requirements, the Commission must determine whether utilities have identified resources to meet the projected load at the "lowest reasonable cost", which must

- 116 Given the direction of the legislature in this connection, the Commission recognized that there are significant environmental benefits to converting highly-polluting bunker oil-fueled ships to LNG and expressed its desire to explore their development within the scope of Commission authority. Fundamentally, however, the Commission is an economic, not an environmental regulator. Thus, while we determined it appropriate to conduct additional process following rejection of PSE's original proposal as a matter of law, the direction provided for going forward was that whatever business model was chosen, PSE would still maintain its ultimate responsibility under the regulatory compact to provide safe, reliable natural gas service at reasonable rates.
- 117 What followed from Order 04 was a commendable level of effort by the parties over the ensuing 10 months. This included, during the final several months of negotiation, the parties' engagement of an independent mediator and the energy consulting BWMQ to serve as an independent technical consultant. Seven mediated conferences were held in Olympia and five telephonic mediation conferences occurred during the period June to September 2016. The mediator also conducted one or more conferences with parties individually. Mr. Gomez testifies that Staff, overall, put more than 1,500 hours of effort into preparing and reviewing filings, conducting discovery, consulting with technical experts, and negotiating with other parties.¹³³ Public Counsel, NWIGU, and PSE no doubt devoted similar levels of resources to the parties' collective efforts.¹³⁴
- 118 Staff's position, considering this substantial effort, is that the terms of the Settlement Stipulation adequately protect PSE's ratepayers and allow PSE to go forward with a shared peaking facility that has the potential to provide to ratepayers beneficial synergies and cost savings relative to alternatives. Mr. Gomez testifies that three important features demonstrate that Commission approval of the Settling Parties' agreement is in the public interest:

consider "resource cost, market-volatility risks, demand-side resource uncertainties, resource dispatchability, resource effect on system operation, the risks imposed on the utility and its ratepayers, public policies regarding resource preference adopted by Washington state or the federal government, *and the cost of risks associated with environmental effects including emissions of carbon dioxide.*" Emphasis added.

¹³³ Exhibit No. JT-1T at 23:15-18 (Gomez).

¹³⁴ ICNU's members are not natural gas customers of PSE and may have required fewer hours of effort to protect their interests in this proceeding. We nevertheless note our appreciation for the organization's participation.

- Puget LNG and its parent company, Puget Energy, commit to hold PSE's ratepayers harmless from any loss or liability caused by unregulated activities at the Tacoma LNG Facility.
- PSE and Puget LNG are required to maintain adequate insurance on the facility.¹³⁵
- The Settlement Stipulation preserves the parties' ability to challenge the prudence of any costs associated with the Tacoma LNG Facility.¹³⁶

We have discussed above the details of these features of the Settlement Stipulation, the testimony and recommendations of Staff and other parties, and some of our analysis and comments related to them.

119 Ms. Colamonici's testimony discussing why Public Counsel believes the Settlement Stipulation is in the public interest follows along similar lines to Staff. Ms. Colamonici observes that:

The Settlement Stipulation became possible only after the parties engaged in several technical conferences and mediated sessions to discuss the details of PSE's proposal, the parties' interests and concerns, and several alternatives to resolve the matter. The resulting Settlement Stipulation is the product of the give and take of negotiation.¹³⁷

She states that the hold harmless provision of the Settlement Stipulation is of particular importance to Public Counsel. Ms. Colamonici elaborates on this general point, giving testimony that Puget Energy will hold PSE ratepayers harmless from the liabilities and financial losses of any non-regulated activity of the Tacoma LNG Facility, from all liabilities and financial losses resulting from the sale or assignment of assets of Puget LNG to a third party, and in circumstances under which Puget LNG (or successors) become insolvent or is unable to pay its debts, files bankruptcy or similar proceedings, discontinues its business, a receiver is appointed, or there is an assignment for the benefit of Puget LNG's creditors.¹³⁸ She concludes that from Public Counsel's perspective,

¹³⁵ The Settlement Stipulation affirmatively requires Puget LNG to carry adequate insurance, but is silent as to PSE. Mr. Garratt testifies that "all the parties understood, it was a basic assumption that PSE would carry insurance for this facility." TR. 271:13-15.

¹³⁶ Exhibit No. JT-1T at 24:10-15 (Gomez).

¹³⁷ Exhibit No. JT-1T at 36:4-8 (Colamonici).

¹³⁸ *Id.* at 36:13-373 (Colamonici).

“insulating PSE ratepayers from the risk of the unregulated activity at the Tacoma LNG Facility is key to meeting the public interest standard in this case.”¹³⁹

120 Mr. Finklea testifies that NWIGU wished to test the assumptions and facts underlying PSE’s proposal to develop the Tacoma LNG Facility to determine if the proposal is in the public interest. In particular, NWIGU wanted to understand whether and how the Tacoma LNG Facility would impact industrial transportation customers who do not otherwise benefit from a peaking facility.¹⁴⁰ According to Mr. Finklea, the advice and guidance of Brown, Williams, Moorhead, & Quinn, Inc., enabled the parties to address NWIGU’s questions and concerns.

121 As in the cases of Staff and Public Counsel, requiring PSE to hold its customers harmless from the liabilities and financial losses of any non-regulated activity of the Tacoma LNG Facility, including the sale or assignment of the assets of Puget LNG to a third party and circumstances in which Puget LNG or any successor to Puget LNG becomes insolvent or is unable to pay its debts when due, discontinues its business or files a petition in bankruptcy, reorganization or similar proceedings, was an important consideration for NWIGU.¹⁴¹ Mr. Finklea testifies also that:

From NWIGU’s perspective, this transaction is made possible because of assets paid for through customer rates, and therefore the benefits should flow to gas customers. Further, to the extent PSE receives payment from Puget LNG in excess of its Ownership Share, PSE has agreed that such benefits will flow to PSE customers.¹⁴²

It accordingly was important to NWIGU that PSE dropped its request to share between PSE’s investors and customers the portfolio benefits associated with the Tacoma LNG Facility.¹⁴³

122 Finally, on the question of public interest, Mr. Finklea echoes other witnesses’ testimony that, importantly, the parties expressly reserved the right to challenge in future PSE rate

¹³⁹ *Id.* at 37:17-19 (Colamonici).

¹⁴⁰ *Id.* at 42:1-15 (Finklea).

¹⁴¹ *Id.* at 43:2-8 (Finklea).

¹⁴² *Id.* at 43:11-15 (Finklea).

¹⁴³ *Id.* at 43:9-11 (Finklea).

proceedings the prudence and recovery of any costs associated with the Tacoma LNG Facility.¹⁴⁴ Mr. Finklea concludes that:

The Settlement Stipulation represents a compromise between the parties based on the information provided in this proceeding, and supported by the analysis of Brown, Williams, Moorhead, & Quinn, Inc. NWIGU supports the Settlement Stipulation, believes it is in the public interest, and requests that the Commission adopt with Settlement Stipulation without modification.¹⁴⁵

- 123 PSE does not offer much analysis concerning why the Settlement Stipulation is in the public interest in its Joint Testimony through Mr. Garratt. Instead, he focuses on a more detailed analysis of the debt financing of the project, and the basis of the revised cost allocators under the JOA and why they are reasonable and in the public interest. Fundamentally, the Settlement Stipulation, in all its component parts, will enable PSE to participate as a tenant in common with Puget LNG in financing, owning, and operating the Tacoma LNG Facility. This has been the goal of the Company from the outset, a goal that, if realized, will benefit PSE's ratepayers, PSE's shareholders, and the broader public interest.
- 124 In the final analysis, in determining this project to be in the public interest, we consider the full record, including the record of public comments, examine all relevant laws, rules and precedents regarding the issues, utilize fully all of our abilities of analysis, and apply our informed judgment to make determinations in a dynamic assessment of the utility and energy industries as they evolve. Thus, what is, or is not, in the public interest is not a static determination or concept. We must assess it anew in every case and have carefully done so in this docket. We determine public interest is served in this case, among other reasons, because the Settlement Stipulation allows Puget Energy to engage in a new line of business that the legislature has declared to be in the public interest while at the same time protecting PSE's customers from potential liabilities that might arise from this new activity. Moreover, PSE's core gas customers will benefit directly from having additional capacity available to meet future peaking needs that must be addressed as they occur.

¹⁴⁴ *Id.* at 44:20-22 (Finklea).

¹⁴⁵ *Id.* at 45:2-6 (Finklea).

5. Public Comment

- 125 The Commission received written comments from more than 142 members of the public, including those opposed to the project and those supporting. In addition, the Commission held a public comment hearing in Olympia on October 19, 2016, attended by 59 people. Throughout the evening of our public comment hearing, we heard from private citizens, public officials, union representatives, and representative from various organizations.
- 126 The public comments ranged from those critical of the Settlement Stipulation because it changes two of the commitments made at the time PSE was acquired by an investment consortium in 2008, to those that find it continues to adequately protect PSE's ratepayers from financial harm. Other comments opposing not the Settlement Stipulation, but the project itself, focused on public safety, siting issues, impacts on property values.
- 127 To be sure, the public comments we received in this docket addressed both subject matter within our jurisdiction and subject matter that is simply outside our jurisdiction. Many individual comments touched on both.
- 128 Some individual comments touched only on matters over which we have limited regulatory authority. For example, some supporters of the project spoke to potential for job creation and economic development.¹⁴⁶ Others spoke to the health and environmental benefits of converting the current diesel ships serving Alaska from Tacoma to less carbon-emitting liquefied natural gas.¹⁴⁷ Some commenters also addressed that the proposed LNG facility is properly zoned.¹⁴⁸
- 129 Opponents of the facility raised issues regarding the impact on home values in nearby neighborhoods,¹⁴⁹ the risk of serious accidents at the facility,¹⁵⁰ and the health and

¹⁴⁶ See, e.g., comments by Dean McGrath, TR 315:15-317:10; Mark Martinez, TR. 317:23-318:19; Jeff Brown, TR. 396:15-399:8; Denise Dyer, TR. TR. 318:3-319:24; Todd Iverson, TR. 347:2-349:21.

¹⁴⁷ See, e.g., comments by Mark Martinez, TR. 317:23-318:19; Bruce Kendall, TR. 320:2-321:5; Denise Dyer, TR. TR. 318:3-319:24; Terry Oxley, TR. 322:15-324:19; Todd Iverson, TR. 347:2-349:21.

¹⁴⁸ See, e.g., comments of Jeff Brown, TR. 396:15-399:8; Javier Figueroa, TR. 363:17-366:23; David Schroedel, TR. 369:16-372:9.

¹⁴⁹ See, e.g., comments of Liz Biviano, TR. TR.359:1-360:23; Marilyn Kimmerling, TR. 382:10-385:5.

environmental impacts of the plant on community.¹⁵¹ Many opponents stressed that the state should not allow continued reliance on fossil fuels, and should demand utilities to increase reliance on renewable energy and conservation.¹⁵² Some argued that when one considers the carbon emissions that begin with the hydraulic fracturing process and continue through the time the fuel is burned, the use of LNG actually increases carbon emissions over what would have been emitted by ships using bunker fuel in their engines.¹⁵³

130 While we acknowledge the concerns raised by the commenters, we note that issues of zoning, safety, environmental policy, and economic development are not squarely within the purview of the Commission's jurisdiction in this case, which is to determine whether the proposed LNG facility will result in increased costs to PSE's retail natural gas customers and that the corporate structure proposed by the settling parties provides strong protections to customers against any losses, liabilities, or costs beyond those assigned to that portion of the facility serving the customers of the regulated utility.

131 Of those comments addressing matters within the Commission's jurisdiction, many focused on the need for peak shaving facilities. They noted that PSE had originally forecast the need for two to three days of peak load, then revised it to six days,¹⁵⁴ and questioned the reliability of these forecasts.

132 Supporters of the project at our public comment hearing also expressed their understanding that the Settlement Stipulation under consideration in this Order protects PSE's customers from financial harm and referred in addition to the public interest issue established by the legislature in RCW 80.28.280, quoted above. Mr. Dean McGrath, for example, stated in his capacity as president of the longshoreman's union, ILWU Local 23, that will load and unload the TOTE ships: "we are encouraged to see that TOTE first

¹⁵⁰ See, e.g., comments of Nanette Reetz, TR. 331:15-333:14; Richard Lovering, TR 338:6-341:3; Carol Colleran, TR. 344:11-346:9; Ann Vance Locsin, TR. 354:11-358:11; Phil Brooke, TR. 393:1-396:9; Liz Biviano, TR. TR.359:1-360:23; Roxy Murray, TR. 372:12-373:21.

¹⁵¹ See, e.g., comments of Richard Lovering, TR. 338:6-341:3;

¹⁵² See, e.g., comments of Roxy Murray, TR. 372:12-373:21; Tracy Wiegman, TR. 367:10-369:13; Dorothy Walker, TR. 341:9-344:7.

¹⁵³ See, e.g., comments of Claudia Riedener, TR. 327:9-330:19; Susan Ryan, TR. 375:23-379:5.

¹⁵⁴ See e.g., comments of Kristina Brown, TR. 334:25-337:15; William Kupinse, TR. 361:1-363:14; Ann Vance Locsin, TR. 354:11-358:11; Melissa Hubbard, TR. 379:9-382:5; LaDonna Robertson, TR. 325:7-326:20; Phil Brooke, TR. 393:1-396:9.

moved forward to have some environmental stewardship, but also that they are ready to open their facility for other carriers that try to, as they move forward, they are going to work with other carriers and the Port to supply them with a fuel alternative.”¹⁵⁵

133 By contrast, others, including Ms. Kristina Brown, a resident of Northeast Tacoma, urge us to “reject the proposal.”¹⁵⁶ With the caveat that we are not asked in this proceeding to approve the project as a prudent, least-cost investment to provide peak shaving capacity to PSE, we take Ms. Brown’s comments to the point she believes PSE should be limited to its core business. When PSE asks the Commission for a prudence determination and seeks recovery of the costs of this project in rates, Ms. Brown and others may wish to appear again to discuss concerns that better alternatives are available to satisfy peak shaving needs and the rate impacts the facility may have for customers. Ms. Brown also expressed concerns about “indirect costs” including pollution she believes the plant will cause to property values, health, and future industrial development. These important matters are concerns for other regulatory bodies, but the Commission has limited authority with respect to them.

134 We consider the public comments offered as being illustrative of public sentiment and provide an opportunity to identify issues the Commission may want to inquire further. As this is a formal adjudicative proceeding under RCW Chapter 34.05 and WAC Chapter 480-07, it must ultimately be decided on the basis of the evidentiary record considering the sworn testimony and exhibits filed by the parties to this proceeding. The balance of this Order is devoted to that decision making process.

C. Decision

135 WAC 480-07-730(1) defines a “full settlement” as an agreement of all parties that would resolve all issues in a proceeding and that is offered as their position in the proceeding along with the evidence they believe supports it.

136 The Commission approves full settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public

¹⁵⁵ Dean McGrath ,TR. 315:15-317:10; *see also* Mark Martinez ,TR. 317:23-318:19 ; Denise Dyer , TR. 318:23-319:24; Bruce Kendall ,TR. 320:2-321:5. We note that these speakers also addressed the benefits the Tacoma LNG Project promises in terms of “family wage jobs.” Community development, of course, is an important matter with which agencies other than the Commission are concerned.

¹⁵⁶ TR. 334:25-337:13.

interest in light of all the information available to the Commission. Ultimately, in settlements, as in fully-litigated rate cases, the Commission must determine that the results are in the public interest, as required by state law.

137 Thus, the Commission considers the individual components of the settlement under a three-part inquiry. We ask:

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy and, conversely, whether Commission approval and adoption of the Settlement Stipulation is in the public interest.
- Whether the evidence supports the proposed elements of the settlement as reasonable resolutions of the issues presented.

138 The Commission must reach one of three possible results:

- Accept the proposed settlement without condition.
- Accept the proposed settlement subject to one or more conditions.
- Reject the proposed settlement.

139 Therefore, we determine in this case that the terms and conditions of the Settlement Stipulation are lawful, supported by an appropriate record, and consistent with the public interest after we assess the entire record, including public comments, and use of best and informed judgment in weighing the evidence. We accordingly determine further that the Commission should approve and adopt the Settlement Stipulation as the Commission's resolution of the issues presented in this proceeding.

140 In addition, we recognize that the Commission and our Staff will have several further opportunities to assess and address issues associated with Puget LNG, LLC if and when it proceeds with development. First, we must review and approve the Joint Ownership Agreement (JOA) within 90 days after Puget LNG is formed. Second, we will also have the ability to review the more detailed Operations and Maintenance Agreement between PSE and Puget LNG governing the operation of the LNG facility, in order to ensure it meets our understand of the terms outlined thus far. Finally, our Staff, other parties, and the Commission reserve our rights to review the prudence of expenditures for this facility in the context of a future general rate case proceeding. In other words, the Commission has a number of mechanisms to evaluate whether the LNG facility is constructed prudently, operates on reasonable terms, and meets the goals and understandings set forth

in the Settlement Stipulation. We put all parties on notice that they should continue to devote the necessary resources to ensure that all of this is achieved timely and efficiently.

141 We do, however, find the need to provide guidance to the Company, and to the other parties to the Settlement Stipulation, concerning one point that will be addressed as they work together to finalize the Joint Ownership Agreement and joint operating agreement that will govern the Tacoma LNG Project going forward and the conduct of business at the Tacoma LNG Facility. In finalizing the plans for corporate governance, we find there should be a more explicit degree of independence in the governance structure for Puget LNG. This does not appear to have been considered fully, if at all, by the Settling Parties as of the hearing.¹⁵⁷ We determine here that at least one of the PSE members and one of the Puget LNG members of the board of managers should be independent and, therefore, not a member, stockholder, director, officer, or employee of Puget Holdings, Puget Energy, PSE, or any other affiliated businesses. Ideally, these independent directors, or at least one of them, will have knowledge and experience with LNG infrastructure, operations, marketing, or regulation.

FINDINGS OF FACT

142 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

- 143 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including natural gas and electrical companies.
- 144 (2) Puget Sound Energy (PSE) is a “public service company” and “gas company” as those terms are defined in RCW 80.04.010 and used in Title 80 RCW. PSE provides natural gas utility service to customers in Washington.¹⁵⁸
- 145 (3) On August 11, 2015, PSE filed a Petition for (i) Approval of a Special Contract for Liquefied Natural Gas Fuel Service with Totem Ocean Trailer Express, Inc.,

¹⁵⁷ See *supra* ¶¶ 91-93.

¹⁵⁸ Although not relevant here, PSE also is an electrical company as that term is defined in the referenced statute and used in Title 80 RCW,

and (ii) a Declaratory Order Approving the Methodology for Allocating Costs between Regulated and Non-regulated Liquefied Natural Gas Services. The Commission initiated Docket UG-151663 and set the matter for hearing.

- 146 (4) On September 30, 2016, PSE, Staff, Public Counsel, NWIGU, and ICNU filed a Settlement Stipulation that is attached to this Order as an Appendix and is incorporated into this Order by reference.
- 147 (5) The Settlement Stipulation, if approved and adopted by the Commission, would resolve all issues in this proceeding.
- 148 (6) On October 17, 2016, the Commission conducted an evidentiary hearing to consider the Settlement Stipulation and the evidence of record in this proceeding.
- 149 (7) The Settlement Stipulation establishes revised Commitments 56 and 58 that were part of the Commission's approval of PSE's acquisition in 2008 by an investment consortium, renews the Company's and its affiliates' agreements to adhere to Commitments 1-55, 57, and 59-63, and establishes new Commitments 64-68. These Commitments individually and collectively provide protections to PSE and its customers relative to its corporate affiliates and effect an appropriate balance of risks between PSE's customers and its owners.
- 150 (8) The record supports a finding that the Settlement Stipulation is in the public interest.

CONCLUSIONS OF LAW

151 Having discussed above all matters material to this decision, and having stated the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

- 152 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.
- 153 (2) The record in Docket U-072375 should be reopened for the limited purpose of amending certain Commitments approved and adopted by the Commission as conditions required to support approval of the acquisition of PSE by an investor consortium.¹⁵⁹

¹⁵⁹ *In the Matter of the Joint Application of Puget Holdings LLC and Puget Sound Energy, Inc., for an Order Authorizing Proposed Transaction*, Docket U-072375, Order 08 (December 30, 2008) (Merger Order).

- 154 (3) Commitments 56 and 58, as approved in the Merger Order, should be amended as discussed in the body of this Order.
- 155 (4) Commitments 1-55, 57, and 59-63, as approved in the Merger Order, are reaffirmed by this Order as continuing obligations of PSE and its corporate affiliates.
- 156 (5) New Commitments 64-68 are established by this Order and the Merger Order is amended by appending these Commitments to Attachment A to that Order.
- 157 (6) Commitments 1-68 are approved and adopted in this Order and attached to this Order as Attachment A.
- 158 (7) PSE should be authorized and required to make such compliance and subsequent filings as are necessary to effectuate the terms of this Order. Such filings include, for example, an appropriate petition, or petitions, seeking Commission approval of the Joint Ownership Agreement and the joint operating agreement under RCW 80.16.020, as discussed in the body of this Order.
- 159 (8) The Commission Secretary should be authorized to accept by letter, from time to time, with copies to all parties to this proceeding, filings that comply with the requirements of this Order.
- 160 (9) The Commission should retain jurisdiction over the subject matters and the parties to this proceeding to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS:

- 161 (1) The Settlement Stipulation filed by the parties to this proceeding on September 30, 2016, is approved as incorporated into this Order by prior reference.
- 162 (2) Commitments 1-55, 57, and 59-63, as approved in the Merger Order in Docket U-072375, are reaffirmed by this Order as continuing obligations of PSE and its corporate affiliates.
- 163 (3) Docket U072375 is reopened for the limited purpose of amending Order 08, the Final Order in Docket U072375, by revising merger Commitments 56 and 58, as follows:
56. Puget Energy shall not operate or own any business other than PSE and Puget LNG, LLC (“Puget LNG”). Puget LNG shall be a special purpose entity formed by Puget Energy solely for the purposes of owning,

developing, and financing, as a tenant-in-common with PSE, an LNG facility at the Port of Tacoma (the “Tacoma LNG Facility”).

58. Joint Applicants commit that the current and any future capital expenditure credit facilities will by their terms limit the use of such funds only for financing PSE capital expenditures of PSE and Puget LNG, LLC. Quarterly officer certificates under each of the credit facilities of Puget Energy and PSE will be made available to the Commission and other interested parties, upon request and subject to the protective order in Docket No. U-072375.

- 164 (4) Commitments 64-68, as discussed in the body of this Order, are approved and adopted.
- 165 (5) The Commission Secretary is authorized to accept by letter, with copies to all parties to this proceeding, filings that PSE makes from time to time to comply with the requirements of this Order.
- 166 (6) The Commission retains jurisdiction over the subject matters and parties to this proceeding to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective October 31, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.

APPENDIX A

SETTLEMENT STIPULATION

DOCKETS UG-151663