

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

COMPLAINANT,

v.

Puget Sound Energy,

RESPONDENT

DOCKETS UE-220066-67/UG-
220067 and UG-210918
(*Consolidated*)

**POST-HEARING BRIEF
OF THE ENERGY PROJECT**

OCTOBER 31, 2022

POST-HEARING BRIEF OF THE
ENERGY PROJECT
DOCKETS UE-220066/UG-220067 AND
UG-210918 (*CONSOLIDATED*)

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I. INTRODUCTION

1. The Energy Project (TEP) respectfully submits this final Post-Hearing Brief in support of its recommendations in the Puget Sound Energy (PSE) 2022 General Rate Case, a multiyear rate plan (MYRP) filing pursuant to Senate Bill 5295, codified in pertinent part at RCW 80.28.425.
2. There are several different components to this case, as reflected in the separate settlements presented to the Commission. The Energy Project is a signatory to the Settlement Stipulation and Agreement on Revenue Requirement and All Other Issues Except Tacoma LNG (Liquified Natural Gas) and PSE's Green Direct Program ("Revenue /Policy Settlement" or "Settlement"). The Energy Project takes no position on the separate Green Direct Settlement. The Energy Project opposes the approval of the Tacoma LNG settlement and explains the reasons below.
3. The Energy Project recommends that the Commission approve the Revenue /Policy Settlement, for the reasons stated in this brief and in the supporting testimony of Brad Cebulko.¹ The Energy Project focuses on the following terms of particular importance to low-income customers: (1) low-income programs; (2) the Time-Varying Rate (TVR) Pilot; (3) performance measures; and (4) other equity-related terms.
4. This is an important case, representing the first MYRP filed by PSE under SB 5295, in which the Legislature adopted a number of regulatory changes regarding, *inter alia*, multiyear rate plans, performance measures, and low-income support. As discussed more fully below, TEP believes the terms of the Revenue /Policy Settlement are consistent with these new statutory

requirements and advance the public interest as more specifically described in this brief. The Energy Project recommends approval of the Revenue /Policy Settlement in full.

II. LOW-INCOME PROGRAMS SETTLEMENT TERMS

5. The Settlement includes several provisions designed to address the needs of low-income customers in PSE's service territory.² The Settling Parties agree that PSE will develop a Bill Discount Rate (BDR) and an Arrearage Management Plan (AMP), in consultation with its Low-income Advisory Committee. The Settlement adopts several areas of agreement regarding program design to be included in the final BDR plan as it is developed. Puget Sound Energy will make a filing with the Commission by July 1, 2023, for approval of the BDR and AMP program designs developed through the advisory group process. If approved, the BDR and AMP would be effective October 1, 2023, and October 1, 2024, respectively.³
6. Puget Sound Energy agrees to increase funding for its Home Energy Lifeline Program (HELP), consistent with RCW 80.28.425(2).⁴ Puget Sound Energy stated at the hearing that the combined amount of the HELP increase for electric and natural gas customers will be \$6.3 million for the 2023/2024 program year (October 1-September 30), with an increase of just under \$1 million for the 2024/2025 program year gas.⁵
7. In addition to addressing bill assistance, the Settlement also provides benefits relating to low-income weatherization in two primary respects. First, the Company's existing support for

¹ Exh. BTC-7T.

² Settlement, Section G.

³ Settlement, ¶ 37(b), (c).

⁴ Settlement, ¶ 38.

⁵ Tr. 340:10-15 (Jhaveri).

weatherization is reaffirmed. Puget Sound Energy agrees to maintain a minimum base funding level for low-income weatherization of no less than the amount included in its Biennial Conservation Plan. Low-income conservation measures that meet a cost-effectiveness test will be fully funded. Existing shareholder commitments for low-income weatherization are maintained.⁶

8. Second, PSE agrees to address the issue of inadequate and outdated weatherization measure costs which are a disincentive to increased energy efficiency efforts. For 2022, PSE agrees to make a good faith effort to increase weatherization measure incentive amounts. This is timely because many measure costs have not been adjusted for several years. Looking forward, PSE agrees to work with its Conservation Resource Advisory Group (CRAG) to survey actual installed measure costs, and to adjust rebate amounts if warranted per the survey findings.⁷

9. Finally, PSE agrees to continue its current credit and collection practices until the conclusion of the Commission's rulemaking in Docket U-210800.

10. These terms are in the public interest because they address low-income customers' need for increased bill assistance to mitigate the impacts of the increases under the multiyear rate plan. In addition to this support to meet monthly bills, the provision for an AMP will be an important tool to allow customers to eliminate ongoing debt burdens that threaten their ability to stay connected. The Settlement also provides continuing support for weatherization as a means to lower bills, improve health, and advance Clean Energy Transformation Act (CETA's) clean

⁶ Settlement, ¶ 39 (a)-(c).

⁷ Settlement, ¶ 39 (a).

energy goals.

11. The Energy Project recommends that the Commission approve the low-income terms of the Settlement.

III. TIME VARYING RATES PILOT SETTLEMENT TERMS

12. In the Settlement,⁸ the parties have agreed to a TVR Pilot as proposed by PSE, with some modifications based on proposals by TEP witness Brad Cebulko designed to better address low-income customer participation in the Pilot.⁹ As stated in the Settlement, the Pilot will:

- Include low-income customers up to 200 percent of Federal Poverty Level (FPL)/80 percent Area Median Income (AMI).
- Provide enabling technology to selected low-income customers.
- Provide bill protection to selected low-income customers.
- Include review of PSE recruitment language by the UTC Consumer Protection Division.
- Include Evaluation, Measurement, & Verification (EM&V) of the Pilot, to include exit survey questions regarding the customers' understanding of their rates.
- Adopt Pilot rates based on the final General Rate Case (GRC) revenue requirement and Cost of Service.

13. The Company proposes to enroll between 7,500 and 14,750 customers in the program, including low-income customers. The Energy Project believes the Pilot will be sufficiently

⁸ Settlement, ¶¶ 41, 42.

⁹ Cebulko, Exh. BTC-1T, at 44-62.

robust, assuming successful recruitment of the number of participants proposed. Because this will be an opt-in Pilot where the Company will need to recruit customers, the Commission's Consumer Protection Division will review and comment on the Pilot recruitment language.¹⁰

14. The experience in other states indicates that TVR may provide some benefits for low-income customers but that these customers are impacted differently than other residential customers.¹¹ Benefits for low-income customers tend to be lower than for non-low-income customers, in part because of low-income customers lack of access to enabling technology such as smart thermostats or appliances. Low-income customers are also exposed to greater financial risk under TVR by bill fluctuations to which they are less able to adjust.
15. The PSE Pilot, as modified in the Settlement, includes two primary elements designed to address these issues. First, PSE will provide enabling technology to half the low-income TVR Pilot participants. Second, half of the low-income Pilot participants will be provided with bill protection to determine if there is an impact on customer behavior to the results of the Pilot. Bill protection has been included in TVR programs in other states to help customers avoid bill increases from TVR rates.
16. To evaluate the initially proposed Pilot, PSE witness Faruqui testified that the Company would include an EM&V plan, which TEP understands will incorporate annual load impact evaluations, a process evaluation after the second year of the Pilot, and customer surveys before, during, and after the conclusion of the Pilot.¹² The EM&V plan, reflecting the Pilot

¹⁰ Settlement, ¶ 42 (d).

¹¹ Cebulko, Exh. BTC-1T, at 46:13-47:3, and 52:14-53:5.

¹² Faruqui, Exh. AF-1T, at 28, ll. 10-15. The EM&V plan will also include an exit survey that asks customers if they understood their rate. Settlement, ¶ 41(e).

modifications, will now also test the impact of the two agreed low-income interventions in the TVR program.

17. To understand the load impacts from the low-income interventions, Mr. Cebulko's testimony recommends that the Company divide the low-income participants into four equally sized treatment groups.

- Treatment group 1: Bill protection only.
- Treatment group 2: Enabling technology only.
- Treatment group 3: Bill protection and enabling technology.
- Treatment group 4: Neither bill protection nor enabling technology.

TEP witness Cebulko proposed these four treatment groups so as to measure the impact of each intervention and evaluate the cost, benefits, and impact of each offering.¹³ PSE indicated at the hearing it is open to this approach.¹⁴ The Energy Project anticipates that PSE will work with its Low-Income Advisory Group, as well as other relevant advisory groups, to develop the final Pilot and EM&V design to best incorporate the Settlement terms. The number of low-income customers PSE ultimately enrolls in this program could have an impact on the final allocation of customers into treatment groups.

18. For these reasons, and as explained in Mr. Cebulko's testimony in support of the Revenue/Policy Settlement, TEP believes the TVR settlement terms are in the public interest and should be approved by the Commission.

¹³ Cebulko, Exh. BTC-1T, at 61:2-14.

¹⁴ Piliaris, Tr. 357:22-358:5.

IV. OTHER SETTLEMENT TERMS PROMOTING EQUITY

19. **Q: Are there other settlement terms of particular interest to TEP?**

20. A: Yes, the decarbonization and electrification terms¹⁵ of the settlement are of interest because they address equity issues in the clean energy context. The Targeted Electrification Pilot and the Targeted Electrification Strategy will prioritize serving low-income customers, vulnerable populations and highly impacted communities. They are designed to include consideration of equity and will include low-income protections. The Decarbonization Study will include incentives provided to low-income customers under the Inflation Reduction Act.

21. In addition to the decarbonization and electrification terms, the capital investments provisions of the settlement also address equity considerations. Sections III(B)-(C) concerning Corporate Capital Planning and Delivery and Distribution Planning, as well as Section III(L) concerning Distributional Equity Analysis describe these requirements. These terms are designed to ensure that PSE modifies its capital planning practices to promote equity.

22. These components of the settlement promoting equity are an important additional reason for TEP's support of the overall settlement package.

V. PERFORMANCE-BASED RATEMAKING SETTLEMENT TERMS

A. Introduction

23. In this case, the Commission must evaluate a proposal for a multiyear rate plan and incorporate performance-based ratemaking. The Settling Parties and Public Counsel carefully

¹⁵ Settlement, Section O.

evaluated the Legislature’s new requirements,¹⁶ retained national experts in performance-based regulation to guide their work, and canvassed other jurisdictions’ performance-based regulation practices to ensure that the proposals presented to the Commission are consistent with the law and best practices in this emerging field. The Settlement presents, and Public Counsel supports,¹⁷ a proposal for performance measures¹⁸ that fully complies with SB 5295’s requirements. As TEP explains later in this brief, nothing in SB 5295 requires the Commission to assign targets or benchmarks to the measures. Although the Commission is not required to approve a performance incentive mechanism (PIM) today, it can do so if approving the PIM is in the public interest. In this case, approving the demand response PIM is in the public interest because there is a clear need for PSE to stand up a robust demand response program, and the PIM includes several improvements and customer safeguards.

B. Performance-Based Regulation

24. The Commission historically has had the discretion to establish performance measures and to design mechanisms that penalize and incent certain actions by regulated utilities. For example, PSE produces an annual service quality measure report card that documents the utility’s performance concerning certain customer service guarantees and reliability performance measures.¹⁹ The report card includes nine measures and each has an associated target or

¹⁶ Engrossed Substitute S.B. 5295, 67th Leg., Reg. Sess., § 2(7) (Wash. 2021); RCW 80.28.425; Cebulko, Exh. BTC-1T; Crane, Exh. ACC-1CT.

¹⁷ Crane, Exh. ACC-19T, at 12:8-13:10.

¹⁸ Performance measures are also known as performance metrics. TEP uses the two terms synonymously.

¹⁹ Crane, Exh. ACC-1CT, at 34:13-36:9.

benchmark.²⁰ Shareholders pay a penalty when PSE fails to meet a certain reliability metric or customer service guarantee.²¹

25. Recently, the Legislature affirmed certain aspects of the Commission’s discretionary authority concerning performance measures, and also mandated that the Commission take a limited set of actions when approving a multiyear rate plan. Senate Bill 5295, codified in RCW 80.28.425(7), requires the following concerning performance-based regulation:

The commission must, in approving a multiyear rate plan, determine a set of performance measures that will be used to assess a gas or electrical company operating under a multiyear rate plan. These performance measures may be based on proposals made by the gas or electrical company in its initial application, by any other party to the proceeding in its response to the company's filing, or in the testimony and evidence admitted in the proceeding. In developing performance measures, incentives, and penalty mechanisms, the commission may consider factors including, but not limited to, lowest reasonable cost planning, affordability, increases in energy burden, cost of service, customer satisfaction and engagement, service reliability, clean energy or renewable procurement, conservation acquisition, demand side management expansion, rate stability, timely execution of competitive procurement practices, attainment of state energy and emissions reduction policies, rapid integration of renewable energy resources, and fair compensation of utility employees.

RCW 80.28.425(7) includes three sentences. These three sentences include one sentence with a mandate, *i.e.*, “[t]he commission must,” followed by two sentences that include delegations of discretionary authority to the Commission, *i.e.*, “the commission may” and “[t]hese performance measures may.”

²⁰ Puget Sound Energy 2021 Service Quality Report Card, https://www.pse.com/-/media/PDFs/2774_SQI_Report_Card_2021.pdf.

²¹ *Id.*; Crane, Exh. ACC-1CT, at 34:13-36:9.

1. Performance-based regulation mandates in RCW 80.28.425(7).

26. Notably, RCW 80.28.425(7) includes only one mandate concerning performance-based regulation. That one mandate is found in the first sentence of the section, which requires that the Commission “must, in approving a multiyear rate plan, determine a set of performance measures that will be used to assess a gas or electrical company operating under a multiyear rate plan.”²² This requirement includes two components. The first is to “determine a set of performance measures,” and the second is to use those performance measures to “assess a gas or electrical company operating under a multiyear rate plan.”²³

2. Delegations of discretionary authority in RCW 80.28.425(7).

27. In the second and third sentences of RCW 80.28.425(7) the Legislature delegates to the Commission the discretion to decide if and when it should employ other tools in the performance-based regulation toolbox.

28. In the second sentence, the Legislature provides the Commission discretion to select which performance measures to use. The Legislature allows the Commission to select from the measures proposed by a party in the proceeding or otherwise supported by evidence.²⁴

29. The third sentence, which discusses “developing performance measures, incentives, and penalty mechanisms” is also entirely discretionary.²⁵ The operative verb in the third sentence allows that “the commission *may* consider [various] factors” when “developing performance

²² RCW 80.28.425(7).

²³ RCW 80.28.425(7).

²⁴ RCW 80.28.425(7).

²⁵ See RCW 80.28.425(7).

measures, incentives, and penalty mechanisms. . .”²⁶ Put simply, there is nothing in the structure of the third sentence or the rest of RCW 80.28.425(7) that requires or implies that the Commission is required to implement an incentive or penalty mechanism.

30. The Legislature used mandatory language in the first sentence and permissive language in the following two sentences. We must assume that the Legislature deliberately selected where to use mandatory and permissive terms. The Legislature could have said, but did not say, that the Commission “must adopt an incentive or penalty mechanism.” Therefore, the Legislature clearly expressed its intent not to require the Commission to adopt a performance incentive mechanism, but left this decision to the Commission.

3. The Settlement complies with the performance-based regulation mandate in RCW 80.28.425(7).

31. The Settlement complies with the mandate in RCW 80.28.425(7) requiring that the Commission first “determine a set of performance measures,” and second, use those performance measures to “assess a gas or electrical company operating under a multiyear rate plan.” Section N of the Settlement identifies a set of performance measures that the Settling Parties recommend the Commission determine are appropriate to assess PSE’s performance because they measure regulatory goals and objectives that are most important to the Commission and the public.²⁷

32. The list of performance metrics are categorized by the four goals provisionally identified by the Commission in its proceeding on performance-based ratemaking.²⁸ This means that the

²⁶ RCW 80.28.425(7) (emphasis added).

²⁷ Settlement, ¶¶ 58-64.

²⁸ Docket U-210590, Proceeding to Develop a Policy Statement Addressing Alternatives to Traditional Cost of Service Rate Making, Notice of Opportunity to File Written Comments (August 5, 2022) (Goal 1: Resilient,

performance metrics can be used for assessing the utility's performance over the multiyear rate plan and for measuring the utility's performance in meeting the Commission's regulatory goals.

33. These measures will be provided as a compliance filing in this docket and available for use by the Commission, stakeholders, and the public.²⁹

34. The Commission and its Staff can, at any time after the measures are filed, access the measures and use them to assess PSE's performance. The Settling Parties do not specify the exact way that the Commission and its Staff should assess PSE's performance using these measures and the Settlement provides them with considerable discretion in this regard. When assessing the Company's performance, the Commission and its Staff can choose to review a subset, a selected number, or all of the measures filed with the Commission. PSE will report each metric annually, so the Commission and its Staff can compare the Company's performance over a period of time.³⁰ Over the course of the multi-year rate plan, or in PSE's next general rate case, the Commission could choose to assess PSE's performance by examining different subsets of the reported measures.

35. Although the Commission is not required to approve a PIM today, it can do so if approving the PIM is in the public interest. In this case, approving the demand response PIM is in the public interest because there is clear need for PSE to stand up a robust demand response program, and the PIM includes several improvements and customer safeguards.

reliable, and customer-focused distribution grid, Goal 2: Customer affordability, Goal 3: Advancing equity in utility operations, and Goal 4: Environmental improvements).

²⁹ Settlement, ¶ 60.

³⁰ Settlement, ¶ 60.

36. There is a clear and immediate need for PSE to stand up a demand response program. PSE estimates that it will need between 1,272 MW and 2,836 MW of additional capacity by 2029 to maintain resource adequacy.³¹ The Company must also convert its fossil fuel resources to clean energy to meet the requirements of CETA.³² Although parties may disagree on PSE's exact capacity need, it is certain that PSE needs additional, clean capacity immediately. Demand response is often the least-cost resource available. Further, as a demand-side resource it reduces the utility's fuel cost risk. Many parties to this case have encouraged PSE to pursue utility-scale demand response for many years, but apart from limited pilot projects, PSE has yet to implement a utility-scale program.³³ The purpose of this demand response PIM is to help address the utility's inherent capital expenditure bias for a supply-side resource and give the Company a utility-scale goal for developing this clean, cost-effective resource today.

37. The PIM includes several improvements compared to PSE's original proposal, as well as important customer safeguards. First, the Settlement dramatically increased the demand response target from PSE's initial proposal of 6 MW in 2024 to a target of 40 MW by 2024.³⁴ Second, the incentive threshold will kick in at 105 percent of the target, rather than the 90 percent proposed by PSE.³⁵ This means that the Company will only earn an incentive if it exceeds its target. Third, the reward thresholds for the Company, which would be set as a percentage of the cost to develop and manage the demand response program, were decreased.³⁶

³¹ Cebulko, Exh. BTC-7T, at 5:6-7.

³² RCW 19.405.040.

³³ Keeling, Exh. JBK-1T, at 31:17-32:6.

³⁴ Settlement, ¶ 58(d).

³⁵ Settlement, ¶ 58(a).

³⁶ Settlement, ¶ 58(a)-(b).

Fourth, the PIM expires at the end of the multiyear rate plan, at which time the parties and the Commission can evaluate the effectiveness of the PIM.³⁷ Finally, the Settling Parties agreed to an incentive cap of no more than \$1 million over the course of the MYRP.³⁸

38. The Energy Project does not believe the design of this PIM is perfect.³⁹ However, a lack of perfection should not stop the Commission from providing PSE an incentive to overcome the capital expenditure bias and stand up a utility-scale demand response program during the rate plan. Accordingly, TEP supports this demand response PIM.

39. The Commission should approve the Settlement's performance-based ratemaking terms in full because the Settlement complies with the mandates of RCW 80.28.425(7) and is in the public interest.

4. Starting with a broad set of performance measures is the best practice for performance-based ratemaking.

40. The Energy Project conceptually categorizes metrics into three levels: reported metrics, scorecards, and performance incentive mechanisms. The three levels of metrics are best depicted

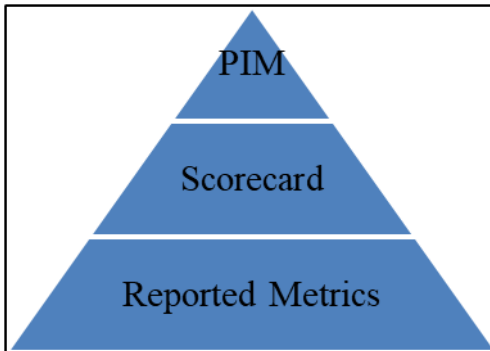
³⁷ Settlement, ¶ 48(f).

³⁸ Settlement, ¶ 58(e).

³⁹ Cebulko, Exh. BTC-7T, at 5:16-6:7.

in a pyramid, as shown in Figure 1 below.⁴⁰

Figure 1: Levels of Reported Metrics



At the base, regulators establish a broad set of metrics to track outcomes across all of the state’s regulatory goals. Of those reported metrics, regulators select a subset to place on the scorecard and assign targets or benchmarks. Finally, regulators select a limited number of performance incentive mechanisms to associate with financial incentives or penalties. Performance incentive mechanisms should only be used for the smallest subset of metrics that are the most important to furthering the public interest; this ensures that utility management focuses on the most important outcomes and avoids imposing significant financial impacts (on both customers and the utility) for relatively less important outcomes.

41. Today the Commission and stakeholders have just begun building Washington’s performance-based regulation pyramid. The Settling Parties and Public Counsel support starting that work in this proceeding by building a wide and structurally sound base consisting of a broad set of measures. With the benefit of several years of reported data for the base measures, the Commission in the future can build the middle layer of the pyramid by identifying a select

⁴⁰ Cebulko, Exh. BTC-1T, at 16:3-21:15.

number of metrics to attach a benchmark or target and place in a scorecard. After the middle layer is solidified, the Commission will have a foundation upon which it can design a limited number of performance incentive mechanisms to promote the public interest.

42. The Energy Project believes that the schedule set in the more deliberate performance-based ratemaking policy docket will resolve these issues in a reasonable and efficient timeframe, consistent with industry best practices.⁴¹ The Energy Project acknowledges that the measures the Commission selects in its performance-based ratemaking policy docket may not match perfectly the metrics included in this Settlement. However, it is not a fatal flaw that there may be discrepancies between the measures in this Settlement and the number, content, and calculation of measures the Commission selects in its performance-based ratemaking policy docket. Such discrepancies are inevitable when the Legislature provides the Commission with overlapping mandates, as it has done here by mandating that the Commission select measures in rate cases before the Commission completes its work in the performance-based ratemaking policy docket. After the Commission issues its policy statement establishing favored performance measures, the parties can begin to align the measures they support in future rate cases with measures included in the Commission's policy statement. The Commission could even set an expectation in its policy statement or general rate case orders that a utility incorporate those favored performance measures in future filings.

43. For the foregoing reasons, and based upon the record in this case, the Commission should

⁴¹ Crane, Exh. ACC-1CT at 30:5-31:6 *citing* Docket U-210590, Proceeding to Develop a Policy Statement Addressing Alternatives to Traditional Cost of Service Rate Making.

approve the performance-based ratemaking aspects of the Settlement in full.

VI. TACOMA LIQUIFIED NATURAL GAS SETTLEMENT

44. The Energy Project opposes the Tacoma LNG Settlement because the settling parties have not demonstrated that PSE's decision to build the LNG facility was prudent or that approval of the Tacoma LNG settlement is in the public interest.
45. The Commission's prudence standard examines what a reasonable board of directors and utility management would have done given what they knew or reasonably should have known at the time they made a decision.⁴² The Commission typically focuses on four factors: need for the resource, evaluation of alternatives, communication with and involvement of the Company's board of directors, and adequate documentation.⁴³ Public Counsel's witness Dr. Earle raises legitimate questions about the prudence of PSE's decision by carefully reviewing each of these four factors and concluding that, for each of the four, a reasonable board of directors would not have approved the Tacoma LNG project.
46. The Energy Project is persuaded by Dr. Earle's showing that PSE's forecasted need steadily decreased over a multiyear timeframe,⁴⁴ that PSE did not consider viable alternatives,⁴⁵ and that PSE did not present alternatives to the board of directors.⁴⁶ Dr. Shau, testifying for the Puyallup Tribe of Indians (Puyallup Tribe), raises concerns about the information PSE used to

⁴² *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Docket UE-031725, Order 12, ¶ 19 (Apr. 7, 2004).

⁴³ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-111048/UG-111049, Order 08, ¶ 409 (May 7, 2012).

⁴⁴ Earle, Exh. RLE-1CT, at 16:3-24:15.

⁴⁵ Earle, Exh. RLE-1CT, at 24:16-30:22.

⁴⁶ Earle, Exh. RLE-1CT, at 24:16-30:22.

determine the size of the facility.⁴⁷ The Commission should carefully review the testimony of Dr. Earle and Dr. Shau and similarly conclude that the decision to build the project was not prudent.

47. Approving the Tacoma LNG Settlement is also inconsistent with the public interest. Under WAC 480-07-750(2), the Commission must evaluate if a proposed settlement is “consistent with the public interest.” SB 5295, which governs the adjudication of multiyear rate plans and became effective before the filing of the instant general rate case, specifies that:

In determining the public interest, the commission may consider such factors including, but not limited to, 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 a gas or electrical company regulated by the commission.⁴⁸

48. The Commission must, consistent with this statutory definition of public interest, evaluate the equity and public health concerns raised by the Puyallup Tribe and Public Counsel.⁴⁹ The LNG plant is located adjacent to the Puyallup Tribe’s reservation—a highly impacted community with vulnerable populations.⁵⁰ The Puyallup Tribe’s testimony clearly describes the equity, environmental, health, and safety impacts on this community. Dr. Shau raises concerns about the emissions of air pollutants from the facility⁵¹ as well as the real risk of a catastrophic explosion at the facility.⁵² The Energy Project also agrees with the Puyallup Tribe that it is inappropriate for PSE to recover from ratepayers the cost of litigation supporting its decision to

⁴⁷ Shau, Exh. RXS-1T, at 9:11-13:13.

⁴⁸ RCW 80.28.425(1).

⁴⁹ Shau, Exh. RXS-1T; Shau, Exh. RXS-30T; Saleba, Exh. GSS-1T; Earle, Exh. RLE-1CT, at 31:1-34:8.

⁵⁰ Shau, Exh. RXS-1T, at 18:5-21:9.

⁵¹ Shau, Exh. RXS-1T, at 17:9-21:9

⁵² Shau, Exh. RXS-1T, at 21:11-23:4.

site the Tacoma LNG plant in a highly impacted community with disproportionately high environmental burdens.⁵³

49. When determining if the Tacoma LNG Settlement is in the public interest, the Commission must give appropriate weight to these facts and consider equity and cumulative environmental health impacts.

VII. CONCLUSION

50. For the foregoing reasons, TEP respectfully recommends that the Commission:
1. Approve in full the proposed Settlement Stipulation and Agreement on Revenue Requirement and All Other Issues Except Tacoma LNG and PSE's Green Direct Program, upon a finding that the Settlement is in the public interest;
 2. Reject the proposed settlement of the Tacoma Liquefied Natural Gas issues, for the reasons set forth in this brief, and the evidence and briefs of the Tribe and Public Counsel.

DATED this 31st day of October, 2022.

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⁵³ Shau, Exh. RXS-1T, at 23:5-30:17.