

**BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION
COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY

Respondent.

DOCKET NO. UE-230313

DECLARATION OF ROBERT L.
EARLE

1. I, Robert L. Earle, make the following declaration:
2. I am the owner of Alea IE, LLC, an economic consulting firm. My business address is 1388 Haight St. #49, San Francisco, CA. I have over 20 years' experience working in the electric power and gas industries. I hold M.S. and Ph.D. degrees in operations research from Stanford University, and a B.A. in mathematics from the College of William and Mary. My curriculum vitae is included in the Appendix to this declaration.
3. I have been engaged by the Public Counsel Section of the Washington State Attorney General's Office to review certain aspects of Puget Sound Energy's (PSE) Power Cost Adjustment Mechanism filing.
4. In conducting my analyses, I evaluated Puget Sound Energy's (PSE or Company) Winter Powerex Contract entered into on September 26, 2022. This contract is for [REDACTED]

[REDACTED]

[REDACTED]¹

5. PSE acted imprudently with respect to the Powerex Winter Contract. My understanding of the Commission's prudence standard is based on Order 12 from Docket UE-031725² and Order 08 from Dockets UE-111048/UG-111049.³ In Docket UE-031725, the Commission stated:⁴

The Commission has consistently applied a reasonableness standard when reviewing the prudence of decisions relating to power costs, including those arising from power generation asset acquisitions. The test the Commission applies to measure prudence is what would a reasonable board of directors and company management have decided given what they knew or reasonably should have known to be true at the time they made a decision. This test applies both to the question of need and the appropriateness of the expenditures. The company must establish that it adequately studied the question of whether to purchase these resources and made a reasonable decision, using the data and methods that a reasonable management would have used at the time the decisions were made.

6. Citing the passage language, in Dockets UE-111048/UG-111049, the Commission said:⁵

There is no single set of factors by which the Commission evaluates prudence but the Commission typically focuses on four factors:

- 1) *The Need for the Resource*: The utility must first determine whether new resources are necessary. Once a need has been identified, the utility must determine how to fill that need in a cost-effective manner. When a utility is considering the purchase of a resource, it must evaluate that resource against the standards of what other purchases are available, and against the standard of what it would cost to build the resource itself.
- 2) *Evaluation of Alternatives*: The utility must analyze the resource alternatives using current information that adjusts for such factors as end effects, capital costs, dispatchability, transmission costs, and whatever other factors need

¹ Direct Testimony of Philip A. Haines, Exh. PAH-1CT at 7:16–8:5. The term of the contract is November 1, 2022 – March 31, 2023 and November 1, 2023 – March 31, 2024 (Haines, Exh. PAH-5C, at 1).

² *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Docket UE-031725, Order 12 (Apr. 7, 2004).

³ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-111048, UG-111049, (*consol.*) Order 08 (May 7, 2012).

⁴ Docket UE-031725, Order 12 ¶ 19.

⁵ Dockets UE-111048, UG-111049, Order 08 ¶ 409.

specific analysis at the time of a purchase decision. The acquisition process should be appropriate.

- 3) *Communication With and Involvement of the Company's Board of Directors:* The utility should inform its board of directors about the purchase decision and its costs. The utility should also involve the board in the decision process.
- 4) *Adequate Documentation:* The utility must keep adequate contemporaneous records that will allow the Commission to evaluate the Company's decision-making process. The Commission should be able to follow the utility's decision process; understand the elements that the utility used; and determine the manner in which the utility valued these elements.

7. PSE submitted bids for the purchase of firm hydroelectric energy during winter peak hours beginning in 2022 in response to an RFP issued by Powerex in September 2022. In developing its bid, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. [REDACTED]⁹

⁶ Haines, Exh. PAH-5C at 1–2.

⁷ *Id.* at 1.

⁸ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-220066, UG-220067, & UG-210918 (*consol.*).

⁹ Direct Testimony of Paul K. Wetherbee, Exh. PKW-7C at 6, *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-220066, UG-220067, and UG-210918 (*consol.*) (filed Jan. 31, 2022).

9. [REDACTED]

[REDACTED]

10. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²

11. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁴

¹⁰ Wetherbee, Exh. PKW-1CT at 13:14–18, Docket UE-220066, UG-220067, & UG-210918 (*consol.*) (filed Jan. 31, 2022).

¹¹ Robert L. Earle, Exh. RLE-3C at 2 (PSE Response to Public Counsel Data Request No. 200, subpart f.) Docket UE-220066, UG-220067, & UG-210918 (*consol.*) (filed July 28, 2022). PSE Response to Public Counsel Data Request No. 200, subpart f.) Docket UE-220066, UG-220067, & UG-210918 (*consol.*) (filed July 28, 2022).

[REDACTED]

¹² PSE Response to Public Counsel Data Request No. 15, subparts a–d), included in the Appendix to this Declaration.

¹³ PSE Response to Public Counsel Data Request No. 7, subpart g.10), included in the Appendix to this Declaration.

¹⁴ PSE Response to Public Counsel Data Request No. 15, sub-part e, included in the Appendix to this Declaration.

12. [REDACTED]

[REDACTED]

[REDACTED] 15 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 17

13. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁵ Dockets UE-111048, UG-111049, Order 08 ¶ 409.

¹⁶ PAH-3C, p. 7. PAH-4C, p. 6.

¹⁷ Earle, Exh. RLE-3C at 3, Dockets UE-220066, UG-220067, & UG-210918 (*consol.*) (PSE Response to Public Counsel Data Request No. 200, subpart g):

[REDACTED]

As noted in Earle, Exh. RLE-1CT at 7, Dockets UE-220066, UG-220067, & UG-210918 (*consol.*),

[REDACTED]

¹⁸ PSE Response to Public Counsel Data Request No. 15, subpart f, included in the Appendix to this Declaration.

¹⁹ See also, PSE Response to Public Counsel Data Request No. 14, subpart b), included in the Appendix to this Declaration.

14.

[REDACTED]

As referenced o[n] page 2 of Exh. PAH-6C,

[REDACTED]

15.

[REDACTED]

²⁰ PSE Response to Public Counsel Data Request No. 14, subpart a), included in the Appendix to this

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16. Another reason to determine that PSE acted imprudently with respect to the Powerex Winter Contract is that one of the factors the Commission focuses on in determining prudence is the evaluation of alternatives.²¹ PSE, however, did not evaluate alternatives. When asked if it contacted any other suppliers to get competing offers, it stated it did not.²² That is, PSE did no “comparison shopping.” While PSE points out that it did not initiate contact with Powerex, this argument lacks merit. To illustrate, suppose someone offered the opportunity to buy a house. A prudent buyer would not just add up the value of various attributes of the house, such as the number of bedrooms, number of bathrooms, etc. A prudent buyer would also look at the price of similar houses on the market and at the sales prices of recently sold houses that were similar. PSE neglected to be a prudent buyer.

17. Moreover, [REDACTED]

[REDACTED]

Declaration.

²¹ Dockets UE-111048, UG-111049, Order 08 ¶ 409.

²² PSE Response to Public Counsel Data Request No. 07, subpart a, included in the Appendix to this Declaration:

Puget Sound Energy (“PSE”) did not contact other suppliers to meet PSE’s identified near term capacity need. To be clear, PSE did not contact Powerex either – PSE received the request for proposal (“RFP”) from Powerex and the product offered in that RFP aligned with PSE’s need for winter capacity.

[REDACTED]

[REDACTED]

[REDACTED]

18. The Commission should disallow [REDACTED] for the Powerex Winter Contract, or a total of \$32,021,040 over the life of the contract.²⁴ The disallowance breaks down as follows:

- For the PCAM true-up for 2022, \$6,446,480 should be removed from the calculation of actual power costs.
- If the Powerex Winter Contract is not included in base power cost rates for 2023, \$15,957,680 should be removed from the calculation of actual power costs for the 2023 PCAM true-up.²⁵
- If the Powerex Winter Contract is not included in base rates for 2024, \$9,616,880 should be removed from the calculation of actual power costs for the 2024 PCAM true-up.²⁶

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT TO THE BEST OF MY KNOWLEDGE THE FOREGOING IS TRUE AND CORRECT.

19. SIGNED at San Francisco, California this 14th day of November, 2023.



Robert L. Earle
Owner
Alea IE, LLC.
1388 Haight St. #49
San Francisco, CA 94117

²³ PSE Response to WUTC Data Request No. 012, , included in Appendix to this Declaration.

²⁴ The Appendix to this Declaration shows the calculations for the disallowance.

²⁵ If the Powerex Winter Contract was included in base power cost rates for 2023, then ratepayers should receive a refund of \$15,957,680 plus any applicable interest and markup, and \$15,957,680 should be excluded from both the baseline and actual power costs in calculating the Net Power Cost (NPC) variance in the 2023 PCAM true-up.

²⁶ If the Powerex Winter Contract was included in base rates for 2024, then base power cost rates for 2024 should be decreased by \$9,616,880, and \$9,616,880 should be excluded from actual power costs in calculating the Net Power Cost (NPC) variance in the 2024 PCAM true-up.