

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Complainant,

v.

PUGET SOUND ENERGY

Respondent.

DOCKET UG-230393

PUBLIC COUNSEL RESPONSE TO
PUGET SOUND ENERGY'S
MOTION TO STRIKE PORTIONS
OF THE TESTIMONY OF ROBERT
L. EARLE AND MOTION TO
STRIKE PORTIONS OF THE
TESTIMONY OF RANAJIT SAHU

1. The Public Counsel Unit of the Washington Attorney General's Office (Public Counsel) responds to Puget Sound Energy's (PSE or Company) Motion to Strike Portions of the Testimony of Public Counsel Witness Robert L. Earle (Motion). Public Counsel urges the Washington Utilities and Transportation Commission (Commission) to deny PSE's motion because Dr. Earle's testimony is relevant, addresses the heart of the issue presented in this proceeding, and does not address issues determined by the Commission in its prior rate case order in Dockets UE-220066, UG-220067, and UG-210918 (Consolidated).

**I. THE ISSUE PRESENTED IN THIS PROCEEDING IS WHETHER PSE'S
TACOMA LIQUEFIED NATURAL GAS FACILITY AND PROJECT ARE
PRUDENT BEYOND ITS SEPTEMBER 2016 DECISION TO BUILD.**

2. PSE initially requested a prudence determination of its Tacoma LNG project in its 2022 general rate case in Dockets UE-220066 and UG-220067. Ultimately, PSE settled all issues raised in the rate case through three settlement agreements.¹ The agreement relevant to the

¹ The three settlements were referred to as the Revenue Requirement Settlement, the Green Direct Settlement, and the Tacoma LNG Settlement. *See, Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Docket Nos. UE-

instant case is the Tacoma LNG Settlement, which addressed only “threshold prudence.” Public Counsel, Puyallup Tribe of Indians (the Tribe), and The Energy Project opposed the Tacoma LNG Settlement.² Not only did Public Counsel and the Tribe oppose the Tacoma LNG Settlement, but also both parties opposed the entire project and urged the Commission to disallow the project as imprudent.

3. The Tacoma LNG Settlement allowed PSE to begin recovering costs of the Tacoma LNG project, largely on a provisional basis through a separate schedule.³ The agreement made clear that it was limited to threshold issues; it states that “PSE met its ‘threshold’ prudence requirement” and that PSE would seek to recover Tacoma LNG facility costs through a separate tracker when it files its 2023 Purchase Gas Adjustment (PGA).⁴ The settling parties incorporated Tacoma LNG distribution costs into the rate case revenue requirement, agreeing that all other Tacoma LNG costs would be filed along with PSE’s 2023 PGA filing.⁵

4. Because the Tacoma LNG Settlement was imprecise in its prudence request, the Commission had to discern what prudence determination it was being asked to make.⁶ The Commission held that the Settlement reflected “an agreement that the Settling Parties are stipulating to the prudence of the Company’s actions up through the initial decision to build the LNG Facility on September 22, 2016, but that the Settlement allows the parties to review the

220066, UG-220067, and UG-210918 (*consol.*), Final Order 24/10 at ¶¶ 47, 50, and 51 (Dec. 22, 2022) (hereinafter “Final Order 24/10”).

² Final Order 24/10 ¶ 320.

³ *Id.*

⁴ *Id.* ¶ 328.

⁵ *Id.*

⁶ *Id.* ¶ 393.

prudence and reasonableness of costs incurred after that point.”⁷ The Commission limited its focus to the initial decision to build the facility.⁸ The Commission did not determine whether PSE’s actions with respect to Tacoma LNG *after* September 22, 2016, were prudent.

5. Final Order 24/10 repeatedly confirms that it is limited to PSE’s actions prior to September 22, 2016. “We agree 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.*”⁹ “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.*”¹⁰ The Commission’s discussion of Public Counsel’s and the Tribe’s advocacy in the 2022 rate case was in the context of PSE’s September 2016 decision, and did not address prudence for the Tacoma LNG project after that initial decision.¹¹ For example, the Commission noted, “We are persuaded that the Company adequately adjusted its forecasts for gas demand but continued to project a need for and LNG facility through, *at the very least, the Company’s decision to initiate construction on September 22, 2016.*”¹² “With regard to the third prudence factor, we agree that PSE’s Board of Directors was sufficiently informed and involved *at least through its decision to authorize construction of the facility on September 22, 2016.*”¹³

⁷ Final Order 24/10 ¶ 393.

⁸ *Id.*

⁹ *Id.* ¶ 394 (emphasis added).

¹⁰ *Id.* ¶ 449 (emphasis added).

¹¹ *Id.* ¶ 394–419.

¹² *Id.* ¶ 397 (emphasis added). *See also*, ¶ 398, which refers to PSE’s decision to build the facility in the discussion of Public Counsel’s alternative analysis, which the Commission also did not accept in evaluating the threshold prudence issue.

¹³ Final Order 24/10 ¶ 417 (emphasis added).

6. Similarly, the Commission’s discussion regarding equity and environmental health was limited to PSE’s initial decision to build Tacoma LNG. The Commission determined that it would be unreasonable to reject the Tacoma LNG Settlement’s “*threshold prudence determination to construct the facility* in light of later statutes that did not exist at the time that expanded the Commission’s authority to consider equity and environmental health.”¹⁴ Instead, the Commission found that the Tacoma LNG Settlement was in the public interest when considered as one of three partial multiparty settlements necessary to resolve PSE’s 2022 general rate case.¹⁵

7. While PSE’s 2022 general rate case was quite possibly its most complex rate case ever filed,¹⁶ the instant docket is narrowly focused on whether Tacoma LNG is prudent, and whether post-September 2016 costs should be included in customer rates. In its final order, the Commission anticipated that these Tacoma LNG costs would be contested to a similar degree as the initial decision was in the 2022 rate case. “We expect to suspend the filing to allow an adequate opportunity for those opposing the Tacoma LNG Settlement to review the filing.”¹⁷ That review is occurring in the instant docket and includes whether PSE’s investment in Tacoma LNG was prudent after its decision to build in September 2016 through its present-day operations.

¹⁴ *Id.* ¶ 426.

¹⁵ *Id.* ¶ 448.

¹⁶ *Id.* ¶ 45.

¹⁷ *Id.* ¶ 405.

II. PUBLIC COUNSEL’S WITNESS DR. ROBERT L. EARLE ADDRESSES THE ISSUE PRESENTED IN THIS CASE: WHETHER TACOMA LNG IS PRUDENT BEYOND PSE’S INITIAL DECISION TO BUILD.

8. PSE challenges Public Counsel’s witness Dr. Earle’s testimony regarding the design day standard (Exh. RLE-1T, 7:21 to 15:9), addressing whether the use of the facility supports a prudence finding (Exh. RLE-1T, 16:3 to 16:21),¹⁸ and applying the public interest standard (Exh. RLE-1T, 31:4 to 32:14). Each portion of testimony PSE requests to strike addresses whether the as-built Tacoma LNG is prudent, not whether PSE’s initial decision to build was appropriate. The Commission’s Final Order 24/10 from PSE’s 2022 general rate case does not preclude Dr. Earle’s testimony.

9. PSE argues that the Tacoma LNG Settlement resolved issues regarding the need for the facility.¹⁹ PSE also argues that Public Counsel’s testimony is beyond the scope of the instant proceeding and was already addressed in the Company’s 2022 rate case.²⁰ None of PSE’s arguments is correct.

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¹⁸ In PSE’s Motion, PSE describes the testimony appearing in Direct Testimony of Robert L. Earle, Exhibit RLE-1T at 16:3–21 as “arguing PSE’s Board was not informed of design day standard.” PSE’s Motion to Strike, ¶ 6 (filed Sept. 27, 2023). The testimony appearing on page 16 of Dr. Earle’s testimony addresses whether PSE’s use of the facility indicates whether the facility is prudent.

¹⁹ PSE’s Motion to Strike, ¶ 5.

²⁰ *Id.* ¶ 6.

A. Dr. Earle’s Design Day Testimony is Relevant to Determining Whether Tacoma LNG is Prudent and Whether Costs Incurred After September 22, 2016, Should be Included in Customer Rates.

10. Prudence is considered not only as for an investment threshold question; it “is continually evaluated during the life of an investment.”²¹ Prudence is not a static concept, but rather must be maintained from the initial decision to build through the continued construction and completion of a project.²² PSE has the burden of proving that every stage of the project was prudent if it seeks to recover related costs in its consumer rates.²³ With respect to Tacoma LNG, the Commission determined only that PSE met its burden regarding the initial decision to build in September 2016. PSE has not yet met its burden, and the Commission has not yet considered, PSE’s decision-making and investment after September 22, 2016.

11. PSE accuses Public Counsel of “relitigating” issues.²⁴ In the 2022 rate case, Public Counsel challenged prudence of the entire Tacoma LNG project; however, the Commission did not decide that issue. Rather, the Commission bifurcated its Tacoma LNG prudence determination, limiting its decision to PSE’s initial decision to build in the context of the rate case settlements and deferring its review of later decisions. In this case, the Commission will consider everything after PSE’s initial decision to build.

12. Dr. Earle focuses his analysis and testimony on PSE’s post-September 22, 2016, development of Tacoma LNG. Some of his analysis treads similar ground as the analysis

²¹ *In re the Comm’n Inquiry into the Valuation of Pub. Serv. Co. Property that Becomes Used and Useful after Rate Effective Date*, Docket U-190531, Policy Statement on Property that Becomes Used and Useful after Rate Effective Date, at 12, n.39 (Jan. 31, 2020) (hereinafter “Used and Useful Policy Statement”).

²² *Wash. Utils. & Transp. Comm’n v. Wash. Water Power Co.*, Docket U-83-26, Fifth Supplemental Order at 13 (Jan. 19, 1984).

²³ *Id.*

²⁴ PSE’s Motion to Strike, ¶ 14.

presented in the 2022 rate case because Public Counsel addressed prudence of the completed plant. Because that issue was not resolved in the 2022 rate case and is at issue here, Dr. Earle’s analysis continues to be relevant to whether post-September 2016 decisions were prudent. Dr. Earle’s analysis only addresses post-September 2016 decisions and evaluates PSE’s information throughout the development of Tacoma LNG, consistent with the Commission’s prudence standards.

13. While the Commission’s Order addressed Dr. Earle’s design day arguments in the rate case, it did so in the context of PSE’s initial decision to build. The Commission did not address the design day arguments as they relate to post-September 2016 investment and decisions and they are still at issue. Because the scope of the instant proceeding is prudence of post-September 2016 Tacoma LNG, Dr. Earle’s testimony regarding design day is relevant as to PSE’s decision-making and investment for that later timeframe.

14. Dr. Earle’s testimony on design day, found at Exhibit RLE-1T at 7:21 to 15:9, is relevant to the issues presented in the instant case and should not be stricken. The Commission should reject PSE’s Motion.

B. Dr. Earle’s Testimony Regarding PSE’s use of the Tacoma LNG Facility is Directly Relevant to the Instant Case and Should Not Be Stricken.

15. In Final Order 24/10, the Commission noted that it “may also consider the extent to which the Facility was used as a peak-shaving resource” in later proceedings to review prudence.²⁵ PSE presented testimony regarding vaporization at the Tacoma LNG facility during

²⁵ Final Order 24/10 ¶ 405.

the 2022-2023 winter in the current docket.²⁶ Dr. Earle’s testimony in Exhibit RLE-1T at 16:3–12 directly addresses PSE’s suggestion that Tacoma LNG may have been used during the 2022-2023 winter and whether that usage indicates whether the facility is prudent. Dr. Earle’s testimony directly addresses PSE’s testimony; the Commission should deny PSE’s Motion.

C. Dr. Earle Appropriately Presents Testimony Regarding the Public Interest Standard.

16. The Tacoma LNG Settlement presented difficult questions about how the Commission should consider capital investments made “before equity was recognized as an overriding public policy issue.”²⁷ The Commission limited its decision to whether “PSE acted prudently in developing and constructing the facility up through the Board of Director’s decision to authorize construction on September 22, 2016.”²⁸ Specifically, the Commission concluded that “the prudence standard should remain focused on what the utility reasonably knew at the time it made its investment decisions.”²⁹ The Commission did not rule on PSE’s post-September 2016 decisions with respect to Tacoma LNG. Nor did the Commission predetermine how it would rule with respect to PSE’s post-September 2016 decisions and costs related to Tacoma LNG.

17. Tacoma LNG is a long-lived asset. Washington public policy has evolved to sharpen its focus on equity. The Commission’s decisions have reflected this focus, recognizing that because “no action is equity-neutral, regulated companies should inquire whether each proposed

²⁶ Direct Testimony of Ronald J. Roberts, Exh. RJR-1T at 40:1–42:11.

²⁷ Final Order 24/10 ¶ 51.

²⁸ *Id.* ¶ 52.

²⁹ *Id.*

modification to their rates, practices, or operations corrects or perpetuates inequities.”³⁰

Reviewing a utility’s initial decision to build is a far different inquiry than reviewing a utility’s decision to continue construction and complete a project in light of equitable considerations. It would be contrary to the public policy of this state to ignore the future negative impacts of Tacoma LNG on surrounding areas, particularly when part of that surrounding area is a highly impacted community and when the Legislature clearly intends to correct past wrongs in energy policy. At the very least, PSE has the burden of showing whether its proposal to include Tacoma LNG in customer rates corrects or perpetuates inequities, and if inequities are perpetuated, how the Company proposes to mitigate those inequities. Dr. Earle’s testimony is relevant to that inquiry and should not be stricken. The Commission should deny PSE’s Motion.

III. THE COMMISSION SHOULD DENY BOTH OF PSE’S MOTIONS TO STRIKE

18. Prudence looks at both the costs incurred and the decisions to incur those costs. Public Counsel’s witness, Dr. Earle, presents relevant testimony to the inquiry in this case, just as the Commission anticipated and intended. Dr. Earle’s testimony should not be stricken. The Commission should deny PSE’s Motion.

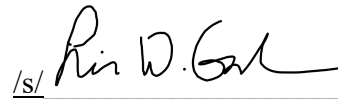
19. Public Counsel also urges the Commission to deny PSE’s Motion to Strike Portions of the Testimony of Ranajit Sahu. The Tribe addressed prudence of the entire Tacoma LNG project during the 2022 rate case, which was not decided in that case but is at issue in this case. The Tribe has presented evidence relevant to the instant matter, focusing on post-September 2016

³⁰ *Id.* ¶ 57, citing *Wash. Utils. Transp. Comm’n v. Cascade Natural Gas Corp.*, Docket UG-210755, Order 10 ¶ 58 (Aug. 23, 2022).

decisions and construction. The Commission should deny PSE's Motion to strike portions of Dr. Sahu's testimony.

DATED this 4th day of October, 2023.

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