

1                   **THE COMMISSION’S CONSISTENT RECOGNITION OF**  
2                   **THE REGULATORY COMPACT**

3   **Q.    On behalf of Staff, Mr. Panco referred to the regulatory compact as a metaphor.**  
4           **Do you agree with that characterization?**

5    A.    No. Mr. Panco testified that the regulatory compact has no legal effect in Washington  
6           and is “only a metaphor.”<sup>11</sup> Chairman Danner recently addressed the regulatory  
7           compact.<sup>12</sup> Open competition with an unregulated utility resulting from the absence  
8           of a service area agreement, abrogates the regulatory compact. The regulatory  
9           compact is a principle grounded firmly in statutory and Constitutional requirements.  
10          The Company, like other electric, gas, and water companies in Washington, is under a  
11          mandatory duty to serve.<sup>13</sup> In return, the Company is statutorily entitled to  
12          Commission-established rates, charges, regulations, practices, and contracts that are  
13          “[s]ufficient to yield a reasonable compensation for the service rendered.”<sup>14</sup>

~~14          Furthermore, the Takings Clause and the Due Process Clause of the United States  
15          Constitution require that the Company be allowed just compensation. “Although [a  
16          utility’s] assets are employed in the public interest to provide consumers of the State  
17          with electric power, they are owned and operated by private investors. This partly  
18          public, partly private status of utility property creates its own set of questions under  
19          the Takings Clause of the Fifth Amendment. . . . If a rate does not afford sufficient  
20          compensation, the State has taken the use of utility property without paying just  
2114          compensation and so violated the Fifth and Fourteenth Amendments.”<sup>15</sup>~~

<sup>11</sup> Exhibit No. DJP-1T, p. 5, ll. 15.

<sup>12</sup> Docket UE-143932, Order 05 (Separate Statement of Chairman Danner, § 2 (May 5, 2016)).

<sup>13</sup> RCW 80.28.110.

<sup>14</sup> RCW 80.28.020.

<sup>15</sup> ~~*Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307-8 (1989).~~

1 **Q. Has Washington recognized the regulatory compact?**

2 A. Yes. The Commission as well as Staff and other parties to this docket have  
3 recognized the application of the regulatory compact in numerous proceedings:

4 ~~● *In re Petition of Puget Sound Energy, Inc.*, Docket UG-151633, Order No. 10 p.  
5 104 (Oct. 13, 2016) (“PSE would still maintain its ultimate responsibility under  
6 the regulatory compact to provide safe, reliable natural gas service at reasonable  
7 rates”);~~

8 ~~● *Walla Walla Country Club v. Pacific Power & Light Company*, Docket UE-  
9 143932, Order No. 05 p. 11 (Separate Statement of Chairman Danner (May 5,  
10 2016) (“Regulation of investor owned electric utilities in the United States is  
11 largely based upon the notion of a ‘regulatory compact,’ under which the state  
12 ‘grants the company a protected monopoly, essentially a franchise, for the sale  
13 and distribution of electricity or natural gas to customers *in its defined service*  
14 *territory*. In return, the company commits to supply the full quantities demanded  
15 by those customers at a price calculated to cover all operating costs plus a  
16 ‘reasonable’ return on the capital invested in the enterprise.”);~~

17 ~~● *WTUC v. Pacific Power & Light Company*, Docket UE-140762, Final Order p.  
18 219 (March 25, 2015) (Mr. Mullins for Boise White Paper testified “customers  
19 rely on the regulatory compact and the oversight of the Commission’s rate case  
20 process to capture and balance both the costs and the benefits the Company  
21 realizes between rate cases.”);~~

22 ~~● *In re Petition of Puget Sound Energy, Inc., for an Accounting Order Approving*  
23 *the Allocation of Proceeds of the Sale of Certain Assets to Public Utility District*  
24 *#1 of Jefferson County*, Docket UE-132027, Order 04 p. 16-17 (“The arguments  
25 of Staff, Public Counsel and ICNU are grounded in the most basic underpinnings  
26 of utility regulation, sometimes referred to as the ‘regulatory compact’ . . . . [I]n its  
27 most basic form, the regulatory compact is that utilities have an obligation to  
28 provide all customers in their territory with safe and reliable service in return for  
29 the regulator’s promise to set rates that will compensate the utility for the costs  
30 incurred to meet that obligation.”);~~

31 ~~● *WUTC v. Rainier View Water Company, Inc.*, Docket UW-110054, Order 05 p. 48  
32 (Oct. 17, 2012) (Concurring Opinion of Commissioner Oshie) (“Without the  
33 assurance that such economic discipline is expressed in a company’s investment  
34 decisions, we lose a fundamental component of the regulatory compact—the  
35 belief that owners are expected to be careful and prudent with their capital.”);~~

36 ~~● *WUTC v. Puget Sound Power & Light Company*, Cause No. U-83-84, Order p.  
37 57-58 (Sept. 28, 1984) (“A note on the concept and existence of the social and  
38 economic compact of utility regulation is necessary to in part help communicate  
39 the reasons for the decisions made by the Commission in this order. The social~~

~~1 \_\_\_\_\_ and economic compact of utility regulation begins with the premise that a  
2 \_\_\_\_\_ regulated utility has an obligation to serve the public. In a decision by an earlier  
3 \_\_\_\_\_ Commission an effort was made to put a limit on that obligation by enacting a  
4 \_\_\_\_\_ moratorium on new electrical hookups to Puget's system. That effort was  
5 \_\_\_\_\_ rejected in a King County Superior Court decision, *Seattle Master Builders v.  
6 \_\_\_\_\_ Commission*, No. 80-2-11632-1. This leaves the state of the law as a utility  
7 \_\_\_\_\_ possesses an unending obligation to provide service to anyone within the service  
8 \_\_\_\_\_ territory of that utility who demands service in accordance with approved tariffs.  
9 \_\_\_\_\_ However, in order for the social duty to serve to be viable, the compact must also  
10 \_\_\_\_\_ provide for a utility to recover expenses it prudently undertakes to meet that  
11 \_\_\_\_\_ obligation.”)~~

121 **Q. Are the Company's proposed tariffs consistent with the regulatory compact as**  
132 **recognized in Washington?**

143 **A.** The compact, grounded in statutory and Constitutional obligations, is at the heart of  
154 the Company's proposed tariffs. As a result of the Company's duty to serve, it has  
165 built distribution and transmission facilities and acquired sufficient long term power  
176 supplies to meet the needs of its customers. When a customer decides to permanently  
187 disconnect and obtain service elsewhere, which it can because Washington does not  
198 provide for exclusive service territories, the cost of those facilities and the stranded  
209 costs for power must be borne by either the remaining customers or the departing  
2110 customer. The proposed tariff is designed to protect against cost shifting to the  
2211 remaining customers.

2312 **BANDED RATES FOR THE NON-RESIDENTIAL CLASSES**  
2413 **WOULD NOT AVOID COST SHIFTING**

2514 **Q. Staff recommends that the Company utilize banded rates to more effectively**  
2615 **compete with Columbia REA instead of pursuing a Stranded Cost Recovery Fee.**  
2716 **What are your thoughts on the recommendation?**

2817 **A.** Banded rates are not an appropriate solution for the issue of cost shifting that occurs  
2918 when customers opt to permanently disconnect from the Company's system. Having