BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

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Docket UE-220066/UG-220067 and UG-210918 (*consolidated*)

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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

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BRIEF OF PUGET SOUND ENERGY

OCTOBER 31, 2022

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I. INTRODUCTION

1. In late January 2022, Puget Sound Energy ("PSE") filed its first multiyear rate plan under RCW 80.28.425. The new statute, which governs rate cases filed after January 1, 2022, mandates the filing of multiyear rate plans with performance measures, provides for rates subject to refund, offers an earnings sharing mechanism to protect customers during the multiyear rate plan, and allows the consideration of equitable factors as part of the public interest standard. PSE's case proposed a three-year multiyear rate plan, with testimony and exhibits from 37 witnesses. PSE's case addressed: cash flow concerns PSE has faced since the passage of the Tax Cuts and Jobs Act and PSE's 2019 general rate case; the acquisition of new power cost resources; recovery of $4 billion in capital expenditures that will have been added since the last general rate case; performance based measures as required by statute; low-income assistance; and resources to improve reliability for gas and electric customers on the coldest winter days and the hottest summer days and to lay the groundwork for cleaner, greener energy under the Clean Energy Transformation Act ("CETA") and the Climate Commitment Act ("CCA"), among other things.

2. Fifteen parties intervened. The non-company parties had a full opportunity to investigate PSE's filed case, to propound more than 1,100 data requests,[1] and to file their own response testimony. These parties, with widely divergent interests, came together over the course of four and a half months in an attempt to resolve the challenging issues in PSE's case. Ultimately, three different settlements were executed: the Green Direct Settlement,[2] the Revenue Requirement Settlement,[3] and the Tacoma LNG Settlement.[4] Together, these three settlements resolve all issues in the case and present a delicately crafted and carefully balanced resolution of the complex issues in the case. Importantly, the three settlements offer substantial benefits to

[1] Exhibits submitted by the parties demonstrate the substantial volume of the discovery directed to PSE.
[2] Settlement Stipulation and Agreement (Green Direct).
[3] Settlement Stipulation and Agreement on Revenue Requirement and All Other Issues Except Tacoma LNG and Green Direct.
[4] Amended Settlement Stipulation and Agreement on Tacoma LNG.

customers: a transmission project that will avoid the risk of rolling blackouts from an existing transmission capacity deficit on the eastside of Lake Washington; new and extended power cost resources that will limit PSE's reliance on a volatile power market; a natural gas peaking resource to serve gas distribution customers on the coldest days in winter; development of a process to plan for more equitable outcomes in corporate capital planning and an equitable distribution of benefits and burdens in distribution system planning; new and expanded low-income assistance including a bill discount rate, arrearage management plan, a funding increase for the Home Energy Lifeline Program ("HELP"), and an extension of PSE's low-income weatherization funding increase through the end of PSE's next general rate case; a time varying rates pilot that includes low-income participants; a decarbonization study; and a targeted electrification pilot and strategy.

3. While the parties executing each individual settlement vary, the majority of parties to the case either support or do not oppose the settlements. Only three parties filed testimony in opposition to the settlements: The Public Counsel Unit of the Washington Office of the Attorney General ("Public Counsel"), The Puyallup Tribe of Indians ("Tribe"), and the Coalition of Eastside Neighborhoods for Sensible Energy ("CENSE"). Each of them opposes limited and discrete issues in the settlements. Two of these opposing parties, CENSE and the Tribe, oppose separate PSE infrastructure projects. CENSE, a neighborhood group, opposes the Energize Eastside transmission project, which addresses a transmission capacity deficiency on the eastside of Lake Washington in PSE's service territory. For five of the past six summers, demand on the eastside has exceeded the transmission reliability threshold, putting thousands of PSE customers at risk of rolling blackouts. Despite the urgent need for the Energize Eastside project, which is already under construction, and despite the fact that the Energize Eastside is being built on an existing transmission corridor, CENSE opposes the project. CENSE has repeatedly opposed the project in multiple venues: Newcastle conditional use permit, Bellevue conditional use permit, Environmental Impact Statement ("EIS") proceedings; and the arguments CENSE has made in these venues has been repeatedly rejected and found to be not credible. CENSE has repeated its

same discredited arguments in this case. CENSE continues to oppose this much needed transmission project in the current case, even though numerous permits have been granted and one phase is under construction and projected to be completed next year.

4. Like CENSE, the Tribe has opposed the Tacoma LNG Facility proposed by PSE in this case in multiple forums, including before the Shoreline Hearings Board, the Puget Sound Clean Air Agency, and the Pollution Control Hearings Board. The Tribe's arguments have been largely rejected by each agency. The Tribe now uses the same worn out and meritless arguments in a final effort to oppose the Tacoma LNG Facility in this case, even though the Tacoma LNG Facility is already built, and used and useful to serve customers on the coldest winter days when peak demand occurs. Public Counsel also filed testimony in opposition to the Tacoma LNG Facility, taking the unusual position that PSE's well-established and accepted planning standards for peak cold days should not be used when considering the need for the Tacoma LNG Facility.

5. PSE has demonstrated the prudence of these projects through voluminous testimony and exhibits. PSE has demonstrated that these projects benefit customers. Specifically, both projects allow for PSE to reliably serve customers in the most extreme weather: the Tacoma LNG Facility allows PSE to have adequate gas supply to serve its natural gas customers on the coldest peak days, and the Energize Eastside project will resolve the transmission capacity deficiency so that power is available on summer and winter peak days.

6. Public Counsel also filed testimony opposing the return on equity ("ROE") and the equity ratio in the settlement. No other party opposes these settlement terms. Public Counsel proposes a drastic decrease in PSE's ROE that is unreasonable and defies principles of gradualism.

7. The three settlements presented to the Commission by a diverse group of settling parties are supported by substantial evidence, they are consistent with the public interest, and are consistent with Washington law. The settlements allow PSE and the State of Washington to move forward towards a greener, cleaner, and more equitable future. They result in rates that are fair, just, reasonable, and sufficient, and they provide assistance for PSE's most vulnerable,

energy burdened customers. For these reasons, PSE respectfully requests that the three settlements be approved, without conditions.

II. LEGAL STANDARDS

A. Rates Must Be Consistent with the Expanded Public Interest Standard, and Be Fair, Just, Reasonable, and Sufficient

8. The ultimate legal question in a general rate case is whether the rates and charges proposed by a utility are in the public interest and are fair, just, reasonable, and sufficient.[5] In making these determinations, the Commission is bound by the statutory and constitutional mandate that a regulated utility is entitled to (i) reasonable and sufficient compensation for the service it provides,[6] and (ii) the opportunity to earn "a rate of return sufficient to maintain its financial integrity, attract capital on reasonable terms, and receive a return comparable to other enterprises of corresponding risk."[7]

9. Washington's ratemaking structure has undergone significant changes in recent years that today allow for a far more flexible approach to ratemaking. The Washington Legislature's 2019 passage of CETA proclaimed that it is "the policy of the state to eliminate coal-fired electricity, transition the state's electricity supply to one hundred percent carbon-neutral by 2030, and one hundred percent carbon free by 2045."[8] The Legislature recognized "that utilities in the state have an important role to play in this transition, and must be fully empowered, through regulatory tools and incentives, to achieve the goals of this policy."[9] The Legislature declared that flexible regulatory mechanisms are available and should be used: "[t]he legislature recognizes and finds that the utilities and transportation commission's statutory grant of authority for rate making includes consideration and implementation of performance and incentive-based

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[5] RCW 80.28.020; *People's Org. for Wash. Energy Res. v. WUTC*, 104 Wn.2d 798, 808 (1985) (en banc) ("*POWER*"); *see also* RCW 80.28.425(1) (the Commission can also consider equitable factors to the extent such factors affect the rates, services, and practices of a gas or electrical company regulated by the commission).
[6] *POWER*, 104 Wn.2d at 808; *Puget Sound Traction Light & Power Co. v. Pub. Serv. Comm'n*, 100 Wn. 329, 334 (1918) (en banc); RCW 80.28.010(1).
[7] *WUTC v. Avista Corp.*, Dockets UE-991606, *et al.*, Third Supp. Order ¶ 324 (Sept. 29, 2000).
[8] RCW 19.405.010(2).
[9] RCW 19.405.010(5).

regulation, multiyear rate plans, and other flexible regulatory mechanisms, where appropriate to achieve fair, just, reasonable, and sufficient rates and its public interest objectives."[10]

10. Accordingly, CETA broadened RCW 80.04.250, the "used and useful" statute, by allowing rates to be set based on property that is "used and useful for service in this state *by or during the rate effective period*."[11] Further, CETA amended RCW 80.04.250 to expressly allow for rates to be set "using any standard, formula, method, or theory of valuation reasonably calculated to arrive at fair, just, reasonable, and sufficient rates."[12] CETA requires the Commission to establish an appropriate process to identify, review and approve property that becomes used and useful after the rate effective date.[13] In January 2020, the Commission issued its Used and Useful Policy Statement,[14] which provides guidance with respect to the changes to the statute.[15] The Used and Useful Policy Statement describes the Commission's expectations with respect to property that becomes used and useful after the rate effective date: utilities should continue to adhere to the "matching principle,"[16] offsetting factors should be considered,[17] and recovery for forecasted cost in rates would be "subject to refund."[18] Further, the Used and Useful Policy Statement suggested ways property could be categorized for review[19] and the process by which final review could occur.[20]

11. Following the enactment of CETA and the amendments to RCW 80.04.250, in 2021, the Legislature enacted RCW 80.28.425 which requires that "[b]eginning January 1, 2022, every general rate case filing of a gas or electrical company must include a proposal for a multiyear

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[10] *Id.*
[11] RCW 80.04.250(2) (emphasis added for newly adopted statutory language).
[12] RCW 80.04.250(3).
[13] *Id.*
[14] Policy Statement on Property that Becomes Used and Useful After Rate Effective Date, Docket U-190531 (Jan. 31, 2020) (hereinafter the "Used and Useful Policy Statement").
[15] RCW 34.05.230(1) ("Current interpretive and policy statements are advisory only."); WAC 480-07-920(1) ("Interpretive and policy statements are advisory only and are not binding on the commission or any person.").
[16] Used and Useful Policy Statement, ¶¶ 20-22, 24.
[17] *Id.* ¶¶ 20, 22, 24, 25, 29, 37, 41, 45.
[18] *Id.* ¶¶ 38, 44, 46.
[19] *Id.* ¶¶ 11, 16, 28, 31, 35.
[20] *Id.* ¶¶ 33-48.

rate plan as provided in this chapter."[21] The Commission's consideration of a proposed multiyear rate plan is subject to the same standards as traditional general rate cases, i.e., whether the proposed rates are fair, just, reasonable, and sufficient and in the public interest.[22] "In determining the public interest, the commission may consider such factors including, but not limited to, environmental health and greenhouse gas emissions reductions, health and safety concerns, economic development, and equity, to the extent such factors affect the rates, services, and practices of a gas or electrical company regulated by the commission."[23]

12. The three settlements before the Commission in this case meet the standards set forth above. They are consistent with the public interest. They do not harm customers and in fact provide numerous benefits for customers as discussed in more detail in this brief and in the testimony and evidence supporting the settlements. The result is rates that are fair, just, reasonable, equitable, and sufficient. The three settlements should be approved by the Commission without conditions.

B. The Commission's Prudence Standard Continues to Apply

13. The Commission has long recognized the standard for considering whether plant investments made by utilities are prudent. Although the Commission reviews the prudence of such investments retrospectively, the review is based on what a reasonable utility knew or should have known at the time the decision was made to move forward with the project,[24] which gives a level of certainty to utilities and investors, who contribute substantial funds towards these investments.[25] With new laws allowing for multiyear rate plans, the Commission further recognizes that a threshold prudence determination is appropriate to determine whether the plant can go into rates provisionally, subject to refund.[26] Prudence is part of the investment threshold

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[21] RCW 80.28.425(1).
[22] *Id.*
[23] *Id.*
[24] *WUTC v Puget Sound Energy*, Docket UE-031725, Order 12 ¶ 19 (Apr. 7, 2004).
[25] *See* Shipman, Exh. TAS-1T at 8:14-9:9 (discussing the importance to investors of consistency and transparency in regulatory frameworks).
[26] Used and Useful Policy Statement, ¶¶ 35, 38, 44, 46.

question,[27] which should include an analysis of need, consideration of alternatives, and review of the general level of spending. Parties and the Commission would then have an opportunity to review the prudence of costs expended when the project is complete, in the annual review, with rates subject to refund if the costs for the project were not prudently incurred.[28]

14. In PSE's 2003 Power Cost Only Rate Case proceeding the Commission reaffirmed the standard it applies in a prudence review. The standard the Commission applies to measure prudence is what a reasonable board of directors and company management would decide based on what they knew or reasonably should have known at the time the decision was made.[29] The Commission recently affirmed that the prudence analysis is not based on hindsight but rather is determined at the point in time when a company made its decision. Once that time is identified, "the Commission can consider whether the Company's decision was prudent *at the time it was made*, in light of what the Company knew or reasonably should have known."[30]

15. In addition to the reasonableness standard, the Commission has cited several specific factors that inform the question of whether a utility's decision to acquire a new resource was prudent. The utility must first determine that the new resource is necessary.[31] Once a need has been identified, the utility must determine how to cost effectively fill that need. When considering acquiring or constructing a resource to meet its need, the utility must evaluate that resource against other potential resources.[32] The utility must keep its board of directors involved in the resource purchase decision process and informed about the resource cost.[33] Last, the utility

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[27] *Id.* ¶ 35.
[28] This is similar to the approach taken by the Alaska Regulatory Commission which reviews whether the decision to proceed with a project was prudent (decisional prudence) and whether actual construction management of the project was prudent (managerial prudence); see *In the Matter of the Revenue Requirement & Cost of Serv. Study Designated As Ta381-1 Filed by Alaska Elec. Light & Power Co.*, U-10-29, Order 15, at 7-11, 11-14 (Sept. 2, 2011).
[29] *WUTC v Puget Sound Energy*, Docket UE-031725, Order 12 ¶ 19 (Apr. 7, 2004).
[30] *WUTC v Avista Corp.*, Dockets UE-200900 *et al.*, Order 08/05 ¶ 267 (Sept. 27, 2021) (emphasis added).
[31] *See, e.g.*, *WUTC v. Puget Sound Power & Light Co.*, Dockets UE-921262, *et al.*, Nineteenth Supp. Order p. 11 (Sept. 27, 1994).
[32] *Id.* at 11.
[33] *Id.* at 37, 46.

must also keep contemporaneous records that will allow the Commission to evaluate its actions with respect to the process of deciding to purchase the resource.[34]

16. As described above, the Commission's prudence standard has remained generally the same for decades. This is due, in part, to the investment community's need for certainty. If the Commission were to create a shifting standard for utility prudence decisions regarding construction and acquisition of plant, it would raise due process concerns from a legal standpoint. From a practical standpoint, investors would look for other utilities and jurisdictions in which to invest their capital, where the regulatory environment is more stable and predictable. Ultimately, this would result in increased costs for regulated utilities in Washington and increased rates for utility customers.[35]

17. The three settlements in this case support the prudence of several investments in infrastructure and power costs, among others. PSE documented the prudence of these resources in its initial prefiled case. The parties had ample time to review the prudence documentation, and most parties support or do not oppose the determination of prudence for these resources. As such, the Commission should determine that the capital investments and power cost resources identified in the settlements are prudent and allow them into rates, as discussed in more detail in this brief and in the settlements and evidence supporting the settlements.

C. Settlements Are Favored by the Commission and Should Be Approved if they Are Not Contrary to Law, Do Not Offend the Public Interest, and Are Supported by Evidence

18. As set forth below, PSE's general rate case was filed in accordance with and meets the requirements of RCW 80.04.250, RCW 80.28.425, and the Used and Useful Policy Statement, and all issues in the case have been resolved through three settlement agreements: (1) the Multiparty Settlement Stipulation on Green Direct ("Green Direct Settlement"), (2) the

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[34] *Id.* at 2, 37, 46.

[35] *See* Shipman, Exh. TAS-1T at 8:14-9:9; *see also id.* at 18:14-19:6 (quoting S&P outlook: "[w]e believe Washington's new law, *predicated on the commission implementing it in a credit supportive manner*, could improve the regulatory environment") (emphasis added).

Multiparty Settlement Stipulation on Revenue Requirement and All Other Issues Except Tacoma LNG and Green Direct ("Revenue Requirement Settlement"), and (3) the Amended Multiparty Settlement Stipulation on Tacoma LNG ("Tacoma LNG Settlement"). Washington law and Commission precedent strongly support and encourage "the resolution of contested issues through settlement when doing so is lawful and consistent with the public interest."[36] In evaluating a proposed settlement, "[t]he 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."[37] And, "in settlements, as in fully-litigated rate cases, the Commission must determine that the resulting rates are fair, just, reasonable, and sufficient, as required by state law."[38] The Commission evaluates (i) whether any aspect of the proposal is contrary to law; (ii) whether any aspect of the proposal offends public policy; and (iii) whether "the evidence supports the proposed elements of the settlement as a reasonable resolution of the issues at hand."[39] However, "[r]atemaking is not an exact science"[40] and settlements are "by nature compromises of more extreme positions."[41] Settlement is appropriate where "the overall result in terms of revenue requirement is reasonable and well supported by the evidence."[42]

19. In this case, together, the three settlements resolve perhaps the most complex case in PSE's history and will be instrumental in shoring up PSE's financial health as it continues its transition to clean energy and complies with CETA and the CCA, while also considering equitable factors in all aspects of utility operations. The Revenue Requirement Settlement and the Tacoma LNG Settlement were negotiated together. Compromises and trade-offs by the

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[36] RCW 34.05.060; WAC 480-07-700, -740–750; *WUTC v. Cascade Nat. Gas Corp.*, Docket UG-060256, Order 05 ¶ 24 (Jan. 12, 2007) (internal citations omitted); *see also WUTC v. Verizon Northwest, Inc.*, Docket UT-061777, Order 01 ¶ 11 (June 30, 2008).
[37] *WUTC v. Avista Corp.*, Dockets UE-150204/UG-150205, Order 05 ¶ 20 (Jan. 6, 2016).
[38] *Id.*
[39] *Id.* ¶ 21.
[40] *Cascade Nat. Gas Corp.*, Docket UG-060256, Order 05 ¶ 24 (Jan. 12, 2007) (internal citations omitted).
[41] *Id.*
[42] *Id.*

supporting and non-opposing parties are reflected in both settlements. The settlements are a reasonable resolution of the issues and result in rates that are in the public interest and are fair, just, reasonable, and sufficient. PSE urges the Commission to approve the settlements without conditions.

III. THE COMMISSION SHOULD APPROVE THE GREEN DIRECT SETTLEMENT, WITHOUT CONDITIONS

20. The Commission should approve the Green Direct Settlement without conditions. The Green Direct Settlement has a wide base of support among parties to the case: PSE, Commission Staff, Public Counsel, King County, and Walmart all join in and support the Green Direct Settlement. Public Counsel represents residential, non-Green Direct customers; King County and Walmart are Green Direct customers. No party in the case opposes the Green Direct Settlement.

21. The Green Direct Settlement is in the public interest because it provides a reasoned and fair approach to allocating costs and benefits associated with PSE's voluntary long term renewable energy purchase rider under Schedule 139 ("Green Direct") in a manner consistent with RCW 19.29A.090(5). That statute requires that "[a]ll 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."

22. Further, the Green Direct Settlement is in the public interest because it fulfills the parties' commitment in the settlement of PSE's 2020 Power Cost Only Rate Case ("PCORC") to establish "a durable method for calculating the energy credit for Green Direct customers and a means to flow any impacts from changing the methodology for calculating the Green Direct credit through to non-Green Direct customers."[43] And, it responds to the Commission's directive in the Final Order approving the 2020 PCORC Settlement that PSE "encourag[e] Green Direct customers to participate in future discussions on this issue."[44] As previously noted, both King

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[43] *WUTC v. Puget Sound Energy*, Docket UE-200980, Settlement Stipulation and Agreement at 6 (Apr. 2, 2021).
[44] *WUTC v. Puget Sound Energy*, Docket UE-200980, Order 05 ¶ 18 (June 1, 2021).

County and Walmart are Green Direct customers and parties to this case and the Green Direct Settlement.

23. A key aspect of the Green Direct Settlement is that it resolves a dispute that has been raised in several prior cases regarding the calculation of the Energy Charge Credit for Green Direct customers. The purpose of the Green Direct Energy Charge Credit "is to compensate Green Direct customers for the cost of the volume of energy they paid for on their electric service schedule but avoided by taking Green Direct service under Schedule 139."[45] The resolution agreed to by the Green Direct settling parties, and not opposed by any party, is intended to establish a durable method for calculating the Energy Charge Credit for Green Direct customers. After collaborative discussions in 2021 and numerous settlement discussions in 2022 as part of the current case, the interested parties reached agreement on a Green Direct Charge Credit that is a "reasonable proxy for the avoided cost of Green Direct customers having their own dedicated resources."[46]

24. There is not one "correct" answer on how the Green Direct Energy Charge Credit should be calculated because parties have differing perspectives on which costs are avoided, and the costs and benefits of the Green Direct program can be extremely difficult or impossible to quantify.[47] Prior to the current settlement, the Green Direct Energy Charge Credit had been set at the variable portion of the Power Cost Adjustment ("PCA") rate, which has most recently been identified for 2023 as $45.8 per MWh. [48] In its direct filing in this case, PSE proposed using the energy portion of the PCA rate to calculate the Green Direct Energy Charge, which is 75 percent of the PCA rate and has most recently been identified for 2023 as $49.4 per MWh.[49] The settling

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[45] Green Direct Settlement Joint Testimony, Exh. JT-1T at 12:15-18.
[46] *Id.* at 11:10-12.
[47] *Id.* at 10:6-16, 17:1-12.
[48] *Id.* at 14, n. 19 (citing Free, Exh. SEF-12 at 1:37). The PCA rate, including the variable portion of the PCA rate, will be updated as part of the power cost update in the compliance filing in this docket. *See* Revenue Requirement Settlement, § 28(b).
[49] Green Direct Settlement Joint Testimony, Exh. JT-1T at 15:15-18 (citing Piliaris, Exh. JAP-5 at 1:2). The PCA rate, including the energy portion of the PCA rate, will be updated as part of the power cost update in the compliance filing in this docket. *See* Revenue Requirement Settlement, § 28(b).

parties agreed to a compromise rate of $47.8 per MWh, which is calculated as the weighted, levelized cost of the two Green Direct PPAs—the Skookumchuck PPA and the Lund Hill PPA.[50]

25. The Green Direct Energy Charge Credit has a fixed escalation of two percent per year, which provides Green Direct and other customers predictability and provides Green Direct customers rate stability. The fixed escalation provides a transparent and simple mechanism for calculating the Green Direct Energy Charge Credit in the future.[51]

26. The Green Direct Settlement expressly provides that it is appropriate for PSE to recover from all customers, through base rates or a separate tariff, the Energy Charge Credit amounts paid to Green Direct customers.[52] Consistent with this provision, the Revenue Requirement Settlement provides that "[t]he recovery of the Green Direct Energy Credit is included in the proposed electric revenue requirement in this Settlement."[53]

27. PSE will continue to track costs and benefits associated with generation surplus or deficiency of the Green Direct resources. As the Green Direct Settlement provides, the methodology for tracking costs and benefits will be unchanged from the methodology established in the 2020 PCORC Settlement.[54]

28. In conclusion, the Green Direct Settlement complies with Chapter 19.29A RCW, it resolves issues that have arisen in multiple prior cases in a manner that satisfies divergent interests, and it is supported by the evidence in the record. For these reasons, the Commission should approve the Green Direct Settlement without conditions.

IV. THE COMMISSION SHOULD APPROVE THE REVENUE REQUIREMENT SETTLEMENT, WITHOUT CONDITIONS

29. The Commission should approve the Revenue Requirement Settlement without conditions. The Revenue Requirement Settlement contains compromises of the issues addressed therein and is fully supported by twelve of the sixteen parties to the case. The terms were

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[50] Green Direct Settlement Joint Testimony, Exh. JT-1T at 18:1-3, 19:9-14.
[51] *Id.* at 20:17-19.
[52] Green Direct Settlement, § 17.
[53] Revenue Requirement Settlement, § 23(s).
[54] Green Direct Settlement, § 17.

carefully negotiated between the settling parties, along with the negotiation of the Tacoma LNG Settlement, and the disruption of any of the terms could have repercussions in other portions of the settlements. Of the parties that did not join, the only party that opposes the Revenue Requirement Settlement is CENSE, and their participation is limited to Energize Eastside. Although not a signatory, Public Counsel actively participated in negotiations and supports or does not oppose many of the terms. The Tribe and King County take no position on the Revenue Requirement Settlement. The objections by CENSE and Public Counsel on the discrete issues they challenge are inconsistent with the evidence presented in the case. Finally, the settlement contains robust protections for customers including rates subject to refund if PSE does not invest in the level of plant projected, an earnings sharing mechanism that protects customers if PSE earns 0.5 percent higher than the rate of return authorized by the Commission (with no similar protection for PSE if it under earns on its authorized rate of return),[55] and a plethora of customer equity and low-income provisions to protect those PSE's customers that are energy burdened.[56] In sum, given the complexity of this case and the number of topics at issue, achieving a settlement of nearly all case issues between multiple parties with widely differing perspectives and interests is a remarkable, balanced achievement, and it should be approved by the Commission without conditions.

A. The Revenue Increase Allows PSE the Resources to Make Investments Needed to Provide Safe and Reliable Service to Customers in an Equitable Manner, While Also Transitioning to a Cleaner Energy Supply

30. The Commission should approve the revenue increase agreed to by the parties. No party opposes the settlement, except for CENSE's challenge to Energize Eastside and Public Counsel's limited challenge, both of which are addressed below. The vast majority of the settlement terms are not opposed. In its prefiled direct testimony, PSE provided evidence regarding the financial challenges it faces—including severely constrained cash flow—as a result of the Tax Cuts and

[55] Revenue Requirement Settlement, § 53.
[56] *Id.* §§ 37-40.

Jobs Act as well as the under recoveries of investments and costs incurred on behalf of PSE customers resulting from the Commission's final order in PSE's 2019 general rate case.[57] By the time rates from the current case go into effect, PSE will be carrying more than four years of net capital expense and operations expense growth that has not been included in rates.[58] While PSE has been able to temporarily mitigate the impacts of the limited recovery from the 2019 general rate case order, these actions are unsustainable.[59] The revenue increases included in the Revenue Requirement Settlement will promote financial stability and allow PSE to provide safe and reliable service to customers and continue its transition to cleaner energy.[60]

31. Since its last general rate case, PSE has made more than $3 billion in necessary and prudent investments that are already providing safe and reliable service to PSE customers, but PSE is not yet recovering in rates this substantial investment.[61] These include programs and projects such as Advanced Metering Infrastructure, and investments in necessary cybersecurity, infrastructure, grid modernization, and pipeline replacement.[62] Likewise, during the multiyear rate plan, PSE will make additional investments subject to refund. The settling parties agree that these investments should be included provisionally in rates subject to refund.

32. The Revenue Requirement Settlement reflects substantial compromise by PSE on several issues. PSE agreed to reduce its revenue request by nearly $200 million[63] and to adjust the timing and rate recovery of several electric and natural gas projects.[64] PSE agreed to this reduction in the spirit of compromise and in consideration of the other terms of the settlement, including the CEIP and the TEP trackers. The revenue requirement agreed to by the settling parties is in the public interest and will result in fair, just, reasonable, and sufficient rates because it provides PSE

[57] Peterman, Exh. CGP-1CT at 4:6-5:4, 30:1-36:16; Hasan, Exh. KKH-1CT at 12:7-14:16, 45:4-46:1.
[58] Rodriguez, Exh. AJR-1T at 12:7-16.
[59] *Id.* at 12:7-16; Hasan, Exh. KKH-1CT at 12:7-13:3.
[60] Rodriguez, Exh. AJR-1T at 11:10-12:6.
[61] *Id.* at 10:12-17.
[62] Rodriguez, Exh. AJR-1T at 5:9-6:12; *see generally* Tamayo, Exh. SLT-1T; Koch, Exh. CAK-1Tr2, Exh. CAK-5, Exh. CAK-6, Exh. CAK-7.
[63] Revenue Requirement Settlement, Exh. A at 5.
[64] *Id.* at 8.

the financial resources to make the investments needed to provide safe and reliable core utility service to customers in an equitable manner and to make the changes necessary for PSE to meet its obligations under CETA and the CCA and to continue the transition to clean energy sources.

B. The Revenue Requirement Settlement Will Allow PSE to Improve Its Financial Health While Also Providing Robust Protections for Customers to Mitigate the Rate Increase, Especially for Low Income Customers

33. As explained above, the revenue increase supported by the settling parties in the Revenue Requirement Settlement will provide much needed relief to improve PSE's financial health.[65] However, PSE and the settling parties understand the need to provide assistance to low income and energy burdened customers.[66] To help mitigate the rate increase, the Revenue Requirement Settlement contains robust protections for low income and energy burdened customers including:

- <u>Protections for low-income customers.</u> The Revenue Requirement Settlement contains substantial support for low income customers including: robust increases in funding for low-income bill assistance;[67] that PSE, in consultation with the Low-Income Advisory Committee, will develop and design a new low income Bill Discount Rate, which will begin on October 1, 2023, and an Arrearage Management Plan;[68] provisions to support low-income conservation and weatherization;[69] and that PSE will continue its existing credit and collection practices until the conclusion of the proceedings in Docket U-210800.[70]

- <u>Rates subject to refund.</u> In accordance with the Used and Useful Policy Statement, plant that will go into service during the multiyear rate plan that has met the threshold prudence standard as agreed to by the settling parties will be included in rates provisionally and will be subject to refund following the annual review process described in the Prefiled Direct Testimony of Susan E. Free, Exh. SEF-1Tr,[71] except that the annual review period will be four months.[72] This ensures that all plant in rates is used and useful and that customers only pay for plant that is prudent.[73]

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[65] Revenue Requirement Settlement Joint Testimony, Exh. JAP-SEF-JJJ-1JT at 8:17-20.
[66] As explained in the Prefiled Direct Testimony of Birud D. Jhaveri, Exh. BDJ-1T, PSE conducted an Energy Burden Analysis ("EBA") pursuant to RCW 19.405.120 that determined that 14 percent of PSE's residential customers in the EBA are energy-burdened, which means that the proportion of their income spent on energy costs is equal to or over six percent. *Id.* at 59:11-60:9. About 98 percent of these customers are also low-income customers. *Id.* at 60:9-10.
[67] Revenue Requirement Settlement, § 38.
[68] *Id.* § 37.
[69] *Id.* § 39.
[70] *Id.* § 40.
[71] Free, Exh. SEF-1Tr at 29:1.
[72] Revenue Requirement Settlement, § 53.
[73] *Id.*

- Earning sharing. As provided by the multiyear rate plan statute, PSE supports and the settling parties agree to the earnings sharing mechanism set forth in the statute that will also take place during the annual review process.[74] The process effectively provides that if PSE's reported rate of return is more than 0.5 percent higher than PSE's authorized rate of return, the excess revenues will be deferred for refund to customers or other Commission determination.[75] Notably, the statute contains no similar protection for PSE if it under earns on its authorized rate of return,

34. Together, these provisions provide that customers are only paying in rates for plant that is prudent; that customers may share in over earning, if it were to occur; and that low-income customers will have substantial resources to assist with energy bill support.

C. The ROE and Capital Structure in the Settlement are Reasonable Whereas Public Counsel's Proposed ROE and Capital Structure Would Harm PSE's Financial Condition

35. The Revenue Requirement Settlement provides for a capital structure that includes an equity ratio of 49.0 percent and an ROE of 9.4 percent for the entirety of the multiyear rate plan. The Commission should approve this capital structure and ROE because it is consistent with Commission guidance and will result in just and reasonable rates that are sufficient for PSE.

36. The Commission's final determination of an acceptable capital structure should recognize the guiding principles of regulatory ratemaking that require an end result that yields fair, just, reasonable, and sufficient rates.[76] The Commission uses the following standard to determine a utility's authorized rate of return: the return should be sufficient to (1) maintain the utility's financial integrity; (2) attract capital under reasonable terms; and (3) provide returns commensurate with those investors could earn by investing in other enterprises of comparable risk.[77] The settlement terms addressing ROE and capital structure meet these requirements.

[74] RCW 80.28.425(6).
[75] *Id.*
[76] *WUTC v. Avista Corp.*, Dockets UE-170485/UG-170486, Order 07 ¶ 59 (Apr. 26, 2018).
[77] *WUTC v. Puget Sound Energy*, Dockets UE-121697/UG-121705, Order 15 ¶ 38 (June 29, 2015).

1. Increasing the equity ratio will allow PSE to rebalance its debt and equity, which will improve cash flow and credit metrics and allow PSE to meet changing business conditions.

37. The Commission should approve the Revenue Requirement Settlement equity ratio of 49.0 percent, which is the equity level PSE achieved in the test year[78] and that it expects to achieve in 2023 and 2024.[79] An equity level of 49.0 percent will help PSE improve its credit metrics performance, and it properly balances safety and economy.[80] Increasing the equity ratio from 48.5 percent to 49.0 percent will enable PSE to begin the process of rebalancing how much debt and equity is invested in the business to meet the significantly changed business conditions it faces.[81] Importantly, it will help improve cash flows and credit metrics, both of which have been a critical focus in this case.[82] Finally, the weighted average cost of capital ("WACC") in the Revenue Requirement Settlement will be the lowest WACC experienced by PSE and customers in recent memory, which will provide customers a significant amount of savings for the next two years.[83]

38. Only Public Counsel opposes the 49.0 percent equity ratio, arguing that PSE should continue with its existing 48.5 percent equity ratio, but Public Counsel's arguments lack coherence. For support, Public Counsel looks to historical ratios and past conditions instead of analyzing present needs and future pressures.[84] Public Counsel also incorrectly compares the equity ratios of parent companies to PSE; parent companies are not appropriate proxies for setting the capital structure of a regulated utility for rate making purposes.[85] Further, Public Counsel improperly compares *actual* parent company equity balances to PSE's regulated equity ratio, and fails to calculate these parent company equity balances on an average of monthly

[78] Peterman, Exh. CGP-1CT at 4:1-5.
[79] *Id.* at 42:19-43:2. In its direct case, PSE projected an equity ratio of 49.0 percent in 2023 and 49.5 percent in 2024, but has compromised in the Revenue Requirement Settlement and agreed to an equity level of 49.0 percent for the two-year rate plan.
[80] Revenue Requirement Settlement Joint Testimony, Exh. CGP-AEB-TAS-1JT at 4:5-21, 54:8-21, 59:3-8.
[81] *Id.* at 4:12-16.
[82] *Id.* at 4:16-17.
[83] *Id.* at 4:17-20, 51:1-52:13.
[84] Woolridge, Exh. JRW-1T at 11:10-19, 91:13-14.
[85] Revenue Requirement Settlement Joint Testimony, Exh. CGP-AEB-TAS-1JT at 49:3-16.

averages ("AMA") basis, contrary, to the Commission's long-standing practice.[86] Finally, Public Counsel ends up ignoring its calculations based on parent companies, instead proclaiming that the existing equity ratio is good enough.[87]

39. Public Counsel ignores the fact that PSE maintained a 49.0 percent equity in the test year[88] and intends to maintain that equity level in the two-year rate plan. PSE has consistently maintained an AMA equity ratio at or above the level authorized by the Commission for the past decade,[89] which has been a fundamental, long-standing component of PSE's financing strategy, and one PSE will continue in the multiyear rate plan.[90] Fundamentally, Public Counsel overlooks that PSE's 48.5 percent equity ratio has not been sufficient to maintain proper credit health.[91] PSE has experienced rating outlook downgrades (from stable to negative) from both S&P Global Ratings and Fitch Ratings for almost a year, spanning 2020 and 2021, including being placed on credit watch negative by S&P.[92] Increasing PSE's equity ratio from 48.5 percent to 49.0 percent will improve credit health, facilitate financial health, and avoid adverse credit rating actions.

2. The settlement ROE of 9.4 percent is appropriate in the context of the current economic environment.

40. The settlement ROE of 9.4 percent, opposed only by Public Counsel, should be approved by the Commission because it is reasonable and sufficient. When considering a proposed ROE, the Commission's practice has been to first identify the range of reasonable returns based on the expert testimony filed in the case,[93] then weigh the detailed results and other evidence to select the appropriate ROE that yields fair, just, reasonable, and sufficient rates.[94] To help with its

[86] *Id.* at 49:11-50:3.
[87] *Id.* at 50:4-20.
[88] Peterman, Exh. CGP-1CT at 4:1-5.
[89] *Id.* at 42:16-43:13 (noting that the only year in the past decade that PSE failed to maintain its authorized equity level on an AMA basis was in 2019, due to negative financial impacts of the Enbridge pipeline rupture).
[90] Revenue Requirement Settlement Joint Testimony, Exh. CGP-AEB-TAS-1JT at 46:19-47:2.
[91] *Id.* at 47:13-48:10.
[92] *Id.*
[93] *WUTC v. Avista Corp.*, Dockets UE-170485/UG-170486, Order 07 ¶ 59 (Apr. 26, 2018).
[94] *Id.*

evaluation, the Commission considers broad-ranging factors when determining the appropriate ROE:

> We must evaluate all cost of capital evidence offered and consider other relevant principles and factors such as the general state of the economy, investment cycles in the industry, and the principle of gradualism to determine, consistent with the public interest, a reasonable range of returns and what specific ROE within that range is appropriate….[95]

41. Here, twelve parties joined the Revenue Requirement Settlement and agreed to an ROE of 9.4 percent. PSE's modeled results based on proxy companies, market conditions, and risk factors specific to PSE resulted in a recommended ROE range of 9.75 percent to 10.5 percent; PSE requested an ROE of 9.9 percent in its direct case.[96] Over the course of this proceeding, market conditions have only worsened: inflation persists while interest rates continue to climb, making investors require greater returns than anticipated at the outset of this case.[97] These conditions support the Revenue Requirement Settlement ROE of 9.4 percent, below what PSE originally requested, but still adequate when viewed as one part of the complex Revenue Requirement Settlement that ultimately results in fair, just, reasonable, and sufficient rates.

42. Only Public Counsel opposes the ROE, recommending an ROE of 8.8 percent, which is well below the low-end of the range of authorized ROEs for any electric or natural gas distribution company since 2018.[98] Public Counsel's proposed ROE would result in a 60 basis point reduction in ROE, which would be antithetical to the important ratemaking principle of gradualism.[99] Public Counsel's opposition to the ROE in the Revenue Requirement Settlement in this case is very similar to Public Counsel's failed position in the 2017 PSE GRC Settlement, in which the settling parties agreed to a 9.5 percent ROE, but Public Counsel and its witness Dr. Woolridge argued for an ROE of 8.85. In that case, the Commission rejected Public Counsel's

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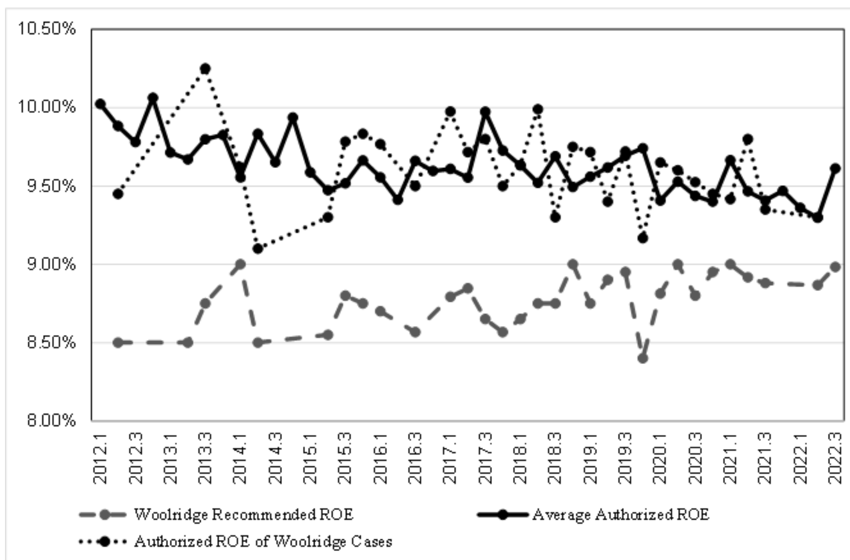
[95] *WUTC v. Avista Corp.*, Dockets UE-200900, *et al.*, Final Order 08/05 ¶ 97 (Sept. 27, 2021).
[96] Bulkley, Exh. AEB-1T at 3:18-4:5.
[97] Revenue Requirement Settlement Joint Testimony, Exh. CGP-AEB-TAS-1JT at 13:4-11.
[98] *Id.* at 6:14-17.
[99] *See WUTC v. Puget Sound Energy,* Dockets UE-170033/UG-170034, Order 08 n. 82 (Dec. 5, 2017).

proposed ROE as outside the range of reasonable returns.[100] Similarly, in this case, and as shown graphically below in Figure 1, Public Counsel's ROE recommendations are outside the range of reasonableness and consistently far below the average authorized ROEs.

Figure 1: Average Authorized ROEs vs. Dr. Woolridge's ROE Recommendations



43. In contrast, the 9.4 ROE agreed to in the Revenue Requirement Settlement is consistent with other parties' testimony and analyses. In its response testimony, AWEC recommended a 9.5 percent ROE to reflect the changing economic environment.[101] Commission Staff views the 9.4 percent ROE as reasonable and testifies that it is close to the median for regulated electric and gas utilities, based on Staff's expert witness' testimony.[102]

44. Public Counsel's recommendation is well below recently authorized ROEs and does not reflect investor-required ROE for a combined electric and gas utility. Moreover, Public Counsel's recommendation is based on ROE data that: (i) includes ROEs from electric distribution utilities instead of only vertically-integrated utilities, like PSE; (ii) includes ROEs associated with limited issue rider proceedings instead of base rate cases; (iii) includes ROEs from jurisdictions with formula rate plans or alternative rate making, which is inconsistent with how the Commission

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[100] *Id.* ¶¶ 90-94.
[101] Mullins, Exh. BGM-1T at 11:8-10.
[102] Erdahl, Exh. BAE-1T at 5:12-22.

regulates PSE; and (iv) includes ROEs that reflect penalties imposed by regulatory commissions, which is inconsistent with how the Commission sets PSE's base rate.[103] Public Counsel's data and analyses are flawed, resulting in conclusions that should not be trusted.

45. Finally, the settlement ROE is consistent with recent decisions by the Commission and consistent with *Bluefield*. In 2021, when authorizing a 9.4 percent ROE for Cascade Natural Gas, the Commission looked beyond models and to the investment context to help determine the appropriate ROE:

> As the U.S. Supreme Court held in *Bluefield*, a utility is generally entitled to a rate of return "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...." Our decision is consistent with the ROE currently authorized for other investor-owned utilities in Washington. In 2020, the Commission authorized a ROE of 9.4 percent for Puget Sound Energy, Avista, and Northwest Natural Gas Company. The Commission approved a settlement authorizing a slightly higher ROE for PacifiCorp at 9.50 percent.[104]

In 2021, the Commission authorized an ROE of 9.5 percent for Avista,[105] justifying that decision in part on inflationary conditions and the Federal Reserve's rate increases.[106] Those inflationary pressures and interest rate increases have only worsened since the 2021 decision in the Avista case.

46. In conclusion, the ROE and capital structure agreed to by the settling parties are reasonable. In contrast, Public Counsel's proposal would impair, rather than strengthen, PSE's financial health. Accordingly, the Commission should accept the ROE and capital structure terms negotiated by the settling parties.

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[103] Revenue Requirement Settlement Joint Testimony, Exh. CGP-AEB-TAS-1JT at 12:3-21.
[104] *WUTC v. Cascade Nat. Gas Corp.*, Docket UG-200568, Final Order 05 ¶ 140 (May 18, 2021).
[105] *WUTC v. Avista Corp.*, Dockets UE-200900, *et al.*, Final Order 08/05 ¶ 73 (Sept. 27, 2021).
[106] *Id.* ¶¶ 70-71.

D. The Revenue Requirement Settlement Allows New Power Cost Resources to be Included in Rates More Timely and will Facilitate PSE's Investment in Clean Energy

47. No party opposes the power cost terms in the Revenue Requirement Settlement, which are vital to maintaining PSE's financial health. The terms are in the public interest because they allow power costs to be set as closely as possible to costs that are reasonably expected to be actually incurred power costs, consistent with the Commission's past guidance.[107] The components of the power cost settlement terms strike a reasonable balance. PSE has agreed not to file a power cost only rate case during the two-year rate plan. However, PSE will be able to update its power cost baseline rate for each year of the rate plan, and the settlement allows PSE to have the resources needed to continue providing reliable electricity to customers while also providing that PSE's power cost investments are prudent, benefit customers, and continue to expand PSE's investment in clean energy, as follows:

- The power supply resources for which PSE sought a prudence determination in its initial 2022 GRC filing are deemed prudent.[108] The prudency of those investments is well supported in PSE's 2022 general rate case filing and not opposed by any party.
- Power cost increases in the revenue requirement are assumed to equal PSE's filed case ($125.5 million in 2023) reduced for the electric portion of the Northwest Pipeline settlement ($4.6 million, after grossing up for revenue sensitive items).[109] The power cost update that will occur at the compliance filing as described below will use these power costs as the reference point for projected 2023 power costs.[110]
- The settlement provides that PSE will update power costs under its PCA in the compliance filing at the conclusion of this case, and that PSE will file by October 1, 2023 to update power costs again for rates effective January 1, 2024, to reflect updates to PSE's purchased power agreements ("PPAs"), natural gas and wholesale power prices, rates charged for transmission services by Bonneville Power Administration ("BPA"), and the impacts to the assumed dispatch of PSE's owned and controlled resources related to the CCA.[111] PSE will update the rate recovering the PCA baseline by updating the power cost model from this filing with the cost and inputs described in the settlement.[112]

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[107] *WUTC v. Puget Sound Energy*, Dockets UE-111048/UG-111049, Order 08 n. 303 (May 7, 2012).
[108] Revenue Requirement Settlement, § 30.
[109] Revenue Requirement Settlement, § 55, Exh. A at 6.
[110] Revenue Requirement Settlement, § 23(d).
[111] Revenue Requirement Settlement Joint Testimony, Exh. JAP-SEF-JJJ-1JT at 6:10-19.
[112] Revenue Requirement Settlement, § 28.

- Parties can challenge the prudency of any new resources in the annual PCA Compliance Filing.[113]
- The cost of any DER PPA for distributed generation, battery resources, and demand response costs are eligible for recovery through PSE's PCORC, PCA Mechanism and/or annual power cost update and are eligible for potential earning on PPAs pursuant to RCW 80.28.410.[114]

48. The power cost terms are of critical importance to PSE. PSE has repeatedly under recovered its power costs in recent years due to the lack of an ability to timely update power costs.[115] By resetting the PCA baseline rate on an annual basis, as the settlement provides, PSE will send more accurate price signals to customers. Further, the annual updates should mitigate the accumulation of large deferral balances that result in surcharges, as has recently occurred.[116]

E. The CEIP, TEP, and Colstrip Trackers Are an Effective Way to Track Certain Costs and Are Supported or Not Opposed by All Parties

49. The Revenue Requirement Settlement removes several costs initially included in PSE's prefiled case for later recovery in rates through rate trackers. These include trackers to recover costs related to PSE's Clean Energy Implementation Plan ("CEIP"), Transportation Electrification Plan ("TEP"), and certain costs relating to PSE's ownership interest in the Colstrip Generating Facilities ("Colstrip").[117] The settling parties agree that each of these trackers is an appropriate way to track and recover these costs and no party opposes the trackers.

50. A tracker is the appropriate method to track PSE's CEIP costs because PSE does not yet have a Commission-approved CEIP in Docket UE-210795; thus, there is some uncertainty as to the amount and type of costs PSE will incur to fulfill its CEIP obligations.[118] At the same time, these programs are important catalysts for implementing the state's broader energy policy and climate goals, and timely recovery is necessary for PSE to have the financial resources to make the necessary investments.[119] The tracker would recover costs not otherwise recovered through

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[113] Revenue Requirement Settlement, § 30(b).
[114] Revenue Requirement Settlement, § 32.
[115] Revenue Requirement Settlement Joint Testimony, Exh. JAP-SEF-JJJ-1JT at 13:3-17.
[116] Phelps, Exh. JKP-1T at 4:7-14, 26:1-10, 37:10-16.
[117] Revenue Requirement Settlement Joint Testimony, Exh. JAP-SEF-JJJ-1JT at 14:3-11.
[118] *Id.* at 14:14-17.
[119] *Id.* at 19:1-15.

PSE's conservation tracker Schedule 120, its power cost recovery mechanisms, or base rates. The exact scope of these costs and the proposed process for recovering these costs is set forth in Revenue Requirement Settlement[120] and the Joint Testimony supporting the settlement.[121] All CEIP investments recovered through the tracker are subject to review, including but not limited to an examination of prudence.[122] The tracker will bridge the gap for this rate plan when an initial CEIP has not yet been approved by the Commission, but PSE agrees to include costs associated with its 2025 CEIP as part of base rates or the associated tariff schedules implementing PSE's multiyear rate plan (Schedules 141-N and 141-R) in its next general rate case.[123]

51. A tracker is also the appropriate method to track PSE's TEP costs because, like the CEIP, the programs that will allow PSE to implement its TEP continue to be subject to Commission approval at this time, prior to formal tariff filings necessary to implement these programs. But timely recovery is needed for these programs. The TEP costs would include capital, depreciation, and O&M expenses.[124] When PSE makes programmatic tariff filings for the TEP, it will have more firm estimates of projected program costs and will file corresponding tariff filings to recover these costs. PSE anticipates this will operate much like the CEIP tracker, as well as the Company's existing conservation tracker rates, that recover projected costs with a subsequent true-up for actual results. The settling parties retain all rights to challenge the prudency of these costs when PSE files tariff revisions for the TEP tracker.[125]

52. Finally, PSE's original proposal, as supported by the settling parties, for the Schedule 141-C tracker for Colstrip rate base investments and expense should be approved. Unlike the CEIP and TEP trackers, PSE is requesting approval of the rates within the Schedule 141-C

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[120] Revenue Requirement Settlement, § 23(k).
[121] Revenue Requirement Settlement Joint Testimony, Exh. JAP-SEF-JJJ-1JT at 14:12-16:2.
[122] Revenue Requirement Settlement, § 23(k).
[123] *Id.*
[124] Revenue Requirement Settlement, § 23(l).
[125] Revenue Requirement Settlement Joint Testimony, Exh. JAP-SEF-JJJ-1JT at 16:3-18.

tracker in this case, and these costs are reflected in the net revenue change.[126] However, as a compromise, PSE agreed to remove capital investments associated with the Colstrip dry ash facilities from recovery in base rates and in the proposed Schedule 141-C tracker.[127] The settling parties also agree that Colstrip costs included in rates in 2023 and beyond (including major maintenance expense and new plant additions) are subject to review, including but not limited to a prudence review, in PSE's annual Schedule 141-C tariff filing.[128] Major maintenance costs incurred during the multiyear rate plan will be amortized over three years, regardless of the year incurred. Costs amortized after 2025 would not be recovered in rates.[129]

F. The Revenue Requirement Settlement Provides a Pathway for PSE to Further Address Equity in Utility Operations

53. The Revenue Requirement Settlement provides a pathway for PSE to continue to weave equitable considerations into its operations, consistent with RCW 80.28.425. With respect to capital planning, PSE will plan for equitable outcomes when making decisions on enterprise-wide capital portfolios, though a process or procedure that will be demonstrated in a compliance filing by the end of the multiyear rate plan. Also, sponsors of PSE's Corporate Spending Authorizations ("CSA") will consider equitable distribution of benefits and reduction of burdens in the CSA process.[130] With respect to delivery and distribution system planning, PSE's investment decision optimization tool will be revised to reflect new benefits and costs related to equity for use in optimizing projects.[131] Further, PSE has agreed to undertake a pilot distributional equity analysis with involvement of other interested parties. Once the pilot and process have been reviewed and approved, PSE will apply these methods to its corporate capital planning process and delivery system planning process.[132]

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[126] Revenue Requirement Settlement, § 23(j), Exh. A at 3-4.
[127] Revenue Requirement Settlement, § 23(j).
[128] *Id.*
[129] *Id.*
[130] Revenue Requirement Settlement, § 24.
[131] Revenue Requirement Settlement, § 26.
[132] Revenue Requirement Settlement, §§ 50-51.

54. There are other equitable provisions spread throughout the Revenue Requirement Settlement, including but not limited to the following: several of the performance metrics proposed in the settlement focus on equitable operations and outcomes.[133] Additionally, low-income customers will participate in the Time Varying Rates Pilot.[134] The Targeted Electrification Pilot will identify barriers to heat pump adoption by low-income, highly-impacted and vulnerable populations and energy burdened customers and will develop policies and programs to support adoption by these customers,[135] and PSE will prioritize these customers in its pilot programs and incentives developed pursuant to its decarbonization study and Targeted Electrification Pilot and Strategy.[136]

G. PSE Will Continue Its Efforts to Decarbonize and Will Develop a Pilot and Strategy for Targeted Electrification

55. The Revenue Requirement Settlement deepens PSE's commitment to a clean energy future for both gas and electric operations in several respects, some of which are listed below. First, it provides that PSE will conduct an updated decarbonization study aimed at maximizing carbon reduction.[137] Second, it provides for PSE to concurrently develop an electrification pilot that will deploy heat pump technologies, including high-efficiency, electric-only solutions and evaluate impacts to gas and electric delivery systems.[138] Third, PSE will build on the findings of the decarbonization study and electrification pilot and incorporate them into a Targeted Electrification Strategy.[139] Fourth, PSE will revise its tariff schedule for natural gas line extension margin allowances immediately after the final order in this case, to be effective when new state building codes take effect in 2023, 2024 and 2025, with margin allowance reduced to zero by January 1, 2025.[140] Finally, PSE will incorporate the costs approved in its Clean Energy

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[133]Revenue Requirement Settlement, § 64; Lowry, Exh. MNL-1T at 23; Lowry, Exh. MNL-4 at 16-18.
[134] Revenue Requirement Settlement, § 41.
[135] Revenue Requirement Settlement, § 67(d).
[136] Revenue Requirement Settlement, § 65.
[137] Revenue Requirement Settlement, §§ 65, 66.
[138] Revenue Requirement Settlement, §§ 65, 67.
[139] Revenue Requirement Settlement, §§ 65, 68.
[140] Revenue Requirement Settlement, § 49.

Implementation Plan in a tracker, which costs will allow PSE to enable implementation of the plan.[141]

H. Inclusion of the Energize Eastside Project in Rates Subject to Refund is in the Public Interest

56. A key component of the Revenue Requirement Settlement is the inclusion in rates of PSE's Energize Eastside transmission project on a slightly delayed timeframe. Based on the substantial evidence in the record, the settling parties agree that PSE has met its threshold prudence requirement to demonstrate that the investment should be provisionally included in rates. [142] Consistent with the settlement, PSE respectfully requests a determination from the Commission that PSE's analysis of the need for the project and consideration of alternatives was reasonable, and further requests that the Commission allow PSE to provisionally include the Energize Eastside project in rates, subject to refund. This is consistent with the Used and Useful Policy Statement for a project that will be used and useful after the rate effective date.[143] CENSE is the only party that challenges the prudence of PSE's decision to construct the Energize Eastside project, but CENSE's prudence analysis is incomplete, and selectively ignores the evidence presented. The Commission should find PSE met its threshold prudence requirement and allow the estimated costs associated with Energize Eastside into rates provisionally.

1. PSE's decision to construct the Energize Eastside project is warranted because it will provide necessary transmission capacity in a growing area.

57. The Energize Eastside project was initially justified based on planning studies that projected demand for electricity would exceed the capacity of the existing infrastructure on the eastside of Lake Washington, and that projection has become a reality. In five of the past six summers, the demand has exceeded the reliability threshold for transmission capacity on the eastside.[144]

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[141] Revenue Requirement Settlement, §§ 23(k), 48.
[142] Revenue Requirement Settlement, § 23(m).
[143] Used and Useful Policy Statement, ¶ 35.
[144] D. Koch, Exh. DRK-26T at 9:1-4; D. Koch, Exh. DRK-1T at 44:1-6.

58. The increase in demand and need for the Energize Eastside project is driven by the continued population and commercial growth in the region on the eastside of Lake Washington.[145] This growth and subsequent increase in demand is expected to continue.[146] The primary 115 kV transmission lines connecting the main substations on the eastside electrical system have not been upgraded since the 1960s while the population in the area has substantially grown.[147]

59. PSE conducts regular electrical system planning and assessments to evaluate transmission capacity and identify potential deficiencies in the system. The need on the eastside was identified in a North American Electric Reliability Corporation ("NERC") reliability assessment in 2009, in which PSE determined, as part of the required studies, that there was a transmission reliability supply need developing. PSE identified the need for a reliability solution in the 2009 NERC TPL planning assessment and has similarly identified the need for a transmission reliability solution since that time.[148] PSE then conducted multiple studies to confirm the results of the transmission planning assessment finding a need for a transmission reliability project.[149] These studies were the 2013 and 2015 Energize Eastside Needs Assessment studies.[150] The studies concluded a transmission deficiency exists in PSE's transmission system, and an upgraded transmission line solves for this deficiency.[151] While the 2013 study focused its concern on a winter transmission capacity deficiency, the 2015 study concluded that by the summer of 2018, nearly 70,000 customers would be at risk of outages and more than 10,000 customers at risk of load shedding using corrective action plans ("CAP") to mitigate transmission transformer overloads.[152]

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[145] *See* D. Koch, Exh. DRK-1T at 44:7-45:11.
[146] *Id.*
[147] *Id.* (noting population has increased in the area during that time period from 50,000 to nearly 400,000).
[148] *Id.* at 48:16-49:12.
[149] D. Koch, Exh. DRK-3r; D. Koch, Exh. DRK-4r.
[150] D. Koch, Exh. DRK-3r; D. Koch, Exh. DRK-4r.
[151] D. Koch, Exh. DRK-3r at 6, 74; D. Koch, Exh. DRK-4r at 4, 21.
[152] D. Koch, Exh. DRK-4r at 21.

60. PSE's Needs Assessments have been reviewed by multiple third-party experts, including Utility Systems Efficiencies, Inc.,[153] Stantec Consulting Services, Inc.,[154] MaxETA Energy and Synapse Energy Economics ("MaxETA/Synapse").[155] All of these third-party studies reached the same final conclusion as PSE: a transmission deficiency exists and Energize Eastside solves for the deficiency. As previously noted, the need for project has only increased, and recently the projected need has become an actual issue because the summer peak need was exceeded in five of the past six years.[156] In the 2021 Pacific Northwest heatwave, actual demand exceeded the need threshold for the Energize Eastside project for five days in a row, reaching 115% of the area load threshold where the studies verified a transmission capacity deficiency exists.[157] While winter peak demand has not materialized as quickly as expected, the need for Energize Eastside to meet winter peak demand is still expected in the ten-year horizon.[158] Moreover, it does not matter whether the transmission capacity deficiency occurs in the summer or winter. In either season, a transmission capacity deficit puts customers at risk for outages and load shedding.

61. The MaxETA/Synapse report was the most recent independent assessment of the need for Energize Eastside conducted on behalf of the City of Newcastle as part of the conditional use permit proceeding.[159] The MaxETA/Synapse study assessed PSE's methodology and conducted a load flow model analysis to evaluate regional load conditions.[160] The MaxETA/Synapse study found that the current summer electric peak demand in King County already triggered an operational need for the transmission expansion, and transmission upgrades are needed to safeguard the operational reliability of the electric system.[161]

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[153] D. Koch, Exh. DRK-10.
[154] D. Koch, Exh. DRK-11.
[155] D. Koch, Exh. DRK-12.
[156] D. Koch, Exh. DRK-26T at 2; D. Koch, Settlement Hearing Tr. at 395:8-21, 404:13-405:5 (Mr. Koch testifying the deficiency is "no longer an issue of planning" and now "an issue of actual loads").
[157] D. Koch, Exh. DRK-1T at 43:16-44:6, 68:11-18.
[158] D. Koch, Exh. DRK-26T at 9:1-10.
[159] D. Koch, Exh. DRK-12.
[160] *Id.* at 4-5.
[161] *Id.* at 5.

62. Furthermore, PSE shares its annual transmission planning assessments with neighboring utilities every year as part of the TPL-001-4 R8 standard requirement.[162] This serves as an opportunity for neighboring utilities to review PSE's TPL report. While third parties have reviewed PSE's Needs Assessments on multiple occasions for permitting jurisdictions, PSE also conducts regular transmission planning assessments in compliance with NERC TPL-001-4 to evaluate whether a need still exists using more current load forecasts. The annual transmission planning assessments conducted each year from 2015-2021 continue to show a need for the Energize Eastside project.[163]

63. The evidence refutes CENSE's position that there is no need for the Energize Eastside project. As noted previously, the transmission reliability threshold has been surpassed on multiple occasions. CENSE witness Richard Lauckhart submitted a report claiming to demonstrate there is no need for the Energize Eastside project, but his report has multiple flaws.[164] The report fails to appropriately stress the system because it appears to have only studied one contingency whereas PSE's studies evaluate thousands of contingencies to identify deficiencies; the report uses incorrect load growth for the eastside area; the report does not perform a summer analysis, which accounts for a primary rationale behind the project; the report erroneously interprets power flows to Canada.[165] This report and the claims made by CENSE have been rejected as not credible, flawed, and inaccurate.[166] The facts are clear, not only did PSE find a transmission need starting in 2009, but there is also an actual need based on the current loads. In the summer of 2020, PSE was "one event away from needing to load shed" due to the transmission deficiency on the eastside.[167] Intentional load shedding or rolling blackouts

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[162] D. Koch, Exh. DRK-26T at 7:16-8:7.
[163] Nightingale, Exh. JBN-2 at 7-19.
[164] Lauckhart, Exh. RL-5.
[165] D. Koch, Exh. DRK-26T at 9:11-10:17.
[166] D. Koch, Exh. DRK-28 (City of Newcastle Hearing Examiner); D. Koch, Exh. DRK-27 at 4 (City of Bellevue Hearing Examiner finding CENSE reports defective and not credible); *Coalition of Eastside Neighborhoods for Sensible Energy, et. al. v. Puget Sound Energy et. al.*, Dkt. EL15-74-000, 153 FERC ¶ 61,076 at ¶ 61 (Oct. 21, 2015) (finding PSE complied with applicable transmission planning requirements).
[167] D. Koch, Settlement Hearing Tr. at 404:13-405:5 (D. Koch explaining PSE was one failure event away from shedding load which would mean intentionally turning off power to customers).

for thousands of PSE customers in the summer is not a desirable or reasonable option.[168] There can be no doubt that the need for additional transmission capacity is immediate and is no longer a theoretical planning exercise.

2. PSE's decision to construct the Energize Eastside project sufficiently considered alternatives and was cost-justified.

64. PSE extensively studied potential solutions to the transmission deficiency on the eastside. As part of the Phase I and Phase II EIS process, PSE evaluated dozens of alternatives. PSE also conducted a Solutions Study in 2014 and 2015 to evaluate the alternatives available.[169] The Energize Eastside project, a 230kV/115kV transformer in the center of the eastside load area connected to new 230kV transmission lines, along with aggressive conservation, was identified as the preferred solution based on federal performance requirements and cost analyses.[170]

65. As noted above, PSE conducted multiple other studies to evaluate alternatives to the Energize Eastside project. For example, PSE evaluated non-wires alternatives to consider the feasibility of solving the problem without constructing a new transmission line but determined the cost-effective non-wires alternatives were not large enough to sufficiently reduce load.[171] PSE also evaluated storage alternatives (batteries) in 2015 and conducted an updated study in 2018.[172] PSE determined batteries would not be feasible because the number of batteries required to meet the capacity deficiency is an implausible magnitude or cost-prohibitive.[173] The 2018 Strategen Storage Alternatives Assessment was an updated report evaluating battery storage options and estimated the cost of the distributed battery solution would be approximately $2.1 billion-$3.1 billion.[174] Other studies evaluated the possibility of running cables underwater

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[168] D. Koch, DRK-1T at 54:17-55:7.
[169] D. Koch, Exh. DRK-5; D. Koch, Exh. DRK-6r; D. Koch, Exh. DRK-15; D. Koch, Exh. DRK-16; D. Koch, Exh. DRK-17.
[170] D. Koch, Exh. DRK-5; D. Koch, Exh. DRK-6r.
[171] D. Koch, Exh. DRK-7 at 32.
[172] D. Koch, Exh. DRK-8; D. Koch, Exh. DRK-9.
[173] D. Koch, Exh. DRK-26T at 12:10-13:2 (noting even if every customer in the eastside area installed a battery storage system equivalent to a Tesla Powerwall 2, only half the 2019 transmission capacity would be met and less than a quarter of the 2027 eastside capacity deficiency would be met).
[174] D. Koch, Exh. DRK-9 at 5-6.

through Lake Washington or running cables underground.[175] In each instance, the studies found the proposed alternatives were either infeasible or substantially more costly than the Energize Eastside project.

66. CENSE contends four alternatives are available to the Energize Eastside project, including: 1) a small peaker plant near Bellevue; 2) use of the existing Seattle City Line; 3) a new 230/115 kV transformer at the PSE Lake Tradition substation: or 4) a combination of DSM activities such as rate design or battery installations. Yet, contrary to CENSE's claims, all of these alternatives were evaluated by PSE in the 2015 Supplemental Eastside Solutions Report,[176] the 2018 Alternatives Assessment,[177] and the 2014 Non-wires Study.[178] The alternatives were found to be not viable or considerably more expensive than the Energize Eastside project.[179]

67. The initial estimated cost in 2014 for the Energize Eastside project was between $154 million and $289 million, and the project remains within the initial estimated range.[180] To reduce costs overall, PSE selected an existing corridor to construct and upgrade the wires. The selected route for the Energize Eastside project was the least impactful environmentally and the least cost option because there was no need to acquire additional property.[181]

68. PSE regularly evaluated potential alternatives to the Energize Eastside project. In each instance, the alternative was either insufficient to address the deficiency, or it was cost prohibitive compared to the Energize Eastside project.

3. PSE informed and involved its Board of Directors in the Energize Eastside project.

69. PSE staff regularly kept PSE's Energy Management Committee, PSE's Asset Management Committee, and PSE's Board of Directors informed and involved in the

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[175] D. Koch, Exh. DRK-13; D. Koch, Exh. DRK-14.
[176] D. Koch, Exh. DRK-6r.
[177] D. Koch, Exh. DRK-9.
[178] D. Koch, Exh. DRK-7.
[179] D. Koch, Exh. DRK-5r; D. Koch, Exh. DRK-6r; D. Koch, Exh. DRK-21.
[180] D. Koch, Exh. DRK-20; D. Koch, Exh. DRK-21.
[181] D. Koch, Exh. DRK-21; D. Koch, Exh. DRK-22.

consideration and construction of Energize Eastside.[182] No party to this proceeding has suggested that PSE failed to meet its burden of keeping its Board of Directors informed and involved in the consideration and construction of Energize Eastside.

70. PSE staff maintained contemporaneous documentation in considering the project and during the construction of Energize Eastside. For example, the project implementation plan, Exh. DRK-21, is a living contemporaneous document that is updated at each major decision-point or event in the project life-cycle. No party to this proceeding suggested that PSE failed to meet its burden of keeping contemporaneous documentation in the consideration and construction of Energize Eastside.

4. The Energize Eastside project will promote the public interest by improving reliability for customers and address an transmission deficiency in a growing area.

71. The Energize Eastside project will provide a range of benefits to customers. Customers receive the benefit of improved reliability through this project that resolves an existing transmission capacity deficiency, which is only expected to grow. The settlement also makes reasonable adjustments to the service dates for Energize Eastside within the revenue requirement, with the South Phase in service by October 2023 and the North Phase in service by October 2024, to reflect the current construction schedule.[183]

72. PSE actively and regularly engaged the public when considering the Energize Eastside project.[184] PSE engaged the public in an advisory capacity when considering the route options.[185] Furthermore, PSE continues to pursue permits for the local jurisdictions where the Energize Eastside project will be built.[186] By engaging with the jurisdictions through the permitting process, PSE increases public awareness for the project while also obtaining permits necessary to proceed.

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[182] D. Koch, Exh. DRK-23r2; D. Koch, Exh. DRK-24; D. Koch, Exh. DRK-25r2.
[183] D. Koch, Exh. DRK-26T at 15:1-8.
[184] D. Koch, Exh. DRK-18.
[185] *Id.*
[186] D. Koch, Exh. DRK-19; D. Koch, Exh. DRK-26T at 14:1-15:8.

73. Finally, PSE is taking all proper safety precautions to build the project. PSE is regularly coordinating with Olympic Pipeline because the Energize Eastside project corridor shares a right-of-way with the pipeline.[187] Transmission lines were already running through this corridor, but safety and environmental considerations were extensively evaluated in the EIS.[188]

74. The Energize Eastside project is safe and cost effective, and it will provide much needed transmission capacity to a growing area. The Commission should allow the project to go into rates, subject to refund, in accordance with the proposed schedule.

5. CENSE's other arguments are unsupported by the evidence and should be rejected.

75. CENSE asserts the load flow studies conducted by PSE contain various flaws or did not follow planning standards. This is incorrect. PSE's planning studies and assumptions have been regularly evaluated by third parties and the studies must follow NERC Standards, including TPL-004-1, which requires an annual evaluation of the transmission system.[189] Furthermore, PSE's planning assumptions are subject to regular review by neighboring utilities, and audited to ensure compliance with TPL standards.[190] At no point have PSE's assumptions and planning procedures regarding Energize Eastside been found deficient. CENSE made a similar complaint to FERC about PSE's transmission planning process, and its complaint was rejected.[191]

76. CENSE also alluded to issues surrounding critical energy infrastructure information ("CEII") and access to CEII. PSE's process for providing CEII to individuals who request such information is a standard process, independent of the Energize Eastside project, and consistent with its Open Access Transmission Tariff.[192] In this proceeding, CENSE belatedly made a broad

[187] D. Koch, Exh. DRK-28 at 7; D. Koch, Settlement Hearing Tr. at 398:6-17.
[188] D. Koch, Exh. DRK-17 at 18.
[189] D. Koch, Exh. DRK-26T at 6:8-8:10.
[190] *Id.* at 7:26-8:7.
[191] *Coalition of Eastside Neighborhoods for Sensible Energy, et. al. v. Puget Sound Energy et. al.*, Dkt. EL15-74-000, 153 FERC ¶ 61,076 at ¶ 61 (Oct. 21, 2015) (holding "Contrary to Complainants' vague allegations that the Respondents have violated [Federal transmission planning regulations], the record before us shows that [PSE] and the other Respondents have complied with the applicable transmission planning requirements").
[192] D. Koch, Settlement Hearing Tr. at 405:9-406:1 (Mr. Koch explaining CENSE requested CEII approval six months after the case was filed, PSE then held meetings with CENSE's expert, and requested CENSE narrow the

request to PSE for information containing CEII, and PSE provided the CEII data once the application was complete, secure safekeeping of the information was confirmed, and the scope of the request appropriately narrowed.[193]

77. None of the arguments proffered by CENSE counter the fact that actual load levels on the eastside have exceeded the reliability threshold in five of the past six summers, meaning the need is no longer a matter of future planning; it has arrived.[194] For these reasons, the Commission should find that PSE has demonstrated the need for the Energize Eastside project and consideration of alternatives sufficient to allow the project in rates, subject to refund.

I. The Commission Should Approve the Approach in the Revenue Requirement Settlement for Annual Review of Plant Subject to Refund, Which No Party Opposes

78. The annual review process and earnings sharing proposals agreed to by the Revenue Requirement Settlement settling parties is consistent with the multiyear rate plan statute and the Commission's Used and Useful Policy Statement and will be an effective approach to annually reviewing plant subject to refund. The statute and Used and Useful Policy Statement require a process for reviewing plant subject to refund.[195] The Used and Useful Policy Statement provides that reviews should provide sufficient information, notice, and time for parties to determine whether the estimates used to set rates were valid and accurate.[196] The process agreed to by the settling parties meets these requirements and provides for an annual review process that would allow PSE and the parties to develop a methodology that could be easily repeated.[197] The settling parties agreed that this approach is preferrable to conducting the entire review in the next general rate case which would be overly burdensome on PSE and the parties.[198] The annual review process is also better for both PSE and customers. For PSE, it alleviates the uncertainty that

scope of the requested data).
[193] *Id.*
[194] D. Koch, Settlement Hearing Tr. at 404:13-405:8 (Mr. Koch noting in 2020 PSE was one event away from intentionally turning power off as a result of the deficiency on the eastside).
[195] RCW 80.28.425(3)(b); Used and Useful Policy Statement, ¶¶ 40-42.
[196] Used and Useful Policy Statement, ¶¶ 40-42.
[197] Revenue Requirement Settlement, § 53; Free, Exh. SEF-1Tr at 29:13-17.
[198] Free, Exh. SEF-1Tr at 29:13-30:2.

comes with having rates subject to refund, and for customers, if a refund is necessary, a faster return is better.[199] The settlement closely follows the detailed proposal set forth by PSE in its direct case[200] with one exception: the review period has been expanded to four months to provide extra time for the reviewing parties.[201] Aside from expanding the review period, no party has disagreed with or opposed PSE's proposed annual review process.

J. The Settlement Provides for Performance Measures Consistent with RCW 80.28.425

79. The Revenue Requirement Settlement requires PSE to report on a robust suite of performance measures that are consistent with the requirements of RCW 80.28.425(7).[202] That statute requires the Commission, when approving a multiyear rate plan, to also "determine a set of performance measures that will be used to assess a gas or electrical company operating under a multiyear rate plan." The statute does not require the performance measures to contain incentives or penalty mechanisms, although they are allowable under the statute.[203]

80. In its direct case, PSE proposed several performance measures and two performance incentive mechanisms ("PIM"), which allow the Commission to assess PSE's operating under the multiyear rate plan. PSE's proposal included historical values for the metrics, where available, and also included proposed targets or baselines for many of the metrics. PSE's proposed performance metrics addressed affordability, service quality, demand response, energy efficiency, electric vehicles, greenhouse gas emissions, and advanced metering infrastructure. Where practical, analogous metrics were proposed for highly impacted communities and vulnerable populations.[204]

81. The Revenue Requirement Settlement builds on the performance metrics proposed by PSE. PSE will report on the performance metrics it identified in its direct case, with

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[199] *Id.* at 30:3-6.
[200] *Id.* at 29:1-50:10.
[201] Revenue Requirement Settlement, § 53.
[202] *Id.* §§ 58-64.
[203] RCW 80.28.425(7) citing the factors the Commission may consider for performance measures that are required by the statute as well as incentives and penalty mechanisms.
[204] Lowry, Exh. MNL-1T at 21:4-47:20; Lowry, Exh. MNL-4.

modifications to the Demand Response PIM that Dr. Lowry had proposed and the elimination of the electric vehicle PIM. The settlement provides 49 additional negotiated performance metrics "[i]n addition to the metrics discussed by PSE witness Dr. Lowry" in PSE's direct case. These additional 49 performance measures address a wide variety of topics including: a resilient, reliable, and customer-focused distribution grid; environmental improvements; customer affordability; and advancing equity in utility operations.[205] While many of the performance metrics in PSE's direct case include targets to measure PSE's performance, the additional 49 performance metrics do not have targets, but will measure PSE's performance in meeting the desired outcome of the goal with the ability over time to determine if service is improving or deteriorating.[206]

82. In summary, the two-year rate plan agreed to by the Settling Parties contains the full panoply of performance metrics, incentives, and penalty mechanisms. With regard to incentive mechanisms, the Settling Parties agreed to accept PSE's proposed Demand Response PIM, with some modifications.[207] With regard to performance metrics, many of the performance metrics PSE proposed in its direct case, and that were adopted in the settlement, contain targets or baselines that allow the Commission to assess PSE's operating under the two-year multiyear rate plan. With regard to penalty mechanisms, PSE will continue to measure and report on its service quality indices, some of which subject PSE to penalties for failure to meet service standards.[208] No party opposes these performance metrics. They should be approved by the Commission as consistent with RCW 80.28.425(7).

[205] Revenue Requirement Settlement, §§ 60-64.
[206] Cebulko, Exh. BTC-7T at 3:6-20.
[207] *See* Revenue Requirement Settlement, § 58.
[208] Lowry, Exh. MNL-1T at 23.

K. The Commission Should Approve the Other Terms of the Revenue Requirement Settlement Without Conditions

83. The following additional noteworthy terms of the Revenue Requirement Settlement are among the terms carefully negotiated between the settling parties:[209]

- COVID Deferral. The Revenue Requirement Settlement provides that PSE will agree to a partial write-off of the COVID deferral—specifically, deferred costs, savings and fee revenues associated with PSE's deferred accounting petition,[210] will be written off.[211] As such, PSE has discontinued this deferral. The settlement allows PSE to seek recovery of "Additional Funding for Customer Programs," which PSE provided pursuant to Order 01 in Docket U-200281 and bad debt accrued in excess of levels embedded in existing rates. PSE will seek recovery of these through PSE's low-income filing in electric and gas Schedule 129.[212] This is not contested by any party.

- Gas Distribution Upgrades. Gas distribution upgrades associated with the Tacoma LNG Facility are included in base rates.[213] These upgrades were completed prior to the filing of the case and are in service today.[214] The costs are allocated only to PSE's gas sales customers.[215]

- Advanced Metering Infrastructure: PSE's testimony presented robust evidence that full recovery for its AMI investment was appropriate in PSE's multiyear rate plan because (a) at the time PSE filed its direct testimony in January 2022, over one million customers had AMI meters installed and those meters were used and useful;[216] (b) AMI deployment will be complete during the multiyear rate plan and the system will be fully used and useful;[217] (c) all customers are already benefiting from AMI and PSE is on track to meet the projections for AMI benefits outlined in its 2019 general rate case;[218] and (d) PSE has begun implementing and has a robust plan for achieving the use case benefits identified in the Commission's 2019 general rate case Final Order, plus additional benefits, which will significantly benefit PSE and its customers.[219]

  While PSE strongly believes full recovery of its AMI investment, including a full return on that investment, is appropriate during the multiyear rate plan, as a reasonable compromise of the issues in this case, the settling parties agree that

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[209] There are other noteworthy terms in the Revenue Requirement Settlement that are important to PSE; however, the page limitation for this brief precludes PSE from addressing them all. Other parties to the Revenue Requirement Settlement will be addressing additional terms in their respective briefs.
[210] *In the Matter of the Petition of Puget Sound Energy, For an Order Approving Deferral of Costs Associated with the COVID-19 Public Health Emergency*, Dockets UE-200780/UG-200781.
[211] Revenue Requirement Settlement, § 23(n).
[212] *Id.*, Exh. A at 6.
[213] Tacoma LNG Settlement, § 18A(4).
[214] Bamba, Exh RBB-1T at 21:7-22.
[215] Piliaris, Exh. JAP-1T at 51:3-16. *See also id.* at 50:12-57:6 for a full explanation of the allocation of LNG-related distribution costs; Piliaris, Settlement Hearing Tr. at 430:4-431:20.
[216] C. Koch, Exh. CAK-7 at 39:1-8; 45:7-8.
[217] *Id.* at 43:9-11; 45:7-8.
[218] *Id.* at 45:9-10.
[219] *Id.* at 45:11-18; Sergici, Exh. SIS-1T, Exh. SIS-3 (AMI Benefits Report).

> PSE should have recovery of its AMI investment through December 31, 2021 to the extent not already recovered, and should include recovery of depreciation and the debt component of the return for AMI after December 31, 2021 in rates, subject to refund. Further, PSE will be permitted to amortize the debt component of the return on rate base deferred through 2021 over three years beginning in 2023.[220] PSE will continue to defer the equity return on AMI rate base through the date rates are set in PSE's next general rate case.[221] PSE will not receive a final determination of prudency until the AMI installation is complete and PSE provides an AMI benefits progress report.[222] The report will provide an update describing how PSE has continued efforts to maximize Company and customer benefits realized under the program and PSE's plans to continue such maximization efforts.[223] PSE will also update its AMI reporting metrics, including equity considerations.[224] These terms are not contested by any party.

V. THE COMMISSION SHOULD APPROVE THE TACOMA LNG SETTLEMENT, WITHOUT CONDITIONS

84. The Tacoma LNG Settlement is consistent with the law and the public interest and is supported by substantial evidence. Accordingly, it should be approved by the Commission. The Tacoma LNG Settlement is balanced. It provides that the decision to build the regulated portion of the Tacoma LNG Facility was prudent and that PSE has met its threshold prudence requirement to demonstrate that the investment can be provisionally included in rates in a tracker, but it further allows the opportunity for parties to challenge costs, when the tracker filing is made in 2023. Six parties support the Tacoma LNG Settlement and several other parties do not oppose the Tacoma LNG Settlement. The Tacoma LNG Settlement was negotiated along with the Revenue Requirement Settlement, with all interested parties involved. As previously discussed, the two settlements reflect compromises among settling parties and non-opposing parties on issues that span both settlements. The only parties that filed evidence opposing the Tacoma LNG Settlement are the Tribe and Public Counsel.

85. The evidence in this case, and the findings of several agencies responsible for considering environmental, health, and safety factors, demonstrates that the Tacoma LNG Facility is safe and will provide benefits to the communities surrounding the facility, including the Tribe. PSE

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[220] Revenue Requirement Settlement, § 23(e)(ii), (iii), (iv), Exh. A at 8.
[221] Revenue Requirement Settlement, § 23(e)(ii), Exh. A at 8.
[222] Revenue Requirement Settlement, § 23(v).
[223] *Id.* § 23(v).
[224] *Id.* § 23(vi).

worked closely with interested parties throughout the process and made concessions in the project to specifically address the Tribe's concerns. Moreover, the evidence in the record supporting the threshold prudence determination is voluminous and demonstrates the careful analyses and consideration that went into the decision to construct the Tacoma LNG Facility. For these reasons, the Commission should approve the Tacoma LNG Settlement without condition.

A. PSE's Decision to Construct the Regulated Portion of the Tacoma LNG Facility Was Prudent

86. The evidence PSE presented in this case demonstrates that PSE acted prudently in making its decision to construct the regulated portion of the Tacoma LNG Facility. PSE respectfully requests that the Commission approve the Tacoma LNG Settlement and determine that PSE's decision to build the regulated portion of the Tacoma LNG Facility was prudent. More specifically, the Tacoma LNG Settlement states

> The Settling Parties accept a determination that the decision to build the regulated portion of the Tacoma LNG Facility was prudent, thus PSE has met its threshold prudence requirement to demonstrate that the investment can be provisionally included in rates in a tracker. All parties retain all rights to challenge LNG costs when PSE files tariff revisions for the tracker.[225]

The proposed threshold prudence determination is based on the Used and Useful Policy Statement, which established a two-step process whereby investment can be provisionally included in rates based on a showing of need and consideration of alternatives. Parties and the Commission would have an opportunity to review the prudence of costs expended in a later review, with rates subject to refund if the costs for the project were not prudently incurred.[226] Under the Tacoma LNG Settlement, the settling parties are seeking a determination in the first step that PSE's decision to build the regulated portion of the Tacoma LNG Facility was prudent (meets the four factors for prudency described further below) and the costs can provisionally be included in rates subject to refund. In the second step, the costs PSE incurred to build the

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[225] Tacoma LNG Settlement, § 18B.
[226] Used and Useful Policy Statement, ¶ 35.

Tacoma LNG Facility will be subject to review when PSE files to begin recovering those costs in rates through a tracker. The timing for such tracker filing is set to align with the timing of PSE's annual Purchased Gas Adjustment filings.[227] All parties retain the right to challenge the Tacoma LNG Facility costs PSE seeks to recover through the tracker when it is filed.

87. Of the many and various entities that are parties to these dockets, only Public Counsel and the Tribe challenge the prudence of PSE's decision to construct the regulated portion of the Tacoma LNG Facility. Although The Energy Project opposes the Tacoma LNG Settlement, it offered no testimony in support of its opposition. Instead, The Energy Project asks the Commission to rely on the testimony filed by Public Counsel and the Tribe to conclude that PSE's decision to build the regulated portion of the Tacoma LNG Facility was not prudent and that the Tacoma LNG Settlement is not in the public interest.[228] Unsupported positions, such as that taken by The Energy Project, should be given little weight, particularly since PSE and the other settling parties will have no opportunity rebut those positions. As demonstrated below, PSE's decision to construct the regulated portion of the Tacoma LNG Facility was prudent and consistent with the public interest, and evidence filed by Public Counsel and the Tribe further substantiate the prudence.

1. The evidence demonstrates that PSE established a need for a natural gas design day peaking resource.

88. PSE determines its need for natural gas resources based on the design peak day condition when all existing resources are fully utilized and there is still an un-served demand. This need determination is primarily made in the formal biennial integrated resource planning ("IRP") process. PSE's design day standard is intended to make sure gas supply resources are planned and available to meet its design day peak demand each year because PSE is obligated to serve the actual demand of its firm customers under design day conditions. The IRP model attempts to find the least cost resource, either supply-side or demand-side to fill the need on the design

[227] Tacoma LNG Settlement, § 18.A.3.
[228] Zakai, Settlement Hearing, Tr. at 490:14-491:13.

day.[229] The Commission has stated that the planning requirements in WAC 480-100-238 and WAC 480-90-238 are intended to ensure each utility develops a strategic approach to meet future resource needs against the backdrop of shifting regulatory, technological, and market conditions.[230] Since at least 2005, the Commission has reviewed and accepted the approach PSE uses in its gas planning and IRP processes; planning processes PSE confirmed were appropriate in its 2021 IRP.[231]

a. PSE's IRP process has shown the need for a gas design day peaking resource for more than a decade

89. PSE's IRP process has shown a need for a gas design day peaking resource since 2009. The 2009 IRP stated that PSE's gas sales portfolio had sufficient resources through the winter of 2014-15 but would need additional gas supply thereafter.[232] The 2011 IRP determined that PSE's gas load and resources were in balance until about 2017.[233] The 2013 IRP demonstrated a need for additional gas peak-day resources beginning in the winter of 2016-17.[234] The 2015 IRP showed a need for additional gas peak-day resources in the winter of 2018-2019.[235] The 2017 IRP included the Tacoma LNG Facility as an existing resource to meet the gas design peak-day needs in the winter of 2019-2020 for the Base Case and high demand scenarios.[236] In addition,

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[229] For additional discussion of PSE's design peak day, see Roberts, Exh. RJR-30T at 4:9-22, 6:4-15.
[230] *Puget Sound Energy's 2015 Integrated Resource Plan*, Dockets UE-141169/UG-141170, Acknowledgement Letter at 1 (May 9, 2016) ("PSE's 2015 IRP"), *see also* Attachment at 1 (PSE has a fundamental responsibility to manage the risks to acquire and deliver electricity and natural gas to its customers).
[231] Roberts, Exh. RJR-30T at 7:14-8:8; *see also Puget Sound Energy's 2011 Integrated Resource Plan*, Dockets UE-100961/UG-100960, Attachment at 10 (Dec. 28, 2011) ("PSE's 2011 IRP") (finding PSE's approach to natural gas modeling and reasoning applied to modeling results to be good); *Puget Sound Energy's 2013 Integrated Resource Plan*, Dockets UE-120767/UG-120768, Attachment A at 9 (Feb. 6, 2014) ("PSE's 2013 IRP") (finding PSE's approach to natural gas modeling and the reasoning applied to model results to be sound); PSE's 2015 IRP, Attachment A at 14 (finding PSE's approach to natural gas modeling and the reasoning applied to model results to be sound); *Puget Sound Energy's 2017 Integrated Resource Plan*, Dockets UE-160918/UG-160919, Revised Attachment at 5 (June 19, 2018) ("PSE's 2017 IRP") (PSE's analysis of its resource needs over the 20-year planning horizon is generally comprehensive and the Commission is satisfied with the scope of analysis).
[232] Roberts, Exh. RJR-3 at 3; *see also Puget Sound Energy's 2009 Integrated Resource Plan*, Dockets UG-080948/UE-080949 (May 30, 2009).
[233] Roberts, Exh. RJR-3 at 3-4; *see also* PSE's 2011 IRP at 1-13.
[234] Roberts, Exh. RJR-3 at 11-12; *see also* PSE's 2013 IRP at 6-3.
[235] Roberts, Exh. RJR-3 at 25-26; *see also* PSE's 2015 IRP at 7-3.
[236] Roberts Exh. RJR-3 at 56-57; *see also* PSE's 2017 IRP at 7-4.

since 2012 PSE's gas load forecasts have shown a near-term or immediate need for additional peak-day resources.[237]

90. The arguments by Public Counsel and the Tribe regarding PSE's forecasting methods are based on faulty assumptions. In the first instance, Public Counsel claims that because PSE's forecasts had been declining, PSE should have re-examined the need for the Tacoma LNG Facility at its two major decision points in 2016 and 2018. Public Counsel fails to acknowledge that PSE did re-examine the need for the Tacoma LNG Facility in 2016 and 2018 and although the forecasted need may have been declining, PSE still had a near-term need for a design day peak resource. In August 2016, the PSE Board of Directors affirmed a strategy for development and construction of the Tacoma LNG Facility, and in September 2016, the PSE Board of Directors approved the execution of the engineering, procurement, and construction contract with Chicago Bridge & Iron. At the time those 2016 decisions were made, PSE had a forecasted immediate need of 7.95 Mdth/day in 2016-2017 and a forecasted need at 20 years (2037-28) of 269.5 Mdth/day.[238] PSE also demonstrated the need for a design day peak resource in March 2018, when the PSE Board of Directors affirmed its commitment to complete construction of the Tacoma LNG Facility and in June 2018, when the PSE Board of Directors approved a budget increase due to construction delays created by the delay in issuance of the air permit by the Puget Sound Clean Air Agency. At the time those 2018 decisions were made, PSE had a forecasted immediate need of 27.22 Mdth/day in 2017-2018 and a forecasted need at 20 years (2037-28) of 237.31 Mdth/day.[239]

b. Public Counsel conflates design day standards with actual maximum days sales, which are entirely different data points.

91. Importantly, Public Counsel conflates actual maximum day sales with PSE's estimate of the design day peak load, which are two very different data points. Specifically, Public Counsel

[237] Roberts, Exh. RJR-9; *see also* Roberts, Exh. RJR-3 at 8, 12, 13, 18, 45, and 56.
[238] Roberts, Exh. RJR-1CT at 60:1-8.
[239] Roberts, Exh. RJR-1CT at 60:8-15.

confuses PSE's *actual maximum day sales* on the highest demand day of a year with PSE's *estimate of the design day peak load* for that year. Based on this faulty comparison, Public Counsel concludes that PSE's design day peak load forecasts must be "inaccurate" because the estimated peaking need did not materialize and there were no curtailments in any of the winters covered by the forecasts. As Mr. Roberts testified, PSE is obligated to serve all of its firm customers on the coldest day of the year and "planning" to accept one or two curtailments in a year would be contrary to PSE's obligation to serve.[240] Public Counsel's claim that PSE was deficient in notifying the PSE Board of Directors about differences between actual maximum day sales and PSE's design peak forecasts fails for the same reason—actual maximum day sales is the wrong basis for comparison.[241]

92. Public Counsel also claims it is important to compare actual outcomes to model predictions. To the extent the Commission follows Public Counsel's recommendation, it is important to consider that PSE's models are analyzing need on the anticipated coldest days of the year and the Commission has found PSE's modeling to be "good" and "sound."[242] Weather-normalizing the actual maximum peak day sales shows that PSE's observed peak day data is not materially different from PSE's IRP forecasts and therefore PSE clearly demonstrated the need for the Tacoma LNG peaking resource.[243] Although Public Counsel claims that comparing weather-normalized actual maximum day sales to forecast numbers is irrelevant, that claim is likely made because the results of the comparison do not support Public Counsel's faulty reliance on the use of actual maximum day sales.

c. The Tacoma LNG Facility was not a stop-gap measure as Public Counsel and the Tribe claim.

93. Public Counsel wrongly claims that the Tacoma LNG Facility was a stop-gap measure and that PSE could have implemented other temporary measures until a better solution was

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[240] Roberts, Exh. RJR-30T at 7:8-13; *see also infra* note 311.
[241] Roberts, Exh. 30T at 12:4-12.
[242] *See supra* note 231.
[243] Roberts, Exh. 30T at 8:12-11:19.

found to meet PSE's gas resource need. As Mr. Roberts testified, PSE fully intended to use the Tacoma LNG Facility as a long-term resource when it was included as a resource in the 2017 IRP.[244] While it is incorrect that the Tacoma LNG Facility was a stop-gap measure or that there were other less costly options available, Public Counsel's "stop-gap" argument actually supports PSE's decision to construct the Tacoma LNG Facility to meet its design day peak resource needs. Public Counsel claims by "stop-gap" it meant that even with the Tacoma LNG Facility as a long-term resource, PSE's projections showed that new resources would be needed fairly soon.[245] Public Counsel cannot credibly argue on one hand that there is no need for the Tacoma LNG Facility while on the other hand claim that it was not a sufficient resource to meet PSE's longer-term need.

94. The Commission should reject the Tribe's claim that the Tacoma LNG Facility would only meet PSE's gas resource needs for five years. The Tribe's argument is plainly false; and is based on a misstatement in the Supplemental EIS ("SEIS") prepared for the Puget Sound Clean Air Agency that the Tacoma LNG Facility would serve as a peak shaving facility for only five to ten years. PSE has never claimed that the Tacoma LNG Facility would only serve as a peak shaving facility for five to ten years. When PSE added the Tacoma LNG Facility as a gas resource in its 2017 IRP, the Tacoma LNG Facility was included in the resource stack for every year shown in that IRP (2018/19 through 2037/38).[246] The fact that additional resources were forecasted to be needed in later years does not mean the Tacoma LNG Facility was only needed for five years.

95. PSE elected not to dispute the erroneous statement in the SEIS because it had no impact on the decision. As Mr. Roberts testified, if the SEIS had contained the correct assumption, then the SEIS would have been even more favorable for PSE, because the environmental impact for

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[244] Roberts, Exh. RJR-30T at 13:3-12.
[245] Earle, Exh. RLE-14CT at 8:6-8.
[246] Roberts, Exh. RJR-30T at 12:15-14:17.

peak-shaving was less than the facilities for marine fuel projection.[247] The Tribe's suggestion that the limited time for using the Tacoma LNG Facility as a peak shaver drove the outcome of the SEIS in PSE's favor is patently false.

d. Arguments that PSE mis-sized the storage tank should be rejected.

96. The evidence demonstrates that PSE appropriately sized the storage tank in the Tacoma LNG Facility, and the Tribe's assertions to the contrary should be rejected. The Tribe initially asserted that PSE mis-sized the Tacoma LNG Facility based on six consecutive days of need "without any basis" for such a determination. In its testimony opposing the Tacoma LNG Settlement, the Tribe claims surprise that PSE "admits" it did not base its decision on the size of the tank on six days of continuous peak shaving need and claims that the costs of constructing an LNG storage tank increase significantly as the tank capacity increases.[248] PSE based its decision for sizing the Tacoma LNG Facility, in part, on its expectation of cold spells lasting two or three days occurring more than once each winter.[249] As Mr. Roberts testified at the evidentiary hearing, if PSE used the Tacoma LNG Facility to meet peak gas needs during two events of two to three days of significant cold temperatures, it would utilize all of PSE's capacity in the tank. PSE would not be able to refill the tank as soon as its share is vaporized; it would take up to 120 days to refill PSE's capacity in the tank.[250] Further, the Tribe's claim regarding construction cost increases is wrong. In 2015, PSE examined downsizing the capacity of the storage tank and determined it would not substantially reduce the costs of construction because the larger facility offers economies of scale and the cost of the facility is not a linear function of the capacity.[251] The storage tank is not oversized and, based on the allocations decided in Docket UG-151663, PSE's customers are not paying for tank capacity they do not need.[252]

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[247] *Id.* at 15:15-16:8.
[248] Sahu, Exh. RXS-30T at 29:17-20, 30:12-13.
[249] Roberts, Exh. RJR-30T 16:14-19.
[250] Roberts, Settlement Hearing Tr. at 428:13-25.
[251] Roberts, Exh. RJR-3 at 20-21, *see also* Roberts, RJR-5C at 859.
[252] *In the Matter of the Petition of Puget Sound Energy, Inc. for (i) Approval of a Special Contract for Liquefied Natural Gas Fuel Service with Totem Ocean Trailer Express, Inc., and (ii) a Declaratory Order Approving the*

97. Public Counsel's similar incorrect claims that the facility is oversized and may never become used and useful[253] are refuted by the evidence. The Tacoma LNG Facility is already used and useful for PSE's customers. Since February 2022, PSE has been using the Tacoma LNG Facility to liquefy natural gas to fill the tank so PSE will have gas available when it is needed on a cold day this winter.[254] In addition, PSE has also transported LNG from the Tacoma LNG Facility to the Gig Harbor Satellite Facility.[255] Just as important, however, is that the analysis Public Counsel relies on to make those claims violates the Commission's prudence standard, which requires the Commission to consider whether PSE's decision was prudent *at the time it was made*, in light of what PSE knew or reasonably should have known at that time.[256] Public Counsel's attempt to get the Commission to stray from the prudence standard that has adequately provided protections to utility customers and certainty to utilities for thirty years should be rejected.

2. PSE evaluated alternatives to the Tacoma LNG Facility.

98. The evidence demonstrates that PSE thoroughly evaluated alternatives to the Tacoma LNG Facility. An LNG storage facility was identified as a potential needed resource in each of PSE's IRP processes from 2009 through 2015 and the Tacoma LNG Facility was included as an established resource in the 2017 IRP, the 2019 IRP Progress Report, and the 2021 IRP. In the May 2009 IRP, an LNG storage resource was among the resources PSE identified for consideration.[257] In the 2011 IRP, PSE analyzed five alternatives and a regional LNG storage facility was identified as one resource in a three-resource lowest reasonable cost plan for meeting

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Methodology for Allocating Costs Between Regulate and Non-regulated Liquefied Natural Gas Services, Docket UG-151663, Order 10 ¶¶ 56-60 (Nov. 1, 2016) ("Cost Allocation Order"); *see also id.* ¶ 101 (Staff investigated a stand-alone peaker sized to meet core gas customer requirements and sited elsewhere in PSE's service territory and found it not to be cost effective when compared to the planned facility at the Port of Tacoma).

[253] Earle, Exh. RLE-14CT at 18:22-19:2, 18:19-22.

[254] Peaking resources, by their nature are meant to be available for peak events; it is not merely operation during a peak event that makes the peaking resource used and useful.

[255] Roberts, Settlement Hearing Tr. at 427:6-8.

[256] *WUTC v Avista Corp.*, Dockets UE-200900, *et al.*, Order 08/05 ¶ 267 (Sept. 27, 2021) (emphasis added).

[257] Roberts, Exh. RJR-1CT at 57:6-10; *see also* Roberts, Exh. RJR-3 at 3.

natural gas demand in 2017 and beyond.[258] In the 2013 IRP, PSE analyzed seven alternatives and projected a combination of five resource alternatives including an LNG peaking project.[259] In the 2015 IRP, the Tacoma LNG project was selected as part of the least-cost resource solution from a pool of seven demand- and supply-side resource options that included long-haul interstate pipeline capacity and regional underground storage service with interstate pipeline storage redelivery service.[260]

99. PSE management updated the resource alternatives that had been evaluated in the 2015 IRP to support its September 2016 request for final authorization from the PSE Board of Directors to move forward with construction of the Tacoma LNG Facility. At that time, the portfolio benefit analysis demonstrated a $54 million net present value benefit to customers with the Tacoma LNG Facility compared to alternative resources over the 20-year period from 2016 through 2035.[261] In light of construction delays due to the delay in issuance of the air permit, PSE management performed a re-evaluation of the resource need and alternatives analysis in early 2018. This analysis showed that the Tacoma LNG Facility remained the least-cost resource alternative to meet PSE's gas design-day peak need, and that a comparison of a "With Tacoma LNG" scenario to a "Without Tacoma LNG" scenario showed a $112.5 million benefit to the existing gas portfolio.[262]

a. Alternatives proposed by Public Counsel and the Tribe are facially unreasonable and unfair to PSE electric customers.

100. The purported alternatives to the Tacoma LNG Facility put forth by Public Counsel and the Tribe are either unreasonable or simply not viable. For example, Public Counsel suggested PSE could have explored installing compressed natural gas storage at its generating stations for use during peak periods, but Public Counsel makes no attempt to address the sheer size of the

[258] Roberts, Exh. RJR-1CT at 57:10-16; *see also* Roberts, Exh. RJR-3 at 3-4.
[259] Roberts, Exh. RJR-1CT at 63:9-19.
[260] Roberts, Exh. RJR-3 at 25-26.
[261] Roberts, Exh. RJR-30T at 20:8-21:6; *see also* Roberts, Exh. RJR-3 at 45-52.
[262] Roberts, Exh. RJR-30T at 22:10-22:14; *see also* Roberts, Exh. RJR-3 at 63.

real estate footprint that would be required to store the necessary volume of compressed natural gas, which renders this alleged alternative not even worthy of evaluation.[263]

101. Contrary to the alleged alternative proposed by Public Counsel and the Tribe, PSE cannot disadvantage its electric customers to favor its gas customers by allowing the gas book to use pipeline capacity acquired for power generation to meet gas peak-shaving needs. In the first instance, PSE has included the pipeline capacity it acquired for power generation in its power supply portfolio. That pipeline capacity cannot reasonably be included as both a gas supply resource and a power supply resource; it would not be prudent utility resource planning for PSE to "plan" to use power supply portfolio resources to supply gas portfolio needs.[264] Second, using the pipeline capacity PSE acquired for power generation to meet its gas design day peak need would result in impermissible cross-subsidization.[265] While it is true that the PSE gas business unit and the PSE electricity business unit conduct gas trades with one another, as Public Counsel posits,[266] the electric business unit selling gas during peak times to the gas business unit is not a reasonable alternative, when both PSE's gas and electric business units are winter peaking.[267] PSE has included the pipeline capacity it needed to get gas to its power plants for power generation in planning its power supply portfolio and that same pipeline capacity cannot also be included in planning for the gas supply portfolio.

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[263] Roberts, Exh. RJR-1CT at 13:18-14:8 (LNG has been cooled to a liquid state with a 1/600th reduction in volume, CNG remains in gaseous form but stored at high pressure which results in a reduction in volume of only approximately 1/100th as compared to non-compressed natural gas).
[264] Roberts, Exh. RJR-30T at 24:11-25:12.
[265] *Id.* at 23:7:19.
[266] Earle, Exh. RLE-14CT at 10:17-11:13.
[267] Earle, Exh. RLE-8 (PSE Response to Public Counsel Data Request No. 378(c) ("Both PSE's gas system and electric system provide service to *highly temperature sensitive demand territory*")); Earle, Exh. RLE-10 (PSE Response to Public Counsel Data Request No. 312(d) ("It was presumed that if a peak event occurs, both PSE gas system needs and gas generation needs may very likely be coincident, thus putting extreme pressure on the entire gas and electric grid")); and Earle, Exh. RLE-10 (PSE Response to Public Counsel Data Request No. 312(e) ("PSE analyzed the Tacoma LNG project for purposes of meeting its natural gas distribution peak system needs. If PSE's electric system load peaked in the summer, like many parts of the country, such gas supply/transportation sharing arrangements might be feasible. However, hoping to divert gas supplies from electric generation *when it is most needed to meet peak electric needs in winter* is not a reasonable plan.")) (Emphasis added).

102. In addition, well over half of the intra-company trades identified by Public Counsel are at points that are not on the Northwest Pipeline system. There is no firm capacity available on the Northwest Pipeline system to move that gas to the PSE distribution system, and PSE cannot rely on interruptible capacity to meet its peaking needs because it is a near certainty that interruptible pipeline capacity will not flow on a very cold day.[268] In contrast, one of the benefits of the Tacoma LNG Facility is its location on the PSE gas distribution system, which means additional Northwest Pipeline capacity is not needed to move gas from the Tacoma LNG Facility to PSE's gas distribution customers.[269] Therefore, it would not be prudent utility "planning" for the PSE gas business unit to plan to buy gas from the electric business unit on a peak day.[270]

103. Public Counsel's and the Tribe's reliance on PSE's response to the Puget Sound Clean Air Agency to support their claim that PSE could use pipeline capacity acquired for power generation to meet gas peak-shaving needs is equally misplaced. PSE was responding to a hypothetical scenario in which the Tacoma LNG Facility was not available for use nearly five years after the date PSE had planned to use it, and Public Counsel's testimony to the contrary[271] is wrong. PSE started its May 25, 2018 response to the Puget Sound Clean Air Agency with the phrase "[i]f the Tacoma LNG project does not occur,…"[272] At that time and in that context, PSE was responding to a hypothetical scenario in which construction of the Tacoma LNG Facility would not be completed. As PSE explained to the Puget Sound Clean Air Agency, in that scenario, "[t]o meet *initial* customer demand for natural gas during those peak days, PSE would have had to repurpose firm gas transmission capacity from peak period electric generation to residential gas service. … PSE would also immediately begin contractual negotiations for expansion of natural gas transmission infrastructure."[273] Using power supply's pipeline capacity to meet gas system needs would have been expensive and unsustainable in the long-term, but it

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[268] Roberts, Exh. RJR-30T at 29:22-30:2.
[269] Roberts, Exh. RJR-1CT at 3:3-16.
[270] Roberts, Exh. RJR-30T at 25:10-12.
[271] Earle, Exh. RLE-14T at 12:18-21.
[272] Earle, Exh. RLE-10 at 20.
[273] Earle, Exh. RLE-10 at 20-21 (emphasis added).

may have been the only option in the hypothetical scenario given the lead time necessary for a gas pipeline expansion or updates to the propane-air facility,[274] both of which have been shown to be more expensive options for customers.[275]

104. Public Counsel incorrectly claims PSE could divert 85 MDth/day of the 125MDth/day from PSE's dual-fuel plants to supply gas customers.[276] Public Counsel is confused; it is nonsensical to state that PSE could divert the power plant consumption to PSE's gas supply customers. As Mr. Roberts testified, at full volume for a full day, the peaker plants could *consume* a total volume of gas of approximately 125 MDth/day. However, PSE has only 54 MDth/day of firm capacity to serve those plants.[277] Therefore, PSE would be limited to "diverting" only up to 54 MDth/day of gas to its gas supply customers from the power supply portfolio and PSE had a need for more than 54 MDth/day. Moreover, it is likely that on a peak gas day, the PSE electric system will also be experiencing a peak day and the power supply portfolio will need pipeline capacity to run the peaking power plants. Public Counsel claims it is a "rare occurrence" for the electric system and the gas system to peak concurrently.[278] This argument confirms yet again the difference between actual use and prudent utility planning. The fact is, as Public Counsel's exhibit recognizes, concurrent peaks of the PSE electric system and the PSE gas system, both of which are winter peaking,[279] do occur and could happen again, whether often or not. PSE must prudently plan to serve peak load on both the gas system and the electric system.

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[274] Roberts, Exh. RJR-30T at 27:11-16.
[275] Roberts, Exh. RJR-3 at 25 (PSE LNG selected above Swarr Upgrade and pipeline expansions not selected), *see also* Cost Allocation Order, ¶ 102.
[276] Earle, Exh. RLE-14CT at 12:5-8.
[277] Roberts, Exh. RJR-30T at 24:11-18.
[278] Earle, Exh. RLE-14CT at 11:3-7.
[279] Earle, Exh. RLE-10 (PSE Response to Public Counsel Data Request No. 312(e) ("PSE analyzed the Tacoma LNG project for purposes of meeting its natural gas distribution peak system needs. If PSE's electric system load peaked in the summer, like many parts of the country, such gas supply/transportation sharing arrangements might be feasible. However, hoping to divert gas supplies from electric generation *when it is most needed to meet peak electric needs in winter* is not a reasonable plan.")) (Emphasis added).

105. The Tribe's claim that PSE could have used its capacity rights at the Jackson Prairie Storage Facility ("Jackson Prairie") or the Gig Harbor Satellite LNG Facility ("Gig Harbor") to meet its peaking needs[280] does not withstand the most cursory scrutiny. As Mr. Roberts testified, all of the Jackson Prairie deliverability and storage capacity owned by PSE (the capacity PSE owns outright and the capacity it has under contract with Northwest Pipeline) is already factored into PSE's design day peak demand studies.[281] The Jackson Prairie capacity owned by Northwest Pipeline is fully contracted and unavailable for PSE to acquire on a peak day and the Jackson Prairie capacity owned by Avista is not available for sale or lease to others.[282] In addition, there is no firm pipeline capacity available for PSE to acquire to move additional storage withdrawals from Jackson Prairie to its distribution system even if additional capacity were available at Jackson Prairie (it is not), and PSE could not rely on interruptible capacity to meet its peaking needs as interruptible pipeline capacity is very unlikely to flow on a peak day.[283] With regard to Gig Harbor, it is also an incremental supply source that is already included in the peak day resource stack. Therefore, Gig Harbor is not an alternative to the Tacoma LNG Facility.[284]

3. PSE's Board of Directors was informed and involved in the decision to build the regulated portion of the Tacoma LNG Facility.

106. As required by the third factor the Commission considers in making a prudence determination, PSE's Board of Directors was fully informed and ultimately made the decision to build the regulated portion of the Tacoma LNG Facility. PSE identified the possibility of using an LNG storage facility to meet its design day peaking needs as early as the 2009 IRP and the 2011 IRP projected a need for a regional LNG storage facility.[285] In May 2012, the PSE Board of Directors authorized PSE to continue investigating the potential ownership of an LNG

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[280] Sahu, Exh. RSX-1T at 9:16-20, 11:20-12:11, 25:8-9.
[281] Roberts, Exh. RJR-30T at 29:11-14.
[282] *Id.* at 29:15-18.
[283] *Id.* at 29:19-30:2.
[284] *Id.* at 30:16-21.
[285] Roberts, Exh. RJR-1CT at 57:6-16; Roberts, Exh. RJR-3 at 2-4; Roberts, Exh. RJR-30T at 5:3-16.

liquefaction and storage facility.[286] As described above and in Mr. Roberts prefiled testimony in this proceeding, PSE continued to inform the PSE Board of Directors regarding its efforts to study the need for gas resources and evaluate an LNG liquefaction and storage facility as an option for meeting those needs through September 2016 when the PSE Board of Directors authorized construction of the Tacoma LNG Facility.[287] In addition, in March 2018, eighteen months after construction had begun, PSE management re-evaluated its gas resource need and confirmed to the PSE Board of Directors that it continued to need the Tacoma LNG Facility and that it was the least cost alternative.[288]

107. The involvement of the PSE Board of Directors is well-documented in the record in this proceeding. PSE provided a list of the decisions made by the PSE Board of Directors throughout the development and construction phases of the Tacoma LNG Facility in Table 6 of Exh. RJR-1CT.[289] In addition, PSE provided a comprehensive narrative timeline of the development and construction of the Tacoma LNG Facility, including descriptions of the dozens of reports and presentations that were provided to the PSE Board of Directors in Exh. RJR-3. PSE also provided all of the documents that were provided to the PSE Board of Directors over the course of the PSE Board's evaluation and decisions approving development and construction of the Tacoma LNG Facility in Exh. RJR-5C.

108. Public Counsel uses most of the same faulty arguments it made about infirmities in PSE's load forecasting and its failure to establish a need for the Tacoma LNG Facility as well as the exclusion of certain (unreasonable and non-viable) alternatives from consideration, to claim that the PSE Board of Directors was not fully informed about the Tacoma LNG Facility.[290] Public

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[286] Roberts, Exh. RJR-1CT at 57:16-20; Roberts, Exh. RJR-3 at 4-8; Roberts, Exh. RJR-5C at 3-61; Roberts, Exh. RJR-30T at 31:5-6.
[287] Roberts, Exh. RJR-1CT at 58:1-60:8; Roberts, Exh. RJR-3 at 8-25, 29-43, 45-52; Roberts, Exh. RJR-30T at 31:6-12; Exh. RJR-5C at 62-1693.
[288] Roberts, Exh. RJR-1CT at 64:17-65:6; Roberts, Exh. RJR-30T at 31:12-14; Roberts, Exh. RJR-5C at 1766-1796.
[289] Roberts, Exh. RJR-1CT at 58:13-60:1.
[290] Public Counsel claims that PSE did not discuss with the Board of Directors: declining forecasts or disappearing projected needs, which PSE has previously discussed are meritless; nor alternatives such as compressed natural gas, sales of gas or pipeline capacity from the electric business unit to the gas unit, or power purchases to replace reduced electric production, which PSE has previously shown to be not viable alternatives.

Counsel's claim that the PSE Board of Directors was not fully informed must fail for the same reasons described above. PSE's gas planning standard is intended to assure PSE can meet the design day peak need and was accepted by the Commission as recently as 2021 as based on reliability and safety and in line with industry best practices.[291] When it accepted the 2021 IRP, the Commission was clearly not in agreement with Public Counsel that there are problems with PSE's load forecasting and needs assessment. Moreover, PSE has demonstrated that none of the alleged "alternatives" put forth by Public Counsel would have been a reasonable or viable alternative to the Tacoma LNG Facility.

109. Public Counsel incorrectly claims that for nearly two years, the PSE Board of Directors received no updates on the Tacoma LNG Facility. Although that claim is false, the two-year period in question begins after the May 2020 Board of Directors meeting. However, by that time, the prudence decision had been made. Indeed, the March 2018 re-evaluation and Board of Directors decision to go forward with the Tacoma LNG Facility was made over two years earlier, and by May 2020, construction of the Tacoma LNG Facility was well underway. There were no longer major decisions for the PSE Board of Directors to make regarding the regulated portion of the Tacoma LNG Facility, and PSE management provided mostly oral Tacoma LNG reports regarding the construction timeline, status of litigation, and updates on the budget.[292] Consistent with the Commission's standard that the prudence analysis is determined at the point in time when a company made its decision, Public Counsel's attempt to show that the PSE Board of Directors was not properly informed when it made the decision to construct the regulated portion of the Tacoma LNG Facility by pointing to a period more than two years after the decision was made is irrelevant.

110. Public Counsel also claims that the PSE Board of Directors was not adequately informed about the Tacoma LNG Project because PSE management did not present the unreasonable and

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[291] Roberts, Exh. RJR-30T at 8:3-5; *see also Puget Sound Energy's 2021 Integrated Resource Plan*, Dockets UE-200304/UG-200305, at 9-67 to 9-68, and at Appx. L Temperature Trend Study (Jan. 4, 2021).
[292] Roberts, Exh. RJR-30T at 33:3-10.

non-viable alternatives put forward by Public Counsel[293] and that forecasted need did not form a part of the PSE Board of Director's decision-making process.[294] In the first instance, PSE is not required to evaluate unreasonable alternatives or alternatives that it knows are not viable. In addition, Public Counsel's attempt to lead the Commission to believe that need forecasts were not a part of the PSE Board of Director's decision-making is at best misleading. Although the exact volumes of immediate need and forecasted need at year 20 may not have been specifically listed in the presentations to the PSE Board of Directors, PSE's gas resource need and load forecasts were embedded in the graphs and other materials PSE management presented to the PSE Board of Directors. For example, the materials presented at the July 2, 2014 Board of Directors meeting, included various graphs depicting PSE's gas resource need[295] as well as a section titled "Gas Peak Day Resource Need and Alternatives Analysis" including a graph that showed the Peak Day Load/Resource Balance.[296] The materials presented at the July 30, 2014 Board of Directors meeting, also included various graphs that showed PSE's natural gas resource need[297] as well as an entire section titled "Resource Need and Alternatives Analysis" including a graph that showed the Peak Day Load/Resource Balance.[298] The materials presented at the February 27, 2015 Board of Directors meeting included a graph that showed PSE's updated gas forecast and that the Tacoma LNG Facility was needed to meet the forecast.[299] The materials presented at the September 24, 2015 Board of Directors meeting included various graphs depicting PSE gas resource need[300] and a "Resource Need and Analysis" section.[301] The materials presented at the August 4, 2016 Board of Directors meeting, included an entire section titled "Resource Need and Alternatives Analysis" including a graph that showed the Peak Day

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[293] Earle, Exh. RLE-14CT at 16:9-14.
[294] *Id.* at 17:3-8.
[295] Roberts, Exh. RJR-5C at 189, 244, 278.
[296] *Id.* at 398-417.
[297] *Id.* at 596, 644, 681.
[298] *Id.* at 756-777.
[299] *Id.* at 862.
[300] *Id.* at 935, 957, 981.
[301] *Id.* at 1143-1158.

Load/Resource Balance.[302] Last, at the March 1, 2018 Board of Directors meeting, PSE management included a graph showing the base need forecast and that the Tacoma LNG Facility was slated to meet part of that need.[303]

4. PSE retained contemporaneous records to demonstrate involvement of the PSE Board of Directors in the decision to build the Tacoma LNG Facility.

111. PSE provided ample evidence to demonstrate that it retained contemporaneous records to show the PSE Board of Directors was involved in and made the decision to build the Tacoma LNG Facility. Exh. RJR-5C includes the written information and materials that were presented to the PSE Board of Directors: in May 2012 when the PSE Board of Directors authorized PSE to continue investigating the potential ownership of an LNG liquefaction and storage facility; during development of a proposed LNG storage facility; in September 2016 when the decision to go forward with construction of the Tacoma LNG Facility was made; in 2018 when the Tacoma LNG Facility was re-evaluated and the decision was made to complete construction; and during construction of the Tacoma LNG Facility.[304] In addition, PSE provided Exh. RJR-3, a narrative timeline of the development and construction of the Tacoma LNG Facility that includes descriptions of the dozens of reports and presentations that were provided to the PSE Board of Directors and are included in Exh. RJR-5C.

112. Public Counsel's claims that PSE's documentation missed the mark on consideration of need, alternatives, and adequate information and that PSE failed to adequately document its decision to build the Tacoma LNG Facility[305] are based on the same faulty assumptions about infirmities in PSE's load forecasting and PSE's alleged failure to evaluate alternatives that are unreasonable or not viable. Those faulty assumptions do not support Public Counsel's arguments that PSE failed to: establish a need for the Tacoma LNG Facility; evaluate alternatives; or properly inform the PSE Board of Directors. As is shown in Exh. RJR-3 and Exh. RJR-5C,

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[302] *Id.* at 1660-1674.
[303] *Id.* at 1794.
[304] *See id.* for the written information and materials that were presented to the PSE Board of Directors.
[305] Earle, Exh. RLE-14CT at 17:12-14, 18:3.

Public Counsel has failed to support its claim that PSE did not retain adequate contemporaneous records to demonstrate the PSE Board of Directors was involved in and made the decision to build the Tacoma LNG Facility.

B. The Tacoma LNG Facility Created Environmental and Other Benefits

113. PSE disagrees with the Tribe's claims that the scope of the Commission's prudency analysis has been changed because the public interest standard allows (but does not require) the Commission to consider factors such as environmental health and equity in making a public interest determination;[306] but even if it were true, the evidence in the record demonstrates the significant environmental and other benefits resulting from the Tacoma LNG Facility. With regard to the legal standard, the Commission's determination of whether a multiyear rate plan is in the public interest is different than its determination of whether a decision to acquire a resource was prudent.[307] Moreover, the Commission should exercise caution in revising its well-established and time-tested prudence standard and applying a different standard retroactively to a constructed plant, as the Tribe proposes. The Tacoma LNG Facility was mechanically completed in February 2021,[308] before the public interest standard in RCW 80.28.425 was amended by the legislature. PSE and its investors relied on the Commission's long-standing prudence standard that focuses on what a reasonable board knew or should have known at the time the decision was made to move forward on the project. For the Tacoma LNG Facility, those decisions were made in 2016 and 2018. While the Commission's long-standing prudence standard contains significant risks due to the inability to recover costs or earn a return on the plant until it is completed, the standard does provide certainty in terms of knowing what the utility must consider and when that standard is applied, i.e., at the time the decision to move forward with the project is made. If utilities and investors now face shifting standards on prudence that are applied retroactively to

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[306] Sahu, Exh. RXS-30T at 9:19-20:1.

[307] Used and Useful Policy Statement, ¶ 43 (recent changes to RCW 80.04.250 must be exercised consistently with Commission's primary obligation to regulate in the public interest).

[308] Roberts, Exh. RJR-3T at 71-72.

constructed projects, utilities will be unwilling to invest in necessary utility infrastructure and investors will invest their capital in other jurisdictions with more predictable regulatory landscapes.

114. That said, the evidence in this case, as well as Washington law demonstrate the Tacoma LNG Facility is consistent with the amended public interest standard that was codified after construction of the facility was completed. The Washington Legislature has determined that the development of LNG vessel refueling facilities is in the public interest.[309] In the Tacoma LNG Cost Allocation Order in Docket UG-151663, the Commission recognized the potential benefits of the Tacoma LNG Facility serving PSE's core customers' peaking needs and promoting the Legislature's stated finding in RCW 80.28.280 that the development of LNG vessel refueling facilities is in the public interest.[310] The Commission also acknowledged that it is an economic, not an environmental regulator, and that PSE would still maintain its ultimate responsibility under the regulatory compact to provide safe, reliable natural gas service at reasonable rates.[311]

115. The Commission has also stated that one core tenet of energy justice is "distributional justice" which aims to ensure that marginalized and vulnerable populations do not receive an inordinate share of the burdens or are denied access to benefits.[312] Therefore, to the extent the Commission considers environmental health and greenhouse gas emissions reductions, health and safety concerns, economic development, and equity, whether as part of the public interest standard or the prudence evaluation, the benefits provided to the Tribe and others that live and work around the Port of Tacoma by the Tacoma LNG Facility must be considered.

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[309] RCW 80.28.280(1) ("The legislature finds that compressed natural gas and liquefied natural gas offers [offer] significant potential to reduce vehicle and vessel emissions and to significantly decrease dependence on petroleum-based fuels. The legislature also finds that well-developed and convenient refueling systems are imperative if compressed natural gas and liquefied natural gas are to be widely used by the public. The legislature declares that the development of compressed natural gas and liquefied natural gas motor vehicle refueling stations and *vessel refueling facilities are in the public interest.*") (Emphasis added).
[310] Cost Allocation Order, ¶ 115.
[311] *Id.* ¶ 116.
[312] *WUTC v. Cascade Nat. Gas Corp.*, Docket UG-210755, Order 09 ¶ 56 (Aug. 23, 2022).

116. Construction of the Tacoma LNG Facility improved onsite environmental conditions as compared to pre-construction conditions. PSE built the Tacoma LNG Facility on a brownfield site[313] that allowed for uncontrolled stormwater releases. PSE replaced 24 creosote piles with 48 steel pilings which provides for additional wave energy dissipation, reduced erosion, and a stabilized shoreline bank, all of which benefit water and sediment conditions in the Blair Waterway.[314] In addition, PSE removed old structures built with materials containing lead and asbestos and cleaned up the site, which removed uncontrolled or untreated sources of stormwater contamination.[315] PSE also installed a stormwater raingarden on the upland facility to decrease the flow of untreated water from a largely industrial peninsula into the Hylebos waterway.[316] The Shorelines Hearings Board noted these material improvements in a decision denying an appeal by the Tribe of the Shoreline Substantial Development Permit issued by the City of Tacoma.[317]

117. PSE also engaged in onsite mitigation in the Hylebos waterway by removing deteriorating coverage from overwater structures, which directly benefits juvenile salmon. PSE engaged in offsite mitigation in Commencement Bay by paying for removal of overwater structures at the Sperry Terminal—again directly benefiting juvenile salmon. PSE also revegetated portions of the 50-foot marine buffer at the Project site on the Hylebos Waterway which benefits salmon, improves water quality, and provides erosion control.[318] The Tribe's claim that the Port of Tacoma, not the Tribe or surrounding community, benefited from all of this clean up work[319] is simply not true. The significant improvements made by PSE benefit people that live and work around the Port of Tacoma as well as salmon and other fish and wildlife that live in and around the Blair and Hylebos waterways and Commencement Bay. Indeed, the "Tribe has a treaty-protected right to fish and shellfish in the area,"… "a recognized interest in the

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[313] Sahu, Exh. RXS-36 at 7, citing the 2015 FEIS.
[314] Roberts, Exh. RJR-33 at 22:21-23-2.
[315] Roberts, Exh. RJR-33 at 24:9-10.
[316] Roberts, Exh. RJR-30T at 42:1-7
[317] Roberts, Exh. RJR-33 at 17:8-18:6, 33:11-13.
[318] Roberts, Exh. RJR-30T at 42:4-20.
[319] Sahu, Exh. RXS-30T at 28:17-19.

quality of the aquatic environment," and is engaged in its own "mitigation and restoration projects intended to improve fish habitat on the Puyallup River."[320] In addition, the Tribe owns property on the Hylebos waterway across from the Tacoma LNG project site and on the Blair waterway.[321] The Tribe's arguments that it does not benefit from PSE's cleanup and other improvements in and around the Tacoma LNG Facility are contradicted by the record.

118. In addition, as a dual-use facility, the Tacoma LNG Facility is providing LNG as fuel for the marine vessel market and is prepared to provide LNG as fuel for trucks.[322] This will drastically reduce emissions from TOTE's Alaska ships, virtually eliminating sulfur oxides (SOx) and particulate matter while drastically reducing nitrogen oxides (NOx) and carbon dioxide which will result in a healthier environment for Tacoma, Puget Sound and Anchorage, the communities in which TOTE operates.[323] This is consistent with Mr. Roberts' testimony at the evidentiary hearing that replacing diesel or fuel oil with LNG to fuel marine vessels and trucks will reduce criteria pollutants, such as SOx and NOx, and decrease greenhouse gases, which will work to improve the health of residents living near the Port of Tacoma and workers at the Port.[324] In addition, staff in the WUTC pipeline safety division noted in their briefing document that reducing the amount of SOx emanating from ships should have major health and environmental benefits for the world, *particularly for populations living close to ports and coasts*.[325]

119. The Tribe claims that because the Pollution Control Hearings Board did not resolve the alleged disparate health impacts on the Tribe and nearby neighborhoods, PSE should be required to do more work to assess the equity impacts of the Tacoma LNG Facility.[326] As Mr. Roberts testified at the evidentiary hearing, every environmental agency that has been involved in

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[320] Roberts, Exh. RJR-33 at 5:2-10.
[321] *Id.* at 5:13-18.
[322] Roberts, Exh. RJR-1CT at 18:6-17.
[323] Sahu, Exh. RXS-10.
[324] Roberts, Settlement Hearing Tr. at 433:17-25.
[325] Sahu, Exh. RXS-36 at 8 (emphasis added).
[326] Sahu, Exh. RXS-30T at 16:21.

permitting the Tacoma LNG Facility has recognized the facility provides environmental benefits. The Final Environmental Impact Statement ("FEIS") prepared by the City of Tacoma addresses many components that would be found in an equity evaluation, including air quality, water quality, fish habitat, water issues, cleanup of an existing brownfield site, and socioeconomic impacts.[327] All impacts were determined to be less than significant. Mr. Piliaris testified that spreading the additional revenue PSE will receive from Puget LNG across PSE's fixed costs has a benefit to all customers, including those that are less economically advantaged.[328] Last, Mr. Roberts testified that the Tacoma LNG Facility increases the reliability of PSE's gas distribution and supports PSE's obligation to serve its customers on a very, very cold day which avoids safety issues that would impact all communities on the PSE system.[329] Although equity concerns were not a primary driver of the Tacoma LNG Facility, the evidence shows it provides benefits to the Tribe and vulnerable and historically disadvantaged communities that should not be ignored.

C. The Threats Claimed by the Tribe Are Not Supported by the Evidence

120. The Tribe inaccurately claims that the record is void of discussion of the impacts of the Tacoma LNG Facility and how those impacts might be mitigated and, therefore, the Commission should determine PSE's decision to build the regulated portion of the Tacoma LNG Facility was not prudent.[330] Based on the discussion in the previous section on the positive impacts provided by the Tacoma LNG Facility, the Tribe's argument must fail. Those positive benefits, both to people living near and working at the Port of Tacoma, as well as those that benefit from cleaner air due to a reduction in transportation emissions, cannot be denied.

121. The Tribe disregards the purpose of the Clean Air Act and the Puget Sound Clean Air Agency and Pollution Control Hearings Board findings in its claims that the Tacoma LNG Facility causes serious negative externalities, and states that the fact that PSE received its air

[327] Roberts, Settlement Hearing Tr. at 434:1-16.
[328] Piliaris, Settlement Hearing Tr. at 430:2-431:20, 435:1-5.
[329] Roberts, Settlement Hearing Tr. at 435:6-21.
[330] Sahu, Exh. RXS-30T at 5:24-6:2.

permit does not establish that the Tacoma LNG Facility does not disparately impact the Tribe.[331] The Tribe's further discussion argues that even though the Tacoma LNG Facility will be in compliance with the Clean Air Act, it emits carcinogens so it must create disparate impacts to the Tribe and the surrounding community.[332] The Tribe's claims, however, ignore that the Clean Air Act is intended to *protect human health* and that the Pollution Control Hearings Board agreed with the Puget Sound Clean Air Agency's finding that the Tacoma LNG Facility is not a "major source" of emissions because its emissions are extremely low when compared to the thresholds that would trigger more stringent permitting requirements.[333]

122. As Mr. Roberts testified, every agency that has reviewed the Tacoma LNG Facility has recognized the facility provides environmental benefits and that it should go forward.[334] The agencies that made those decisions, e.g., the Puget Sound Clean Air Agency, the Washington Department of Ecology, the Pollution Control Hearings Board, and the Shoreline Hearings Board, have certain expertise on the environmental and health impacts of proposed projects. In contrast, the Commission has previously determined that it "is principally an economic regulator and that a general rate proceeding such as this is focused specifically on the Company's costs and their recovery in rates."[335] Although the Commission can consider other factors that are not strictly economic under the new public interest standard, the Tribe inappropriately requests that the Commission second guess the decisions made by other agencies with environmental and health expertise.

123. The Tribe claims, misleadingly, that in response to the remand of the air permit by the Pollution Control Hearings Board, the parties to the proceeding have not yet agreed on how to amend the air permit to add the condition of installing a continuous emissions monitoring system

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[331] *Id.* at 18:16-22.
[332] *Id.* 19:8-20:8.
[333] Roberts, Exh. RJR-30T at 38:7-39:14; Roberts, Exh. RJR-32 at 32, 58.
[334] Roberts, Settlement Hearing Tr. at 434:5-7.
[335] *WUTC v. Puget Sound Energy*, Dockets UE-111048/UG-111049, Order 04 ¶¶ 11 (Sept. 27, 2011); *see also* Cost Allocation Order, ¶¶ 22, 116.

("CEMS") to monitor SO_2 emissions and volatile organic compound emissions.[336] The Tribe fails to mention, however, that the Pollution Control Hearings Board did not adopt the Tribe's "extensive proposed changes" to the Permit, including the CEMS language proposed by the Tribe.[337] Nor does the Tribe mention that based on agreement by the parties, the Pollution Control Hearings Board directed that a SO_2 CEMS be installed[338] and that PSE has already installed the agreed upon CEMS at the Tacoma LNG Facility.

124. The Tribe's claims that the alleged negative externalities to the Tribe and area surrounding Port of Tacoma are driven only by PSE's desire to serve TOTE's fueling needs are not accurate. The Tribe claims PSE located the Tacoma LNG Facility at the Port of Tacoma only so it would be close in proximity to TOTE.[339] As a dual-use facility, it was important for PSE to be able to serve both uses, marine vessels and its distribution system in order for both uses to share development, construction, and operating costs and achieve a cost effective gas design day peak resource.[340] The use of the Tacoma LNG Facility for gas system peaking needs is complementary to its use for marine and trucking fueling as was acknowledged in the Cost Allocation Order.[341] Moreover, the location at the Port of Tacoma is also good for PSE's gas customers because it is located on the PSE distribution system, which avoids the need to use the Northwest Pipeline system.[342]

125. The Tribe wrongly claims that PSE does not address worst-case events or catastrophic accidents, and instead PSE conflates code compliance with safety.[343] In addition, the Tribe claims

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[336] Sahu, Exh. RXS-30T at 20:17-21:5.
[337] Roberts, Exh. RJR-32 at 77:6-11.
[338] Roberts, Exh. RJR-32 at 76:17-77:2 (the parties agree that installing CEMS would remedy the Board's finding that the Permit does not assure SO_2 emissions will not cause or contribute to NAAQS violation, the Board directs that a SO_2 CEMS be installed).
[339] Sahu, Exh. RSX-1T at 24:3-7.
[340] Roberts, Exh. RJR-1CT at 10:4-19, 32:17-33:13, *see also* Exh. RJR-30T at 4-16.
[341] Cost Allocation Order, ¶ 19 (the Tacoma LNG project's benefits could be enhanced by building a facility that could serve the transportation fuel market; LNG facilities are capital intensive and costs for all customers are reduced when the facilities' costs can be distributed across a larger customer base; the peaking component of an LNG storage facility requires significant storage and relatively small liquefaction capacity, conversely, the marine and heavy-duty trucking markets require significant, steady liquefaction and minimal storage).
[342] Roberts, Exh. RJR-1CT at 35:3-16.
[343] Sahu, Exh. RXS-30T at 23:12-16.

that Commission Staff acknowledged the design spill scenario that PSE modeled does not represent all reasonably anticipatable risks posed by the facility,[344] and that PSE's design spill is a standardized scenario that does not account for all potential risks presented by LNG facilities.[345] However, the same Commission Staff report quoted by the Tribe also lists numerous mitigation measures PSE included in its construction design.[346] The City of Tacoma's FEIS found that due to mitigation measures identified in the EIS and inherent in the Tacoma LNG Facility design, the Tacoma LNG Facility would have no significant unavoidable adverse health and safety impacts.[347] The FEIS also found that public safety is of paramount importance to any LNG facility, and that the LNG industry has an exceptionally good safety record which indicates that regulations governing LNG siting and operation are effective.[348] The FEIS also acknowledged PSE's "Nobody Gets Hurt Today" core value.[349] In addition, as part of the FEIS, the City of Tacoma engaged a third-party engineering firm that specializes in LNG services, Braemar Technical Services' Engineering & Naval Architecture Group ("Braemar"), to perform an independent peer review and evaluation of the Tacoma LNG Facility for safety, code compliance, and industry best practices.[350] The Tacoma City Fire Department later engaged Braemar to evaluate the proposed design and siting of the Tacoma LNG Facility to validate its fire protection and systems.[351] The Braemar report is included as Exh. RJR-35 and a summary of the report is in Exh. RJR-30T at 54:16-55:11.

126. The Tribe's claim that PSE has announced aspirations for the Tacoma LNG Facility to transport LNG by rail and that such trains would traverse the Tribe's reservation[352] is refuted by the Tribe's own evidence in this case. The Tribe proffered Exh. RXS-38, an excerpt of the

[344] *Id.* at 24:9-12.
[345] *Id.* 25:7-10.
[346] Sahu, Exh. RXS-36 at 8-9.
[347] Sahu, Exh. RXS-22 at 1.
[348] *Id.* at 3.5-7.
[349] *Id.* at 3.5-8; *see also* Roberts, Exh. RJR-30T at 52:19-20.
[350] Roberts, Exh. RJR-30T at 53:9-19.
[351] *Id.* at 54:3-15.
[352] Sahu, Exh. RXS-30T at 26:8-9, 27:3-6.

deposition of a PSE employee, which demonstrates that PSE does not have and has not announced aspirations to transport LNG by rail. The PSE witness in the deposition testified that: at one time there was a page on the Puget LNG website that mentioned potential use of the rail spur but that page was no longer on the website; the rail spur on the Tacoma LNG Facility property was used by prior tenants, is no longer connected to any railroad, and he did not know if it would even be suitable for an LNG tanker car; rail transportation of LNG had been talked about by Puget LNG marketing (as distinct from PSE); and he understood there is not a market for transportation of LNG by rail.[353] The deposition testimony does not support the Tribe's claim that PSE has announced aspirations to transport LNG by rail.

D. Other Arguments Raised by the Tribe Lack Merit

127. The Tribe makes several other specious claims that the Commission should reject. The Tribe argues that PSE does not need liquefaction or a storage tank to meet its peak shaving needs.[354] This argument fails because if the gas is not liquefied and there is no tank, natural gas cannot be stored and available on the distribution system when PSE needs it for peak shaving. As PSE has shown, no other storage options are available in the region.[355]

128. Next the Tribe claims there would be no need for a vaporizer if PSE had not liquefied the gas for TOTE or other transportation customers.[356] This argument fails for the same reason as the liquefier and tank argument; without liquefaction, natural gas cannot be stored and will not be available for peak shaving; and to use the liquefied gas for peak shaving, it must be re-vaporized.

129. Last, the Tribe claims PSE had to re-design the Tacoma LNG Facility "at substantial cost" because gas composition changed, and the re-design was needed only to meet TOTE requirements.[357] The Tribe's arguments are not supported by the evidence. There is no significant difference between the gas quality needed for TOTE's engines and the gas quality

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[353] Sahu, Exh. RXS-38.
[354] Sahu, Exh. RSX-1T at 27:9-12, 16-19.
[355] Roberts, Exh. RJR-30T at 29:11-30:2.
[356] Sahu, Exh. RSX-1T at 28:9-15.
[357] *Id.* at 28:25-29:4; RXS-30T at 31:11-32:12.

needed for use by PSE's retail gas customers.[358] Although the TOTE requirement is expressed as a minimum methane number, the requirement for PSE's distribution customers is expressed as Btus, which reflect the heating value of the gas. High levels of ethane and propane and low levels of methane in the gas stream are just as much a problem for PSE's distribution customers as they would be for TOTE.[359] The Tribe's characterization of the re-design cost is an exaggeration. The actual cost was approximately $5.4 million on a project with a total cost of $478,000,00.[360]

E. PSE Made Significant Efforts to Engage with Interested Parties and Revised the Scope of the Project in Response to Concerns Raised by the Tribe

130. Early in the project, PSE used multiple communication strategies to communicate with interested parties, including the Tribe, and to provide information about the Tacoma LNG project. PSE's outreach included briefings with officials at the federal, state, county, city, and Port of Tacoma as well as neighborhood councils, local community and business groups and Port of Tacoma tenants. PSE also participated in public meetings and hearings, including two processes undertaken pursuant to the State Environmental Policy Act, the City of Tacoma's EIS process and the Puget Sound Clean Air Agency's Supplemental EIS process.[361] In addition, PSE included discussion of the Tacoma LNG project in its IRP processes from 2009 through 2017, the IRP-year the Tacoma LNG project was included in the resources required to meet design day peak load.[362] The IRP process is a public process that includes a variety of interested parties, such as: PSE customers; Commission staff; city, county and state government representatives; energy sector developers and producers; energy councils and coalitions directly impacted by IRP

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[358] Roberts, Exh. RJR-30T at 59:8-10; Roberts, Settlement Hearing Tr. at 420:22-23.
[359] Roberts, Settlement Hearing Tr. at 423:6-20.
[360] Roberts, Exh. RJR-30T at 61:9.
[361] Roberts, Exh. RJR-1CT at 40:10-42:19; Roberts, Exh. RJR-5C, 201, 211, 231-233, 363-373, 629, 742-754, 1105-1116; Roberts, Exh. RJR-30T at 41:9-17.
[362] Roberts, Exh. RJR-1CT at 57:6-16, 58:1-9, 63:9-19, 64:6-7; Roberts, Exh. RJR-30T at 4:9-6:2, 17:4-19:14.

results; environmental, climate change and other community advocacy groups; labor organizations in energy industries; and land use groups.[363]

131. PSE also undertook significant efforts to engage with the Tribe. Although the Tribe largely ignored PSE's early efforts to engage, PSE continued its Tribal outreach and ultimately PSE technical and legal staff were able to meet with the Tribe's technical and legal staff. In addition, PSE's senior leadership met with the Tribal Council and provided additional information on safety studies associated with the Tacoma LNG project's design and development.[364]

132. PSE understood activity on the Hylebos waterway was a major concern for the Tribe. In response to the Tribe's concern, PSE filed a stipulation with the Shoreline Hearings Board and City of Tacoma stating that it would restrict its in- and over-water work in the Hylebos waterway to those activities related to improving three existing stormwater outfalls and the removal of 4,973 square feet of overwater decking.[365] To be clear, PSE abandoned the Hylebos waterway portion of the project, which had been approved under the Shoreline Substantial Development Permit, in response to the Tribe's concerns. In addition, PSE revised its Water Quality Protection and Monitoring Plan to provide increased monitoring frequency and instrumented monitoring to address concerns raised by the Tribe.[366]

F. The Tacoma LNG Tracker Will Allow Parties and the Commission to Review the Costs Before Costs Go Into Rates in 2023

133. The Commission should approve the Tacoma LNG tracker as proposed by the parties to the Tacoma LNG Settlement. The Tacoma LNG Settlement provides that all costs associated with the Tacoma LNG facility that are allocated to the regulated utility, would be reviewed, and if the costs are reasonable, recovered in the tracker. A projection of the costs to be included in the

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[363] *See* PSE's 2017 IRP, Attachment at 1 (finding development of PSE's IRP and involvement of interested parties and Commission Staff to be the most extensive such effort in memory).
[364] Roberts, Exh. RJR-1CT at 41:10-42:19.
[365] Roberts, Exh. RJR-33 at 13:17-14:9; *see also id.* at 47:16-17 (although the Tribe objected to the Stipulation, the Shoreline Hearings Board found that the Tribe failed to provide evidence to support its claims).
[366] Roberts, Exh. RJR-33 at 14:19.

tracker is set forth in the Tacoma LNG Settlement as updated in PSE's Response to Bench Request No. 2; these are capital investments and expenses that have been removed from the revenue requirement in the multiyear rate plan and instead will be reviewed for recovery in a tracker.[367] The tracker will be filed contemporaneously with the 2023 PGA filing. As discussed above, while the parties accept a determination that the decision to build the regulated portion of the Tacoma LNG Facility was prudent, all parties retain all rights to challenge the Tacoma LNG costs when PSE files tariff revisions for the tracker.[368]

134. The evidence in the record supporting PSE's prudence case—demonstrating the need for the Tacoma LNG Facility, consideration of alternatives, and review by the PSE Board of Directors—is massive. Mr. Roberts' testimony and exhibits included more than 2600 pages supporting the prudence of the Tacoma LNG Facility, and the parties to the case had the full allotment of time to consider the prudence documentation PSE filed. It would be inefficient to repeat this review and require PSE to once again submit thousands of pages of documentation addressing need and alternatives, when the plant is completed and providing service to customers. Further, it would be burdensome to conduct this evaluation again, in the context of a tracker filing that has a much shorter review period than the current case. For these reasons, PSE respectfully requests that the Commission allow the Tacoma LNG Facility to be provisionally included in rates through the tracker filing, with a determination that PSE has met its threshold prudence determination that constructing the regulated portion of the Tacoma LNG Facility was prudent, with all costs subject to review for reasonableness.

G. The Tacoma LNG Accounting Petition Should Be Approved with Modifications that Remove Carrying Costs and Allow PSE to Continue Deferring Costs Until the Tracker is Reviewed, which Is Consistent with the Tacoma LNG Settlement Terms

135. The Commission should approve the accounting petition PSE filed seeking authorization for deferred accounting of PSE's costs associated with the Tacoma LNG Facility, with two

[367] Tacoma LNG Settlement, § 18D; PSE Response to Bench Request No. 002, Dockets UE-220066/UG-220067/UG-210918 (Oct. 18, 2022).
[368] Tacoma LNG Settlement, § 18D.

exceptions. First, as noted in the Tacoma LNG Settlement, the deferral period should be extended until recovery of the plant and deferral commences within the tracker. This settlement term recognizes that since the date for recovery of Tacoma LNG costs was extended from the GRC rate effective date (January 1, 2023) until the tracker filing and approval, PSE should be permitted to continue deferring the costs it has incurred and will incur during that time period.[369] Second, PSE is agreeing in this Brief to drop its request to recover carrying charges associated with the deferral.[370] Therefore, the Commission does not need to grant the request to defer carrying charges, as set forth in the accounting petition.

VI. CONCLUSION

136. The settlements presented to the Commission fully resolve a complex case, with minimal opposition. They allow PSE to stabilize its financial health while providing enhanced benefits to low-income and energy burdened customers. They allow PSE to recover plant in service and that will go into service for customers, including to provide reliable energy on the most extreme weather days. They weave equity into PSE's operations and move PSE farther and faster towards a clean energy future. They resolve issues between classes of PSE customers in a fair and equitable manner. For these reasons, and as set forth more fully in this brief and the supporting evidence, the settlements should be approved without conditions.

[369] Tacoma LNG Settlement, § 18A(1)(2).
[370] Free, Exh. SEF-1Tr at 138:17-18.

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Respectfully submitted

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