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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKETS UG-230393

PUYALLUP TRIBE OF INDIANS’
OPPOSITION TO PUGET SOUND
ENERGY’S MOTION TO STRIKE
PORTIONS OF THE TESTIMONY OF
DR. RANAJIT SAHU

[W]e read the Settlement and the Settling Parties’ post-hearing briefs as indicating 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 prudence and reasonableness of costs incurred after that point.¹

I. INTRODUCTION

The Puyallup Tribe of Indians (Tribe) opposes respondent Puget Sound Energy’s (PSE) motion to strike portions of Dr. Ranajit Sahu’s September 8, 2023 testimony, which was submitted

¹ Dockets UE-220066, UG-220067, & UG-210918 (Consolidated) (“Consolidated Dockets”) Order 24/10 (“Final Order 24/10”) at ¶ 393.

1 to the Washington Utilities and Transportation Commission (Commission) as Exhibit RXS-1T.
2 PSE's motion attempts to improperly limit the scope of the Commission's review of the costs
3 incurred by PSE after September 22, 2016, and mischaracterizes the purpose of Dr. Sahu's
4 testimony. The costs incurred by PSE after its decision to construct the Tacoma LNG Project are
5 subject to the Commission's prudence evaluation. Each portion of Dr. Sahu's testimony that
6 PSE requests to strike addresses whether PSE's decisions regarding Post-2016 Costs at
7 Tacoma LNG are prudent, not whether PSE's initial decision to build was appropriate. This
8 information is directly relevant to the Commission's prudence analysis; thus the Tribe asks that
9 the Commission deny PSE's motion to strike in its entirety.

10 **II. BACKGROUND**

11 This matter concerns the prudence of costs associated with the Tacoma LNG Project that
12 were incurred by PSE following its decision to construct the facility on September 22, 2016 (Post-
13 2016 Costs). This is the second WUTC docket reviewing the prudence of PSE's expenditures at
14 the Tacoma LNG Project, which commenced under WUTC Consolidated Dockets UE-220066,
15 UG-220067, & UG-210918 (Consolidated Dockets). Initially, when the Tribe filed Dr. Sahu's
16 testimony in the Consolidated Dockets, that case concerned both pre-2016 and post-2016 costs.
17 As such, it should come as no surprise that Dr. Sahu has repeated some of his testimony to make
18 a record in this case.

19 On February 28, 2022, the Commission granted the Tribe's petition to intervene in the
20 Consolidated Dockets. The Tribe's participation was limited to issues related to the Tacoma LNG
21 Settlement. A key aspect of the inquiry conducted under the Consolidated Dockets was the
22 Commission's evaluation of whether the costs incurred by PSE related to the Tacoma LNG Project
23 were prudent and in the public interest. The scope of issues to be addressed under the Consolidated
24 Dockets, and the testimony submitted on behalf of the Tribe and other Parties in the Consolidated
25 Dockets, was not limited to addressing the prudence of PSE's actions up through the initial
26 decision to build the LNG Facility on September 22, 2016. This temporal limitation was

1 established much later in the Consolidated Dockets. Therefore, the testimony there discussed
2 relevant facts related to PSE’s decisions and expenditures through 2022.

3 In testimony submitted on behalf of the Tribe in the Consolidated Dockets, Dr. Sahu
4 broadly addressed the negative externalities caused by the Tacoma LNG facility, deficiencies in
5 PSE’s analysis of the need for the facility, and the minimal benefit the facility provides to
6 ratepayers.² Dr. Sahu concluded that, based on several factors, the Tacoma LNG Project was not
7 a prudent response to meet the needs articulated by PSE as its rationale for construction.³

8 The Commission’s final decision regarding the Tacoma LNG Settlement in the
9 Consolidated Dockets fully resolved only the prudence of PSE’s decisions regarding the Tacoma
10 LNG Project up through its September 22, 2016 decision to build the facility. The Commission’s
11 Final Order 24/10 notes that “[i]n the interest of precision, we construe the Settlement as requesting
12 a determination that the decision of PSE’s Board of Directors to build the Tacoma LNG Facility
13 on September 22, 2016 was prudent.”⁴ The Commission continued, stating that “[t]aken together,
14 we read the Settlement and the Settling Parties’ post-hearing briefs as indicating an agreement that
15 the Settling Parties are stipulating to the prudence of the Company’s actions up through the initial
16 decision to build the LNG Facility on September 22, 2016, but that the Settlement allows the
17 parties to review the prudence and reasonableness of costs incurred after that point.”⁵ The instant
18 matter, WUTC Docket UG-230393, addresses the prudence of PSE’s decisions and expenditures
19 following that September 22, 2016 decision.

20 The Commission granted the Tribe’s petition to intervene in WUTC Docket UG-230393,
21 making the Tribe a party with a right to make a record in these proceedings.⁶ On September 8,
22 2023 the Tribe submitted written testimony from Dr. Ranajit Sahu as Exhibit RXS-1T with

23 ² See Consolidated Dockets at Exhibits RXS-1T (July 28, 2022) and RXS-30T (Sept. 9, 2022).

24 ³ *Id.*

25 ⁴ Final Order 24/10 at ¶ 393.

26 ⁵ *Id.*

⁶ See Order 03 at ¶ 8.

1 associated exhibits RXS-2 through RXS-34. On the same date, Public Counsel submitted the
2 written testimony of Mr. Robert L. Earle as Exhibit RLE-1CT with associated Exhibits RLE-2
3 through RLE-14, and WUTC Staff submitted the written testimony of Ms. Betty A. Erdahl and
4 related exhibits as Exhibits BAE-1CT through BAE-12.

5 On September 17, 2023, PSE filed two motions, asking the Commission to strike portions
6 of the testimony of Dr. Sahu submitted on behalf of the Tribe and to strike portions of Mr. Earle's
7 testimony submitted on behalf of Public Counsel. Though this opposition is primarily focused on
8 PSE's motion to strike portions of Dr. Sahu's testimony, to the extent that it addresses PSE's
9 attempt to improperly limit the scope of the prudency analysis to be conducted by the Commission,
10 those arguments apply equally to PSE's motion against the testimony of Mr. Earle submitted by
11 Public Counsel.

12 Further to this point, in apparent recognition of the fact that equity and the public interest
13 are before the Commission in this proceeding, UTC Staff also filed testimony concerning equity
14 and the public interest.⁷ PSE notably did not move to strike *that* testimony.

15 PSE should not be allowed to manipulate the Commission's fact-finding function by
16 culling information that it does not like from the record. The Commission should deny PSE's
17 disingenuous request to strike portions of the testimony of Dr. Ranajit Sahu.

18 **III. ARGUMENT**

19 **A. PSE's Post-2016 Costs are subject to the Commission's prudence** 20 **analysis.**

21 First, Dr. Sahu's testimony pertains only to factors to be considered in the Commission's
22 analysis of PSE's Post-2016 Costs. PSE is mistaken when it claims that portions of Dr. Sahu's
23 testimony that bear on the prudence of PSE's Post-2016 Costs and the appropriate share of those
24 costs to be allocated to PSE ratepayers are outside the scope of the issues presented in this case.
25 The bifurcated nature of the prudency analysis for the Tacoma LNG Project does not obviate the

26 ⁷ Exhibit BAE-1CT.

1 Commission’s application of the reasonableness standard described in *WUTC v. Puget Sound*
2 *Energy, Inc.*, Docket UE-031725.⁸ Dr. Sahu’s testimony is relevant and necessary to the
3 Commission’s consideration of PSE’s demonstration of need and the alternatives available at the
4 times it was making post-September 22, 2016 decisions. The negative externalities presented by
5 the Tacoma LNG Project are important context to be considered when determining the prudence
6 of PSE’s Post-2016 Costs.

7 In WUTC Docket UG-151663, the Commission authorized PSE to decide whether and how
8 to move forward with the Tacoma LNG Project, and the associated settlement stipulation expressly
9 reserved questions of prudence and cost recovery in rates for future review and determination by
10 the Commission.⁹ The purpose of the Consolidated Dockets was to address those issues, but the
11 Commission’s December 22, 2022 Final Order 24/10 did not fully resolve questions of prudence
12 and cost recovery. The Commission limited its decision regarding Post-2016 Costs to finding that
13 the Settling Parties agreed that PSE had “met its ‘threshold’ prudence requirement, which allowed
14 PSE to collect Tacoma LNG Facility Costs on a provisional basis.”¹⁰

15 Final Order 24/10 did not end the prudency analysis, nor did it render information regarding
16 ratepayer need and/or Tacoma LNG’s impacts on the Tribe and surrounding communities
17 irrelevant. This is because, “[i]n addition to a threshold prudency showing, the Company must
18 demonstrate prudency over the life of the investment.”¹¹ The Commission possesses the authority
19 to determine the value of any utility property used and useful for service “by or during the rate
20 effective period.”¹² It may approve changes to rates up to 48 months after the rate-effective date
21 “using any standard, formula, method, or theory of valuation reasonably calculated to arrive a fair,
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23 ⁸ See *WUTC v. Puget Sound Energy, Inc.*, Docket UE-031725, Order 12 (Apr. 7, 2004).

24 ⁹ See Final Order 24/10 at ¶¶ 322, 324.

25 ¹⁰ See Final Order 24/10 at ¶ 328 (quoting Tacoma LNG Settlement at ¶ 18.B).

26 ¹¹ See Final Order 24/10 at ¶ 425.

¹² RCW 80.04.250(2).

1 just, reasonable, and sufficient rates.”¹³ Here, the Commission deferred the full prudency analysis
2 regarding Post-2016 Costs incurred by PSE, stating that “the Settlement allows the parties to
3 review the prudency and reasonableness of costs incurred after that point.”¹⁴ Prudence is not a
4 static concept—it must be maintained from the initial decision to build through the continued
5 construction and completion of a project.¹⁵ And PSE has the burden of proving that every stage of
6 the project was prudent if it seeks to recover related costs in its consumer rates.¹⁶

7 PSE now objects to Dr. Sahu’s testimony stating that the standard of review authorized by
8 RCW 80.28.425 is relevant to this proceeding.¹⁷ In claiming that Dr. Sahu “challenges the public
9 interest framework applied in the 2022 GRC Final Order for the Tacoma LNG Facility” and that
10 “[n]ow, the Tribe is attempting to upend that determination”,¹⁸ PSE misapprehends Dr. Sahu’s
11 testimony and the prudency standard. Dr. Sahu’s testimony simply refers to the Commission’s
12 explicit acknowledgement that RCW 80.28.425 applies during the Commission’s review of the
13 prudency of the Tacoma LNG Project.¹⁹

14 The Commission’s Order 24/10 did not disregard the public interest factors that are
15 provided in RCW 80.28.425. The Commission noted that insofar as the Tacoma LNG facility’s
16 implications for equity and environmental health were considered as public interest factors
17 pursuant to RCW 80.28.425 during its review of the Tacoma LNG Settlement, those factors were

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19 ¹³ RCW 80.04.250(3).

20 ¹⁴ *Id.*

21 ¹⁵ *Wash. Utils. & Transp. Comm’n v. Wash. Water Power Co.*, Docket U-83-26, Fifth
Supplemental Order at 13 (Jan. 19, 1984).

22 ¹⁶ *Id.*

23 ¹⁷ PSE Motion to Strike at ¶ 27.

24 ¹⁸ *Id.*

25 ¹⁹ Exhibit RXS-1T 17:1-9 (citing Final Order 09, Approving and Adopting Settlement Agreement
Subject to Conditions, *WUTC v. Cascade Natural Gas Corporation*, Docket UG-210755 at FN31
26 (August 23, 2022) (explaining that RCW 80.28.425(1) applies to multiyear rate plans filed on or
after January 1, 2022, and that PSE’s multiyear rate plan in the Consolidated Dockets has a
statutory effective date of December 22, 2022.)).

1 also considered in the context of the other two partial multiparty settlements.²⁰ Taken together, the
2 three partial multiparty settlement would resolve the general rate case and provide for a two-year
3 multiyear rate plan.²¹ The Commission considered the public interest factors described in RCW
4 80.28.425 in its prudence evaluation under the Consolidated Dockets; thus PSE’s contention that
5 the Tribe is attempting to upend that determination by referring to the applicability of those factors
6 here is meritless.

7 Further, even if the Commission’s prudence analysis in the Consolidated Dockets did not
8 consider the public interest factors provided in RCW 80.28.425, Final Order 24/10 does not
9 preclude the Commission from applying those factors during its consideration of PSE’s recovery
10 of the Post-2016 Costs. This is because, in its decision the Commission explicitly noted that “for
11 the purposes of reviewing this non-precedential Settlement, that the applicable definition of the
12 public interest was the one in effect at the time PSE decided to build the facility.”²² In stating its
13 decision was temporally limited, the Commission made clear that its public interest analysis in
14 Final Order 24/10 was specific to the narrow issue before it and did not apply to issues before it in
15 subsequent matters.

16 In sum, the Commission’s determination that PSE’s decision to construct the facility on
17 September 22, 2016 was prudent does not prevent the Commission from coming to a different
18 conclusion regarding PSE’s later decisions based on later information. As discussed below, the
19 Sahu testimony that PSE challenges goes to PSE’s *later decisions* and is therefore relevant to the
20 prudence of PSE’s Post-2016 Costs. Accordingly, the Commission should deny PSE’s motion to
21 strike portions Dr. Sahu’s testimony.

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25 ²⁰ Final Order 24/10 at ¶¶ 430, 431.

26 ²¹ *Id.*

²² Final Order 24/10 at ¶ 428 (emphasis added).

1 **B. Dr. Sahu’s testimony regarding the impacts of the Tacoma LNG Project is**
2 **relevant to the prudence PSE’s Post-2016 Costs.**

3 The Sahu testimony that PSE seeks to exclude addresses Tacoma LNG’s negative
4 externalities and is thus relevant to the Commission’s prudence analysis regarding PSE’s Post-
5 2016 Costs. PSE objects to Dr. Sahu’s testimony discussing: 1) opposition to the Tacoma LNG
6 facility from the surrounding community (due to treats the facility poses to health and safety);²³ 2)
7 the environmental impacts of the facility;²⁴ 3) safety concerns associated with the facility;²⁵ 4)
8 whether ratepayers need Tacoma LNG, when there are alternatives available to PSE to meet the
9 ratepayer needs that PSE points to;²⁶ 5) the excessive legal fees PSE is seeking to recoup from
10 ratepayers;²⁷ and 6) the scope and relevance of the PSCAA air permit and the PCHB decision
11 regarding the challenges to that permit.²⁸

12 As a threshold matter, the Tribe addresses PSE’s contention that portions of Dr. Sahu’s
13 testimony repeats information presented in the Consolidated Dockets. PSE has a point. But there
14 is a reason that portions of Dr. Sahu’s testimony has been repeated. When he provided his
15 testimony in the Consolidated Dockets, all issues—Pre-2016 Costs and Post-2016 Costs—were in
16 issue. It is only later that the Consolidated Dockets were narrowed to Pre-2016 Costs. Because
17 much of Dr. Sahu’s testimony in the Consolidated Dockets concerned, and was relevant to, the
18 issues now before the Commission in this matter, it is being presented here to make a record *in*
19 *this case*. The record relied on by the Commission will be incomplete if it does not include
20 information regarding the negative externalities and disparate impacts of the Tacoma LNG Project.
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22 ²³ *Id.* (citing RXS-1T at 11:13-26 and 12:12-22).

23 ²⁴ PSE Motion to Strike at ¶¶ 5-6 (citing RXS-1T at 17:10-26:17, 26:18-27:20, and 49:14-18).

24 ²⁵ *Id.* (citing RXS-1T at 26:18-27:20, RXS-1T 32:18-35:22, 36:1-38:19, and 49:14-18).

25 ²⁶ *Id.* (citing RXS-1T at 17:10-26:17, 40:1-41:12, 41:20-42:13, 46:6-26, and 49:14-18).

26 ²⁷ *Id.* (citing RXS-1T at 49:19-50:2 and 51:3-21).

²⁸ *Id.* (citing RXS-1T at 28:1-29:7).

1 The Tacoma LNG Settlement approved by the Commission allows the parties to review
2 the prudence and reasonableness of the Post-2016 Costs, which are subject to a “continuous
3 demonstration of prudence over the life of the investment now that equity and environmental
4 health considerations have been incorporated into ratemaking.”²⁹ It is appropriate and necessary
5 for the Commission to evaluate the prudence of PSE’s Post-2016 Costs based on a record reflecting
6 what PSE knew, or should have known, at the time it made those decisions. The impact and burden
7 of the Tacoma LNG Project on the surrounding community did not become irrelevant to future
8 decisions when PSE made the decision to construct its facility in 2016. PSE should not be allowed
9 to manipulate the Commission’s decision-making function by limiting the Commission’s ability
10 to consider those impacts.

11 Further, PSE’s suggestion that Dr. Sahu’s testimony lacks relevance because it contains
12 relatively few references to PSE’s testimony is disingenuous.³⁰ The testimony submitted by PSE
13 does not address the equities of the Tacoma LNG Project or how they were considered during
14 decisions regarding Post-2016 Costs. Mr. Roberts’ testimony also avoids acknowledging the
15 negative environmental and safety impacts of the Tacoma LNG Project or how PSE took those
16 into consideration after September 22, 2016. PSE’s attempt to preclude the Commission’s
17 consideration of the negative externalities and disparate impacts of the Tacoma LNG Project by
18 sidestepping those issues in its testimony should be rejected. Dr. Sahu’s testimony is relevant and
19 deserves response. PSE will have the opportunity to demonstrate that its Post-2016 Costs are
20 prudent and in the public interest in the context of the negative externalities in its October 6, 2023
21 rebuttal testimony.

22 In the Consolidated Dockets, the Commission expressed its agreement with the Tribe that
23 “investor-owned utilities like PSE should have been and should be responsive to the needs of those
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25 ²⁹ Final Order 24/10 at ¶ 425.

26 ³⁰ See PSE Motion to Strike at ¶ 6.

1 they serve or those who are impacted by their operations.”³¹ And it has acknowledged that, “[s]o
2 that the Commission’s decisions do not continue to contribute to ongoing systemic harms, we must
3 apply an equity lens in all public interest considerations going forward.”³² In its discussion of the
4 posture of its prudence analysis for the Tacoma LNG Project, the Commission found that “there
5 is a natural tension in this proceeding between the absence of equity and environmental health
6 considerations in ratemaking as it relates to the threshold prudence of PSE’s decision to construct
7 the facility and the continuous demonstration of prudence over the life of the investment now that
8 equity and environmental health considerations have been incorporated into ratemaking.”³³
9 Having acknowledged the tension associated with incorporating equity and environmental health
10 considerations into its review of the prudence of PSE’s decisions over the life of the investment,
11 the Commission cannot properly exclude testimony related to those factors in its consideration of
12 the prudence of PSE’s Post-2016 Costs.

13 The Commission discussed application of the equities in *WUTC v. Cascade Natural Gas*
14 *Corporation*. The Commission has adopted the principles of equity spelled out in RCW
15 43.06D.020(3)(a),³⁴ which state that:

- 16 • Equity requires developing, strengthening, and supporting policies and
17 procedures that distribute and prioritize resources to those who have been
18 historically and currently marginalized, including tribes;
- 19 • Equity requires the elimination of systemic barriers that have been deeply
20 entrenched in systems of inequality and oppression; and

21 ³¹ Final Order 24/10 at ¶ 429, FN 833.

22 ³² Final Order 09, Approving and Adopting Settlement Agreement Subject to Conditions, *WUTC*
23 *v. Cascade Natural Gas Corporation*, Docket UG-210755 at ¶ 58 and FN 39 (“State law defines
24 ‘equity lens’ as providing consideration to those characteristics for which groups of people have been
historically, and are currently, marginalized to evaluate the equitable impacts of an agency’s policy. See
RCW 43.06D.010(4). See also RCW 49.60.030.”).

25 ³³ Final Order 24/10 at ¶ 425.

26 ³⁴ Final Order 09, Approving and Adopting Settlement Agreement Subject to Conditions, *WUTC*
v. Cascade Natural Gas Corporation, Docket UG-210755 at ¶ 55.

- Equity achieves procedural and outcome fairness, promoting dignity, honor, and respect for all people.³⁵

The Commission has also embraced the concept of energy justice, which “is focused on (1) ensuring that individuals have access to energy that is affordable, safe, sustainable, and affords them the ability to sustain a decent lifestyle; and (2) providing an opportunity to participate in and have meaningful impact on decision-making processes.”³⁶ The core tenets of energy justice are distributional justice, procedural justice, recognition justice, and restorative justice.³⁷ Such justice cannot be achieved if the Tribe’s concerns regarding the disparate distribution of benefits and burdens if the Tacoma LNG Project are not heard. **The Commission cannot make efforts to reconcile historic and ongoing inequalities if it does not consider evidence demonstrating them.** And the Commission cannot hope to deliver restorative justice—by way of disrupting and addressing distributional, recognitional, or procedural injustices—if it is precluded from considering those injustices in its prudence inquiry.

The Commission cannot achieve an equitable outcome if it does not consider the historic and current marginalization of the Tribe and other highly-impacted communities surrounding the Tacoma LNG facility. Nor can it profess to be eliminating systemic barriers, achieving procedural an outcome fairness, or promoting dignity, honor, and respect for all people if PSE is allowed to essentially silence the concerns of the community that is subject to its negative externalities.

A discussion of the relevance of the various portions of the testimony that PSE has moved to strike follows.

³⁵ RCW 43.06D.020(3)(a).

³⁶ Final Order 09, Approving and Adopting Settlement Agreement Subject to Conditions, *WUTC v. Cascade Natural Gas Corporation*, Docket UG-210755 at ¶ 56.

³⁷ *Id.*

1 1. Dr. Sahu’s testimony regarding ratepayer needs and PSE’s
2 alternatives to meeting those needs speaks to a crucial component
3 of the prudence PSE’s Post-2016 Costs.

4 In the Consolidated Dockets, the Commission expressed its agreement with the Tribe that
5 “investor-owned utilities like PSE should have been and should be responsive to the needs of those
6 they serve or those who are impacted by their operations.”³⁸ The Commission’s Final Order
7 temporally limited its findings regarding PSE’s demonstration of need, stating that “PSE has
8 demonstrated a need for the Tacoma LNG Facility at least through the initial decision to build the
9 facility on September 22, 2016.” As discussed *supra* at Section III(A), the Commission’s threshold
10 prudence determination for costs incurred after that date does not preclude a complete and ongoing
11 prudence analysis in this proceeding.

12 PSE is incorrect when it argues that portions of Dr. Sahu’s testimony addressing the lack
13 of need for the Tacoma LNG Project are not relevant. PSE’s request should be denied because
14 striking these portions of Dr. Sahu’s testimony prevents the establishment of a complete record in
15 support of the Commission’s determination on the prudence of the Post-2016 Costs.

16 2. Consideration of the negative externalities and disparate impacts of
17 the Tacoma LNG Project is highly relevant to the prudence of
18 PSE’s Post-2016 Costs.

19 As noted above, the disparate impacts of the Tacoma LNG Project did not become
20 irrelevant to future decisions when PSE made the decision to construct Tacoma LNG in 2016. And
21 decisions made by PSE after September 22, 2016 exacerbated those impacts. At those decision
22 points, PSE knew or should have known about the topics it seeks to exclude from Dr. Sahu’s
23 testimony—air emissions associated with the Tacoma LNG Project and the health impacts of such
24 emissions; safety risks associated with an accident at the Tacoma LNG facility; and that a Health
25 Impact Assessment could have helped it understand and potentially mitigate the impacts of its
26 facility.

³⁸ Final Order 24/10 at ¶ 429, FN 833.

1 Contrary to PSE’s accusation, the Tribe is not attempting “to relitigate issues decided by
2 the Commission less than a year ago.”³⁹ Dr. Sahu’s testimony is provided to ensure the
3 Commission’s decision regarding PSE’s Post-2016 Costs is based on a complete record. And it
4 was made clear during the Consolidated Dockets that the Commission is capable of discerning
5 what information is relevant to its decisions. There, the Tribe objected to PSE appending an excerpt
6 of the testimony Shari Libicki, a witness who did not appear in the proceeding, to the testimony of
7 Mr. Roberts. In response to the objection, instead of excluding the appended testimony, the
8 presiding judge ordered PSE to submit Dr. Libicki’s *entire* testimony in the other matter. When
9 the Tribe pointed out that this submission would involve hundreds of pages of additional testimony
10 the presiding judge dismissed its concerns, stating:

11 I’m not especially troubled in terms of a 403 issue or things along
12 those lines. We don’t have a jury. We sort through large amounts of
information already.⁴⁰

13 If the Commission is equipped to sort through large amounts of information—such as the
14 improper Libicki testimony admitted in the Consolidated Dockets—the Commission is certainly
15 equipped to provide the appropriate weight to the relevant and admissible information in Dr.
16 Sahu’s testimony.

17 3. Dr. Sahu’s testimony regarding the PSCAA air permit and PCHB
18 review of that permit does not rehash those agencies
19 determinations, it clarifies the scope of issues addressed therein.

20 The Tribe has not submitted testimony “contesting the PSCAA air permit and PCHB
21 review processes as it relates to the overall determination of emissions from the LNG Facility.”⁴¹
22 A simple review of Dr. Sahu’s testimony discredits PSE’s specious claim, as this portion of Dr.
23 Sahu’s testimony discusses the scope and limitations of the air permit, but does not attempt to

24 ³⁹ PSE Motion to Strike at ¶ 1.

25 ⁴⁰ Hearing Transcript Vol IV, Docket Nos. UE-220066, UG-22067 and UG-210918
(Consolidated), *WUTC v. Puget Sound Energy*, (Oct. 3, 2022) at 412:20–23.

26 ⁴¹ PSE Motion to Strike at ¶ 24.

1 contest the permit or the PCHB decision regarding the permit.⁴² Instead, the testimony clarifies
2 that the purpose of the PSCAA air permit is to address whether the facility is in compliance with
3 the requirements of the Clean Air Act, and that no consideration of the cumulative impacts of the
4 carcinogenic and toxic and air pollutants emitted by the facility is required in that permitting
5 process.

6 PSE's request to strike this testimony should be denied because (1) the information is
7 relevant to the Commission's evaluation of the prudence of PSE's Post-2016 Costs and (2) the
8 information is responsive to the testimony of Mr. Roberts submitted by PSE in this matter
9 regarding the significance of the PSCAA permit and the PCHB determination.⁴³

10 **IV. CONCLUSION**

11 Based on PSE's admission in the Consolidated Dockets that it did not consider the equities
12 and disproportionate impacts of the Tacoma LNG Project during the development of the Tacoma
13 LNG Project, PSE has a strong interest in convincing the Commission that Final Order 24/10
14 precludes the consideration of those factors in the prudence evaluation for the Post-2016 Costs.
15 However, the Commission must reject PSE's attempt to misconstrue the scope of its prior decision
16 and limit the analysis of those costs. The full prudence analysis applies to the Commission's
17 consideration of whether the costs incurred after September 16, 2016 were in the public interest.

18 The Tribe is not challenging costs that the Commission determined were prudent in
19 the prior order. Dr. Sahu's testimony regarding: opposition to the Tacoma LNG facility from
20 the surrounding community (due to treats the facility poses to health and safety); the
21 environmental impacts of the facility; safety concerns associated with the facility; whether
22 ratepayers need Tacoma LNG, when there are alternatives available to PSE to meet the
23 ratepayer needs that PSE points to; the excessive legal fees PSE is seeking to recoup from
24 ratepayers; and the scope and

25 ⁴² The Tribe recognizes this is the inappropriate forum to challenge the air permit, and its appeal
26 of the PCHB decision regarding the air permit issued by PSCAA for the Tacoma LNG Facility is
ongoing before the Washington Court of Appeals.

⁴³ See Exhibit RJR-1T at 45:11-17.

1 relevance of the PSCAA air permit and the PCHB decision regarding the challenges to that permit
2 are relevant to the issues now before the Commission. While the Commission may have addressed
3 some of these issues discussed in Dr. Sahu's testimony in the Consolidated Dockets, the
4 Commission did not address those issues as they relate to PSE's Post-2016 Costs, which are still
5 at issue. PSE's motion to strike Dr. Sahu's testimony should be denied in its entirety.

6
7 DATED this 4th day of October, 2023, at Seattle, Washington.

8
9 OGDEN MURPHY WALLACE, P.L.L.C.

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