

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

Docket UG-230393

**PUGET SOUND ENERGY’S MOTION
TO STRIKE PORTIONS OF THE
TESTIMONY OF RANAJIT SAHU**

We agree that PSE acted prudently in developing and constructing the Tacoma LNG Facility up through the initial decision to authorize construction of the facility on September 22, 2016. Consistent with the Tacoma LNG Settlement, the parties may review and challenge the prudence of later construction and operation costs in a future proceeding, including when PSE files for LNG recovery at the same time it files its 2023 PGA.¹

I. INTRODUCTION

- I.* Pursuant to WAC 480-07-375, Puget Sound Energy ("PSE") hereby moves to strike those portions of the prefiled response testimony and exhibits of the Puyallup Tribe of Indians ("Tribe") submitted on September 8, 2023, that challenge the prudence of the Tacoma LNG Project ("LNG Facility") on the basis of need and alternatives and that seek to relitigate issues decided by the Commission less than a year ago. Such testimony and exhibits should be stricken

¹ Dockets UE-220066, UG-220067, & UG-210918 (Consolidated) ("2022 PSE GRC") Order 24/10 ("Final Order"), ¶ 449.

because they are outside the scope of issues presented in this case. The Commission rule at issue is WAC 480-07-375(1)(d) (motions to strike).

2. Specifically, PSE moves the Commission to strike the following lines and pages from the Response Testimony of Ranajit Sahu (Exh. RXS-1T): 11:13-26, 12:12-22, 17:1-9, 17:10-26:17, 26:18-27:20 (those portions mentioning “catastrophic accident” and “air pollution”), 28:1-29:6, 30:9-32:17, 32:18-35:22, 36:1-38:19, 40:1-41:12, 41:20-42:13, 46:6-26, 49:14-18, 49:19-50:2, and 51:3-21 (collectively the “Testimony”). The Testimony improperly addresses issues beyond the scope of this proceeding, and regurgitates the same arguments already addressed and resolved by the Commission in the PSE 2022 general rate case (“GRC”) in Dockets UE-220066, UG-220067, & UG-210918. The Commission’s Final Order in PSE’s 2022 GRC is clear, parties may challenge the prudence of later construction and operation costs, but PSE’s decision to develop and construct the LNG Facility was prudent.²

3. The Testimony should be stricken because it improperly challenges the prudence of the decision to develop and construct the LNG Facility rather than provide relevant testimony to the issues presented by PSE before the Commission. None of the Testimony is tied to a decision PSE made after it sufficiently, and prudently considered whether the facility was needed and if there were alternatives. The Testimony also attempts to introduce evidence already determined to be irrelevant, or otherwise held by the Commission to lack credibility. In some instances, the Testimony is word-for-word the same as prior testimony the Commission already reviewed on issues the Commission explicitly addressed. The Commission’s decision in the Final Order

² Final Order ¶ 449.

should control the scope of this proceeding, and any testimony reopening previously decided issues or expanding the scope should be stricken.

II. BACKGROUND

4. PSE’s 2022 GRC resulted in three settlements that together resolved all major issues presented to the Commission, including a settlement on the Tacoma LNG Facility (the “Settlement”).³ As part of the Settlement, the settling parties agreed that PSE would move the LNG Facility costs into a tracker that records PSE’s costs for the development, construction, and operation of the LNG Facility and seek recovery of these costs in rates in a subsequent proceeding.⁴ The Commission approved the Settlement, with conditions, and authorized PSE to file the Tacoma LNG tracker at issue in this case. In approving the Settlement, the Commission agreed that PSE acted prudently in the development and construction of the LNG Facility up through the initial decision to authorize construction on September 22, 2016.⁵ The Commission also reserved the rights of parties to “review and challenge the prudence of later construction and operation costs” in this proceeding.⁶ One purpose for establishing a “tracker” is to allow parties to review the costs associated with the LNG Facility once the costs are known and measurable.⁷ The Settlement, as approved in the Commission’s Final Order, resolved the issue of certain prudence factors up to the decision to build, including whether there is a need for the LNG

³ Final Order ¶¶ 508-510, Appendix A, B, & C.

⁴ Final Order ¶¶ 449-450.

⁵ Final Order ¶ 449.

⁶ Final Order ¶ 449.

⁷ Settlement Hearing Tr. 477:3-11 (noting Staff supported moving costs “to a tracker” so Staff can “review them at the end of the rate year when all those costs are known and measurable”).

Facility and whether PSE adequately considered alternatives.⁸ The LNG Settlement Agreement was clear on the issue of prudence:

Prudence: 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.⁹

5. The LNG Settlement was opposed and litigated by the Tribe in the 2022 GRC.¹⁰ After considering the opposition, the Commission approved the LNG Settlement in the 2022 GRC Final Order, with conditions. The Commission resolved and rejected several issues raised by the Tribe relating to: demonstration of need,¹¹ consideration of alternatives,¹² allocation of facility costs,¹³ facility design,¹⁴ litigation costs,¹⁵ environmental health considerations,¹⁶ and the public interest standard applicable to the LNG Facility.¹⁷ The Commission rejected the Tribe's position on these issues and agreed with PSE's position.

6. As a party to the 2022 PSE GRC, the Tribe is aware the 2022 GRC Settlement and Order disposed of key questions of prudence, including the decision to build the LNG Facility, the location, and the need for the LNG Facility. The Tribe made the same arguments opposing the

⁸ Final Order at ¶¶ 394, 412, 449, & Appendix C at ¶ 18.

⁹ Final Order, Appendix C at ¶ 18.

¹⁰ Final Order at ¶ 33.

¹¹ Final Order at ¶¶ 394-399, 405, and 411.

¹² Final Order at ¶¶ 412-416

¹³ Final Order at ¶¶ 404

¹⁴ Final Order at ¶¶ 400-403

¹⁵ Final Order at ¶¶ 420

¹⁶ Final Order at ¶¶ 432-447

¹⁷ Final Order at ¶¶ 421-448

LNG Facility in the 2022 GRC.¹⁸ And in this proceeding, as shown below, the Tribe submitted testimony from the same witness, that addresses many of the exact same issues, and at times, is word-for-word the same as the testimony submitted in the 2022 GRC. The Tribe barely hides the irrelevance of its testimony to the testimony and issues in this case as it only references PSE’s testimony four times, across two pages of its 51 pages of testimony.¹⁹

7. Despite the direction and ruling of the Commission, the Tribe submitted the following Testimony, clearly beyond the scope of this proceeding and already addressed in PSE’s 2022 GRC:

- 1) **Sahu RXS-1T 11:13-26 and 12:12-22**: testimony arguing nearby communities opposed the facility due to alleged pollution and adverse health impacts, and an alleged risk of catastrophic accident.
- 2) **Sahu RXS-1T 17:1-9**: testimony arguing the Commission should apply the updated standard of RCW 80.28.425 and corresponding public interest analysis in Order 09 of the Cascade case (UG-210755) to a facility almost entirely constructed prior to the Cascade Order and enactment of RCW 80.28.425.
- 3) **Sahu RXS-1T 17:10-26:17**: testimony alleging environmental concerns of siting the LNG Facility in its current location should impact the prudence determination when considering need and alternatives.
- 4) **Sahu RXS-1T 26:18-27:20 (those portions mentioning “catastrophic accident” and “air pollution”)**: testimony alleging catastrophic accident risks and air pollution should be considered by the Commission.
- 5) **Sahu RXS-1T 28:1-29:7**: testimony contesting the Puget Sound Clean Air Agency (“PSCAA”) air permit and Pollution Control Hearings Board (“PCHB”) review and each agency’s ability to evaluate alleged pollution.
- 6) **Sahu RXS-1T 28:1-29:6 and 30:9-32:17**: testimony advocating for a Health Impact Assessment.

¹⁸ See 2022 PSE GRC, Post-Hearing Brief of Puyallup Tribe of Indians at 2-3, 8-12 (arguing public interest considerations), 13-18 (arguing adverse health and rail considerations), 19-20 (arguing need and alternatives), 21-22 (arguing for a Health Impact Assessment) (October 31, 2022).

¹⁹ See, e.g., Sahu RXS-1T at 26:19-27:13 (occasionally citing testimony of Ron Roberts).

- 7) **Sahu RXS-1T 32:18-35:22**: testimony arguing Tacoma LNG presents a risk of catastrophic accident.
- 8) **Sahu RXS-1T 36:1-38:19**: testimony arguing PSE's alleged interest in selling LNG to be transported by rail expands the zone of catastrophic impacts.
- 9) **Sahu RXS-1T 40:1-41:12 and 41:20-42:13**: testimony regarding the storage tank capacity and possible alternatives.
- 10) **Sahu RXS-1T 46:6-26**: testimony regarding possible alternatives, the need not being driven by ratepayers, and how that relates to the allocation percentage of costs.
- 11) **Sahu RXS-1T 49:14-18**: testimony arguing there were alternative locations for the facility and alleging air pollution and safety risks.
- 12) **Sahu RXS-1T 49:19-50:2 and 51:3-21**: testimony arguing PSE would have incurred less legal fees if it had located the Tacoma LNG Facility in a more remote location; PSE incurred excess legal expenses in litigation of the air permit.

8. As discussed herein, the Commission should strike the portions of the Tribe's Testimony listed above because they exceed the scope of this proceeding and retread ground already ruled on by the Commission. The issues before the Commission are related to the prudence of construction and operation costs of the LNG Facility after the 2016 decision to build, not allegations related to need, alternatives, facility design, or other environmental topics, which have already been decided by the Commission.²⁰ The Testimony unnecessarily expands the scope of this proceeding, which will require the Commission and parties to expend further time and resources if the parties must re-address these issues. Further, the Testimony does not assist the Commission in making a determination on the issues related to later construction and operations costs of the LNG Facility presented in this docket.

²⁰ Final Order at ¶¶ 449-450.

III. ARGUMENT

9. The Commission provided direction to the parties in PSE’s 2022 GRC that the purpose of this proceeding is to evaluate the capital and operating costs of the LNG Facility; it is not to decide whether PSE acted prudently in its decision to develop and construct the facility based on its consideration of need or alternatives, as these issues have already been decided by the Commission.²¹ Despite this Commission determination, the Tribe’s witness explained that his “testimony goes primarily to the first two of the Commission’s four primary factors, (1) the need for the resource and (2) the evaluation of alternatives.”²² By addressing these prudency factors, the Tribe is challenging the prudency of the decision to develop and construct the LNG Facility—issues already decided by the Commission—and not the costs of the LNG Facility.

10. The applicable standard here is whether the testimony at issue is relevant, and therefore admissible, in this proceeding.²³ The Commission has broad discretion to accept evidence it deems relevant, and equally broad discretion to reject irrelevant evidence.²⁴ Testimony directed at issues already addressed in other Commission orders, or testimony addressing issues litigated in other proceedings before the Commission, are outside the scope and irrelevant. Accordingly, the Commission will strike witness testimony and evidence that “attempts to reopen and argue” issues already addressed in a previous order.²⁵ Additionally, to the extent a party submits

²¹ *Id.*

²² Sahu Exh. RXS-1T at 17:11-12.

²³ WAC 480-07-495(1).

²⁴ *In re the Application of Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle For a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company*, Dockets TC-143691, TC-160516, TC-161257 (Consolidated) (“*In re Speedishuttle*”), Order 16/09 (Feb. 3, 2017).

²⁵ *Id.*

testimony or exhibits outside the scope of the pending proceeding, the Commission will strike that testimony on the basis of relevance as well.²⁶ Striking irrelevant testimony before the hearing is beneficial because it preserves Commission and party resources.²⁷ The scope of this proceeding is to evaluate the prudence of later construction and operation costs.²⁸ The Testimony should be stricken as irrelevant because it does not address the prudence of later construction and operation costs, and because it reopens arguments already addressed by the Commission in PSE's 2022 GRC.

11. The Testimony can be divided into four categories of topics already presented in PSE's 2022 GRC and addressed by the Commission in the Final Order: (a) need and facility design, (b) alternatives, (c) environmental concerns including whether a Health Impact Assessment should be ordered, and (d) the retroactivity of the updated public interest standard.

A. *The Testimony challenging the need for the Tacoma LNG Facility should be stricken. (Sahu Exh. RXS-1T 40:1-41:12, 41:20-42:12)*

12. The Commission found that "PSE has demonstrated a need for the Tacoma LNG Facility at least through the initial decision to build the facility on September 22, 2016."²⁹ The Tribe challenged the LNG Facility design and whether it matched the need in the 2022 GRC.³⁰ Now, in the current proceeding, the Tribe again repeats testimony challenging the need for the LNG Facility instead of challenging costs. For example, Mr. Sahu's testimony cited by the

²⁶ *AT&T Communications of The Pacific Northwest, Inc. v. Verizon Northwest, Inc.*, Docket UT-020406 Order 05 (Feb. 2003) (striking testimony for relevance that addressed charges unrelated to the costs at issue before the Commission); *WUTC v. PSE*, Dockets UE-090704 and UG-090705 (consolidated) Order 10 (Jan. 8, 2010) (striking testimony related to renewable energy credit costs that were to be addressed in another proceeding).

²⁷ *In re Speedishuttle*, Order 16/09 (Feb. 3, 2017).

²⁸ Final Order at ¶ 449.

²⁹ Final Order at ¶ 394.

³⁰ Final Order at ¶ 400 (citing 2022 GRC testimony of Sahu, Exh. RXS-1T at 10-13).

Commission in the 2022 GRC Final Order arguing the impropriety of the LNG Facility’s tank capacity given the need, is almost exactly the same as the testimony in the pending case.³¹ These are not new arguments for the Commission to consider, and they are not relevant to the issues in this case. The Commission was “not persuaded” by the argument that the LNG Facility’s storage tank was overbuilt in the 2022 GRC Final Order.³²

13. Nevertheless, the Tribe’s Testimony puts forth this same argument.³³ The basis for the Tribe’s Testimony contesting the LNG Facility design is directly tied to the same data request responses and exhibits that formed the basis of the Tribe’s 2022 GRC testimony.³⁴ It is a repeat of testimony that the Commission directly addressed and rejected in the 2022 GRC Final Order and should be stricken.

14. The Tribe’s Testimony also argues that there was not a need for the LNG Facility because the capacity could have been handled by the Jackson Prairie storage facility.³⁵ This testimony should also be stricken because it was directly addressed by the Commission in the 2022 GRC Final Order, where the Commission “reject[ed] Public Counsel’s arguments that PSE could have used capacity at the Jackson Prairie Storage Facility or the Gig Harbor Satellite LNG Facility to meet its peaking needs.”³⁶

³¹ Compare 2022 GRC testimony of Sahu, Exh. RXS-1T at 10-13 with Sahu Exh. RXS-1T at 40:1-41:12, 41:20-42:12.

³² Final Order at ¶ 400-401.

³³ Sahu Exh. RXS-1T at 40:1-41:12, 41:20-42:12.

³⁴ Compare 2022 GRC Exh. RXS-5, PSE’s response to Public Counsel’s Data Request No. 391 and Exh. RXS-6, PSE’s Response to Data Request No. 378, Attachment A (native .xlsx file), with, Exh. RXS-5, PSE’s response to Public Counsel’s Data Request No. 391 in WUTC consolidated dockets UE-220066 & UG-220067 and 2022 GRC Exh. RXS-6, Attachment A (native .xlsx file) to PSE’s Response to Data Request No. 378 in WUTC consolidated dockets UE-220066 & UG-220067.

³⁵ Sahu Exh. RXS-1T at 41:20-42:12.

³⁶ Final Order at ¶ 416 (facilities like Jackson Prairie are factored into PSE’s resource stack and there is no firm pipeline capacity to move gas from these facilities to accommodate peak demand.).

B. *The Testimony challenging the consideration of alternatives for the Tacoma LNG Facility should be stricken. (Sahu Exh. RXS-1T at 41:23-42:12, 49:14-18, 34:6-9, 49:19-50:2, 51:3-21.)*

15. The Commission found that “PSE has adequately considered alternatives to the Tacoma LNG Facility.”³⁷ Even though the Tribe and Public Counsel suggested alternatives to the LNG Facility in the 2022 GRC, the Commission found “that these proposals are not fully supported by the evidence.”³⁸ Despite these findings, the Tribe challenges PSE’s consideration of alternatives in this proceeding. Here, the Testimony does not identify specific alternatives other than the Jackson Prairie storage facility,³⁹ but the Commission rejected that option as a potential alternative to the LNG Facility in the 2022 GRC.⁴⁰ On a few occasions in the Testimony, the Tribe broadly argues there were other alternatives available to meet ratepayer needs, primarily contesting the siting of the LNG Facility.⁴¹ This testimony should be stricken because the 2022 GRC addressed whether PSE has adequately considered alternatives.⁴²

16. In support of the alternatives challenge to prudence, the Tribe submits testimony arguing PSE would have incurred less legal fees if it had located the LNG Facility in a more remote location or constructed a different facility to meet the needs.⁴³ The Commission rejected similar arguments in the Final Order where it held that it is “not credible for the Tribe to challenge

³⁷ Final Order at ¶ 412.

³⁸ Final Order at ¶ 413.

³⁹ Sahu Exh. RXS-1T at 41:23-42:12.

⁴⁰ Final Order at ¶ 416

⁴¹ Sahu Exh. RXS-1T at 34:6-9, 49:14-18.

⁴² Final Order at ¶ 412.

⁴³ Sahu Exh. RXS-1T 49:19-50:2, 51:3-21.

PSE’s recovery of litigation costs in this proceeding when PSE has so far prevailed on the vast majority of issues raised by the Tribe in other forums.”⁴⁴

17. This line of testimony should be stricken as outside the scope of this proceeding because the Commission already addressed the alternatives prong of prudence for the LNG Facility.

C. *The Testimony challenging environmental considerations should be stricken.*

18. Throughout its testimony and brief in the 2022 GRC, the Tribe raised various environmental allegations— many of which were found to be not credible by other state agencies—as arguments that the Commission should determine the LNG Facility was not prudent. The Commission considered these issues, addressed them in the Final Order, and rejected the Tribe’s positions. Yet, the Tribe’s Testimony once again raises the same environmental concerns that fall outside the scope of this proceeding, as a basis for denying prudence.

Sahu Exh. RXS-1T 17:10-26:17 (environmental externalities).

19. The Tribe’s Testimony at Exh. RXS-1T 17:10 through 26:17 argues the Tacoma LNG Facility poses health and safety concerns, including air pollution that result in alleged negative externalities. This same line of testimony was presented by the Tribe in the 2022 GRC.⁴⁵ The Commission rejected these arguments in both broad and specific terms in the Final Order. The Commission’s Final Order held that it “serves primarily as an *economic* regulator[,]” and the law “does not allow the Commission to retrospectively second-guess the determinations of other, more specialized environmental health agencies ... responsible for reviewing agencies’ actions

⁴⁴ Final Order at ¶ 420.

⁴⁵ Final Order at ¶ 339.

in siting and permitting the plant.”⁴⁶ The Commission noted the Pollution Control Hearings Board’s “findings as to the credibility of Dr. Sahu’s testimony undermine many of the Tribe’s arguments regarding air quality impacts and its emphasis on Dr. Sahu’s opinions.”⁴⁷

20. The Testimony at Exh. RXS-1T 17:10 through 26:17 repeats the same concerns and argument Dr. Sahu proffered during the 2022 GRC, cites no new testimony from the current proceeding, and fails to connect the Testimony to an issue the Commission must determine in this case. For example, the Tribe’s 2022 GRC testimony made the same arguments about air pollution externalities,⁴⁸ and challenged the LNG Settlement on that same basis.⁴⁹ The Tribe is using this proceeding to once again challenge the “siting” of the plant and the decision to build the LNG Facility in its current location and argues the Commission should again consider the same alleged negative externalities previously presented in the 2022 GRC. The Commission dismissed these arguments as outside its jurisdictional scope and should do so here.

Sahu Exh. RXS-1T 26:18-27:20 (those portions mentioning “catastrophic accident” and “air pollution”), 32:18-35:22, and 36:1 to 38:19.

21. The portions of the Testimony alleging catastrophic accident risks and air pollution in RXS-1T 26:18 through 27:20, RXS-1T 32:18 through 35:22, and RXS-1T 36:1 through 38:19 should be stricken because the issue was already considered by the Commission.⁵⁰ Throughout the Testimony, the Tribe argues there is a risk of “catastrophic accident” with the LNG

⁴⁶ Final Order at ¶ 427.

⁴⁷ Final Order at ¶ 436.

⁴⁸ Compare Sahu Exh. RXS-1T at 21:3-26:4, with 2022 PSE GRC Sahu Exh. RXS-1T at 17:9-21:9.

⁴⁹ 2022 PSE GRC Sahu Exh. RXS-30T at 16:17-21:14.

⁵⁰ The air pollution arguments were addressed above and are directly tied to the Tribe’s externality argument.

Facility.⁵¹ The Tribe made this exact argument in the 2022 GRC,⁵² and after the Commission “carefully considered the Tribe’s argument” on that issue, the Commission explicitly rejected it.⁵³

22. Next, the Tribe’s Testimony implies that PSE has an interest in selling LNG by rail, which the Tribe alleges has catastrophic accident implications.⁵⁴ This argument was also made in the 2022 GRC, and the Commission placed “relatively little weight on claims that PSE may transport LNG by rail” because of the limited evidence supporting this claim.⁵⁵

23. The catastrophic accident testimony is not relevant to the considerations before the Commission in this proceeding because it is not tied to the prudence of later construction and operation costs, and the allegations were rejected in the 2022 GRC.⁵⁶ Allowing this testimony in the record serves to improperly expand the issues before the Commission and causes PSE and other parties to unnecessarily relitigate the issue.

Sahu Exh. RXS-1T 28:1 to 29:6 (PSCAA air permit and PCHB review).

24. The Tribe also submits testimony contesting the PSCAA air permit and PCHB review processes as it relates to the overall determination of emissions from the LNG Facility.⁵⁷ The Testimony serves to re-hash determinations and processes by more specialized reviewing agencies ultimately expanding the scope of this proceeding. It should be stricken. The Tribe’s Testimony specifically contests the cumulative impacts of emissions and argues these agencies’

⁵¹ Sahu Exh. RXS-1T 26:18-27:20; Sahu Exh. RXS-1T at 32:18-35:22.

⁵² 2022 PSE GRC Sahu Exh. RXS-1T at 21:10-23:4.

⁵³ Final Order at ¶¶ 440-444.

⁵⁴ Sahu Exh. RXS-1T 36:1-38:19.

⁵⁵ Final Order at ¶¶ 445-446.

⁵⁶ Final Order at ¶¶ 440-446.

⁵⁷ Sahu Exh. RXS-1T 28:1-29:7

determinations should not be given weight by the Commission.⁵⁸ The Tribe submitted similar, and in some instances the exact same testimony when challenging the Settlement in the 2022 GRC.⁵⁹ The Commission addressed these arguments in the Final Order, finding “that many of the Tribe’s arguments deserve little weight[,]” and PSE’s decision to build the LNG Facility was prudent.⁶⁰

25. The Testimony from RXS-1T 28:1 through 29:7 should be stricken. The Testimony improperly goes to PSE’s decision to build and site the LNG Facility, issues which the Commission addressed in the 2022 GRC. The Testimony contests the evaluations of other agencies and improperly expands the issues before the Commission here.

Sahu Exh. RXS-1T 28:1 to 29:6 and 30:9 to 32:17 (Health Impact Assessment).

26. The Tribe also submits testimony advocating for a Health Impact Assessment.⁶¹ The Testimony submitted in this proceeding advocating for a Health Impact Assessment is similar and in most instances, the exact same wording,⁶² as the testimony submitted in the 2022 GRC. The Health Impact Assessment testimony attempts to relitigate an issue already considered and rejected by the Commission. The Commission “decline[d] to require a Health Impact Assessment of the facility” in part because it is not a requirement of the legislature and the “request may be better directed to other agencies.”⁶³ Whether the Commission should order a

⁵⁸ Sahu Exh. RXS-1T 28:1-29:7

⁵⁹ 2022 PSE GRC Sahu RXS-30T at 18:1-21:10.

⁶⁰ Final Order at ¶¶ 435-438.

⁶¹ Sahu Exh. RXS-1T 28:1-29:6, 30:9-32:17.

⁶² Compare Sahu Exh. RXS-1T at 31:11-32:17 with 2022 PSE GRC Sahu Exh. RXS-30T at 21:16-22:16

⁶³ Final Order at ¶ 439.

Health Impact Assessment has been litigated and is outside the scope of this proceeding. The corresponding testimony should be stricken.

D. *The Testimony challenging the public interest standard applied by the Commission for the Tacoma LNG Facility should be stricken. (Sahu Exh. RXS-1T 17:1-9.)*

27. The Tribe’s Testimony also challenges the public interest framework applied in the 2022 GRC Final Order for the Tacoma LNG Facility.⁶⁴ The Commission opted to not retroactively hold PSE to a standard that was not in place at the time the LNG Facility was being built.⁶⁵ Now, the Tribe is attempting to upend that determination, and its witness offers legal arguments as to the applicable standard.⁶⁶ The Commission emphasized in the Final Order that RCW 80.28.425 “should not be applied retroactively” and it is not a vehicle to “retrospectively second-guess the determinations of other, more specialized environmental health agencies[.]”⁶⁷ The Tribe’s Testimony again requests the Commission to apply RCW 80.28.425 retroactively when evaluating the prudence of construction and operation costs of the Tacoma LNG Project. To the extent the Tribe’s Testimony attempts to re-litigate the Commission decision in the Final Order, it should be stricken from the record.

IV. CONCLUSION

28. The Tribe’s Testimony makes assertions that are irrelevant to the underlying prudence determination of the LNG Facility’s costs after the decision to construct was made in 2016. The

⁶⁴ Sahu Exh. RXS-1T 17:1-9.

⁶⁵ Final Order at ¶¶ 422-431.

⁶⁶ Sahu Exh. RXS-1T 17:1-9.

⁶⁷ Final Order at ¶ 427.

Testimony is improper and outside the scope of this proceeding. The Commission should strike the Tribe's Testimony as described above.

RESPECTFULLY SUBMITTED this 27th day of September, 2023.

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