

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

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

**POST-HEARING BRIEF
OF PUBLIC COUNSEL**

October 31, 2022

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I. INTRODUCTION

I. The Puget Sound region, like the rest of the country, is recovering from the deepest impacts from the COVID-19 pandemic. The economic impact of the pandemic persists, and Puget Sound Energy (PSE or the Company) continues to carry large past-due balances.¹ Against this backdrop, PSE filed a significant rate case. The initial filing sought a multi-year rate plan that would have raised combined rates for electric and natural gas customers in the region by \$1.7 billion dollars over three years. Under a multi-party settlement, ratepayers face a combined rate increase of nearly \$863 million over two years.² These rate increases will have a substantial impact on PSE's customers and must be carefully evaluated against the Commission's standards.

Tables 1 and 2: PSE's Initial Revenue Request
(Source: Exh. ACC-19T at 6:4–6, Tables 3 and 4)

ELECTRIC Initial Filing				TOTAL over current rates
2023	\$330	-	-	\$330
2024	\$330	\$62.7	-	\$392.7
2025	\$330	\$62.7	\$10.2	\$402.9
2023-2025	\$990	\$125.4	\$10.2	\$1,125.6

NATURAL GAS Initial Filing				TOTAL over current rates
2023	\$165.5	-	-	\$165.5
2024	\$165.5	\$29.9	-	\$195.4
2025	\$165.5	\$29.9	\$23.3	\$218.7
2023-2025	\$496.5	\$59.8	\$23.3	\$579.6

¹ See monthly filings in Docket U-200281.

² See, Andrea Crane, Exh. ACC-19T at 4:3 – 6:7.

Tables 3 and 4: Multi-Party Settlement Revenues
(Source: Exh. ACC-19T at 6:4–6, Tables 3 and 4)

ELECTRIC Settlement - Base revenue change + potential CEIP and TEP ³ tracker revenue			TOTAL over current rates
2023	\$252.5	-	\$252.5
2024	\$252.5	\$53.6	\$306.1
2023-2024	\$505	\$53.6	\$558.6

NATURAL GAS Settlement - Base revenue change + potential Tacoma LNG tracker revenue			TOTAL over current rates
2023	\$125.9	-	\$125.9
2024	\$125.9	\$52.5	\$178.4
2023-2024	\$251.8	\$52.5	\$304.3

2. In addition to its rate impact, the case is significant for the issues it raises. This case includes recurring issues regarding return on equity (ROE) and capital structure, as well as rate spread and rate design. This case also raises novel issues, including a sharpened focus on decarbonization, equity, and performance based ratemaking. PSE presents its first multiyear rate plan proposal since the passage of RCW 80.28.425, which the Legislature enacted during the 2021 legislative session. Additionally, PSE seeks prudence determinations on a number of significant projects, including the Company's advance metering infrastructure (AMI) investment,

³ Clean Energy Implementation Plan (CEIP) and Transportation Electrification Plan (TEP).

the eastside transmission project commonly known as Energize Eastside, and the Tacoma Liquefied Natural Gas (LNG) project.

3. The parties present three multi-party settlements to the Utilities and Transportation Commission (UTC or Commission). Those settlements are the Green Direct Settlement,⁴ the Tacoma LNG Settlement,⁵ and the Revenue Settlement.⁶ While these settlements resolve all issues in the case, Public Counsel does not recommend that the Commission approve all of the settlements. Instead, Public Counsel recommends that the Commission approve the Green Direct Settlement, reject the Tacoma LNG Settlement, and modify the Revenue Settlement terms on capital structure and return on equity.

II. LEGAL STANDARDS

4. Rates must be fair, just, reasonable, and sufficient, and the Commission is authorized to set rates after hearing by order.⁷ The Commission has defined fair, just, reasonable, and sufficient to mean “fair to customers and to the Company’s owners; just in the sense of being based solely on the record developed in the proceeding following principles of due process of law, reasonable in light of the range of possible outcomes supported by the evidence, and sufficient to meet the needs of the Company to cover its expenses and attract necessary capital on

⁴ Settlement Stipulation and Agreement (Green Direct) (filed Aug. 5, 2022) (hereinafter “Green Direct Settlement”)

⁵ Settlement Stipulation and Agreement on Tacoma LNG (filed Aug. 26, 2022) (hereinafter “Tacoma LNG Settlement”).

⁶ Settlement Stipulation and Agreement on Revenue Requirement and All Other Issues Except Tacoma LNG and PSE’s Green Direct Program (filed Aug. 26, 2022) (hereinafter “Revenue Settlement”)

⁷ RCW 80.28.020.

reasonable terms.”⁸ PSE carries the burden to prove the requested rates are fair, just, reasonable, and sufficient.⁹ The Commission’s findings must be based on evidence in the record.¹⁰

5. With respect to proposed settlements, the Commission “will approve a settlement if it is lawful, supported by an appropriate record, and consistent with the public interest in light of all the information available to the commission.”¹¹ The Commission judges reasonableness under its statutory standards and may approve, approve with conditions, or reject a settlement.¹² RCW80.28.425(1) states that the public interest includes environmental health and greenhouse gas emissions reduction, health and safety, economic development, and equity — to the extent that such factors affect the rates, services, and practices of the regulated utility. The Commission applies an equity lens to its public interest considerations.¹³

6. Settling parties must provide “supporting documentation sufficient to demonstrate that the settlement is consistent with the law and the public interest.”¹⁴ Non-settling parties have the right to offer evidence and argument in opposition to settlements.¹⁵ The Commission decides each contested issue “on its merits considering the full record.”¹⁶

⁸ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Inc.*, Dockets UE-090704 and UG-090705 (*consol.*), Order 11, ¶ 18 (Apr. 2, 2010) (emphasis added).

⁹ RCW 80.04.130(4) (“At any hearing involving any change in any schedule, classification, rule, or regulation the effect of which is to increase any rate, charge, rental, or toll theretofore charged, the burden of proof to show that such increase is just and reasonable shall be upon the public service company.”); *see also* RCW 80.28.010(1); RCW 80.28.020.

¹⁰ RCW 34.05.461(4).

¹¹ WAC 480-07-750(2).

¹² WAC 480-07-750(2)(a)–(c).

¹³ *Wash. Utils. & Transp. Comm’n v. Cascade Nat. Gas Corp.*, Docket UG-210755, Order 09, ¶¶ 58–60 (Aug. 23, 2022).

¹⁴ WAC 480-07-740(3); *see also* WAC 480-07-750(2).

¹⁵ WAC 480-07-740(3)(c).

¹⁶ *In re Puget Sound Energy, Inc.*, Dockets UE-121373, et al. (*consol.*), Order 07/06/06: Order Rejecting Multiparty Settlement, ¶ 20 (June 25, 2013).

III. THE COMMISSION SHOULD APPROVE THE GREEN DIRECT SETTLEMENT WITHOUT CONDITION

7. Public Counsel joins PSE, Commission Staff, King County, and Walmart in the Green Direct Settlement. Public Counsel asks the Commission to approve the Green Direct Settlement without conditions because “it provides a reasonable and economically justifiable resolution for the level of the Green Direct Credit with a transparent and simple mechanism that is easily implemented.”¹⁷
8. The Green Direct Settlement is a multi-party settlement under WAC 480-07-730. It resolves issues pertaining to the Green Direct Energy Credit received by Green Direct subscribers.¹⁸ The Energy Credit has been in dispute in recent cases including PSE’s 2019 general rate case, PSE’s 2020 power cost only rate case, and the current rate case.¹⁹ Although the Settlement is not joined by all parties, it is uncontested as no party opposes the Green Direct Settlement. The Commission may approve the Green Direct Settlement if it finds that the Settlement is lawful, supported by the record, and in the public interest.²⁰
9. PSE’s Green Direct Tariff, Schedule 139 allows large commercial and industrial customers to subscribe to a voluntary renewable energy rider to meet their clean energy goals. RCW 19.29A.090(5) requires, “All costs and benefits associated with any option offered by an electric utility under this section must be allocated to the customers who voluntarily choose that option and may not be shifted to any customers who have not chosen such option.” Public

¹⁷ Joint Testimony in Support of Partial Multiparty Settlement Stipulation and Agreement Addressing Green Direct, Exh. JT-1T at 20:17–19.

¹⁸ *Id.* at 2:13–17.

¹⁹ *Id.* at 2:17–3:1.

²⁰ WAC 480-07-750(2).

Counsel witness Dr. Robert Earle explains that this means that non-participants in the Green Direct Program should be indifferent to the operation of the program.²¹

10. The Green Direct Settlement offers “a good approximation to the indifference principle mandated by statute.”²² To quantify the indifference principle, the Green Direct Credit should equal the value of what the Green Direct Purchased Power Agreements (PPAs) bring to PSE’s system.²³ To quantify that value, one must determine what PSE would have done in absence of the Green Direct Program and how that would impact power costs.²⁴ The Green Direct Credit would equal the difference between the “but-for costs” and the actual costs. The “but-for costs” represents the costs that would have been prudently incurred by PSE had it not entered into the Green Direct PPA.²⁵ Actual costs include service to Green Direct customers and the Green Direct PPA output, but not the cost of the PPAs or Green Direct administrative costs.²⁶

11. To determine what PSE would have done differently in absence of the Green Direct PPAs, it is reasonable to focus on what PSE would have done at the time PSE entered into those PPAs.²⁷ If PSE had not entered into the PPAs it obtained for the Green Direct program, it likely would have sought similar contracts.²⁸ This conclusion is supported by PSE’s 2017 Integrated Resource Plan (IRP), which indicates that PSE would have added solar capacity to its portfolio.²⁹

²¹ Exh. JT-1T at 21:3–10.

²² *Id.* at 21:9–10.

²³ *Id.* at 21:13–14.

²⁴ *Id.* at 21:14–16.

²⁵ *Id.* at 21:16–20.

²⁶ *Id.* at 21:20–22:2 and 22:9–16. Dr. Earle explains in testimony how costs would be calculated on an *ex post* and *ex ante* approach. *Id.* at 22:17–24:20.

²⁷ Exh. JT-1T at 23:11–13.

²⁸ *Id.* at 23:15–18 and 24:3–9.

²⁹ *Id.* at 18–19.

Because PSE would likely have sought similar contracts, the cost of the Green Direct PPAs offers a good proxy for PSE's but-for costs.³⁰ The Commission determined the Green Direct PPAs to be prudent, and they reflect market prices when the contracts were signed.

12. While there are other ways to calculate the value brought to PSE's system by the Green Direct PPAs, those approaches are likely more volatile and complicated.³¹ The Green Direct Settlement's *ex ante* approach offers stability, simplicity, transparency, easy implementation, and a reasonable approximation of the value.³²

13. RCW 19.29A.090(5) clearly requires that the costs and benefits be borne by subscribers. Non-subscribers, including residential and small business customers, cannot subsidize the Green Direct Program. The Green Direct Settlement offers a durable resolution that addresses unlawful subsidization, and is therefore in the public interest. Public Counsel recommends that the Commission approve the Settlement without condition.

IV. THE TACOMA LNG SETTLEMENT IS NOT IN THE PUBLIC INTEREST AND THE COMMISSION SHOULD REJECT IT

14. PSE entered into a settlement agreement related to the Tacoma LNG facility with Commission Staff, AWEC, Walmart, Kroger, and Nucor Steel. The settling parties "accept a determination that the decision to build the regulated portion of the Tacoma LNG Facility was prudent."³³ Notably, AWEC, Walmart, Kroger, and Nucor Steel did not perform a prudence analysis with respect to the Tacoma LNG Facility, but rather simply accept and do not oppose a

³⁰ *Id.* at 23:19–24:2.

³¹ *Id.* at 24:13–14.

³² *Id.* at 24:11–20.

³³ Tacoma LNG Settlement at 4.

determination of prudence for settlement purposes. In closing remarks, counsel for AWEC stated, “AWEC’s testimony on Tacoma LNG in this case was focused on this rate-making treatment for the project, and therefore, that will be the scope of my comments this afternoon.”³⁴ In discovery, Walmart, Kroger, and Nucor Steel all confirm that they did not conduct prudence analyses³⁵ and that they “accept the determination” as part of the settlement.³⁶

15. Public Counsel, The Puyallup Tribe of Indians, and The Energy Project oppose the Tacoma LNG Settlement because it is not in the public interest. Public Counsel conducted a prudence review of the facility and opposes the Tacoma LNG Settlement as imprudent.³⁷ Not only is PSE’s investment in the facility not prudent, it also perpetuates systemic inequities. As such, costs associated with Tacoma LNG should not be included in either base rates or a tracker. The Commission should disallow the costs.

16. Settling parties request that the Commission determine that the decision to build the regulated portion of the facility was prudent and that it may be provisionally included in customer rates through a tracker.³⁸ Parties retained the right to challenge costs when PSE files tariff revisions for the tracker,³⁹ and Staff candidly stated that it had not completed its prudence review of the facility.⁴⁰ “Staff is not done with its review of this project. It’s just moving it to a

³⁴ Moser, TR. 468:23–469:1.

³⁵ Alex Kronauer, Exh. AJK-18X at 1–2 (subsection (e) and answer thereto); Justin Bieber, Exh. JB-4X at 1–2 (subsection (e) and answer thereto); Kevin Higgins, Exh. KCH-8X at 1 and 3 (subsection (e) and answer thereto).

³⁶ Alex Kronauer, Exh. AJK-18X at 3 (subsection (d) and answer thereto); Justin Bieber, Exh. JB-4X at 3 (subsection (d) and answer thereto); Kevin Higgins, Exh. KCH-8X at 4 (subsection (d) and answer thereto).

³⁷ The Puyallup Tribe also evaluated prudence.

³⁸ Settlement Stipulation and Agreement on Tacoma LNG at 5 (hereinafter “Tacoma LNG Settlement”).

³⁹ Tacoma LNG Settlement at 5.

⁴⁰ Roberson, TR. 476:22–477:12.

later time which will allow for a better review.”⁴¹ The Commission has a sufficient record to determine prudence and disallow the costs from being included in customer rates.

17. The Tacoma LNG Settlement uses a term “threshold prudence.” The Commission stated in the Used and Useful Policy Statement that, “The threshold for including provisional pro forma adjustments will be determined on a case-by-case basis according to the specifications of the rate-effective period investment.”⁴² The Commission noted that prudence is “always part of the investment threshold question and is continuously evaluated during the life of an investment.”⁴³

18. Even when property becomes used and useful after the rate effective date, the utility must show that the investment in the property is prudent for it to be included in rates, even on a provisional basis.⁴⁴ Property included in rates on a provisional basis are subject to refund and further review, but that further review does not — and should not — absolve a utility from demonstrating prudence.⁴⁵ If an investment is not prudent, it should not be included in rates, even on a provisional basis.

19. Prudence is a reasonableness standard. “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.”⁴⁶ That reasonableness standard requires the Commission to test what a reasonable board of directors and company

⁴¹ Roberson, TR. 477:9–11.

⁴² *In re: the Comm’n Inquiry into the Valuation of Pub. Serv. Co. Property that Becomes Used and Useful after Rate Effective Date*, Docket U-190531, Policy Statement on Property that Becomes Used and Useful after Rate Effective Date, ¶ 35 (Jan. 31, 2020) (hereinafter “Used and Useful Policy Statement”).

⁴³ *Id.* at 12, n.39.

⁴⁴ *Id.*, ¶ 35.

⁴⁵ Indeed, the second step in which investments are reviewed *confirms* that the investments are used and useful and prudent. *Id.*, ¶ 46.

⁴⁶ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Inc.*, Docket UE-031725, Order 12, ¶ 19 (Apr. 7, 2004).

management would have decided given what they knew or reasonably should have known to be true at the time of the decision.⁴⁷ “This test applies to both the question of need and the appropriateness of the expenditures.”⁴⁸

20. PSE bears the burden of proving that all stages of the project were prudent: initiation, construction, and continuation of the project.⁴⁹ Indeed, even if a decision to begin a project is prudent, construction or completing a projected is not necessarily prudent.⁵⁰ “The Commission believes that a company must continually evaluate a project as it progresses to determine if the project continues to be prudent from both the need for the project and its impact on the company’s ratepayers.”⁵¹

21. The Commission enumerated factors that it typically focuses on in determining prudence, although no single set of factors determines prudence. Those factors are:⁵²

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.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Wash. Utils. & Transp. Comm’n v. The Wash. Water Power Co.*, Docket U-83-26, Fifth Supplemental Order at 13 (Jan. 19, 1984).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Inc.*, Dockets UE-111048/UG-111049 (*consol.*), Order 08, ¶ 409 (May 7, 2012) (hereinafter “2011 Puget GRC”).

3) *Communication With and Involvement of the Company's Board of Directors:* The utility should inform its board of directors about the purchase decision and its costs. The utility should also involve the board in the decision process.

4) *Adequate Documentation:* The utility must keep adequate contemporaneous records that will allow the Commission to evaluate the Company's decision-making process. The Commission should be able to follow the utility's decision process; understand the elements that the utility used; and determine the manner in which the utility valued these elements.

22. The Commission also considers the public interest with respect to PSE's rates, services, and practices. RCW 80.28.425(1) defines the public interest to include environmental health and greenhouse gas emissions reductions, health and safety concerns, economic development, and equity. The burden to ensure that systemic harms are not perpetuated does not rest solely on the Commission, but "regulated companies should inquire whether each proposed modification to their rates, practices, or operations corrects or perpetuate inequities."⁵³ The Commission recognizes that ensuring equity requires a comprehensive understanding of how systemic racism and other inequities are self-perpetuating in the existing regulatory framework without corrective intervention.⁵⁴

23. PSE's investment in Tacoma LNG is neither prudent nor in the public interest.

A. PSE's Investment in the Regulated Portion of the Tacoma LNG Project Fails the Prudence Standard.

24. The Commission, in approving an earlier settlement, did not approve the Tacoma LNG project. The settling parties in the prior case, including Public Counsel, expressly reserved the

⁵³ *Cascade*, Docket UG-210755, Order 09, ¶ 58. This burden to evaluate systemic harms should be borne by all parties appearing before the Commission.

⁵⁴ *Id.*

right to challenge prudence in a later docket.⁵⁵ This is the docket in which PSE seeks a prudence ruling from the Commission, and in its initial filing, the Company sought to include costs in base rates.⁵⁶ The Tacoma LNG Settlement shifts the timing for cost recovery to a tracker mechanism, but does not change the ultimate goal of recovering those costs from ratepayers. Public Counsel urges the Commission to find that the Tacoma LNG project is imprudent and disallow costs.

1. PSE’s analysis of need was flawed and demonstrates that Tacoma LNG is not required to meet peak need.

25. In considering if a capital investment is prudent, the Commission looks at whether the utility determined that the chosen resource was needed.⁵⁷ In this case, although PSE repeatedly forecasted an “immediate” need for a peaking resource, the forecasted peak demand never materialized.⁵⁸ Not only did the need never materialize, but for nine years between 2012 and 2021, peak loads were well below PSE’s natural gas resources.⁵⁹ In other words, *no* need materialized.⁶⁰ Dr. Earle testified about examples where PSE’s forecasts did not materialize.⁶¹ PSE responded with its own list of *failed* predictions, presenting them as evidence of need.⁶²

26. PSE further criticized Public Counsel’s analysis comparing actual peak demand with forecasted demand. However, comparing actual outcomes to model predictions is both

⁵⁵ *In re: Pet. of Puget Sound Energy for (i) Approval of Special Contr. for LNG Fuel Serv. with Totem Ocean Trailer Express, and (ii) Declaratory Ord. Approving Methodology for Allocating Costs between Regul. and Non-regul. LNG Servs.*, Docket UG-151663, Order 10, ¶ 4 (Nov. 1, 2016).

⁵⁶ Direct Testimony of Ronald J. Roberts, Exh. RJR-1CT at 11:19–12:2.

⁵⁷ *2011 Puget GRC*, Order 08, ¶ 409.

⁵⁸ Response Testimony of Robert L. Earle, Exh. RLE-1CT at 16:5–6 and Table 2.

⁵⁹ Earle, Exh. RLE-1CT at 17:1–8 and Figure 2.

⁶⁰ Earle, Exh. RLE-14CT at 4:6–7. PSE does not refute this. Earle, Exh. RLE-14CT at 4:3–9.

⁶¹ Earle, Exh. RLE-1CT at 16:7–17:1 (Table 2).

⁶² Earle, Exh. RLE-14CT at 4:10–5:14.

reasonable and necessary to determine if forecasts and model predictions are accurate and should be believed.⁶³ The LNG plant would only be used if actual demands exceed PSE’s existing resources.⁶⁴ Dr. Earle’s testimony establishes that PSE’s forecasts were “not occasionally” different from actuals, but rather a “consistent record of inaccuracy over many years.”⁶⁵

27. Comparing PSE’s forecasts year over year demonstrates their inaccuracy. For example, the starting point for PSE’s forecasts between 2013 and 2016 were well above recent actual peak loads.⁶⁶ Additionally, the 2013 forecast was significantly higher than the 2012 forecast.⁶⁷ PSE used the 2013 forecast and Integrated Resource Plan to project an “immediate need” for an LNG liquefaction and storage facility.⁶⁸ PSE’s subsequent forecasts flattened between 2014 and 2016, with each subsequent year projecting less need than the previous forecast.⁶⁹ This trend continued in 2017 and 2018,⁷⁰ and further continued into 2019, 2020, 2021, and 2022.⁷¹ “Years of inaccurate forecasts should have alerted PSE management and a well-informed Board of Directors that the Tacoma LNG Project should be reconsidered.”⁷² This did not happen.

28. Public Counsel witness Dr. Earle argues that PSE’s forecasts and the need that never materialized calls “into question whether there was a need for new resources in the short term or

⁶³ *Id.* at 5:15–22.

⁶⁴ *Id.* at 6:3–9.

⁶⁵ *Id.* at 5:22–6:2.

⁶⁶ Earle, Exh. RLE-1CT at 18:15–18 and 19:1–3 (Figure 4).

⁶⁷ *Id.* at 18:4–5 and 19:1–3 (Figure 4).

⁶⁸ *Id.* at 18:6–9.

⁶⁹ *Id.* at 18:10–14.

⁷⁰ *Id.* at 21:1–8 and Figure 5.

⁷¹ Earle, Exh. RLE-14CT at 3:6–13 and Figure 1. PSE does not refute this. *Id.* at 4:1–2.

⁷² *Id.* at 8:14–15.

long term.”⁷³ Indeed, PSE has not established a reasonable need for the Tacoma LNG project, rendering its decision to proceed with the investment was imprudent.

2. PSE failed to consider adequate alternatives.

29. The Commission considers whether a utility evaluates alternatives in determining if a capital investment is prudent. With respect to the LNG project, PSE considered some alternatives, including expanded service on various pipelines, storage from Mist storage facility, and upgrading the existing Swarr LP-air facility.⁷⁴ However, as Dr. Earle testified, PSE left other viable options completely out of consideration.⁷⁵ Dr. Earle identifies three alternatives PSE did not consider even though PSE was aware of them. For example, PSE could have considered whether gas for generation could be curtailed. If gas for generation could be curtailed and substitute power was needed, that power could be purchased and imported.⁷⁶ PSE identified another alternative to the Puget Sound Clean Air Agency involving fuel oil to generate electricity from dual-fuel combustion turbines.⁷⁷ Another unconsidered alternative includes installing compression natural gas storage at generation stations for peak usage.⁷⁸

30. PSE was trying to solve the problem of avoiding curtailments in natural gas service for a

⁷³ Earle, Exh. RLE-1CT at 22:10–11.

⁷⁴ *Id.* at 26:8–11.

⁷⁵ *Id.* at 26:11.

⁷⁶ *Id.* at 27:2–3.

⁷⁷ Interestingly, in response to the Puget Sound Clean Air Agency, PSE posed the use of fuel oil as a foregone conclusion rather than purchasing substitute electricity via the market. Market purchases would be reasonable to consider given that the peak need being addressed would occur only over “a few days that may only occur once every few winters.” *Id.* at 11:14–15 (citing Roberts, Exh. RJR-1CT at 17:17–19). *See also*, Earle, Exh. RLE-14CT at 12:16–13:11.

⁷⁸ Earle, Exh. RLE-1CT at 27:3–7.

few days occurring once every few years.⁷⁹ Under that scenario, Dr. Earle points out that “it would have been worth exploring whether addressing gas for generation demand would have been a less expensive solution for PSE’s ratepayers, through either curtailing the gas plants and buying power on the open market or having the gas plants burn fuel oil.”⁸⁰ Similarly, PSE could have considered other resources within the Company, such as intracompany trading. PSE engages in intracompany trading when transactions are not entered into for the benefit of one utility at the expense of the other.⁸¹

31. Although PSE responded to Public Counsel’s examples of alternatives the utility could have considered, none of PSE’s criticisms rebut the viability of the alternatives or that the alternatives were not presented and considered by the Board of Directors.⁸² PSE’s failure to consider adequate alternatives renders its analysis of whether to proceed with the Tacoma LNG project incomplete and imprudent.

3. PSE failed to provide adequate information to its Board of Directors.

32. At two major decision points, one in September 2016 and one in March 2018, PSE’s Board of Directors considered and decided to proceed with the Tacoma LNG Project. The Board did not have adequate information, making its decisions imprudent.

33. PSE was aware of the discrepancies between actual peak and forecasted need. Given the many years of forecasted load being well above actuals, it would have been reasonable — if not

⁷⁹ *Id.* at 28:1–3.

⁸⁰ *Id.* at 28:3–6.

⁸¹ Earle, Exh. RLE-14CT at 10:6–11:13.

⁸² *See id.* at 9:10–15:20.

paramount — for PSE to inform the Board.⁸³ However, PSE’s management appears to have not informed the Board of the discrepancies between forecast and actuals, nor did it justify to the Board why moving forward with the project was desirable. Dr. Earle states, “At the very least, PSE management should have informed its Board of Directors of this issue and explained to them why PSE management still believed, despite the facts before them, that the resource was needed.” Instead, management’s projections of need turned out to be nothing but false alarms, and the Board was not informed enough to question whether the forecasts were reliable.⁸⁴

34. PSE similarly did not present information to the Board about potential alternatives to address gas for generation demand.⁸⁵ The Board was not given the chance to assess whether such alternatives should be evaluated.

35. PSE filed its Board presentation materials regarding the regulated portion of the Tacoma LNG Project in this Docket in Exhibit RJR-5C.⁸⁶ In discovery, PSE confirmed that no other materials were presented to the Board regarding Tacoma LNG.⁸⁷ The Board materials do not discuss curtailments of gas to PSE’s gas customers, the level of immediate need, or comparison of year to year forecasts or forecasts to actuals.⁸⁸ The last presentation to the Board was made on May 6, 2020.⁸⁹ Dr. Earle testifies, “However, in over 1800 pages of materials, PSE did not discuss declining forecasts or disappearing projected needs. Nor did PSE management present

⁸³ Earle, Exh. RLE-1CT at 20:4–9 and 22:4–7.

⁸⁴ *Id.* at 24:6–11.

⁸⁵ *Id.* at 30:3–4.

⁸⁶ *Id.* at 23:10–12.

⁸⁷ *Id.*

⁸⁸ *Id.* at 23:13–17.

⁸⁹ *Id.* at 23:12–13, n.58.

alternatives to the Tacoma LNG Project, such as sale of gas to the gas business unit from the electric business unit or compressed natural gas.”⁹⁰

36. Dr. Earle aptly summarizes PSE’s failure to inform its board as follows:

At the two major decision points to continue with the Tacoma LNG Project, a better-informed Board of Directors acting in the interest of PSE’s ratepayers might reasonably have concluded that the need forecasting was problematic and should be reexamined; that, even if the forecasts were to be believed, the LNG facility would not satisfy the projected need for more than four or five years; and that the analysis had not considered sufficient alternatives. In any event, the Board could have concluded that the project should have been suspended until it had better evidence that it was the best solution for ratepayers.⁹¹

37. PSE’s management failed to consider the facts and present them to the Board, making the decision to move forward with the LNG Project imprudent.⁹²

4. PSE’s documentation does not support PSE’s decision to build Tacoma LNG.

38. As noted above, PSE submitted over 1800 pages of documentation, consisting of presentations made to the Board of Directors. “PSE seems to put great weight on the volume of materials.”⁹³ Volume alone does not satisfy the Commission’s requirement that the utility keep adequate contemporaneous records of the decision-making process. Here, PSE left key information out of its presentations to the Board of Directors.⁹⁴ The documentation indicates that the Board was either inadequately informed or that the documentation itself is incomplete.⁹⁵ Neither are indicative of prudent decision-making.

⁹⁰ Earle, Exh. RLE-14CT at 16:7–11.

⁹¹ Earle, Exh. RLE-1CT at 2:26–3:7.

⁹² *Id.* at 23:6–8.

⁹³ Earle, Exh. RLE-14CT at 16:6–7.

⁹⁴ *Id.* at 16:4–14.

⁹⁵ *Id.* at 16:15–17:8.

B. Tacoma LNG is not in the Public Interest Because it Perpetuates Environmental Inequities and Overburdens an Already Burdened Community.

39. 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.⁹⁶ While RCW 80.01.040 does not define “public interest,” it does refer to “the public service laws.”⁹⁷ The public service laws include all laws affecting public service companies.⁹⁸ The public interest that the Commission is to protect is the interest of the regulated utility’s customers.⁹⁹ Recently, the Legislature codified the Commission’s ability to consider equity in its public interest analysis in RCW 80.28.425(1). RCW 80.28.425(1) defines the public interest to include environmental health and greenhouse gas emissions reductions, health and safety concerns, economic development, and equity to the extent such factors affect a utility’s rates, services, and practices.

40. The Tacoma LNG Project is not in the public interest. The Puyallup Tribe of Indians presented Dr. Ranajit Sahu, an air pollution expert with over 30 years experience.¹⁰⁰ Dr. Sahu testified about the environmental burdens in the area around the Tacoma LNG facility.¹⁰¹ Dr. Sahu testified that Tacoma LNG will emit pollution to the ambient air, including criteria air pollutants, toxic air pollutants, volatile organic compounds, and greenhouse gases.¹⁰² “Emissions

⁹⁶ RCW 80.01.040.

⁹⁷ RCW 80.01.040(2) and (3).

⁹⁸ See RCW 80.04.470.

⁹⁹ *Cole v. Wash. Utils. & Transp. Comm’n*, 79 Wn.2d 302, 306, 485 P.2d 71, 73–74 (1971).

¹⁰⁰ Ranajit Sahu, Exh. RXS-30T at 7:4–17.

¹⁰¹ Ranajit Sahu, Exh. RXS-1T; Exh. RXS-30T at 15:9–16:16.

¹⁰² Ranajit Sahu, Exh. RXS-1T at 17:11–14. Dr. Sahu provides a detailed analysis of the emissions expected from the Tacoma LNG facility. *Id.* at 11:15–21:9.

from the Tacoma LNG facility contribute to disparate impacts by releasing additional pollution to the airshed of already environmentally overburdened adjacent communities.”¹⁰³

41. The Washington Environmental Health Disparities Map ranks Washington neighborhoods for the cumulative risks from environmental factors influencing health outcomes.¹⁰⁴ The LNG facility is located in the Tacoma Tideflats, which ranks 10 of 10 for environmental health disparities while the surrounding areas rank between 5 and 10.¹⁰⁵ The areas impacted by the Tacoma LNG facility are indisputably carrying a disproportionate environmental burden.¹⁰⁶

42. The Commission may consider environmental health and equity in determining the public interest.¹⁰⁷ It is undeniable that the LNG facility will negatively impact the environmental health of the Puyallup Tribe of Indians, whose land the facility abuts. It is also undeniable that the negative environmental health impacts are attributable to the regulated portion of the facility (in addition to the unregulated portion of the facility).

43. Indeed, locating the Tacoma LNG facility on the border of the Puyallup Tribe's land perpetuates systemic harm by continuing to overburden an already overburdened population. The Commission correctly recognizes that the objective of ensuring that vulnerable populations “do not receive an inordinate share of the burdens” should be part of its analysis.¹⁰⁸ Whether the Commission should approve the Tacoma LNG Settlement is clearly an environmental justice

¹⁰³ Ranajit Sahu, Exh. RXS-30T at 15:12–14.

¹⁰⁴ *Id.* at 15:14–19.

¹⁰⁵ *Id.* at 15:21–16:2.

¹⁰⁶ *Id.* at 16:7–9.

¹⁰⁷ *Cascade*, Docket UG-210755, Order 09, ¶ 52.

¹⁰⁸ *Cascade*, Docket UG-210755, Order 09, ¶ 56.

issue. PSE’s proposed operations causes negative environmental impact on neighboring communities, perpetuating inequities instead of correcting them. Approving the Tacoma LNG Settlement would likewise perpetuate inequities. As a result, the Commission should reject the Settlement and find that the Tacoma LNG facility is not in the public interest due to the environmental impact on neighboring communities.

44. PSE points to environmental benefits from the Tacoma LNG facility to justify the project.¹⁰⁹ However, any greenhouse gas emissions reductions realized from switching marine fuel to LNG is irrelevant, because the marine fuel component of the Tacoma LNG facility is a non-regulated activity. The Washington Supreme Court in *Cole* recognized that the Commission could not consider the impact on an unregulated business by a regulated utility.¹¹⁰ Similarly, the Commission in this case should not consider any non-regulatory impact of the LNG plant on marine traffic emissions. The *non-regulatory* business, or its potential environmental impact, has no bearing on whether the *regulated* portion of the facility is in the public interest. Indeed, RCW 80.28.425(1) limits the inquiry to “the extent such factors affect the rates, services, and practices” of a regulated utility. Thus, the relevant greenhouse gas emissions are those from the regulated portion of the facility.

C. The Commission Should Disallow All Capital Costs Related to the Tacoma LNG Project.

45. Because PSE’s investment in Tacoma LNG is neither prudent nor in the public interest, the Commission should disallow all costs associated with the project. Project costs include both

¹⁰⁹ See Carson, TR. 474:4–21.

¹¹⁰ *Cole*, 79 Wn.2d at 305–306.

total plant costs of \$239 million and distribution upgrades totaling \$46.6 million plus any allowance of funds used during construction (AFUDC).¹¹¹

V. THE COMMISSION SHOULD APPROVE THE REVENUE SETTLEMENT WITH CONDITIONS

46. PSE, Commission Staff, Alliance of Western Energy Consumers (AWEC), Federal Executive Agencies (FEA), Walmart, The Energy Project, Kroger, NW Energy Coalition (NWECA), Sierra Club, Front and Centered, Microsoft, and Nucor Steel entered into the Revenue Settlement, which addresses all issues except Tacoma LNG and Green Direct. Public Counsel is not a party to the Revenue Settlement. While Public Counsel believes many terms are in the public interest and we remain neutral on other terms, we do not believe that the Revenue Settlement is in the public interest as written.¹¹²

47. The Revenue Settlement includes an authorized ROE of 9.4 percent, and a capital structure with 49 percent equity.¹¹³ While the settlement terms are lower than PSE's request for 9.9 percent ROE and a capital structure of 50 percent, Public Counsel opposes the terms because they result in rates that are excessive and not fair, just, or reasonable.¹¹⁴

48. Public Counsel accepts and views as reasonable the following terms of the Revenue Settlement: electric and natural gas rate spread and rate design, AMI, Colstrip cost recovery, low income issues, time varying rate pilot, distributional equity analysis, gas line extension,

¹¹¹ Earle, Exh. RLE-1CT at 12:25–13:3; Bauman, Exh. SB-9T at 2:19–3:16.

¹¹² Bauman, Exh. SB-9T at 5:11–14.

¹¹³ Revenue Settlement, ¶ 23(a) (Return on Equity/Capital Structure/Cost of Debt).

¹¹⁴ J. Randall Woolridge, Exh. JRW-13T at 1:15–18; Bauman, Exh. SB-9T at 15–20.

decarbonization and electrification study, COVID costs, PCORC terms, and performance based ratemaking.¹¹⁵

49. Public Counsel takes no position regarding the overall revenue requirement (except the amounts associated with cost of capital and capital structure terms), Energy Eastside, depreciation, the earnings test, and power costs.¹¹⁶

A. The Settlement Includes ROE and Capital Structure Terms That Public Counsel Opposes Because They Are Excessive, Resulting in an Unjust Burden on Ratepayers.

50. Public Counsel witness Dr. J. Randall Woolridge testified that ROE of 8.8 percent and a capital structure with 48.5 percent equity would be reasonable and appropriate for PSE.¹¹⁷ Setting PSE’s ROE at 9.4 percent and a capital structure with 49 percent equity “is excessive, and thus is not fair, just, reasonable, justified, or in the public interest.”¹¹⁸ Public Counsel recommends that the Commission reject those terms and adopt Public Counsel’s recommendation on cost of capital and capital structure.

1. Equity in PSE’s capital structure should remain as authorized in its last general rate case at 48.5 percent.

51. Capital structure consists of the mix of debt and equity that a utility has used to fund its operations. Debt and equity have different costs, so funding decisions made by a utility has a

¹¹⁵ Bauman, Exh. SB-9T at 6:6–18.

¹¹⁶ *Id.* at 7:1–6.

¹¹⁷ Woolridge, Exh. JRW-13T at 2:17–3:1; Response Testimony of J. Randall Woolridge, Exh. JRW-1T at 5:1–7 and 14–16.

¹¹⁸ Woolridge, Exh. JRW-13T at 3:11–14.

substantial impact on customer rates and investor returns.¹¹⁹ A capital structure weighted too strongly towards equity can result in unreasonably high costs for the ratepayer. On the other hand, a capital structure weighted too strongly towards debt can jeopardize the utility’s access to capital markets and financial viability.¹²⁰

52. The Commission judges a utility’s capital structure on how it balances economy and safety. “Safety” refers to the idea that a capital structure with more equity and less debt may result in higher overall costs and higher rates for customers, but has enhanced financial integrity. “Economy” refers to the idea that a capital structure with more debt and less equity may result in lower overall costs and lower rates for customers.¹²¹ The Commission must address the “basic tension between economy and safety in determining the capital structure to use for setting a utility’s rates.”¹²² A capital structure used for ratemaking purposes should present an optimal mix of equity and debt to balance capital costs with financial risk.¹²³ The Commission requires the capital structures of privately held utilities, such as PSE, to appropriately balance debt and equity.¹²⁴ If a capital structure is too heavily capitalized with equity, the costs are unfair to ratepayers, creating an unfair burden.¹²⁵

53. In this case, PSE initially requested a capital structure with 50 percent equity, but settled at 49 percent equity under the Revenue Settlement. Public Counsel witness Dr. Woolridge

¹¹⁹ *2011 Puget GRC*, Order 08, ¶ 35.

¹²⁰ *Pioneer Nat. Res. USA, Inc. v. Pub. Util. Comm'n of Tex.*, 303 S.W.3d 363, 373 (Tex. App. 2009).

¹²¹ *2011 Puget GRC*, Order 08, ¶ 35.

¹²² *2011 Puget GRC*, Order 08, ¶ 36.

¹²³ *In re: Zia Nat. Gas Co.*, 128 N.M. 728, 731, 998 P.2d 564, 567 (2000).

¹²⁴ *2011 Puget GRC*, Order 08, ¶ 35.

¹²⁵ *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-130043, Order 05, ¶¶ 41–42 (Dec. 4, 2013).

determined an appropriate capital structure for PSE's rates should have 48.5 percent equity. He considered the average common equity ratios for the Electric, Bulkley, and Gas Proxy Groups. The Electric Proxy Group consisted of 24 publicly-held electric utilities. The Bulkley Proxy Group, developed by PSE witness Anne Bulkley, consisted of the group 13 gas and electric utilities. The Gas Proxy Group consisted of nine natural gas distribution companies.¹²⁶ As of December 31, 2021, each proxy group had average common equity ratios significantly lower than 49.0 percent as proposed in the Revenue Settlement. The Electric Proxy Group had an average common equity ratio of 41.7 percent. The Bulkley Proxy Group had an average common equity ratio of 39.4 percent. The Gas Proxy Group had an average common equity ratio of 38.6 percent.¹²⁷

54. The settling parties and PSE have not demonstrated that increasing PSE's equity share would produce fair, just, and reasonable rates. Public Counsel recommends that the Commission retain PSE's current authorized capital structure with a common equity ratio of 48.5 percent. Dr. Woolridge testified that a capital structure with 48.5 percent equity is

(1) consistent with the Company's historic capitalization, which PSE has used to finance its operations and maintained its credit ratings; (2) consistent with the Commission past policies on utility capitalizations; and (3) more reflective of the capital structures of proxy groups of electric, combination electric and gas, and gas distribution companies.¹²⁸

¹²⁶ Woolridge, Exh. JRW-1T at 23:8–25:6.

¹²⁷ *Id.* at 28:16–22.

¹²⁸ *Id.* at 29:5–9.

55. Commission Staff witness David Parcell illustrates PSE’s recent capitalization in Exhibit DCP-6.¹²⁹ Both PSE and its parent company, Puget Holdings, maintained stable equity ratios over the last five years.¹³⁰ PSE has been able to reasonably finance its operations during this time period. Moreover, PSE has maintained positive credit ratings that is as good as or better than the three proxy group companies.¹³¹
56. Public Counsel’s recommended capital structure is in line with the Commission’s policy of weighing safety and economy. The Commission has authorized PSE’s capital structure with 48.5 percent equity in PSE’s last three rate cases.¹³² Before that, the Commission authorized PSE’s capital structure with 48 percent equity in PSE’s 2011 and 2013 rate cases.¹³³
57. The Revenue Settlement proposes a capital structure that includes more common equity than the proxy groups.¹³⁴ While Public Counsel’s recommended capitalization for ratemaking purposes is also higher than the proxy groups average common equity ratio, it is closer to the proxy groups than the Revenue Settlement proposal. Because our recommendation is consistent with PSE’s actual capitalization and how the Commission has balanced safety and economy, Public Counsel does not recommend reducing equity in PSE’s capital structure for ratemaking purposes.

¹²⁹ See also, Testimony of David Parcell, Exh. DCP-1T at 23:9–21. Staff witness Parcell testified that PSE’s capitalization should remain at 48.5 percent equity. Parcell, Exh. DCP-1T at 27:12–28:2.

¹³⁰ *Id.* at 23:17–18.

¹³¹ Woolridge, Exh. JRW-1T at 25:7–16 and Table 5.

¹³² Dockets UE-170033/UE-170034; Dockets UE-180899/UG-180900; Dockets UE-190529/UG-190530. See Parcell, Exh. DCP-19.

¹³³ Dockets UE-111048/UG-111049; Dockets UE-130137/UG-130138. See Parcell, Exh. DCP-19.

¹³⁴ See Woolridge, Exh. JRW-1T at 28:22–29:1.

58. Conversely, increasing PSE’s common equity ratio to 49 percent results in a capital structure that is tilted too heavily towards safety at the expense of ratepayers. Additionally, the current regulatory environment is viewed as “more favorable,” which suggests that a *reduction* in equity ratio is warranted, if any change is required.¹³⁵ Leaving PSE’s capital structure at its currently authorized ratio sufficiently balances economy and safety, and it is reasonable to leave PSE’s capital structure unchanged. The Commission should adopt Public Counsel’s recommended capital structure containing 48.5 percent common equity.

2. The Revenue Settlement’s Return on Equity is Excessive and Inequitable.

59. The purpose of regulation is to establish prices that are fair to customers while allowing the company to meet its operating and capital costs.¹³⁶ Public utilities are usually natural monopolies due to capital requirements and the economic burden of duplicating services.¹³⁷ Markets determine a firm’s return on equity in competitive industries. By contrast, monopoly utilities lack competition and offer essential services, making it inappropriate for utilities to set their own prices.¹³⁸

60. Two seminal United States Supreme Court cases, *Hope*¹³⁹ and *Bluefield*¹⁴⁰ establish guiding principles on how regulators must address a utility’s ability to earn a fair return. The Court expressed that a fair return should be (1) comparable to returns investors expect to earn on

¹³⁵ Parcell, Exh. DCP-1T at 26:9–18.

¹³⁶ Woolridge, Exh. JRW-1T at 29:21–30:2.

¹³⁷ *Id.* at 29:16–18.

¹³⁸ *Id.* at 29:15–20.

¹³⁹ *Fed. Power Comm’n. v. Hope Nat. Gas Co.*, 320 U.S. 591, 64 S.Ct. 281 (1944).

¹⁴⁰ *Bluefield Waterworks & Improvement v. Pub. Serv. Comm’n. of W. Va.*, 262 U.S. 679, 43 S.Ct. 675 (1923).

other investments of similar risk, (2) sufficient to assure confidence in the company's financial integrity, and (3) adequate to maintain and support the company's credit and to attract capital.¹⁴¹

In other words, the opportunity to earn a fair return requires comparable earnings, financial integrity, and ability to attract capital. The regulator's role is to authorize a rate of return for ratemaking purposes that allows a utility the opportunity to earn a fair profit. It is incumbent on the utility to manage its operations to earn that fair return, which is not guaranteed.

61. Cost of capital, both debt and equity, are determined in part by economic and financial conditions.¹⁴² Between 2007 and 2021, authorized returns on equity for electric and gas utilities declined nationally.¹⁴³ Despite market volatility during this time-period,¹⁴⁴ utility ROEs continue to be higher than the market-based cost of capital. Dr. Woolridge analyzed utility market-to-book ratios, which illustrates the relationship between earned ROE and actual cost of equity.¹⁴⁵ A ratio of 1.0X indicates that a company is selling common stock at book value.¹⁴⁶
62. Over the past five years, the average earned electric ROE has been between 9.0 and 10.0 percent. The average market-to-book ratio increased for electric utilities, peaking at 2.0X in 2019 and declined to 1.75X in 2020 and 2021.¹⁴⁷ For natural gas companies, the average earned ROE has been between 8.0 percent and 9.0 percent. The average market-to-book ratio for natural gas

¹⁴¹ *Bluefield*, 262 U.S. at 662–93; *Hope*, 320 U.S. at 603.

¹⁴² Parcell, Exh. DCP-1T at 8:19–20.

¹⁴³ Woolridge, Exh. JRW-1T at 17:14–22 and 18:1–5; Parcell, Exh. DCP-1T at 11:15–12:6.

¹⁴⁴ Woolridge, Exh. JRW-1T at 10:11–17:13; *See also* Parcell, Exh. DCP-1T at 12:6–13:17.

¹⁴⁵ Woolridge, Exh. JRW-1T at 11:1–9; Exh. JRW-4.

¹⁴⁶ Woolridge, Exh. JRW-1T at 9:16–19 and 31:5–29.

¹⁴⁷ Woolridge, Exh. JRW-1T at 11:1–9; Exh. JRW-4 at 3, Panel A.

companies reached 2.25X in 2019 and decreased to 1.5X at the end of 2021.¹⁴⁸ The market-to-book ratios indicate that utilities have been selling stock over book value.

63. Comparing authorized ROEs with 30-year treasury yield, authorized ROEs did not decline or adjust to the same extent. For example, gas ROEs declined nationally by 10–15 basis points, while the 30-year Treasury yield decreased by over 150 basis points.¹⁴⁹ Washington authorized ROEs similarly did not decrease as the Treasury yields declined.¹⁵⁰ In fact, Washington authorized ROEs remained steady at 9.4 or 9.5 percent through 2021.¹⁵¹

64. Cost of capital is an opportunity cost and is prospective-looking. As a result, cost of capital must be estimated.¹⁵² To set an appropriate ROE, the Commission must determine the market-based cost of capital for the utility. The market-based cost of capital represents the return investors could expect from other investments of similar risk.¹⁵³ Expert witnesses and regulators rely on economic models and formulas that use market data of firms with similar risk to estimate and set a regulated utility's ROE.¹⁵⁴ Dr. Woolridge presents the Discounted Cash Flow (DCF) Model and the Capital Asset Pricing Model (CAPM), both of which are rigorously tested and frequently relied upon to estimate the market-based cost of capital. Indeed, the Commission has assigned greater weight to DCF results relative to other models.¹⁵⁵

¹⁴⁸ Woolridge, Exh. JRW-1T at 11:5–9; Exh. JRW-4 at 3, Panel B.

¹⁴⁹ Woolridge, Exh. JRW-1T at 19:9–10, Figure 6.

¹⁵⁰ *Id.* at 20:9–21:4, Figure 7.

¹⁵¹ *Id.*

¹⁵² Parcell, Exh. DCP-1T at 8:7–9.

¹⁵³ Woolridge, Exh. JRW-1T at 3:7–10.

¹⁵⁴ *Id.* at 3:10–14.

¹⁵⁵ *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-200900, UG-200901, & UE-200894 (*consol.*), Order 08/05, ¶ 103 (Sep. 27, 2021).

65. The Revenue Settlement proposes an ROE of 9.4 percent, which leaves PSE’s authorized ROE unchanged from its last general rate case. Public Counsel argues that PSE’s authorized ROE should be lower and recommends that the Commission authorize a more reasonable 8.8 percent ROE. Dr. Woolridge concluded that the market-based cost of equity for PSE is between 7.40 percent and 8.90 percent.¹⁵⁶

66. He bases this range on the results of his DCF and CAPM analysis of the three proxy groups. The CAPM results ranged from 7.40 percent to 7.70 percent. The DCF results ranged from 8.75 percent to 8.9 percent.¹⁵⁷ Dr. Woolridge gave primary weight to the DCF results, consistent with the Commission’s reliance on DCF analysis results.¹⁵⁸ As a result, Dr. Woolridge testified that he recommends an equity cost of 8.80 percent for PSE.¹⁵⁹ Dr. Woolridge’s complete cost of capital analysis results in the following recommendation:

Public Counsel’s Rate of Return Recommendation¹⁶⁰

Capital Source	Capitalization Ratios	Cost Rate	Weighted Cost Rate
Short-term debt	1.66%	2.09%	0.03%
Long-term debt	49.84%	5.07%	2.53%
Common equity	48.50%	8.80%	4.27%
Total capitalization	100.00%		6.83%

¹⁵⁶ Woolridge, Exh. JRW-1T at 63:9–10.

¹⁵⁷ Woolridge, Exh. JRW-1T at 63:7-8, Table 9.

¹⁵⁸ *Avista*, Dockets UE-200900, UG-200901, & UE-200894 (*consol.*), Order 08/05, ¶ 103 (quoting James C. Bonbright, *et al.*, *Principles of Public Utility Rates*, 317–18 (Pub. Utils. Reps. 2nd ed. 1988)).

¹⁵⁹ Woolridge, Exh. JRW-1T at 63:11–12.

¹⁶⁰ *Id.* at 6, Table 2.

67. Comparing the Revenue Settlement’s ROE recommendation to Staff witness David Parcell’s analysis further highlights the unreasonableness of leaving PSE’s authorized ROE at 9.4 percent.¹⁶¹ Parcell recommends 9.25 percent ROE, which is lower than PSE’s current authorized ROE of 9.4 percent.¹⁶² While it is directionally similar to Public Counsel’s ROE recommendation, Parcell’s analysis contains errors, distortions, and inconsistencies.¹⁶³
68. Parcell identifies a range for ROE of 9.1 percent to 9.5 percent.¹⁶⁴ Parcell’s ROE recommendation does not reflect the results of his ROE studies, and he distorted his results by ignoring low-end results. Thus, Parcell’s recommended ROE is higher than supported by his studies.¹⁶⁵ Moreover, the only results that supported Parcell’s 9.25 percent ROE recommendation were from two non-traditional approaches, the alternative Risk Premium and Comparable Earnings approaches. Both approaches are of Parcell’s own making and interpretation.¹⁶⁶ The Comparable Earnings approach is not generally recognized as a cost of equity capital model, and Parcell’s interpretation of the results are completely subjective.¹⁶⁷ Parcell’s alternative Risk Premium approach measures commission behavior and not investor behavior.¹⁶⁸ Considering the results of Parcell’s DCF and CAPM approaches, the results support an ROE of 8.5 percent, which is also well below the proposed 9.4 percent ROE in the Revenue Settlement.¹⁶⁹

¹⁶¹ Woolridge, Exh. JRW-13T at 23:7–9.

¹⁶² Parcell, Exh. DCP-1T at 4:14–15. Parcell’s recommendation is also lower than PSE’s requested 9.9 percent ROE.

¹⁶³ Woolridge, Exh. JRW-13T at 23:4–7 and 6:13–23:14.

¹⁶⁴ *Id.* at 7:2–5.

¹⁶⁵ *Id.* at 7:12–15.

¹⁶⁶ *Id.* at 8:7–12.

¹⁶⁷ *Id.* at 16:5–7.

¹⁶⁸ *Id.* at 21:12–13.

¹⁶⁹ *Id.* at 8:10–12.

69. The Settlement’s proposed ROE is overly generous to shareholders, and it takes no steps to moving towards a more fair result. The Revenue Settlement would result in ratepayers bearing higher rates than necessary or fair as a result of the excessive ROE. Approving Public Counsel’s recommendations would result in more fair rates for customers.

3. Impact of Public Counsel’s cost of capital and capital structure recommendation reduces the Revenue Settlement’s proposed revenue requirement for both electric and natural gas service.

70. Public Counsel’s recommendation reduces the ROE and equity in PSE’s capital structure from the proposals in the Revenue Settlement. To implement Public Counsel’s recommendation, the revenue requirements must be reduced. Considering only the base rates and not the costs placed in trackers or otherwise removed from base rates, the following tables show the revenue impact of Public Counsel’s recommendations. Further adjustments may be needed for costs removed from base rates.

Table 5: Impact of Public Counsel ROR Recommendation (Electric)

	Electric	2023	2024
1	Revenue Settlement Rate Base (Revenue Settlement, Exhibit B, page 1)	\$5,440,416,160	\$5,673,064,261
2	Public Counsel Rate of Return (Woolridge, Exh. JRW-1T at 6, Table 2)	6.83%	6.83%
3	Operating Income (Line 1 X Line 2)	\$371,580,424	\$387,470,289
4	Revenue Settlement Operating Income (Revenue Settlement, Exhibit B, page 1)	\$389,533,797	\$406,191,401
5	Public Counsel Adjustment (Line 3 – Line 4)	(\$17,953,373)	(\$18,721,112)
6	Revenue Conversion Factor (Revenue Settlement, Exhibit B, Page 1)	0.752355	0.752355
7	Public Counsel Adjustment (Line 5 / Line 6)	(\$23,862,902)	(\$24,883,349)

Table 6: Impact of Public Counsel ROR Recommendation (Natural Gas)

	Natural Gas	2023	2024
1	Revenue Settlement Rate Base (Revenue Settlement, Exhibit E, page 1)	\$2,580,838,851	\$2,666,946,871
2	Public Counsel Rate of Return (Woolridge, Exh. JRW-1T at 6, Table 2)	6.83%	6.83%
3	Operating Income (Line 1 X Line 2)	\$176,271,294	\$182,152,471
4	Revenue Settlement Operating Income (Revenue Settlement, Exhibit E, page 1)	\$184,788,062	\$190,953,396
5	Public Counsel Adjustment (Line 3 – Line 4)	(\$8,516,768)	(\$8,800,925)
6	Revenue Conversion Factor (Revenue Settlement, Exhibit E, page 1)	0.754801	0.754801
7	Public Counsel Adjustment (Line 5 / Line 6)	(\$11,283,462)	(11,659,927)

B. The Revenue Settlement’s Terms Addressing Performance Based Ratemaking Complies with RCW 80.28.425 and are in the Public Interest.

71. At hearing, Chair Danner questioned whether the Revenue Settlement’s terms addressing Performance Based Ratemaking (PBR) comply with RCW 80.28.425.¹⁷⁰ The statute requires that the Commission “in approving the multiyear rate plan, approve a set of performance measures that would be used to assess a gas or electric company operating under a multiyear rate plan.”¹⁷¹ Chair Danner also asked about incorporating Performance Incentive Mechanisms (PIMs).¹⁷² Nothing in RCW 80.28.425 requires the Commission to adopt PIMs in order to assess a utility’s

¹⁷⁰ Danner, TR. 322:15–335:13.

¹⁷¹ RCW 80.28.425(7).

¹⁷² Danner, TR. 324:16–19.

operations under a multiyear rate plan. Indeed, Public Counsel recommended in response testimony that the Commission find that it is premature to approve any PIMs at this time.¹⁷³

72. RCW 80.28.425 requires utilities to file multiyear rate plans with general rate cases filed after January 1, 2022.¹⁷⁴ While utilities must include multiyear rate plans in their proposals, the Commission has discretion to approve such plans.¹⁷⁵ Importantly, multiyear rate plans are subject to the same standards applicable to other rate filings. Multiyear rate plans must result in fair, just, reasonable, and sufficient rates and must be in the public interest.¹⁷⁶ The public interest is defined to include environmental health and greenhouse gas emissions, health and safety concerns, economic development, and equity.¹⁷⁷

73. If the Commission approves a multiyear rate plan, it must be able to measure the utility's performance under the plan.¹⁷⁸ The statute does not prescribe how the Commission shall measure the utility's performance. Rather, the statute states that the Commission *may* base performance measures on party proposals or testimony and evidence. The Commission *may* develop

¹⁷³ Crane, Exh. ACC-19T at 2:19–23.

¹⁷⁴ S.B. 5295 did not create a new type of rate relief or bestow new powers to the Commission. Before SB 5295, utilities could file multiyear rate plans and the Commission could approve them. *See, Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-120436 and UG-12047 (*consol.*), Order 09, ¶¶ 30-31 (Dec. 26, 2012) (two-year rate plan proposed by settlement approved); *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.* Dockets UE-121697 and UG-121705 (*consol.*), Order 07, ¶¶ 137–170 (June 25, 2013) (five-year rate plan granted); *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-160228 and UG-160229 (*consol.*), Order 06, ¶¶ 1, 4 (Dec. 15, 2016) (two-year rate plan proposed by company rejected); *Wash. Utils. & Transp. Comm'n v. Pacific Power & Light Co.*, Docket UE-152253, Order 12, ¶¶ 1, 5 (Sep. 1, 2016) (two-year rate plan proposed by company approved). S.B. 5295's requirement that utilities file multiyear rate plans is a new regulatory obligation. *See* Engrossed Substitute S.B. 5295, 67th Leg., 2021 Reg. Sess., § 2(7) (Wash. 2021).

¹⁷⁵ “The commission *may*, by order after an adjudicative proceeding as prescribed by chapter 34.05 RCW, approve, approve with conditions, or reject a multiyear rate plan proposal made by a gas or electrical company or an alternative proposal made by one or more parties, or any combination thereof.” RCW 80.28.425(1) (emphasis added).

¹⁷⁶ RCW 80.28.425(1).

¹⁷⁷ *Id.*

¹⁷⁸ RCW 80.28.425(7).

“performance measures, incentives, and penalty mechanisms” and it may consider several non-exclusive factors enumerated in the statute.¹⁷⁹ In other words, PIMs are tools, but the Commission is not required to use PIMs as the tool by which it measures performance.¹⁸⁰ The Commission may employ performance measures, incentives, or penalty mechanisms, or devise a different method to measure performance.

74. PSE currently has a service quality index program by which it measures its performance and is subject to potential penalties if it fails to meet certain targets. PSE proposed an expanded “score card” over the multiyear rate plan. The Settlement further elaborates on the performance metrics PSE will track during the multiyear rate plan. Under the Settlement, PSE is obligated to track and report on over 70 metrics during the multiyear rate plan.¹⁸¹ The additional metrics under the Revenue Settlement “relate to 1) a resilient, reliable, and customer-focused distribution grid, 2) environmental improvements, 3) customer affordability, and 4) advancing equity.”¹⁸² The performance metrics, coupled with the reporting obligation, meets the requirements of RCW 80.28.425 and provides a basis to measure PSE’s performance during its rate plan.

75. With the exception of a new demand response PIM, no new PIMs are established under the Settlement. Taking a conservative approach in this case is reasonable, especially since the Legislature directed the Commission to examine alternatives to traditional cost of service regulation. Indeed, the Legislature required the Commission to open a proceeding to address

¹⁷⁹ *Id.*

¹⁸⁰ Response Testimony of Andrea C. Crane, Exh. ACC-1CT at 41:16–20.

¹⁸¹ Piliaris, TR. 335:6–9.

¹⁸² Crane, Exh. ACC-19T at 11:15–19.

such alternatives, including performance based regulation.¹⁸³ This proceeding, conducted in Docket U-210590, is underway and is intended to “provide clarity and certainty to stakeholders on the details of performance-based regulation.”¹⁸⁴ The metrics and single PIM provided for under the Revenue Settlement will establish baselines that can be used for additional measures, if appropriate, after the work in Docket U-210590 is complete.

76. In the meantime, the Commission and stakeholders will be able to evaluate PSE’s performance during the rate plan, which is important to ensure that PSE’s service quality does not deteriorate as utilities may have a greater incentive to reduce costs during a rate plan.¹⁸⁵ Public Counsel witness Andrea Crane testified, “Performance metrics can therefore provide an objective measure of the impact of the [multiyear rate plan] on the Company’s quality of service, as well as on other aspects of the Company’s operations.”¹⁸⁶

77. Public Counsel supports the additional performance measures provided for in the Revenue Settlement and the elimination of the EV PIM. While we have concerns about PIMs based on a percentage of program costs, Public Counsel is supportive of the Demand Response PIM for purposes of resolving this proceeding.¹⁸⁷ The limited duration of the rate plan and changes to the target, reward thresholds, and reward payments allow Public Counsel to accept the Demand Response PIM.¹⁸⁸

¹⁸³ Crane, Exh. ACC-1CT at 30:9–14; *see* Engrossed Substitute S. B. 5295, 67th Leg., 2021 Reg. Sess. § 1 (Wash. 2021).

¹⁸⁴ *Id.* at 30:15–16 (citing Engrossed Substitute S. B. 5295, 67th Leg., 2021 Reg. Sess. § 1 (Wash. 2021)).

¹⁸⁵ *Id.* at 42:8–12.

¹⁸⁶ *Id.* at 42:10–12.

¹⁸⁷ *See* Crane, Exh. ACC-19T at 11:20–13:10.

¹⁸⁸ *Id.* at 13:5–10.

C. Public Counsel Supports a Number of Terms Under the Revenue Settlement.

78. In addition to the performance based ratemaking terms discuss above, Public Counsel supports many terms under the Revenue Settlement. Specifically, Public Counsel supports settlement terms addressing electric and natural gas rate spread and rate design, Advanced Metering Infrastructure (AMI), Colstrip cost recovery, low income issues, time varying rate pilot, distributional equity analysis, gas line extension, decarbonization and electrification study, COVID costs, and power cost only rate case (PCORC) terms. The Commission should approve these terms.

79. **Rate spread and rate design.** Public Counsel supports the electric and natural gas rate spread and rate design terms of the Revenue Settlement. With respect to electric rate spread, PSE reasonably reflected cost of service study results, and the Settlement is a reasonable compromise among parties. The result is an equitable assignment of revenue requirement across rate classes.¹⁸⁹ With respect to electric rate design, the Revenue Settlement reflects no increase to the residential customer charge, which is in the public interest because the existing charge is sufficient to reflect direct customer costs.¹⁹⁰

80. With respect to natural gas rate spread, Public Counsel supports the Revenue Settlement because it results in a reasonable compromise and equitably assigns revenue responsibility across the rate classes.¹⁹¹ Public Counsel also supports the natural gas rate design terms. Even though

¹⁸⁹ Bauman, Exh. SB-9T at 9:1–8.

¹⁹⁰ *Id.* at 9:9–13.

¹⁹¹ *Id.* at 9:14–10:10.

the Settlement calls for a slight increase in the residential basic charge, the increase is lower than PSE requested and is consistent with Public Counsel’s analysis.¹⁹²

81. **AMI.** The Revenue Settlement includes terms addressing PSE’s AMI investment.¹⁹³ The Settlement reaches a reasonable compromise of allowing PSE to begin amortizing its debt cost while continuing to defer the equity return on the AMI investment. Bifurcating PSE’s return in this manner allows PSE to service its debt costs while providing sufficient incentive to PSE to maximize customer benefits related to AMI.¹⁹⁴ Once PSE sufficiently establishes customer benefits, it may begin amortizing the equity return, but no earlier than 2025.¹⁹⁵ In addition, the Revenue Settlement includes metrics related to AMI, which will aid stakeholders and the Commission in understanding AMI program benefits and impact on equity.¹⁹⁶

82. **Colstrip.** The Revenue Settlement removes all costs related to Colstrip’s dry ash facilities; provides that all costs included in rates in 2023 and beyond are subject to review; and requires that all major maintenance costs incurred during the multiyear rate plan will be amortized over three years, regardless of the year incurred.¹⁹⁷ The Settlement also includes terms related to Microsoft’s request to pay its share of Colstrip decommissioning and remediation costs in a lump sum. If the costs vary from the estimate, PSE will not seek additional contribution from Microsoft, and Microsoft will not seek reimbursement.¹⁹⁸ These terms are consistent with

¹⁹² *Id.* at 10:11–14.

¹⁹³ *Id.* at 10:17–12:11.

¹⁹⁴ *Id.* at 12:12–16.

¹⁹⁵ *Id.* at 12:19–13:2.

¹⁹⁶ Bauman, Exh. SB-9T at 13:3–14:7.

¹⁹⁷ *Id.* at 14:10–15.

¹⁹⁸ *Id.* at 14:15–15:3.

Clean Energy Transformation Act requirements and Public Counsel’s recommendations. Public Counsel supports the terms related to Microsoft because there are adequate protections under the Settlement for ratepayers in the event PSE’s cost estimates are not accurate.¹⁹⁹

83. **Low income.** The Revenue Settlement includes several terms addressing low-income issues. Those issues include bill discount rate and arrearage management, home energy lifeline program (HELP) funding, low-income conservation and weatherization, and credit and collections.²⁰⁰ Each of these terms provides critical assistance and protection to PSE’s low-income customers and are in the public interest.²⁰¹

84. **Time varying rate pilot.** Public Counsel supports the Revenue Settlement terms addressing PSE’s time varying rate program pilot. The Settlement addresses interventions to help evaluate the pilot’s impact on low-income customers.²⁰²

85. **Distributional equity analysis.** Under the Revenue Settlement, PSE agrees to meet with stakeholders to develop a pilot distributional equity analysis. Distributional equity analysis is important because it will lay the groundwork for PSE to incorporate equity into its planning processes. Public Counsel supports these terms because the anticipated analysis could be a real step forward towards equitable provision of utility service.²⁰³

¹⁹⁹ *Id.* at 15:4–18.

²⁰⁰ *Id.* at 16:3–6.

²⁰¹ *Id.* at 16:7–18:20.

²⁰² Bauman, Exh. SB-9T at 19:2–20:11.

²⁰³ *Id.* at 20:13–21:13.

86. **Natural gas line extension.** Public Counsel supports the Revenue Settlement terms on natural gas line extension because they provide an “appropriate means to comply with state policy and phase out extension allowances.”²⁰⁴
87. **Decarbonization and targeted electrification.** Public Counsel supports the decarbonization and targeted electrification provisions because they will provide valuable information, particularly regarding vulnerable and highly impacted communities.²⁰⁵ While we have some concerns about the \$15 million budget for these efforts, costs will be reviewed and considered for recovery in PSE’s next rate case.²⁰⁶ Because these terms will likely positively impact equity and environmental justice issues, Public Counsel believes they are in the public interest.
88. **COVID deferral.** The Revenue Settlement includes a partial write-off of COVID costs. The costs being written off are associated with so-called “foregone revenues” from late payment fees and disconnection fees.²⁰⁷ Under the Settlement, PSE will be allowed to seek recovery of costs associated with assistance programs and bad debt.²⁰⁸ As Public Counsel witness Crane testified, “PSE was not conducting disconnections during the moratorium and no disconnection or late fees could be lawfully levied. *PSE is not entitled to revenues from disconnection or late fees that would have been unlawfully imposed.*”²⁰⁹ The Revenue Settlement presents a reasonable

²⁰⁴ *Id.* at 21:15–23:9.

²⁰⁵ Crane, Exh. ACC-19T at 15:5–18.

²⁰⁶ *Id.* at 15:7–16.

²⁰⁷ *See*, Crane, Exh. ACC-1CT at 16:9–17:12.

²⁰⁸ Revenue Settlement at 9–10.

²⁰⁹ Crane, Exh. ACC-1CT at 17:5–8 (emphasis added).

compromise and removes amounts for which ratepayers should bear no responsibility from rates. As a result, Public Counsel supports the partial write-off of PSE’s COVID deferral.²¹⁰

89. **PCORC.** The Revenue Settlement includes a stay-out related to PCORC filings during the multiyear rate plan. Public Counsel supports this term because it reduces the number of times during the rate plan that PSE will reset its power costs, resulting in more stable rates.²¹¹

D. Public Counsel Remains Neutral on Certain Terms of the Revenue Settlement.

90. Public Counsel neither supports nor opposes certain Revenue Settlement terms, including overall revenue requirement (except the amounts associated with cost of capital and capital structure terms), Energy Eastside, depreciation, the earnings test, and power costs. As a result, Public Counsel neither recommends that the Commission approve these terms or reject them.

91. **Revenue Requirement.** Public Counsel does not take a position with respect to the revenue requirements allowed under the Revenue Settlement for PSE’s electric and natural gas services. While the Settlement includes reductions to certain gas capital additions, that same is not true for electric capital additions.²¹² The Revenue Settlement reflects significant capital expenditures for 2024. Virtually all of the electric capital additions contained in PSE’s initial filing are included in Revenue Settlement’s electric revenue increases.²¹³ Even though there will be a true-up process, “the high bar set in this case will provide an incentive for PSE to spend up to the amount authorized by the Commission.”²¹⁴ Public Counsel cannot support the revenue

²¹⁰ Crane, Exh. ACC-19T at 7:10.

²¹¹ Bauman, Exh. SB-9T at 24:7–10.

²¹² Crane, Exh. ACC-19T at 7:22–8:2.

²¹³ *Id.* at 8:2–5.

²¹⁴ *Id.* at 8:5–9.

increases, but we do not oppose them, except for the impact of the cost of capital and capital structure terms.²¹⁵

92. **Energize Eastside.** With respect to the Energize Eastside project, Public Counsel’s review did not uncover a basis to oppose. Public Counsel is cognizant of the challenge posed by CENSE, and we encourage the Commission to fully consider CENSE’s arguments. If the Commission approves the project for cost recovery, Public Counsel does support delayed spending for the project.²¹⁶

93. **Depreciation.** PSE, Staff, and Public Counsel presented depreciation recommendations in their litigation cases. Public Counsel does not oppose the terms in the Revenue Settlement addressing depreciation.

94. **Earnings test.** The earnings test provisions reflect statutory requirements. The statutory requirements under RCW 80.28.425(6) speak for themselves, and Public Counsel takes no position on the settlement terms addressing earnings test.

95. **Power Costs.** Public Counsel takes no position regarding whether the Commission should approve or reject the power cost terms related to the 90-day compliance filing²¹⁷ to update 11 power cost categories for rates going into effect on January 1, 2024. However, Dr. Earle testified about Public Counsel’s concern about how prudence will be reviewed.²¹⁸ Public

²¹⁵ *Id.* at 8:9–12.

²¹⁶ *Id.* at 7:9.

²¹⁷ PSE witness Susan Free indicated that there would be five to six months to review, but the Revenue Settlement characterizes the filing as a 90-day compliance filing. Free, TR 340:21–343:8; Revenue Settlement at 17.

²¹⁸ Earle, Exh. RLE-14CT at 20:4–22:11.

Counsel understands that the settling parties intend that prudence be determined during the update filings, which will most likely be decided through the open meeting process.²¹⁹

96. While the settlement terms reflect “business as usual” in terms of how power cost adjustment filings have been done, Public Counsel’s concern is an equitable one. If intervenors representing disadvantaged communities “lack the staff or budgets to follow Commission filings closely and engage in all relevant proceedings, they lose the ability to guard the rights” of their communities.²²⁰ Regulatory transparency is even murkier when the annual proceeding is not set up as an adjudication.²²¹ If prudence of these updates is reviewed in PSE’s next rate case, Public Counsel’s concerns about equity and the full opportunity for intervenor review are alleviated. Reviewing prudence in PSE’s next rate case is also consistent with the Commission’s Used and Useful Policy Statement and would not conflict with the existing power cost adjustment annual review process.²²² If the Commission approves the power cost update terms, it should require that prudence be evaluated in PSE’s next rate case to allow broader, more complete review of new resources included in the updates.

E. Summary of Public Counsel’s Positions Regarding the Revenue Settlement.

97. Public Counsel urges the Commission to reject the Revenue Settlement’s cost of capital terms on equity and capital structure. The Commission should adopt Public Counsel’s analysis of a fair ROE and capital structure and approve an ROE of 8.8 percent and capital structure with

²¹⁹ *Id.* at 21:14–17.

²²⁰ *Id.* at 21:23–26.

²²¹ *Id.* at 21:26–27.

²²² *Id.* at 21:26–22:9.

48.5 percent equity. This would reduce the revenue requirement for electric and natural gas base rates over the course of the multiyear rate plan as follows.²²³

<u>Electric</u>	<u>2023</u>	<u>2024</u>
	\$23,862,902	\$24,883,349
<u>Natural Gas</u>	<u>2023</u>	<u>2024</u>
	\$11,283,462	\$11,659,927

98. Public Counsel supports and asks the Commission to approve terms related to electric and natural gas rate spread and rate design, AMI, Colstrip cost recovery, low income issues, time varying rate pilot, distributional equity analysis, gas line extension, decarbonization and electrification study, COVID costs, PCORC terms, and performance based ratemaking.

99. Public Counsel takes no position regarding the overall revenue requirement (except the amounts associated with cost of capital and capital structure terms), Energy Eastside, depreciation, the earnings test, and power costs. If the Commission approves the power cost terms, Public Counsel urges the Commission to require that prudence review be conducted in PSE’s next general rate case.

VI. PUBLIC COMMENTS REFLECT MANY OF PUBLIC COUNSEL’S THEMES ABOUT TACOMA LNG AND ROE AND FURTHER ILLUSTRATE THE HIGH COST OF A RATE INCREASE IN THIS CASE.

100. PSE’s rate case generated substantial public participation through which many expressed overwhelming opposition to the Company’s proposed rate increases, ROE, and the Tacoma LNG

²²³ Further adjustments may be needed for costs removed from base rates.

project. In total, customers submitted over 1900 written comments to the Commission and 45 written comments to Public Counsel.²²⁴ Over 100 people participated in the virtual Public Comment Hearing on September 28, 2022, with dozens offering oral comments opposing the rate increase and Tacoma LNG project.²²⁵

101. Many customers expressed concerns about the increases, on top of a variety of cost of living increases. One customer stated, “many local families are still struggling with COVID setbacks and no one’s income has gone up by 15% this year. In our region especially, the discrepancy between income and cost of living is enormous.”²²⁶

102. Other customers who live on fixed and limited incomes commented that PSE’s proposed rate increase “will have a major impact” on their budget.²²⁷ One customer requests that the UTC “consider seriously the impact these rate increases have on what used to be middle class families ...”²²⁸ This customer states, “We are stretched so thin because of all the other increases in fuel and food costs that I literally live in fear of homelessness.”²²⁹

103. A number of customers also mentioned concerns about PSE’s proposed ROE being too high. Customers are concerned with being asked to pay for increased rates that will benefit shareholders, rather than make improvements to safety and reliability.²³⁰ One customer notes,

The existing 9.4 is excessive as it is ... The rest of us are being whipsawed through the market with our investment funds in 2022 and probably 2023. Utility

²²⁴ See Offer of Public Comment Exh. No. BR-3, UTC Comment Matrix and PCU Tally (filed Oct. 17, 2022).

²²⁵ See Public Comment Hr’g Tr. vol. 3 (filed Oct. 7, 2022).

²²⁶ Offer of Public Comment Exh. No. BR-3, UTC Comment Matrix at 40–41 (Comment of Alina Zollfrank).

²²⁷ *Id.*, UTC Comment Matrix at 1537 (Comment of Karen Sue Witmer).

²²⁸ *Id.*, UTC Comment Matrix at 29 (Comment of Carole Teshima).

²²⁹ *Id.*, UTC Comment Matrix at 29 (Comment of Carole Teshima).

²³⁰ See *id.*, UTC Comment Matrix at 1536–37 (Comment of Dale L. Weir).

shareholders are getting enough of a steady return at this point in time and that should not be a goal of rate setting during these financial times.²³¹

104. Another customer writes, “A more reasonable guaranteed return on equity would be 6%. I suggest you taper the return on equity over a few years with a large decrease in the first year to partially pay for the increased rates consumers will pay.”²³² Other customers mentioned PSE’s position as a monopoly and current authorized rate of 9.4 percent ROE, stating, “That is too high for a monopolistic enterprise authorized by the government. Inflation is hurting regular people, and PSE can and should accept a lower rate of return in order to help regular people, and the UTC should make that happen.”²³³

105. Many PSE customers are also concerned about the Company’s proposed Tacoma LNG project, citing concerns about the need for the facility, the environmental review, and impact on the Tacoma community. One customer stated that the Commission, “must consider disproportionate impacts to marginalized communities in its decision-making, and the LNG facility will disproportionately impact already burdened and marginalized communities, including the Puyallup Tribe and immigrants at the Northwest Detention Center.”²³⁴

106. Many customers stated their support of the Puyallup Tribe and Tacoma community, who have opposed PSE’s efforts to develop this facility.²³⁵ Several customers cited concerns related to PSE beginning construction of the LNG facility prior to obtaining all of the necessary

²³¹ *Id.*, UTC Comment Matrix at 67–68 (Comment of Mary Clark).

²³² *Id.*, UTC Comment Matrix at 9 (Comment of Bob Crittenden).

²³³ Lagestee, TR. 190:7–11 (Comment of Todd Lagestee).

²³⁴ Lucas, TR. 210:14–19 (Comment of Kyle Lucas).

²³⁵ *See* Ponzio and Brown, TR. 154:9–12 and 194:11–15 (Comments of Rebecca Ponzio and Krys Brown).

permits.²³⁶ Customers also expressed concerns with the location of the LNG facility, stating that the “high polluting and risky facility is located less than a mile from homes, churches, daycare facilities, and schools ...”²³⁷ Participants in the public comment hearing urged the Commission to deny prudence of the LNG project, which will have minimal benefits to ratepayers in proportion to the cost the Company wants to charge ratepayers.²³⁸

107. Some customers raised similar concerns about PSE’s Energize Eastside project. One customer was concerned about the trees that would be cut down for the project and stated that the Company has “been building without permits.”²³⁹ Another customer was concerned that PSE has not “demonstrated the need for this project.”²⁴⁰

108. PSE’s customers provided important reminders to the Commission as to what a rate increase would mean to their households and communities. Public Counsel urges to Commission to keep these customers’ concerns in mind when considering outcomes in this case.

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²³⁶ See Ponzio, Briggs, & Lucas, TR. 154:6–12, 187:10–12, and 210:20–24 (Comments of Rebecca Ponzio, Rob Briggs, and Kyle Lucas).

²³⁷ Arnold, TR. 192:2–4 (Comment of Oneida Arnold).

²³⁸ Ivey, TR. 213–14 (Comment of Tony Ivey).

²³⁹ Faith, TR. 218:16–22 (Comment of Amy Faith).

²⁴⁰ Offer of Public Comment Exh. BR-3, UTC Comment Matrix at 1044–45 (Comment of Elizabeth Mitchell).

VII. CONCLUSION

109. The Commission must carefully evaluate the settlements presented. PSE's resulting rates must be fair, just, reasonable, and sufficient. Ratepayers purchase essential services from PSE, and they count on the Commission to critically and fairly adjudicate rate cases.
110. Public Counsel asks that the Commission approve the Green Direct Settlement as it presents an economically justifiable resolution that complies with statute. The resolution provides transparency, stability, and is fair and easy to implement. The Green Direct Settlement is in the public interest and is not contested by any party. It should be approved.
111. Public Counsel opposes the Tacoma LNG Settlement and asks the Commission to reject that settlement. Public Counsel has shown that the project fails the Commission's prudence evaluation. However, even if the Commission finds that the initial decision to move forward with the LNG project was prudent, which it was not, operating the system now is not prudent in light of the RCW 80.29.425(1). The Tacoma LNG Settlement perpetuates systemic injustices of the type the Commission has acknowledged should be avoided and remedied. Thus, the Commission should reject the Tacoma LNG Settlement as both imprudent and not in the public interest.
112. Public Counsel recommends that the Commission accept with conditions the Revenue Settlement. The Revenue Settlement contains most of the terms that resolve this case. Taken as a whole, the Revenue Settlement is not in the public interest; however, modifications to the Settlement would bring it into the public interest. In particular, Public Counsel opposes terms addressing return on equity and capital structure. The Settlement uses an excessive ROE and a higher level of equity than is reasonable, resulting in rates that are not fair, just, and reasonable. The Commission should adopt the Revenue Settlement with the condition that ROE be set at 8.8

percent and the capital structure to be set with 48.5 percent equity. Lastly, if the Commission accepts the power cost update terms, it should also condition that acceptance on conducting prudence review in PSE's next rate case.

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ROBERT FERGUSON
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/s/ 

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