BEFORE THE WASHINGTON

UTILITIES & TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Complainant,

v.

PUGET SOUND ENERGY

Respondent.

DOCKET UG-230393

RESPONSE TESTIMONY OF ROBERT L. EARLE ON BEHALF OF WASHINGTON STATE OFFICE OF ATTORNEY GENERAL PUBLIC COUNSEL UNIT

Exhibit RLE-1CT

September 8, 2023

Shaded Information is Designated Confidential per Protective Order in Docket UG-230393

RESPONSE TESTIMONY OF ROBERT L. EARLE

EXHIBIT RLE-1CT

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EXHIBITS LIST

I. INTRODUCTION / SUMMARY

Q. Please state your name and business address.

A. My name is Robert Earle. My business address is 1388 Haight St. #49, San Francisco, California 94117.

Q. By whom are you employed and in what capacity?

A. I am employed by Alea IE, LLC as the owner.

Q. On whose behalf are you testifying?

A. I am testifying on behalf of the Public Counsel Unit of the Washington Attorney General's Office (Public Counsel).

Q. Please describe your professional qualifications.

A. I have over two decades of experience in the electric power and natural gas industries. This includes working on infrastructure planning, environmental mitigation, and analysis of gas and electric power markets. I have Ph.D. and M.S. degrees from Stanford University in operations research, and an A.B. in mathematics from the College of William and Mary. My curriculum vitae is attached as Exhibit RLE-2.

Q. What exhibits are you sponsoring in this proceeding?

A. I sponsor the following exhibits:

Exhibit RLE-2	Curriculum Vitae of Robert Earle
Exhibit RLE-3	PSE Resp PC DR 5
Exhibit RLE-4	PSE Resp PC DR 42
Exhibit RLE-5	PSE Resp PC DR 37
Exhibit RLE-6	PSE Resp PC DR 40 with Attach. A
Exhibit RLE-7	Vaporization Day Comparison
Exhibit RLE-8	PSE Resp PC DR 24

Exhibit RLE-9 PSE Resp Staff DR 26

Exhibit RLE-10 PSE Resp PC DR 23 with Attach. A

Exhibit RLE-11 Public Comment Matrix, UG-151663

Exhibit RLE-12 PSE Resp PC DR 26 with Attach. A

Exhibit RLE-13 Legal Fees

Exhibit RLE-14 Pipeline Allocation

Q. Please give an overview of your testimony.

A. My testimony addresses the prudency of continuation of the Tacoma LNG Project after September 22, 2016, the prudency of certain legal costs incurred after September 22, 2016, and the allocation of costs for the "4-mile" distribution upgrade.

Q. What are your findings?

A. My findings are as follows:

- Prudency after 2016: Proceeding with the Tacoma LNG Project after September 22, 2016, was imprudent and all costs incurred after that date should be disallowed.
- Legal costs:
  - Regardless of whether the Washington Utilities and Transportation Commission (Commission) decides that proceeding with the Tacoma LNG Project after October 2016 was prudent, all legal costs including overhead incurred for the Tacoma LNG Project after 2016 should be disallowed.
  - The Commission should order a refund for legal costs incurred before 2017 for the Tacoma LNG Project to ratepayers of $2.28 million grossed up by overhead and any other additional charges that were applied to those costs. Interest on the refund should also accrue at Puget Sound Energy's (PSE or Company) cost-of-capital.

- Whether or not the Commission decides proceeding with the Tacoma LNG Project after October 2016 was prudent or disallows all legal costs for the Tacoma LNG Project after October 2016, the Commission should order PSE to undertake an independent audit at shareholder expense of all of its legal costs, cost controls for legal costs, and recordkeeping for the past ten years. This independent audit report should be submitted within one year of the Commission's order to the Commission, Commission Staff, and Public Counsel for review.
- Allocation of the 4-mile upgrade: if the Commission decides that proceeding with the Tacoma LNG Project after September 22, 2016, was prudent, the Commission should reject PSE's allocation of costs for the 4-mile upgrade. Usage analysis demonstrates that PSE over-allocates the pipe cost in its analysis because the gas utility uses no more than 25.6 percent of the 4-mile upgrade.

For reasons discussed further in my testimony below, it is inappropriate for PSE to recover the post-September 2016 costs of the Tacoma LNG Project in utility rates, and these costs should be disallowed.

II. PRUDENCY

Q. Please explain your understanding of the Commission's prudence standard.

A. My understanding of the Commission's prudence standard is based on Order 12 from Docket UE-031725[1] and Order No. 08 from Dockets UE-111048 and UG-111049.[2] In Docket UE-031725, the Commission stated:[3]

[1] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Docket UE-031725, Order 12 (Apr. 7, 2004).
[2] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-111048 and UG-111049, Order 08 (May 7, 2012).
[3] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy,* Docket UE-031725, Order 12 ¶ 19 (Apr. 7, 2004).

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

Citing the passage language, in Dockets UE-111048 and UG-111049, the Commission said:[4]

> There is no single set of factors by which the Commission evaluates prudence but the Commission typically focuses on four factors:
>
> 1) *The Need for the Resource:* The utility must first determine whether new resources are necessary. Once a need has been identified, the utility must determine how to fill that need in a cost-effective manner. When a utility is considering the purchase of a resource, it must evaluate that resource against the standards of what other purchases are available, and against the standard of what it would cost to build the resource itself.
>
> 2) *Evaluation of Alternatives:* The utility must analyze the resource alternatives using current information that adjusts for such factors as end effects, capital costs, dispatchability, transmission costs, and whatever other factors need specific analysis at the time of a purchase decision. The acquisition process should be appropriate.
>
> 3) *Communication With and Involvement of the Company's Board of Directors:* The utility should inform its board of directors about the purchase decision and its costs. The utility should also involve the board in the decision process.
>
> 4) *Adequate Documentation:* The utility must keep adequate contemporaneous records that will allow the Commission to evaluate the Company's decision-making process. The Commission should be able to follow the utility's decision process;

[4] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy* Dockets UE-111048 and UG-111049, Order 08 ¶ 409 (May 7, 2012).

understand the elements that the utility used; and determine the manner in which the utility valued these elements.

Q. To your knowledge, does PSE agree with your understanding of the Commission's prudence standard?

A. PSE cites the same language I do above from Order 12 from Docket UE-031725, so the Company and I would appear to have some common ground in our understanding of the Commission's prudence standard.[5]

Q. Are there subtleties to this delineation of the Commission's prudency standard introduced by the Commission's Order in PSE's 2022 GRC, Dockets UE-220066 and UG-220067?

A. Yes. In its Order, the Commission stated, "When we review the prudency of costs included in PSE's 2023 Tacoma LNG tariff filing, the Commission may also consider the extent to which the Facility was used as a peak-shaving resource."[6] With this, the Commission introduces an element of *ex post* review in its decision making. *Ex post* evaluation can be reasonable when there is an asymmetry of information between the evaluator (the Commission) and decision maker (PSE). In this case, it is difficult for parties other than PSE to know what all the facts were that PSE knew when it made the decisions concerning the Tacoma LNG Project.[7] When an economic actor with an asymmetric information advantage makes claims about forecasts in the past, it is reasonable to include actual outcomes in the evaluation of actions based on those forecasts. For example, it is reasonable to judge a stock picking newsletter by how its stock picks actually fare in the market. The greater burden should be on the entity with

[5] Direct Testimony of Ronald J. Roberts, Exh. RJR-1T at 9:14–11:1.
[6] *Wash. Utils. & Transp. Comm'n v Puget Sound Energy*, Dockets UE-220066, UG-220067 and UG-210918 (*consol.*) Order 24/10 ¶ 405 (Dec. 22, 2022).
[7] Indeed, as discussed below, it appears not even PSE, or certainly PSE's Board knew or considered all the facts.

greater information because of their ability to manipulate forecasts and hide information from parties with less information.

Ex post outcomes therefore should be weighed in favor of the informationally advantaged party, only if the evidence is overwhelmingly compelling in support of the decision to proceed based on forecasts. Evidence that shows that the *ex post* outcome is at best moderately supportive of the informationally advantage entity should be discounted, and evidence that is not supportive should be counted as evidence against prudency.

Q: Are there other requirements the Commission must consider when evaluating the prudence of the Tacoma LNG Project?

A: Yes. The Commission regulates investor owned utilities, including Puget Sound Energy, in the public interest. In determining the public interest, the Commission may consider "environmental health and greenhouse gas emissions reductions, health and safety concerns, economic development, and equity, to the extent such factors affect the rates, services, and practices" of the regulated utility.[8]

III. THE COMMISSION SHOULD DISALLOW ALL COSTS FOR THE TACOMA LNG PROJECT INCURRED AFTER SEPTEMBER 2016

A. Introduction

Q. Please describe the Tacoma LNG Project.

A. The Tacoma LNG Project is a natural gas liquefaction and storage facility, along with associated improvements to PSE's distribution system needed to support the Tacoma LNG Facility. PSE uses the term "Tacoma LNG Facility" to refer to the following:[9]

[8] RCW 80.28.425(1).
[9] Direct Testimony of Jon A. Piliaris, Exh. JAP-1T at 53:10–18, *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-220066, UG-220067, and UG-210918 (*consol.*) (filed Jan 31, 2022).

- buildings, gas processing, storage and support equipment, and foundations located on PSE's leased site at the Port of Tacoma;
- underground LNG fuel line connecting the LNG tank to TOTE's berthing area, marine fueling system and in-water platform at TOTE's site;
- LNG tanker truck loading racks;
- the lease from the Northwest Seaport Alliance; and
- the ground lease from the Port of Tacoma.

In contrast, according to PSE the term "Tacoma LNG Project" is broader, incorporating the Tacoma LNG Facility along with distribution system upgrades and other items:[10]

- the development, construction and operation of the Tacoma LNG Facility;
- improvements to PSE's gas distribution system needed to support the Tacoma LNG Facility;
- regulatory approval to operate the Tacoma LNG Facility to provide peaking capability for PSE's regulated core gas utility customers; and
- commercial contracts to sell LNG to non-utility customers for use as fuel as a non-regulated service.

The regulated peaking function is designed to provide up to 85,000 Dth/day of peak-day supply to the PSE gas system up to 10 times a year.[11]

Q. Why does PSE say it developed the Tacoma LNG Project?

A. PSE says it developed the Tacoma LNG Project for two reasons.

[10] *Id.* at 53:19–54:7.
[11] Direct Testimony of Ronald J. Roberts, Exh. RJR-1CT at 32:9–12, *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy* Dockets UE-220066, UG-220067, and UG-210918 (*consol.*) (filed Jan 31, 2022); Robert L. Earle, Exh. RLE-5, *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-220066, UG-220067, and UG-210918 (*consol.*) (PSE Response to WUTC Staff Data Request No. 92) (filed July 28, 2022).

1. The Tacoma LNG Project would provide the ability to "meet a peak demand for a few days that may only occur once every few winters."[12]
2. PSE intended to "provide LNG as a transportation fuel to large maritime and trucking customers as well as industrial users in the region, through its affiliate Puget LNG."[13]

Q. Please summarize your findings on the Tacoma LNG Project.

A. The Commission approved the decision to develop and construct the Tacoma LNG Facility through September 22, 2016.[14] The record does not support the prudence of the Tacoma LNG Project for PSE ratepayers, and all costs after September 22, 2016, for the Tacoma LNG Project should be disallowed.

Q. Please summarize why the Commission should disallow all costs for the Tacoma LNG Project incurred after September 2016.

A. The raison d'être for disallowing the post-September 2016 costs of the Tacoma LNG Project is the design day standard.[15] PSE witness Ronald J. Roberts testifies that PSE bases resource need on the "Design Peak Day condition when all existing resources are fully utilized and there is still an un-served demand." Roberts explains, "Each load forecast scenario would have a unique calculated design peak volume per year. The design peak volume is based on PSE's planning standard, forecasted customer count, and customer use per degree day, taking into account recently observed actual loads

[12] Roberts, Exh. RJR-1CT at 17:17–19, *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy,* Dockets UE-220066, UG-220067, and UG-210918 (*consol.*) (filed Jan 31, 2022).
[13] *Id.* at 17:9–11.
[14] *Wash. Utils. & Transp. Comm'n v Puget Sound Energy*, Dockets UE-220066, UG-220067 and UG-210918 (*consol.*), Order 24/10 ¶ 52 (Dec. 22, 2022).
[15] Multiparty Settlement Testimony of Ronald J. Roberts, Exh. RJR-30T at 6:3–15, *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy,* Dockets UE-220066, UG-220067, and UG-210918 (*consol.*) (filed Aug. 26, 2022).

and the impact of existing demand side resources."[16] PSE uses the design day standard to dismiss actual outcomes in weather and demand as irrelevant to its decision to proceed with the Tacoma LNG Project.[17] PSE's design day standard was outdated by 2016, and therefore its balancing of benefits to ratepayers versus the cost of the design day standard were misaligned.

B. Problems with the Design Day Calculation and PSE's Forecasts

Q. What is the design day standard?

A. The design day standard, or peak-day planning standard, is a criterion in heating degree days (HDD)[18] for system planning. The capacity of the gas system should be designed to meet demands arising from the design day HDD. PSE relied on the 2005 Least Cost Plan in its calculation of gas peak demand forecasts.[19] The design day standard in its 2005 Least Cost Plan was developed through a cost-benefit analysis that "consider[ed] customers' value of reliability of service with the incremental costs of the resources necessary to provide that reliability at various temperatures."[20]

As the Commission described it:[21]

> The Company uses a "design peak day" (the coldest day over the past

[16] *Id.* at 4:13–19.
[17] Roberts, Exh, RJR-1T at 2:15–19, 14:12–15:2, *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy* Dockets UE-220066, UG-220067, and UG-210918 (*consol.*) (filed Jan 31, 2022).
[18] Puget Sound Energy, Least Cost Plan, App. I Gas Planning Standard at 1, *In re Puget Sound Energy 2005 Least Cost Plan,* Docket UE-050664 (Apr. 2005) (filed May 2, 2005):

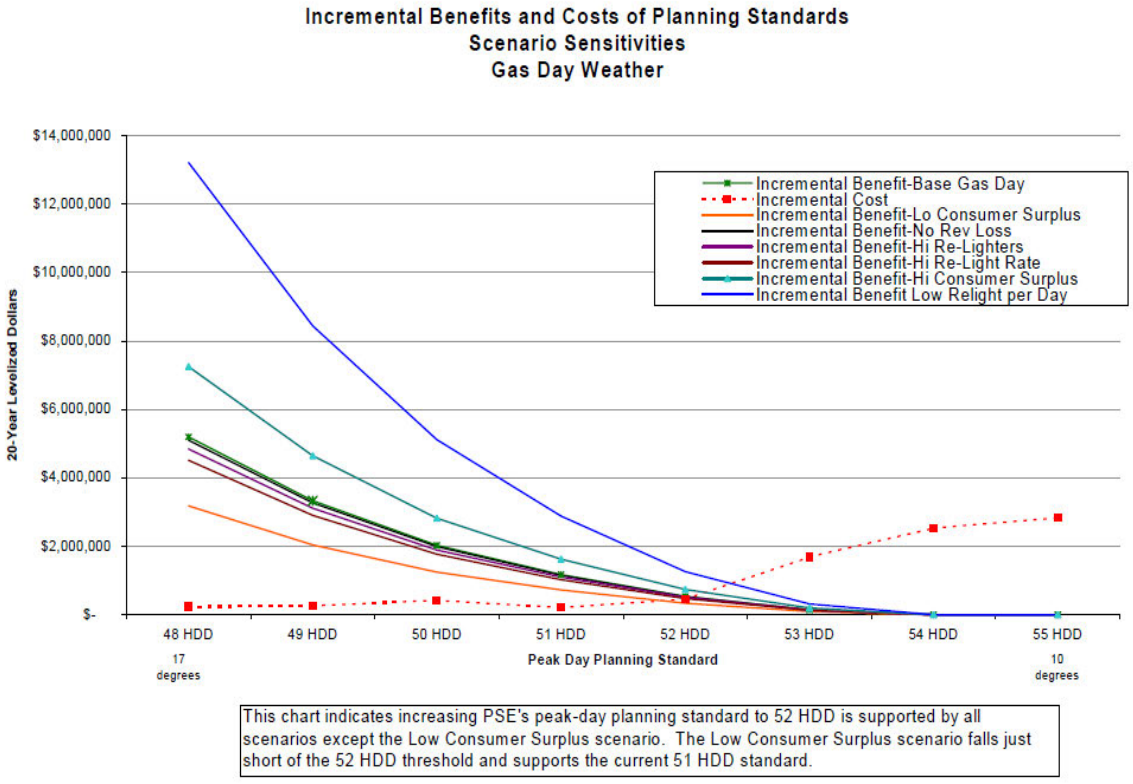
> The concept of heating degree days (HDD) was developed by engineers as an index of heating fuel requirements. They found that when the daily mean temperature is lower than 65 degrees, most buildings require heat to maintain an inside temperature of 70 degrees. Thus, an HDD number represents the following equation: 65 – the average daily temperature = HDD.

[19] Roberts, Exh. RJR-30T at 7:14–8:2, *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy,* Dockets UE-220066, UG-220067, and UG-210918 (*consol.*) (filed Aug. 26, 2022).
[20] Puget Sound Energy Least Cost Plan, App. I Gas Planning Standard, at 1, Docket UE-050664 (filed May 2, 2005).
[21] Puget Sound Energy Acknowledgment Letter at 4, *In re Puget Sound Energy 2005 Least Cost Plan*, Docket UE-050664 (filed Aug. 29, 2005).

several years) to assess highest single-day natural gas load. This approach is also used to identify natural gas pipeline stress points and needed upgrades. Since design peak days very rarely, if ever, occur, the cost of creating a system to meet this load may be excessive. Given the several decade historical record of hourly temperature, it is possible to compute the probability with which a design day would occur. Therefore, PSE should compare overall system costs assuming: (i) design peak day, (ii) expected design day (probability weighted coldest day) and (iii) second coldest day. This kind of analysis would reveal the extra cost or investment added due to the choice of design peak day.

Figure 1 from PSE's 2005 Least Cost Plan illustrates the tradeoff between the benefits of increased reliability (higher HDD) and costs. [22]

Figure 1: 2005 Least Cost Plan Balancing the Costs and Benefits of Additional System Capacity



[22] Puget Sound Energy Least Cost Plan, App. I Gas Planning Standard, at 7, Docket UE-050664 (filed May 2, 2005).

The 2005 Least Cost Plan determined that the optimal peak-day planning standard was 52 HDD (13°F). PSE reported that this standard meets or exceeds 98 percent of peak day temperatures from 1950 to 2003.[23]

Q. Has PSE updated its design day standard since 2005?

A. No. In its 2023 Gas IRP, PSE says it included climate change effects in its modeling for the first time. In describing its conclusions, PSE states that it was maintaining the 52 HDD standard but did not report doing an economic analysis of the cost-benefit tradeoffs between the benefits of reliability and the costs of reliability. So, while it has reaffirmed the 52 HDD standard as a 1 in 50 years standard, it has not justified that standard economically since 2005.[24] In approving the 2005 standard, the Commission stated that "the data underlying that analysis is now dated."[25]

Q. Why is that important?

A. In none of the analyses of the Tacoma LNG Project did PSE incorporate the costs versus the benefits of maintaining the 52 HDD standard. In 2005, PSE calculated the benefits of a 52 HDD standard over a 47 HDD standard to be $15.1 million.[26] This benefit was dwarfed, however, by the overnight capital costs of $182 million PSE estimated to be allocated to ratepayers in September 2016.[27] The capital costs grew through the course of the project so that by the end of December 2021, the capital costs PSE would allocate to ratepayers had grown 31 percent to $239 million.[28] During the

[23] Puget Sound Energy Least Cost Plan, App. I Gas Planning Standard, at 5, *In re Puget Sound Energy 2005 Least Cost Plan,* Docket UE-050664 (filed May 2, 2005).
[24] Puget Sound Energy Compliance Filing, App. D, at D.11–D.13, *In re PSE 2023 Gas Utility Integrated Resource Plan,* Docket UG-220242 (filed May 31, 2023).
[25] Puget Sound Energy Acknowledgment Letter at 5, Docket UE-050664 (filed Aug. 29, 2005).
[26] Levelized 20-year benefits of $12.3 million inflated to 2016. Puget Sound Energy Least Cost Plan, App. I Gas Planning Standard, at 3, *In re Puget Sound Energy 2005 Least Cost Plan,* Docket UE-050664 (filed May 2, 2005).
[27] Roberts, Exh. RJR-1CT at 46:10–18, *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy,* Dockets UE-220066, UG-220067, and UG-210918 (*consol.*).
[28] *Id.*

course of the Project, PSE should have re-evaluated the 52 HDD standard in light of the vast difference between the potential benefits of $15.1 million and the hundreds of millions of dollars the solution was to cost ratepayers.

PSE did not do so, nor did PSE communicate with its Board of Directors concerning the design day standard. PSE provides information given to the Board of Directors after September 2016 in Roberts Exhibit RJR-8C. Exhibit RJR-8C contains no instances of any discussion of design peak day gas requirements.[29] In discovery, PSE confirmed that it "could not identify any additional materials on design peak day gas requirements that were presented to the PSE Board of Directors that were not already included in exhibits in this case."[30] In a subsequent discovery response, PSE cites Roberts Exhibit RJR-8C as an example of informing the Board of Directors about design day peak gas requirements; however, [redacted]

Therefore, based on PSE's discovery responses, testimony, and exhibits, PSE has never discussed the 2005 design peak day gas requirements with its Board. As a result, the Commission should find continuing with the Tacoma LNG Project to be imprudent

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[29] Roberts, Exh. RJR-8C. A search of the exhibit reveals no discussions of design peak day gas requirements.
[30] When asked for materials on design peak day gas requirements presented to the Puget Sound Energy Board from 2003 to present not already included in any exhibits filed in this case, PSE responded, "PSE could not identify any additional materials on design peak day gas requirements that were presented to the PSE Board of Directors that were not already included in exhibits in this case;" Earle, Exh. RLE-3 (PSE Response to Public Counsel Data Request No. 05).
[31] Earle, Exh. RLE-4 (PSE Response to Public Counsel Data Request No. 42) (citing Exh. RJR-8C at 76); Puget Sound Energy Least Cost Plan, App. I Gas Planning Standard, at 1, Docket UE-050664 (filed May 2, 2005).

after September 2016, and disallow all costs for the Tacoma LNG Project incurred after September 2016.[32]

Q. Are there other problems with PSE's use of the 2005 gas planning standard to justify decisions after 2016?

A. Yes. The HDD 52 standard means that PSE's natural gas projections are based on a 1 in 50 years peak using SEATAC temperature data from 1950 to 2003.[33] The issue is that there has been an increase in winter peak temperatures since 2003, as illustrated in Figure 2. The trend in winter peak (minimum) temperatures is that the winter minimum temperature has been increasing since 1950. The minimum for the period 1950 to 2003 occurred in the winter of 1968-1969 (12° F). Twenty years later, the winter of 1968-1969 still has the lowest daily minimum over 72 years. Going into winter 2015-2016, the 1 in 50 years seasonal peak was 15° F.[34]

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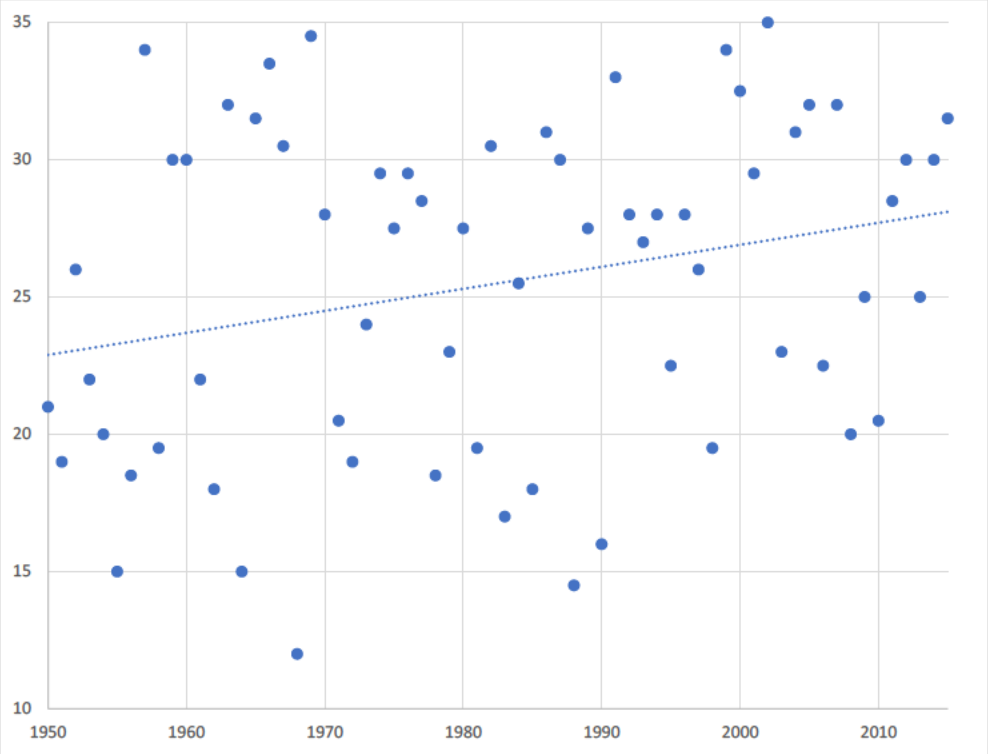
[32] It is disturbing as well that PSE refuses to answer basic questions about the 2005 Least Cost Plan on which it relies for its design day criterion. The Commission should not allow PSE's reliance on the design day criterion if it cannot provide basic evidence for it. Earle, Exh. RLE-5 (PSE Response to Public Counsel Data Request No. 37).

[33] Puget Sound Energy Least Cost Plan, App. I Gas Planning Standard, at 5, Docket UE-050664.

[34] The proper measure for the minimum temperature to drive the design day should be the winter seasonal minimum temperature, not the yearly minimum temperature because the design should be based on the need during a season. A cold winter with a low temperature in December and a low temperature in January followed by a warm winter would make it appear that the weather is cold for two years when it is not. This is because it would count the low December and January temperatures in the first winter season as separate data points. From the point of view of designing the gas system, one should focus on what happens in a winter season. While PSE's gas system design is around the winter peak not the annual, PSE appears to measure the 1-in-50 criteria with the annual peak.

Figure 2: Winter Peak (Minimum) Temperatures (°F) by Season



PSE says it "reasonably relied on its forecasts for gas demand, which showed a need for an LNG peak-shaving facility."[35] But, relying on its forecasts for gas demand is only reasonable if the gas forecasts are reasonable. Though other elements of the forecast were purportedly updated, the design day standard of 13° F was not updated.[36] PSE did not consider this evidence in applying the design day standard either before September 2016 or after.

PSE may point to its 2023 IRP as taking into account climate change with change in the design peak of 13° F (52 HDD). However, PSE's 2023 standard does not take into account the cost-benefit tradeoffs for the 1-in-50 standard. Moreover, on

[35] Roberts, Exh. RJR-1T at 11:13–15 (citing Docket UE-220066, UG-220067 and UG-210918 (*consol.*), Order 24/10, ¶¶ 394–399).
[36] *Id.* at 12:1–10.

closer examination, the evidence used for the 2023 standard is flawed. PSE uses three different climate models to project temperatures from 2020 to 2049.[37] Only one of the models drives the maintenance of the 52 HDD standard.[38] The model in question has inexplicable temperature excursions such as predicting a minus 1.12° F minimum temperature for 2048 even though the 2047 minimum temperature is 22.42° F and the minimum 2049 temperature is 18.71° F. Such volatility in model results is typically very concerning. PSE relies on the anomalies in this model to justify maintaining the 13° F standard. Removing that model from the calculation of a 1-in-50 standard increases the standard from 13° F to 22° F (43 HDD).[39]

C. PSE's Purported Use of the Tacoma LNG Facility as Justification for Prudency Should be Dismissed by the Commission

Q. Do you agree with PSE's claims that its vaporization use at the Tacoma LNG Facility show the prudence of costs incurred after the September 22, 2016, decision?

A. No, not at all. First, the initial decision to build and operate the Tacoma LNG Facility could be prudent as the Commission previously determined, but some of the later decisions and costs incurred could still be imprudent. For instance, hypothetically, even if the decision to build and operate the Tacoma LNG Facility was prudent, some of the costs to accommodate gas quality issues might be still be imprudent. Or, the decision to build the plant could be prudent, but costs of a marble tiled restroom with gold faucets would not be prudent. Thus, use of the Tacoma LNG Facility to achieve

[37] Earle, Exh. RLE-6 (PSE Response to Public Counsel Data Request No. 40 with Attachment A).
[38] This is the CNRM-CM5_MACA model.
[39] PSE uses a yearly measure for the minimum temperature rather than the seasonal, which leads to an inappropriately lower 1-in-50 design temperature. I do not correct for that here because PSE provides the climate model numbers in terms of years, not winter seasons. Alternatively, using all three climate scenarios but the actual data for the years 2020 through 2022 results in a 1-in-50 standard of 16° F (49 HDD).

peak shaving per design day criteria provides no evidence as to the prudence of costs incurred.

Second, even if the Tacoma LNG Facility was used for peak shaving, which it was not, that would not be informative -as to whether the choice to build the Facility was prudent or not compared to the alternatives, or whether the design day criteria used was prudent. At best, any use of the Tacoma LNG Facility to peak shave to meet design day criteria indicates that it can be used to do so, but not that it was the best choice.

Third, the Commission stated, "When we review the prudency of costs included in PSE's 2023 Tacoma LNG tariff filing, the Commission may also consider the extent to which the Facility was used as a peak-shaving resource."[40] PSE's vaporization in winter 2022-2023 did not constitute peak shaving to meet design day criteria.

Q. Why do you say that PSE's vaporization in winter 2022-2023 did not constitute peak shaving to meet design day criteria?

A. The gas demand on the days when PSE vaporized was far below the projected peak demand day level and far below the level of resources available before the Tacoma LNG Facility was online. The gas demand levels on the vaporization days were on average 44 percent below the level of resources available before the Tacoma LNG Facility was available. The highest demand day of the vaporization days was 29 percent below the pre-Tacoma LNG level of resources.[41] The vaporization days hardly qualify as anything near peak demand days, and PSE's description of the vaporization as peak shaving should be rejected.

[40] *Wash. Utils. & Transp. Comm'n v Puget Sound Energy*, Dockets UE-220066, UG-220067 and UG-210918 (*consol.*), Order 24/10 ¶ 405 (Dec. 22, 2022).
[41] Similar figures apply to the F2022 forecast for winter 2022–2023, with the average demand on a vaporization day 45 percent below the forecast, and the highest demand vaporization day 30 percent below the forecast.

Moreover, the amounts vaporized are far below the amounts the Tacoma LNG Facility was designed for. The maximum vaporization of the Tacoma LNG facility is 66,000 Dth,[42] while the amounts vaporized on the vaporization days ranged from 0.2 percent of that to at most 57.8 percent of that. Compared to the amount of gas demand, the vaporization amounts ranged from 0.08 percent of demand to 7.45 percent of demand.[43]

The amounts vaporized and the demand on the days of vaporization compared with forecasted peak and resources available before Tacoma LNG show that the vaporizations claimed by PSE as proof of prudency were, in fact, merely performative.

Q. Does PSE claim that absent vaporization from the Tacoma LNG Facility on those days that curtailments to PSE core customers would have been required?

A. No, not at all. When asked if PSE asserted that absent vaporization from the Tacoma LNG Facility that curtailments to PSE core customers would have been required, PSE refused to answer the question. Moreover, PSE would not say that the Tacoma LNG Facility was necessary "to buttress system reliability and mitigate any potential trickle-down effects of a full BC Pipeline curtailment."[44]

Q. What is your assessment then of PSE's claims about the vaporizations?

A. PSE has manufactured a situation to try to meet the Commission's ex post criterion of peak shaving. Its vaporizations were not peak shaving, but simply a reduction of dependence on other resources when demand is far from peak. PSE does not provide any evidence that vaporization at Tacoma LNG Facility was necessary, nor does any evidence support that it was necessary. The Commission should reject PSE's claim that

[42] Roberts, Exh. RJR-1T at 2:15–16.
[43] Earle, Exh. RLE-7 (Vaporization Day Comparison).
[44] Earle, Exh. RLE-8 (PSE Response to Public Counsel Data Request No. 24).

the vaporizations in winter 2022-2023 support prudency. In fact, as discussed above regarding *ex post* evidence, the weakness of PSE's claim provides evidence that the decision to proceed with the Tacoma LNG Project was imprudent.

Q. Is there other evidence from winter 2022-2023 that PSE's decision to proceed with the Tacoma LNG Project was imprudent?

A. Yes. PSE's use of the Tacoma LNG Facility belies its claims about the need for it. Rather than having anything close to 6.3 million gallons on hand for winter cold snaps,[45] the maximum amount of LNG PSE stored for ratepayers throughout the winter of 2022-2023 was 48 percent of what PSE claims it needs to have on hand.[46] According to PSE, "a two-to-three day cold spell would deplete the storage tanks, and it could take up to 120 days to refill it."[47] It is not clear whether witness Roberts meant that a single two-to-three day cold spell would deplete the storage tank, or two such cold spells would deplete the storage tank. In either case, if PSE really believed that the Tacoma LNG Facility would be necessary, as it has claimed, it would fill PSE's portion of the tank going into winter. Indeed, PSE recognized this quite early in the planning process and demonstrated its understanding in the following statement: "The LNG that is used for peak shaving (6.3 million gallons) needs to be liquefied and sitting in the storage tank by the beginning of winter each year." [48]

[45] The amount of tank capacity allocated to PSE is 6.3 million gallons.
[46] Earle, Exh. RLE-9 (PSE Response to Staff Data Request No. 26); Earle, Exh. RLE-10 (PSE Response to Public Counsel Data Request No. 23 with Attachment A). The 48 percent was derived by taking the maximum PSE (not Puget LNG) had stored in the LNG tank from October 1, 2022 through March 31, 2023, and dividing that by PSE's share of the tank (6.3 million gallons).
[47] *Wash. Utils. & Transp. Comm'n v Puget Sound Energy*, Dockets UE-220066, UG-220067 and UG-210918 (*consol.*), Order 24/10 ¶ 400 (citing Ronald J. Roberts, TR. 428:13–25) (Dec. 22, 2022).
[48] Earle, Exh. RLE-11 at 9 (Docket UG-151663 Public Comment Matrix).

Q. What is your recommendation to the Commission in their consideration of *ex post* decision evidence?

A. The *ex post* decision evidence indicates that PSE's decision to proceed with the Tacoma LNG Project was imprudent. The Commission should therefore consider the *ex post* decision evidence as weighing against any finding of prudency. PSE's use of the Facility was performative at best, pretending to meet the need as an attempt to justify its decisions regarding the Tacoma LNG Project.

It might be otherwise had PSE had to use just half of the Tacoma LNG Facility's ability to peak shave a demand of 1,016 MDth down to the pre-Facility resource level of 973 MDth.[49] That did not happen last winter, nor does it have any likelihood of happening in the future. PSE's already overstated F2022 forecast through winter 2043-2044 has a maximum forecast of 984 MDth over those 21 years, a mere 11 MDth over the resources it had before the Tacoma LNG Project. History will prove the folly of the Tacoma LNG Project and the unnecessary damage done to PSE ratepayers.

IV. LEGAL COSTS

A. The Commission Should Disallow All Legal Costs after 2016

Q. Why should the Commission disallow all legal costs after 2016 related to the Tacoma LNG Project?

A. Utilities have an obligation to provide evidence of costs incurred that they wish to recover from ratepayers. Just as a business traveler who wishes to be reimbursed for travel expenses may be required produce receipts, utilities are obligated to provide proof of costs and their reasonableness in order to get recovery from ratepayers. As discussed above, the Commission requires adequate documentation in its prudency test.

[49] The Facility can inject 66,000 Dth in a day and provide another 19,000 Dth via truck, for a total of 85,000 Dth.

PSE, however, has refused to provide or cannot provide evidence of their legal costs or their reasonableness for the Tacoma LNG Project.

Q. Why do you say that PSE refused to provide or cannot provide evidence for the legal costs or their reasonableness for the Tacoma LNG Project?

A. For two reasons. First, when asked to provide monthly legal costs for the Tacoma LNG Project, PSE could not provide the monthly legal costs prior to 2017, stating "PSE did not separately track legal costs and therefore, cannot provide the requested information for 2013 through 2016."[50] Without any evidence for these costs, PSE states without documentation that the "external legal costs … [were] not more than $1 million per year in total."[51] Second, when asked for billing records pertaining to legal costs for the Tacoma LNG Project, PSE refused to provide any.[52]

Q. Does the evidence for the incurrence and reasonableness of legal costs produced by PSE raise other concerns?

A. Yes, it did. In response to Public Counsel Data Request No. 26, subpart b., PSE provided a spreadsheet purporting to show the "monthly external legal counsel costs, and monthly internal legal counsel costs and hours from 2017 to present for the Tacoma LNG Project."[53] Three anomalies stand out from PSE's spreadsheet.

First, for the 75 months (from April 2017 to June 2023) reported in the spreadsheet, there are no costs reported for internal incurred legal expenses for 10 of those months. During those 10 months, PSE reports $0.654 million in external legal costs. Moreover, from September 2022 to November 2022, while there were no internal

[50] Earle, Exh. RLE-12 (PSE Response to Public Counsel Data Request No. 26 with Attachment A, subpart b.).
[51] *Id.*
[52] *Id.* (PSE Response to Public Counsel Data Request No. 26 with Attachment A, subpart c.).
[53] *Id.* (PSE Response to Public Counsel Data Request No. 26 with Attachment A, subpart b.).

legal costs during those three months, there were $0.419 million in external legal costs.[54] This raises at least two questions: were external legal expenses and activities not being monitored or reviewed by PSE's legal staff during those 10 months, including the three-month gap from September 2022 to November 2022? And, given that the litigation concerning the Tacoma LNG Project was largely over by that time,[55] why was $0.419 million spent on external legal resources with no apparent supervision? If PSE had provided billing records, these questions could have been examined with evidence that might provide answers or uncover potential problems.

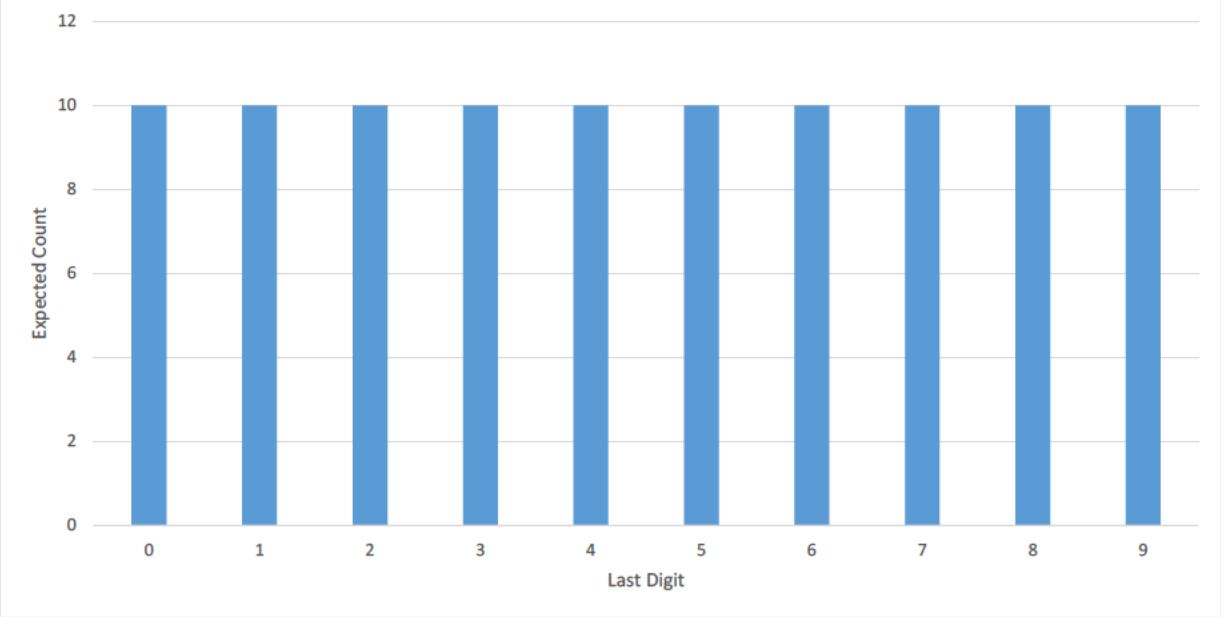
Second, PSE says that from January 2017 to March 2017, there were no legal costs.[56] A three-month holiday after spending up to $1 million each year from 2013 to 2016,[57] and then spending $1.243 million in the remaining nine months of the year 2017, seems highly improbable. An examination of billing records might explain this anomaly, however, PSE refused to provide or was unable to provide billing records.

Third, the pattern of numbers provided for internal labor expenses is unusual. A commonly used technique for ferreting out abnormalities in accounting records and scientific papers is to look at the statistical distribution of the last digit of the numbers.[58] For instance, the last digit of the number 146.05 is 5, and the last digit of the number 2,387.73 is 3. Under a wide variety of circumstances, the last digit of a set of numbers should be uniformly distributed. That is, the frequency with which a given

[54] Earle, Exh. RLE-13 (Legal Fees).
[55] Roberts, Exh. RJR-1T at 27:3–29:7.
[56] Earle, Exh. RLE-12, Attachment A (PSE Response to Public Counsel Data Request No. 26 with Attachment A). This Attachment shows no legal costs in those months, and subpart b. of PSE's response states that the Attachment contains "monthly external legal counsel costs, and monthly internal legal counsel costs and hours from 2017 to present for the Tacoma LNG Project".
[57] Earle, Exh. RLE-12 (PSE Response to Public Counsel Data Request No. 26 with Attachment A, subpart b.).
[58] Stephan Dlugosz and Ulrich Müller-Funk, *The value of the last digit: statistical fraud detection with digit analysis*, 3 Advances in Data Analysis and Classification at 281–290 (Dec. 2009).

number occurs is equal to the frequency of any other number. In other words, if we have one hundred numbers, one would expect on average that each of the numbers 0 through nine occur 10 times as a last digit. Figure 3 illustrates what the expected distribution would be for the last digit of a hundred numbers.

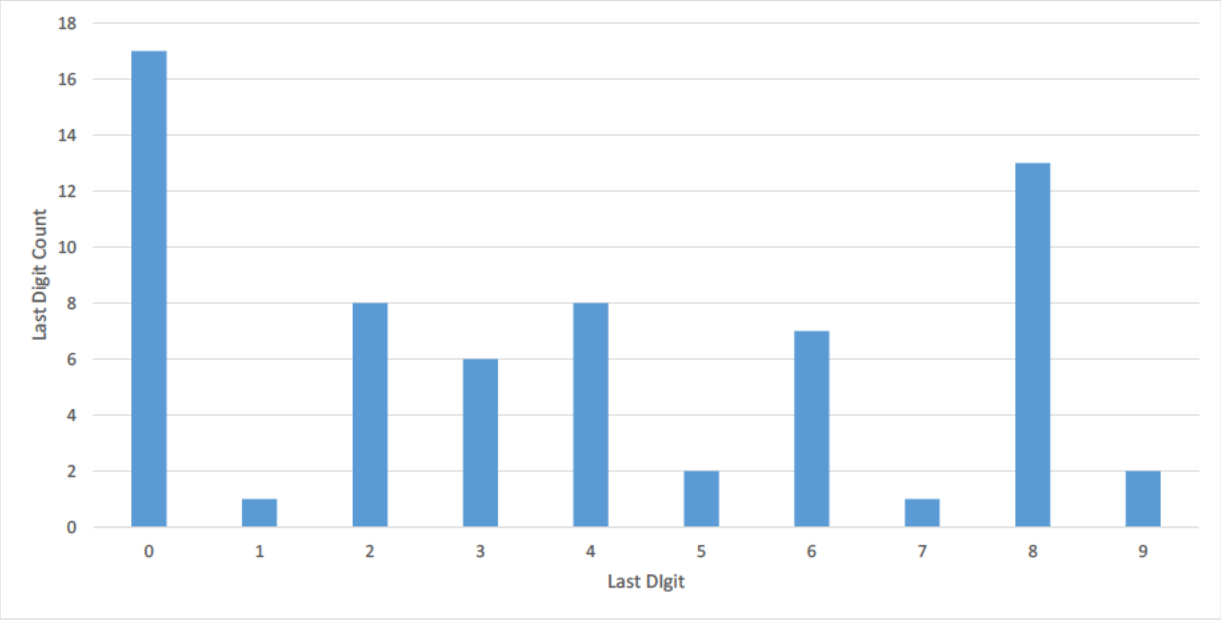
Figure 3: Expected Count of Occurrence of Last Digits for One Hundred Numbers



The pattern of last digits for the billing amounts for internal labor expenses does not appear to match this pattern as illustrated in Figure 4. Performing a statistical "goodness-of-fit" test measures shows that the last digits in the billing records are not uniformly distributed.[59] The billing amounts for internal labor expenses therefore are anomalous and therefore should be examined. PSE, unfortunately, foreclosed any such examination by refusing to provide billing records.

[59] The test is statistically significant with a p-value less than 0.01.

Figure 4: Last Digit Count for Internal Labor Expenses



Q. What is your conclusion?

A. PSE refused to provide basic evidence in the form of billing records to support its recovery of claimed legal costs from ratepayers. For this reason alone, the Commission should disallow all legal costs for the Tacoma LNG Project after 2016. Moreover, PSE's record keeping with respect to legal costs for the Tacoma LNG Project was sloppy at best. It did not record costs separately prior to 2017, and the records it did produce raise further concerns about the claimed legal costs. Based on these two factors, the Commission should disallow all legal costs and any overhead or other charges applied to them for the Tacoma LNG Project after 2016 even if the Commission finds that continuing with the Tacoma LNG Project after 2016 was prudent.

If the Commission decides to allow the reimbursement of PSE's purported legal costs, then the Commission is signaling to its regulated entities that they do not have to show evidence for their claims of costs, but merely need to assert that costs were

incurred in order to obtain recovery. This would largely end effective regulation of utilities in the State of Washington by the Commission and upend the long-standing burden of proof on utilities to justify proposals.

B. PSE Should Refund Ratepayers a Portion of the Legal Costs Incurred before 2017

Q. Please explain why PSE should refund ratepayers a portion of the legal costs incurred for the Tacoma LNG Project before 2017.

A. As discussed above, "PSE did not separately track legal costs … for 2013 through 2016."[60] This means that PSE would have had not been able to separate those legal costs from other costs. Unless PSE shareholders paid for general legal costs for the four years 2013 through 2016, this means that PSE ratepayers inappropriately paid for all of the legal costs rather than sharing the expense with the Puget LNG per Order 10, Docket UG-151663.[61]

Q. How much should be refunded to ratepayers?

A. PSE states that the "external legal costs …[were] not more than $1 million per year in total."[62] Taking the $1 million per year figure and ignoring internal legal costs (claimed by PSE to be *de minimis*), yields $4 million in Tacoma LNG Project legal costs for the years 2013 to 2016. Using the common cost allocators of 43 percent for PSE ratepayers and 57 percent for Puget LNG[63] means that PSE ratepayers should be refunded 57 percent of $4 million, or $2.28 million grossed up by any overhead or other charges

[60] Earle, Exh. RLE-12 (PSE Response to Public Counsel Data Request No. 26 with Attachment A, subpart b.).
[61] *In re the Petition* of *Puget Sound Energy for an Approval of Special Contract for LNG Fuel Serv. with Totem Ocean Trailer Express, Inc. and (ii) A Declaratory Ord. Aproving the Methodology for Allocating Costs between Regul. And Non-regul. LNG Servcs.,* Docket UG-151663, Order 10: Final Order, ¶ 61 (Oct. 31, 2016).
[62] Earle, Exh. RLE-12 (PSE Response to Public Counsel Data Request No. 26 with Attachment A, subpart b.).
[63] *In re the Petition* of *Puget Sound Energy,* Order 10, Docket UG-151663, ¶ 61 (Nov. 1, 2016). PSE also uses these common cost allocators for legal costs for the costs it purported to identify. *See* Earle, Exh. RLE-12 (PSE Response to Public Counsel Data Request No. 26 with Attachment A, subpart a.).

that were applied.[64] In addition, interest on the refund should accrue at PSE's cost-of-capital.

C. The Commission Should Order PSE to Have an Independent Audit of All of its Legal Costs and Record keeping

Q. Why should the Commission order PSE to have an independent audit of all of Legal Costs, Cost Controls of Legal Costs, and Recordkeeping?

A. As discussed above, PSE failed to keep adequate records of legal costs for the Tacoma LNG Project in several ways. First, PSE failed to separate legal costs for the Tacoma LNG Project from other legal costs for at least four years. Adequate billing records should have an identification of the matter on which legal personnel have recorded billing time. That PSE did not separately track legal costs before 2017 raises the question, generally, of whether PSE is adequately tracking the areas and reasons for the incurrence of legal costs.

Second, there are mysterious lacunae in the records of legal costs for the Tacoma LNG Project:

- Missing records for 2013-2016;
- The first three months of 2017 have a holiday of three months for both internal and external legal personnel from working on the Tacoma LNG Project[65];
- Ten other months in which there was no internal legal work done including a consecutive three months during which $0.419 million in external legal costs were incurred.

[64] Earle, Exh. RLE-13 (Legal Fees). This exhibit shows the calculations for the refund.
[65] Earle, Exh. RLE-12, Attachment A (PSE Response to Public Counsel Data Request No. 26 with Attachment A).

What happened in the months with no records at all? What happened during the months when there were external legal costs but not internal costs? Does this indicate inadequate review of external legal work? There is a need to examine these lacunae through an independent audit.

Third, the internal monthly legal costs exhibit an anomaly in their last digit as discussed above. This is also an indicator of the need for an audit, especially in light of the other problems with PSE's ability to justify its legal costs.

Fourth, PSE is unable to provide the number of hours billed by external resources per month.[66] The number of hours billed by external resources by month is a basic fact that ratepayers have a right to know and that informs the reasonableness of the expense.

Fifth, PSE refused to provide billing records resulting in a number of questions that cannot be answered on the current record, including:

- Are the amounts billed per day by a person reasonable?
- Are the hours charged reasonable?
- Are the non-labor expenses charged reasonable?
- Does the workflow comport with the legal proceedings and other legal work?
- Is there adequate documentation of the work performed including hours and description of the work performed?
- Is there adequate supervision of external counsel with a view towards cost control? For the records provided, internal legal expenses were a mere two

[66] Earle, Exh. RLE-12 (PSE Response to Public Counsel Data Request No. 26 with Attachment A, subpart b).

percent of external legal expenses.[67] Without billing records with clear descriptions of work performed, it is unclear whether there was adequate supervision or cost control.

For all these reasons, there should be an independent audit at shareholder's expense of PSE's legal costs, cost controls for legal costs, and recordkeeping. The audit should cover all legal costs, not just those incurred for the Tacoma LNG Project.

Q. What time period should the independent audit cover and to whom should it be submitted?

A. The audit should cover an adequate period to assess performance over time. With a timeframe for the Tacoma LNG Project starting in 2013, a 10-year look back is appropriate. Moreover, as discussed above, the report should cover all of PSE's legal costs, not just those confined to the Tacoma LNG Project. It is important to determine the extent to which any problems with legal costs and recordkeeping apply to other activities of PSE.

This independent audit report should be submitted within one year of the Commission's order to the Commission, Commission Staff, and Public Counsel for review.

[67] Earle, Exh. RLE-13 (Legal Fees).

V. THE COMMISSION SHOULD REJECT PSE'S COST ALLOCATION FOR THE FOUR-MILE PIPELINE

Q. Please describe the background of the four-mile pipeline distribution upgrade for which PSE seeks cost recovery.

A. PSE asserts certain distribution upgrades were needed for the Tacoma LNG Project.[68] Amongst these are the four-mile pipeline segment of 16 inches. PSE claims that a 12-inch pipeline would have been adequate for the delivery of gas to the Tacoma LNG Facility, but a 16-inch pipeline is needed to deliver 66,00 Dth/day from the Tacoma LNG Facility to other portions of the PSE distribution system.[69]

Q. How does PSE propose to split the costs of the 4-mile upgrade?

A. PSE proposes to split the costs with 61.8 percent allocated to PSE ratepayers and 38.3 percent allocated to Puget LNG.[70]

Q. How does PSE derive its allocation?

A. PSE starts with the purported cost of installing a 12-inch pipeline of $23.3 million. According to PSE, the 12-inch pipeline would have been sufficient to deliver the gas needed to the Tacoma LNG Facility. To enable the pipeline to deliver 66,000 Dth/day from the Facility, PSE says that it required putting in a 16-inch pipeline at an additional cost of $4.1 million. PSE allocates all of the cost of the $4.1 million to PSE ratepayers.

To split the $23.3 million cost for a 12-inch pipeline, PSE splits the cost in half in a strange way, attributing half of the cost to deliveries *to* the Tacoma LNG Facility, and half of the cost to delivery *from* the Facility to PSE's distribution system. Because deliveries from the Facility to PSE's distribution system occur only on behalf of PSE's

[68] Piliaris, JAP-1T at 53:19–54:7, *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Docket UE-220066, UG-220067, and UG-210918 (*consol.*).
[69] Direct Testimony of William F. Donahue, Exh. WFD-1T at 7:16–19.
[70] *Id*.

ratepayers, PSE reasons that as a starting point, half of the $23.3 million should be allocated to PSE's ratepayers. The other half of $23.3 million PSE allocates 90 percent to Puget LNG and 10 percent to PSE ratepayers based on the Settlement approved by the Commission in Docket UG-151663.[71]

Q. Do you agree with PSE's proposal?

A. No. PSE's allocation method ignores the amount of use of the pipeline and arbitrarily splits the $23.3 million cost into half attributable to receipts (gas to the facility) and half attributable to delivery (gas from the Facility) ignoring the fact that delivery from the Facility can only occur a maximum of 10 days per year due to limitations on vaporization imposed by the Puget Sound Clean Air Agency (PSCAA).[72] As a result, use of the pipeline for "delivery from" is less than three percent.[73] At most, only three percent of the cost should be attributed to "delivery from."

PSE's approach is as if you and friend wanted to test drive his new electric car at a racetrack. The racetrack charges by the distance driven on the track, and you agree with your friend to split the charges based on the distance you each drive. Once at the track, your friend drives the car nine times around the track, and you drive it once around the track. Both of you have driven the car going forward. You then decide you would like to try driving the car in reverse, so you turn the car around and drive it in reverse for 1/32 (about three percent) of the track length. The total charges for driving around the track are $200 based on total distance driven (10.3 track distance).[74] Your friend says you should pay $110 dollars, and he should pay $90. You ask why, and

[71] *Id.* at 6:3–7:22.
[72] Earle, Exh. RLE-5, *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-220066, UG-220067, and UG-210918 (*consol.*) (PSE Response to WUTC Staff Data Request No. 92) (filed July 28, 2022).
[73] 10 days out of 365 is 2.7 percent. Earle, Exh. RLE-14 (Pipeline Allocation).
[74] 9+1+0.3. Earle, Exh. RLE-14 (Pipeline Allocation).

your friend says that you did all the driving in reverse so that's half of the cost or $100, and you did 10 percent of all the driving forward so you should pay $10 of the remaining $100 cost.

Clearly, a friend behaving like that would not be much of a friend (though perhaps the friend has other good qualities). What your friend gets wrong to your detriment, as PSE does in its calculations *vis a vis* ratepayers, is that the use of the track (distance driven) is what matters, not the flow (driving forward or driving in reverse).

Q. How does evaluating the use of the pipe impact the allocation analysis?

A. Analyzing use demonstrates how excessive PSE's allocation to ratepayers would be. If PSE is correct that increasing the size of the pipeline from 12 inches to 16 inches was wholly required to enable deliveries from the Tacoma LNG Facility to PSE's distribution system, then the gas utility would use the full amount of the increase size of the pipe represented by the $4.1 million upgrade. Next, the use of the 12-inch pipe ($23.3 million of the pipe cost) consists primarily of delivery *to* the Facility. As discussed above, deliveries from the Facility to the distribution system take up only 2.7 percent of the pipeline's time (10 out of 365 days). The remaining 97.3 percent of the time, the flow on the system is split 90/10 between Puget LNG (90 percent) and PSE ratepayers (10 percent). This results in an allocation of only 12.5 percent of the 12-inch cost based on usage by the gas utility.

Therefore, the overall allocation for the 16-inch pipe based on use should not be more than 25.6 percent to PSE ratepayers and 74.4 percent to Puget LNG. [75] As this

[75] Earle, Exh. RLE-14 (Pipeline Allocation).

discussion demonstrates, PSE's proposal is fundamentally flawed and unfair to ratepayers, and should be rejected.

VI. EQUITY CONSIDERATIONS

Q. Do you have continuing concerns about equity with respect to the Tacoma LNG project?

A. Yes, I do. Consistent with the statutory definition of public interest, the Commission should consider disparate impacts on Highly Impacted Communities and Vulnerable Populations in its decisions on the Tacoma LNG Project.

As Public Counsel pointed out in its rate case Brief, but was not addressed by the Commission:

> The Commission's core function is to regulate in the public interest the rates, services, facilities, and practices of all persons engaged in the business of supplying utility service. While RCW 80.01.040 does not define "public interest," it does refer to "the public service laws." The public service laws include all laws affecting public service companies. The public interest that the Commission is to protect is the interest of the regulated utility's customers.[76]

In considering PSE's practices, the impacts of its actions on its ratepayers should be included simply beyond the merely economic including, for example, matters such as disruptive marketing campaigns and maintenance practices that disrupt daily life. Disparate impacts on Highly Impacted Communities and Vulnerable Populations seem to fit into the category of concerns about the practices of a regulated utility. While RCW 80.28.425 codified the Commission's ability to consider equity, it would be detrimental to Highly Impacted Communities and

[76] Public Counsel Post-Hearing Brief ¶ 39, *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-220066, UG-220067, and UG-210918 (*consol.*) (citations omitted) (filed Oct. 31, 2022).

Vulnerable Populations, who will experience the impact of the LNG Facility for decades to come, for the Commission to ignore equity in its determination in this case.

We learned from PSE's testimony in the rate case that the Company did not consider equity as it considered whether to build and complete the LNG Project.[77] This failure to consider equity in the Company's decision making is a failure in prudence, even before RCW 80.28.425. PSE acts because of anticipated or approved laws and regulations,[78] but it failed to consider equity at all with respect to the LNG Project. This is surprising given the evolving political atmosphere concerning equity and the Puyallup Tribe of Indians' concerns about the LNG Project.[79] Indeed, PSE has long been aware of equity considerations: "Starting in 2017, PSE has offered competitive funding awards to local non-profits, public housing authorities, and tribal entities to install solar on their facilities … providing vital support to those in need through lower utility bills for our low-income or Black, Indigenous, and People of Color (BIPOC) customers …"[80]

Q. Does this conclude your testimony?

A. Yes.

[77] Earle, Exh. RLE-1CTr at 31:1–34:8, *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-220066, UG-220067, and UG-210918 (*consol.*) (filed Sept. 16, 2022).
[78] Roberts, Exh. RJR-1CT at 77:6–7, *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-220066, UG-220067, and UG-210918 (*consol.*) (filed Jan. 31, 2022).
[79] Roberts, Exh. RJR-5C at 939, *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-220066, UG-220067, and UG-210918 (*consol.*) (filed Jan. 31, 2022).
[80] Puget Sound Energy 2021 Clean Energy Implementation Plan, at 168–169, *In re Puget Sound Energy Clean Energy Implementation Plan Pursuant to WAC 480-100-640,* Docket UE-210795 (filed Feb. 1, 2022).