

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	DOCKETS UE-220066 and
TRANSPORTATION COMMISSION)	UG-220067 & UG-210918
)	<i>(Consolidated)</i>
Complainant,)	
)	
v.)	
)	
PUGET SOUND ENERGY)	
)	
)	
Respondent.)	

POST-HEARING BRIEF OF THE
ALLIANCE OF WESTERN ENERGY CONSUMERS

October 31, 2022

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I. INTRODUCTION

1 Pursuant to the Washington Utilities and Transportation Commission’s (“Commission”) Order 20/06 in the above-referenced dockets, the Alliance of Western Energy Consumers (“AWEC”) hereby files this Post-Hearing Brief.¹

2 Three Stipulations were entered in this proceeding, two of which AWEC joined. The Settlement Stipulation and Agreement on Revenue Requirement and All Other Issues Except for Tacoma LNG and Green Direct (“Revenue Requirement Settlement”) was agreed to by AWEC, Puget Sound Energy (“PSE” or “Company”), Staff of the Washington Utilities and Transportation Commission (“Staff”), Federal Executive Agencies (“FEA”), Front and Centered, Kroger, Co. (“Kroger”), Microsoft, the NW Energy Coalition (“NWE”), Nucor Steel Seattle, Inc. (“Nucor”), Sierra Club, The Energy Project (“TEP”), and Walmart, Inc. (“Walmart”) (collectively, “Revenue Requirement Settling Parties”), with Public Counsel Unit of the Attorney General’s Office (“Public Counsel”) and the Coalition of Eastside Neighborhoods for Sensible Energy (“CENSE”) opposing limited provisions.² The Settlement Stipulation and Agreement on Tacoma LNG (“Tacoma LNG Settlement Agreement”) was joined by AWEC, PSE, Staff, Walmart, Kroger and Nucor, with The Puyallup Tribe of Indians, TEP, and Public Counsel opposing.³ AWEC did not take a position on the Green Direct settlement, and no party opposes that settlement.

¹ Dockets UE-220066 & UG-220067 (consolidated) Order 20 and UG-210918 Order 06 (Aug. 22, 2022).

² King County neither joins nor opposes the Revenue Requirement Settlement. Revenue Requirement Settlement at ¶ 3.

³ The Tacoma LNG Settlement is outside of the scope of the following parties’ intervention, and thus they do not participate in the Tacoma LNG Settlement: Microsoft, FEA, CENSE and King County. LNG Settlement at ¶ 4. NWE, Sierra Club and Front & Centered neither join nor oppose the Tacoma LNG Settlement. *Id.* at ¶ 2.

3 Public Counsel opposes the proposed Return on Equity (“ROE”) and capital structure included in the Revenue Requirement Settlement Agreement, arguing that the inclusion of these terms renders the settlement agreement overall inconsistent with the public interest, despite its position that most of the settlement provisions are reasonable and in the public interest, and that a smaller subset of issues are not contrary to the public interest.⁴ CENSE opposes the prudence of the Energize Eastside project.⁵

4 The Puyallup Tribe of Indians challenges the prudence of the Tacoma LNG project, as well as the amount of plant allocated to PSE’s regulated business, and argues that PSE did not properly consider equity in its decision to build the project.⁶ Accordingly, the Puyallup Tribe of Indians concludes that the settlement is not in the public interest.⁷ Public Counsel also opposes the prudence of the Tacoma LNG project, and asserts that PSE did not properly consider equity in its decision, thus concluding that the settlement should be rejected.⁸ TEP opposes the Tacoma LNG Settlement, and will elaborate on its position in its post-hearing brief.⁹

5 Contrary to Public Counsel’s and CENSE’s assertions otherwise, viewed holistically, the Revenue Requirement Settlement Agreement is in the public interest, as it results in rates that are fair, just, reasonable, and sufficient for the services rendered by PSE. Similarly, the Tacoma LNG Settlement also results in rates that are fair, just and reasonable related to the regulated portion of the Tacoma LNG Facility. Accordingly, AWEC continues to support the

⁴ Exh. SB-9T at 5:10 – 7:6.

⁵ Exh. NH-1T; Exh. RL-35T.

⁶ Exh. RXS-30T; Exh. GSS-1T.

⁷ Exh. RXS-30T; Exh. GSS-1T.

⁸ Exh. RLE-14CT; Exh. SB-9T at 2:19 – 3:16.

⁹ Exh. BTC-7T at 1:18-22.

Revenue Requirement Settlement Agreement and the Tacoma LNG Settlement Agreement as filed in this docket, and recommends the Commission adopt these without modification.

II. ARGUMENT

6 Pursuant to WAC 480-07-700, the Commission “supports parties’ informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest.” When evaluating a settlement, the Commission considers the “end result” to determine whether rates are fair, just, reasonable and sufficient, rather than the individual methods by which rates are determined.¹⁰ The Commission approves settlements that are “lawful, supported by an appropriate record, and consistent with the public interest in light of all of the information available to the commission.”¹¹

7 Both the Revenue Requirement Settlement Agreement and the Tacoma LNG Settlement Agreement reflect compromise positions from the parties, but ultimately strike an appropriate balance between the interests of customers and shareholders. Both agreements are lawful, supported by the record, and result in fair, just, reasonable and sufficient rates, rendering both agreements consistent with the public interest. For these reasons, both the Revenue Requirement Settlement Agreement and the Tacoma LNG Settlement Agreement should be adopted without modification.

¹⁰ See *WUTC v. Avista Corporation*, Dockets UE-120436 and UG-120437 (consolidated), Order 09, and Dockets UE-110876 and UG-110877, Order 14, at 29 (Dec. 26, 2012), referring to *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603, 64 S.Ct. 281, 88 L.Ed. 333 (1944) for the conclusion that “Ultimately, it is the ‘end result’ that is the test of whether proposed rates are fair, just, reasonable, and sufficient.”

¹¹ WAC 480-07-750(2).

A. The Revenue Requirement Settlement is consistent with the public interest and should therefore be adopted without modification.

8 The record in this proceeding is replete with evidence in support of the Revenue Requirement Settlement Agreement and should thus not be rejected or altered in accordance with Public Counsel’s recommendations for ROE and capital structure. The record further demonstrates that PSE’s decision to invest in the Energize Eastside project was prudent, and CENSE’s opposition is without merit.¹² When viewed holistically, the Revenue Requirement Settlement strikes an appropriate balance between the interests of customers and shareholders, ensuring that PSE can provide safe and reliable service while charging customers fair, just, reasonable and sufficient rates.

i. The stipulated Revenue Requirement will result in rates that are fair, just, reasonable and sufficient.

9 The Revenue Requirement Settlement Agreement benefits customers relative to PSE’s filed case and resolves several issues of importance to AWEC. First and foremost, relative to PSE’s filed case, the Revenue Requirement Settlement Agreement results in reduced costs for customers, including PSE’s industrial customers, during a period of economic challenges and high inflation.

10 PSE initially sought a three-year rate plan, over which it requested significant base rate increases, particularly for natural gas services. The Revenue Requirement Settling Parties agreed to a two-year rate plan with an overall electric revenue increase of \$223 million

¹² See Exh. JAP-SEF-JJJ-1JT at 44:6 – 45:8.

for Rate Year 1 and \$38 million for Rate Year 2,¹³ and gas revenue increase of \$70.6 million for Rate Year 1 and \$18.8 million for Rate Year 2.¹⁴ To achieve these results, the Revenue Requirement Settling Parties agreed on a “black box” approach with certain agreed upon assumptions and ratemaking treatment for certain issues:

- Two-Year Rate Plan: the settling parties agreed to a two-year rate plan, as opposed to PSE’s initially requested three-year rate plan.¹⁵ A two-year rate plan is consistent with the requirements of RCW 80.28.425, as well as the Commission’s Used and Useful Policy Statement,¹⁶ and allows PSE the opportunity to recover the reasonable and prudent costs necessary to provide safe and reliable service to customers at rates that are fair, just, reasonable and sufficient.
- Cost of Capital: the Settling Parties agreed to an authorized return on equity of 9.4 percent with a capital structure of 49 percent equity and 51 percent debt, with a cost of debt at 5.0 percent for the duration of the MYRP.¹⁷ The stipulated Cost of Capital is the product of arm’s length settlement negotiations, and should therefore be considered within the context of the overall settlement agreement and stipulated revenue increase. Moreover, the ROE and capital structure are identical to PSE’s existing ROE and capital structure established just two years ago. While capital markets have been volatile recently, there is insufficient evidence to demonstrate that these markets have

¹³ Revenue Requirement Settlement Agreement at ¶ 21.

¹⁴ Revenue Requirement Settlement Agreement at ¶ 22.

¹⁵ Revenue Requirement Settlement Agreement at ¶ 20.

¹⁶ Docket U-190531 – Policy Statement on Property that Becomes Used and Useful after Rate Effective Date (Jan. 31, 2020).

¹⁷ Revenue Requirement Settlement Agreement at ¶ 23.a.

fundamentally changed sufficiently to justify a higher or lower ROE or a change in capital structure.

- Operations & Maintenance (“O&M”) Expense:
 - For electric O&M, the Settling Parties agreed to PSE’s proposed increases to electric O&M, subject to the reductions embedded in Exhibit J to the settlement, and to move recovery of Clean Energy Implementation Plan (“CEIP”) and Transportation Electrification Plan (“TE Plan”) O&M to separate trackers.¹⁸ The reductions reflected in Exhibit J were in consideration of each party’s litigation position, and thus reflect a compromise position on a reasonable level of electric O&M for inclusion in rates. Though AWEC may be generally skeptical of trackers, moving CEIP and TE Plan costs to separate trackers helps to ensure transparency in implementing specific legislative mandates and objectives, and is supportable within the context of an overall settlement.
 - For natural gas O&M, the Settling Parties agreed to PSE’s proposed increases with a 20 percent reduction in gas O&M increases for 2023 and 2024.¹⁹ Similar to electric O&M, the agreed upon reduction from PSE’s filed case represents a compromise position for the parties and results in a reasonable level of natural gas O&M assumed in rates.

¹⁸ Revenue Requirement Settlement Agreement at ¶ 23.h.

¹⁹ Revenue Requirement Settlement Agreement at ¶ 23.i.

- Plant Investment:
 - For electric capital investments, the Settling Parties agreed to assume in rates PSE’s proposed electric capital investments as filed in its initial filing, subject to certain rate reductions and recovery of capital expenses for Clean Energy Implementation Plan and Transportation Electrification Plans through separate trackers.²⁰ The Revenue Requirement Settlement Agreement’s treatment of electric capital costs is consistent with the Commission’s used and useful policy statement, and ensures that customers ultimately bear cost responsibility for capital investments deemed prudent by the Commission. As with O&M, recovery of CEIP and TE Plan capital costs through separate trackers allows for transparency in costs and ratemaking.
 - For natural gas capital investments, the Settling Parties agreed to PSE’s proposed capital investments subject to a \$5 million reduction in 2023 and a \$1 million reduction in 2024, which reflect lower gas rate base in part attributable to lower new gas customer construction costs.²¹ Similar to electric capital investments, the Revenue Requirement Settlement Agreement’s treatment of natural gas capital costs is consistent with the Commission’s used and useful policy statement, and ensures that customers only bear cost responsibility for capital investments ultimately deemed prudent by the Commission.

²⁰ Revenue Requirement Settlement Agreement at ¶ 23.f.

²¹ Revenue Requirement Settlement Agreement at ¶ 23.g.

- NW Pipeline Refund: PSE agreed to reflect in rates the estimated \$24.3 million refund anticipated from Northwest Pipeline attributable to gas customers over a 12-month period through the Company’s annual Purchased Gas Adjustment (“PGA”) filing.²² For the estimated \$4.6 million refund attributable to electric customers, PSE agreed to credit forecasted power costs in 2023.²³ Reflection of the Northwest Pipeline refund in rates is appropriate given that PSE will receive these benefits, and thus the benefit should accrue to customers.²⁴
- Power Costs and Updates: The Settling Parties agreed that power cost increases embedded in revenue requirement are assumed to be equal to PSE’s filed case, subject to the NW Pipeline refund previously described. PSE will update its power costs in the compliance filing in this case and will use that update as the reference point for projected 2023 power costs.²⁵ While AWEC has not always supported power cost updates at the end of rate cases and reserves its right to oppose such updates in the future, AWEC was willing to agree to an update in this case in the context of overall Revenue Requirement Settlement Agreement.

11 The Revenue Requirement Settlement Agreement also reflects consideration of ESSB 5295’s directives to consider customer equity, environmental health and greenhouse gas emissions reductions,²⁶ as well as important protections for customers. Additional protections

²² Revenue Requirement Settlement Agreement at ¶ 55.
²³ Revenue Requirement Settlement Agreement at ¶ 23.d.
²⁴ Exh. BGM-1T at 41:14-19.
²⁵ Revenue Requirement Settlement Agreement at ¶ 23.d.
²⁶ See Exh. JAP-SEF-JJJ-1JT at 41:8-14.

for customers include, for example, rates subject to refund and additional review for provisional capital investments, which will be subject to an agreed upon process.²⁷ If capital investments are found to be imprudent pursuant to those processes, the Company is required to refund imprudent amounts to customers. The Company is also subject to an annual earnings review with sharing in accordance with the requirements of RCW 80.28.425(6).²⁸

ii. *The stipulated rate spread and rate design for electric service and natural gas service are in the public interest.*

12 The Revenue Requirement Settling Parties agreed to use PSE's filed rate spread methodology for electric service. For natural gas service, the Revenue Requirement Settling Parties agreed to a compromise in which gas base rate spread is set midway between PSE's proposed relative percentage-based increases and an equal percentage of margin.²⁹ The Revenue Requirement Settling Parties also agreed to spread Schedules 141-R and 141-N proportionately to the base increase.³⁰

13 While AWEC raised several concerns with PSE's natural gas cost of service study, and its proposed rate spread and rate design,³¹ AWEC views the agreement in the settlement to be an acceptable compromise of competing interests. Importantly, no party contests either the electric or natural gas rate spread and rate design components of the settlement.³² The rate spread and rate design agreed to in this case are supported by the record

²⁷ Exh. JAP-SEF-JJJ-1JT at 20:3 – 23:11.

²⁸ Revenue Requirement Settlement Agreement at ¶ 53.

²⁹ Revenue Requirement Settlement Agreement at ¶¶ 33-34.

³⁰ *Id.* at ¶ 34.

³¹ *See generally*, Exh. LDK-1T.

³² Public Counsel also accepts electric and natural gas rate spread and rate design as reasonable and in the public interest. Exh. SB-9T at 6:8-9.

and reflect the give and take of settlement discussions among parties representing all interests in this case. For these reasons, and in consideration of the Revenue Requirement Settlement Agreement as a whole, the rate spread and rate design agreed to by the parties will result in fair, just, reasonable and sufficient rates.

iii. The Commission should decline to reject or modify the Revenue Requirement Settlement Agreement as proposed by Public Counsel and CENSE.

14 The Revenue Requirement Settlement balances the interests of customers and shareholders, while ensuring that the statutory requirements of a multi-year rate plan are met and that customers are adequately protected such that only reasonable costs and prudent capital investments are reflected in rates, and that PSE's overall earnings are not unreasonable for the duration of the MYRP.

15 The two parties that object to the Revenue Requirement Settlement Agreement – Public Counsel and CENSE – do so on discrete and limited grounds. Public Counsel argues that PSE's assumed Return on Equity and Capital Structure are unreasonable, and thus render the Revenue Requirement Settlement Agreement inconsistent with the public interest, despite its conclusion that “many components of the [Revenue Requirement Settlement Agreement] are reasonable and are in the public interest....”³³ CENSE's testimony is solely focused on its assertion that the Energize Eastside project is imprudent, and should thus be removed from rates in this case.

³³ Exh. ST-9T at 5:10-14.

16 AWEC urges the Commission to refrain from adopting Public Counsel’s recommended ROE and Capital Structure and from finding PSE’s Energize Eastside project to be imprudent. With regard to adjusting ROE and Capital Structure, doing so in this case risks abandonment of the Revenue Requirement Settlement Agreement by one or more of the Settling Parties, given the right of each Settling Party to accept or reject any conditions imposed by the Commission.³⁴ The Settlement Agreement was reached following arm’s-length negotiations that balanced the interests of all parties, and resulted in an overall revenue requirement that is both supported by the record and has the support of almost every party on almost every issue. Given the number of parties to this case and their diversity of interests, this is no small feat. Consistent with its long-standing practice, the Commission should consider the “end result” of the Revenue Requirement Settlement Agreement and conclude that, as filed, it results in overall rates that are fair, just, reasonable and sufficient.

17 The Commission should reject CENSE’s arguments to deem the Energize Eastside project imprudent, as CENSE has failed to provide credible, sufficient evidence in support of its position.³⁵

B. The Commission should adopt the Tacoma LNG Settlement Agreement as filed.

18 The Tacoma LNG Settlement resolves all issues related to PSE’s investment in the regulated portion of its Tacoma LNG project. Pursuant to this agreement, the settling parties agree that PSE’s decision to build the regulated portion of the facility was prudent, and therefore

³⁴ Revenue Requirement Settlement Agreement at ¶ 75.

³⁵ Exh. JAP-SEF-JJJ-1JT at 44:6 – 45:8.

costs may be included in rates on a provisional basis via a separate tariff rider.³⁶ Importantly, the Tacoma LNG Settlement Agreement does not require any party to waive its right to challenge Tacoma LNG costs at the point that cost recovery is sought, thereby ensuring that customers only pay costs deemed reasonable and prudent by the Commission.³⁷ Unreasonable and imprudent costs will be refunded to customers to the extent they have been provisionally included in rates. Also, important to AWEC, the Tacoma LNG Settlement Agreement ensures that Tacoma LNG costs are not allocated to transport customers, consistent with the settlement agreement in which the Commission initially considered the Tacoma LNG project.³⁸ Transport customers do not benefit from the project, and thus are appropriately excluded from bearing its costs.³⁹

19 Like the Revenue Requirement Settlement, the Tacoma LNG Settlement Agreement is the result of extensive settlement discussions following robust review and analysis from the parties. It is supported by PSE, Staff, AWEC, Walmart, Kroger and Nucor. Public Counsel and the Puyallup Tribe of Indians oppose the Tacoma LNG Settlement Agreement’s provision on the prudence of constructing the Tacoma LNG project. TEP’s specific objections are unclear at this point.⁴⁰ AWEC notes that the record in this case contains substantial evidence that PSE’s decision to construct the Tacoma LNG project was prudent, and thus, PSE should be permitted to include Tacoma LNG costs in rates via the stipulated tariff rider.⁴¹

³⁶ Tacoma LNG Settlement Agreement at ¶ 18.B.

³⁷ *Id.*

³⁸ Docket No. UG-151663, Order 10, Appen. A ¶ 32 (Sept. 30, 2016).

³⁹ Exh. BGM 11-T at 10:19 – 11:5.

⁴⁰ Exh. JAP-SEF-JJJ-1JT at 45:9 – 48:2.

⁴¹ Exh. BGM-11T at 10:13-18.

III. CONCLUSION

20 As demonstrated by the record in this proceeding, the Revenue Requirement Settlement Agreement and the Tacoma LNG Settlement Agreement are consistent with the public interest. Accordingly, the Commission should accept both agreements without modification.

Dated this 31st day of October, 2022.

Respectfully submitted,

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