

**EXH. SRS-1T
DOCKETS UE-170033/UG-170034
2017 PSE GENERAL RATE CASE
WITNESS: STEVEN R. SECRIST**

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

**Docket UE-170033
Docket UG-170034**

**PREFILED REBUTTAL TESTIMONY
(NONCONFIDENTIAL) OF

STEVEN R. SECRIST

ON BEHALF OF PUGET SOUND ENERGY**

AUGUST 9, 2017

PUGET SOUND ENERGY

**PREFILED REBUTTAL TESTIMONY
(NONCONFIDENTIAL) OF
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Commission (April 2, 1998)

1 **PUGET SOUND ENERGY**

2 **PREFILED REBUTTAL TESTIMONY**
3 **(NONCONFIDENTIAL) OF**
4 **STEVEN R. SECRIST**

5 **I. INTRODUCTION**

6 **Q. Please state your name and business address.**

7 A. My name is Steven R. Secrist, and my business address is 10885 N.E. Fourth
8 Street, Bellevue, Washington 98004. I am employed by Puget Sound Energy
9 (“PSE”) as the Senior Vice President, General Counsel, and Chief Ethics and
10 Compliance Officer.

11 **Q. Have you prepared an exhibit describing your education, relevant**
12 **employment experience, and other professional qualifications?**

13 A. Yes. It is the First Exhibit to my Prefiled Rebuttal Testimony, Exh. SRS-2.

14 **Q. Please summarize the purpose of your testimony.**

15 A. My testimony responds to the Testimony of Elizabeth C. O’Connell, Exh. ECO-
16 1CT, witness for the staff of the Washington Utilities and Transportation
17 Commission (“Staff”) who recommends that the Commission should disallow
18 \$5.6 million of PSE’s prudently-incurred environmental remediation costs.
19 My testimony (1) outlines PSE’s and its predecessors’ efforts to recover insurance
20 proceeds for its environmental remediation expenses; (2) explains why
21 Ms. O’Connell’s understanding of PSE’s insurance recoveries is flawed; and
22 (3) demonstrates that her proposed disallowance should be rejected because it is

1 based upon an incomplete and inaccurate interpretation of the relevant
2 documentation.

3 **II. PSE'S RECOVERY AND ALLOCATION OF**
4 **ENVIRONMENTAL REMEDIATION COSTS THROUGH**
5 **INSURANCE POLICIES**

6 **Q. Are you familiar with PSE's efforts to recover environmental remediation**
7 **costs from its insurers?**

8 A. Yes. Beginning in May 1989, I worked for Washington Natural Gas ("WNG") as
9 a Staff Attorney in WNG's legal department during which time WNG was
10 engaged in litigation with its insurers over WNG's environmental remediation
11 costs.

12 **Q. Please describe the scope of your responsibilities while working for WNG?**

13 A. My responsibilities included managing WNG's environmental program, including
14 environmental-related litigation. During the 1990s, much of this work was
15 overseeing WNG's efforts to recover environmental remediation costs from its
16 insurers. This included providing periodic updates to the Commission and
17 dialogue with Staff regarding the status of WNG's environmental remediation
18 activities and related litigation.

19 **Q. During your time there, did WNG have sites that required environmental**
20 **remediation?**

21 A. Yes, prior to the availability of natural gas in the northwest (1956), gas was
22 manufactured locally at plant sites operated by gas distribution companies.

1 WNG's predecessor companies operated manufactured gas plants at various
2 locations in WNG's service territory. These sites had various environmental
3 issues associated with them, according to modern day standards and
4 Washington's Model Toxics Control Act (MTCA) provided the requirements for
5 the associated cleanup of these sites (note that the Tar Pits site was an exception
6 as it was managed by EPA pursuant to the Comprehensive Environmental
7 Response, Compensation, and Liability Act (CERCLA)). As a result, many of the
8 former manufactured gas plant sites required remediation to address residual
9 environmental contamination. Included amongst these sites are the Tacoma
10 Historical Coal Gasification Plant situated in the Tacoma Tide Flats ("Tacoma
11 Tar Pits"), the Gas Works Park site in Seattle, the "A" Street Site in Tacoma, as
12 well as former manufactured gas plant sites in Everett and Chehalis. Over time,
13 additional former manufactured gas plant sites were also identified.

14 **Q. Did WNG identify historic insurance policies to pursue to help cover**
15 **environmental remediation costs?**

16 **A.** Yes, WNG had comprehensive general liability ("CGL") insurance coverage as
17 did its predecessors.

18 **Q. Did WNG pursue recovery of its environmental remediation costs through its**
19 **insurers?**

20 **A.** Yes. WNG was aggressive in its pursuit of insurance coverage for its
21 environmental related costs. WNG engaged the law firms of Kirkpatrick &

1 Lockhart (now K&L Gates LLP) and Riddell Williams P.S. (now Fox
2 Rothschild LLP) to assist it in its insurance recovery efforts.

3 **Q. What was the objective and result of WNG's litigation with its insurers?**

4 A. WNG sought from its CGL insurers recovery of environmental remediation costs
5 associated with its manufactured gas plant sites. In 1991, WNG initiated its first
6 litigation against its historic insurers to recover its past and future environmental
7 remediation costs for its manufactured gas plant sites. During this litigation,
8 WNG was able to ultimately recover from its insurers approximately
9 \$38.1 million. The largest of the recoveries was a \$29 million post-trial settlement
10 in connection with the Tacoma Tar Pits site.

11 **Q. Have you reviewed the Response Testimony of Elizabeth C. O'Connell, Exh.**
12 **ECO-1CT, filed on behalf of WUTC Staff, in which Ms. O'Connell**
13 **recommends the disallowance of \$5.6 million in PSE's incurred remediation**
14 **costs?**

15 A. Yes. Ms. O'Connell's testimony is inaccurate and reflects a fundamental
16 misunderstanding of WNG's and later PSE's processes for managing its
17 environmental insurance recoveries. She does not question the prudence of either
18 the expenses at the Tacoma Tar Pits site nor the cost recoveries associated with
19 the site, yet she recommends a disallowance based on an incomplete and
20 inaccurate interpretation of documentation provided by PSE.

1 **Q. Ms. O’Connell points to a letter you sent to the Commission in 1995, Exh.**
2 **ECO-13C, as support for the disallowance for the Tacoma Tar Pits site**
3 **because you informed the Commission that the \$29 million will “pay**
4 **substantially all unreimbursed remediation costs incurred by WNG for the**
5 **remediation of the Tacoma Historical Coal Gasification Plant situated on the**
6 **Tacoma Tide Flats.” How do you respond?**

7 A. Ms. O’Connell fails to acknowledge the historical context of my letter and ignores
8 my reference to “unreimbursed remediation costs.” At this time, WNG was in
9 ongoing communications with Commission Staff regarding both the remediation
10 efforts and the associated insurance and third party recoveries. At the time I wrote
11 that letter, PSE had already recovered \$7.6 million from insurance companies for
12 the Tacoma Tar Pits site and another site, plus additional recoveries from third
13 parties. The total environmental remediation costs incurred at the Tacoma Tar Pits
14 site through June 1995 totalled \$34.6 million. Thus, the statement in the letter
15 regarding the \$29 million was referencing the then currently known and
16 outstanding remediation costs at the Tacoma Tar Pit site as of November 1995,
17 less recoveries from insurance companies and third parties, and prior to the \$29
18 million settlement. Given the previous recoveries of \$7.6 million, the \$29 million
19 insurance recovery did in fact pay for substantially all unreimbursed remediation
20 costs that WNG had incurred at that time. WNG was also in ongoing
21 communications with Staff at this time regarding both the remediation efforts and
22 the associated insurance and third party recoveries.

1 **Q. Are there other documents that demonstrate the prior \$7.6 million recovery**
2 **for Tacoma Tar Pits site?**

3 A. Yes, in fact, Ms. O’Connell’s own exhibit, Exh. ECO-14C, reflects the fact that
4 WNG had already recovered over \$7.6 million from insurance carriers, plus
5 additional recoveries from third parties associated with the Tacoma Tar Pits site
6 and another site. For example, WNG received over \$2 million dollars from Joseph
7 Simon & Sons, the current owner of the property, and also received smaller
8 amounts from other parties who were responsible for a portion of the
9 contamination at the site, including prior owners in the predecessor company who
10 operated the manufactured gas plant at the Tacoma Tar Pits site. Thus, as shown
11 in her own exhibit, the total recoveries for the Tacoma Tar Pits site exceed the
12 total of \$34.6 million environmental remediation costs incurred at the site through
13 June 1995, and there is no “\$5.6 million difference”¹ as Ms. O’Connell suggests.
14 Given the context of these additional earlier recoveries, my letter informed the
15 Commission that the \$29 million should cover all unreimbursed remediation costs
16 incurred by WNG for the Tacoma Tide Pits, based on the costs known at that
17 time. Ms. O’Connell’s suggestion that \$5.6 million of PSE’s prudently incurred
18 remediation costs should be disallowed is based on an inaccurate analysis of the
19 relevant information and should be rejected.

¹ O’Connell, Exh. ECO-1CT at 18:4.

1 **Q. Are there other errors in Ms. O’Connell’s assumptions?**

2 A. Yes. Ms. O’Connell points out that WNG removed the Tacoma Tar Pits site from
3 the quarterly reporting to the Commission after my November 1995 letter in Exh.
4 ECO-13C and assumes that this meant that the \$29 million had been directly
5 applied to the \$34 million remediation expense, and that WNG believed the
6 project had been completed. This is incorrect. I discontinued reporting on the
7 Tacoma Tar Pits site in the WNG quarterly reports because it was no longer an
8 active site. WNG’s quarterly reports were presented as only including sites where
9 significant remedial activity was either underway or planned.²

10 **Q. Please explain the events that occurred leading up to your September 1995**
11 **letter to the Commission regarding the Tacoma Tar Pits.**

12 A. In September 1995, WNG received confirmation from EPA that the remediation
13 at the Tacoma Tar Pits site was complete and in accordance with the Consent
14 Decree entered into between WNG and EPA. However, as a part of the closure,
15 WNG was required to conduct ongoing water quality monitoring to determine
16 whether there was any contaminated groundwater leaving the site. This was a
17 reasonable requirement in that the remediation at the site required the treatment
18 and stabilization of contaminated tarry materials on site and placement of the
19 stabilized material in “waste piles” permanently located on site. EPA also
20 required the ongoing monitoring of groundwater adjacent to the site in order to
21 ensure that no contaminated groundwater was leaving the site after the completion

² See O’Connell, Exh. ECO-16.

1 of the construction and stabilization work. It was not anticipated at the time that
2 there would be a need to perform additional groundwater remediation. At that
3 time, I stopped reporting the Tacoma Tar Pits site in my letters to the Commission
4 because it was no longer an active site. Reporting on the site was discontinued
5 until such time as the ongoing water quality monitoring work indicated that
6 groundwater remediation would be required.

7 **Q. Ms. O’Connell takes issue with PSE’s inclusion of the Tacoma Tar Pits site**
8 **on PSE’s December 1997 quarterly report to the Commission. Why did**
9 **WNG and later, PSE, begin reporting on the Tacoma Tar Pits site in 1997?**

10 A. Ms. O’Connell claims that PSE brought “the remediation costs back to life, so to
11 speak”³ when PSE reported on the Tacoma Tar Pits costs and recoveries in its
12 December 1997 quarterly report. However, Ms. O’Connell’s theory is incorrect.
13 Prior to their merger, WNG and Puget Sound Power & Light had each been
14 reporting their environmental remediation activities separately to the
15 Commission, in differing formats. As can be seen throughout Exh. ECO-16, after
16 the merger, PSE made changes to the reporting format. Then, in 1998,
17 Commission Staff requested a change to have additional information included in
18 PSE’s environmental reporting. PSE first included this additional information in
19 its December 1997 quarterly report, submitted on April 2, 1998. Ms. O’Connell
20 uses this report to support her claim that PSE brought the remediation costs “back
21 to life.” However, Ms. O’Connell fails to reference all of the relevant information.

³ O’Connell, Exh. ECO-1CT at 12:19.

1 She provides the supplemental spreadsheet included in PSE's December 1997
2 quarterly report in Exh. ECO-17, but she does not provide the transmittal letter
3 that accompanied the supplemental spreadsheet, which PSE has provided as Exh.
4 SRS-3. As in previous quarterly reports, the transmittal letter continues to provide
5 a narrative discussion with Commission Staff on sites with "significant remedial
6 activity currently in progress by PSE"⁴ but more significantly, it also references
7 the supplemental spreadsheet.⁵ That was provided at the request of Staff.⁶
8 Because of the change requested by Staff, PSE began reporting deferred costs and
9 recoveries for all of its environmental remediation projects in the requested
10 additional spreadsheet, whether or not they had significant remedial activity,
11 including the Tacoma Tar Pits.⁷ Based on the records, the inclusion of the Tacoma
12 Tar Pits site in the December 1997 report was the result of a request by Staff to
13 provide the additional information starting in December 1997, not because PSE
14 was trying to falsely bring it "back to life."

15 **Q. Why weren't the insurance recoveries and other recoveries associated with**
16 **the Tacoma Tar Pits ever allocated to the actual environmental remediation**
17 **costs for that site?**

18 A. There are several reasons why allocation has not yet occurred. First, WNG did not
19 allocate the insurance proceeds it received from the insurance litigation ending in

4 Secrist, Exh. SRS-3 at 3.

5 O'Connell, Exh. ECO-17.

6 Secrist, Exh. SRS-3 at 1.

7 There are other non-active sites such as WSDOT Federal/State and Electron, to name a few. *See* O'Connell, Exh. ECO-17 at 1, 3.

1 1995 to specific sites because many of the insurance settlements were not limited
2 to the Tacoma Tar Pits site. Second, the total remediation costs for each former
3 manufactured gas plant site were unknown and for some sites, active remediation
4 was still underway. For example, at Tacoma Tar Pits, in 1998, EPA directed PSE
5 to address benzene concentrations in groundwater that exceeded the Record of
6 Decision cleanup criteria. The approach required PSE to install a groundwater
7 capture and treatment system. As a result, PSE incurred additional remediation
8 costs from the operation, maintenance and monitoring of this system, which has
9 continued since that time. Thus, the settlements in the original insurance coverage
10 case created a pool of insurance recoveries for WNG's undifferentiated
11 manufactured gas plant sites. Until final remediation costs for all sites within that
12 bundle of risks are known, PSE's practice has been to not allocate insurance
13 reimbursement proceeds to particular sites, including for Tacoma Tar Pits.

14 **Q. Please elaborate on the reasons PSE has not allocated its insurance**
15 **recoveries.**

16 A. It is in customers' best interest for PSE to track separately the costs from the
17 recoveries for any remediation site that could be covered by an insurance policy,
18 including the Tacoma Tar Pits site. Doing a premature allocation would
19 improperly shift the risk of misestimating future unknown remediation costs from
20 PSE's remaining insurers to PSE. Following the 1995 insurance litigation, PSE
21 pursued a second insurance litigation against its historic CGL insurance carriers to
22 recover environmental costs for a wider group of former manufactured gas plant

1 sites. All but one of the insurance settlements related to this litigation were for
2 multiple sites and did not allocate the settlements by site because PSE's ultimate
3 remediation costs at some or all of the sites remained unknown. If PSE
4 prematurely declared a site remediation complete, it could impair PSE's ability to
5 fully recover from insurers the full amount of available insurance proceeds for
6 that site or other sites, if future remediation costs turned out to be higher than
7 previously estimated. Had PSE done an allocation, it would have been based both
8 on estimates of future remediation expenditures at each site and an estimate of
9 each CGL insurance carriers' corresponding responsibility. This would have
10 served to minimize both total recoveries and limit the corresponding obligations
11 of many of the underlying insurance carriers, which would have harmed
12 customers.

13 Indeed, before they ultimately settled, the later-settling insurers in the second
14 litigation argued for just such an offset in order to escape any obligation to insure
15 PSE for future unknown costs. PSE was able to defeat this defense and keep the
16 risk of uncertain future costs with the insurers by demonstrating the
17 undifferentiated nature of its recoveries and its inability to allocate them to
18 particular sites.

19 Furthermore, the second insurance litigation filed by WNG resulted in numerous
20 insurance coverage "buyback" opportunities. A policy buyback is an insurance
21 term that involves an insurance company buying its policy back from the insured
22 party as a means of settling potential insurance obligations. The common scenario

1 involves an insurance company contesting its liability under historic policies and,
2 in an effort to avoid ongoing defense obligations or the risk of litigation, it settles
3 on a one-time basis for all known and unknown future risks by effectively
4 purchasing its policy back from PSE. For PSE, this approach avoids the potential
5 and cost of multiple lawsuits against a single insurance carrier and the prospect of
6 the insurance company becoming insolvent. Because this type of arrangement
7 often covers multiple sites and all past, present, and future liabilities, whether
8 known or unknown, without any apportionment of proceeds between the sites, it
9 was in customers' best interest for PSE to track its costs separate from recoveries
10 for any remediation site that could be considered to be a subject of this litigation,
11 including the Tacoma Tar Pits site. Doing so avoided a premature foreclosure of
12 insurance recoveries from other insurers. This allowed PSE to preserve its
13 insurance as to future unknown sites with insurers which did not negotiate a
14 buyback.

15 **Q. Are there any other reasons why PSE has not apportioned insurance**
16 **recoveries?**

17 A. Yes. As Ms. Free has testified, from an accounting standpoint, there is less clarity
18 for the sites when costs and recoveries are netted out, rather than recorded
19 separately, particularly when recoveries covered multiples sites or where there is
20 the potential that additional work could be done at the site in the future. Thus,
21 generally speaking, PSE has not netted out insurance recoveries to environmental
22 remediation sites, except where PSE is reasonably certain remediation is complete

1 and where PSE has site specific reimbursement proceeds. Thus, the settlement
2 proceeds recovered from the 1995 insurance litigation have never been netted
3 against PSE's outstanding remediation costs, including the Tacoma Tar Pits site,
4 largely because the recoveries were never assigned to any particular site and
5 because for decades the future costs have remained uncertain.

6 **Q. Does PSE continue to seek recovery from insurers?**

7 A. Yes, PSE continues to pursue coverage, although PSE has substantially exhausted
8 its ability to recover insurance on some legacy policies held by PSE's
9 predecessors.

10 **III. CONCLUSION**

11 **Q. Does this conclude your rebuttal testimony?**

12 A. Yes.