

**EXH. SEF-4T
DOCKET UG-230393
WITNESS: SUSAN E. FREE**

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UG-230393

PREFILED REBUTTAL TESTIMONY (NONCONFIDENTIAL) OF

SUSAN E. FREE

ON BEHALF OF PUGET SOUND ENERGY

OCTOBER 6, 2023

PUGET SOUND ENERGY

**PREFILED REBUTTAL TESTIMONY (NONCONFIDENTIAL) OF
SUSAN E. FREE**

CONTENTS

I. INTRODUCTION1

II. INCLUSION OF THE DEFERRED COSTS IN RATES IS JUST
AND REASONABLE AND SHOULD BE APPROVED BY THE
COMMISSION3

 A. PSE Should Recover its Deferred Return on Rate Base3

 B. Plant Level Included in Rate Base was Used and Useful12

 C. Gas Quality Design Investments Benefit All Customers13

III. LEGAL COSTS CHARGED TO THE TACOMA LNG PROJECT
ARE REASONABLE AND CONSISTENT WITH ORDER 24/1014

IV. CONCLUSION23

1 **PUGET SOUND ENERGY**

2 **PREFILED REBUTTAL TESTIMONY (NONCONFIDENTIAL) OF**
3 **SUSAN E. FREE**

4 **I. INTRODUCTION**

5 **Q. Are you the same Susan E. Free who submitted Prefiled Direct Testimony on**
6 **behalf of Puget Sound Energy in this proceeding?**

7 A. Yes, on May 25, 2023, I filed the Prefiled Direct Testimony of Susan E. Free,
8 Exhibit SEF-1T, and two supporting exhibits (Exh. SEF-2 through Exh. SEF-3).

9 **Q. What is the purpose of your rebuttal testimony?**

10 The purpose of my rebuttal testimony is to respond to the testimony of Betty A.
11 Erdahl who testified on behalf of the Staff of the Washington Utilities and
12 Transportation Commission (“Commission Staff”). Specifically, I address
13 recommendations of Commission Staff to disallow the following costs:

- 14 • \$18.9 million of the total return deferral of \$35.2 million beginning on
15 February 2022 through January 2023¹;
- 16 • \$0.7 million in deferred depreciation expense related to plant beginning on
17 February 2022 through January 2023, based on an incorrect theory that the
18 plant was not fully used and useful; and
- 19 • \$0.5 million in costs related to the redesign of the LNG Facility (which
20 includes the impact on the deferral as well as on rate base and depreciation
21 going forward).
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¹ The deferred return that Ms. Erdahl asks the Commission to disallow is the deferred return prior to rates going into effect, which means it would encompass the period February 2022 through January 6, 2023, rather than through January 2023, as Ms. Erdahl testifies.

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In addition, I respond to Public Counsel’s testimony proposing to disallow all internal legal costs and external legal fees associated with the Tacoma LNG Project.

Q. Please summarize your rebuttal testimony.

A. My testimony shows that:

- PSE’s inclusion of the deferred costs in rates is just and reasonable and consistent with the Tacoma LNG Settlement Agreement and the Commission Order² approving the same;
- PSE’s recovery of the deferral of its return on its share of the capital investment in the Tacoma LNG Facility for the period beginning on February 1, 2022 and ending on January 6, 2023 the day prior to the rate effective date in Docket UG-220067 is appropriate, consistent with the Commission’s Order 24/10 and promotes the Commission’s public interest standard;
- The Tacoma LNG Facility was used and useful beginning with its commercial operation date in February 2022 and full recovery of the deferral should be allowed beginning with that date;
- PSE’s inclusion of approximately \$543,000 associated with gas quality expenses (“Gas Quality”) to gross plant balances is appropriate and consistent with Order 24/10; and
- PSE’s legal fees associated with the Tacoma LNG Facility, both internal and external, are appropriate and should be included in the tracker.

² See *WUTC v. PSE*, Dockets UE-220066, UG-220067, UG-2210918, Order 24/10 ¶¶ 448-450 and Appendix C (December 22, 2022) (“Order 24/10”).

1 **II. INCLUSION OF THE DEFERRED COSTS IN RATES IS JUST AND**
2 **REASONABLE AND SHOULD BE APPROVED BY THE COMMISSION**

3 **A. PSE Should Recover its Deferred Return on Rate Base**

4 **Q. Please explain why the Commission should reject witness Erdahl’s proposal**
5 **to disallow rate recovery of the deferred return of \$18.9 million, which is the**
6 **portion of total deferred return balance of \$35.2 million beginning**
7 **February 2022 through January 6, 2023.**

8 A. I have several concerns with Ms. Erdahl’s testimony opposing the deferral and
9 recovery of PSE’s return on the Tacoma LNG Facility. Based on these concerns
10 which I outline below, the Commission should reject Ms. Erdahl’s
11 recommendation to disallow recovery of \$18.9 million of deferred return. First,
12 Ms. Erdahl purports the Commission rarely allows a utility to book expenses into
13 a deferral absent a showing of extraordinary circumstances.³ What Ms. Erdahl
14 does not acknowledge is that the Commission has already allowed PSE to
15 recognize the deferral including deferred return. PSE made this demonstration in
16 its accounting petition filed in Docket UG-210918 on November 24, 2021
17 (“Accounting Petition”). In the Accounting Petition, PSE explained that it would
18 experience significant earnings erosion absent a deferral given the level of
19 financial investment it has made and the length of time after commercial
20 operation of the Facility until recovery will be approved.⁴ On December 22, 2022,
21 the Commission approved, with modifications, PSE’s Accounting Petition⁵ allowing

³ See Erdahl, Exh. BAE-ICT, at 9-10.

⁴ See Accounting Petition at ¶ 13.

⁵ See Order 24/10 at ¶ 450 (approving PSE’s deferred accounting petition filed in Docket UG-210918).

1 PSE to book the deferral. Therefore, the issue of whether PSE should book expenses
2 and return on capital in a deferral account has already been decided by the
3 Commission.

4 **Q. Has PSE experienced actual earnings erosion?**

5 A. Yes. I provided testimony of PSE's actual earnings erosion in my direct
6 testimony.⁶ Nearly two years have elapsed since the Tacoma LNG Facility
7 commenced commercial operation in February 2022 and began liquefying natural
8 gas to fill the facility's storage tanks, and PSE has yet to recover any costs
9 associated with the plant.

10 **Q. Did Commission Staff oppose PSE's Accounting Petition or the deferral of**
11 **these costs?**

12 A. No, in the Tacoma LNG Settlement, Commission Staff did not oppose the
13 Accounting Petition, nor did Commission Staff oppose the inclusion of the deferred
14 return. Commission Staff and the settling parties agreed to allow PSE to continue
15 the deferral until recovery of the plant and deferral commences within the tracker.⁷

16 **Q. What else did the Tacoma LNG Settlement provide for?**

17 A. The Tacoma LNG Settlement provided that PSE would amortize the deferred
18 Tacoma LNG costs as requested in Docket UG-210918 in the Tacoma LNG
19 Tracker. The Tacoma LNG Settlement set forth the costs associated with the

⁶ See Free, Exh. SEF-1T, at 10:5-10.

⁷ See Tacoma LNG Settlement, ¶ 18.A.1.

1 Tacoma LNG Facility that would “be recovered through the tracker until agreed to
2 otherwise by the Settling Parties.”⁸ Those costs included the deferred return and
3 other costs detailed in the deferred accounting petition beginning in February 2022
4 when the facility began commercial operations.⁹

5 **Q. What other concerns do you have with Ms. Erdahl’s position on the Tacoma**
6 **LNG deferral and recovery of the deferral?**

7 A. I disagree with Ms. Erdahl’s assertion that recovering a deferred return is only
8 appropriate to incentivize a specific, desired utility behavior.¹⁰ Primary reasons for
9 recovery of the deferred return in this case are (i) the magnitude of the investment
10 PSE made to serve its customers, (ii) the length of time between commercial
11 operations and getting the investment into rates, and (iii) the fact that PSE is
12 underearning on its authorized rate of return, as I testified in my direct testimony.

13 **Q. Do you agree with Ms. Erdahl’s testimony that PSE did not modify its**
14 **behavior in pursuit of the Legislature’s preferred policy outcomes to build**
15 **out the infrastructure for marine-vessel fueling stations?**

16 A. No. As I discuss in more detail below, PSE spent 15 months working with the
17 Commission and parties to Docket UG-151663 to find an acceptable approach to
18 comply with the important public policy of providing marine vessel fueling
19 stations. In fact, PSE creatively modified its behavior and proposals over the

⁸ *Id.* ¶ 18.A.2-3.

⁹ *See id.* ¶ 18.D.

¹⁰ *See* Erdahl, Exh. BAE-1CT, at 10-11.

1 course of that proceeding to find a way to meet the important public policy
2 interest set forth in RCW 80.28.280—to develop LNG refueling stations to reduce
3 vessel emissions and decrease dependence on petroleum-based fuels.

4 **Q. How do you respond to Ms. Erdahl's view that PSE's decision to develop and**
5 **construct the Tacoma LNG Facility does not promote a defined public policy**
6 **objective?**

7 A. Ms. Erdahl's statement disregards PSE's history with the Tacoma LNG Facility
8 and the fact that the marine vessel fueling service would not exist but for the
9 efforts of PSE. Ms. Erdahl correctly points out that "the Legislature directed the
10 Commission to incent the build out of marine-vessel-LNG-fueling-station
11 infrastructure" in RCW 80.28.280 and .290.¹¹ In response to this public policy
12 directive, PSE proposed to provide the marine vessel fueling station under a
13 special contract with TOTE as a regulated service in Docket UG-151663. The
14 Commission rejected PSE's proposal to effectuate the public policy directive by
15 offering LNG fueling service to TOTE as a regulated service.¹² Nevertheless,
16 recognizing the important public interest in providing LNG vessel refueling
17 facilities as set forth in statute, the Commission provided parties an opportunity to
18 explore further whether there might be alternative business models with structures
19 that would fall under the Commission's jurisdiction.¹³ As stated by the
20 Commission's order: "the Commission provided parties the opportunity to

¹¹ Erdahl, Exh. BAE-1CT at.11:12-14.

¹² See Docket UG-151663, Order 10 ¶¶ 43, 115.

¹³ See Docket UG-151663, Order 10 ¶¶ 43, 115.

1 explore alternative corporate structures and business models within the scope of
2 the Commission’s authority that would enable PSE to proceed with the
3 development of the Tacoma LNG Facility.”¹⁴ In response, PSE continued to
4 work with parties to find a way to provide marine vessel fueling service as a non-
5 regulated business, while also using the facility to provide peak-shaving service to
6 PSE’s customers. Ultimately, a solution was reached which allowed Puget Energy
7 to form an unregulated affiliate—Puget LNG—that would provide marine fueling
8 service while also using the facility to provide peak-shaving for the benefit of its
9 natural gas customers.¹⁵ As Mr. Roberts has testified, it was the dual uses of the
10 Tacoma LNG facility—marine vessel fueling and peak shaving—that allowed the
11 facility to be the least cost resource to serve PSE’s natural gas customers.¹⁶

12 In light of this history, it is disingenuous for Commission Staff to take the
13 position that “PSE did not modify its behavior in pursuit of the Legislature’s
14 preferred policy outcome.”¹⁷ PSE spent 15 months in a Commission proceeding,
15 working with parties and the Commission to identify a way that PSE could meet
16 the policy directive of RCW 80.28.280 in a manner consistent with the
17 Commission’s jurisdictional determination and also make natural gas service
18 available to PSE’s customers on the coldest days of the year.

¹⁴ Docket UG-151663, Order 10 ¶ 43.

¹⁵ See Docket UG-151663, Order 10 ¶ 43.

¹⁶ See Order 24/10 ¶ 411 (noting Roberts’ testimony at hearing that PSE achieved economies of scale by constructing a dual-use facility).

¹⁷ See Erdahl, Exh. BAE-1CT, at 11:14-15.

1 **Q. Are you aware of any prohibitions on recovery of a deferred return on plant?**

2 A. No. The Commission has authority to grant recovery of a deferred return on plant.
3 No party has asserted that the Commission lacks that authority. In fact, Ms. Erdahl
4 supports the recovery of the deferred return on plant that was deferred beginning in
5 January 2023, when rates went into effect in PSE’s general rate case.

6 **Q. What is Ms. Erdahl’s justification for allowing recovery of the deferred**
7 **return once rates went into effect, but not allowing recovery of the deferred**
8 **return for the 10 months in 2022 after the plant achieved commercial**
9 **operation?**

10 A. She does not provide a clear and cogent reason for differentiating between the
11 deferred return that occurred before rates went into effect—which she proposes be
12 disallowed—and the deferred return that occurred after rates went into effect—for
13 which she proposes to allow recovery. Her only explanation is that she views the
14 deferral and recovery of the return on plant to be extraordinary relief.

15 **Q. How do you respond to Ms. Erdahl’s assertion that this is not an extraordinary**
16 **situation justifying recovery of the deferred return?**

17 A. The Tacoma LNG Facility went into service and was available to meet the capacity
18 needs of customers beginning in February 2022. Ms. Erdahl ignores the fact that a
19 delay in recovering a return on a used and useful plant with capital costs of
20 \$240 million is an extraordinary situation that justifies recovery of the return. As
21 stated in PSE’s Accounting Petition, “the magnitude of the financial investment for

1 the Tacoma LNG Facility and the one-time nature of the facility, constitutes an
2 extraordinary circumstance,”¹⁸ which justifies recovery of the deferred return.

3 **Q. Has the Commission approved recovery of a deferred return in the past when**
4 **large plant investments went into service before they could be included in**
5 **rates?**

6 A. Yes. I am aware of deferrals for several large generating units for which PSE was
7 allowed to defer *and recover* its return on the plant investment.¹⁹ As is the case
8 here, the deferrals were due to a timing difference between the commercial
9 operation dates of the plant and the dates the plant costs would go into rates. For
10 example, in PSE’s 2010 general rate case, the Commission approved deferral of
11 PSE’s capital costs, return on the capital costs, and operating expenses related to
12 the Mint Farm natural gas-fired generating plant and the Wild Horse Expansion
13 wind facility.²⁰ No party opposed PSE’s recovery of the deferred return on these
14 large plants that went into service before they could be included in rates.

¹⁸ Accounting Petition at ¶ 14.

¹⁹ See, e.g., *WUTC v. Puget Sound Energy*, Docket UE-111048 Order 08 ¶ 322 (May 7, 2012)(allowing recovery of deferred costs for Lower Snake River wind farm deferred in Docket UE-100882); *WUTC v. Puget Sound Energy*, Dockets UE-090704 and UG-090705 Order 11 (Apr. 10, 2010) (allowing recovery of deferred costs for Mint Farm generating station and Wild Horse Expansion).

²⁰ See *WUTC v. Puget Sound Energy*, Order 11, Dockets UE-090704 and UG-090705 at ¶¶ 237-238, 242 (Apr. 10, 2010) (allowing deferral and recovery of deferred costs including a return on rate base but denying recovery of additional carrying costs).

1 **Q. How is the deferral on the Tacoma LNG Facility similar to the examples you**
2 **cited?**

3 A. The Tacoma LNG Facility is a large plant that went into service nearly a year before
4 it could be included in rates. The deferred costs on the Tacoma LNG Facility were
5 incurred for the least cost alternative to satisfy peak day need as identified in
6 previous Integrated Resource Plans (“IRP”). As such, the deferral and recovery
7 would be similar to that allowed under RCW 80.80.060(d).

8 **Q. Are there other situations where the Commission has approved recovery of a**
9 **deferred return similar to the methodology set forth in RCW 80.80.060(d)?**

10 A. Yes. The Commission has approved deferral treatment in a manner consistent with
11 the deferral methodology set forth in RCW 80.80.060(d) for circumstances that are
12 not directly contemplated under that statute. For instance, PSE treated its Treasury
13 Grants and monetized Production Tax Credits (a payable to customers) in a manner
14 consistent with the deferral methodology set forth in RCW 80.80.060(d).²¹

15 **Q. Are there other reasons for allowing PSE to recover its deferred return on**
16 **the Tacoma LNG Facility beginning on the date it went into commercial**
17 **service?**

18 A. Yes. It is important to note that, had PSE elected the alternative of acquiring
19 additional gas pipeline transmission capacity to satisfy PSE’s peak day needs (a

²¹ See *WUTC v. Puget Sound Energy*, Docket UE-130617 *et al.*, Order 06 ¶¶ 28-31 (Oct. 23, 2013); *WUTC v. Puget Sound Energy*, Docket UE-170033 and UG-170034, Order 08 and Appendix B at ¶ 117 (citing to Exh. KJB-17T at 90-91 for RCW 80.80.060 deferred accounting treatment agreed to by the parties).

1 more costly alternative), rather than choosing the Tacoma LNG Facility including
2 its return, the cost of that pipeline capacity would have been included in PSE's
3 Purchased Gas Adjustment ("PGA") mechanism, which includes a deferral
4 component for collection from customers in a future PGA period. Therefore, it is
5 appropriate to allow deferral of the costs and return associated with PSE's share of
6 the Tacoma LNG facility, which will be used to satisfy peak day needs as the
7 deferral treatment is in line with current business practice for the alternative
8 resources over which the LNG facility was selected. Additionally, had PSE
9 contracted for capacity instead of investing in the Tacoma LNG Facility, the
10 contracted rate would have been the counterparty's total cost rate which would have
11 included a rate of return for the counterparty. Finally, not allowing deferral of these
12 costs and return would signal that uneven financial incentives exist between
13 alternatives for meeting the same capacity need.

14 **Q. When PSE considered the Tacoma LNG Facility as compared to other**
15 **alternatives, did it include a return on the plant from the date of its**
16 **commercial operations in its analysis?**

17 A. Yes. The Tacoma LNG Facility was the least cost option even with full recovery
18 of its return on plant from the date of commercial operation.

1 **B. Plant Level Included in Rate Base was Used and Useful**

2 **Q. Please explain why the plant level used to calculate the Deferred Returns was**
3 **used and useful in February 2022.**

4 A. PSE Witness Ronald J. Roberts demonstrates that the Tacoma LNG Facility has
5 been used and useful since its commercial operation date in February 2022. In
6 addition to Mr. Roberts' testimony on this point, I would add that Ms. Erdahl
7 misconstrues the Commission's determination regarding the Tacoma LNG Facility
8 being used and useful. In Order 24/10, the Commission expressly stated that
9 "capacity itself provides a benefit for customers" and that "*capacity* is, by itself, a
10 used and useful resource for customers."²² The Commission did not say the amount
11 of "available capacity of the facility is the used and useful resource" as Ms. Erdahl
12 claims. A facility is either used or useful or it is not. Commission Staff's argument
13 that used and useful should be viewed on a continuum or gradient is not consistent
14 with past Commission practice or Order 24/10, and Ms. Erdahl provides no support
15 for her position.

16 **Q. Do you agree with Ms. Erdahl's reduction to the depreciation deferral?**

17 A. No. Ms. Erdahl applies the same flawed logic with respect to the used and useful
18 standard when she proposes to reduce the depreciation deferral. Because the plant
19 was ready to provide peak shaving capacity beginning in February 2022, PSE
20 should be permitted to recover the depreciation expense for this time period.

²² Order 24/10 ¶ 405.

1 **C. Gas Quality Design Investments Benefit All Customers**

2 **Q. What is Commission Staff’s proposal with respect to the design of the Tacoma**
3 **LNG Facility’s preliquefaction treatment equipment?**

4 A. Witness Erdahl proposes that the Commission deny recovery of the return of and
5 the return on the incremental capital invested with the redesign of the LNG
6 preliquefaction treatment equipment. Specifically, she is proposing a Gas Quality
7 adjustment of \$563,228 to the monthly plant balances, which includes the impact
8 on the deferrals as well as on going-forward rate base and depreciation expense.²³
9 She seeks this disallowance under the incorrect theory that the redesign to address
10 the change in the composition of gas quality benefitted only Puget LNG and not
11 PSE’s customers.

12 **Q. Please explain why the Gas Quality amount of \$563,228 should be included in**
13 **the plant balances.**

14 A. The Commission considered and rejected this same claim in Order 24/10. As stated
15 in the final order: “We are not persuaded . . . that PSE incurred unreasonable costs
16 in redesigning the facility due to changing composition of imported natural gas.
17 Roberts testified that high levels of ethane or propane in imported natural gas were
18 a problem for core gas customers as well as non-regulated, Puget LNG
19 customers.”²⁴ Again, Witness Erdahl is re-litigating stale arguments previously
20 raised by the Puyallup Tribe of Indians (“Tribe”) that were rejected in Order

²³ See Erdahl, Exh. BAE-1CT, at 19:16-20:2.

²⁴ See Order 24/10 ¶ 403.

1 24/10.²⁵ Mr. Roberts provides a more detailed discussion for why Ms. Erdahl's
2 recommendations should be rejected.

3 **III. LEGAL COSTS CHARGED TO THE TACOMA LNG PROJECT ARE**
4 **REASONABLE AND CONSISTENT WITH ORDER 24/10**

5 **Q. How do you respond to Public Counsel's claims²⁶ that all legal costs charged**
6 **to the Tacoma LNG Project since 2016 should be disallowed?**

7 A. PSE properly utilized internal and external legal resources during the planning,
8 development, and construction of the Tacoma LNG Project, and legal costs were
9 also necessary to respond to multiple legal challenges to the project. PSE
10 provided documentation of these legal costs when requested in discovery. Public
11 Counsel's testimony seeking to disallow all legal costs is without merit and
12 demonstrates a basic misunderstanding of how PSE accounts for legal costs.

13 **Q. Please describe how PSE accounts for legal costs.**

14 A. Costs for the PSE legal department are charged to an operations and maintenance
15 account, FERC account 920, administrative and general salaries, unless the costs
16 are attributable to a specific capital project. Costs for outside legal services are
17 charged to specific matter numbers established by the external law firm.
18 Internally, those matter numbers are tied to specific projects, when appropriate,
19 and to general categories, when appropriate.

²⁵ See Order 24/10 ¶ 403.

²⁶ See Earle, Exh. RLE-1CT, at 19:15-24:3.

1 **Q. Did PSE refuse to provide evidence of its legal costs or their reasonableness**
2 **for the Tacoma LNG Project as claimed by Public Counsel?²⁷**

3 A. No, PSE did not refuse to provide evidence of legal costs. Rather, PSE provided
4 monthly external legal counsel costs and monthly internal legal costs and hours
5 for the time period relevant to this case, which is from January 2017 through June
6 2023. PSE objected to providing legal costs prior to 2017 because the request
7 was unduly burdensome and outside the scope of this proceeding, which is
8 focused on costs incurred after the decision to build the Tacoma LNG Project in
9 2016. Additionally, PSE objected to the level of detail Public Counsel requested
10 because its legal invoices contain descriptions of legal work that is attorney client
11 privileged information.

12 **Q. How do you respond to Public Counsel's testimony claiming PSE's discovery**
13 **response was inadequate?**

14 A. Public Counsel's filed testimony is the first notice PSE received that Public
15 Counsel viewed this data request response as incomplete or inadequate. Although
16 Public Counsel is taking issue in its response testimony with the information PSE
17 provided in its response to Public Counsel Data Request No. 026,²⁸ Public
18 Counsel did not notify PSE of its concerns or avail itself of the procedures for
19 resolving discovery disputes provided in WAC 480-07-425(1). Public Counsel
20 did not contact PSE to seek an alternative way to receive additional information

²⁷ See Earle, Exh. RLE-1CT, at 20:1-11; 21:13; 23:2-24:3.

²⁸ See *id.* Public Counsel Data Request No. 026 is included in the record as Exh. RJE-12.

1 or details related to legal costs nor did it make any other efforts to resolve its
2 concern with PSE’s response—concerns of which PSE was unaware until Public
3 Counsel’s testimony was filed.

4 **Q. How do you respond to Public Counsel’s claim that PSE is unable to provide**
5 **monthly legal costs for Tacoma LNG prior to 2017?**²⁹

6 A. First, it is important to reiterate that legal costs prior to September 22, 2016 are
7 outside the scope of this case, which is focused on costs after the 2016 decision to
8 build Tacoma LNG.³⁰ Second, as explained in the response to data request
9 No. 026, prior to 2017, PSE was not tracking legal costs as a separate cost
10 category when charged to the Tacoma LNG Project. Prior to 2017, external legal
11 costs attributable to the Tacoma LNG Project had been accumulated in Tacoma
12 LNG Project capital accounts, but not in a legal cost category. Starting in early
13 2017, after issuance of Order 10 in Docket UG-151663, PSE internal legal costs
14 and external legal costs attributable to the Tacoma LNG Project were charged to a
15 “legal” cost category for the Tacoma LNG Project.

²⁹ See Earle, Exh. RLE-1CT, at 5-10.

³⁰ See Order 24/10 ¶¶ 393, 420, 449.

1 **Q. Has PSE performed additional research of the legal costs incurred for the**
2 **Tacoma LNG Project prior to 2017 in response to Public Counsel's**
3 **testimony?**

4 A. Yes. Although PSE's pre-2017 legal costs are outside the scope of this
5 proceeding, in response to Public Counsel's testimony concerning legal costs,
6 PSE performed additional research to determine the external legal costs that were
7 incurred for the Tacoma LNG Project prior to April 2017. PSE was able to
8 determine that it incurred \$2.7 million for external legal fees for the Tacoma LNG
9 Project prior to April 2017. PSE also confirmed that 43 percent, or \$1.2 million
10 of those costs were allocated to PSE in accordance with Order 10 in Docket UG-
11 151663.³¹

12 **Q. Please respond to Public Counsel's claims³² that PSE's external legal**
13 **activities were not being monitored by PSE's legal staff for ten of the 75**
14 **months from April 2017 to June 2023.**

15 A. I am puzzled by Public Counsel's apparent contradictory positions that (i) PSE's
16 internal legal team should have billed additional time to the Tacoma LNG Project
17 and (ii) all of PSE's legal expenses should be disallowed.

18 It is important to understand that PSE had a legal staff of five attorneys, which is
19 a very small legal department for the size of the company. The PSE legal

³¹ Costs between January and March 2017 were \$115,000 in total, with \$50,000 assigned to PSE.

³² See Earle, Exh. RLE-1CT, at 20:18-21:8.

1 department hires outside legal counsel for their expertise in specific areas of law.
2 Internal attorneys for PSE partner with outside counsel and work closely with
3 them on litigation and regulatory strategy. Given this complementary approach,
4 depending on the flow of work internally at PSE, other competing demands, and
5 the progress of a given project, there can be months when internal counsel spends
6 more time on a project and months when internal counsel spends little or no time
7 on the project.

8 Specific to the Tacoma LNG Project, it is well documented that there have been
9 repeated filings and appeals in multiple forums attacking PSE's efforts to
10 construct an LNG facility in Tacoma. The core arguments for the attacks and
11 appeals have been simply repeated in these different forums in the hopes of
12 getting a different answer. PSE ultimately prevailed on all of these appeals and
13 did so by repeating its core defenses in each of the various forums. This also
14 fundamentally shaped the nature of services and time invested by PSE internal
15 legal counsel.

16 **Q. Was the environmental permitting litigation related to the Tacoma LNG**
17 **Project “largely over by September 2022 to November 2022” as claimed³³ by**
18 **Public Counsel?**

19 A. No, this assertion is incorrect and materially misleading. During this window of
20 time, significant critical work was undertaken by outside attorneys to complete

³³ See Earle, Exh. RLE-1CT, at 20:18-21:8.

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briefing before the Washington Court of Appeals: Division II.

Although PSE prevailed at every level in each of the three rounds of appeals filed by the Tribe, the latest appeal brought by the Tribe and environmental appellants on the environmental review of potential greenhouse gas impacts and the project’s air permit were particularly onerous due to the number and highly technical nature of issues raised. Because PSE prevailed before the Pollution Control Hearings Board, PSE had one opportunity—the response—to defend the project on appeal. In this instance, the system charges for legal costs that occurred in August and December 2022 (which reflect work done in August 2022 and includes the bulk of the fees in the September-November 2022 window) included PSE’s response to both sets of appellants and responses to two amicus briefs. As previously explained, PSE’s internal legal team is small, which means complex litigation requires outsourcing. Internal review of these briefs is reflected in the internal legal time recorded in December 2022 for overseeing outside counsel.

The tables shown below provide the detail associated with the internal hours worked and when those hours were recorded in the system and demonstrates work performed in August through December 2022 was charged to the Tacoma LNG Project in December 2022.

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Table 1: Internal Legal Hours Worked and External Legal Costs

2022	Month Hours Worked	Month Hours Posted	Internal Labor Exp	PSE Share (43%)	External Costs	PSE Share Ext (43%)
Jan	7	7	\$ 703	\$ 302	\$ 80,603	\$ 34,659
Feb	7	7	\$ 703	\$ 302	\$ 46,705	\$ 20,083
Mar	15	15	\$ 1,662	\$ 715	\$227,679	\$ 97,902
Apr	9	9	\$ 920	\$ 395	\$128,493	\$ 55,252
May	1	1	\$ 108	\$ 47	\$ 65,917	\$ 28,344
Jun	4	4	\$ 750	\$ 323	\$ 57,681	\$ 24,803
Jul	8	1	\$ 54	\$ 23	\$101,380	\$ 43,593
Aug	8	14	\$ 1,461	\$ 628	\$147,738	\$ 63,527
Sep	21				\$334,639	\$143,895
Oct	13				\$ 51,907	\$ 22,320
Nov	9				\$ 32,213	\$ 13,851
Dec	2	46	\$ 6,716	\$ 2,888	\$110,419	\$ 47,480
Total	103	103				

2

3

Table 2: Internal Legal Hours - Time Entry

Time Entry	Time Worked	Total Charged	Allocated to PSE
Week of Aug. 29	4	\$ 584	\$ 251
Week of Sept. 5	1	\$ 146	\$ 63
Week of Sept. 12	1	\$ 146	\$ 63
Week of Sept. 19	4	\$ 584	\$ 251
Week of Sept. 26	12	\$ 1,752	\$ 753
Week of Oct. 3	2	\$ 292	\$ 126
Week of Oct 17	8	\$ 1,168	\$ 502
Week of Oct 24	3	\$ 438	\$ 188
Week of Nov 7	1	\$ 146	\$ 63
Week of Nov 14	3	\$ 438	\$ 188
Week of Nov 28	5	\$ 730	\$ 314
Week of Dec 5	2	\$ 292	\$ 126
Total Posted in Dec-22	46	\$ 6,716	\$ 2,888

4

1 **Q. Is it “highly improbable” that there were no legal costs charged to the**
2 **Tacoma LNG Project from January 2017 to March 2017 after PSE spent “up**
3 **to \$1 million each year from 2013 to 2016” on legal costs as claimed³⁴ by**
4 **Public Counsel?**

5 A. First, Public Counsel misquotes the language from PSE’s response to the data
6 request. In its response, PSE stated that the “category of costs in which external
7 legal costs would have been included was *not more* than \$1 million per year in
8 total.”³⁵ Moreover, as discussed above, PSE was allocated \$50,000 of the total
9 \$115,000 incurred for external legal fees for the Tacoma LNG Project for that
10 period.

11 Because a Commission order in Docket UG-151663 was not received until
12 November 2016, there was no established capital project to which internal legal
13 counsel could charge their time. Therefore, it is not possible to re-create the hours
14 that internal legal counsel spent prior to this time.

15 **Q. How do you respond to Public Counsel’s theory that PSE’s internal legal**
16 **costs are anomalous based on the last digit of each time entry?**

17 A. I find this theory to be questionable and inapplicable to this case. While Public
18 Counsel is not alleging fraud by PSE, the article on which Public Counsel witness
19 Earle relies purports to address “statistical fraud detection with digit analysis.”

³⁴ See Earle, Exh. RLE-1CT, at 21:9-13.

³⁵ See Earle, Exh. RLE-12, at 1 (emphasis added).

1 Public Counsel's apparent theory is that because the last digits of PSE's monthly
2 internal legal costs are not uniformly distributed, they are anomalous and should
3 be disallowed.³⁶ PSE witness John Taylor provides further rebuttal of this issue.

4 **Q. If the Commission allows PSE to recover its legal costs for the Tacoma LNG**
5 **Project, would it be signaling to regulated entities that they do not need to**
6 **show evidence of their claims for cost recovery as stated³⁷ by Public Counsel?**

7 A. Not at all. PSE provided evidence of its internal and external legal costs for the
8 relevant time period in a manner that does not disclose attorney client privileged
9 billing detail. It is especially disingenuous for Public Counsel to claim that PSE
10 "refused to provide basic evidence" when Public Counsel did not inform PSE that
11 it viewed PSE's response to Data Request No. 26 as inadequate or schedule a
12 discovery conference to air its concerns.

13 **Q. Should PSE be required to refund a portion of the legal costs incurred for the**
14 **Tacoma LNG Project prior to 2017 as claimed³⁸ by Public Counsel?**

15 A. No. As previously stated, those costs are outside the scope of this proceeding.
16 Moreover, Public Counsel does not understand how PSE treated the external legal
17 costs incurred for the Tacoma LNG Project prior to 2017. Those costs were
18 included in the total capital costs for the Tacoma LNG Project and were allocated
19 based on the percentages that were established in Order 10 in Docket UG-151663

³⁶ See Earle, Exh. RLE-1CT at 21:14-24:3.

³⁷ See Earle, Exh. RLE-1CT at 23:2-24.

³⁸ See Earle, Exh. RLE-1CT at 24:6-25:2.

1 as cited by Public Counsel. The pre-2017 legal costs charged to the Tacoma LNG
2 Project were appropriately allocated and there is no need for any refunds.

3 **Q. Should the Commission order an independent audit of all PSE legal costs,**
4 **cost controls of legal costs, and recordkeeping starting in 2013 based on**
5 **Public Counsel’s claim³⁹ that PSE failed to keep adequate records of legal**
6 **costs for the Tacoma LNG Project?**

7 A. No. Public Counsel’s request for a full audit of all PSE’s legal costs, its cost
8 controls, and recordkeeping is outside the scope of this proceeding, which is
9 specifically focused on construction and operation costs of the Tacoma LNG
10 Project. Further, PSE’s legal fees related to the Tacoma LNG Project are
11 reasonable and appropriate, for the reasons discussed above and in the rebuttal
12 testimonies of PSE witnesses John D. Taylor and Ronald J. Roberts. For these
13 reasons, Public Counsel’s request for an audit should be rejected.

14 **IV. CONCLUSION**

15
16 **Q. Does that conclude your Prefiled Rebuttal Testimony?**

17 A. Yes, it does.

³⁹ See Earle, Exh. RLE-1CT at 27:5-27:17.