Service Date: November 16, 2016

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, **Complainant,** **v.** **PUGET SOUND ENERGY,** **Respondent.**	DOCKETS UE-151871 and UG-151872 (*consolidated*) ORDER 06 FINAL ORDER REJECTING TARIFF

SYNOPSIS

1 *Puget Sound Energy (PSE or Company) proposes to lease water heating and heating, ventilation, and air conditioning (HVAC) equipment to its customers. The Company plans to offer leases of 10 to 18 years depending on the type of equipment, which PSE's contractors would select and install in the customer's location. PSE promotes this program as a regulated business expansion opportunity that would provide substantial benefits to both the Company and its customers.*

2 *The Commission concludes that PSE's proposed equipment leasing program is a utility service within the Commission's jurisdiction. The statute broadly defines electric and gas plant to include personal property that is "used for or in connection with" the sale of electricity or natural gas,[1] and we find that water heating and HVAC equipment comes within this definition as long as that service furthers an important public purpose. Our conclusion is consistent with the Commission's previous statutory interpretation, upheld by the Washington Supreme Court, rendered in the context of PSE's discontinued but still current water heater rental service.*

3 *In this case, the Company's stated purpose of the proposed program is to increase energy conservation and efficiency. We accept PSE's representations for jurisdictional purposes and agree that this is an important public policy goal. While we conclude that PSE's proposed water heating and HVAC equipment lease program satisfies the statutory*

[1] RCW 80.04.010(11); RCW 80.04.010(15).

prerequisites of a regulated utility service, we also examine the extent to which the program furthers this goal as part of our inquiry into whether the program's rates, terms, and conditions are fair, just, and reasonable.

4 *We also accept for purposes of this case the Company's characterization of the service as a leasing program, not a sale of equipment. Washington's Consumer Lease Act is enforceable through the state's Consumer Protection Act, which does not apply to regulated utilities. We decline to apply the definitions in that statute to determine what constitutes a "sale of merchandise or appliances or equipment" under RCW 80.04.270. The statutory prohibition on including such sales as part of a public service company's regulated operations does not preclude PSE from offering this proposed service.*

5 *We find, however, that the rates, terms, and conditions PSE proposes in this specific case are not fair, just, and reasonable. The proposed rates are not based on the actual costs of the equipment PSE would lease to customers but on an average of the estimated costs for the types of equipment PSE likely would offer. Nor does the Company provide sufficient evidence to support the demand assumptions it used to calculate the proposed rates. In addition, the terms and conditions PSE proposes primarily assign the burdens and risks of equipment ownership to the customer, insulate the Company from most liability for damage caused to or by the equipment, and otherwise unduly favor PSE. We cannot find these terms and conditions fair, just, and reasonable.*

6 *We also find that the proposed service raises consumer protection issues. Commission rules focus on protecting consumers from public service companies exercising monopoly power, not from the practices of such companies operating in a competitive market. Provisions in the proposed tariff absolve the Company from liability or fail to address consequences for lack of compliance with the lease terms, which would threaten to undermine Commission efforts to remedy customer complaints.*

7 *Finally, we conclude that the proposed leasing program is not in the public interest. The program does not satisfy established state energy conservation and efficiency standards and in some cases could hinder efforts to reduce energy consumption. PSE also failed to demonstrate that the claimed benefits of the proposed service would outweigh its costs.*

8 *We are sensitive to the desire of regulated electric and natural gas companies to explore other revenue opportunities in light of level or declining loads. Any new service, however, must be well-developed at the outset and consistent with the public interest. We conclude that PSE's proposal, as currently designed, is not sufficiently developed, its*

proposed rates, terms, and conditions are not fair, just, and reasonable, and that PSE's proposal is not in the public interest. We therefore reject the proposed tariff.

I. PROCEDURAL BACKGROUND

9 On September 18, 2015, Puget Sound Energy (PSE or Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective tariffs WN U-60 schedule 75 and WN U-2 schedule 175 to offer electric and natural gas equipment lease service to its customers (Program). The Commission entered Order 01, Complaint and Order Suspending Tariff Revisions, on November 13, 2015, and subsequently initiated an adjudicative proceeding to address the issues raised in the filing.

10 On January 5, 2016, the Commission conducted a prehearing conference to establish a schedule for the adjudication and to address other procedural issues. Overruling the objections of PSE and Commission regulatory staff (Staff), the Commission granted intervention to the Western Washington Chapter of the Sheet Metal and Air Conditioning Contractors National Association (SMACNA-WW), a trade association whose members specialize in the sale, installation, and servicing of heating, ventilation, and air conditioning (HVAC) equipment and energy management services in western Washington, and the Washington State Heating, Ventilation, and Air Conditioning Contractors Association (WSHVACCA), a statewide association representing the HVAC industry in Washington. The Commission found that PSE placed the HVAC equipment market at issue in this proceeding and that these associations could provide the Commission with useful information about that market. The Commission, however, limited the associations' intervention to the issue of the effect of the tariffs on PSE's customers, not the impact on other market participants.[2] The Commission adopted the parties' agreed schedule, including hearing dates before Administrative Law Judge Gregory J. Kopta in June 2016.

11 Pursuant to this schedule, PSE filed a revised tariff on February 17, 2016, and direct testimony on February 25, 2016. The Company filed corrections to its testimony on April 25, 2016.

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[2] Order 02, Prehearing Conference Order, ¶¶ 6-13. The Commission denied intervention to Sunrun, which designs, installs, monitors, and maintains solar panels on homeowner rooftops, concluding that this company did not have a substantial interest in this proceeding and its participation would not be in the public interest. *Id*. ¶ 14.

12 On April 27, 2016, a majority of the parties filed a joint motion requesting that the Commissioners hear and decide the case because it presents significant policy issues that would be resolved best by the Commissioners in the first instance.[3] The Commission granted the motion and revised the procedural schedule accordingly.

13 On June 7, 2016, Staff, the Public Counsel Unit of the Washington Attorney General's Office (Public Counsel), and the intervenors filed their response testimony. PSE filed rebuttal testimony on July 1, 2016.

14 On July 13, 2016, Staff filed a Motion for Summary Determination. Staff argued that the Commission should reject the tariff on two grounds: (1) the Program does not qualify as a utility service under Washington law, and (2) PSE failed to present sufficient evidence to establish a prima facie case that its proposed rates are just and reasonable. Staff requested an exemption from the requirement in WAC 480-07-380(2)(b) that such motions be filed at least 30 days prior to the evidentiary hearing, claiming that the motion was based, in part, on the new evidence PSE included in its rebuttal testimony, and Staff did not have sufficient time to analyze that testimony and prepare its motion within the requisite time period.

15 After the Commission requested responses, Public Counsel, SMACNA-WW, and WSHVACCA each filed responses in support of Staff's motion. PSE filed a response in opposition to the motion.[4]

16 On August 1 and 3, 2016, the Commission conducted evidentiary hearings on PSE's proposed service. At the outset of the hearings, Judge Kopta announced the Commission's decision not to rule on Staff's motion but to consider the issues Staff raised in light of the evidence and briefing the parties presented.[5]

17 On August 9, 2016, PSE filed its responses to bench requests the Commission promulgated during the hearings. On August 10 and 15, respectively, Staff and Public Counsel filed objections to, and motions to strike, one of the Company's bench request responses, claiming that PSE was introducing new customer credit terms and conditions after the hearing that other parties had no opportunity to address. On August 16, 2016, the

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[3] Public Counsel did not join the motion but did not oppose it.

[4] The Company also moved for leave to file replies to the responses of Public Counsel and SMACNA-WW.

[5] TR 105:18-106:19.

Company filed its response to the objections, stating that its bench request response provided the information the Commission requested, and the Commission has the discretion to consider updated information. On August 17, 2016, the Commission entered Order 05, Order on Evidentiary Issues, overruling the objections, denying the motions to strike, and admitting both PSE's bench request responses and Staff's responses into the record subject to the Commission determination of the appropriate weight to give the evidence.

18 The parties filed simultaneous opening post-hearing briefs on August 30, 2016, and reply briefs on September 19, 2016.[6]

19 Sheree Strom Carson and David S. Steele, Perkins Coie, Seattle, Washington, represent PSE. Sally Brown, Christopher M. Casey, and Jeff Roberson, Assistant Attorneys General, Olympia, Washington, represent Staff. Lisa Gafken, Assistant Attorney General, Seattle, Washington, represents Public Counsel. Jeffrey D. Goltz, Cascadia Law Group, Olympia, Washington, represents SMACNA-WW. James L. King, Jr., pro se, Olympia, Washington, represents WSHVACCA.

II. INTRODUCTION

20 Electric and natural gas utilities in Washington and throughout the United States face new and different business challenges today than they have through much of their history. Historically, utility revenues grew reliably, if not steadily, because load growth was significant year over year and typically equal to or greater than increasing capital and operating costs. Under such a regime, utilities usually could recover both their fixed costs embedded in rate base and their variable costs accounted for in volumetric rates.

21 Such historical conditions, however, are not necessarily present for many electric and natural gas utilities today. Utility integrated resource plans in recent years have shown flat or very low load growth for electric and natural gas distribution service, in combination with low commodity prices for natural gas, which in turn have created lower wholesale electricity prices in the Northwest. Moreover, mandatory conservation measures for both electricity and natural gas that represent significant least-cost resources continue to limit load growth. In addition to low load growth, customer desires and

[6] Staff subsequently submitted a letter on October 12, 2016, making an additional point in support of its position, which PSE moved to strike on October 14, 2016. We agree with the Company that the Commission did not authorize further argument, even in the form of a PSE tariff citation, and we do not consider Staff's letter in rendering our decision.

regulations to reduce greenhouse gases from energy production and other sources are putting increased demands on utilities and state commissions as they work to balance affordable rates for consumers and a fair return for shareholders.

22 Further, the demands of new technologies, including existing and emerging renewable energy technologies, and the ability of these technologies to generate substantial amounts of data at shorter intervals measuring the generation and consumption of energy both at the meter and beyond the meter, and the movement of energy through the grid, create new opportunities and challenges for utilities and state commissions. As technology and software capabilities advance, more such services undoubtedly will be developed and offered as a utility service, either regulated or non-regulated. Despite these changes, electric and natural gas utilities such as PSE continue to be subject to mandatory reliability and safety standards both at the federal and state level, requiring continued capital investments. Indeed, regulated utilities remain obligated to provide safe, reliable and affordable utility service to all customers who request it.

23 These business and regulatory challenges facing utilities such as PSE have sparked a vigorous national discussion about the "utility of the future." New and creative business models are being proposed or discussed at commissions around the country, and many commenters are questioning the continued vitality of the traditional regulatory ratemaking model. Many utilities, including PSE, have a holding company corporate structure under which the overall utility can pursue such business opportunities either on an unregulated basis, a fully regulated basis, or some hybrid between the two approaches. PSE cites to its desire to transform to a "utility of the future" as justification for the filing in this proceeding, to promote increased energy efficiency, demand response, and distributed energy resources, including electric storage on premise.

24 As these challenges increase, however, our statutory obligations governing the utilities we regulate remain the same, namely to offer the utility the opportunity to earn a "sufficient" return while ensuring that the utility offers reliable service at fair, just, and reasonable rates. Indeed, in this case, PSE requests that we approve a new leasing service on a fully regulated basis, not on a non-regulated basis or hybrid model. Accordingly, the standards that we apply present a considerably high threshold for PSE, or any utility, when it petitions to offer such services. This is especially true when the utility is attempting to enter a new market in which a large number of companies or service providers are already providing equipment and services on a competitive basis.

25 The Commission must always balance a large number of factors as well as the interests of parties in assessing such a new service, including the risks and rewards for such service. In particular, we must consider the level of risk, who bears the risk, and whether the risk can be mitigated to prevent harm to consumers if the Company's predictions are not realized.

26 In determining fair, just, and reasonable rates, the Commission has the authority and, indeed, the obligation to set cost-based rates in the proposed tariff and to ensure that the record evidence, as well as the service terms and conditions, support such rates. While commissions may depart from cost-based ratemaking for certain pilot projects with new technologies or services, the Commission has traditionally set rates based on the cost to service customers. There are many reasons for such a standard and obligation, including protecting residential customers from cross-subsidies, preventing undue discrimination, and ensuring that, if regulated, the service is offered on a reasonable basis to all potential customers in that class.

27 Finally, the burden of proof to justify a new tariff remains unequivocally with the utility in its case before the Commission – not with Staff, Public Counsel, or intervenors. Accordingly, PSE has the obligation to develop a full record in a transparent way and provide to the satisfaction of the Commission that the Company has properly assessed the market demand, balanced the risks compared to potential rewards, and provided sufficient protections to consumers. While this is a relatively high threshold, especially for new services or equipment, it is firmly grounded in our statutory obligations in RCW Chapter 80 and prior Commission decisions over many decades.

III. SUMMARY OF EVIDENCE

A. PSE

28 PSE presented the testimony of Liz Y. Norton, Malcolm B. McCulloch, Ahmad Faruqui, PhD, Andrew J. Wigen, Eric E. Englert, and Matthew R. Marcelia in support of the Company's proposed Program.

29 Ms. Norton is the Director, Product Marketing & Growth for PSE. She described the Company's Program and discussed the gaps in the market that PSE has identified. She also described how the Program is designed to meet customer needs.[7]

30 Mr. Malcolm is PSE's Manager, Leasing. He outlined how PSE established market parameters and tested customer interest in the Program. He described the Program's features and how they differ from the Company's current water heater rental program. In addition, he detailed how PSE will establish service partnerships to implement the Program. He also explained the Program's rates and rate structure.

31 Dr. Faruqui is a consultant that PSE engaged to testify on its behalf. He analyzed the barriers to adoption of new, efficient products and described how the Program will address these barriers and act as a complement to the Company's energy efficiency programs. He developed a model to quantify the benefits the Program would provide to both participating and non-participating customers, including but not limited to bill savings, enhanced comfort and quality of life, avoided energy costs, avoided capacity costs, and avoided emissions.

32 Mr. Wigen is the cofounder and owner of Emerald City Energy and McLendon Home Services. He testified that the Program will be a valuable addition to the marketplace and will capture a market segment that currently is underserved, if not completely unserved.

33 Mr. Englert is the Manager, Regulatory Initiatives and Tariffs for PSE. He testified that the Program is an extension of the Company's past and current Commission-approved services. He stated that although the Program will have significant conservation benefits, it is not a conservation program. He also described the Program's customer protections.

34 Mr. Marcelia is the Company's Controller and Principal Accounting Officer. He addressed the Program's tax consequences and explained that taxes are not a point of differentiation that should sway the Commission to support or deny the Program. He also provided his view of the proper accounting for the Program.

B. Staff

35 Staff presented the testimony of Bradley T. Cebulko, Elizabeth C. O'Connell, and Andrew Roberts.

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[7] Ms. Norton filed rebuttal testimony and adopted the direct testimony and exhibits of Jason E. Teller, who did not testify.

36 Mr. Cebulko was a Regulatory Analyst in the Conservation and Energy Planning section of the Commission's Regulatory Services Division.[8] He testified that the Program is a departure from PSE's past and current utility services that would provide no benefit to ratepayers. He opined that the Program is not necessary to meet any unmet customer need and in essence is a financing and insurance service for customers to acquire end-use appliances. The proposed rates, in his view, are not based on known and measurable costs and are designed to require some customers to subsidize others. Staff, therefore, recommends that the Commission reject the Program.

37 Elizabeth C. O'Connell is a Regulatory Analyst in the Energy Regulation Section of the Commission's Regulatory Services Division. She testified that the Program is not a regulated utility service and is indistinguishable from services provided by companies not subject to Commission oversight. She also took issue with the Company's accounting of the equipment that is the subject of the Program and addressed concerns with the asymmetry of information between PSE customers and the Company.

38 Andrew Roberts is a Regulatory Analyst in the Commission's Consumer Protection Section. He identified several consumer protection issues presented by the Program. These issues include the absence of controls on sales and fulfillment strategies, lack of a plan to deal with customer disputes, concerns with customer understanding of the Program's cost components, terms, and conditions, and difficulties in ensuring that non-standard installation costs are fair, just, and consistently applied.

C. Public Counsel

39 Public Counsel presented the testimony of Senior Regulatory Analyst Mary M. Kimball. She testified that PSE used the results of a flawed and misleading online survey to develop unreasonable lease rates and to miscalculate alleged conservation savings. She opined that the Program prices are excessive and the Company has not undertaken a cost-effectiveness analysis or otherwise demonstrated that the Program is consistent with the requirements of a legitimate conservation program. She recommended that the Commission reject the filing and that PSE engage with its Conservation Resource

[8] After the conclusion of the evidentiary hearings, Mr. Cebulko took a position as a policy advisor to the Commissioners. He has been screened from any discussions or deliberations in this matter between or among the Commissioners, the Administrative Law Judge, or the policy advisors working with the Commissioners, and he has had no involvement in the Commission's decision in this case.

Advisory Group (CRAG) to consider other opportunities that could reach a broader set of consumers at significantly lower costs to customers.

D. Intervenors

40 SMACNA-WW presented the testimony of Julie Muller-Neff, Brian Fluetsch, and John van den Heuvel.

41 Ms. Muller-Neff is Executive Vice President of SMACNA-WW. She described the organization and its members, the work they do, and the current market.

42 Mr. Fluetsch is the President and Chief Executive Officer of Sunset Air, Inc., a full service energy services company and SMACNA-WW member. He described the current competitive market for water heaters and heating systems and opined that no gap exists because all services PSE proposes to offer that would be of actual interest to customers are already available at significantly lower prices. He stated that appliance leasing exists only in the commercial sector and his company's customers have expressed very little interest in such an option. He described the wide variety of products available in the market and opined that PSE's offerings are very limiting and would not be good for customers.

43 Mr. van den Heuvel is the Vice President of Supplies and Sales at GENSCO, an HVAC distributor serving five states in the Pacific Northwest. He described his company and the market in which it participates in PSE's service territory. GENSCO offers 980 individual products, which is only about one-third of the total number of products available. He opined that there is no need for a leasing service and that the Program would limit the choices that the current unregulated market provides by making only a tiny fraction of the products available to customers for lease.

44 WSHVACCA presented the testimony of Steven J. Krecker and William E. Pinkey. Mr. Krecker is President of WSHVACCA and the retired co-owner of Air Masters, Inc., a certified dealer of high tier HVAC equipment in Port Orchard. He testified that the Program would damage both the market and ratepayers and that a better approach would be for PSE to partner with contractors. He also expressed concern that there is no "standard installation" of HVAC equipment and thus all customers would have to pay significant upfront installation costs they were not expecting. Mr. Pinkey is the Treasurer of WSHVACCA and Chief Financial Officer of Barron Heating and Air Conditioning,

Inc. He provided additional detail and discussion of the points Mr. Krecker discussed in his testimony.

IV. DISCUSSION

45 PSE has proposed a program to lease water heating and HVAC equipment to its customers and to provide associated installation, maintenance, and repair. Under the Program, the Company would offer leases of 10 to 18 years depending on the type of equipment, which PSE would select and install. Customers' eligibility for such leases would depend on their credit worthiness and the availability of equipment and contractors. The proposed rates are based on information the Company received from several contractors in response to a request for quotes (RFQ) for pricing of the type of equipment PSE would likely offer. Standard installation would be included in the lease rate, and customers would have to pay any non-standard costs, for which the Company would offer separate financing. PSE anticipates that it will expand the Program in the future to offer leases for other types of equipment and services, including demand response, solar panels, and battery storage.

46 Commission Staff, Public Counsel, and the intervenors have raised several concerns with the Company's proposed Program. They contend that the Program is not a "utility service" subject to Commission regulation as that term is used in statute and that for all intents and purposes, the Program is a sale of equipment that the statute prohibits as part of a public service company's regulated operations. Even if the Commission has jurisdiction over the Program, the other parties claim that no customer demand exists for this service and that the rates, terms, and conditions PSE proposes are not fair, just, and reasonable.

47 We conclude that the Program is a utility service and that the applicable statute does not preclude PSE from offering such a service. We nevertheless find that the rates, terms, and conditions PSE proposes are not fair, just, and reasonable and that the Program is not in the public interest. We consider the testimony and evidence presented by all the parties and address the elements of the proposed Program and the parties' concerns in more detail below.

A. Jurisdiction

48 We first consider whether PSE's proposed Program is a utility service subject to Commission regulation. In resolving this issue, we look to the relevant statutory authority

governing the Commission's regulatory authority over electric and natural gas utilities, as well as Commission and judicial precedent.

49 The legislature has authorized the Commission to "[r]egulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation."[9] The statute does not define "utility service or commodity" but gives the Commission broad discretion to determine whether it regulates particular operations.[10]

50 Electric or gas companies are defined in RCW Title 80 as any company "owning, operating or managing any electric [or gas] plant for hire within this state."[11] Electric or gas plant, in turn, "includes all . . . personal property operated, owned, used or to be used for or in connection with . . . the sale or furnishing of electricity [or natural gas] for light, heat, or power."[12] The primary issue, then, is whether the water heating and HVAC equipment PSE proposes to lease is personal property to be used in connection with the sale of electricity or natural gas for heat and thus included in electric or gas plant subject to Commission regulation.

51 In addition, the Commission previously concluded that a rental program for gas furnaces and water heaters offered by Washington Natural Gas (WNG), a predecessor company of PSE, was a regulated utility service. The Commission in that case rejected the argument that WNG was effectively selling the equipment and that RCW 80.04.270 prohibited the company from engaging in such activities as part of its regulated operations. That statute provides:

> Any public service company engaging in the *sale* of merchandise or appliances or equipment shall keep separate accounts, as prescribed by the commission, of its capital employed in such business and of its revenues therefrom and operating expenses thereof. *The capital employed in such business shall not constitute a part of the fair value of said company's property for rate making purposes, nor shall the revenues from or operating expenses of such business constitute a part of the operating*

[9] RCW 80.01.040(3).

[10] RCW 80.04.015.

[11] RCW 80.04.010(12); RCW 80.04.010(14).

[12] RCW 80.04.010(11); RCW 80.04.010(15).

> *revenues and expenses of said company as a public service company*. (Emphasis added.)

The Commission found that WNG was leasing, not selling, equipment, and thus this statutory prohibition did not apply.[13]

52 Following an appeal of the Commission's decision, the Washington Supreme Court in *Cole v. Washington Utils. & Transp. Comm'n* agreed that the statute did not preclude WNG from offering its rental program as a utility service:

> It is also 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. Absent proof by the appellants of incidents of sale in the agreement between the gas company and its customers, appellants cannot expect the commission to decide that a common lease falls within the purview of RCW 80.04.270.[14]

The court also agreed that RCW 80.04.130 and RCW 80.04.150, both of which refer to "rental" charges for services public service companies provide, bolstered the Commission's conclusion that appliance leasing is a jurisdictional activity. "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."[15]

53 We therefore must decide whether these Commission and supreme court decisions remain good law and, in conjunction with the statute, support PSE's proposal to offer the Program as a regulated utility service.

1. Parties' Positions

54 PSE asserts that the Program is a utility service subject to Commission jurisdiction. PSE claims that water heating and HVAC equipment is personal property used in conjunction with the sale of electricity or natural gas for heat and thus is electrical or gas plant as defined in the statute.[16] Other statutory provisions contemplate that the public service

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[13] *Cole v. Washington Natural Gas Co.*, Docket U-9621.

[14] *Cole v. Washington Utils. & Transp. Comm'n*, 79 Wn.2d 302, 307 (1971).

[15] *Id.* at 308.

[16] *See* RCW 80.04.010(11); RCW 80.04.010(15).

company may have a rental charge for electric or gas plant,[17] which PSE claims is consistent with the leasing provisions in the Program. PSE argues that the Commission and Washington courts have confirmed this statutory interpretation. The Commission, the Thurston County Superior Court, and the Washington Supreme Court have all concluded that such a program is a utility service, and pursuant to those decisions, the Company has been providing gas water heater leasing under tariff with the Commission since 1961. PSE, therefore, concludes that the Program falls squarely within this precedent and statutory authority.

55 Staff and Public Counsel, however, contend that leasing water heating and HVAC equipment is unrelated to the provision of electricity and natural gas. Unlike the program the Commission and the courts upheld in *Cole*, PSE's latest proposal is not intended to further deployment and greater usage of natural gas. Staff proposes that the Commission conclude that utility service ends at the customer's meter unless the proposed service is narrowly tailored to further a compelling public interest or a statute specifically authorizes the service. Here, according to Staff and Public Counsel, PSE has failed to demonstrate a nexus between the Program and any compelling public interest, in sharp contrast to the equipment rental program at issue in *Cole*, in which the court confirmed the appliance leasing practice was justifiable as a "method of stimulating growth of the utility enterprise."[18]

56 In addition, citing to a Commission policy statement addressing third-party providers of solar energy,[19] Staff and Public Counsel state that the Commission has articulated three factors it uses to determine whether a service is subject to regulation: (1) whether the service is being offered to the public; (2) the market power of the company offering the service; and (3) the need for consumer protection. Staff and Public Counsel contend that none of these factors support PSE's position, that is, the Program would only be available to a select group of customers, a fully competitive market already exists, and the Program is not an essential public service requiring regulatory oversight.

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[17] RCW 80.04.130; RCW 80.04.150.

[18] *Cole*, 79 Wn.2d at 307.

[19] *In re Amending and Repealing Rules in WAC 480-108 Relating to Electric Companies' Interconnection with Electric Generators*, Docket UE-112133, Interpretive Statement Concerning Commission Jurisdiction and Regulation of Third-Party Owners of Net Metering Facilities (July 30, 2014).

57 Staff also claims that the Program is effectively a sale, not a lease, and that RCW 80.04.270 prohibits PSE from engaging in the sale of appliances or equipment as part of its regulated operations. While recognizing that the Commission did not adopt this interpretation in the context of the WNG equipment rental program, Staff contends that the Consumer Lease Act, Chapter RCW 63.10, alters the applicable legal framework. Staff asserts this statute provides:

> a "retail installment contract" *is considered a sale that includes a contract in the form [of] a lease* if the lessee (1) pays as compensation for their use a sum substantially equivalent to or in excess of the value of the goods sold, and (2) the lessee is bound to become, or for no other or a merely nominal consideration, has the option of becoming the owner of the goods upon full compliance with the provisions of the lease.[20]

58 According to Staff, the Program results in the sale of equipment because it requires customers to make lease payments that exceed the value of the equipment and provides the opportunity to own that equipment near the end of the lease term for a nominal amount. The legislature enacted the Consumer Lease Act after the Commission and the Washington Supreme Court decided *Cole*, which Staff believes further renders that case inapposite.

59 SMACNA-WW agrees with Staff and Public Counsel that the Program is not comparable to the rental service at issue in *Cole* and is not otherwise authorized as a utility service under applicable statutes. SMACNA-WW also argues that statutory history of the Commission's governing statutes demonstrates that the reference to "rental" in RCW 80.04.130 and RCW 80.04.150 applies only to telecommunications equipment, not to energy facilities. SMACNA-WW examined the language in the 1911 legislation that created the Commission's jurisdiction over utilities and observes that the term "rental" appears 13 times in relation to regulation of telephone service but does not appear at all in the provisions governing gas and electric service for the "obvious" reason that "telephone service is dependent on a handset or similar equipment in order to make the service useful."[21] Even when these provisions evolved into chapters 80.28 and 80.36 RCW, SMACNA-WW argues, they retained this distinction. SMACNA-WW contends that it was much later when the "leasing of equipment crept into the menu of offerings of

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[20] Staff Initial Brief ¶ 28 (emphasis in original) (citing RCW 63.14.010(11)).

[21] SMACNA-WW Initial Brief ¶ 15.

utilities,"[22] primarily through the Commission's statutory interpretation to which the Washington Supreme Court deferred in *Cole* and which the Commission can and should change.

60 PSE rebuts each of the arguments. The Company asserts that nothing in statute or Commission precedent supports ending all utility service at the customer's meter or limiting rentals to telecommunications equipment. To the contrary, PSE offers facilities other services on the customer side of the meter. The Company also contends that neither the Commission nor the courts concluded that load building is the only justification for an equipment leasing service. In addition, the Company maintains that the three-part inquiry the Commission used in its 2014 Interpretive and Policy Statement on third party solar service is not binding or applicable here, and even if it were, the Company has satisfied that standard.

2. Decision

61 We conclude that a water heating and HVAC equipment leasing program can be a tariffed utility service subject to Commission jurisdiction and regulation under appropriate circumstances, subject to a demonstration that its rates, terms, and conditions are fair, just, and reasonable. We find that such predicate circumstances exist here. The statutory language is sufficiently broad to include water heating and HVAC equipment as electric or gas "plant" as long as it is "used for or *in connection with* . . . the sale or furnishing of electricity [or natural gas] for light, heat, or power."[23] We interpret this language to require a public purpose nexus between such facilities and the furnishing of electricity or natural gas. That interpretation is consistent with *Cole*, in which the Commission found that the water heater rental program was a utility service because it furthered the public purpose of promoting greater use of natural gas.

62 Since the *Cole* decision, circumstances in both the electric and natural gas distribution utilities have changed remarkably, as certain state and federal laws require or encourage reduced or more efficient use of energy commodities. For example, the citizens of the state of Washington in 2006 passed Initiative 937, now codified in RCW 19.285 as the Energy Independence Act, which requires certain utilities to achieve all cost-effective conservation in providing electric service. In addition, Commission rules require natural gas utilities to provide demand-side management plans to promote conservation of

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[22] *Id*. ¶ 21.

[23] RCW 80.04.010(11); RCW 80.04.010(15) (emphasis added).

natural gas usage by their customers.[24] In other words, Washington utilities are required to develop creative, cost-effective methods to reduce consumption of both electricity and natural gas.

63 There could be a compelling nexus between current state policy goals for reducing consumption and an equipment leasing program that encourages such conservation. We find in this case that PSE's proposed Program's stated purpose to increase energy conservation and efficiency provides the necessary nexus, subject to the Company's demonstration that the Program would actually further those goals. We discuss below whether PSE's Program demonstrates this nexus and whether the rates, terms, and conditions are fair, just, and reasonable.

64 We do not adopt Staff's proposal to draw a demarcation line at the customer's meter for determining the regulatory nature of a proposed service. There is no support in statute or Commission precedent to support imposing such a jurisdictional bright line at the customer meter. Nor do we think such a standard would reflect appropriate public policy. Rather, in light of the rapid technological change in the utility environment, the preferable approach is to consider each proposed service individually to determine whether it serves a public purpose that Commission regulation is designed to foster.

65 We also conclude that the strict scrutiny Staff proposes is too constraining when assessing whether a proposed service is subject to Commission regulation. The public purpose must be important, but the extent to which the service promotes or achieves that purpose is not a jurisdictional threshold issue. We share Staff's and Public Counsel's concerns with whether the Program is properly structured to increase energy conservation and efficiency, but we address that issue in determining whether the rates, terms, and conditions of the Program are fair, just, and reasonable, not whether the Commission has jurisdiction to regulate that service.

66 We also appreciate Staff's concern that the Program has hallmarks of a sale in the guise of a lease, but again we find that this concern is more appropriately addressed as part of our inquiry into the reasonableness of the Program's terms and conditions. On its face, the Washington Consumer Lease Act is an adjunct to the state's Consumer Protection

[24] WAC 480-90-238.

Act,[25] from which regulated utility operations are exempt.[26] We decline to extend the application of that statute to defining what constitutes a utility's "sale of merchandise or appliances or equipment" pursuant to RCW 80.04.270. Accordingly, for purposes of determining the Commission's jurisdiction we accept the Company's representation that the Program is for the lease, not sale, of water heating and HVAC equipment.

67 We take this opportunity to clarify the test Staff and Public Counsel cite for determining whether a service is subject to Commission regulation. We first delineated that "test" in an interpretive and policy statement in the context of whether solar energy services offered by unregulated companies were subject to Commission oversight.[27] The Commission expressed its belief that the three factors it considered – (1) whether the service is being offered to the public, (2) the company's market power, and (3) the need for consumer protection – were best suited to determining whether the Commission has jurisdiction to regulate a company that previously had not been subject to Commission oversight. PSE correctly observes that as an interpretive and policy statement, this determination is not binding but is merely advisory.[28]

68 In the two subsequent orders that cite those factors, the Commission has relied only on the first factor, public use, to determine that a service PSE offered under contract to only one customer was not a utility service.[29] As we explained in a recent order, "Central to [the public service requirement] is the question whether the service is offered generally to

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[25] *See* RCW 63.10.050 (providing that a violation of the Consumer Lease Act "is an unfair or deceptive act or practice in trade or commerce and an unfair method of competition for purpose of applying the consumer protection act").

[26] RCW 19.86.170.

[27] *In re Amending and Repealing Rules in WAC 480-108 Relating to Electric Companies' Interconnection with Electric Generators*, Docket UE-112133, Interpretive Statement Concerning Commission Jurisdiction and Regulation of Third-Party Owners of Net Metering Facilities ¶¶ 59-71 (July 30, 2014).

[28] RCW 34.05.230(1).

[29] *In re Puget Sound Energy's Application for Approval of a Special Contract under WAC 480-80-143*, Docket UG-160748, Order 01 ¶ 4 (July 7, 2016); *In re Petition of Puget Sound Energy for (i) Approval of a Special Contract for Liquefied Natural Gas Fuel Service with Totem Ocean Trailer Express, Inc. and (ii) a Declaratory Order Approving the Methodology for Allocating Costs Between Regulated and Non-regulated Liquefied Natural Gas Services*, Docket UG-151663, Order 04 ¶¶ 24-28 (Dec. 18, 2015).

the public or is offered selectively."[30] Whether the Commission considers other factors, such as market power or the need for the Commission to protect consumers, depends on the circumstances of each case.

69 Here we conclude that PSE has satisfied the first factor, the public service requirement. The Company proposes to make the Program generally available to all eligible customers, not just to a small, select group. Although we believe this factor alone carries considerable weight in our determination and with the courts, we also consider the other two factors, namely monopoly power and the need for consumer protection. We have previously found that "the lack of a monopoly weighs slightly against a finding of public use,"[31] and we reach the same conclusion in this case. The Company's entry into an existing competitive market raises public interest concerns, which we discuss below, but it does not define the nature of the proposed service. With respect to the third factor, "[w]here there is a significant risk to consumers and the interests of investors and consumers are not aligned, courts are more likely to find a dedication to public use."[32] We find that just such circumstances exist here.

70 The other parties complain that the Company's restrictions – including requiring home ownership, credit worthiness qualifications, and unlimited discretion as to geographic availability – render the Program a private, not public, service. There is a vast difference, however, between limiting eligibility for a particular service and serving only one customer or a small group of customers. Those limitations must be just and reasonable,[33] but their mere existence does not make an otherwise public service private.[34] The opposing parties also decry the dangers of a regulated entity entering an existing competitive market, but again those concerns go to the reasonableness of the Program's

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[30] *In re Petition of Puget Sound Energy for (i) Approval of a Special Contract for Liquefied Natural Gas Fuel Service with Totem Ocean Trailer Express, Inc. and (ii) a Declaratory Order Approving the Methodology for Allocating Costs Between Regulated and Non-regulated Liquefied Natural Gas Services*, Docket UG-151663, Order 04 ¶ 24 (Dec. 18, 2015).

[31] *In re Amending and Repealing Rules in WAC 480-108 Relating to Electric Companies' Interconnection with Electric Generators*, Docket UE-112133, Interpretive Statement Concerning Commission Jurisdiction and Regulation of Third-Party Owners of Net Metering Facilities ¶ 70 (July 30, 2014).

[32] *Id.* ¶ 69.

[33] RCW 80.28.010(3).

[34] Indeed, PSE lists several utility services the Commission has authorized companies to provide that have limitations on customer eligibility. PSE Initial Brief ¶ 63 & n.146.

terms and conditions, not whether the service is private or public. And even those parties concede that the Commission would need to safeguard consumers if it authorizes PSE to offer the Program as a regulated utility service.

71 Finally, SMACNA-WW's analysis of statutory history is informative but not persuasive. The statute currently in effect provides, in relevant parts,

> Except as provided in subsection (2) of this section, whenever *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. Pending such hearing and the decision thereon, the commission may suspend the operation of such rate, charge, *rental*, or toll for a period not exceeding ten months from the time the same would otherwise go into effect.[35]
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> …
>
> 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.[36]

Our interpretation of the statutes we administer necessarily is based primarily, if not exclusively, on the statutory language. "Rental" of equipment may have been restricted to telecommunications companies in the past, but the statute currently applies that term to any public service company, which necessarily includes PSE and other electrical and gas companies. We construe that language, as we must, as reflecting the intent of the

[35] RCW 80.04.130(1) (emphasis added).

[36] RCW 80.04.150 (emphasis added).

legislature, and we cannot and will not adopt an interpretation that conflicts with the plain language of the statute.

72 Nor does RCW 80.04.270 alter our analysis. That provision addresses "the sale of merchandise or appliances or equipment" and makes no reference to rentals or leases. SMACNA-WW argues that the Commission can and should revisit and reverse the statutory interpretation on which the Commission previously relied to conclude that PSE's existing water heating equipment rental program is a utility service because it is not a sale under this statute. We find no reason to do so. We do not rely on RCW 80.04.270 for our conclusion that the Program is a utility service and thus have no reason to reconsider the basis for the Commission's prior order. That determination, which the state supreme court affirmed in *Cole*, merely bolsters our decision that PSE's proposed Program is a utility service within the Commission jurisdiction to regulate.

73 In summary, our statutory authority and the supreme court's decision in *Cole* do not support the positions taken by Staff, Public Counsel, and the intervenors that PSE's proposed program is not a utility service. We decline to reverse prior decisions and Commission practice in this case. However, whether or not the proposed service is fair, just, and reasonable is a separate question that involves multiple issues of ratemaking, terms and conditions, and consumer protection. We will address these issues, and any future request for utility services, on a case-by-case basis, with the utility bearing the burden of proving that such a program is in the public interest.

B. "Market Gap" and Consumer Demand

74 Gas and electric companies must "furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable."[37] Implicit in this broad directive is the requirement that consumers need or demand the gas or electric company's service or facilities. PSE, therefore, must demonstrate that the Program would address customers' need for utility service.

1. Parties' Positions

75 PSE contends that the Program fills a market gap and unmet consumer demand. Over 33,000 customers currently rent water heaters from PSE under the program its predecessor WNG began, and since the Company closed this program to new customers

[37] RCW 80.28.010(2).

in 2000, PSE states that customers have been requesting that the Company again offer this service.[38]

76 The Company also reviewed data from a 2012 Regional Building Stock Assessment compiled by the Northwest Energy Efficiency Alliance (NEEA Study) as part of a comprehensive study of northwest residential building characteristics. PSE determined based on this data that as much as 40 percent of the water heating and HVAC equipment currently in service is 15 years old or older, and in some cases customers are using equipment that has far exceeded its useful life. PSE maintains that there are several reasons for this, including significant cost, dissatisfaction with available options, lack of information, or confusion about the equipment purchasing process. PSE promises that its proposed Program would address this market gap by providing customers with an affordable option to replace aging appliances with new energy-efficient equipment.

77 The Company also contracted with Cocker Fennessy, an established market research firm, to assess customer needs and preferences with respect to water heaters or HVAC equipment. According to its market survey results, over 32 percent of customers were interested in leasing water heaters and 20 percent expressed interest in leasing HVAC equipment. In addition, 80 percent of the survey respondents identified access to energy-efficient equipment as important or very important, and customers expressed the preference to pay more overall for equipment on a monthly basis than to incur large, up-front costs.[39] PSE claims that all of this evidence amply demonstrates a market gap for leasing water heating and HVAC equipment and consumer demand for the Program.

78 The other parties disagree. They maintain that PSE has miscalculated and misinterpreted the results of the NEEA Study. NEEA conducted the study in 2011, but PSE calculated the age of the equipment as of 2016. Properly matching this date with the appropriate vintage of the equipment results in the conclusion that at the time NEEA conducted the survey, 24 percent or less, not 40 percent, of the equipment was 15 years old or older depending on the type of equipment. Because some equipment has a useful life longer than 15 years, that percentage would be even lower if used to determine the equipment's useful life. "Useful life," moreover, is a nebulous concept because it is determined as an average, which means that half of the equipment will last longer than the average amount of time.

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[38] Norton, TR 182:15 – 183:5.

[39] PSE Initial Brief ¶ 17; McCulloch, Exh. MBM-18.

79 These parties also argue that the Cocker Fennessy survey is fatally flawed. They contend that it is inherently biased because PSE commissioned it for this adjudication and was involved in the survey's development. In addition, these parties contend that the survey did not fully disclose key costs and terms to the respondents, most notably by misrepresenting that the sum of the lease payments would be similar to the costs to purchase, install, maintain, repair, and dispose of the same equipment. These parties further observe that PSE provided no witness testimony or other evidence to support the design and methodology used in the survey, rendering that study without proper evidentiary foundation and thus wholly unreliable.

80 SMACNA-WW and WSHVACCA agree with Staff and Public Counsel and maintain that there is no market gap and that if leasing were a viable option of significant interest to consumers, such an option would already be offered.

2. Decision

81 The opposing parties have pointed out significant deficiencies in PSE's evidence on this issue. We agree that PSE has miscalculated the amount of equipment that is beyond its useful life based on data from the NEEA study. The data indicates that approximately 20 percent of the equipment identified in the study was beyond its average useful life within the relevant time period, half of the amount on which the Company relies to support its claims.[40]

82 We also find that the Cocker Fennessy survey is of limited value. The evidence demonstrates that the total costs to lease equipment under the Program are substantially higher than the cost to purchase that equipment.[41] Accordingly, the survey's representation that the costs would be similar did not reflect the rates and terms PSE proposes for the Program. The timing and PSE's involvement in the preparation of that survey reduces its credibility as a neutral assessment of consumer interest in water heating and HVAC equipment leasing. The lack of supporting testimony from a witness with personal knowledge of the survey's design and methodology heightens these flaws.

83 We nevertheless conclude that the record evidence is sufficient to demonstrate consumer demand for a service that facilitates replacing aging water heating and HVAC equipment with more efficient products. Even at 20 percent, the amount of equipment currently in

[40] Public Counsel Initial Brief ¶¶ 49-52; Norton TR 134-36 & 144:13-20; Norton, Exh. JET-3.

[41] *E.g.*, Fluetsch, Exh. BF-1T at 19-22 and Exh. BF-5: Kimball, Exh. MMK-1HCT at 25-29.

service that is at or beyond the end of its useful life is substantial and represents an opportunity to deploy newer, more energy-efficient heating appliances.

84 PSE's research, while far from robust, also indicates a significant level of customer interest in options other than purchasing that equipment. PSE currently provides a water heater rental service to over 33,000 customers, and more customers have requested that service since the Company stopped offering it. Such "real world" experience supports the general conclusion in the Cocker Fennessy survey that consumers are interested in a leasing arrangement.[42] We disagree with the opposing parties' contention that the survey's flaws render it entirely useless. The survey does not demonstrate interest specifically in the Program, but we conclude that its conclusions are a useful data point in our determination of general customer interest and demand.

85 For purposes of determining whether consumer demand exists, the evidence PSE presented may overstate the degree of unmet demand, but it supports a finding that the type of service the Company proposes would address some level of customer need. We address further below the extent to which the record is sufficient to demonstrate that the Program is consistent with the public interest.

C. Fair, Just, and Reasonable Rates

86 The determination of what constitutes "fair, just, and reasonable rates" is perhaps the critical analysis in this proceeding. "All charges made, demanded or received by any gas company [or] electrical company … for gas [or] electricity … or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient."[43] Our central obligation to regulate in the public interest is premised on balancing the utility's needs for revenue and fair returns on its rate base with the customers' interest in paying reasonable rates for the services they receive. PSE must prove that the rates it has proposed for the Program are fair, just, reasonable, and sufficient.

1. Parties' Positions

87 PSE claims that it has met its burden of proof. PSE's proposed lease rates incorporate the equipment, installation, maintenance, and repair costs PSE received in response to a request for quotes (RFQ) the Company distributed to contractors. PSE bundled

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[42] SMACNA-WW and WSHVACCA contend that they have not received any indication of consumer interest in leasing, but we are not willing to ignore PSE's experience to the contrary.

[43] RCW 80.28.020(1).

equipment based on aligned characteristics and predicates the rates for each product based on the product size, input capacity, efficiency, system capabilities, and performance qualifications. The Company used bidder response inputs for each of the three service partner paths to establish average costs for each product and the associated services, comparable to the practices PSE uses to establish the rates for other customer-associated installations such as new electric or natural gas service installation.[44]

88 The Company calculated the rates based on a discounted cash flow methodology, which includes all costs PSE would incur to purchase, install, operate, and maintain the equipment over the life of the lease term. PSE discounted these costs to today's terms using the Company's approved cost of capital to calculate the Company's total revenue requirement in net-present value. PSE then converted this amount into a levelized monthly rate for each type of leasing product, which remains constant over the life of the lease and does not escalate or change.[45] PSE further maintains that only customers who participate in the Program will pay rates to cover the costs of the Program. If non-standard installation is required, PSE will charge the customer for the costs the Company actually incurs.

89 The result, PSE asserts, are reasonable rates that were developed consistent with established rate-making procedures, are comparable to prices charged in the market, and recover all of PSE's costs to provide the service. In response to other parties' concerns with the Company's use of averages, PSE claims that nearly every rate the Commission sets involves averaging, and rates for a specific customer rarely, if ever, match that customer's precise usage or the precise cost to serve that customer.

90 PSE notes that it could make a compliance filing to incorporate any adjustments to the rates that the Commission believes would be appropriate. "What matters is not whether PSE used an average to set rates, but whether the rates used represent a fair, just, and reasonable representation of the costs of the service."[46]

91 Staff disagrees that the rates for the service are fair, just, reasonable, and sufficient, observing that the Company has not identified the specific equipment it would offer customers under the program. Accordingly, in Staff's view, none of the costs on which PSE bases its rates are known and measurable and thus by definition are not fair, just, and

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[44] McCulloch, Exh. MBM-7HCT at 18:3-12.

[45] McCulloch, Exh. MBM-1T at 18:11-19.

[46] PSE Initial Brief ¶ 101.

reasonable. Staff argues that "PSE's proposed rates contained speculative costs 'divorced' from the actual costs of the products and services the customers would receive."[47] Staff also disputes the Company's averaging of costs for different equipment, arguing that the result would be unreasonable discrimination among customers, many of whom would be receiving equipment, repair, and maintenance that will cost more or less than the costs on which PSE based the rate the customer pays.

92 Public Counsel also disputes PSE's proposed rates, arguing that they far exceed market rates, and the pricing model on which the Company relies contains several major flaws, including:

(1) Misplaced reliance on the Cocker Fennessy study for demand assumptions; the survey was intended to gauge customer interest, not likelihood of participation; it was misleading, and PSE failed to produce evidence to support the survey's applicability and design;

(2) Reliance on cost estimates, rather than the actual costs of specific equipment the Company would provide;

(3) Overstating the Company's market potential analysis because the residential product share market data applies only to single family homes; and

(4) Failure to support the assumed equipment failure rate incorporated into the model.

93 SMACNA-WW shares Staff's concern that using the mean of the cost quotes PSE received in response to its RFQ results in rates that are not based on the costs of the equipment the Company will supply to customers. SMACNA-WW also contends that PSE's use of its authorized cost of capital is excessive when the Company will finance the equipment through debt, not a mix of debt and equity, and the customer, rather than PSE, bears all of the risk. An equipment lease, SMACNA-WW argues, also places a higher tax burden on customers than a sale. SMACNA-WW further agrees with Public Counsel that the lease rates are far in excess of the prices customers would pay to purchase the equipment in the existing market. Finally, SMACNA-WW claims that these deficiencies cannot be remedied through a compliance filing as the Company has

[47] Staff Initial Brief ¶ 64. Given the uncertainty about the actual cost of the equipment, Staff raises concerns about the actual amount that PSE will seek to place in rate base, thereby earning a return.

suggested. Any necessary changes involve more than mathematical corrections, as addressing the deficiencies includes modifying the pricing methodology and assumptions used in setting the rates.[48]

2. Decision

94 We find that PSE has failed to demonstrate that the rates it proposes for the Program are fair, just, and reasonable. PSE's Program design intends that the costs of water heating and HVAC equipment leased to customers are recovered only from customers participating in the Program and are not part of the Company's distribution network that can be recovered from all customers. PSE states that a specific make and model of appliance will be installed at a single customer's request and dedicated to that customer for the entirety of its useful life. Lease rates for these appliances, therefore, must be based on the cost of the actual equipment leased, not the average of cost estimates for similar types of facilities, or averaged like traditional distribution assets. PSE has yet to identify the specific makes and models of equipment the Company will lease, much less obtain binding quotes from contractors for the costs to purchase, install, repair, and maintain that equipment. Such rates by definition cannot be construed to be based on actual costs, and thus PSE has failed to demonstrate that its proposed rates are fair, just, and reasonable.

95 PSE contends that averages are cost-based and that the Commission regularly uses averages to set rates in a variety of circumstances. We agree in general that averaging the costs of facilities is appropriate when setting the rates for electric or natural gas plant in service to determine an overall revenue requirement at an aggregate level, as we do in a general rate case. Such an approach, however, is not appropriate when the service the Company offers is providing specific facilities to customers and asserting that such customers will recover the costs of the Program. PSE recognizes this concept in other contexts. When PSE provides non-residential line extensions, for example, those facilities are dedicated to a specific customer, and the Company charges that customer the actual costs PSE incurs to construct those facilities.[49] Under the Program, a customer would be leasing a specific, dedicated piece of equipment, and the rate the customer pays must be based on the cost of that equipment.

96 PSE also claims that at least some of its rates are "very close" to the average equipment and installation costs the Company has experienced with its conservation rebates and to

[48] SMACNA-WW Initial Brief ¶¶ 70-71.

[49] PSE Electric Service Tariff WN U-60, Schedule 85, Eleventh Revision of Sheet 85f ¶ 4.

market prices Public Counsel has identified. Comparing averages to averages or samples to samples misses the point. The issue is the cost of the equipment the customer is leasing. Comparison of the lease rate for that piece of equipment to the purchase of the same equipment in the market would be a useful check, but PSE has not yet identified the makes and models it intends to lease, rendering such a comparison impossible at this point. We also note that charging a rate based on average costs for equipment that PSE, not the customer, chooses to install would provide the Company with both the incentive and the ability to supply water heaters or HVAC equipment that cost less than that average, thereby maximizing Company profit. We decline to approve such rates.

97 We further find that the Cocker Fennessy study fails to provide adequate support for the demand assumptions on which PSE calculates its proposed rates. We agree with Public Counsel that on its face, the survey appears to have been designed to gauge customer interest in a generic leasing program, not to assess the likely percentage of customers who would participate in the Program. We also agree that some of the information provided to survey respondents, *e.g.*, that the costs of leasing would be similar to purchasing the equipment,[50] does not accurately describe the Program. Without testimony to address these issues from a witness who has personal knowledge of the survey's design and methodology, we are unwilling to rely on PSE's use of the survey's findings and conclusions to determine customer demand assumptions for purposes of calculating fair, just, reasonable, and sufficient rates.

98 We nevertheless agree with PSE that the tax consequences of the Program would result from any lease of electric or gas plant. We recognize that taking this service from a regulated utility company may result in some variation in the overall tax rate based on specific municipal tax code, but we will not foreclose a public service company from offering such a service solely because of the tax implications. Nor do we take issue with the concept of non-standard installation charges for the leased equipment, which the WSHVACCA witnesses testified are standard practice in the market.[51] Where costs will vary significantly based on individual circumstances, the Company should be permitted to calculate and recover the reasonable actual costs it incurs. Customers' ability to void

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[50] Although PSE claims that its equipment costs are comparable to market prices, we agree with the other parties that the evidence demonstrates that customers will pay substantially more for equipment under the Program than they would pay if they purchased the equipment in the market. Kimball, Exh. MMK-1HCT at 25:5-29:11; Fluetsch, Exh. BT-1T at 20:23-21:16 and Exh. BT-5.

[51] Krecker, Exh. SJK-1T at 6:12-24; Pinkey, Exh. WEP-1T at 3:4-4:3.

the lease if they do not agree to any such charges is an important safeguard, and PSE's offer to finance those rates provides a useful consumer benefit.[52]

99 On the whole, however, we conclude that PSE's proposed rates in this proceeding are not fair, just, reasonable, and sufficient. We further agree with SMACNA-WW that PSE cannot cure the deficiencies in these rates through a compliance filing. The Company bore the burden to provide sufficient evidence to prove its proposed rates were cost-based and properly calculated. PSE failed to carry that burden, and we will not protract these proceedings to give the Company another bite at that apple.

D. Just and Reasonable Terms and Conditions

100 The Commission reviews not just the rates but the terms and conditions of any proposed utility service, as these terms affect the overall proposed service to the customer. This review is especially critical where, as here, a proposal will compete with products and services offered in an already fully competitive industry. Our statute requires that. "All rules and regulations issued by any gas company [or] electric company, … affecting or pertaining to the sale or distribution of its product or service, must be just and reasonable."[53] PSE must prove that the terms and conditions of the Program are just and reasonable.

1. Parties' Positions

101 PSE states, "The tariff contains 19 pages of terms and conditions that fully describe the service and the rights and responsibilities of the parties,"[54] most of which are common terms in lease agreements. The Company dismisses other parties' allegations about the insufficiency of information, maintaining that PSE has made revisions and commitments in response to these criticisms above and beyond what it otherwise would be required to do.

102 Staff contends that the tariff contains numerous terms and conditions that are grossly unfair to customers, including but not limited to provisions that (1) authorize the Company to accelerate payment of all remaining lease payments in the event of a

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[52] We do not address the other rate deficiencies the parties have alleged because they largely result from the Program's terms and conditions, which we address in the following section.

[53] RCW 80.28.010(3).

[54] PSE Initial Brief ¶ 103.

customer default; (2) allow PSE to terminate the lease on 30 days' notice but preclude the customer from terminating the lease without purchasing the equipment; (3) unduly limit customer remedies in the event of equipment breakdowns; and (4) unreasonably insulate the Company from liability for damage that any faulty equipment causes to customers or their property. Staff further claims that PSE does not propose to provide sufficient information to consumers, such as how rates are calculated and which equipment the Company will install.

103 Public Counsel argues that the Program's terms and conditions are complex, and PSE has no plans to provide assistance to customers to understand the details of the Program. Public Counsel cautions that the usual "buyer beware" approach is inappropriate when consumers trust the utility and the Commission to protect their interests.

2. Decision

104 We find that the Program's terms and conditions are not just and reasonable. In several areas, PSE provides benefits and safeguards for itself at the expense of its customers. Those customers would be required to sign leases of 10 to 18 years for equipment PSE selects. While PSE could terminate the lease at any time and for any reason with only 30 days' notice,[55] the customer could not terminate the lease without purchasing the equipment.[56] In the event of a customer default, which could be the result of missing a single payment at the beginning of the term, the Company could accelerate all remaining lease payments,[57] even though purchasing the equipment would be far less expensive. PSE's proposed terms also insulate the Company from liability for any damage the leased equipment causes to customers or their property,[58] while holding the customer fully responsible for damage resulting from operation of the equipment or other events outside the Company's control.[59]

105 These terms appear to be solely for the benefit of the Company. They are designed to *guarantee* that PSE recovers its costs plus a return on its investment, in sharp contrast to the Company's other services for which the Commission authorizes only the *opportunity*

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[55] McCulloch, TR. 350:19-351:10; Substitute Proposed Schedule 75, Sheet 75-U § 5.12.b.

[56] Substitute Proposed Schedule 75, Sheet 75-U § 5.12.c.

[57] McCulloch, TR 347:10 – 348:9.

[58] Substitute Proposed Schedule 75, Sheet 75U § 5.13.

[59] *Id*. Sheet 75-O, § 5.7.c.

for such recovery. The Commission did not authorize guaranteed cost recovery when it approved the existing water heater rental program, and we decline to do so here. Nor will we permit the Company to absolve itself of all liability for damage caused by equipment PSE owns and installs on customers' premises. PSE effectively proposes to require customers to assume all of the risks of owning the equipment while paying a lease rate that far exceeds what customers would pay to purchase the equipment. We find that such an arrangement is not just and reasonable.

106 We also agree with Staff and Public Counsel that the terms and conditions of the leasing agreement are complex and unusual for a utility service and thus may not be easily understood by all potential consumers of this service. In response to criticism that its survey did not disclose to consumers the total price over the term of the contact, Mr. McCulloch stated, "The survey provided to respondents the average monthly payment and term of the lease. PSE's customer base is fully capable of performing basic calculations."[60] That is not sufficient. The Commission must ensure that the terms are just and reasonable, but each customer will decide whether to accept those terms as right for them. Such acceptance should be based on customers' understanding of the actual terms to which they are agreeing, not blind reliance on the Company's representations. Other participants in the market work with consumers to ensure that the equipment the companies provide meets their customers' needs as the customers perceive those needs.[61] We find that the tariffs fail to facilitate customer comprehension of the lease and its terms and that the Program's terms and conditions are not just and reasonable.

E. Consumer Protection

107 Implicit in the obligation to ensure that utility service rates, terms, and conditions are fair, just, and reasonable is the Commission's duty to protect consumers. The Commission acts as a surrogate for the constraints of a competitive market by establishing standards of conduct for regulated utilities and resolving disputes over service provisioning between those companies and their customers. PSE must demonstrate not only that the Program complies with these standards but that the Company's implementation and operation of the Program will not adversely affect consumers.

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[60] McCulloch, Exh. MBM-7HCT at 27:7-9.

[61] Fluetsch, Exh. BF-1T at 12:1-15.

1. Parties' Positions

108 PSE contends that the Commission has robust consumer protection rules and practices with which the Company will fully comply. The tariff, PSE asserts, need not include billing and other dispute resolution terms when Commission rules already address those issues. PSE states that it will be regulated more heavily than any other provider of water heating and HVAC equipment, and such Commission oversight will ensure that consumers are adequately protected.

109 Staff argues that the Commission's consumer protection rules do not address the type of sales and marketing issues likely to arise from an equipment lease service, and the Program terms and conditions do not remedy that deficiency. Staff is concerned that the Commission may need to deal with customer disputes about pressure sales, upselling of products, or other sales techniques. According to Staff, in many instances the tariff does not address consequences for a customer's failure to comply with their lease commitments. "The Commission may bear a heavy burden investigating and resolving any disputes that might arise from PSE's failure to spell out all the necessary terms."[62]

110 Public Counsel maintains that PSE's marketing plans and collection and usage of customer information raise consumer protection issues and that the Company has not developed a plan to transition customers of the existing water heater rental program to the new Program. Public Counsel also believes that approving the Program as a utility service would relieve it from compliance with the Consumer Protection Act (CPA). That statute has more appropriate consumer protections for a competitive market than Commission rules, which are directed to minimizing monopoly power.

111 SMACNA-WW echoes the arguments that Commission rules are not designed to address deceptive trade or market practices and other consumer protection issues arising in a competitive market. SMACNA-WW also claims that the regulatory process is an unduly cumbersome way to maintain and update the equipment, rates, and lease terms available to consumers to keep pace in a rapidly changing market.

2. Decision

112 We share the consumer protection concerns that Staff, Public Counsel, and SMACNA-WW have raised. We do not expect the tariff to include provisions that protect customers

[62] Staff Initial Brief ¶ 78.

from anti-competitive or deceptive practices, but as Public Counsel observes, the focus of Commission rules is on protecting consumers from the exercise of monopoly power, not from the practices of companies operating in a competitive market. The CPA is designed to address those issues, yet that statute is inapplicable to regulated utility service. We are not willing to put consumers in this legal limbo.

113 Nor are we prepared at this juncture to devote the time and resources that would be required to promulgate rules that address competitive issues and to develop the necessary expertise to enforce them. We certainly could not do so prior to PSE initiating service under the proposed tariff or even within a reasonable time thereafter. Moreover, the costs associated with the Staff resources and time to respond to potential consumer protection issues arising from such a program have not been fully vetted. Without this analysis, the opposing parties raise a valid concern that regulatory fees may not adequately cover the Program, resulting in a cross-subsidy from other customer classes, contrary to the Company's representation that the Program would be self-sustaining. The costs associated with updating and maintaining the tariff, including adding new products, terms and rates as frequently as SMACNA-WW asserts, may also result in cross-subsidization by other ratepayers.

114 We also question how effective the Commission could be in enforcing the terms and conditions of this service given PSE's proposal to rely on third party contractors, rather than PSE employees, to provision the service. We recognize that the Company currently uses contractors to perform certain functions as part of its utility operations and that PSE remains ultimately responsible for compliance with Commission requirements regardless of who is actually doing the work. Here, however, contractors would not be merely an adjunct to PSE's service provisioning but would be working directly with customers and performing virtually all of the work required to install, maintain, and repair the leased equipment. PSE has yet to select any of these contractors, much less provide the Commission with reasonable assurance that the Commission would be able to fully protect consumers under these novel circumstances.

115 Consumer protection issues also may arise from the Company's incentives under the Program. PSE naturally will want to maximize its revenues by aggressively marketing this service. In its efforts to do so, we agree with Staff and Public Counsel that the Company could have an incentive to engage in high pressure sales techniques and make improper use of information and resources it holds as a result of being the electricity and natural gas service provider. While such fears may be exaggerated, we would request more information about how the Company will act in the best interests of its customers.

116 Finally, the tariff terms themselves generate consumer protection concerns. As we discuss above in the context of the Program's terms and conditions, the Company has severely limited its liability for any damage caused to or by the leased equipment, leaving little or no room for the Commission to provide remedies in response to customer complaints about these issues. Staff and Public Counsel accurately point to other provisions in which the tariff does not specify the consequences if the customer does not satisfy his or her obligations under the lease. Such ambiguity raises the concern that PSE could use a customer's unwitting failure to comply with the lease terms to declare a default and accelerate all remaining lease payments. Even where the tariff specifies a consequence for the Company's failure to perform, the remedy is insufficient.[63]

117 We find that PSE has failed to demonstrate that sufficient safeguards exist in connection with the proposed Program and its operation to adequately protect consumers.

F. Public Interest

118 The Commission is responsible to "[r]egulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation."[64] PSE asserts that the Program is in 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."[65] We conclude above that increasing energy conservation and efficient energy usage is an important public interest. PSE must demonstrate that the Program is consistent with that interest.

1. Parties' Positions

119 PSE contends that the Program overcomes barriers that keep thousands of customers from replacing water heating and HVAC equipment that is beyond its useful life. PSE touts the Program as providing "significant benefits to participants unmatched in the industry, including access to energy-efficient equipment with full-service maintenance,

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[63] *See* Roberts, Exh. AR-1T at 8:3-5 and Substitute Proposed Schedule 75, Sheet 75-P § 5.7.f (a credit of 1/30th of the monthly lease rate per day after 48 hours is the sole remedy when the equipment is out of service).

[64] RCW 80.01.040(3).

[65] PSE Initial Brief ¶ 8.

repair, and replacement throughout the lease term, beyond the period of the manufacturer's warranty."[66]

120 The Company relies on the analysis of Dr. Faruqui to support these claims. He explained that PSE's leasing service helps customers overcome barriers to replace aging water heating and HVAC equipment, including credit constraints, risk aversion, imperfect information and search costs, myopic behavior, and various externalities.[67] He found that PSE's proposed leasing service addresses these barriers to adoption of new, energy-efficient equipment for some customers better than any other market option.[68] Dr. Faruqui also used a model to calculate the Program's benefits and concluded that the Program yields quantifiable energy savings costs and other benefits, as well as substantial non-quantifiable benefits for participating customers.[69]

121 PSE concedes that the Program is not a formal energy conservation program but asserts that compliance with those standards is unnecessary to demonstrate energy savings. Incremental savings, in the Company's view, are better than no savings at all. The Company also touts the Program's public interest benefits to all consumers of avoided energy use, greenhouse gas emissions, and generation and distribution capacity costs. PSE claims that a cost-benefit analysis is unnecessary, and indeed impossible for the Program, because many of the benefits are non-pecuniary and cannot fully be quantified.

122 PSE also claims that the Program will provide a useful "platform" to enable demand response and new distributed resource technologies in the future. The Company refers to the evolving nature of the "utility of the future" and cites to the need for the Commission to be responsive to a broad range of approaches and technologies by regulated utilities like PSE in the future. PSE does not offer any specific proposals, however, related to equipment leasing, and recognizes that the Commission recently approved two requests for proposals for demand response technologies recently in a separate docket.

123 Staff and Public Counsel contend that the Company cannot legitimately claim conservation savings when the Program does not comply with the Energy Efficient Resource Standard in the Energy Independence Act.[70] PSE's claimed benefits, in these

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[66] PSE Initial Brief ¶ 104.

[67] Faruqui, Exh. AF-1T, at 5:3-12:20.

[68] *Id.* at 13:1-18:2.

[69] PSE Initial Brief ¶¶ 175-78.

[70] RCW 19.285.

parties' view, are also overstated through Dr. Faruqui's reliance on the flawed Cocker Fennessy survey and his failure to include any consideration of costs in his analysis. They assert that the Program would actually hinder conservation efforts by promoting standard efficiency equipment at the expense of encouraging consumers to install more energy efficient alternatives. Staff and Public Counsel also assert that the Company's constant revisions to its proposal – as late as in a response to a Commission bench request following the evidentiary hearings – violates principles of fundamental fairness and deprives interested parties of the opportunity to review and evaluate the Program.

124 SMACNA-WW and WSHVACCA argue that the Program restricts consumer choice, and they echo Staff's and Public Counsel's observation that many of the equipment types PSE proposes to offer are only "standard efficiency" and would have minimal, if any, energy conservation savings.

125 SMACNA-WW further contends that PSE offers scant evidence and no linkages between equipment leasing and any possible new technologies related to the "utility of the future." SMACNA-WW notes the absence of any equipment leasing discussion in advanced discussions on the utility of the future in other states, such as New York. SMACNA-WW points out that the Company admits it has no comprehensive business plan yet for such applications and that there is no mention of leasing in the Commission's interpretive and policy statement that addresses this issue.

2. Decision

126 We conclude that the Program is not in the public interest for all the reasons Staff, Public Counsel, and the intervenors state. The evidence demonstrates that replacing aging water heating and HVAC equipment with more energy efficient alternatives is in the public interest, but we are not convinced that the Program would substantially further that goal.

127 As an initial matter, we question whether leasing is a viable option for providing water heating and HVAC equipment. Leases of personal property are most common when the subject property is fungible or otherwise has value after the expiration of the lease term, *e.g.*, automobiles or furniture. The equipment at issue here, however, cannot be reused once it has been installed,[71] which presents a substantial risk that the lessor will not recover its costs unless the lease extends for the entire useful life of the equipment. Those circumstances, rather than market failure, may explain why such leases are not currently

[71] McCulloch, TR 348:15 – 349:5.

available.[72] PSE proposes to eliminate the risk of stranded costs by proposing lease terms and conditions that would guarantee the Company full cost recovery – terms and conditions that we reject. While we do not foreclose equipment leasing as a potential utility service option, PSE would need to address the cost recovery issue in some other manner.

128 We also decline to give substantial credence to PSE's claims that the Program would result in significant energy conservation savings. We agree with Staff and Public Counsel that the Company's failure to comply with well-established conservation program requirements and the absence of a consideration of costs in Dr. Faruqui's benefit analysis undermine such claims. We share these parties' concerns that encouraging consumers to install water heating and HVAC equipment that meets only the minimum efficiency standards would hamper more than enhance effective conservation efforts.

129 Any utility company venture into an existing competitive market, moreover, warrants closer Commission scrutiny. The Commission does not regulate the market for water heating and HVAC equipment and has no desire to do so. We nevertheless are cognizant of the potential impact of a regulated company's entry into that market, and we will not authorize such entry unless we are convinced that it would further an important public interest and benefit all consumers. In our view, the Program does not meet that standard.

130 Finally, we are sensitive to the needs of PSE and all electric and gas companies within our jurisdiction to explore new services as one way to address the prospect of flat or declining load growth and to promote energy conservation efforts. We nevertheless agree with SMACNA-WW that there is very little evidence in this case that would support equipment leasing as an element of new technologies and applications related to a "utility of the future" vision. The Commission's interpretive and policy statement relates primarily to the issues surrounding third-party solar generation on a distributed basis, not directly or indirectly to equipment leasing. PSE has not produced compelling evidence in this case that would lead us to apply our encouragement for the development of new technologies and applications to this proceeding.

131 We agree with the other parties that PSE should explore new service options in conjunction with the Conservation Resource Advisory Group and other stakeholder groups and should file proposals with the Commission only when they are fully

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[72] Under the existing discontinued program, the initial term was only twelve months, after which the lease was subject to termination by either party on 30 days' notice. Englert, Exh. EEE-4 at 3.

developed. We expect future filings to be more complete to give other parties and the Commission sufficient opportunity to fully review and evaluate the Company's proposals as set forth in its initial filing.

G. Accounting Issues

132 Staff raised several issues related to the lease classification of the Program and recognition of the leasing assets. The Company did not provide direct testimony on the accounting treatment but responded to multiple data requests from Staff and provided a rebuttal response. The parties did not address the issue during the hearing or in their post-hearing briefs.

133 Staff argues the lease equipment does not meet the Federal Energy Regulatory Commission (FERC) accounting definition of plant in service and argues the Uniform System of Accounts (USoA) guidance only refers to the utility as a lessee. Accordingly, Staff believes the Financial Accounting Standards Board (FASB) Topic 842-30-30-1 Leases appropriately records the lease in a receivable account. On rebuttal, the Company proclaims FERC General Instruction (GI) 19 is agnostic, and only certain portions of GI 20 indicate the utility is considered the lessee. PSE also argues it is not required to follow Generally Accepting Accounting Principles and holds the lease equipment does meet the definition of plant in service under FERC accounting definition.

134 The Commission declines to enter a decision regarding the accounting treatment for this rejected tariff filing. However, the proper accounting of the leasing assets, either as rate base or as accounts receivable, will be an important issue if future filings of this nature come before the Commission.

FINDINGS OF FACT

135 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including investor-owned electric companies.

136 (2) PSE is a public service company regulated by the Commission, providing service as an electrical company and natural gas distribution company.

137 (3) PSE's proposed equipment leasing program would charge customers to lease personal property that is used in connection with the sale of electricity or natural gas for heat.

138 (4) Consumers are interested in a service that facilitates replacing aging water heating and HVAC equipment with more efficient products.

139 (5) Consumer demand exists for a conservation program that would achieve the energy efficiency and emission reduction goals PSE identifies as being among the Program's benefits.

140 (6) The lease rates in the Program are not based on the costs of the actual equipment PSE would provide to the customer.

141 (7) The terms and conditions PSE proposes for its equipment leasing program assign the burdens and risks of equipment ownership to the customer and insulate the Company from most liability for damage caused to or by the equipment.

142 (8) Replacing water heating and HVAC equipment that is past its useful life with more energy efficient alternatives is an important public interest.

143 (9) PSE has not demonstrated that the benefits of the Program outweigh the costs.

CONCLUSIONS OF LAW

144 (1) The Commission has jurisdiction over the subject matter of, and parties to, this proceeding.

145 (2) PSE's proposed equipment leasing program is a utility service subject to Commission jurisdiction and regulation.

146 (3) PSE failed to provide sufficient reliable evidence to support the demand assumptions the Company used to establish the lease rates.

147 (4) The Program rates are not fair, just, reasonable, and sufficient.

148 (5) The Program terms and conditions are not just and reasonable.

149 (6) PSE has failed to prove that its proposed equipment leasing program would substantially accomplish the objective of replacing water heating and HVAC equipment that is past its useful life with more energy efficient alternatives.

150 (7) PSE has failed to demonstrate that sufficient safeguards exist in connection with the proposed Program and its operation to adequately protect consumers.

151 (8) The Commission should reject the tariffs as not consistent with the public interest.

ORDER

THE COMMISSION REJECTS Puget Sound Energy tariffs WN U-60 Schedule 75 and WN U-2 Schedule 175 filed in these dockets.

Dated at Olympia, Washington, and effective November 16, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.