

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UG-230393

ORDER 04

DENYING MOTIONS TO STRIKE
PORTIONS OF ROBERT L.
EARLE AND RANAJIT SAHU'S
TESTIMONIES

BACKGROUND

- 1 On May 25, 2023, Puget Sound Energy (PSE or Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective natural gas tariff WN U-2. PSE characterizes its filing as establishing a new tariff schedule, Schedule 141LNG – Liquefied Natural Gas Rate Adjustment, made pursuant to the Commission's final order in Dockets DE-220066 and UG-220067 in PSE's last general rate case (2022 GRC).
- 2 The Commission suspended operation of the tariffs on June 8, 2023, by Order 01 entered in this Docket. On July 7, 2023, the Commission entered Order 03, Prehearing Conference (Order 03) setting a procedural schedule and giving notice of hearing.
- 3 On September 8, 2023, the non-Company parties submitted testimony pursuant to the procedural schedule.
- 4 On September 27, 2023, PSE filed a Motion to Strike Portions of the Testimony of Dr. Robert L. Earle (Motion I) and a Motion to Strike Portions of the Testimony of Dr. Ranajit Sahu (Motion II). PSE argues in both Motion I and Motion II that portions of these testimonies are outside of the scope of this proceeding and therefore irrelevant. The Company further claims that portions of those testimonies challenge the prudence of the decision to develop and construct the LNG Facility and revisit issues which were already determined by the Commission in the 2022 GRC.¹

¹ PSE Motion I, ¶ 3. PSE Motion II, ¶ 2-3.

- 5 PSE specifically argues in Motion I that the 2022 GRC resolved and rejected Public Counsel Unit of the Washington Attorney General’s Office’s (Public Counsel’s) positions on the demonstration of need and the public interest standard applicable to the LNG Facility.² PSE argues that Public Counsel is attempting to re-address these issues and is therefore expanding the scope of this proceeding.³
- 6 PSE further states in Motion II that the 2022 GRC resolved and rejected the Puyallup Tribe of Indians’ (Tribe’s) positions on demonstration of need, consideration of alternatives, allocation of facility costs, facility design, litigation costs, environmental health considerations, and the public interest standard applicable to the LNG Facility.⁴ The Company argues that the Tribe is also attempting to re-address these issues and to expand the scope of this proceeding.⁵
- 7 On October 4, 2023, Commission staff (Staff), filed its Response to PSE’s Motions to Strike. Staff asserts that the Commission should reject PSE’s arguments regarding the prudency standard. Staff disagrees with the Company’s position that since the Commission determined in the 2022 GRC that legislative amendments incorporating equity and environmental considerations into the public interest standard do not apply retroactively, it therefore, does not apply when reviewing the prudency of construction and operation costs for PSE’s LNG facility in this proceeding.⁶
- 8 Staff argues that PSE’s Motion I and Motion II expand the Commission’s determinations on prudency in Order 24 of the 2022 GRC too broadly⁷. Staff states that since the Commission only approved the Settlement based on the prudency of decisions made up to September 22, 2016, the parties retain the right under the LNG Settlement and Order 24 to challenge the standard of related costs after this date.⁸ Finally, Staff states that since some of the costs at issue in this proceeding were incurred after the Clean Energy Transformation Act (CETA) and RCW 80.28.425 became effective, the Commission does not face a retroactivity issue when applying these standards to events that occur after these laws took effect.⁹
- 9 On October 4, 2023, Public Counsel filed its Response to PSE’s Motion I and II in opposition to striking both Dr. Robert Earle and Dr. Ranajit Sahu’s testimonies. Public Counsel asserts that Dr. Earle’s testimony is relevant and does not re-address issues

² PSE Motion I, ¶ 5.

³ *Id.* at ¶ 9-10.

⁴ PSE Motion II, ¶ 5-6.

⁵ *Id.* at ¶ 8-10. PSE puts these into four categories: (a) need and facility design, (b) alternatives, (c) environmental concerns including whether a Health Impact Assessment should be ordered, and (d) the retroactivity of the updated public interest standard.

⁶ Staff’s Response to PSE’s Motions to Strike, ¶ 1.

⁷ *Id.* at ¶ 1 and 9.

⁸ *Id.* at ¶ 9.

⁹ *Id.*

previously determined by the Commission in the 2022 GRC.¹⁰

- 10 Public Counsel further argues that prudence is not merely a threshold question, but continually re-examined for the lifetime of the investment.¹¹ Moreover, Public Counsel argues that since the Commission only examined PSE decision up to September 22, 2016, Dr. Earle's testimony only revisits issues so much as they were not determined after that date.¹² For instance, the design day arguments only so much as they are related to post-September investments and decisions.¹³
- 11 Finally, Public Counsel asserts that Dr. Earle's testimony appropriately addresses the need to review the question of when to apply the current public interest standard since the Commission specifically only determined up to September 22, 2016.¹⁴ Public Counsel argues that since PSE has, at a minimum, 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 examination.¹⁵
- 12 On October 4, 2023, the Tribe filed its Opposition to PSE's Motion II. The Tribe argues that PSE mischaracterizes the purpose of Dr. Sahu's testimony and attempts to improperly limit the scope of this proceeding.¹⁶ The Tribe further asserts that while some of the testimony was used in the 2022 GRC, this is because the Commission did not rule on the post-September 2016 costs.¹⁷
- 13 The Tribe additionally asserts that the issues it continues to raise regarding the impact and burden of the LNG Facility do not become irrelevant to future decisions because PSE decided to construct its facility in September 2016.¹⁸ The Tribes also points to the Commission's final Order 24/10 stating that prudence requires a continuous demonstration over the life of an investment.¹⁹ The Tribe also argues that the Commission cannot begin to address historic or ongoing inequities if it does not consider evidence demonstrating them.²⁰

DISCUSSION

- 14 We deny PSE's Motion I and Motion II to Strike, for the following reasons.

¹⁰ Public Counsel's Response to PSE's Motions to Strike, ¶ 1.

¹¹ *Id.* at ¶ 10.

¹² *Id.* at ¶ 11-13.

¹³ *Id.*

¹⁴ *Id.* at ¶ 16-17.

¹⁵ *Id.* at ¶ 17.

¹⁶ Puyallup Tribe of Indians' Opposition to PSE's Motion II, at 2:2-4.

¹⁷ *Id.* at 2:11-26.

¹⁸ *Id.* at 9:6-10.

¹⁹ *Id.* at 9:1-4.

²⁰ *Id.* at 11:7-12.

15 WAC 480-07-495(1) provides that:

All relevant evidence is admissible if the presiding officer believes it is the best evidence reasonably obtainable, considering its necessity, availability, and trustworthiness. The presiding officer will consider, but is not required to follow, the rules of evidence governing civil proceedings in nonjury trials before Washington superior courts when ruling on the admissibility of evidence.

16 Accordingly, the Commission has broad discretion to consider or reject any evidence it deems relevant, or irrelevant.²¹ At this stage of the proceedings, the Commission is considering only prefiled testimony that may be offered into evidence at the hearing and, therefore, need only determine whether any portion of that testimony is so demonstrably irrelevant to the disputed issues that the Commission would not admit it into evidence if it were offered.²²

17 As stated in Final Order 24/10:

[W]e conclude that PSE acted prudently in developing and constructing the facility up through the Board of Director's decision to authorize construction on September 22, 2016. The parties may review and challenge subsequent construction and operation costs in a later proceeding. We also conclude that the prudence standard should remain focused on what the utility reasonably knew at the time it made its investment decisions. PSE's decisions should not be second-guessed based on facts or changes to the law that occurred after it initiated construction and after the facility was mechanically completed.²³

18 In this proceeding, the Commission considers the prudence and reasonableness of the investments and decisions the Company made after September 22, 2016. While we have considered PSE's challenges to the testimony offered by Earle and Dr. Sahu, we are not persuaded that the identified pages of these witnesses' testimony are demonstrably irrelevant to assessing the prudence of costs from September 22, 2016, forwards. The non-Company parties may reasonably refer to events occurring before September 2016 in order to provide context to their positions in this proceeding.²⁴ References to earlier

²¹ *In re the Application of Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle For a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company*, Dockets TC-143691, TC-160516, TC-161257 (Consolidated) (“*In re Speedishuttle*”), Order 16/09, at ¶ 9. (Feb. 3, 2017).

²² *Id.*

²³ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-220066, UG-220067, & UG-210918, Final Order 24/10 at ¶ 52. (Dec. 22, 2022)

²⁴ The Company itself refers to events occurring before September 2016 to provide context for the decision to construct the facility. *See* Roberts, Exh. RJR-1T at 6:1-7:9.

events before September 2016 appear bound-up with Earle's and Sahu's challenges to the prudence of costs after that same date.²⁵

- 19 We also observe that Public Counsel and the Tribe are permitted to raise testimony regarding negative externalities and other potential risks of operating the Tacoma LNG Facility, at least from September 22, 2016, forwards. For example, Dr. Sahu discusses the current state of the federal rules allowing LNG transport by rail.²⁶
- 20 However, the Commission will retain discretion in its Final Order in this proceeding to determine whether a party is merely relitigating issues decided by Final Order 24/10. The Commission has yet to determine whether and where to apply the expanded public interest standards set forth in RCW 80.28.425(1) and CETA apply to our continued review of the LNG Facility.
- 21 We additionally agree with Staff that there is yet to be a determination on whether some of the costs at issue in this proceeding were incurred after the expanded public interest standards became effective. Therefore, it is reasonable that the parties would argue for consideration of these standards and include testimony in support of those factors. The Commission agrees with the Tribe that without an opportunity to develop a record considering possible historic or ongoing inequities, we cannot hope to rectify them. This is imperative in the pursuit of addressing distributional, recognition, and procedural injustices.
- 22 PSE primarily argues that portions of Public Counsel and the Tribe's witness testimonies re-address issues previously determined in the Company's 2022 GRC. While we acknowledge that many portions of these testimonies may have been included in the previous docket or speak to issues previously contested, though not yet determined. We find that these submissions were made in a reasonable effort to address post-September 2016 decisions. Accordingly, we find they do not broaden the scope of this proceeding.

ORDER

- 23 **THE COMMISSION ORDERS That Puget Sound Energy's Motions to Strike are DENIED.**

DATED at Lacey, Washington, and effective October 18, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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²⁶ Sahu, Exh. RXS-1T at

/s/ Michael S. Howard
MICHAEL HOWARD
Administrative Law Judge

**NOTICE TO PARTIES: This is an Interlocutory Order of the Commission.
Administrative review may be available through a petition for review, filed within 10
days of the service of this Order pursuant to WAC 480-07-810.**