

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,**

**Complainant,**

v.

**PUGET SOUND ENERGY,**

**Respondent.**

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

**PUGET SOUND ENERGY'S  
RESPONSE TO PUYALLUP TRIBE  
OF INDIANS' CROSS MOTION TO  
STRIKE PORTIONS OF PUGET  
SOUND ENERGY'S POST-HEARING  
BRIEF DATED OCTOBER 31, 2022**

**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**

**I. RELIEF REQUESTED**

- I.* Pursuant to WAC 480-07-375(4), Puget Sound Energy ("PSE") hereby submits this response to the Puyallup Tribe of Indians' ("Tribe's") Cross Motion to Strike Portions of PSE's Post-hearing Brief ("Cross Motion") that was embedded in the Tribe's Response to PSE's Motion to Strike Portions of the Tribe's Post-hearing Brief ("Response"). PSE opposes the

**PSE'S RESPONSE TO TRIBE'S CROSS MOTION TO STRIKE**

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**Perkins Coie LLP**  
10885 N.E. Fourth Street, Suite 700  
Bellevue, WA 98004-5579  
Phone: (425) 635-1400  
Fax: (425) 635-2400

Tribe's Cross Motion and requests that the Washington Utilities and Transportation Commission ("Commission") reject or deny the Cross Motion.

## II. BACKGROUND

2. On January 31, 2022, PSE filed its first multiyear rate plan. The Commission opened consolidated dockets UE-220066 and UG-220067 to adjudicate PSE's rate plan. PSE's request for deferred accounting treatment for its share of the Tacoma liquefied natural gas ("LNG") Facility was consolidated with those two dockets on May 12, 2022. On August 12, 2022, various parties to the consolidated dockets executed three different settlements to resolve all issues in the case, including a Settlement Stipulation and Agreement on Tacoma LNG ("Tacoma LNG Settlement") which provides that PSE's decision to build the regulated portion of the Tacoma LNG Facility was prudent. The Commission held an evidentiary hearing on the three settlements on October 3, 2022, and the record in this proceeding closed with the conclusion of the evidentiary hearing. All parties were allowed to file Post-hearing Briefs on October 31, 2022.
3. The Tribe filed testimony in opposition to the Tacoma LNG Settlement and cross-examined witnesses for PSE and other parties that support the Tacoma LNG Settlement at the evidentiary hearing. Despite having the opportunity to file testimony opposing the Tacoma LNG Settlement and cross examine witnesses that support the Tacoma LNG Settlement, the Tribe introduced new evidence in its Post-hearing Brief consisting of a press release issued by and posted to the website of the Washington Governor and an *amicus* brief filed by the Washington Attorney General in a litigation challenging the Tacoma LNG air permit. PSE timely filed a Motion to Strike Portions of the Tribe's Post-hearing Brief ("Motion to Strike") and the Tribe

filed its Response to PSE’s Motion to Strike on November 14, 2022. The Tribe embedded its Cross Motion at the end of its November 14th Response.

### **III. ARGUMENT**

#### **A. The Tribe’s Cross Motion Violates WAC 480-07-375(2)**

4. The Tribe’s Cross Motion violates the Commission’s rule, WAC 480-07-375(2), which requires a party to file a motion “separately from any pleading or other communication with the commission.” Rather than file its Cross Motion separately from any pleading or other communication, the Tribe embedded its Cross Motion in the Tribe’s Response to PSE’s Motion to Strike. The Tribe violated WAC 480-07-375(2) by including the Cross Motion in the same pleading as its Response. WAC 480-07-375(2) states that the “commission will not consider motions that are merely stated in the body of a pleading...”. Therefore, in accordance with WAC 480-07-375(2), the Commission should reject the Tribe’s Cross Motion.

#### **B. The Claims in the Cross Motion are Meritless**

5. The Tribe inaccurately claims that PSE’s Post-hearing Brief “is rife with controversial assertions of fact” which are not supported by the record. (Response at 10:17-19). The Tribe states further that PSE’s brief includes “many controversial and unsupported assertions” and it purports to “highlight” some of them in its Response. (Response at 11:1-21). As shown below, each of the PSE assertions that the Tribe claims is unsupported is in fact supported by substantial evidence in the record in this proceeding. The Tribe’s claims are meritless, and the Commission should deny the Cross Motion.

**1. PSE’s Statements in Paragraph 4 Are Supported by Record Evidence**

6. The Tribe takes issue with PSE’s statement that the Tribe is raising arguments in this proceeding that were previously reviewed and rejected by other agencies. (Response at 11:1-4). Although the Tribe attempts to distinguish its arguments in this proceeding (which concerns prudence) from its arguments in the environmental review proceedings, those attempts fail. The Tribe’s testimony claims the Tacoma LNG Facility presents “disparate impacts” to minority and low-income communities related to siting a facility near those communities that poses a risk of catastrophic explosion and increased air pollution.<sup>1</sup> As described in PSE’s testimony in support of the Tacoma LNG Settlement, the Tribe’s claim that the Tacoma LNG Facility poses a risk of catastrophic explosion was previously rejected by the Pollution Control Hearings Board.<sup>2</sup> In addition, PSE addressed potential safety issues in its design and construction of the Tacoma LNG Facility as is well-documented in the record in this proceeding.<sup>3</sup>

7. The claims by the Tribe that the Tacoma LNG Facility poses human health risks to the surrounding community due to air pollution were rejected by the Puget Sound Clean Air Agency and the Pollution Control Hearings Board. The rejection of the Tribe’s arguments by these agencies is documented in PSE’s testimony and exhibits in this proceeding.<sup>4</sup> Moreover, the Shorelines Hearings Board identified numerous benefits to the surrounding community that were provided by the Tacoma LNG Facility; these findings are also documented in PSE’s testimony

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<sup>1</sup> Sahu, Exh. RSX-1T, at 8:9:13 and 16:9-11.

<sup>2</sup> Roberts, Exh. RJR-30T, at 55:12-56:11.

<sup>3</sup> See Roberts, Exh. RJR-30T, at 52:11-55:11; and 56:12-57:10; *see also*, Exh. RJR-35.

<sup>4</sup> See Roberts, Exh. RJR-30T, at 38:1-39:14; 43:7-49:3; and 50:23-52:4; *see also*, Exh. RJR-32 and Exh. RJR-34.

and exhibits.<sup>5</sup> The record evidence demonstrates that the Tribe is making the same arguments before the Commission that it has made in other forums, and those claims have been largely rejected. Accordingly, there is no basis to strike PSE’s statement that the Tribe is raising arguments in this proceeding that were previously reviewed and rejected by other agencies.

**2. PSE’s Statements in Paragraphs 16 and 113 Are Supported by Record Evidence**

8. The Tribe claims PSE’s statement that “the Commission’s prudence standard has remained generally the same for decades,” “due in part, to the investment community’s need for certainty” is unsupported. (Response at 11:5-7). PSE included a discussion of the Commission’s prudence standard in paragraphs 13 through 17 of its Post-hearing Brief. That discussion demonstrates that the Commission has utilized its current prudence standard since at least 1994,<sup>6</sup> and that the standard has remained generally the same since then.<sup>7</sup>

9. To the extent the Tribe’s claim is based on the unfounded premise that changes to RCW 80.04.250 made by the Clean Energy Transformation Act (“CETA”), or the enactment of RCW 80.28.425 which requires gas and electric companies to file multiyear rate plans, changed the Commission’s prudence standard, the Tribe is wrong. CETA allows for rates to be set based on property that is “used and useful in this state *by or during the rate effective period.*”<sup>8</sup> After enactment of CETA, the Commission issued its Used and Useful Policy Statement which

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<sup>5</sup> See Roberts, Exh. RJR-30T, at 41:18-43:2; see also, Exh. RJR-33, at 11:9-16; 13:17-14:9; 16:5-9; 17:8-18; 22:19-23:2; 24:2-10; and 25:2-18.

<sup>6</sup> See PSE Post-hearing Brief at n. 31, citing *WUTC v. Puget Sound Power & Light Co.*, Dockets UE-921262, *et al.*, Nineteenth Supp. Order p. 11 (Sept. 27, 1994).

<sup>7</sup> See PSE Post-hearing Brief at n. 30, citing *WUTC v. Avista Corp.*, Dockets UE-200900 *et al.*, Order 08/05 ¶ 267 (Sept. 27, 2021).

<sup>8</sup> RCW 80.04.250(2)(emphasis added for newly adopted statutory language).

describes the Commission’s expectations with respect to property that becomes used and useful after the rate effective date.<sup>9</sup> The Used and Useful Policy Statement, however, did not change the Commission’s prudence standard. In addition, under RCW 80.28.425, the Commission’s consideration of a proposed multiyear rate plan is subject to the same standards as traditional rate cases, i.e., whether the proposed rates are fair, just, reasonable, and sufficient and in the public interest.<sup>10</sup> Although RCW 80.28.425 expanded the factors the Commission may consider in determining the public interest for purposes of approving a multiyear rate plan, it did not change the Commission’s prudence standard.

10. The Tribe’s claim that PSE’s statement concerning the investment community’s need for certainty is unsupported, is also unsupported. Indeed, paragraph 16 of PSE’s Post-hearing Brief cites to the testimony of PSE’s witness Shipman which refers to investors seeking “*consistency and transparency*” as well as “*predictability*” from the regulatory regime.<sup>11</sup> In addition, PSE witness Peterman’s testimony supports PSE’s statement that the investment community needs certainty; Ms. Peterman cited a Moody’s credit opinion which stated that “a rating downgrade could occur if decisions from the WUTC continue to be *inconsistent* and unresponsive of credit quality...”<sup>12</sup> Ms. Peterman also testified that “*changing* regulatory policies or requirements” will negatively impact credit metrics.<sup>13</sup> PSE’s statement is also supported by a research update issued by S&P Global which stated, among other things, that S&P Global “view[ed] the WUTC’s

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<sup>9</sup> 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”).

<sup>10</sup> RCW 80.28.425(1).

<sup>11</sup> See PSE’s Post-hearing Brief at n. 35 (emphasis added).

<sup>12</sup> See Peterman Exh. CGP-1CT at 36:13-16, citing Exh. GCP-10 at 36 (Moody’s Investors Service, *Credit Opinion - Puget Sound Energy Inc.*, Aug. 25, 2021 at 2) (emphasis added).

<sup>13</sup> *Id.* at 39:6-11 (emphasis added).

decision as a *potential shift in the company's regulatory construct* that increases business risk for PSE..." and it would "lower the ratings if in [its] view the regulatory construct in the state materially weakens."<sup>14</sup> A credit opinion by Moody's which states that a "rating downgrade could occur if decisions from the WUTC continue to be *inconsistent* and unsupportive of credit quality"<sup>15</sup> also supports PSE's statement that the investment community needs certainty. The Tribe's statement that PSE had "no evidentiary support" for its statements about longevity of the prudence standard and investors' need for certainty is belied by the evidence.

### **3. PSE Statements in Paragraph 85 Are Supported by Record Evidence**

11. The Tribe misleadingly claims that PSE did not identify the agencies it was referring to in paragraph 85 of its Post-hearing Brief which stated that "several agencies" have found that the Tacoma LNG Facility will provide benefits to surrounding communities. Paragraphs 84 and 85 are lead-in paragraphs to the argument in PSE's Post-hearing Brief supporting the Tacoma LNG Settlement. Citations to record evidence supporting the Tacoma LNG Settlement are found in the argument sections that follow paragraph 85. In paragraph 116 of its Post-hearing Brief, PSE identified the Shoreline Hearings Board as an entity that found "material improvements" in the Blair and Hylebos waterways from the Tacoma LNG Facility. PSE also cited in paragraph 117 of its Post-hearing Brief to findings made by the Shoreline Hearings Board that PSE had undertaken numerous actions that benefit salmon, improve water quality, and provide erosion control in the Hylebos waterway and that PSE had made significant improvements that benefit people that live and work around the Port of Tacoma as well as fish and wildlife that live in and

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<sup>14</sup> See Peterman Exh. CGP-10 at 9-10 (emphasis added).

<sup>15</sup> *Id.* at 36 (emphasis added).

around the Blair and Hylebos waterways and Commencement Bay. In paragraph 118 of its Post-hearing Brief, PSE identified a finding by staff in the WUTC pipeline safety division that using LNG for marine fuel should have major health and environmental benefits, particularly for populations living close to ports and coasts. The Final Environmental Impact Statement prepared for the City of Tacoma found that impacts from the Tacoma LNG Facility on air quality, fish habitat, water quality, and socioeconomics in the area would be less than significant.<sup>16</sup> Further, paragraph 122 of PSE’s Post-hearing Brief lists the agencies that have reviewed the project and cites to Mr. Roberts’ testimony at the hearing regarding the environmental benefits recognized by these agencies. In summary, the Tribe’s claim that PSE relied on findings by “unidentified” agencies is not true.

#### **4. PSE Statements in Paragraph 90 Are Supported by Record Evidence**

12. The Tribe claims that PSE offers assertions in paragraph 90 of its Post-hearing Brief about decisions of the PSE Board of Directors that are not supported by citations to the record. The falsity of this claim is proven by the citations in notes 238 and 239 in paragraph 90 of PSE’s Post-hearing Brief. Indeed, note 238 cites to Roberts, Exh. RJR-1CT at 60:1-8. The discussion at page 60 of Exh. RJR-1CT refers to Table 6 in Exh. RJR-1CT. Table 6 includes citations to Exh. RJR-5C, the information and documents provided to the PSE Board of Directors as it made decisions during the study, development, and construction of the Tacoma LNG Facility.<sup>17</sup> In addition, Exh. RJR-3 provides a narrative timeline of the process PSE used to design, develop, and construct the Tacoma LNG Facility. The decisions made by the PSE Board of Directors

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<sup>16</sup> See PSE Post-hearing Brief at 119.

<sup>17</sup> See Roberts Exh. RJR-1CT at 58:10-60:1.



concerning the Tacoma LNG Facility and the information that was provided to support those decisions are well-documented in the record in this proceeding.

**5. PSE Statements in Paragraph 91 Are Supported by Record Evidence**

13. The Tribe claims that PSE's statements in paragraph 91 of its Post-hearing Brief about positions taken by Public Counsel are not supported by citations. Paragraph 91 of PSE's Post-hearing Brief explains why Public Counsel's comparison of actual maximum day sales on the highest demand day of a year to PSE's estimate of the design day peak load for that year is faulty. Public Counsel's comparison of the highest demand day of a year to the estimated Design Day peak load for that year is in Public Counsel's testimony Earle, Exh. RLE-1CT, at 16:3-24:15. The fact that PSE did not cite to Public Counsel's testimony in its Post-hearing Brief does not mean the testimony and faulty comparison do not exist. Indeed, PSE's testimony in support of the Tacoma LNG Settlement, Exh. RJR-30T at 6:19-12:12 responds to and refutes Public Counsel's testimony.

**IV. CONCLUSION**

14. PSE respectfully requests the Commission deny the Tribe's Cross Motion. The Commission should reject the Tribe's Cross Motion because it violates WAC 480-07-375(2). In the alternative, the Commission should deny the Cross Motion because the claims made therein are unsupported and lack merit. PSE's Post-hearing Brief is supported with substantial evidence from the record developed in this proceeding. The section of the Post-hearing Brief addressing the Tacoma LNG Settlement includes 143 footnotes, the vast majority of which are cites to the record. The Tribe's picayune attempts to strike random uncited sentences in PSE's Post-hearing Brief—while ignoring the multitude of subsequent citations supporting PSE's assertions, often in

the same paragraph or in argument that follows the introductory paragraphs—should not be indulged. The Cross Motion should be denied.

RESPECTFULLY SUBMITTED this 21st day of November, 2022.

**PERKINS COIE LLP**

By



Sheree Strom Carson, WSBA #25349

Donna L. Barnett, WSBA #36794

Pamela J. Anderson, WSBA #37272

David S. Steele, WSBA #45640

Byron C. Starkey, WSBA #55545

Attorneys for Puget Sound Energy