BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND ENERGY, Respondent.	DOCKETS UE-220066, UG-220067, UE-210918 (*Consolidated*)
In the Matter of the Petition of PUGET SOUND ENERGY For an Order Authorizing Deferred Accounting Treatment for Puget Sound Energy's Share of Costs Associated with the Tacoma LNG Facility	

POST-HEARING BRIEF OF COMMISSION STAFF

October 31, 2022

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I. INTRODUCTION

1 After "several months of negotiation,"[1] various combinations of the parties to these consolidated cases reached three settlement agreements that collectively resolve all issues raised by the general rate case filed by Puget Sound Energy (PSE) in these dockets.[2] Those settlements provide for rates that balance the interests of PSE and its ratepayers, allow PSE to invest in infrastructure critical to the realization of Washington's policy goals, put PSE on a path toward dealing equitably with all of its customers, provide for assistance to customers struggling in the post-pandemic economy, and advance the decarbonization of PSE's operations. The Commission should approve those settlements without condition.

II. SETTLEMENT REVIEW

2 The Commission supports "parties' informal attempts to resolve disputes without the need for contested hearings."[3] That said, no settlement may become effective without its approval.[4]

3 The Commission will "approve[] settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the Commission."[5] Accordingly, the Commission reviews a settlement agreement to determine whether: (1) any aspect is "contrary to law," (2) any aspect "offends public policy," and (3) "the evidence supports the proposed

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[1] Mullins, Exh. BGM-11T at 1:20-22.
[2] Those settlements are: (1) the Settlement Stipulation and Agreement (Green Direct) (hereinafter the "GD Settlement"), (2) the Settlement Stipulation and Agreement on Revenue Requirement and All Other Issues Except Tacoma LNG and PSE's Green Direct Program (hereinafter the "General Settlement"), and (3) the Settlement and Agreement on Tacoma LNG (hereinafter the "LNG Settlement").
[3] WAC 480-07-700.
[4] WAC 480-07-730.
[5] *Wash. Utils. & Transp. Comm'n v. Pac. Power & Light Co.*, Dockets UE-191024, UE-190750, UE-190929, UE-190981, & UE-180778, Order 09/07/12, 11 ¶ 29 (Dec. 14, 2020) (internal quotation omitted) (2020 Pacificorp GRC Order); WAC 480-07-750(2).

elements of the settlement as a reasonable resolution of the issues at hand."[6] The Commission may condition its approval,[7] and, if it does, the parties must clearly accept all conditions or the settlement is treated as rejected.[8]

III. THE STANDARDS FOR RATESETTING AND MULTIYEAR RATE PLANS

4 Because the Commission's approval of a settlement turns on the lawfulness of its terms, it must review the three settlements presented here against the backdrop of the law governing ratemaking.

5 "[T]he Commission" must set rates that "balance the needs of the public to have safe, reliable and appropriately priced service with the financial ability of the utility to provide that service."[9] It must, accordingly, set rates that are "fair to both customers and the utility; just . . . in that the rates are based solely on the record in" the proceeding "following the principles of due process of law; reasonable . . . in light of the range of potential outcomes presented in the record; and sufficient . . . to meet to the financial needs of the utility to cover its expenses and attract capital on reasonable terms."[10] The Commission must also set rates, terms, and practices that promote equity among a utility's customers.[11]

6 Every electric or gas general rate case filed after January 1, 2022, including this one, "must include a proposal for a multiyear rate plan."[12] The Commission has wide discretion to

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[6] *Wash. Utils. & Transp. Comm'n v. Cascade Nat. Gas Corp.*, Docket UG-210755, Order 09, 15 ¶ 48 (Aug. 23, 2022) (2022 Cascade GRC Order).
[7] WAC 480-07-750(2).
[8] WAC 480-07-750(2)(a)(iii).
[9] 2020 Pacificorp GRC Order at 11 ¶ 28.
[10] 2020 Pacificorp GRC Order at 11 ¶ 28; see RCW 80.28.010, .020.
[11] 2022 Cascade GRC Order at 9 ¶ 29 (reviewing a settlement for whether it produced "fair, just reasonable, equitable, and sufficient" rates, terms, and conditions), 16 ¶ 51 (explaining that the public interest involves a "fair, just, reasonable, and sufficient outcome"). 23-24 ¶ 74 (adding conditions to ensure that the settlement did not produce "unfair, unreasonable, unjust, and inequitable results").
[12] RCW 80.28.425(1); *see* WAC 480-07-595(1).

approve, reject, or modify any proposed multiyear rate plan based on whether it determines that the plan produces rates that are fair, just, reasonable, equitable, sufficient, and consistent with the public interest.[13] In evaluating that consistency with the public interest, the Commission "may consider . . . factors including, but not limited to, environmental health and greenhouse gas emissions reductions, health and safety concerns, economic development, and equity, to the extent that such factors affect the" company's "rates, services, and practices."[14] The legislature imposed certain requirements for any approved rate plan.[15]

IV. THE GREEN DIRECT SETTLEMENT IS LAWFUL, CONSISTENT WITH THE PUBLIC INTEREST, AND A REASONABLE RESOLUTION OF THE ELEVANT ISSUES

7 The first settlement presented for approval is the partial multiparty Green Direct (GD) Settlement.[16] Several parties take no position on the GD Settlement,[17] and no party opposes it.[18] The Commission should approve the settlement without condition as it produces a stable and reasonable method for calculating the energy credit necessary to prevent cross-subsidization between PSE's Green Direct customers and its general customer base.[19]

8 The GD Settlement's terms: (1) incorporate into PSE's rates the Resource Option Energy Charge for Schedule 139 customers as approved by the Commission in Docket UE-200817; (2) set a formula for calculating the Energy Charge Credit for all GD customers; (3) recognize PSE's right to recover from all customers the GD Energy Charge Credit amounts

[13] RCW 80.28.425(1); *see* Cascade 2022 GRC Order at 9 ¶ 29.
[14] RCW 80.28.425(1).
[15] RCW 80.28.425(2), (3), (6), (7).
[16] *See* WAC 480-07-730(3)(b) (defining a partial multiparty settlement). The settling parties are PSE, Staff, Public Counsel, King County, and WalMart. *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-220066 & UG-220067, Settlement Agreement and Stipulation (GD Settlement), 1 ¶ 1 (Aug. 4, 2022) (GD Settlement).
[17] Those parties are AWEC, TEP, NWEC, Front & Centered, Sierra Club, FEA, and Kroger. GD Settlement at 1 ¶ 1.
[18] Id.
[19] RCW 19.29A.090(5).

paid to GD customers, subject to a review of the accuracy of PSE's calculation; and, (4) continue the tracking and reporting mechanisms approved in PSE's 2020 power cost only rate case (PCORC) to monitor program costs and benefits.[20]

9 Those terms are lawful. RCW 19.29A.090(1) requires electric utilities to provide to retail customers "a voluntary option to purchase qualified alternative energy resources." To meet that obligation, PSE created the GD program. RCW 19.29A.090(5) requires that "[a]ll costs and benefits associated with" such an option "must be allocated to the customers who voluntarily choose that option and may not be shifted to any customers who have not." The energy credit at the heart of the GD Settlement ensures that this cross-subsidization does not occur.[21]

10 Further, the GD Settlement produces a reasonable result consistent with the public interest. Its terms provide ratepayers with rate "predictability" and "stability,"[22] the Commission with increased administrative efficiency,[23] and PSE with cost-recovery that complies with RCW 19.29A.090(5).[24] The formula for calculating the energy credit produces an energy credit rate that lies well within the range of rates produced by the methods previously approved by the Commission.[25] And the formula, which uses the levelized cost of the blended PPA costs, recognizes that the value of the GD contracts themselves reasonably approximates the energy and non-energy benefits GD customers provide to PSE's system.[26] It also produces a value that compensates GD customers for the provision of those benefits to

[20] GD Settlement at 5-6 ¶ 17.
[21] Piliaris, McGuire, Earle, Brombaugh & Kronauer, JT-1T at 11:12-17, 20:6-11, 21:3-10, 25:6-10,
[22] Piliaris, McGuire, Earle, Brombaugh & Kronauer, JT-1T at 12:7-10, 19:17-18.
[23] Piliaris, McGuire, Earle, Brombaugh & Kronauer, JT-1T at 12:7-10, 20:1-3.
[24] Piliaris, McGuire, Earle, Brombaugh & Kronauer, JT-1T at 9:11-14.
[25] Piliaris, McGuire, Earle, Brombaugh & Kronauer, JT-1T at 19:9-14.
[26] *See* Piliaris, McGuire, Earle, Brombaugh & Kronauer, JT-1T at 17:16-19, 18:4-8.

PSE's system, while at the same time ensuring that GD customers pay toward PSE's fixed costs, to which they contribute.[27]

V. THE GENERAL SETTLEMENT IS LAWFUL, CONSISTENT WITH THE PUBLIC INTEREST, AND A REASONABLE RESOLUTION OF NUMEROUS ISSUES

11 The second settlement presented for approval is the partial multiparty General Settlement.[28] Several parties have taken no position on the settlement;[29] Public Counsel opposes the General Settlement's return on equity (ROE) and capital structure terms, as well as the power cost term governing the process for reviewing the prudence of new generation resources;[30] and CENSE opposes its Energize Eastside terms.[31]

12 The Commission should reject Public Counsel's and CENSE's arguments and approve the settlement without condition as lawful, reasonable, and consistent with the public interest. The settlement's terms cement equity at the heart of PSE's operations by requiring it to incorporate equitable considerations into its planning processes. The settlement includes revenue requirement increases that significantly reduce PSE's as-filed request, and meaningfully increase assistance for customers struggling with their energy burden, producing rates that are fair and just to ratepayers, yet sufficient to meet PSE's needs. And the settlement requires PSE to take multiple actions meant to decarbonize its operations, something that will assist Washington meeting its climate commitments.

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[27] JT-1T at 18:4-8; *see also* JT-1T at 18:17-19:14.
[28] WAC 480-07-730(3)(b). The parties to the General Settlement are PSE, Staff, AWEC, FEA, WalMart, TEP, Kroger, NWEC, Sierra Club, Front and Centered, Microsoft, and Nucor Steel Seattle. *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-220066, UG-220067, & UG-210918, Settlement Stipulation on Revenue Requirement and All Other Issues Except Tacoma LNG and Green Direct, 1 ¶ 1 (Aug. 26, 2022) (hereinafter "General Settlement").
[29] Those parties are King County and the Puyallup Tribe of Indians.
[30] Woolridge, Exh. JRW013T at 3:10-14; Earle, Exh. RLE-14T at 21:23-22:11.
[31] *See generally* Hansen, Exh. NH-1T; Lauckhart, Exh. RL-35T.

A. The General Settlement's Rate Plan Complies With RCW 80.28.425

13 As noted above, the legislature imposed certain requirements on multiyear rate plans. The General Settlement satisfies those requirements.

14 First, any rate plan must produce rates that are fair, just, reasonable, equitable, and sufficient, and its terms must be consistent with the public interest.[32] The General Settlement complies with those requirements, as discussed further below in Section V. B.

15 Second, a rate plan must include "an increase in the amount of low-income bill assistance to take effect in each year of the rate plan where there is a rate increase," and this assistance increase "must be equal to double the percentage increase . . . in the residential base rates approved for each year of the plan."[33] The General Settlement contains terms consistent with that requirement.[34]

16 Third, the Commission must, for purposes of the plan, value the utility's property and "ascertain and determine the" utility's "revenues and operating expenses" for each year of the rate plan.[35] The General Settlement satisfies that requirement.

17 Fourth, the rate plan must provide for the deferral of "all revenues in excess of .5 percent higher than the rate of return authorized by the commission."[36] The General Settlement contains terms providing for this deferral.[37]

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[32] RCW 80.28.425(1).
[33] RCW 80.28.425(2).
[34] General Settlement at 23 ¶ 38. McCloy, Exh. LCM-1T at 15:18-16:3.
[35] RCW 80.28.425(3). Where the plan extends for more than two years, RCW 80.28.425(3)(e) imposes additional requirements concerning the utility's power costs. RCW 80.28.425(3)(e). That provision has no relevance here given the duration of the rate plan.
[36] RCW 80.28.425(6).
[37] General Settlement at 28 ¶ 53. Piliaris, Free, & Jacobs, Exh. JAP-SEF-JJJ-1JT at 20:12-20.

18 Finally, the Commission must select measures for evaluating the performance of a utility operating under a rate plan.[38] The General Settlement requires PSE to report a number of metrics from which the Commission could choose these measures.[39]

19 At hearing, Chair Danner inquired whether the agreed to metrics satisfy the requirements of RCW 80.28.425(7) without associated incentives or penalties.[40] They do.

20 RCW 80.28.425(7) distinguishes between "performance measures," "incentives," and "penalty mechanisms." Although none of those terms are defined, the statute gives meaning to the first by context,[41] explaining that they are meant to "be used to assess a gas or electric company operating under a multiyear rate plan."[42] To "assess" something means "to judge or decide the amount, value, quality, or importance of something."[43] Performance measures thus differ from incentives and penalty mechanisms, which encourage or discourage actions or outcomes.[44] The plain text of RCW 80.28.425(7) therefore indicates that the Commission need only approve metrics usable to measure how PSE performs under this multiyear rate plan; it need not approve any particular "incentive" or "penalty mechanism."[45] The Commission could,

[38] RCW 80.28.425(7).
[39] General Settlement at 30-34 ¶¶ 60-64. Those metrics incorporate by reference those offered by PSE in its initial filing. *Id.* at 30 ¶ 60.
[40] Piliaris, TR. 324:15-328:1 (Chair Danner inquiring whether the proposed metrics satisfy RCW 80.28.425(7)).
[41] *See Buchheit v. Geiger,* 192 Wn. App. 691, 696, 368 P.3d 509 (2016) (tribunals may use statutory context to ascertain the plain meaning of statutorily undefined terms).
[42] RCW 80.28.425(7).
[43] Cambridge Dictionary Online, *available at* https://dictionary.cambridge.org/dictionary/English/assess (last visited Oct. 20, 2022); *see Buchhet,* 192 Wn. App. at 696 (tribunals may use dictionaries to ascertain the plain meaning of statutorily undefined terms).
[44] *See* Cambridge Dictionary Online, *available at* https://dictionary.cambridge.org/dictionary/English/incentive (Defining "incentive" to mean something that encourages a person to do something) (last visited Oct. 21, 2022), Cambridge Dictionary Online, *available at* https://dictionary.cambridge.org/dictionary/ English/penalty (defining "penalty" to mean "a disadvantage brought about as a result of a situation or action) (last visited Oct. 21, 2022). *see Buchheit,* 192 Wn. App. at 696 (tribunals may use dictionaries to ascertain the plain meaning of statutorily undefined terms).
[45] RCW 80.28.425(7)

and should, simply designate the metrics agreed to in the Settlement as the performance measures called for in RCW 80.28.425(7), or some subset thereof.

B. The General Settlement's Individual Terms Are Lawful And Reasonably Advance The Public Interest

21 The general settlement contains terms that concern, among other things,[46] equity, the rate plan length and yearly revenue requirement, cost of capital and capital structure, advanced metering infrastructure, power costs, various tracker mechanisms, the Energize Eastside project, and performance-based regulation. Those terms are lawful and in the public interest.

1. The Equity terms

22 As noted, the Commission may consider equity when determining whether a multiyear rate plan is in the public interest.[47] This consideration focuses on "energy justice and its core tenets."[48] Energy justice involves "(1) ensuring that individuals have access to energy that is affordable, safe, sustainable, and affords them the ability to sustain a decent lifestyle; and (2) providing an opportunity to participate in and have meaningful impact on decision-making processes."[49] Its core tenets are: distributional justice,[50] procedural justice,[51] recognition

[46] Other parties will brief these other issues where they have a strong interest in the outcome. The Energy Project will brief why the settlement's low-income and time-varying-rate-pilot terms are lawful and in the public interest. The Joint Environmental Advocates will brief why the settlement terms related to natural gas infrastructure, natural gas line allowances, and decarbonization are lawful and in the public interest. AWEC, the Federal Executive Agencies, Kroger, Walmart, and Nucor Steel Seattle will brief why the settlement's rate spread and rate design terms and lawful and in the public interest.
[47] RCW 80.28.425(1).
[48] 2022 Cascade GRC Order at 18 ¶ 56.
[49] Cascade 2022 GRC Order at 18 ¶ 56.
[50] Distributional justice "refers to the distribution of benefits and burdens across populations." 2020 Cascade GRC Order at 18 ¶ 56.
[51] Procedural justice "focuses on inclusive decision making processes and seeks to ensure that proceedings are fair, equitable, inclusive for participants, recognizing that marginalized and vulnerable populations have been excluded from decision-making processes historically." 2022 Cascade GRC Order at 18 ¶ 56.

justice,[52] and restorative justice.[53] The general settlement's equity terms are consistent with energy justice and those core tenets, and require PSE to make significant changes to its operations so as to deal equitably with all of its customers.

a. Corporate Capital Planning (CCP)

23 The CCP terms require PSE to create (1) "a process or procedures" requiring "PSE's Board of Directors and senior management [to] plan for equitable outcomes when making decisions on enterprise-wide capital portfolios" in its planning processes," and (2) "corporate spending authorizations "that require sponsors to consider the equitable distribution of benefits and reduction of burdens of" each project or program.[54]

24 These terms "take an important step toward [a] paradigm shift"[55] that would "require PSE to incorporate an equity lens into its Corporate Capital Planning Process," the process that "governs the enterprise-wide planning and allocation of funds from the five-year budget."[56] They "move the Company toward monitoring how it can eliminate" systemic barriers "deeply entrenched in systems of inequality and oppression" as it "integrat[es] feedback from persons affected by its decisions."[57] In doing so, the terms "incorporate elements of distributional and procedural justice."[58]

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[52] Recognition justice "requires an understanding of historic and ongoing inequalities and prescribes efforts that seek to reconcile these inequalities;" 2022 Cascade GRC Order at 18 ¶ 56.
[53] Restorative justice requires the use of "regulatory government organizations or other interventions to disrupt and address distributional, recognitional, or procedural injustices, and to correct them through laws, rules, orders, and practices." 2020 Cascade GRC Order at 18 ¶ 56.
[54] General Settlement at 14-15 ¶ 24.
[55] McCloy, Exh. LCM-10T at 5:7-14.
[56] Erdahl, Exh. BAE-1T at 13:3-7.
[57] Erdahl, Exh. BAE-1T at 13:9-12.
[58] Erdahl, Exh. BAE-1T at 13:7-8.

b. Delivery and Distribution System Planning (DDSP)

25 The DDSP term requires PSE to (1) coordinate its Distribution System Planning with its CEIP process to create an "integrated system planning approach for distribution system investments," and (2) "develop new benefits and costs related to equity for use in the optimization step in" the software that replaces its investment decision optimization tool.[59]

26 The DDSP terms contain elements of each of the four core tenets of energy justice. By requiring PSE to develop "new benefits and costs with associated weights related to equity" and then "incorporate those benefits and costs into resource decisions," the terms "will directly contribute to distributional justice."[60] The "robust public participation process" required by the term will require PSE to collaborate with "advisory groups, customers, and Named Communities," and thus contribute to procedural, recognitional, and restorative equity by "seeking to recognize and correct that affected communities have not been involved in creating the benefits and costs" currently used by PSE.[61]

c. The Distributional Equity Analysis (DEA)

27 The DEA term requires PSE to "develop methods and process for a pilot distribution equity analysis" and then apply those methods and process as a pilot to the 80 MW of DER resources it intends to acquire pursuant to its 2021 IRP and CEIP.[62] After completion of the pilot, PSE will make a filing with the Commission that will initiate a Staff-led process, supported by a Staff-selected facilitator that PSE must hire, to refine methods for distributional equity analyses.[63]

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[59] General Settlement at 15-16 ¶¶ 25-26.
[60] Erdahl, Exh. BAE-1T at 14:2-4.
[61] Erdahl, Exh. BAE-1T at 14:4-9.
[62] General Settlement at 27 ¶ 50. If PSE does not pursue that DER project, it must select another one agreeable to the parties.
[63] General Settlement at 27-28 ¶ 51.

28 These terms contain elements of two of the core tenets of energy justice. They "seek[] to ensure that PSE will distribute and prioritize resources equitably, rather than based on the most favorable benefit-to-cost ratio."[64] That will produce, in the long run, distributional equity.[65] And the terms further procedural equity by "result[ing] in a process that will be open to participation from other parties to refine the methods for a distributional equity analysis of benefits and burdens during the MYRP,"[66] thus "providing" interested persons "an opportunity to participate in and have meaningful impact on decision making processes."[67]

2. The revenue requirement items

29 The general settlement contains the agreed-to revenue requirement and a number of terms that impact that revenue requirement. The Commission should approve the settlement as lawful, reasonable, and in the public interest based on those terms, which reflect significant negotiation and compromise on the part of each of the settling parties.

a. The rate plan term and the revenue requirement

30 The General Settlement provides for a two-year rate plan[68] with stepped revenue requirement increases in each year.[69] Although the parties did not agree on a common method for reaching the agreed to revenue requirements, they did specify a number of the elements.[70] For the first rate year (RY2023) the settlement authorizes incremental revenues of $223 million for PSE's electric operations and $70.6 million for PSE's gas operations.[71] For the second rate

[64] Erdahl, Exh. BAE-1T at 15:8-11.
[65] See 2022 Cascade GRC Order at 18 ¶ 56.
[66] Erdahl, Exh. BAE-1T at 15:3-6.
[67] Erdahl, Exh. BAE-1T at 15:6-8.
[68] General Settlement at 4 ¶ 20.
[69].General Settlement at 4 ¶¶ 20-21.
[70] Mullins, Exh. BGM-11T at 2:18-20; *see generally* General Settlement at 4-14 ¶¶ 20-23.
[71] General Settlement at 4 ¶ 21. In its initial filing, PSE sought incremental revenues of $330 million for electric operations and $165 million for gas operations for RY 2023. Rodriguez, Exh. AJR-1T at 5 Table 1.

year (RY2024), the settlement authorizes incremental revenues of $38 million and $18.8 million for PSE's electric and gas operations, respectively.[72]

31 Those terms "reflect[] a reasonable outcome for revenue requirement."[73] The shorter duration of the rate plan as compared to PSE's initial filing reflects concern about the state of the economy and the need to gain experience with the operation of multiyear rate plans under RCW 80.28.425.[74] The agreed to revenue requirement increases constitute significant savings for PSE's ratepayers as compared to PSE's initial filing,[75] even when accounting for the shifting of some costs into tracker mechanisms,[76] while at the same time providing stable and predictable revenues that will allow PSE to perform its public service obligations.[77] That is exactly the balance that the Commission strives for in setting fair, just, reasonable, and sufficient rates.[78]

b. Cost of Capital

32 The General Settlement specifies PSE's return on equity (ROE) as 9.4 percent, its cost of debt as 5.0 percent, and its capital structure as 49 percent equity and 51 percent debt for the duration of the rate plan.[79] Public Counsel opposes those terms, asking the Commission to set PSE's ROE at 8.8 percent and its capital structure with a 48.5/51.5 equity/debt split.[80] The

[72] General Settlement at 4 ¶ 22. In its initial filing, PSE sought incremental revenues of $62.7 million for electric operations and $29.9 million for gas operations for RY 2024. Rodriguez, Exh. AJR-1T at 5 Table 1.
[73] Erdahl, Exh. BAE-1T at 2:20-21.
[74] Piliaris, Free & Jacobs, Exh. JAP-SEF-JJJ-1JT at 9:25-28; Crane, Exh. ACC-19T at 8:15-22.
[75] Erdahl, Exh. BAE-1T at 4:15-21.
[76] *See* Crane, Exh. ACC-19T at 5:12-16 (noting that PSE's initial filings contained $42.9 million for electric RY2023, $16.2 million for electric RY2024, $32.8 million for gas RY2023, and $32.4 million for gas RY2024 that will now be recovered under the trackers described below).
[77] Erdahl, Exh. BAE-1T at 4:18-19; Piliaris, Free, & Jacobs, Exh. JAP-SEF-JJJ-1JT at 4:1-9, 8:17-10:4.
[78] *Wash. Utils. & Transp. Comm'n v. Avista Utils.*, Dockets UE-200900, UG-200901, UE-200894, Order 08/05, 10-11 ¶ 23 (Sept. 27, 2021).
[79] General Settlement at 4 ¶ 23.a.
[80] *See generally* Woolridge, Exh. JRW-13T.

settlement terms are lawful and in the public interest, and the Commission should reject Public Counsel's proposed alternative and adopt them without condition.

i. Capital Structure

33 The Commission determines an appropriate capital structure "to set the framework for calculating an overall rate of return" so as to "balance safety (the preservation of investment quality credit ratings and access to capital) against economy (the lowest overall cost to attract and maintain capital)."[81] The Commission may look to a utility's historic capital structure, a projected capital structure, or it may create a hypothetical capital structure to achieve this balance.[82]

34 PSE plans to rebalance safety and economy through injections of equity.[83] The settlement's capital structure terms reflect those plans. They are lawful.[84] They will also help PSE retain access to capital on reasonable terms, something that will benefit ratepayers in the long run,[85] and thus something consistent with the public interest.

35 Public Counsel, however, urges the Commission to instead set PSE's equity ratio at 48.5 percent based on PC witness Woolridge's conclusions about: (1) PSE's historical capitalization, (2) the Commission's past practice, and (3) the typical equity ratios in what he believes to be PSE's peers.[86] Those arguments are misplaced.

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[81] *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Dockets UE-050864 & UE-050412, Order 04/03, 82 ¶ 230 (Apr. 17, 2006) (2005 PacifiCorp GRC Order).
[82] 2005 PacifiCorp GRC Order at 82 ¶ 230.
[83] Peterman, Exh. CGP-1T at 42:5-12; Hasan, Exh. KKH-1T at 46:5-7.
[84] PSE's test-year capital structure was 49 percent equity and 51 percent debt. Peterman, Exh. CGP-1T at 16 Table 4. The Commission can thus either treat the settlement capital structure as based on its historic capitalization or a project. Hazan, Exh. KKH-1T at 47:3-5. Either is permissible. 2005 PacifiCorp GRC Order at 82 ¶ 230 (the Commission accepts historic or projected capital structures).
[85] Shipman, Exh. TAS-1T at 2:1-3, 29:7-13.
[86] Woolridge, Exh. JRW-13T at 3:10-13;JRW-1T at 29:3-12.

36 Public Counsel's arguments about PSE's historic capitalization lack merit. Whatever PSE's historic level of capitalization, it plans on issuing equity, and it has business justifications for doing so.[87] As PSE notes, the regulatory and financial environment has changed significantly over the last three years, and it must adapt to those changes.[88]

37 Public Counsel's arguments about the Commission's past practices fare no better. The Commission's ratemaking standards are not frozen in time, and they adapt to new laws and changes in the economic cycle.[89] Both are occurring here, and the Commission's order should reflect as much.

38 Public Counsel's arguments about average capitalizations are plainly erroneous. Woolridge reviewed the capital structure of utility parent companies, not operating utilities.[90] PSE is an operating utility, and it and its peers have vastly different equity structures than their corporate parents.[91] Given Woolridge's error, the Commission should place no weight on his analysis.

ii. Return on Equity (ROE)

39 The Commission must set rates that permit a utility to "earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties."[92] This return "should be reasonably sufficient to assure confidence in the financial integrity of the enterprise,

[87] *E.g.*, Peterman, Bulkey, & Shipman, Exh. CGP-AEB-TAS-1JT at 47:13-48:10.
[88] Peterman, Bulkey, & Shipman, Exh. CGP-AEB-TAS-1JT at 47:5-12.
[89] *See Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-200900, UG-200891, & UE-200894, Order 08/05, 38 ¶ 97 (Sept. 27, 2021) (Avista 2020 GRC Order)
[90] Peterman, Bulkey, & Shipman, Exh. CGP-AEB-TAS-1JT at 49:1-4.
[91] Peterman, Bulkey, & Shipman, Exh. CGP-AEB-TAS-1JT at 49:4-10.
[92] *Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm'n*, 262 U.S. 679, 692-93, 43 S. Ct. 675, 67 L. Ed. 1176 (1923).

so as to maintain its credit and to attract capital."[93] When selecting the appropriate ROE, the Commission exercises its "informed judgment" when considering expert testimony, "the general state of the economy, investment cycles in the industry, and the principle of gradualism."[94]

40 The settlement's ROE term leaves PSE's current ROE in place. That reflects a reasonable compromise given the risk-lowering effects of the rate plan (more timely recovery of investments, for example) and the risk-raising effects of rampant inflation and the Federal Reserve's tightening monetary policy.[95] The Commission should adopt it.

41 Public Counsel, for its part, contends the Commission should adopt a lower ROE based on Woolridge's analysis. And not a slightly lower ROE: PC asks the Commission to set PSE's ROE at 8.8 percent. Regardless of whether Woolridge erred in his analysis, and he did, in multiple ways,[96] Public Counsel's recommendation replaces gradualism with shock therapy. But the Commission employs gradualism with movement in a utility's ROE rather than shock therapy because of the dire financial consequences of adjusting a utility's ROE too quickly.[97] PC's recommendation is facially unreasonable, and the Commission should reject it.

c. Advanced Metering Infrastructure

42 In the General Settlement, the settling parties: (1) stipulate to a determination that PSE has sufficiently demonstrated system benefits for its AMI deployment, (2) agree that PSE will not obtain a final prudence determination until all AMI installation is complete and PSE updates its AMI benefits report to show how it has continued to maximize systemic and

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[93] *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603, 64 S. Ct. 281, 88 L. Ed. 333 (1944).
[94] *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-200900, UG-200901, & UE-200894, Order 08/05, 38 ¶ 97 (Sept. 27, 2021) (Avista 2020 GRC Order).
[95] Erdahl, Exh. BAE-1T at 5:18-22; Shipman, Exh. TAS-1T at 20:7-15.
[96] *See generally* Peterman, Bulkey, & Shipman, Exh. CGP-AEB-TAS-1JT at 6:11-45:19.
[97] *Wash. Utils. & Transp. Comm'n v. Cascade Natural Gas Corp.*, Docket UG-200568, Order 05, 35 ¶ 123 (May 18, 2021); *see, e.g.*, Shipman, Exh. CGP-AEB-TAS-1T at 59:13-60:10.

customer benefits, (3) require PSE to continue deferring the return on equity of its AMI investments, and (4) agree to allow PSE to begin amortizing the deferred debt component of its return on AMI investments.[98]

43 The Commission has long required PSE to defer the return on its AMI investment. It did so because it determined that "PSE has not satisfactorily demonstrated the benefits of the AMI system as a whole."[99] The Commission intended this deferral to incent PSE to wring "maximum value" from its AMI investment, both for its customers and its system.[100]

44 The settlement continues, albeit less forcefully, that incentive. It recognizes the parties' discomfort with the showing PSE had made about its realization of AMI's benefits,[101] and PSE's need for cash flow to fund its public service obligations. Allowing PSE to amortize the debt component of the return on AMI rate base gives it that cash flow,[102] but the continued deferral of the return-on-equity component until PSE submits a report showing maximization of AMI's benefits will force it to continue to maximize those benefits.[103] Again, that is exactly the type of balance of utility and ratepayer needs the Commission strives for when setting rates.

d. Power Costs

45 The General Settlement contains terms that: (1) embed in the revenue requirement costs equal to PSE's initially filed power costs, less the electric portion of the Northwest Pipeline settlement (a net of roughly 120.9 million dollars in RY2023); (2) forbid PSE from filing a

[98] General Settlement at 5-6 ¶ 23.e. The settlement also contains terms concerning AMI metrics, but this brief folds that term into the general metrics discussion below.
[99] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-190529, UG-190530, UE-190274, UG-190275, UE-171225, UG-171226, UE-190991, & UG-190992, Order 08/Order 05/Order 03, 49 ¶ 155 (July 8, 2020) (2020 PSE GRC Order).
[100] 2020 PSE GRC Order at 49-50 ¶157.
[101] *See* Erdahl, Exh. BAE-1T at 9:9-11
[102] Erdahl, Exh. BAE-1T at 9:3-15.
[103] Erdahl, Exh. BAE-1T at 9:3-15.

power cost only rate case (PCORC) during the rate plan, but allow PSE to update its power cost baseline for 2023 and 2024 with specified inputs following a specified process; (3) clarify that DER power purchase agreements, battery resources, and demand response costs are eligible for recovery through the power cost baseline updates; and (4) deem the acquisition of the resources listed in PSE's initial filing as prudent and clarify that interested persons may challenge the prudence of any resources acquired subsequent to the initial filing in the power cost baseline update.[104] Those terms are lawful and consistent with the public interest, for three reasons.

46 First, the ability to update its power costs will prevent PSE from facing under-recoveries that it cannot "continue to absorb" as it complies with CETA and adjusts its resource mix.[105] The update thus eliminates a potential constraint on PSE's ability to comply with state law.

47 Second, the updates will improve the accuracy of the PCA baseline forecast.[106] The accuracy of that forecast is critical to the correct functioning of the PCA baseline, and thus to its purposes of mitigating risk and incenting PSE to manage its power costs.[107]

48 Third, the settlement sets out an orderly process that balances administrative economy with the parties' need to thoroughly review PSE's power costs. The PCORC stay-out provision and the annual multi-year rate plan filing terms will reduce the number of filings PSE will make with the Commission.[108] At the same time, the other terms give parties an extra 30 days to review PSE's power cost model inputs as compared to Staff's litigation position[109] and a

[104] General Settlement at 4-5 ¶ 3.d, 17-19 ¶¶ 27-32.
[105] Piliaris, Free, & Jacobs, Exh. JAP-SEF-JJJ-1JT at 10-15.
[106] Erdahl, Exh. BAE-1T at 15:17-19, 16:3-6.
[107] Erdahl, Exh. BAE-1T at 16:1-3.
[108] Erdahl, Exh. BAE-1T at 17:21-18:2, *see id.* at 15:20-16:1.
[109] Erdahl, Exh. BAE-1T at 16:8-10.

five-month period for reviewing PSE's power costs and the prudency of any new resources.[110] If necessary, any interested person may ask the Commission to delay the prudence determination until the next year, providing additional time for the review where necessary.[111]

49 Public Counsel, however, argues that power cost determinations should only occur in PSE's next GRC.[112] The Commission should reject that argument, which not only needlessly turns PSE's power cost filings into an adjudication by default, adding to the Commission's administrative burden, but ignores interested persons' ability to extend the review process by asking the Commission to defer a prudence finding for a year.

e. The trackers and tracker-adjacent issues

50 As noted above, the General Settlement removes a number of items in PSE's as-filed case from base rates and authorizes PSE to develop tracker mechanisms for certain costs for those items. The trackers are lawful and very much consistent with public policy, specifically the state's energy policy goals.

i. The Colstrip Tracker and Colstrip Remediation Costs

51 The General Settlement contains six key Colstrip terms. Those (1) authorize PSE to move Colstrip rate base and expense into a separate tracker, (2) exclude dry ash investments from the tracker, (3) require PSE to amortize any major maintenance costs for Colstrip over three years, regardless of the year in which the Company incurs them, (4) reserve interested parties' right to challenge Colstrip costs when PSE makes its annual tracker tariff filing, (5) accept PSE's calculation of estimated decommissioning and remediation costs, net of monetized Production Tax Credits, and (6) accept PSE's proposed allocation factor for

[110] Erdahl, Exh. BAE-1T at 17:3-13.
[111] Erdahl, Exh. BAE-1T at 173:16.
[112] Earle, Exh. RLE-14T at 21:18-22:11.

Microsoft's share of D&R costs and allow Microsoft to immediately pay its share of those costs, with PSE bearing the risk of any inaccurate cost forecast.

52 Removing Colstrip rate base and expense from base rates and transferring them to a tracker will facilitate CETA compliance with regard to decommissioning and remediation costs, and also provide transparency as to those costs, facilitating review.[113] That review will ensure that PSE's customers pay only for costs PSE prudently incurs, and the dry ash and major maintenance terms ensure that ratepayers will not pay for those costs after 2025, when CETA requires PSE to eliminate coal generation from its allocation of electricity.[114] And the Microsoft term will provide all of PSE's ratepayers certainty with regard to Microsoft's share of the Colstrip D&R costs.

ii. The CEIP Tracker

53 The General Settlement authorizes PSE, working with other interested parties, to "develop a separate tracking mechanism and tariff. . . for costs included in its approved CEIP . . . that are not included in Power Costs and [which] are appropriate for recovery during" the rate plan.[115] Any costs recovered through the tracker are subject to full review,[116] and their inclusion within the tracker does not qualify them as incremental costs for purposes of CETA's compliance provisions.[117]

54 Those terms recognize that PSE's investment in CEIP costs is necessary for Washington to meet its energy goals.[118] At the same time, PSE's filed case left much uncertain

[113] Erdahl, Exh. BAE-1T at 9:22-10:4.
[114] Erdahl, Exh. BAE-1T at 10:6-13.
[115] General Settlement at 8 ¶ 23.k. Appropriate costs include distributed energy resource (DER) program costs, "O&M expense, and capital expense for projects that enable CEIP implementation." *Id.*
[116] General Settlement at 8 ¶ 23.k.
[117] General Settlement at 8 ¶ 23.k; *see* RCW 19.405.050(3); WAC 480-100-660(4).
[118] Piliaris, Free, & Jacobs, Exh. JAP-SEF-JJJ-1JT at 19:2-10.

as to which investments PSE would actually make.[119] By moving those costs out of base rates and into a tracker, the parties simplified treatment of the costs – PSE will forecast them and then true them up, subject to the parties' review and a potential refund.[120] PSE will thus receive timely, provisional recovery of its investments and ratepayers will ultimately only pay for investments that PSE actually makes.

iii. The Transportation Electrification (TE) Tracker

55 The General Settlement authorizes PSE to develop a rate tracker for "Transportation Electrification Program costs."[121] As with the CEIP and Colstrip trackers, any cost included in the TE Tracker are subject to full review when PSE files the relevant tariff revisions.[122]

56 Much like the CEIP tracker, The TE tracker terms provide PSE with timely recovery for critical investments, but make that recovery subject to later review and potential refunds. Again, PSE will need to make significant investments in TE for Washington to meet its energy policy goals.[123] But, at the same time, the TE sector is evolving rapidly, and there is significant uncertainty about the shape of those investments over the life of the rate plan.[124] By moving TE costs to a tracker, the Commission can provide PSE with timely, provisional recovery of its investments, which will incent investments necessary to achieve state energy policy goals, but at the same time provide ratepayers the protection of a full review, including all the traditional ratemaking standards.[125]

f. Energize Eastside

57 The General Settlement allows PSE to place its Energize Eastside costs into rates

[119] Erdahl, Exh. BAE-1T at 11:7-10.
[120] Piliaris, Free, & Jacobs, Exh. JAP-SEF-JJJ-1JT at 15:4-6; Erdahl, Exh. BAE-1T at 11:10-12.
[121] General Settlement at 8 ¶ 23.l. Eligible costs include "capital, depreciation, and O&M expenses." *Id.*
[122] General Settlement at 8 ¶ 23.l.
[123] Piliaris, Free, & Jacobs, Exh. JAP-SEF-JJJ-1JT at 19:2-10.
[124] Erdahl, Exh. BAE-1T at 11:19-12:2.
[125] Erdahl, Exh. BAE-1T at 12:2-3; Piliaris, Free, & Jacobs, Exh. JAP-SEF-JJJ-1JT at 19:7-10.

provisionally, with the settling parties agreeing to accept a determination that PSE has made the threshold showing necessary for it to do so.[126] Investment costs will be subject to review after PSE has placed the relevant plant into service, with potential refunds based on that review.[127] CENSE opposes this term on policy and factual bases.[128] The Commission should reject CENSE's arguments and adopt the settlement's terms as a lawful and reasonable resolution of the Energize Eastside issues presented.

58 CENSE's bases its policy arguments on a policy that no longer exists. Specifically, CENSE contends that the Commission forbids rate recovery for investments that it has not yet deemed prudent.[129] But the Clean Energy Transformation Act (CETA) allowed the Commission to authorize such recovery,[130] and the Commission has issued a policy statement generally approving of provisional recovery for property not in-service by the rate effective date.[131] The Energize Eastside terms are fully consistent with CETA's changes to the law, the Commission's policy statement, and with the public interest, because they provide PSE with timely, provisional recovery of its investment in the project,[132] but ensure that it must refund any amounts deemed imprudent, not used and useful, or otherwise in violation of the Commission's ratemaking standards when the Commission reviews the project after PSE places it in service.[133]

59 CENSE's factual arguments fare no better. CENSE first contends that PSE fails to show the need for the project, assailing the studies PSE provides and offering its own. Its

[126] General Settlement at 8 ¶ 23.m.
[127] General Settlement at 8 ¶ 23.m.
[128] See generally Lauckhart, Exh. RL-1T, RL-35T; Hansen, Exh. NH-1T.
[129] Lauckhart, Exh. RL-35T at 5:22-6:8, 10:5-11.
[130] RCW 80.04.250(2), (3).
[131] *See generally in re Commission Inquiry into the Valuation of Public Service Company Property that Becomes Used & Useful after Rate Effective Date*, Docket U-190531, Policy Statement (Jan 31, 2020).
[132] Erdahl, Exh. BAE-1T at 12:9-16.
[133] Erdahl, Exh. BAE-1T at 12:9-16.

claims here lack merit. PSE has offered studies, both its own[134] and those done by others,[135] attesting to the need for the project. The permitting authorities that have looked at those have found PSE's proper and credible and CENSE's not.[136] And the Commission should note that PSE's studies were correct, and CENSE's were not. PSE faces transmission deficits on the eastside of Lake Washington that, unless remedied, will require PSE to shed load (cut power to) large numbers of customers at summer and winter peak demand.[137] The legislature tasked the Commission with regulating electric companies to prevent events like those from happening.[138]

60 CENSE also contends that PSE failed to consider alternatives to the Energize Eastside project. That argument fails as well. PSE considered both "wires" and "non-wires" alternatives to the Energize Eastside project.[139] None of these, however, provided a more feasible, cost-effective solution than the Energize Eastside project.[140]

3. Performance Based Regulation and Metrics

61 The General Settlement contains multiple performance based ratemaking terms. These: (1) approve with modifications a performance incentive mechanism (PIM) concerning DR proposed by PSE, and (2) approve with numerous additions the performance metrics proposed by PSE, and PSE will report its performance on these metrics to the Commission in conjunction with its annual MYRP review filings.[141]

a. The DR PIM

[134] Koch, Exh. DRK-1T at 64:30-66:4Koch, Exh. DRK-3; Koch, Exh. DRK-4
[135] Koch, Exh. DRK-7, Koch, Exh. DRK-10, Koch, Exh. DRK-11, Koch, Exh. DRK-112
[136] E.g., Koch, DRK-27 at 4-5; Koch, Exh. DRK-28 at 3-5
[137] Koch, Exh. DRK-1T at 53:7-15, 54:18-55:7.
[138] RCW 80.28.010(2) (requiring utilities to maintain instrumentalities and facilities that are "safe, adequate, and efficient").
[139] Nightingale, Exh. JBN-1T at 5:14-7:20; Koch, DRK-26T at 11:24-12:9; Koch, Exh. DRK-1T at 55:19-62:18.
[140] Koch, DRK-26T at 12:10-13:14; Koch, Exh. DRK-1T at 55:19-64:29.
[141] General Settlement at 29-30 ¶ 58, 30-34 ¶¶ 60-64.

62 As noted, the settlement would authorize a modified version of the DR PIM proposed by PSE in its initial filing. The modified PIM is lawful and in the public interest.

63 RCW 80.28.425(7) authorizes the Commission to "develop[]" performance incentives, like the DR PIM. A DR PIM is in the public interest because it will "incent[] . . . PSE to overcome hurdles to implement DR programs."[142] This particular PIM, with the modifications to PSE's as-filed PIM, "will push PSE to implement over 40 MW of DR" over the rate plan.[143] The modifications create "customer safeguards"[144] by capping the incentive payment at approximately one million dollars over the rate plan, avoiding the risk of "significant cost to customers,"[145] and by sunsetting the PIM at the end of the rate plan.[146]

b. Metrics

64 As also noted, the settlement requires PSE to calculate and report numerous metrics to the Commission.

65 RCW 80.28.425(7) requires the Commission to "determine a set of performance measures that will be used to assess a gas or electric company operating under a multiyear rate plan." When "developing performance measures, incentives, and penalty mechanisms, the commission may consider" a non-exclusive list of factors that includes, among other things, "lowest reasonable cost planning, affordability, increases in energy burden, cost of service, . . .service reliability, clean energy or renewable procurement, conservation acquisition, demand side management expansion, rate stability, . . . [and] attainment of state energy and emissions reduction policies."[147]

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[142] Erdahl, Exh. BAE-1T at 19:5-9.
[143] Erdahl, Exh. BAE-1T at 19:10-12.
[144] Cebulko, Exh. BTC-7T at 6:3-4.
[145] Erdahl, Exh. BAE-1T at 19:5-12.
[146] Cebulko, Exh. BTC-7T at 6:3-4.
[147] RCW 80.28.425(7).

66 The metrics are an evolutionary step forward in the Commission's regulation of PSE. "Taken together," they "will help establish whether the Company's investments are producing benefits for PSE's customers and whether those benefits are being distributed equitably."[148] This baseline will, as a number of witnesses testified, allow the Commission to properly craft a wide spectrum of PIM and penalty mechanisms in future rate cases.[149]

VI. THE LNG SETTLEMENT IS LAWFUL, CONSISTENT WITH THE PUBLIC INTEREST, AND A REASONABLE RESOLUTION OF THE ISSUES PRESENTED

67 The final settlement presented for approval is the partial multiparty LNG Settlement.[150] The LNG Settlement: (1) specifies that PSE will continue to defer LNG costs until recovery of those costs begins through a tracker mechanism, and also specifies which costs are eligible for potential inclusion in the tracker; (2) creates the tracker mechanism; (3) accepts a determination that PSE's decision to build the LNG plant was prudent, but reserves the parties right to challenge LNG costs when PSE files the tariff pages for the tracker; and (4) provides for an agreed-to rate spread and rate design.[151] The Puyallup Tribe and Public Counsel oppose the settlement, arguing in different ways that PSE did not prudently decide to build the LNG facility. This settlement, too, is lawful, consistent with the public interest, and a reasonable outcome for the Tacoma LNG issues, and the Commission should reject the Puyallup Tribe's and PC's arguments to the contrary.

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[148] Erdahl, Exh. BAE-1T at 19:17-19.
[149] Erdahl, Exh. BAE-1T at 19:21-20:2; Piliaris, TR. 323:13-17; Cebulko, TR. 326:13-327:1; McCloy, TR. 327:10-20.
[150] WAC 480-07-720(3)(b). The parties to the LNG Settlement are PSE, Staff, AWEC, Walmart, Kroger, and Nucor Steel Seattle, Inc. *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-220066, UG-220067, & UG-210918, Amended Settlement Stipulation & Agreement on Tacoma LNG, 1 ¶ 1 (Sept. 9, 2022) (LNG Settlement).
[151] LNG Settlement at 4-5 ¶ 18.

68 The LNG terms simplify ratemaking as it relates to the LNG facility. PSE had not yet placed the LNG plant in service when it filed this rate case,[152] and the case therefore involved costs deferred pursuant to an accounting petition,[153] historic test year costs, post-test year costs, and estimates of future costs, such as operations and maintenance costs. By shifting LNG recovery into a tracker, the settlement eases the parties' review of those costs because when PSE files the tracker tariff schedule, the costs for which PSE seeks recovery through its requested tracker rates at that point will be known and measurable and the plant will be demonstrably used and useful, or not.[154]

69 And the LNG terms preserve all parties' ability to challenge construction or operations costs that do not survive scrutiny under the Commission's ratemaking standards.[155] This will ensure that PSE's customers only pay for plant that was prudently constructed and used and useful, and that they only pay for expenses that were prudently incurred. Again, this properly balances the interests of PSE and its ratepayers.[156]

70 The Puyallup Tribe asks the Commission to deny PSE rate recovery for the LNG plant given what the Puyallup Tribe argues are infirmities in the showing of need made by PSE as well as the equity, environmental, and safety issues the facility presents.[157] Its arguments are based on considerations of prudence and the public interest.

71 The Puyallup Tribe's first prudence claim is that PSE failed to show a need for the facility because it had sufficient resources, its forecasts were erroneous and therefore could not justify the facility, and because municipalities have begun enacting bans on new gas

[152] Roberts, Exh. RJR-1T at 69:10-14.
[153] Free, Exh. SEF-1T at 137:17-138:19.
[154] Erdahl, Exh. BAE-1T at 20:20-21:2.
[155] Erdahl, Exh. BAE-1T at 20:19-20.
[156] Erdahl, Exh. BAE-1T at 20:19-20.
[157] *See generally*, Saleba, Exh. GSS-1T; Sahu, Exh. RXS-30T.

connections, limiting the need for new gas resources.[158] The first argument fails because PSE has an obligation to serve customers that request service and thus had a need to prepare to serve anticipated growth.[159] The second claim improperly engages in ex post data analysis rather than looking to what PSE knew at the time it made the relevant decisions, and that analysis is impermissible under the Commission's prudence standards.[160] The last contention looks to events that had not occurred (and which the company could not have reasonably anticipated) at the time PSE made the relevant decisions, again, something impermissible under the Commission's prudence analysis.[161]

72 The Puyallup Tribe's second prudence claim is that PSE should have known not to build the LNG facility because of equitable, environmental, and safety considerations. Again, a prudence review does not employ hindsight, but instead focuses on what the utility knew or should have known at the time it made a decision.[162] At the time PSE made the decision to build the LNG plant, the Commission did not consider the considerations raised by the Puyallup Tribe as within its regulatory ambit, relying instead on other tribunals to address those concerns.[163]

73 The Puyallup Tribe also seeks disallowance of LNG costs based on a public interest standard. This line of argument presents difficult questions. As the Commission has

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[158] Saleba, Exh. GSS-1T at 6:15-10:3.
[159] *See* RCW 80.28.110; WAC 480-90-238.
[160] *Wash. Utils. & Transp. Comm'n v. Puget Sound Power & Light Co.*, Cause U-83-54, Fourth Supplemental Order, at 32 (Sept. 28, 1984).
[161] *Wash. Utils. & Transp. Comm'n v. Puget Sound Power & Light Co.*, Cause U-83-54, Fourth Supplemental Order, at 32.
[162] *Wash. Utils. & Transp. Comm'n v. Puget Sound Power & Light Co.*, Cause U-83-54, Fourth Supplemental Order, at 32.
[163] *E.g., in re Petition of Puget Sound Energy, Inc.*, Docket UG-151663, Order 10, 57 ¶ 133 (Oct. 31, 2016) ("Ms. Brown also expressed concerns about 'indirect costs' including pollution she believes the plant will cause to property values, health, and future industrial development. These important matters are concerns for other regulatory bodies, but the Commission has limited authority with respect to them."); *see id.* at 9 ¶ 22 ("[i]n this connection, it is important to understand that the Commission principally is an economic regulator.").

recognized, "the public interest is not a static determination or concept."[164] And the public interest has changed – CETA and other recently enacted statutes reflect the legislature's determination that energy policy should not focus on results for PSE's customers as a monolithic bloc, but that it should focus on ensuring that historically marginalized or minimized groups within PSE's customer base receive equitable treatment.[165] Staff doubts that the Commission would have issued the order paving the way for the construction of the LNG facility[166] or that it would approve of a multiyear rate plan involving a facility that began after the enactment of CETA or RCW 80.28.425(1) under the new definition of the public interest. But where does that leave this facility, which was planned and mostly built under the old legal regime?

74 Staff concludes, and so should the Commission, that the applicable definition of the public interest was the one in effect at the time PSE decided to build the facility. That accords with the general presumption that changes in the law operate prospectively absent some legislative indication to the contrary,[167] and the fact that nothing in CETA or RCW 80.28.425(1) speaks to retrospective operation. Under that definition, the public interest largely focused on incenting PSE to provide the least cost, yet reliable, service possible,[168] with some legislative encouragement for services like the provision of compressed and liquefied natural gas for vehicles.[169] PSE decided to build the LNG facility to comport with those understandings of the public interest.[170]

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[164] *In re Petition of Puget Sound Energy, Inc.*, Docket UG-151663, Order 10, 54 ¶ 124.
[165] *E.g.*, RCW 19.405.010(6), .040(8), .060(1)(c)(iii); RCW 80.28.425(1)
[166] *See generally in re Petition of Puget Sound Energy, Inc.*, Docket UG-151663, Order 10.
[167] *Kitsap Alliance of Property Owners v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 160 Wn. App. 250, 259, 255 P.3d 696 (2011).
[168] *See In re Petition of Puget Sound Energy, Inc.*, Docket UG-151663, Order 10, 6 ¶ 15, 47 ¶ 105.
[169] *E.g.*, RCW 80.28.280.
[170] *See generally in re Petition of Puget Sound Energy, Inc.*, Docket UG-151663, Order 10, 8 ¶ 21, 44-47 ¶¶ 101-105

75 Public Counsel opposes cost-recovery for the LNG facility on pure prudence grounds, arguing that PSE failed to make the necessary showing on each of the Commission's prudence criteria. The Commission should reject those arguments. No matter how Public Counsel's witness dresses them up, its witness's conclusion about the showing of need made by PSE all apply hindsight, looking at PSE's actual need long after PSE made a decision based upon forecasted need. And, in any event, that witness uses the wrong data for comparing actual and forecasted need to create a difference between those two[171] and uses actual need data biased by PSE's subsequent, aggressive conservation measures.[172] Public Counsel's arguments about PSE's analysis of alternatives and communications with PSE's board of directors ignore that PSE had an obligation to plan to fill the projected shortfall in gas supply,[173] reasonably considered alternatives, and reasonably communicated that analysis with the board.[174]

VII. CONCLUSION

The three settlements presented for the Commission's consideration are lawful, in the public interest, and a reasonable resolution of the issues presented by PSE's initial filing. The Commission should approve them without condition.

RESPECTFULLY SUBMITTED this 31st day of October, 2022.

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[171] Roberts, Exh. RJR-30T at 6:19-9:11.
[172] Roberts, Exh. RJR-30T at 10:20-22.
[173] RCW 80.28.210.
[174] Roberts, Exh. RJR-30T at 17:4-28:16, 31:5-33:10.