

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY

Respondent.

**Docket No. UE-151871
Docket No. UG-151872
(consolidated)**

**INITIAL BRIEF OF
PUGET SOUND ENERGY**

AUGUST 30, 2016

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I. INTRODUCTION

1 On September 18, 2015, Puget Sound Energy (“PSE”) filed tariffs WN U-60 Schedule 75
and WN U-2 Schedule 175 to offer an optional service whereby customers could lease from
PSE water heaters, furnaces, and heat pumps, many of which are energy efficient. The service
responds to customer interest and demand for an equipment leasing option and offers
numerous benefits to participating customers such as providing customers with an affordable
way to acquire new energy-efficient equipment and providing customers with comprehensive
maintenance, repair, and warranty service unmatched in the industry.

2 PSE’s proposed service addresses a significant market gap. Thousands of households in
PSE’s service area are using outdated equipment beyond its useful life. By offering customers
an alternative mechanism to acquire energy-efficient equipment, PSE’s leasing service would
help bridge this gap. The infusion of energy-efficient equipment would also yield significant,
quantifiable benefits to participants and non-participants, including energy conservation
benefits, avoided emissions, and avoided generation and distribution capacity costs.

3 PSE proposes this service with an eye to the future. In an era where energy efficiency is
the priority, PSE believes that it is imperative to take advantage of developing technologies
and provide affordable ways for customers to acquire these technologies. The leasing
platform has the potential to allow PSE to reach beyond water heaters and HVAC equipment,
upon Commission approval, and lease equipment such as solar panels, battery storage, and
electric vehicle chargers. By offering customers new technologies through leasing, PSE can
better place these technologies in customer homes, leading to improvements in system-wide
efficiency and interconnectedness across the energy grid.

4 Commission Staff (“Staff”) and the other parties to this case, however, claim these
benefits are not substantial enough. They ignore customer demand for the service and the

significant program benefits. Instead, Staff opposes PSE’s proposal by relying on recycled legal arguments as to whether public utilities can engage in leasing. But that issue has been settled by the Commission and the Washington Supreme Court for over fifty years, and public service companies have leased water heaters and other equipment for decades.

5 After nearly a year of litigation, Staff and the other parties are not clear as to what they want. On the one hand, Staff criticizes PSE’s proposed service for not being similar enough to past programs, while on the other hand, they criticize PSE for not being forward looking. Yet, as Staff acknowledges, the utility industry is “an industry in transition.”¹ To survive, public utilities will need to develop new ways to diversify their revenue bases, including “beyond [their] historical core business model [with] . . . new revenue streams,”² and accordingly, the Commission may need to “evolve from its traditional regulatory framework.”³

6 The intervenors fare no better. They criticize PSE’s leasing proposal for not offering customers enough equipment options, yet paradoxically, by opposing leasing, they are inhibiting customer choice by refusing to let customers determine whether leasing—an option not currently offered in the marketplace—works for them. Rather than constrain customer choice by opposing leasing, they should support PSE’s proposal, which partners with contractors to expand the market through accelerated replacement of equipment.

7 PSE’s proposed service is both grounded in the past and focused on the future. Equipment leasing is, as a matter of law, a legitimate function of a regulated utility, as demonstrated by decades of use by Washington utilities, and is still offered by PSE today. Accordingly, PSE is proposing leasing at this time to help solve significant issues relating to

¹ Cebulko, Exh. No. BTC-1THC, at 41:21.

² *Id.* at 41:2-4.

³ *Id.* at 41:20-21.

overcoming customer barriers to acquire new, more efficient equipment; to establish a platform for offering additional energy equipment and new technologies in the future; and to diversify its service offerings and revenue base. These are all legitimate and worthwhile justifications for offering leasing.

8 The evidence demonstrates that PSE’s leasing service is consistent with the public interest because it responds to customer demand and provides significant, quantifiable and nonquantifiable benefits to participants who alone bear the cost for the service, while also providing significant societal benefits to all non-participating customers. Further, the rates provided are fair, just, reasonable, and sufficient because they are based on actual costs provided by licensed service providers for a service that provides a turn-key water heating and HVAC⁴ equipment service with an unparalleled, comprehensive maintenance, repair, and warranty. Accordingly, the Commission should approve PSE’s equipment leasing service.

II. STATEMENT OF FACTS

A. PSE Has Provided End Use Equipment Services to Customers Since The 1940s

9 PSE and its predecessor companies have been providing optional, end-use equipment services to customers as a regulated service for more than half a century. In the 1940s, one of PSE’s predecessor companies, Puget Power & Light Co. (“Puget Power”), began providing customers an optional “Storage Water Heating Service,” which, for a monthly charge, the company would furnish a time switch that connected to the customer’s water heater and would activate the water heater.⁵ In 1961, one of PSE’s other predecessor companies, Washington

⁴ “HVAC” refers to “heating, ventilation, and air conditioning.”

⁵ Puget Sound Power & Light Co., W.D.P.S. No. 46, 4th Revised Sheet No 6 (Dec. 30, 1940), Schedule 6, Storage Water Heating Service. As a condition to the service, the company was required “[t]o provide adequate and economical hot water service for the customer, the tank, and heater, if external, shall be covered with sufficient heat insulation, as provided by the Company. . . . All water heating installations and equipment shall be subject to the approval of the Company as to the type and capacity of heating units, tanks, controls and insulation.” *Id.*

Natural Gas (“WNG”), began offering customers natural gas conversion burners for rent.⁶ In 1964, WNG expanded its equipment offering to include gas circulating heaters, furnaces, and water heaters.⁷ In 1965, Puget Power began also offering electric water heaters for lease.⁸ The service was offered to all customers, “except those occupying mobile or temporary premises.”⁹ The company retained ownership of the equipment throughout the lease term.¹⁰ In 1997, WNG and Puget Power merged, forming PSE. PSE discontinued the electric water heater leasing program but continued the WNG program. In 2000, PSE closed the program to new customers. Today, over 33,000 customers continue to rent equipment from PSE.¹¹

10 In addition to its existing equipment leasing program, PSE currently provides a variety of other optional end-use services to customers. PSE and other public utilities in Washington also offer a variety of in-home, end-use equipment inspection and repair services.¹² PSE’s service includes “minor repairs to heating and water heating equipment.”¹³ PSE also leases lighting fixtures and accessories, as well as transformers.¹⁴

⁶ *Cole v. Wash. Utils. & Transp. Comm’n*, 79 Wn.2d 302, 304 (1971).

⁷ *Id.* The equipment lease included any “normal” installation costs, maintenance and repair service, and replacement if the equipment failed. The cost was simply added to the customer’s bill. A “normal” installation did not include “any changes, modifications or upgrading of the distribution system.” The customer was responsible for any “excess cost.” Englert, Exh. No. EEE-3T, at 15:8-16; Exh. No. EEE-4 (*Cole v. Wash. Natural Gas Co.*, No. U-9621 (1968) (Opening Brief of W.W. Cole, et al, Plaintiffs, In Support of Plaintiffs’ Position Herein, Exhibits).

⁸ Puget Sound Power & Light Co., WN U-51, Electric Tariff A, Original Sheet No. 4, Washington Utilities & Transportation Commission (Jan, 19, 1965).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Norton, Exh. No. LYN-1T, at 16:6-8, 25:12-16; Englert Exh. No. EEE-3T, at 22:1.

¹² In Rule No. 2 Definitions (Sheet No. 12-A), PSE is specifically allowed to conduct safety and inspection services for customers that occur on the customer side of the meter. See Rule No. 24, http://pse.com/aboutpse/Rates/Documents/gas_rule_24.pdf. Notably, other utilities such as Avista and Northwest Natural Gas conduct similar natural gas appliance inspections on the customer side of the meter. See [https://www.nwnatural.com/uploadedFiles/AboutNWNatural/RatesAndRegulations/WashingtonTariffBook/GeneralRulesAndRegulations/6Sheet9.1\(1\).pdf](https://www.nwnatural.com/uploadedFiles/AboutNWNatural/RatesAndRegulations/WashingtonTariffBook/GeneralRulesAndRegulations/6Sheet9.1(1).pdf) and <https://avistautilities.intelliresponse.com/index.jsp?interfaceID=1&requestType=NormalRequest&id=1245&source=9&question=appliance>.

¹³ Rule No. 24, http://pse.com/aboutpse/Rates/Documents/gas_rule_24.pdf.

¹⁴ Englert, Exh. No. EEE-1T, at 3:1-8:11; Exh. No. EEE-3T at 25:10-26:10; TR. 467:17-468:13.

B. PSE Determines That Offering Additional Equipment Leasing Options Would Help Satisfy A Market Gap, Meet Customer Demand, And Achieve Company Goals

11 In 2014, PSE began evaluating the possibility of offering additional equipment leasing options to customers. This consideration was spawned by a confluence of different factors driven by external market forces and Company dynamics.

12 First, since PSE closed its existing rental program to new customers in 2000, customers have been requesting that PSE again offer equipment leasing service.¹⁵ And, the 33,000 customers who continue to lease water heaters from PSE demonstrate the continued interest.

13 Second, PSE reviewed data obtained by the Northwest Energy Efficiency Alliance (“NEEA”) as part of a comprehensive study of Northwest residential building characteristics.¹⁶ By analyzing data compiled during this study, PSE determined that as much as 40% of the residential water heating and HVAC equipment currently in use in the market was fifteen years old or older.¹⁷ The data revealed that many customers were simply not replacing aging water heating and HVAC equipment.¹⁸ In some cases, customers were using equipment that far exceeded its useful life.¹⁹

14 There are many reasons why customers do not replace aging equipment. Some customers are either unable to replace their equipment due to the significant financial costs of purchasing water heating or HVAC equipment.²⁰ Other customers are dissatisfied with current market

¹⁵ TR. 359:2-10; Norton, Exh. No. LYN-1T, at 29:1-3.

¹⁶ Letter from Ken Johnson to Steven J. King (Nov. 6, 2015); Teller, Exh. No. JET -1T, at 7:4-20; Exh. No. JET-3.

¹⁷ Teller, Exh. No. JET-1T, at 7:4-20; Norton, Exh. No. LYN-1T, at 10:13-21, 13:1-10; McCulloch, Exh. No. MBM-1T, at 4:3-10; Letter from Ken Johnson to Steven J. King (Nov. 6, 2015). The parties dispute how PSE has calculated this percentage and spent an inordinate amount of time at the hearing on this issue. But no party disputes that there are thousands of customers who are using water heating and HVAC equipment in the region that is fifteen years or older. For gas forced air furnaces, for example, whether the percentage is 23% as opposed to 40%, it still represents thousands of old units. See Wigen, Exh. No. AJW-1T, at 3-11. If PSE’s leasing service can even reach a small percentage of these customers, the program has benefited customers and society.

¹⁸ Teller, Exh. No. JET-1T, at 7:13-20; Wigen, Exh. No. AJW-1T, at 3-11, 4:16-5:2.

¹⁹ Teller, Exh. No. JET-1T, at 7:13-20.

²⁰ *Id.* at 9:1-10; Wigen, Exh. No. AJW-1T, at 4:10-15, 7:4-7; Faruqui, Exh. No. AF-1T, at 5:8-6:16.

options or are overwhelmed with the equipment purchasing process.²¹ Most homeowners have never purchased water heating or HVAC equipment before and are uninformed about equipment options and the type of equipment their home needs.²² Unfortunately, this often leads to customers delaying replacement until the equipment fails which can lead to uninformed equipment choices at inopportune times.²³ In these situations, customers are also less inclined to fully consider higher efficiency equipment options.²⁴ In addition to inconvenience, there are numerous potential dangers associated with the failure of water heating or HVAC equipment.²⁵ PSE determined that leasing could help address this market gap by providing customers with an affordable option to acquire new, energy-efficient equipment before equipment failure, with no or limited upfront cost.²⁶

15 Third, with the rapid evolution of energy-efficient technologies, including water heating and HVAC equipment, power generation and storage systems such as solar panels and batteries, and integrated network solutions such as Demand Response, leasing provides a platform by which PSE could flexibly offer these products to customers, or test other new technologies on a permanent or experimental basis.²⁷

16 Finally, as Staff has explained, the “[electric and gas utility] industry is in transition.”²⁸ PSE believes that the utility of the future will be different than public utilities were in the past and will need to be more diversified, flexible, and reliable than ever before.²⁹ Instead of

²¹ Wigen, Exh. No. AJW-1T, at 4:1-5:14; Teller, Exh. No. JET-1T, at 9:11-22; Norton, Exh. No. LYN-1T, at 13:14-14:10; McCulloch, Exh. No. MBM-7THC, at 6:6-7:4.

²² Wigen, Exh. No. AJW-1T, at 4:1-5:14; Teller, Exh. No. JET-1T, at 9:11-22.

²³ Teller, Exh. No. JET-1T, at 7:1-7; 9:1-6; 10:1-10; Wigen, Exh. No. AJW-1T, at 2:17-3:2.

²⁴ Teller, Exh. No. JET-1T, at 7:1-7; 8:14-20.

²⁵ *Id.* at 7:8-20; 8:8-13; Wigen, Exh. No. AJW-1T, at 3:12-21.

²⁶ Teller, Exh. No. JET-1T, at 10:11-11:6; Norton, Exh. No. LYN-1T, at 10:13-11:16.

²⁷ Norton Exh. No. LYN-1T, at 5:11-15, 7:13-19.

²⁸ Cebulko, Exh. No. BTC-1THC, at 41:21; Norton, Exh. No. LYN-1T, at 6:7-9.

²⁹ Norton, Exh. No. LYN-1T, at 3:7-4:12, 7:4-12; 14:11-15:2.

promoting ways to increase energy usage, the focus of the future is using new technologies to improve energy efficiency.³⁰ Utilities will need to be better equipped to manage and find ways to improve efficiencies across the entire energy grid, from the power generation hubs to the actual equipment used by customers in their homes.³¹ In addition, with a leveling or even decrease in future capacity needs,³² to remain strong and solvent, utilities will need more diverse revenue bases.³³ As observed by Staff, “it may be necessary that the Commission evolve from its traditional regulatory framework to accommodate an industry in transition.”³⁴ PSE’s proposed leasing service can provide infrastructure to better interconnect efficient equipment to the system, while also diversifying and strengthening PSE’s revenue base.³⁵

C. PSE Conducts Market Analysis To Evaluate Program Potential

17 In May 2014, PSE conducted a market survey with an established PSE residential customer panel to better understand customer needs and preferences relating to water heating and HVAC equipment and to test customer interest in a new leasing service.³⁶ Over 800 customers answered questions relating to HVAC equipment and nearly 800 answered questions relating to water heaters.³⁷ The survey results were informative:

- Overall, 32% of customers were interested in leasing water heaters;³⁸
- Overall, 20% of customers were interested in leasing HVAC equipment;³⁹

³⁰ Norton, Exh. No. LYN-1T, at 3:11-22.

³¹ *Id.*

³² *Id.* at 4:1-9; 14:11-15:2.

³³ *Id.*

³⁴ Cebulko, Exh. No. BTC-1THC, at 41:20-21; Norton, Exh. No. LYN-1T, at 4:13-5:2, 6:5-7:3.

³⁵ Norton, Exh. No. LYN-1T, at 10:4-12.

³⁶ McCulloch, Exh. No. MBM-7THC, at 32:1-8; Exh. No. MBM-18 (PSE Response to SMACNA Data Request No. 028).

³⁷ *Id.*, Exh. No. MBM-18 (PSE Response to SMACNA Data Request No. 028), at 23.

³⁸ *Id.* at 22, 37-40.

³⁹ *Id.* at 25, 28-29.

- Customers value the “peace of mind” that comes from comprehensive maintenance, repair, and warranty service;⁴⁰
- Access to energy-efficient equipment was highly important to respondents as 80% identified it as “important” or “very important” and it was one of the top two reasons customers would acquire new equipment;⁴¹
- Equipment brand was not important to customers. Most either had neutral opinions about brand or did not recognize brands, and most did not know the brand of their own water heating or HVAC equipment brand;⁴² and
- Customers do not want large out-of-pocket costs for water heating and HVAC equipment and would rather pay more overall for monthly payments.⁴³

D. PSE Files Tariff WN U-60 Schedule 75 And WN U-2 Schedule 175

18 On September 18, 2015, PSE filed tariffs WN U-60 Schedule 75 and WN U-2 Schedule 175 to offer electric and natural gas equipment lease services to customers. Because PSE could not enter into service contracts prior to Commission approval of the service and thus did not have rate information, PSE filed the tariff using a phased approach.⁴⁴ Initially, the tariff would contain a description of equipment offerings and rate methodology, and upon approval of the service and product categories, PSE would then update the filing with rates.⁴⁵

19 In response to PSE’s market analysis and customer needs, PSE designed the program to (1) address the significant market gap of customers not replacing aging water heater and HVAC equipment; (2) infuse the marketplace with currently-available energy efficient water heat and HVAC equipment; (3) provide a platform for the Company to offer additional

⁴⁰ *Id.*

⁴¹ *Id.* at 33-35.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Letter from Ken Johnson to Steven V. King (Sept. 18, 2016), at 5.

⁴⁵ *Id.*

equipment options and technologies in the future; and (4) offer several improvements to PSE's existing rental service.⁴⁶

20 Unlike financing programs that can require extensive credit qualifications, PSE specifically designed the service to improve financial accessibility to customers by providing customers who cannot purchase equipment an affordable option for replacing their equipment with non-invasive and instantaneous eligibility criteria tied primarily to their bill history with PSE.⁴⁷ Based on PSE's current eligibility criteria, approximately 83% of PSE's residential customers and 87% of PSE's commercial customers would qualify for the service.⁴⁸ Under the terms of the tariff schedule, standard installation costs are included in the monthly tariffed rates.⁴⁹ When non-standard installation costs are required due to the need for additional venting or duct work, for example, the customer would be responsible for such non-standard installation costs,⁵⁰ consistent with the current rental program,⁵¹ and standard industry practice.⁵² To lessen the financial burden of these costs, customers have the option of paying for any non-standard installation costs in three installments, interest free.⁵³ For added convenience, the monthly leasing cost would appear on the customer's utility bill.⁵⁴

21 The service also addresses the market gap by offering customers a reasonable selection of equipment options that would provide a practical equipment solution for most customers.⁵⁵

⁴⁶ *Id.* at 2-6; Norton, Exh. No. LYN-1T, at 11:5-16.

⁴⁷ Teller, Exh. No. JET-1T, at 4:4, 10:19-21; Norton, Exh. No. LYN-1T, at 11:10-11; Faruqi, Exh. No. AF-4T, at 11:12-12:2; 13:13-14.

⁴⁸ PSE Response to Bench Request No. 001.

⁴⁹ Tariff Sheet No. 75-L.

⁵⁰ McCulloch, Exh. No. MBM-7THC, at 11:1-13:13; Tariff Sheet No. 75-L.

⁵¹ McCulloch, Exh. No. MBM-7THC, at 16:1-14; TR. 333:4-18.

⁵² Wigen, Exh. No. AJW-1T, at 10:18-11:15.

⁵³ McCulloch, Exh. No. MBM-7THC, at 16:11-14; TR. 333:4-18.

⁵⁴ Tariff Sheet No. 75-F.

⁵⁵ McCulloch, Exh. No. MBM-1T, at 2:15-3:17; Exh. No. MBM-7THC, at 6:6-7:4; Norton, Exh. No. LYN-1T, at 11:8-9.

For many customers, the process for acquiring new water heating and HVAC equipment is overwhelming and many prefer having a straightforward selection of options.⁵⁶ The equipment offered in PSE's tariff will satisfy the equipment needs of most of PSE's customer base.⁵⁷ However, the program was not designed to offer every piece of water heating or HVAC equipment in the marketplace, but rather, to provide a practical solution for most customers.⁵⁸ In addition, the service would provide customers the added convenience of regularly-scheduled maintenance, 24-hour repair service, and equipment warranty, including full replacement if the equipment fails throughout the lease term.⁵⁹

22 Significantly, of the types of equipment offered above, most are high-efficiency equipment options that provide customers with an affordable way to upgrade their aging systems with more efficient equipment without the significant upfront costs of purchasing the equipment outright.⁶⁰ PSE also offered select at-code equipment options for those customers that are unable to retrofit their homes for larger, higher efficiency units, or choose not to.⁶¹

23 Additionally, as noted above, the service is intended to provide a platform for PSE to flexibly offer additional equipment options and technologies in the future.⁶² Leasing can be an effective way to serve a rapidly evolving energy market.⁶³ Additional products can be added

⁵⁶ McCulloch, Exh. No. MBM-1T, at 2:15-3:17; Exh. No. MBM-7THC, at 6:6-7:4; Teller, Exh. No. JET-1T, at 7:4-11:6; Faruqui, Exh. No. AF-1T, at 3:7-12:20; Wigen, Exh. No. AJW-1T, at 4:1-6:14; Norton, Exh. No. LYN-1T, at 13:14-15:10.

⁵⁷ McCulloch, Exh. No. MBM-1T, at 2:15-3:17; TR. 273:3-6.

⁵⁸ McCulloch, Exh. No. MBM-7THC, at 6:6-7:4; Teller, Exh. No. JET-1T, at 10:11-11:6; Norton, Exh. No. LYN-1T, at 11:15-16.

⁵⁹ Teller, Exh. No. JET-1T, at 3:16-17:2; Norton, Exh. No. LYN-1T, at 11:15-16; McCulloch, Exh. No. MBM-7THC, at 22:15-23:21.

⁶⁰ Norton, Exh. No. LYN-1T, at 11:12, 25:5-11, 28:3-11; 29:20-30:8.

⁶¹ McCulloch, Exh. No. MBM-7THC, at 37:17-38:13.

⁶² Norton, Exh. No. LYN-1T, at 4:6-12; 5:11-15; 7:13-19; 8:13-14.

⁶³ *Id.* at 3:5-7:19.

to the service as the market, technology or customer needs change.⁶⁴ PSE also believes that leasing can be used to test and pilot Demand Response and other similar technologies and has specifically offered to incorporate Demand Response into the leasing service upon approval.⁶⁵

24 Finally, PSE's leasing service was specifically designed to address concerns that Staff and other parties have raised regarding PSE's existing rental service.⁶⁶ For example, unlike PSE's existing program, under the proposed service, the lease rates will not be set as part of the Company's revenue requirement and the rate spread/rate design in a general rate case.⁶⁷ Rather, all costs associated with the leasing service will be paid for by only customers who actually lease the equipment.⁶⁸ The program is entirely self-contained and if the rates set by PSE fail to fully recover the costs of the service, PSE and its shareholders alone bear that cost.⁶⁹ No costs are passed on to non-participating customers.⁷⁰ In addition, unlike the existing service, the new leasing service would have a fixed lease term and rates fixed throughout the lease term. At the end of the term the customer could either renew for new equipment or choose to end their lease. Additionally, the service would include preventive maintenance; a broader product portfolio, including more energy-efficient options and access

⁶⁴ *Id.* at 7:13-19. Some examples of potential additional equipment PSE may consider are expanded residential HVAC, including ductless heat pumps and gas tankless water heaters; expanded commercial HVAC, including packaged heat/direct expansion cooling and boilers; solar; energy storage/batteries; electric vehicle equipment; and back-up generators. Letter from Ken Johnson to Steven V. King (Sept. 18, 2015), at 2.

⁶⁵ *Id.* at 6; Norton, Exh. No. LYN-1T, at 8:9-12; Exh. No. LYN-3; McCulloch, Exh. No. MBM-1T, at 14:17-21.

⁶⁶ McCulloch, Exh. No. MBM-1T, at 10:1-14:16; Norton, Exh. No. LYN-1T, at 21:12-22:8.

⁶⁷ Norton, Exh. No. LYN-1T, at 21:12-22:8, 25:18-26:2.

⁶⁸ *Id.*; McCulloch, Exh. No. MBM-7THC, at 25:8-16; 31:3-13; 34:1-23; McCulloch, Exh. No. MBM-1T, at 21:3-13; Faruqui, Exh. No. AF-4T, at 16:7-17:6.

⁶⁹ Norton, Exh. No. LYN-1T, at 21:12-22:8, 25:18-26:2; McCulloch, Exh. No. MBM-7THC, at 25:8-16, 31:3-13, 34:1-23; McCulloch, Exh. No. MBM-1T, at 21:3-13; Faruqui, Exh. No. AF-4T, at 16:7-17:6.

⁷⁰ Norton, Exh. No. LYN-1T, at 21:12-22:8, 25:18-26:2; McCulloch, Exh. No. MBM-7THC, at 25:8-16, 31:3-13, 34:1-23; McCulloch, Exh. No. MBM-1T, at 21:3-13; Faruqui, Exh. No. AF-4T, at 16:7-17:6.

to Demand Response and other technologies; and access to energy-efficiency rebates.⁷¹
Overall, the service would be a significant improvement to PSE's existing service.⁷²

E. PSE Conducts Additional Surveys And Files A Revised Tariff

25 Both before and after the Commission suspended the tariff, PSE engaged with stakeholders and responded to questions, comments and concerns expressed. The most significant concern expressed by parties was that they wanted to review rates in the tariff before fully evaluating the service.

26 As part of its process of updating the tariff with rates, PSE conducted a second survey to better understand reasons why customers do not replace equipment, the frequency of equipment maintenance, and interest in connectivity of equipment.⁷³ The second survey revealed that: 80% of customers are waiting for equipment to fail before considering replacement; maintenance is not a standard practice for most customers; upfront cost is a significant barrier that is preventing some customers from acquiring new equipment sooner; and customers are interested in both water heater and space heater connectivity.⁷⁴

27 PSE followed the second PSE survey by retaining a market research firm, Cocker Fennessy, to provide an independent, third-party evaluation of customer interest of PSE's proposed service.⁷⁵ Cocker Fennessy is a highly regarded public affairs research and communications firm with 25 years of experience managing, conducting, and reporting on public behaviors and opinions related to a wide variety of issues.⁷⁶ Its clients include local

⁷¹ McCulloch, Exh. No. MBM-1T, at 10:1-14:21.

⁷² *Id.* at 13:13-14:21.

⁷³ *Id.*, Exh. No. MBM-19 (PSE Response to SMACNA Data Request No. 030).

⁷⁴ *Id.*

⁷⁵ *Id.*, Exh. No. MBM-7THC, at 32:1-8.

⁷⁶ *Id.* at 26:1-6.

jurisdictions, state agencies, utilities, private business, non-profits, and tribes.⁷⁷ Cocker Fennessy conducted its market research in partnership with Pacific Market Research, one of the largest market research firms on the west coast.⁷⁸ Pacific Market Research has managed projects for a wide variety of reputable local entities including Starbucks, the Washington State Department of Transportation, the City of Seattle, the Bill & Melinda Gates Foundation, the U.S. Internal Revenue Service, and the U.S. Department of Education.⁷⁹

28 After reviewing PSE's proposed tariff and engaging with PSE to fully understand the service, Cocker Fennessy used an online survey to evaluate customer interest.⁸⁰ Cocker Fennessy and Pacific Market Research used two independent survey panel firms who specialize in compiling representative online survey panels to best achieve accurate survey results.⁸¹ The survey respondents lived in PSE's service area, were homeowners with decision-making authority regarding major household appliance purchases, and did not know that service would be offered by PSE.⁸² Respondents were presented with information about the core features of PSE's program, including the types of equipment that would be offered, the lease term, and approximate monthly lease rate for each type of equipment.⁸³

29 PSE had a minimal role in the Cocker Fennessy study. Once PSE provided Cocker Fennessy with basic information about the program, Cocker Fennessy prepared the survey and in coordination with its partners, administered the survey.⁸⁴ PSE's only role was in reviewing

⁷⁷ *Id.* at 26:6-7.

⁷⁸ *Id.* at 26:10-12.

⁷⁹ *Id.* at 26:12-15.

⁸⁰ *Id.*, Exh. No. MBM-1T, at 5:7-8; Exh. No. MBM-3, at 1; Exh. No. MBM-43 (PSE Response to Public Counsel Data Request No. 042).

⁸¹ *Id.*, Exh. No. MBM-44 (PSE Response to Public Counsel Data Request No. 043).

⁸² *Id.*, Exh. No. MBM-1T, at 5:6-10; Exh. No. MBM-3, at 1; Exh. No. MBM-43 (PSE Response to Public Counsel Data Request No. 042).

⁸³ *Id.*, Exh. No. MBM-1T, at 5:11-6:1.

⁸⁴ TR. 357:21-358:14; Exh. No. MBM-44 (PSE Response to Public Counsel Data Request No. 043).

draft survey questions to ensure all relevant topics were addressed.⁸⁵ PSE had no involvement in disseminating the survey or in compiling, analyzing, or summarizing the survey results.⁸⁶

30 The results of the Cocker Fennessy survey demonstrated strong customer interest in the service and were consistent with PSE’s past surveys and market research:⁸⁷

- For residential water heaters, 25% of respondents were interested in leasing and 29% were undecided;
- For residential gas furnaces, 18% of respondents were interested in leasing and 22% were undecided;
- For residential air source heat pumps, 13% were interested in leasing and 20% were undecided;⁸⁸ and
- The results were even higher among customers with older equipment: 32% of customers with older water heaters were interested, 25% of customers with older gas furnaces were interested, and 16% with older heat pumps were interested.⁸⁹

31 In comparison to PSE’s 2014 survey, the customer interest results were very similar:

End-Use Equipment	2014 PSE Survey⁹⁰	2016 Cocker Fennessy Survey
Gas Furnace	18%	18%
Air Source Heat Pumps	18%	13%
Water Heat	32%	25%

32 The survey revealed that leasing could significantly accelerate customers’ acquisition of more efficient equipment. Seventeen percent said they probably or definitely would replace

⁸⁵ TR. 357:21-358:14.

⁸⁶ *Id.*

⁸⁷ Norton, Exh. No. LYN-1T, at 11:17-12:17; McCulloch, Exh. No. MBM-7THC, at 32:1-8.

⁸⁸ McCulloch, Exh. No. MBM-1T, at 6:2-13, Exh. No. MBM-3; Exh. No. MBM-43 (PSE Response to Public Counsel Data Request No. 042).

⁸⁹ McCulloch, Exh. No. MBM-1T, at 6:14-7:2; Exh. No. MBM-3; Exh. No. MBM-43 (PSE Response to Public Counsel Data Request No. 042).

⁹⁰ McCulloch, Exh. No. MBM-18 (PSE Response to SMACNA Data Request No. 028).

their heating or water heating equipment earlier than if they had to purchase the equipment themselves, and another 27% said they “possibly” would accelerate replacement.⁹¹

33 In addition, consistent with past market research, the survey determined that customers found appealing the lack of upfront costs, the inclusive maintenance, repair, and 24-hour customer service, and the access to smart technology.⁹² Seventy-two percent of customers reported that the program’s maintenance and repair would provide added peace-of-mind.⁹³ The survey also found that customers value access to energy-efficient equipment and that 70% of customers believe that it is important to help customers switch to technologically-advanced equipment.⁹⁴ In particular, customers were attracted to the possibility of having access to smart technologies such as demand response or web-enabled technologies.⁹⁵ Notably, no other party to this case has conducted or presented any other market analysis evaluating customer interest in an equipment leasing program comparable to PSE’s proposed service.

34 On February 17, 2016, PSE filed a revised tariff updating the tariff with monthly lease rates and various other terms, as agreed to by the parties at the January prehearing conference.⁹⁶ PSE utilized customer interest metrics, gathered through the Cocker Fennessy survey, as one input used to establish a reasonable estimate of the total addressable lease market.⁹⁷ The monthly lease rates also factored in PSE overhead costs, as well as equipment specifications, installation, and maintenance costs submitted by licensed Washington state water heater and HVAC contractors following a Requests for Qualification (“RFQ”) issued by

⁹¹ *Id.*, Exh. No. MBM-1T, at 7:3-9; Exh. No. MBM-43 (PSE Response to Public Counsel Data Request No. 042).

⁹² *Id.*, Exh. No. MBM-1T, at 7:10-16; Exh. No. MBM-43 (PSE Response to Public Counsel Data Request No. 042).

⁹³ *Id.*, Exh. No. MBM-1T, at 7:10-16; Exh. No. MBM-43 (PSE Response to Public Counsel Data Request No. 042).

⁹⁴ *Id.*, Exh. No. MBM-1T, at 7:10-16; Exh. No. MBM-43 (PSE Response to Public Counsel Data Request No. 042).

⁹⁵ *Id.*, Exh. No. MBM-1T, at 7:17-23.

⁹⁶ *WUTC v. Puget Sound Energy*, Dkt. Nos. UE-151871 & UG-151872, Order 02 (Jan. 7, 2016) (Appendix B).

⁹⁷ McCulloch, Exh. No. MBM-7THC, at 33:4-8. This analysis also included inputs associated with product market share as well as customer eligibility based on specific financial qualifications. PSE then applied a conservative assumption that only 50% of this total addressable lease market would actually participate. *Id.* at 33:4-16.

PSE.⁹⁸ These costs were then incorporated into a pricing model in which the monthly lease price charged to a customer was calculated based on discounted cash flow methodology.⁹⁹

F. PSE Offers Additional Commitments To Its Leasing Service In Rebuttal Testimony

35 On July 1, 2016, PSE filed rebuttal testimony. As part of its testimony, PSE included a list of commitments or proposed conditions that PSE would be willing to commit to, in addition to the terms set forth in Schedule 75.¹⁰⁰ These commitments were not intended to be revisions to the actual tariff, but rather, additional commitments PSE would undertake if authorized to do so by the Commission in the final order.¹⁰¹ The only commitment that would involve a substantive change to the tariff is PSE's offer to refresh the rates and potentially offer additional models of equipment upon final execution of service contracts.¹⁰² Even if this offered commitment is accepted, PSE does not expect the refresh of rates to materially change the rates currently filed in the tariff.¹⁰³

III. LEGAL STANDARDS

36 The Commission regulates public utilities “in the public interest, as provided by the public service laws.”¹⁰⁴ There is no specific test for determining “public interest.” Rather, “[t]he laws, public policies and values of our state define the ‘public interest.’”¹⁰⁵ “Public interest” is also informed by any relevant public service laws.¹⁰⁶

⁹⁸ *Id.*, Exh. No. MBM-1T, at 17:16-23; Exh. No. MBM-7THC, at 2:3-8:2, 8:11-10:21.

⁹⁹ *Id.*, MBM-1T, at 18:10-19; MBM-7THC, at 3:1-4:11.

¹⁰⁰ Norton, Exh. No. LYN-1T, at 8:1-9:7; Exh. No. LYN-3.

¹⁰¹ *Id.*, Exh. No. LYN-1T, at 8:1-9:7; Exh. No. LYN-3.

¹⁰² *Id.*, Exh. No. LYN-1T, at 8:1-9:7; Exh. No. LYN-3; McCulloch, Exh. No. MBM-7THC, at 9:9-10:7.

¹⁰³ McCulloch, Exh. No. MBM-7THC, at 10:3-5.

¹⁰⁴ RCW 80.01.040(3).

¹⁰⁵ *In the Matter of the Joint Application of Puget Holdings LLC & Puget Sound Energy, Inc., for an Order Authorizing Proposed Transaction*, Dkt. No. U-072375, Order 08, ¶15 (Dec. 30, 2008).

¹⁰⁶ RCW 80.01.040(3); *Cole*, 79 Wn.2d at 306.

A. Washington Encourages The Use Of Energy-Efficient Technologies

37 Indisputably, there are numerous laws, public policies, and values in Washington state that encourage the use of energy-efficient technologies and solutions. Indeed, the goal of the Energy Independence Act is to “[i]ncreas[e] energy conservation.”¹⁰⁷ In 2010, the Legislature mandated a state energy strategy that included the use of energy-efficient technologies:

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

(d) Reduce dependence on fossil fuel energy sources through *improved efficiency and development of cleaner energy sources*, such as bioenergy, low-carbon energy sources, and natural gas, and leveraging the indigenous resources of the state for the production of clean energy.¹⁰⁸

38 To help accomplish these goals, the Legislature has provided the Commission with the authority to encourage and incentivize utilities to invest in and develop programs that can help achieve these initiatives. For example, RCW 80.28.024 provides:

[T]he potential for meeting future energy needs through conservation measures, including energy conservation loans, energy audits, the use of appropriate tree plantings for energy conservation, and the use of renewable resources, such as solar energy, wind energy, wood, wood waste, municipal waste, agricultural products and wastes, hydroelectric energy, geothermal energy, and end-use waste heat, may not be realized without incentives to public and private energy utilities. *The legislature therefore finds and declares that actions and incentives by state government to promote conservation and the use of renewable resources would be of great benefit to the citizens of this state by encouraging efficient energy use* and a reliable supply of energy based upon renewable energy resources.¹⁰⁹

RCW 80.28.025 further mandates utilities to develop programs that advance energy-efficient technologies:

¹⁰⁷ RCW 19.285.020.

¹⁰⁸ RCW 43.21F.088(1)(c)-(d) (emphasis added); *see also* RCW 43.21F.010 (“[A] successful state energy strategy must . . . foster[] a clean energy economy . . . [and] [m]eet the state’s obligations to reduce greenhouse gas emissions”).

¹⁰⁹ RCW 80.28.024 (emphasis added).

[In] establishing rates for each gas and electric company regulated by this chapter, *the commission shall adopt policies to encourage meeting or reducing energy demand through cogeneration . . . , measures which improve the efficiency of energy end use*, and new projects which produce or generate energy from renewable resources.¹¹⁰

39 It is in the public interest to encourage customers to utilize energy-efficient water heating and HVAC equipment, and to support mechanisms by which customers can more easily obtain such equipment. PSE's leasing service is in the public interest because it encourages and provides customers an affordable and reliable way to acquire energy-efficient water heating and HVAC equipment, while providing significant benefits to customers.

B. Relevant Public Service Laws Authorize Equipment Leasing By Regulated Utilities

40 As noted above, "public interest" is defined, in part, by the relevant public service laws. There are numerous statutes that provide regulated utilities with the authority to lease end-use equipment to customers and the Commission and the Washington Supreme Court have confirmed that these statutes authorize equipment leasing. By virtue of equipment leasing being included as an express power by a regulated utility, the Legislature, the Commission, and the courts have determined that leasing of equipment of the type PSE requests in this case is in the public interest as a matter of law.

C. Rates Must Be Fair, Just, Reasonable, And Sufficient

41 A utility is authorized to recover rates that are "fair, just, reasonable, and sufficient to allow it to render such services."¹¹¹ To be fair, just, reasonable, and sufficient, however, the rates and rate methodology need not be "perfect."¹¹² Particularly for a new program offering,

¹¹⁰ RCW 80.28.025 (emphasis added).

¹¹¹ RCW 80.28.010, RCW 80.28.020; *Jewell v. WUTC*, 90 Wn.2d 775, 777 (1978).

¹¹² *In the Matter of the Petition of Puget Sound Energy*, Docket No. UE-140626, Order 01, Order Denying Waiver and Approving Accounting Petition on Conditions, 313 P.U.R. 4th 315 (Apr. 30, 2014).

the rates simply need to be a “fair, just, and reasonable starting point” for the service.¹¹³ As discussed below, PSE’s rates are fair, just, reasonable, and sufficient because they are based on actual costs for the services, are commensurate with other market options, and allow PSE the opportunity to recover its authorized rate of return.

IV. EQUIPMENT LEASING IS PROPER FOR A REGULATED UTILITY

A. Washington State Law Grants Public Utilities The Authority To Lease And The Commission Has Expressly Conferred This Power To PSE

42 There are several Washington statutes that provide jurisdictional authority for public utilities to implement a leasing service. For example, RCW 80.04.130 provides:

[W]henever any public service company shall file with the commission any schedule, classification, rule, or regulation, the effect of which is to change any rate, charge, *rental*, or toll theretofore charged, the commission shall have power, either upon its own motion or upon complaint, upon notice, to enter upon a hearing concerning such proposed change and the reasonableness and justness thereof.¹¹⁴

43 Similarly, RCW 80.04.150 provides

Whenever the commission shall find, after hearing had upon its own motion or upon complaint as herein provided, that any rate, toll, *rental or charge* which has been the subject of complaint and inquiry is sufficiently remunerative to the public service company affected thereby, it may order that such rate, toll, *rental or charge* shall not be changed, altered, abrogated or discontinued, nor shall there be any change in the classification which will change or alter such rate, toll, *rental or charge* without first obtaining the consent of the commission authorizing such change to be made.¹¹⁵

44 In addition, the Commission has expressly conferred upon PSE the authority to implement equipment leasing as a regulated service. For example, the natural gas tariff on file with the Commission allows PSE to offer optional natural gas end-use equipment services to its customers, including water heater rentals. In Rule No. 2 Definitions (Sheet No. 12-A), Gas

¹¹³ *Id.*

¹¹⁴ RCW 80.04.130 (emphasis added).

¹¹⁵ RCW 80.04.150 (emphasis added). In addition, RCW 80.28.010 and RCW 80.28.100 each reference a charge for “*any other service* rendered or to be rendered in connection therewith.” (Emphasis added.)

Service is defined broadly to include “Rental of natural gas equipment.”¹¹⁶ A tariff approved and on-file with the Commission has the force and effect of law.¹¹⁷ Rule No. 2 makes rental of natural gas equipment intrinsically part of Gas Service as a matter of law.

B. The Washington Supreme Court and Commission Confirm the Validity of Leasing

45 The Commission and the Washington Supreme Court have repeatedly confirmed that equipment leasing is a legitimate function by a regulated utility, including the leasing of water heaters. As discussed above, in 1961, PSE’s predecessor WNG began offering customers the option to lease from WNG natural gas conversion burners. In early 1962, the Oil Heat Institute and the Association of Gas Utilities petitioned the Commission challenging WNG’s rental program.¹¹⁸ The Commission affirmed the program since “[g]as conversion rental charges appear to be subject to Commission jurisdiction.”¹¹⁹

46 The Commission reaffirmed the legitimacy of the program a few years later. By 1964, WNG expanded the program to offer customers additional equipment for rent including gas circulating heaters, furnaces, and water heaters.¹²⁰ In 1965, several oil fuel dealers and the Oil Heat Institute challenged the legality of WNG’s rental program.¹²¹ Commission Staff joined the industry’s objection to the program by arguing that the Commission should disallow the program and “find leasing to be a non-utility function subject to the law of the marketplace rather than regulatory jurisdiction”¹²² and that leasing was really a sale program and was

¹¹⁶ See http://pse.com/aboutpse/Rates/Documents/gas_rule_02.pdf.

¹¹⁷ *General Tel. Co. of N.W., Inc. v. City of Bothell*, 105 Wn.2d 579, 585 (1986).

¹¹⁸ Englert, Exh. No. EEE-3T, at 16:1-7.

¹¹⁹ *Id.*, Exh. No. EEE-5 (Letter from Jack Taylor, Commission Secretary, to Karr, Tuttle, Campbell, Koch and Granberg (Apr. 10, 1962)).

¹²⁰ *Cole*, 79 Wn.2d at 304.

¹²¹ *Id.*

¹²² Englert, Exh. No. EEE-6 (*Cole v. Wash. Natural Gas Co.*, No. U-9621, at 21 (1968)(Commission Staff Brief)).

prohibited as merchandising.¹²³ The Commission firmly rejected the industry and Staff's arguments and upheld leasing as a legitimate utility practice. The Commission reviewed RCW 80.04.130 and 80.04.150 summarized above and explained that together the provisions "empower the Commission to determine the reasonableness and justness of any rate schedule," including expressly "rentals."¹²⁴

47 On appeal, both the Thurston County Superior Court and the Washington Supreme Court affirmed the Commission's determination that leasing is a legitimate utility function and does not constitute merchandising.¹²⁵ The Supreme Court confirmed the Commission's holding that RCW 80.04.130 and 80.04.150 provide statutory authority for leasing:

Because no clause or individual words of a statute should be deemed superfluous . . . ***we assume that the legislature contemplated that public service corporations would engage in rental and leasing programs.***¹²⁶

48 The Supreme Court was also strongly persuaded by a decision in *Department of Public Service v. Pacific Power & Light Co.*, 13 P.U.R.(n.s.) 187 (1936), where the Commission's predecessor upheld Pacific Power's promotional equipment sale program, "suggesting that the legislature recognized early the need for regulated utilities to engage in promotional activities similar to those which are challenged here."¹²⁷ Ultimately, the Supreme Court found that "the commission and the trial court correctly found that [WNG's] leasing program was legal, fully compensatory and of great benefit to the utility and to its consumers."¹²⁸

49 WNG's equipment leasing program ran uninterrupted until 1992 when in its rate case, Staff again challenged the appropriateness of WNG's service. Staff took the position that

¹²³ *Id.* at 3-4.

¹²⁴ *Cole v. Wash. Natural Gas Co.*, No. U-9621, at 14-15 (1968) ("Commission Proposed Order") (emphasis in original).

¹²⁵ *Cole*, 79 Wn.2d at 302, 308-11.

¹²⁶ *Id.* at 308 (emphasis added).

¹²⁷ *Id.*

¹²⁸ *Id.* at 309-10.

equipment rental should be a non-regulated service because it occurred on the customer side of the meter. According to Staff witness James Russell:

The appropriate test for the determination of a utility's allowable costs for ratemaking purposes parallels the Commission's jurisdiction, which ends at the meter (recognizing however, that there is a safety aspect to natural gas service.) Any activity beyond the meter is a competitive service, the costs of which should not be included in the utility's operating or capital accounts.¹²⁹

50 The Commission did not accept Staff's arguments and WNG's program (now PSE's) continues today.

51 In sum, the Commission and the Washington Supreme Court have confirmed that equipment leasing is a legitimate activity by a regulated utility. As stated at the evidentiary hearing on August 1, 2016, in rejecting Staff's motion for summary determination, "the statutes are very broad in their definition of what is and what is not included in utility service."¹³⁰ Whether a leasing service proposed by a regulated utility is appropriate under the public utility laws is a factual determination as to whether it is fair, just, reasonable, and sufficient—not a legal one.¹³¹

C. Arguments Made By Staff And Other Parties Do Not Overcome The Controlling Washington Authorities And Extensive Equipment Leasing History

52 Despite the overwhelming authorities cited above, Staff and other parties in this case have raise several unfounded arguments as to why equipment leasing is not a legitimate service by a regulated utility. Each of these arguments fails.

1. Staff's "behind the meter" distinction finds no support in the law.

53 Staff has resurrected a relic of the past—its novel "behind the meter" bright-line rule, to argue that PSE should not be able to lease end-use equipment. However, the "behind the

¹²⁹ Norton, Exh. No. LYN-1T, at 18:13-19:5 (citing *WUTC v. WNG*, Dkt. No. UG-920840, Russell, Exh. T-183, p. 10:16-22).

¹³⁰ TR. 105:23-106:5.

¹³¹ TR. 106:6-19.

meter” delineation has never been adopted by the Legislature, the Commission, or any Washington court and has been rejected repeatedly by the Commission. As confirmed by the Commission at the evidentiary hearing: “[The] Commission has not found to this point anything in the statutes that would require drawing a bright line at the meter.”¹³²

54 In *Cole*, the opponents to WNG’s rental program raised this exact argument only to be rejected by the Commission. In analyzing the scope of its jurisdictional authority, the Commission reviewed RCW 80.28.010, which provides that the Commission has jurisdiction over “[a]ll charges . . . by any gas company, electrical company . . . for gas, electricity. . . or for any service rendered or to be rendered in connection therewith.”¹³³ The Commission also reviewed RCW 80.28.020 and RCW 80.28.100 and determined that both confirm that it has jurisdictional authority over leasing equipment connected to gas and electric service, including “behind the meter” equipment:

It is clear that the Commission has, by statute, been given jurisdiction and power to regulate rates, charges, rentals for the sale of gas, or any service connected therewith. Certainly, the furnishing of rented conversion burners or other appliances using gas is a service directly connected with the sale of gas. . . .¹³⁴

The Commission has statutory jurisdiction and general powers and the duty to regulate utility practices including and specifically rental charges and any service rendered in connection with gas sales. . . .¹³⁵

The Commission is given jurisdiction to regulate rates and charges for supply gas or for any service in connection therewith, including the service of renting gas appliances and rates and charges therefor. Therefore, the terms of the rental contract would fall within the Commission jurisdiction and responsibilities.”¹³⁶

¹³² TR. 106:1-3.

¹³³ Commission Proposed Order at 15; RCW 80.28.010(1).

¹³⁴ Commission Proposed Order at 15.

¹³⁵ *Id.* at 20.

¹³⁶ *Id.* at 45.

55 The Commission ruled that it has jurisdictional authority over any service “connected” to gas and electric service, including expressly a “rental contract” for equipment.¹³⁷ These statutes are also consistent with the definitions of electric and gas plant which provide that plant specifically includes:

[A]ll real estate, fixtures and personal property operated, owned, used or to be used for or in to facilitate the generation, transmission, distribution, sale or furnishing of electricity [or natural gas] for light, heat, or power for hire; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.¹³⁸

Hot water heaters, furnaces, and heat pumps are fixtures and personal property used to facilitate the furnishing of heat. Staff’s “behind the meter” theory lies in direct contravention to Washington statutes and Commission authority.

56 Staff made the same argument in the 1992 WNG rate case, seeking to terminate the leasing service because it was behind the meter.¹³⁹ As before, this argument was not accepted by the Commission and WNG’s existing program continued as a regulated service.

57 Staff’s “behind the meter” hypothesis is also inconsistent with decades of actual utility practice. As Staff has acknowledged, PSE has offered “behind the meter” leasing services to customers in a variety of contexts, including its existing leasing program that has operated for over fifty years and still currently has approximately 33,000 active customers. Other “behind the meter” equipment that PSE leases to customers includes PSE lighting equipment program.¹⁴⁰ Indeed, if there was any question as to whether the legislature believed that “behind the meter” equipment was within the jurisdiction of a public utility, the legislature’s

¹³⁷ *Id.*

¹³⁸ RCW 80.04.010(11), (15).

¹³⁹ Norton, Exh. No. LYN-1T, at 18:13-19:5 (citing *WUTC v. WNG*, Dkt. No. UG-920840, Russell, Exh. T-183, p. 10:16-22).

¹⁴⁰ Englert, Exh. No. EEE-1T, at 3:1-8:11; Exh. No. EEE-3T, at 25:1-26:10.

recent electric vehicle supply service statute expressly provides that public utilities may “deploy” electric vehicle equipment.¹⁴¹

58 Finally, Staff’s “behind the meter” standard is shortsighted and would unnecessarily limit the Commission’s jurisdiction.¹⁴² The Commission rejected this argument in Staff’s motion for summary determination and should likewise do in its decision.

2. Load building is not a prerequisite to leasing.

59 In this case, Staff and other parties have incorrectly suggested that the circumstances in *Cole* are distinguishable because PSE’s current proposal is not motivated by “load building.”

First, neither the Commission, the Washington Supreme Court, nor any statute or regulation, has ever placed the prerequisites on leasing that Staff and other parties are trying to impose. Load building is never mentioned in any Washington statute, nor did the Commission or the Supreme Court in *Cole* place such a limitation on leasing.

60 Second, in *Cole*, the Commission stated that the purpose of the WNG program was “to build load and gain gas customers *and to give prospective gas customers who could not afford to purchase the necessary equipment the opportunity to have gas service within their means without the necessity of purchasing the appliances.*”¹⁴³ The parties entirely ignore this purpose of the WNG program, which was to increase customer accessibility to equipment

¹⁴¹ RCW 80.28.360.

¹⁴² For example, Staff’s rule could impair PSE and other utilities’ ability to conduct safety and inspection services. In Rule No. 2 Definitions (Sheet No. 12-A), PSE is specifically allowed to conduct safety and inspection services for customers that occur on the customer side of the meter. *See* Rule No. 24, http://pse.com/aboutpse/Rates/Documents/gas_rule_24.pdf. Notably, other utilities such as Avista and Northwest Natural Gas conduct similar natural gas appliance inspections on the customer side of the meter. *See* [https://www.nwnatural.com/uploadedFiles/AboutNWNatural/RatesAndRegulations/WashingtonTariffBook/GeneralRulesAndRegulations/6Sheet9.1\(1\).pdf](https://www.nwnatural.com/uploadedFiles/AboutNWNatural/RatesAndRegulations/WashingtonTariffBook/GeneralRulesAndRegulations/6Sheet9.1(1).pdf) and <https://avistautilities.intelliresponse.com/index.jsp?interfaceID=1&requestType=NormalRequest&id=1245&source=9&question=appliance>.

¹⁴³ Commission Proposed Order at 17.

that some customers could not afford due to upfront capital cost. Like PSE’s proposal, there were several legitimate motivating justifications for the WNG program.

61 Finally, the WNG program has been upheld by the Commission for decades during
changing market conditions and continues today even when load building is no longer a
Company objective. The argument that load building is a prerequisite to leasing fails.

3. To be authorized, leasing need not be utilized by every customer.

62 Some parties have erroneously suggested that PSE is not offering its service to the public
and therefore, the service should not be a regulated service.¹⁴⁴ As discussed below, these
arguments fail and should be rejected by the Commission.

63 First, while PSE must “offer” its service to the public,¹⁴⁵ this does not mean that every
service offered by PSE must be available and accessible to every customer without any
preconditions. There is nothing inappropriate with placing basic prerequisites on a public
service. Indeed, PSE has numerous programs that have qualification requirements. Even
electric or gas utility service is predicated on the customer paying for the service and failure to
do so results in the termination of service. Furthermore, there are numerous examples where
PSE and other utilities have offered optional programs that not all customers choose to or
qualify to participate in, including but not limited to PSE’s optional existing lease service that
has been in operation for over fifty years, or its current lighting leasing program.¹⁴⁶

¹⁴⁴ See, e.g., Public Counsel’s Response In Support of Commission Staff’s Motion for Summary Determination, ¶ 6 (July 22, 2016).

¹⁴⁵ RCW 80.02.010(12); *In the Matter of Amending and Repealing Rules in WAC 480-108 Relating to Electric Companies-Interconnection With Electric Generators*, No. UE-112133, ¶ 60 (July 30, 2014) (“2014 Interpretive Statement”).

¹⁴⁶ PSE’s Response to Public Counsel’s Response In Support of Commission Staff’s Motion for Summary Determination, ¶ 48 (July 29, 2016). Other examples of PSE programs that are either not offered to all customers or all customers choose not to participate include, but are not limited to, Schedule 150 (Net Metering Services for Customer Generator Systems); Schedule 7A (Master Metered Residential Service); Schedules 35 and 29 (Seasonal Irrigation & Drainage Pumping Service); Schedule 43 (Interruptible Primary Service for Total-Electric Schools);

64 Second, PSE's leasing service is open to all customers who can overcome a very basic credit eligibility standard tied to the customer's payment history with PSE.¹⁴⁷ Any customer who pays their utility bill on time, on a regular basis, can take advantage of the program.¹⁴⁸ Based on PSE's current propensity to pay score, 83% of PSE's residential customers, and 87% of its commercial customers, would qualify for the service.¹⁴⁹

65 Finally, some parties have suggested that because PSE has conditioned its service on adequately securing service contracts that the service is not available to all customers. But PSE has numerous programs that are conditioned on service availability.¹⁵⁰ And, based on PSE's RFQ responses, PSE anticipates it would be able to provide the leasing service to its entire service territory.¹⁵¹ Thus, the leasing service will be available to all customers.

4. Equipment leasing is not merchandising.

66 Staff and other parties have incorrectly suggested that PSE's leasing service is really a sales program and constitutes merchandising under RCW 80.04.270. First, PSE's leasing program has all the characteristics of a lease, not a sale. The Uniform Commercial Code

Schedule 93 (Voluntary Load Curtailment Rider); Schedule 194 (Residential and Farm Energy Exchange Benefit); Schedule 195 (Electric Vehicle Charger Incentive); Schedule 136 (Large Volume Green Energy Purchase Rider); Schedule 61 (Special Standby and Auxiliary Heating Service); Schedule 307 (Extension of Distribution Facilities – Pilots); Schedule 54 (Optional Gas Compression Service); Schedule 50 (Emergency Compressed Natural Gas Service); Schedule 53 (Propane Service); and Schedule 41 (Large Volume High Load Factor Gas Service).

¹⁴⁷ PSE Response to Bench Request No. 001; Teller, Exh. No. JET-1T, at 4:4, 10:19-21; Faruqi, Exh. No. AF-4T, at 13:13-14.

¹⁴⁸ Teller, Exh. No. JET-1T, at 4:21-5:14, 10:19-21.

¹⁴⁹ PSE Response to Bench Request No. 001.

¹⁵⁰ PSE offers numerous services with limited availability, including Schedule 41 (Large Volume High Load Factor Gas Service); Schedule 50 (Emergency Compressed Natural Gas Service); Schedule 53 (Propane Service); Schedule 54 (Optional Gas Compression Service); Schedule 61 (Special Standby and Auxiliary Heating Service); Schedule 307 (Extension of Distribution Pipelines – Pilots); Schedule 150 (Net Metering Services for Customer-Generator Systems); Schedule 7A (Master Metered Residential Service); Schedule 29 (Seasonal Irrigation & Draining Pumping Service); Schedule 35 (Seasonal Primary Irrigation & Drainage Pumping Service); Schedule 43 (Interruptible Primary Service for Total-Electric Schools); Schedule 93 (Voluntary Load Curtailment Rider); Schedule 194 (Residential and Farm Energy Exchange Benefit); Schedule 195 (Electric Vehicle Charger Incentive); and Schedule 136 (Large Volume Green Energy Purchase Rider).

¹⁵¹ TR. 335:19-21.

(“UCC”) defines “sale” as “the passing of title from the seller to the buyer for a price.”¹⁵² In contrast, a “[l]ease means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease.”¹⁵³ This is precisely how PSE’s lease service is structured. PSE (the lessor) owns the equipment and would convey the equipment to the customer (the lessee) for a specific lease term and for a specified monthly rate. At the conclusion of the lease, the customer is required to either return the equipment to PSE, or may enter into a new lease term with new equipment.¹⁵⁴ Under the UCC, PSE’s leasing service is not a sale as a matter of law.

67 As noted above, in *Cole*, Staff raised this same argument only to be rejected by the Commission. As explained by the Commission in *Cole*, even using their ordinary meaning, the distinction between a lease and sale is obvious and straightforward:

“[RCW 80.04.270] relates to only a ‘sale.’ Staff counsel argues that it should be so interpreted to include the leasing programs of the defendant. We have examined the arguments made by staff counsel in support of his contentions and entirely disagree with his theories. The distinction between a ‘sale’ and a ‘lease’ is so well known as not to require discussion.”¹⁵⁵

“A rental or lease of a gas appliance is not a ‘sale.’ The statute is not intended to apply to a ‘rental’ or a ‘lease’ of appliances or equipment, and it does not.”¹⁵⁶

68 As explained further by the Washington Supreme Court in affirming the Commission:

It is . . . apparent that there is a well-recognized difference in meaning between the terms ‘sale’ and ‘lease,’ and that the jurisdictional exclusion of RCW 80.04.270 relates only to the former. . . . Applying the rule that the words of a

¹⁵² RCW 62A.2-106; *Smith v. Skone & Connors Produce, Inc.*, 107 Wn. App. 199, 206 (2001).

¹⁵³ RCW 62A.2A-103(1)(j).

¹⁵⁴ Tariff Sheet No. 75-U.

¹⁵⁵ Commission Proposed Order at 15-16, 20 (emphasis in original).

¹⁵⁶ *Id.* at 45.

statute must be given their usual and ordinary meaning . . . *we cannot see how the word ‘sale’ in RCW 80.04.270 can include this ordinary leasing activity.*¹⁵⁷

69 Staff has similarly suggested that PSE’s leasing service is a sale program because PSE would assume the capital expense of purchasing the equipment as well as assume the cost to maintain, repair, and replace the equipment throughout the lease term.¹⁵⁸ But Staff does not explain how financing the purchase of the equipment to be leased results in a transfer of ownership and constitutes a sale, nor does Staff provide any authority for the proposition that providing capital in support of a utility enterprise is beyond the jurisdictional authority of a utility.¹⁵⁹ PSE provides capital and assumes the cost to maintain, repair, and replace equipment as part of its existing lease service and its other leasing and other equipment end-use services.¹⁶⁰ Indeed, one of PSE’s primary functions as a public utility is just that—a financier of capital required to provide utility service and associated services to customers.¹⁶¹ From the actual power generating facilities, to the transmission lines and pipelines that transport power and gas, to the meters attached to a customer’s home or business, to water heaters as part of the existing rental program and lightbulbs for lighting services, PSE appropriately provides capital for all of these services.¹⁶² The fact that PSE is providing capital for its leasing service does not make it a sale program.¹⁶³

¹⁵⁷ *Cole*, 79 Wn.2d at 307-08 (citations omitted) (emphasis added).

¹⁵⁸ O’Connell, Exh. No. ECO-1THC, at 3:4-13, 8:2-16.

¹⁵⁹ Englert, Exh. No. EEE-3T, at 18:14-18.

¹⁶⁰ *Id.* at 18:18-19.

¹⁶¹ *Id.* at 18:21-19:1.

¹⁶² *Id.* at 19:2-9.

¹⁶³ Likewise regarding Staff’s suggestion that PSE’s service is an insurance program. Cebulko, Exh. No. BTC, at 2:19-20, 23:13-14. PSE replaces failed equipment in many of its services, including its existing leasing program. Englert, Exh. No. EEE-3T, at 19:10-19.

70 Finally, PSE included a purchase option during the lease term because of a prior Commission directive as part of the 1992 WNG rate case.¹⁶⁴ For existing leasing customers, PSE has offered customers a purchase option since that time.¹⁶⁵ Less than two percent of existing lease customers exercise the purchase option, and the option is usually exercised only in the context of a property transaction where a leasing customer is selling their home.¹⁶⁶ Even where a lease offers a purchase option, it does not convert the lease program to a sale.¹⁶⁷ PSE's leasing service is not a sales program and is not subject to RCW 80.04.270.

5. The 2014 Interpretive Statement is not controlling.

71 Staff and other parties have suggested that the factors enumerated by the Commission in its recent 2014 Interpretive Statement¹⁶⁸ control whether PSE's proposed leasing service should be authorized. This is an overstatement of the scope of the 2014 Interpretive Statement, the purpose by which it was issued, and its legal effects.

72 First, Commission interpretive statements are advisory only and do not have the force of law.¹⁶⁹ Indeed, as stated by the Commission in the 2014 Interpretive Statement itself, "Policy and interpretive statements are non-binding guidance of an agency's current thinking regarding a specific issue."¹⁷⁰ Second, the context of the 2014 Interpretive Statement is

¹⁶⁴ Englert, Exh. No. EEE-3T, at 20:1-5; *WUTC v. Wash. Natural Gas Co.*, Dkt. No. UG-920840, 1993 WL 500058 (Wash. U.T.C. Sept. 27, 1993).

¹⁶⁵ TR. 356:14-21.

¹⁶⁶ *Id.* at 356:22-357:16.

¹⁶⁷ See RCW 63.10.020(4)(defining consumer leases and allowing for option to purchase); RCW 63.10.040(1)(k) (requiring disclosure of whether there is a purchase option).

¹⁶⁸ *Interpretive Statement Concerning Commission Jurisdiction and Regulation of Third-Party Owners of Net Metering Facilities*, Docket No. UE-112133 (July 30, 2014).

¹⁶⁹ RCW 34.05.230(1) ("Current interpretive and policy statements are advisory only."). As the Commission recently noted, "[s]uch statements generally set forth the Commission's preferences or clear guidelines in certain policy-related matters after extensive deliberation in a workshop setting." *In re Petition of PSE and NWECA For an Order Authorizing PSE To Implement Electric and Natural Gas Decoupling Mechanisms and To Record Accounting Entries Associated With the Mechanisms*, Dockets UE-121697 & UG-121705, Order 07, ¶ 95 (June 25, 2013). They do not set forth immutable doctrine. *Id.*

¹⁷⁰ 2014 Interpretive Statement at ¶ 6.

unrelated to PSE's leasing proposal. The 2014 Interpretive Statement provides the Commission's "current opinion regarding the Commission's jurisdiction over third-party owners of net-metered systems."¹⁷¹ PSE's leasing service has nothing to do with third-party ownership of net-metered systems.¹⁷²

73 Finally, even if the factors discussed by the Commission regarding third-party ownership of net-metering applied to PSE, the factors favor PSE. As described above, PSE's leasing service would be offered and available to all PSE customers that can overcome a very basic financial qualification. In addition, some parties have suggested that because PSE does not have a monopoly over equipment sales or financing that the service should not be a regulated service. As discussed above, equipment leasing, as a matter of law, is a statutorily-conferred power of a regulated utility in Washington. Further, PSE is not selling equipment or offering financing like other market participants. PSE is offering a comprehensive leasing service that is not currently being provided by any party in the marketplace in response to significant customer demand and market interest. In addition, market research demonstrates a market gap where customers are using outdated equipment and technologies. PSE's service is specifically tailored to address this gap in response to current market options that are failing to remedy this issue. The types of equipment PSE currently seeks to lease have a direct impact on energy consumption and efficiency. Improving the relationship between the customer and utility through new technologies (e.g., better equipment technologies and Demand Response), and improving system-wide efficiency, is a concern that PSE is uniquely situated to address. Current market participants have no incentive to be concerned about regional energy efficiency on the whole. Since virtually all PSE customers use water heating and HVAC

¹⁷¹ *Id.*

¹⁷² TR. 170:8-171:8.

equipment, providing an alternative market option on a household-by-household basis that is not currently available in the market that can achieve the purposes discussed above could have a significant transformational impact on the marketplace.¹⁷³ Thus, PSE's role in the marketplace is a unique one that no party aside from PSE can fill.

V. EQUIPMENT LEASING IS CONSISTENT WITH THE PUBLIC INTEREST AND RESULTS IN FAIR, JUST, REASONABLE, AND SUFFICIENT RATES

74 PSE has met its burden of proof to demonstrate that its proposed leasing service is fair, just, reasonable, and sufficient, and consistent with the public interest. First, PSE has demonstrated that its leasing service will provide quantifiable benefits to participating and all non-participating customers. Second, PSE's rates are supported by actual costs for actual equipment and services. Third, PSE's leasing service addresses a significant market need, overcomes barriers to purchase, and is responsive to customer demand. Fourth, PSE's leasing service provides significant, robust consumer protection provisions that meet or exceed protections required under the consumer protection laws. Finally, PSE's commitments will further enhance the service and benefit participants while increasing PSE's accountability.

A. PSE's Equipment Leasing Service Will Yield Significant, Quantifiable Benefits To Both Participants And Non-participants And Is Consistent With The Public Interest

1. Dr. Faruqui's benefits model demonstrates significant quantifiable benefits for both participating and non-participating customers.

75 PSE's equipment leasing service will provide significant benefits to both participants and non-participants, as demonstrated by Dr. Faruqui's analysis.¹⁷⁴

76 Dr. Faruqui utilized a benefits estimation model similar to that which he has employed in other cases.¹⁷⁵ Based on the addressable market size, the model forecasts the quantifiable

¹⁷³ See Norton, Exh. No. LYN-1T, at 3:5-8:14; 14:11-15:2; 28:1-30:8.

¹⁷⁴ Faruqui, Exh. No. AF-1T, at 19:3-22:8.

benefits of the service predicated on the annual deployment and cumulative installation of leased equipment units.¹⁷⁶ Because PSE's service offers customers the opportunity to lease energy-efficient equipment, customers who install units more efficient than they would have installed otherwise (above-code), save energy and, by so doing, create public benefits.¹⁷⁷ Some customers are still using equipment that far exceeds its useful life and has undergone decades of performance degradation.¹⁷⁸ Any accelerated replacement of equipment beyond its useful life due to leasing, would yield benefits for the duration of the period that they would have kept their inefficient equipment for, before replacing it.¹⁷⁹ Even customers that choose at-code equipment models contribute to system efficiency benefits where they replace an old, inefficient unit sooner than they would otherwise have done so.¹⁸⁰

77 Based on the existing market surveys, vendor feedback, information relating to water heating and HVAC equipment market share, customer participation eligibility, product efficiency, and other factors, Dr. Faruqui estimated the annual corresponding benefits for each type of equipment within the addressable market.¹⁸¹ In total, Dr. Faruqui calculated the following quantifiable benefits during the first twenty years of the program resulting from customers leasing energy-efficient equipment:

- Over 153,000 MWh of electric energy conservation, which is equivalent to powering over 600 homes each year;¹⁸²
- Nearly 180 million therms of gas energy conservation, which is equivalent to fueling over 11,000 homes each year;¹⁸³

¹⁷⁵ *Id.* at 19:11-12.

¹⁷⁶ *Id.* at 20:10-22:8.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 21:6-13.

¹⁷⁹ *Id.* at 21:31-18.

¹⁸⁰ *Id.* at 19:6-22:8.

¹⁸¹ *Id.* at 20:10-22:8.

¹⁸² *Id.* at 2:14-16, 25:7-26:6.

¹⁸³ *Id.* at 2:17-18, 26:7-27:2.

- 1.15 million tons of CO2-equivalent emissions avoided, which is equivalent to taking over 11,100 cars off the road;¹⁸⁴
- \$3.2 million in avoided generation and distribution capacity costs;¹⁸⁵ and
- \$127 million in utility bill savings for participating customers.¹⁸⁶

78 In addition to yielding quantifiable energy savings costs and other benefits, the service has substantial non-quantifiable benefits for participating customers. As evidenced by PSE's customer research, a significant percentage of customers value a lease option, particularly where the service would provide a comprehensive turn-key service with regularly-scheduled maintenance, repair, and no-cost warranty replacement throughout the lease term.¹⁸⁷ These benefits may currently be unquantifiable, but are a significant value for some customers.¹⁸⁸

2. Dr. Faruqui appropriately evaluated the benefits of PSE's service.

79 Parties have criticized Dr. Faruqui for not conducting a traditional cost-benefit analysis for calculating and evaluating the benefits of PSE's leasing service by only conducting a benefits analysis. These arguments fail for several reasons.

80 First, there is no statutory or Commission rule mandating a cost-benefit test in this context. For this reason, throughout this case, Staff and other parties have struggled to articulate or agree on the proper test that should be used in this scenario and have generically stated some kind of cost-benefit analysis is required.¹⁸⁹ But they cite no authority for this proposition nor do they specify what kind of cost-benefit analysis is appropriate.

¹⁸⁴ *Id.* at 2:19-20, 27:3-28:2.

¹⁸⁵ *Id.* at 2:21, 28:3-29:2.

¹⁸⁶ *Id.* at 2:22, 28:4-10.

¹⁸⁷ McCulloch, Exh. No. MBM-1T, at 7:10-16; Exh. No. MBM-43 (PSE Response to Public Counsel Data Request No. 042).

¹⁸⁸ Faruqui, Exh. No. AF-4T, at 18:11-15; Wigen, Exh. No. AJW-1T, at 11:16-12:7.

¹⁸⁹ TR. 474:12-25.

81 Second, a cost-benefit analysis in this case is inappropriate because the benefits are non-pecuniary and cannot fully be quantified. While there are clearly quantifiable benefits, customers who decide to lease equipment also do so because the lease offers them non-pecuniary benefits such as comprehensive maintenance, repair, and warranty service, and straightforward qualification requirements.¹⁹⁰ The non-pecuniary benefits are customer specific and not quantifiable.¹⁹¹ However, we can infer from the customer’s decision to participate in the leasing service that the sum of these benefits would be at least as large as the cost of the leasing service;¹⁹² otherwise, the customer will chose not to participate. Thus, it is not necessary or possible to quantify the benefits to each participating customer.¹⁹³

82 For non-participating customers, however, the analysis is simple: There are no costs, only benefits.¹⁹⁴ Non-participating customers will enjoy the benefits of carbon and emissions reductions as well as avoided generation and distribution capacity costs, without any cost.¹⁹⁵

83 The suggestion by Staff and other parties that PSE is seeking to avoid or usurp the Commission’s authority to evaluate whether a proposal is fair, just, reasonable, and sufficient is simply inaccurate. PSE has never suggested that the Commission should not evaluate PSE’s proposal. Rather, in terms of the cost-benefit analysis, customers must conduct the analysis themselves because, as with any purchase or leasing decision, some “customer[s] may weigh certain factors over the monetary cost” differently than other customers.¹⁹⁶ As an entirely optional service, only the customer can conduct the analysis. Some customers may decide that the monthly rate is worth the convenience and benefits of the program (both pecuniary and

¹⁹⁰ Faruqui, Exh. No. AF-4T, at 14:11-17, 18:11-15, Exh. No. AF-1T at 14:15-15:13.

¹⁹¹ *Id.* at 18:4-15.

¹⁹² *Id.* at 16:3-18:15, 22:11-18.

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 1:17-20, 2:6-8, 17:3-6.

¹⁹⁵ *Id.*; Norton, Exh. No. LYN-1T, at 25:18-26:2.

¹⁹⁶ Faruqui, Exh. No. AF-4T, at 18:11-15.

nonpecuniary), and some may not.¹⁹⁷ If a customer decides that the corresponding benefits of the program outweigh those costs, then the cost-benefit analysis has already been conducted.

84 Staff, however, has placed paternalistic value judgments on the benefits of the program¹⁹⁸ by suggesting they are not “adequate”¹⁹⁹ enough or that the cost is too “expensive.”²⁰⁰ Staff also “has serious concerns that the Company’s interests in this program are not adequately aligned with its customers.”²⁰¹ The evidence rebuts Staff’s allegation: For decades, thousands of customers have chosen leasing and still do today. PSE continues to receive requests from customers to lease equipment. There is old equipment currently in use in the market today. Several rounds of market analysis have demonstrated strong customer interest in leasing, and there are clear customer benefits from the service. No party has proffered any concrete evidence to rebut the evidence provided by PSE that supports the above.

85 Therefore, in scenarios like this where costs are borne only by participants, who by choosing to participate show that they will receive a benefit that is at least as large as the cost, it is entirely appropriate to calculate only the societal benefits as Dr. Faruqui has done.²⁰² In comparison to the costs, there are significant benefits for both participants and non-participants.

3. Dr. Faruqui appropriately did not use a Total Resource Cost test.

86 Some parties have erroneously suggested that PSE should have used a total resource cost (“TRC”) test to evaluate PSE’s leasing service. This is incorrect. The TRC test is used to evaluate the efficacy of a program offered as a conservation program under Schedule 120

¹⁹⁷ Norton, Exh. No. LYN-1T, at 26:16-21.

¹⁹⁸ Englert, Exh. No. EEE-3T, at 29:9-20:11.

¹⁹⁹ Cebulko, Exh. No. BTC-1THC, at 20:17-20.

²⁰⁰ *Id.* at 21:6.

²⁰¹ *Id.* at 21:3-4.

²⁰² Faruqui, Exh. No. AF-4T, at 17:7-11.

where the program costs are distributed across all customers.²⁰³ PSE's proposed leasing service is not a conservation program under Schedule 120 because only those customers that choose to participate in the service bear the cost of the service.²⁰⁴ Non-participating customers bear no share of the program costs. As explained by Dr. Faruqui:

Traditional cost-effectiveness tests for utility conservation programs, such as the Total Resource Cost [test]. . . are not relevant in this case since all costs are borne by those who choose to participate in this optional service, while any risk is borne by shareholders. Put differently, all costs and risks are borne by voluntary participants in the program, and any public benefits that accrue to non-participating customers are a costless bonus for them. This bonus is what the Public Benefits Model captures.²⁰⁵

87 Like many other PSE programs, PSE's leasing service will provide conservation benefits resulting from some customers choosing to lease efficient equipment and/or accelerate replacement of old, inefficient equipment.²⁰⁶ Similarly, customers that lease efficient equipment may also be eligible for rebates.²⁰⁷ But these benefits do not transform the service into a conservation program or require a TRC test.²⁰⁸ PSE has numerous services and programs that have conservation benefits, but are not actual conservation programs.²⁰⁹

4. Dr. Faruqui used valid inputs to calculate its estimated benefits.

88 In an attempt to discredit Dr. Faruqui's analysis, Staff and other parties have criticized Dr. Faruqui's use of customer participation data from the Cocker Fennessy study. This argument fails for several reasons. First, as described above, the Cocker Fennessy study was conducted independently using industry-standard methodologies by polling actual PSE

²⁰³ TR. 380:10-381:7; Faruqui, Exh. No. AF-4T, at 16:20-17:6.

²⁰⁴ Englert, Exh. No. EEE-1T, at 8:15-18; TR. 444:11-15.

²⁰⁵ Faruqui, Exh. No. AF-4T, at 16:20-17:6.

²⁰⁶ *Id.* at 8:12-9:22.

²⁰⁷ *Id.*; Exh. No. EEE-3T, at 27:3-10.

²⁰⁸ Englert, Exh. No. EEE-1T, at 8:19-9:7.

²⁰⁹ For example, PSE's lighting lease services under Schedules 55, 56, 58, and 59 all create conservation savings, but are not considered PSE conservation programs, nor are they considered under PSE conservation schedules (Schedules 200-299). *See* Englert, Exh. No. EEE-1T, at 3:1-11.

customers. Dr. Faruqui, who has decades of experience analyzing market data, independently confirmed that the Cocker Fennessy study was an appropriate way to ascertain market interest in a new product or service,²¹⁰ and he performed his own “due diligence” as it relates to the methodology used by Cocker Fennessy.²¹¹ In addition, the customer participation data derived from the Cocker Fennessy study is consistent with PSE’s earlier market study. Therefore, Dr. Faruqui’s customer participation inputs are substantiated by two separate studies.

89 Second, the suggestion that this input alone could compromise the entire benefits model is a gross overstatement. The customer participation input is simply one out of numerous model inputs. While adjusting the customer participation figure would alter the level of benefits calculated by Dr. Faruqui, the only way to render the benefits at zero would be to input customer participation at 0%, which no party has suggested. Indeed, given that PSE currently leases equipment to 33,000 customers,²¹² that customers are still requesting leasing from PSE,²¹³ and that customer surveys demonstrate strong customer interest, no party can question that some customers will lease from PSE, which will generate benefits.

90 Others have questioned why Dr. Faruqui used a different customer participation metric than Mr. McCulloch did in his pricing model.²¹⁴ This concern reflects a fundamental misunderstanding of both the purpose of Dr. Faruqui’s model and the pricing model used to set rates. Dr. Faruqui’s model incorporates the participation rates from the Cocker Fennessy study to convey the “total possible benefits from the addressable market (i.e., market or

²¹⁰ Faruqui, Exh. No. AF-4T, at 19:17-20:7.

²¹¹ TR. 259:1-13.

²¹² Norton, Exh. No. LYN-1T, at 25:14-17.

²¹³ TR. at 359:2-10; Norton, Exh. No. LYN-1T, at 29:1-3.

²¹⁴ Kimball, Exh. No. MMK-1THC, at 32:16-19.

economic potential).”²¹⁵ In contrast, the pricing model, which sought to conservatively predict the achievable potential of the service,²¹⁶ assumed that only half of those customers who both expressed interest in the Cocker Fennessy study and who meet financial qualifications would participate.²¹⁷ However, even if Dr. Faruqui utilized the percentage used in the pricing model, there would still be quantifiable benefits generated from the service.

B. The Rates And Rate Methodology Are Fair, Just, Reasonable, And Sufficient And Are Based On Actual Costs For Actual Equipment And Services

91 The evidence demonstrates that the rates and rate methodology are fair, just, reasonable and sufficient. To meet this standard the rates need not be “perfect.”²¹⁸ For a new program offering, the rates need to be a “fair, just, and reasonable starting point” for the service.²¹⁹

1. The rates in the tariff are based on known costs of chosen products.

92 The equipment costs used in establishing rates for the leasing tariffs are based on actual market equipment costs submitted by bidders responding to PSE’s RFQs. As Mr. McCulloch testified, in the past year, PSE has conducted multiple RFQs and received responses from fifteen water heating and HVAC equipment manufacturers, distributors, and installation partners who are interested in partnering with PSE to provide the lease service.²²⁰ PSE used the responses received from these contractors in its PSE’s pricing model, which accurately

²¹⁵ Faruqui, Exh. No. AF-4T, at 20:8-12.

²¹⁶ *Id.* at 20:8-12.

²¹⁷ McCulloch, Exh. No. MBM-7THC, at 33:1-16.

²¹⁸ *In the Matter of the Petition of Puget Sound Energy*, Dkt. No. UE-140626, Order 01, Order Denying Waiver and Approving Accounting Petition on Conditions, 313 P.U.R. 4th 315 (Apr. 30, 2014).

²¹⁹ *Id.*

²²⁰ McCulloch, Exh. No. MBM-1T, at 17:16-18:8, 19:4-23.

reflect costs of actual equipment currently used in the market.²²¹ The prices submitted by the contractors included the equipment, installation, and ongoing maintenance and repair.²²²

93 Moreover, PSE has identified the equipment it plans to lease including “specific types of equipment based on product size, input capacity, efficiency, system capabilities, and performance qualifications.”²²³ The RFQ prices submitted by contractors were based on these actual equipment specifications.²²⁴ PSE’s rates in its tariff are tied directly to the actual products and services the customer will receive.²²⁵ PSE does not include specific brands in its tariff consistent with its practice in the existing water heater rental tariff.²²⁶ Research has also shown that specific brands are not a high priority for those customers who choose to lease equipment.²²⁷ While it may be true that some customers want to immerse themselves in education and information about equipment brands available in the marketplace, that option is always available to them in the marketplace.²²⁸ Many customers find the myriad of options overwhelming and this can deter them from moving forward with replacement of older equipment.²²⁹ It is these customers that may find leasing helpful.

2. The proposed rates are supported by a detailed pricing model.

94 Staff and other parties incorrectly assume that non-participating customers will bear the cost of the service, and they state they cannot recommend the program without an “assurance”

²²¹ McCulloch, Exh. No. MBM-7THC at 4:4-5:11; Exh. No. MBM-8HC; Exh. No. MBM-1T, at 17:16-18:8, 19:4-23.

²²² McCulloch, Exh. No. MBM-1T, at 15:1-19:23; Exh. No. MBM-7THC, at 4:11-5:3.

²²³ McCulloch, Exh. No. MBM-1T at 19:4-12; Exh. No. MBM-7HCT at 4:11-5:3.

²²⁴ McCulloch, Exh. No. MBM-1T at 19:4-12.

²²⁵ McCulloch, Exh. No. MBM-7HCT at 3:1-5:11; Exh. No. MBM-1T, at 18:9-20:13.

²²⁶ TR. 301:17-22.

²²⁷ McCulloch, Exh. No. MBM-18 (PSE Response to SMACNA Data Request No. 028).

²²⁸ McCulloch, Exh. No. MBM-7THC, at 6:7-7:4.

²²⁹ See Faruqui, Exh. No. AF-1T, at 8:3-10:7; Exh. No. AF-4T, at 12:16-18.

that non-participating customers will not pay for the service.²³⁰ PSE has made this assurance.²³¹ PSE provided a pricing model that supports the rates and demonstrates that the costs are borne by only participating customers.²³² For each type of equipment PSE proposes to lease, PSE's pricing model includes a breakdown of costs for equipment, installation, maintenance, repair, operations, depreciation, early failure, bad debt, and labor.²³³

95 As Mr. McCulloch testified, the monthly lease price charged to a customer is calculated based on a discounted cash flow methodology.²³⁴ The rates include all costs borne by PSE in installing, operating and maintaining the equipment over the life of the lease term.²³⁵ These costs are totaled and discounted to today's terms using the Company's approved cost of capital in order to calculate the Company's total revenue requirement in net-present value.²³⁶ This amount is then converted into a levelized monthly rate for each specific leasing product, which remains constant over the life of the lease and does not escalate or change.²³⁷

96 As stated above, non-participating customers do not pay for the leasing service; only those customers who choose to participate will pay for the service.²³⁸ This is a change from the existing rental program in which rental rates are subject to adjustment in rate cases.²³⁹ In the early 2000s, there were concerns that the existing water heater rental program was not cost-effective because these customers were not covering the cost of the service and other

²³⁰ Cebulko, Exh. No. BTC-1THC, at 17:16-18:7.

²³¹ See, e.g., Norton, Exh. No. LYN-1T, at 21:12-22, 25:18-26:2.

²³² McCulloch, Exh. No. MBM-1T, at 18:9-21:13.

²³³ See O'Connell, Exh. No. ECO-5HC. The highly confidential pricing model was provided to parties as a work paper supporting PSE's direct testimony in February 2016 and is also an exhibit. McCulloch, Exh. No. MBM-7THC, at 3:9-11. In addition, PSE held workshops for parties who had signed the Highly Confidential protective order on March 8 and April 4, 2016, for the purpose of walking through the pricing model and answering questions. See McCulloch, Exh. No. MBM-7THC, at 3:11-14.

²³⁴ McCulloch, Exh. No. MBM-1T, at 18:10-19:3.

²³⁵ *Id.* at 18:10-19:3.

²³⁶ *Id.*

²³⁷ See *id.* at 18:11-19.

²³⁸ See *id.* at 13:1-12; Faruqi, Exh. No. AF-4T, at 16:12-17:6; Norton, Exh. No. LYN-1T, at 25:18-26:2.

²³⁹ McCulloch, Exh. No. MBM-1T, at 11:1-9.

customer groups were subsidizing the program.²⁴⁰ PSE's leasing proposal has been designed to eliminate cross-subsidization; all the costs of the lease service are factored into the tariffed rates.²⁴¹ Accordingly, the rates will not be adjusted in general rate cases, although other parties in general rate cases can verify that no leasing costs are included in general rates.²⁴²

3. Staff improperly applies traditional ratemaking principles used in general rate cases to the new leasing service.

97 Staff ignores the fact that the lease service is a new service, approved outside of a general rate case, and has erroneously argued for the application of general rate case principles and accounting rules that do not apply in this situation, such as a historical test year and the "known and measurable standard."²⁴³ Mr. Englert rebutted Staff's inapposite application of general rate making principles to the proposed lease tariff:

Ms. O'Connell broadly misapplies the known and measurable standard. This standard is set forth in the Commission rules governing general rate cases; it is the standard to be applied to a specific type of accounting adjustment in a general rate case, specifically, it applies to pro forma adjustments to a historical test year in a general rate case and requires the pro forma adjustments to be known and measurable. . . .

In contrast, the case currently before the Commission is not a general rate case, nor is there a historical test year nor pro forma adjustments to the test year. Such a standard is not possible, nor reasonable, for a new tariff schedule offering, such as the current case, where there are no historical costs for the new service.²⁴⁴

98 Staff's improper application of the known and measurable standard should not be adopted. It would unnecessarily and inappropriately encumber the Commission's ability to approve new services offered by regulated companies. Under Staff's theory, no new service could ever be approved by the Commission because a new service cannot have a history of

²⁴⁰ Norton, Exh. No. LYN-1T, at 25:18-26:2.

²⁴¹ *Id.* at 21:12-22, 25:18-26:2.

²⁴² *Id.*

²⁴³ See Cebulko, Exh. No. BTC-1THC, at 3:5; 21:6-8, 24:14-16 ("The proposed rates are not based on known and measurable costs."); O'Connell, Exh. No. ECO-1THC, at 4:16-17, 5:9-11, 15:9-16:8.

²⁴⁴ Englert, Exh. No. EEE-3T at 10:7-18 (internal citations omitted).

documented costs until it is approved by the Commission. Thus, Staff fabricates a nonsensical “chicken and egg” dilemma that would tie the hands of the Commission and regulated companies, and would act as a deterrent to the development of new services.

99 Staff overreaches further by arguing that the pro forma accounting adjustment rule that requires pro forma adjustments in a general rate case to be “known and measurable” prohibits PSE from including the leasing equipment in rate base.²⁴⁵ Mr. Marcellia rebutted Staff’s incorrect assumptions that the electric and gas plant for the leasing service cannot be included in rate base because it is not known and measurable:

Ms. O’Connell’s sweeping characterization of the known and measurable standard is misapplied and incorrect (ECO-1THC 15:11). She incorrectly states that the Commission applies this standard when determining whether to include electric plant in rate base. However, it is the actual original costs of the assets that should and would be recorded in rate base. The known and measurable standard is a Commission rule with specific applicability--it addresses pro forma adjustments in general rate cases, and specifically allows known and measurable changes that occur after the close of a historical test year in a general rate case to be pro formed into the test year. See WAC 480-07-510(3)(e)(iii). This rule does not address how the Company records plant in rate base for accounting purposes, outside of a general rate case. It is the Company’s intention to only record the actual original cost of the equipment used in the leasing program in the program’s rate base in Account 104.²⁴⁶

100 The Commission should reject Staff’s inappropriately expansive view of the pro forma accounting adjustment rule and the historical test year, which do not apply to this new service.

4. The use of averages is not uncommon in setting rates.

101 Staff and other parties seek to discount the validity of the leasing rates because they are based, in part, on averages. But this ignores that nearly every rate the Commission sets involves averaging. It is rare, if ever, that the rate for a specific customer matches that customer’s precise usage or the precise cost for serving that customer. For example, all

²⁴⁵ O’Connell, Exh. No. ECO-1THC, at 15:9-15.

²⁴⁶ Marcellia, Exh. No. MRM-1T, at 15:4-16.

residential customers are charged the same basic charge for customer service, even though some customers use Company services such as the call center extensively, while other customers never place a call to the call center. Similarly, some customers' homes, and the pipes and wires that serve their homes, are less accessible than other customers, yet these costs to serve are averaged for PSE's residential customer base as a whole.

102 Further, nothing exemplifies the importance of averages in ratemaking more clearly than the "average of monthly averages" measurement of rate base, which takes the average plant in rate base for each month of the test year and then averages those monthly averages together to reach a final average amount of plant in rate base for ratemaking purposes.²⁴⁷ Additionally, the Commission uses averages regularly in setting rates including the determination of return on equity,²⁴⁸ the determination of PSE's incentive payout to be included in rates,²⁴⁹ the recovery of rate case expense,²⁵⁰ the calculation of working capital,²⁵¹ the determination of power costs,²⁵² the recovery of annual storm damage expense,²⁵³ and cost of service/rate spread,²⁵⁴ to name a few. Averages are used because they ensure that rates are consistent and fair across all ratepayers.

103 Consistent with the above, it is not unreasonable that PSE's determination of lease rates for a type of water heater or heat pump includes some averages. What matters is not whether PSE used an average to set rates, but whether the rates used represent a fair, just, and

²⁴⁷ See, e.g., *WUTC v. Pacific Power & Light Co.*, Dkt. No. UE-140762, Final Order ¶¶ 145-151 (March 25, 2015).

²⁴⁸ See, e.g., *WUTC v. PSE*, Dkt. Nos. UE-111048 & UG-111049 (consolidated), Order 08, ¶¶ 58-89 (May 7, 2012) (discussing the averages used in the DCF cost of equity calculation).

²⁴⁹ *Id.* ¶¶ 119-20 (using a four-year average of company incentive payouts to determine the amount of incentive pay to be included in rates).

²⁵⁰ *Id.* ¶¶ 149-58.

²⁵¹ *Id.* ¶¶ 196-97 (the calculation for working capital is based on the average of the monthly averages of the asset and liability accounts).

²⁵² *Id.* ¶ 226 (using three-month average of daily forward market gas prices).

²⁵³ *Id.* ¶¶ 290-99 (based on an average of six years for storm damage that is charged to PSE's income statement).

²⁵⁴ *Id.* ¶¶ 331-51.

reasonable representation of the costs of the service. For example, PSE has demonstrated that the proposed rates for a Tier 2 heat pump, even with some element of averaging, is very close to the actual average cost of equipment and installation for a Tier 2 heat pump based on nearly 1,000 installations of this equipment as recorded through conservation rebates.²⁵⁵ Moreover, when comparing the average bundled unit cost for a heat pump in PSE's Pricing Worksheet with the three distinct sized heat pumps, the proposed rates would vary by only plus or minus two percent, which falls within an acceptable "margin of error for parity ratios."²⁵⁶ PSE's equipment costs for a water heater (\$421) are also well within (and on the low end) of Public Counsel's range of costs for a water heater (\$379-\$799).²⁵⁷ Public Counsel also conceded that PSE's equipment and installation costs were consistent with other market options.²⁵⁸ Thus, PSE's use of averages represents a fair cost for the equipment and services in PSE's tariff.

5. The proposed leasing service provides benefits unmatched in the industry.

104

The leasing service provides significant benefits to participants unmatched in the industry, including access to energy-efficient equipment with full-service maintenance, repair, and replacement throughout the lease term, beyond the period of the manufacturer's warranty. No party has presented a comparable service.²⁵⁹ While not every customer will choose leasing, many customers place a high value on a turn-key solution from a single source to address their water heating and HVAC needs.²⁶⁰

²⁵⁵ See McCulloch, Exh. No. MBM-7THC, at 20:1-20.

²⁵⁶ *Id.* at 19:6-11.

²⁵⁷ *Id.* at 21:1-14; Kimball, Exh. No. MMK-1THC, at 26:8-9.

²⁵⁸ McCulloch, Exh. No. MBM-7THC, at 21:1-14; Kimball, Exh. No. MMK-1THC, at 27:1-3.

²⁵⁹ McCulloch, Exh. No. MBM-7THC, at 22:4-23:2.

²⁶⁰ *Id.*, Exh. No. MBM-18 (PSE Response to SMACNA Data Request No. 028); Exh. No. MBM-1T, at 7:10-23; Exh. No. MBM-43 (PSE Response to Public Counsel Data Request No. 042); Wigen, Exh. No. AJW-1T, at 11:16-12:7.

In an attempt to discredit PSE’s service, Staff and Public Counsel undertake flawed apples-to-oranges comparisons of PSE’s lease service to various market purchase options.²⁶¹ In making their comparisons, they ignore the unique features that PSE’s leasing service offers to customers, such as non-invasive financial eligibility screening, maintenance, in-home repair, replacement for the life of the lease, time value of money, peace of mind, and ease of selection process.²⁶² Instead, Public Counsel lumps all these features into an “imputed interest rate” of 22.1%, ignoring the fact that PSE appropriately used its weighted average cost of capital of 7.77%,²⁶³ and instead implying that customers get no value from these additional aspect of a lease service.²⁶⁴ Ms. O’Connell makes a similar inaccurate comparison.²⁶⁵

The attempted comparison’s to PSE’s service all fail because there are no comparable market options.²⁶⁶ For example, Public Counsel’s own exhibit, “Consumer Reports’ Water Heater Buying Guide,” recommends that customers “[c]hoose a water heater with the longest warranty available.”²⁶⁷ PSE’s lease service provides complete replacement for the leased equipment and in-home repair for the full term of the lease.²⁶⁸ But the equipment that Public Counsel cites as equivalent to PSE’s lease service have much more limited warranties—a three-year limited tank and one-year limited parts warranty for the Sure Comfort water heater,²⁶⁹ and a twelve-year limited warranty for tank and parts, three-year full in-home labor

²⁶¹ McCulloch, Exh. No. MBM-7THC, at 23:3-25:16.

²⁶² *Id.*

²⁶³ No party has challenged PSE’s use of its weighted cost of capital in calculating its rate of return. McCulloch, Exh. No. MBM-7THC, at 22:1-3.

²⁶⁴ *Id.* at 25:1-7; Kimball, Exh. No. MMK-1THC, at 25:5-26:5.

²⁶⁵ O’Connell, Exh. No. ECO-1THC, at 43:12:45-2.

²⁶⁶ McCulloch, Exh. No. MBM-7THC, at 22:4-23:2.

²⁶⁷ Kimball, Exh. No. MMK-2, at 9.

²⁶⁸ Tariff Sheet Nos. 75-M, 75-N, 75-O, 75-P, 75-Q.

²⁶⁹ Kimball, Exh. No. MMK-6, at 12.

warranty for the Rheem Performance Platform.²⁷⁰ Mr. Wigen testifies to the important value of PSE’s “bumper to bumper warranty” that provides in-home repair and replacement for the lease term, as compared to the limited warranties typically offered by manufacturers and installers.²⁷¹ Consistent with Consumer Reports’ advice, many customers value the full service replacement and repair that PSE’s lease service provides. As Mr. McCulloch testified:

When considering the full suite of benefits afforded a customer taking this service, the proposed lease rate over the lease term is appropriate and reasonable. Customers not only gain access to new, efficient energy equipment, but they also acquire the assurance that the equipment will provide its intended benefits throughout the term of the lease, that it will be maintained at no cost, and should it need repair or replacement, the customer will bear no additional costs. This assurance is invaluable to some customers and cannot be acquired through a standard or financed purchase, even with an extended warranty.²⁷²

No party—including the Intervenors—have offered evidence of an actual service currently provided in the marketplace that is comparable to PSE’s comprehensive service.

107

The parties have also argued that PSE’s service is flawed because there are better market options to acquire water heating and HVAC equipment other than leasing. Ms. Kimball makes the obvious point that “Customers with access to capital would be better off financially if they purchased a hot water heater.”²⁷³ But PSE’s service is intended to provide an affordable option to customers that do not have access to capital to purchase outright, or who do not qualify for or are uncomfortable with financing options. Insufficient access to capital is a paramount reason why customers do not replace their equipment.²⁷⁴

²⁷⁰ *Id.* at 10.

²⁷¹ Wigen, Exh. No. AJW-1T, at 8:13-9:17.

²⁷² McCulloch, Exh. No. MBM-7THC, at 23:11-19.

²⁷³ Kimball, Exh. No. MMK-1THC, at 29:1-2.

²⁷⁴ Wigen, Exh. No. AJW-1T, at 4:10-12, 6:8-11.

The alternative market options suggested by the parties may be acceptable market options for some customers but they do not and have not resolved the issue for all customers.²⁷⁵ For example, the process to obtain financing is typically a multi-step process that requires the customer to (1) decide what equipment to finance; (2) research financing options; (3) find a vendor to provide and install the equipment; (4) apply for a loan at a lending institution; (5) purchase the equipment or pay the contractor using the loan; (6) repay the loan, usually directly to lending institution; and (7) purchase a separate maintenance, repair, and warranty plan.²⁷⁶ Nearly all such processes require a credit application and background check.²⁷⁷ The available financing options have a range of interest rates, fees, term periods, and other requirements that may be prohibitive for some customers.²⁷⁸ As explained by Dr. Faruqui:

None of the alternatives currently available in the market fully address all of the major barriers discussed in my direct evidence. Although several of the above solutions partially address the barriers of credit constraints, myopic behavior, and externalities, they do not completely ease customers' risk aversion or the issues of imperfect information and search costs.²⁷⁹

PSE's leasing service would be the only market option where all aspects of the service are centralized into one place, where customers would qualify based only on their bill history with PSE, and where the maintenance, repair, and warranty would be guaranteed throughout.²⁸⁰ There is simply no comparable market option.

6. Non-standard installation costs are consistent with industry practice.

In order to ensure that all customers receive the same service for their lease rates, PSE standardized the services that occur in nearly all equipment installations, and included these in

²⁷⁵ Faruqui, Exh. No. AF-4T, at 2:9-15:20; Wigen, Exh. No. AJW-1T, at 8:3-10, 11:16-12:7.

²⁷⁶ Faruqui, Exh. No. AF-4T, at 14:18-15:20.

²⁷⁷ *Id.* at 2:9-11:10.

²⁷⁸ *Id.*

²⁷⁹ *Id.* at 9:16-10:3.

²⁸⁰ *Id.* at 12:11-15:20.

the pricing model and the tariffed rates.²⁸¹ If there are additional, “non-standard” installation services required, these charges will be billed separately.²⁸²

111 PSE consulted with licensed water heating and HVAC contractors as well as internal PSE subject matter experts from PSE’s Gas First Response and Energy Efficiency divisions to determine what should appropriately be considered a “standard” and a “non-standard” installation.²⁸³ PSE’s delineation of standard versus non-standard costs were verified by a licensed practitioner. Exhibit No. MBM-13HC provides an email exchange between PSE and a local HVAC provider, in which the HVAC provider confirmed that PSE’s “list of standard practices for installation are right on.”²⁸⁴ Mr. Wigen also confirmed that this is a standard and appropriate practice.²⁸⁵ In fact, his business uses a similar process where water heating and HVAC equipment sales occur primarily by phone based on standardized pricing.²⁸⁶ PSE’s RFQ included detailed information on what it considered standard and non-standard installations so that the responders could accurately reflect this in their submittals.²⁸⁷

112 The majority of lease customers will have only standard installations. However, the tariff and information provided to customers will advise them of the possibility that there may be non-standard costs. The tariff sheets make clear what types of installation services are considered non-standard and to which additional charges may apply.²⁸⁸ Customers “will be informed of any non-standard installation costs prior to the Equipment being installed, and

²⁸¹ McCulloch, Exh. No. 7THC, at 11:13-12:12, 15:14-19.

²⁸² *Id.* at 11:13-12:5, 16:1-17:6.

²⁸³ *Id.* at 13:6-9; Exh. No. MBM-1T, at 19:8-17.

²⁸⁴ *Id.*, Exh. No. MBM-13HC; Exh. No. MBM-7THC 13:9-13.

²⁸⁵ Wigen, Exh. No. AJW-1T, at 10:18-11:15; Exh. No. AJW-2, at 2:10-21.

²⁸⁶ *Id.*, Exh. No. AJW-1T, at 10:18-11:15; Exh. No. AJW-2, at 2:10-21.

²⁸⁷ McCulloch, Exh. No. MBM-7THC, at 12:1-3. The standard and non-standard costs are detailed on Exhibit No. MBM-6.

²⁸⁸ *See* Tariff Sheet No. 75-L; McCulloch, Exh. No. 7THC, at 12:14-23.

may elect at that time to cancel the installation without cost.”²⁸⁹ For those customers who face non-standard costs for installation, they will be provided the convenient option to pay for these non-standard installation costs over a three-month period, interest free.²⁹⁰

113 Staff’s testimony that charging non-standard costs “provides a loophole around charging a tariffed rates”²⁹¹ disregards the many tariffs on file with the Commission that allow a regulated utility to charge additional amounts beyond the tariffed rate under certain circumstances.²⁹² Exhibit No. EEE-7 lists several PSE tariffs that allow for additional charges to customers, including: (i) Schedule 85, electric line extensions, which allows PSE to determine line extension costs using its own cost estimating system in conjunction with sound engineering practices; (ii) customer payments for upgrades and reconfiguration of substation equipment in Tariff Schedule 6; and (iii) additional charges allowed for non-standard permits, easements, and other extraordinary costs not included in standard costs in natural gas Schedule 7, to name just a few.²⁹³ Other Washington utilities use similar distinctions.²⁹⁴ Additionally, PSE existing natural gas water heater rental service charges customers for “non-standard” costs that arise when a customer’s equipment fails and needs to be replaced.²⁹⁵

114 In sum, non-standard costs are not unique to this tariff filing. PSE has taken care to determine what costs are appropriately considered standard and what costs should be treated as non-standard costs. By only charging customers that have non-standard installations the

²⁸⁹ Tariff Sheet No. 75-L.

²⁹⁰ TR. 333:7-15; McCulloch, Exh. No. MBM-7THC, at 16:11-14.

²⁹¹ Cebulko, Exh. No. BTC-1THC, at 23:7-9.

²⁹² Englert, Exh. No. EEE-3T, at 28:13-29:8.

²⁹³ *Id.*, Exh. No. EEE-7.

²⁹⁴ McCulloch, Exh. No. MBM-7THC, at 17:7-16.

²⁹⁵ *Id.* at 16:2-17:6.

extra costs for those installations, it ensures that customers only pay for the services they receive, and are not subsidized by other customers.²⁹⁶

7. The tax treatment for leasing customers is comparable to sales customers.

115 SMACNA attempts to paint a complicated picture of taxes related to PSE's leasing service, but it is not as complicated as SMACNA claims. Taxes are an inevitable part of business for PSE as well as for the contractors SMACNA and WSHVACCA represent. Customers who lease equipment from PSE will pay sales tax, just as they do when they purchase equipment. The B&O tax is a tax on the lessor or the seller that PSE will pay, as do sellers of the equipment. It is a cost of doing business that is baked into the businesses determination of the price of its product.²⁹⁷ For PSE, this can be transparently seen in the pricing model.²⁹⁸ There is no state utility tax imposed on lease service, because B&O taxes are paid instead.²⁹⁹ Only one local jurisdiction charges a local utility tax for leases—Bellingham, so that is not a critical distinction for PSE.³⁰⁰ Customers must pay property tax on water heating and HVAC equipment whether they own it or it is owned by PSE and leased by customers. Property tax is less than one percent of the value of the equipment for PSE through Schedule 140.³⁰¹ PSE's current pricing mechanism as filed includes property taxes.³⁰² As Mr. Marcelia testified in rebuttal, "in a compliance filing, PSE will remove the property tax from the Schedule 75 rate, and it will instead be charged to customers through Schedule

²⁹⁶ *Id.* at 11:7-12:12, 15:14-19.

²⁹⁷ Marcelia, Exh. No. MRM-1T, at 1:15-2:18.

²⁹⁸ *See* Highly Confidential Pricing Model (Single Product Calculations at *e.g.* Tab 35, line 82, row D), O'Connell, Exh. No. ECO-5HC.

²⁹⁹ Marcelia, Exh. No. MRM-1T, at 3:15-4:1.

³⁰⁰ *Id.* at 4:1-5.

³⁰¹ TR. 459:8-16.

³⁰² *See, e.g.*, Highly Confidential Pricing Model, (Single Product Calculation at *e.g.*, tab 35, line 71), O'Connell, Exh. No. ECO-5HC.

140.”³⁰³ In summary, the tax treatment for customers who lease from PSE and customers who purchase equipment is comparable and should not be a deciding factor in this case.

8. The Commission can order a compliance filing to refresh the rates.

116 Although there is substantial evidence supporting PSE’s rates as filed, PSE has offered to submit a compliance filing within 60 days after Commission approval of the lease tariffs.³⁰⁴ The Commission has discretion as to whether to order such a compliance filing. It is not uncommon for the Commission to order a company to refresh rates at the conclusion of a contested case. In general rate cases and power cost cases, PSE routinely updates its power cost rates during rebuttal or in a supplemental filing, and also updates rates in a compliance filing at the conclusion of the case, based on more recent contract prices and gas prices.³⁰⁵

117 Additionally, in the 1992 WNG rate case, the Commission accepted a proposal by WNG, made on rebuttal, to offer more energy efficient water heaters through its rental program and ordered WNG to update its rates in a compliance filing to include rates for these new products that had not been included in WNG’s direct or rebuttal case.³⁰⁶ Specifically, the Commission stated “the company is directed to file a revised tariff which contains a cost recovering rate for the new, efficient water heaters it proposes to lease.”³⁰⁷ The Commission’s order in the WNG rate case is directly on point with what PSE has offered to do in the current case. PSE is willing to update its costs after finalizing the contracts with its partners.

³⁰³ Marcelia, Exh. No. MRM-1T, at 7:3-11.

³⁰⁴ Norton, Exh. No. LYN-3, at 2.

³⁰⁵ See, e.g., *WUTC v. Puget Sound Energy*, Dkt. Nos. UE-111048 & UG-111049, Final Order ¶ 8, (May 7, 2012); *WUTC v. Puget Sound Energy*, Dkt. No. UE-141141, Final Order, ¶ 8, (Nov. 3, 2014).

³⁰⁶ *WUTC v. WNG*, Dkt. No. UG-920840, Fourth Supp. Order at 17 (Sept. 27, 1993).

³⁰⁷ *Id.*

C. Lease Solutions Addresses A Significant Market Need

118 PSE's leasing service is consistent with the public interest because it will help address the market gap caused by the thousands of households in PSE's service area that are using water heating and HVAC equipment that is beyond its useful life. While the parties challenge the precise percentage and number of households with aging equipment, they do not dispute that there are thousands of households that have equipment that are past its useful life.

119 As explained by Dr. Faruqui, PSE's leasing service helps customers overcome barriers to replace aging water heating and HVAC equipment that contributes to this market gap.³⁰⁸ These barriers include credit constraints, risk aversion, imperfect information and search costs, myopic behavior, and various externalities.³⁰⁹ According to Dr. Faruqui, for some customers, PSE's proposed leasing service addresses these barriers to adoption of new, energy-efficient equipment better than any other market option.³¹⁰ No party has offered evidence disputing or rebutting Dr. Faruqui's expert analysis on this issue.

D. Lease Solutions Provides Significant And Robust Consumer Protection Provisions That Meet Or Exceed Protections Required Under The Consumer Protection Laws

120 The parties have levied a variety of consumer protection concerns against PSE's proposed lease service but none of them are legitimate. As a regulated entity, PSE is more closely regulated than other market actors. Further, PSE's tariff complies with the Commission's consumer protection requirements and adequately protects customers.

1. PSE will be subject to more regulation than other market actors.

121 The suggestion that by offering leasing, PSE is somehow beyond the detection of consumer protection rules is simply wrong. Public utilities are under more scrutiny and

³⁰⁸ Faruqui, Exh. No. AF-1T, at 3:9-5:2; Exh. No. AF-4T, at 2:9-15:20.

³⁰⁹ *Id.*, Exh. No. AF-1T, at 5:3-12:20.

³¹⁰ *Id.* at 13:1-18:2.

regulation that any unregulated private company. As the Commission has recognized, “[t]he Commission’s consumer protection oversight of electrical companies is broad and exclusive.”³¹¹ PSE’s leasing service will be subject to the Commission’s consumer protection oversight in its leasing service, just as it is in every other aspect of its business.

122 The public service laws contain extensive consumer protection provisions. For example, regulated companies are required to publish and file with the Commission all rates and charges.³¹² Hence, while other water heating and HVAC contractors have no obligation to disclose their pricing, PSE’s prices will be transparent. In addition, PSE cannot provide any “unreasonable preference or advantage to any person” and cannot engage in any rate discrimination.”³¹³ Thus while unregulated entities can adjust pricing and can also determine who they will and will not do business with, PSE’s rates are static and PSE must offer service to all who are interested and qualify. Unlike unregulated companies, in some circumstances, public utilities are even required to provide services when customers fail to pay, and are required to offer customers special billing arrangements in exchange for services.³¹⁴

123 Commission rules prescribe public utilities’ service responsibilities, billing requirements, service applications, deposit requirements, disconnection and reconnection of service rules, meter testing, and payment arrangements.³¹⁵ There are also Commission rules governing what information public utilities must disclose to customers³¹⁶ and rules protecting against the

³¹¹ 2014 Interpretive Statement ¶ 50.

³¹² RCW 80.28.050

³¹³ RCW 80.28.090-100.

³¹⁴ RCW 80.28.010(4), (7).

³¹⁵ WAC 480-100-148 (service); WAC 480-100-178 (billing); WAC 480-100-108 (applications); WAC 480-100-113 (deposits); WAC 480-100-128 (disconnection); WAC 480-100-133 (reconnection); WAC 480-100-183 (meter testing); WAC 480-100-138 (payment).

³¹⁶ WAC 480-100-103 (required disclosures).

disclosure of customer information.³¹⁷ In addition, there are specific Commission rules regarding how public utilities must respond to customer complaints and grievances.³¹⁸ And, to enforce any rule violation, the Commission may impose civil penalties on regulated companies³¹⁹ and when issuing penalties, the Commission can give special consideration to violations that are harmful to the public and affect a large number of customers.³²⁰

124 In search of a problem, the parties argue that there will be confusion as to how PSE's service partners are regulated since they are unregulated entities. But this ignores the fact that PSE and other regulated companies routinely use nonregulated contractors and service partners to carry out various aspects of their public service duties, and PSE remains responsible for the actions of these nonregulated partners.³²¹ As Mr. Englert testified:

PSE routinely works with service providers in various areas of its business, such as, but not limited to: construction services; vegetation management services; outage restoration services; attachment services; conservation program implementation services; and demand response services. All of these service providers are not regulated by the Commission, yet PSE remains responsible for the service providers' actions and for the customer-facing transactions. The Commission has a process in place to handle any complaint resulting from these processes—whether they are services provided directly by PSE or provided by a service provider. Therefore, it will not be difficult for the Commission's Consumer Protection Staff to appropriately monitor PSE's leasing service and respond to consumer complaints, should they arise.³²²

125 Given the above, no party can credibly argue that PSE will be under less consumer protection scrutiny than other market actors. PSE's leasing service will have more consumer

³¹⁷ WAC 480-100-153 (disclosure protection).

³¹⁸ WAC 480-100-173; WAC 480-100-128(9).

³¹⁹ RCW 80.04.380; RCW 80.04.405.

³²⁰ Enforcement Policy of the Washington Utilities and Transportation Commission, Docket A-120061, ¶ 15 (Jan. 4, 2013).

³²¹ See, e.g., *WUTC v. PSE*, Docket PG-060215, Final Order Accepting Settlement Agreement on Condition ¶ 30 (April 3, 2008) (commending PSE for admitting responsibility for contractor's fraudulent conduct, acknowledging PSE's responsibility to ensure compliance when working with contractor, and fining PSE \$1.25 million for contractor's fraudulent conduct).

³²² Englert, Exh. No. EEE-3T, at 3:12-4:2.

protection oversight than any other water heating or HVAC equipment service in its service territory, which benefits customers.³²³

2. PSE’s tariff complies with the relevant consumer protection rules and provides sufficient protection to customers.

126 The parties have raised a host of overstated concerns about the lack consumer protections in PSE’s tariff, including that PSE is not providing sufficient information to participating customers about the service.³²⁴ The tariff contains 19 pages of terms and conditions that fully describe the service and the rights and responsibilities of each party.³²⁵ Contrary to suggestions made by the parties, as required by law, PSE’s tariff will:

- Fully inform customers of all of their rights and responsibilities;³²⁶
- Provide the scope of PSE’s service, including the maintenance schedule, repair obligations, and replacement guarantee are fully explained in the tariff;³²⁷
- Disclose the monthly lease rate, the lease term, and total lease cost;³²⁸ and
- Fully inform customers of any non-standard costs and allows customers the option to cancel the service if they choose due to non-standard costs.³²⁹

127 Moreover, PSE made changes to its tariff based on feedback from the parties to strengthen the disclosures to customers. For example, PSE “clarified that its internal creditworthiness score will be used to qualify customers for the lease service; clarified customers’ responsibility for installation costs related to non-standard conditions; provided

³²³ But even if customers are viewed at risk through PSE’s leasing service, as other parties claim, the Commission has recognized that in such situations, regulation by the Commission is strongly favored, which further supports the fact that PSE’s service should appropriately be regulated. 2014 Interpretive Statement, ¶ 62.

³²⁴ Englert, Exh. No. EEE-3T, at 9:10-10:2.

³²⁵ *Id.* at 2:14-23.

³²⁶ *Id.* at 2:21-3:9; TR. 199:8-19.

³²⁷ Englert, Exh. No., EEE-1T, at 10:9-18.

³²⁸ *Id.* at 10:3-8.

³²⁹ McCulloch, Exh. No. MBM-7THC, at 11:10-13; Tariff Sheet No. 75-L.

more detail regarding maintenance and repair responsibilities; revised default terms to include a 30-day notice before PSE may terminate the lease, and made several other changes.”³³⁰

128 PSE fully intends to comply with the Commission’s rules addressing late fees, customer complaints, third-party marketing, and any other applicable law or rule.³³¹ Like all of its service offerings, it is PSE’s practice to follow the Commission rules and applicable laws.³³² Suggestions that PSE will be exploiting customers or engaging in “upselling” are baseless.³³³

129 Finally, PSE’s tariff does not contain any conflicting provisions. For example, at the hearing, there was some discussion as to whether PSE’s replacement warranty provision (Tariff Sheet No. 75-Q), conflicted with PSE’s “Disclaimer of Warranties” provision (Tariff Sheet No. 75-V). There is no conflict. As a matter of contract law, PSE’s Disclaimer of Warranty is a standard contractual provision providing that since PSE, “being neither the manufacturer, nor a supplier, nor a dealer in the equipment,”³³⁴ cannot make any guarantees regarding the condition or merchantability of the equipment, and cannot be not liable if because of a defect in the equipment, a customer suffers damages or loss.³³⁵ However, what PSE can do, and what it has guaranteed in the tariff, is notwithstanding the Disclaimer of Warranties, promise to repair or if needed, replace the equipment at any time during the lease, should the equipment fail, regardless of any manufacturer warranty.

E. PSE’s Commitments Will Enhance The Service And Increase PSE’s Accountability

130 The proposed additional commitments PSE offered in its rebuttal testimony do not materially change the terms of the tariff schedules PSE filed. They are simply commitments

³³⁰ Englert, Exh. No. EEE-3T, at 2:8-13, 4:3-6:11, 7:1-8:20.

³³¹ *Id.* at 2:16-21, 6:1-11.

³³² *Id.* at 2:11-13.

³³³ *Id.* at 4:3-5:21.

³³⁴ Tariff Sheet No. 75-V.

³³⁵ *Id.*

above and beyond the tariff that PSE would be willing to also agree to, but are not required for the tariff as-filed to be approved or take effect.³³⁶ They include:

- Annual tracking and reporting obligations;
- Transition of customers from PSE’s existing program to the new program;
- Evaluate how as part of the 2018-19 Biennial Conservation Plan process the leasing service might influence rebate target setting;
- Ways to use the leasing services as a platform for exploring demand response technologies, and for the viability of leasing customer generation and storage equipment such as batteries, both independently and in combination;
- Confirm final pricing with updated rates based on contract execution and the possible addition of equipment product offerings aligned to those already filed; and
- Use the program as a platform to evaluate the “utility of the future.”³³⁷

131 PSE’s offered commitments are consistent with commitments offered in other cases before the Commission. For example, in the 1992 WNG rate case described above, WNG offered several proposals on rebuttal, which the Commission accepted.³³⁸ These included proposals such as further increasing the rental rate from the rate originally proposed in WNG’s direct filing; adding additional energy-efficient models beyond those included on the filed tariff schedule, with rates to be determined in a compliance filing; and eliminating a customer allowance for installation costs that was included on the tariff filed in WNG’s direct case.³³⁹

132 More recently, in the 2007 PSE merger proceeding, the joint applicants’ rebuttal testimony included eight pages of significant, additional commitments that had not been offered in direct testimony addressing rate credits, low income assistance, service quality

³³⁶ Norton, Exh. No. LYN-1T at 8-9.

³³⁷ Norton, Exh. No. LYN-3.

³³⁸ Norton, Exh. No. LYN-1T, at 19-20.

³³⁹ See *id.*; *WUTC v. Washington Natural Gas*, Docket UG-920840, Fourth Supp. Order, at 16-17 (September 27, 1993).

measures, and conservation.³⁴⁰ Likewise, in *In re PacifiCorp*, extensive commitments on rebuttal were offered and accepted by the Commission as “consistent with the public interest and that the terms and conditions are fair, just and reasonable.”³⁴¹ There are numerous other examples where additional commitments are offered on rebuttal.³⁴² The commitments PSE offered in rebuttal are consistent with Commission practice and do not take away from the sufficiency of the tariffs as filed and would further benefit customers.

VI. CONCLUSION

133 For the reasons set forth above, the Commission should approve PSE’s leasing program.

Respectfully submitted this 30th day of August, 2016.

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³⁴⁰ See *In re Joint Application of Puget Holdings and PSE For an Order Authorizing Proposed Transaction*, Docket U-072375 (Rebuttal Testimony of Stephen P. Reynolds), at 1-9; *In re Joint Application of Puget Holdings LLC and Puget Sound Energy*, No. U-072375 (Dec. 30, 2008) (Order 08), at 26-42 (discussing the merger commitments proposed by the joint applicants on rebuttal and the further modifications of those commitments by the parties in settlement and by the Commission as part of the final order).

³⁴¹ *In re PacifiCorp*, No. UE-981627 (Oct. 14, 1999) (5th Supp. Order).

³⁴² See, e.g., *Washington Utilities & Transportation Commission v. PacifiCorp.*, No. UE-100749 (Mar. 25, 2011) (Order 06) (rebuttal testimony used to modify parties’ positions and facilitate settlement); *Washington Utilities & Transportation Commission v. Puget Sound Power & Light Co.*, No. UE-901183-T (Apr. 1, 1991) (“The company’s proposal as revised on rebuttal . . . should be implemented . . .”).