

1
2
3
4 **BEFORE THE**
5 **WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**
6
7

8 In the Matter of the Petition of
9
10 **PUGET SOUND ENERGY, INC.**
11
12 for (i) Approval of a Special Contract for
13 Liquefied Natural Gas Fuel Service with
14 Totem Ocean Trailer Express, Inc. and
15 (ii) a Declaratory Order Approving the
16 Methodology for Allocating Costs Between
17 Regulated and Non-regulated Liquefied
18 Natural Gas Services
19
20

Docket No. UG-15____

Petition for (i) Approval of a Special
Contract for Liquefied Natural Gas Fuel
Service with Totem Ocean Trailer
Express, Inc. and (ii) a Declaratory Order
Approving the Methodology for
Allocating Costs Between Regulated and
Non-regulated Liquefied Natural Gas
Services

21
22 1. In accordance with RCW 34.05.240, and WAC 480-07-370 and WAC 480-
23 07-930, Puget Sound Energy, Inc. (“PSE”) submits this Petition requesting that the
24 Washington Utilities and Transportation Commission (“Commission”) issue, on or before
25 November 3, 2015: (i) an order approving a special contract by and between Totem Ocean
26 Trailer Express, Inc. (“TOTE”) and PSE; and (ii) a declaratory order approving the
27 methodology for allocating costs between regulated and non-regulated liquefied natural gas
28 (“LNG”) services, and related approvals under the terms and conditions set forth in more
29 detail herein. Concurrent with the filing of this Petition, PSE is filing a motion for a highly
30 confidential protective order.
31
32

33
34
35
36
37
38
39
40
41
42 2. PSE is engaged in the business of providing electric and gas service within
43 the State of Washington as a public service company, and is subject to the regulatory
44
45
46
47

Petition of Puget Sound Energy, Inc. for
Commission Approval of a Special Contract for
Providing LNG Service and a Declaratory Order
Approving a Cost Allocation Methodology

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: 425.635.1400
Fax: 425.635.2400

1 authority of the Commission as to its retail rates, service, facilities and practices. Its full
2
3 name and mailing address for purposes of this proceeding are:
4

5 Puget Sound Energy, Inc.
6 Attn: Kenneth Johnson
7 Director, State Regulatory Affairs
8 P.O. Box 97034
9 Bellevue, Washington 98009-9734
10 Phone: 425.456.2110
11 Email: ken.s.johnson@pse.com
12
13
14

15 PSE's representatives for purposes of this proceeding are:
16

17 Jason Kuzma
18 Pamela J. Anderson
19 Perkins Coie LLP
20 10885 N.E. Fourth Street, Suite 700
21 Bellevue, WA 98004-5579
22 Phone: 425.635.1400
23 Fax: 425.635.2400
24 Email: jkuzma@perkinscoie.com
25 pjanderson@perkinscoie.com
26
27
28

29 3. TOTE is a shipping company that transports approximately thirty percent of
30
31 all consumer goods shipped to Alaska. TOTE is wholly-owned by Saltchuk Resources, Inc.,
32
33 a privately held investment group based in Seattle.
34
35

36 4. As support for PSE's Petition, PSE files herewith and incorporates herein the
37
38 following prefiled direct testimony and supporting exhibits:
39
40

- 41 • Prefiled Direct Testimony of Roger Garratt
42 (Exhibit No. ___(RG-1CT) and supporting exhibits
43 (Exhibit No. ___(RG-2) through Exhibit No. ___(RG-4C));
44
- 45 • Prefiled Direct Testimony of Clay Riding
46 (Exhibit No. ___(CR-1HCT) and supporting exhibits
47

Petition of Puget Sound Energy, Inc. for
Commission Approval of a Special Contract for
Providing LNG Service and a Declaratory Order
Approving a Cost Allocation Methodology

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: 425.635.1400
Fax: 425.635.2400

(Exhibit No. ___(CR-2) through Exhibit No. ___(CR-4HC));

- Prefiled Direct Testimony of James P. Hogan (Exhibit No. ___(JPH-1T) and supporting exhibits (Exhibit No. ___(JPH-2) through Exhibit No. ___(JPH-5));
- Prefiled Direct Testimony of Larry E. Anderson (Exhibit No. ___(LEA-1T) and supporting exhibits (Exhibit No. ___(LEA-2) and Exhibit No. ___(LEA-3C));
- Prefiled Direct Testimony of Melissa F. Bartos (Exhibit No. ___(MFB-1T) and supporting exhibits (Exhibit No. ___(MFB-2) through Exhibit No. ___(MFB-4HC));
- Prefiled Direct Testimony of Harold “Skip” York (Exhibit No. ___(HSY-1T) and supporting exhibits (Exhibit No. ___(HSY-2) through Exhibit No. ___(HSY-4HC));
- Prefiled Direct Testimony of Susan E. Free (Exhibit No. ___(SEF-1T) and supporting exhibits (Exhibit No. ___(SEF-2) through Exhibit No. ___(SEF-11C)); and
- Prefiled Direct Testimony of Jon A. Piliaris (Exhibit No. ___(JAP-1T) and supporting exhibits (Exhibit No. ___(JAP-2) through Exhibit No. ___(JAP-7)).

5. The following statutes and rules may be brought into issue by this Petition:

RCW 34.05.240, RCW 80.28.080, RCW 80.28.090, RCW 80.28.100, RCW 80.04.570,
WAC 480-07-370(1)(b), WAC 480-07-930, and WAC 480-80-143.

I. BACKGROUND and STATEMENT OF FACTS

6. PSE is currently providing natural gas service to retail natural gas customers

located in its service territory in western Washington in accordance with the rules and

Petition of Puget Sound Energy, Inc. for
Commission Approval of a Special Contract for
Providing LNG Service and a Declaratory Order
Approving a Cost Allocation Methodology

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: 425.635.1400
Fax: 425.635.2400

1 regulations of the Commission, including, but not limited to, PSE rates and tariffs on file
2
3 therewith.
4

5 7. The PSE 2013 Integrated Resource Plan (“2013 IRP”) demonstrated that PSE
6
7 would have a need for peaking resources beginning in 2017. The 2013 IRP projected that
8
9 PSE would meet its resource needs with, among other things, commercial development of a
10
11 LNG storage facility. With an LNG storage facility, PSE would have sufficient resources to
12
13 supply loads until the winter of 2021 to 2022.
14
15

16 8. LNG plants have a long history of use by utilities, including PSE, to manage
17
18 peak-day loads. Natural gas is liquefied over the summer months and stored in a large
19
20 cryogenic tank. During peak winter days, the liquefied gas is vaporized and injected into the
21
22 distribution system.
23
24

25 9. Although the primary purpose of the LNG storage facility contemplated by
26
27 PSE was to provide peak-day supply for PSE’s retail natural gas customers, the project’s
28
29 benefits can be enhanced by serving additional markets. LNG facilities are capital intensive
30
31 and, therefore, costs for all customers are reduced when the facilities’ cost can be distributed
32
33 across a larger customer base. The peak-shaving component of an LNG storage facility
34
35 requires significant storage and relatively small liquefaction capacity. Conversely, the
36
37 marine, heavy-duty trucking and other fuel markets require significant, steady liquefaction
38
39 and minimal storage.
40
41
42
43

44 10. TOTE operates two Orca class ships between the Port of Tacoma and the Port
45
46 of Anchorage on a regimented schedule of sailings departing from Tacoma every
47

1 Wednesday and Friday evening. TOTE selected PSE pursuant to a competitive bidding
2
3 process to provide LNG as marine fuel for use in two Tacoma, Washington-based Orca-
4
5 class cargo ships. PSE therefore determined to construct its LNG storage facility at the Port
6
7 of Tacoma. PSE will provide TOTE fuel for ships that are being converted from diesel to
8
9 cleaner-burning LNG. Using LNG will allow TOTE to exceed new, stricter emission
10
11 standards in the maritime shipping industry.
12
13

14 11. In this Petition and the supporting prefiled direct testimony and supporting
15
16 exhibits, PSE uses the term “Tacoma LNG Facility” to refer to the following:
17

- 18 • buildings, gas processing, storage and support equipment, and
19 foundations located on PSE’s leased site at the Port of
20 Tacoma;
21
- 22 • underground LNG fuel line connecting the LNG tank to
23 TOTE’s berthing area, marine fueling system and in-water
24 platform at TOTE’s site
25
- 26 • LNG tanker truck loading racks; and
27
- 28 • the ground lease from the Port of Tacoma.
29
30
31

32
33 PSE uses the term “Tacoma LNG Project” to refer to the following:
34

- 35 • the development, construction and operations of the Tacoma
36 LNG Facility;
37
- 38 • improvements to PSE’s gas distribution system needed to
39 support the Tacoma LNG Facility;
40
- 41 • regulatory approvals to provide the following regulated
42 services:
43
44
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

- (i) the operation of the Tacoma LNG Facility to provide additional peaking capability for PSE’s core gas customers
- (ii) the operation of the Tacoma LNG Facility to provide LNG to TOTE for use as a marine fuel; and
 - commercial contracts to sell LNG to non-TOTE customers for use as fuel as a non-regulated service.

12. The Tacoma LNG Project will also help meet the demand for LNG as a fuel by regional maritime, heavy duty trucking and industrial customers. In order to meet the demands of the maritime market, the Tacoma LNG Facility will be located on the water at the Port of Tacoma and will be capable of filling TOTE ships and other vessels or bunker barges. The Tacoma LNG Facility will also be capable of filling LNG tanker trucks that will supply regional truck fleets and industrial customers.

13. The Tacoma LNG Facility will be capable of liquefying 250,000 gallons of LNG per day and storing approximately 8 million gallons of LNG on site. The Tacoma LNG Facility will be capable of injecting 66,000 decatherms per day (“Dth/day”) of vaporized gas and diverting up to 19,000 Dth/day of gas into PSE’s distribution system to provide 85,000 Dth/day of peak-day supply. TOTE will consume more than 39 million gallons of LNG annually, which is approximately 44 percent of the LNG to be produced at the Tacoma LNG Facility. The Tacoma LNG Facility will also dispense LNG to other end-use customers via a tanker truck loading system and marine loading facilities located on the water.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

II. THE TOTE SPECIAL CONTRACT

14. On October 27, 2014, PSE entered into an LNG Fuel Supply Agreement with TOTE (the "TOTE Special Contract"). A copy of the TOTE Special Contract is provided as the Third Exhibit to the Prefiled Direct Testimony of Clay Riding, Exhibit No. ____ (CR-4HC)). PSE has designated the TOTE Special Contract as "highly confidential."

15. PSE seeks approval in this Petition of the TOTE Special Contract as a special contract pursuant to WAC 480-80-143. WAC 480-80-143(4) provides that a special contract will become effective on the later of the effective date in the contract or 30 days after the contract is filed with the Commission. A party may ask for an earlier effective date, but even in that event "the contract shall not become effective on a date that precedes commission approval." WAC 480-80-143(4). WAC 480-80-143(5) specifies the information and showings that must be made in an application or petition for Commission approval of a special contract. WAC 480-80-143(7) provides that special contracts may be submitted as confidential pursuant to WAC 480-07-160, provided that the essential terms and conditions required to be disclosed under WAC 480-80-143(7) are public.

16. Pursuant to WAC 480-80-143(7), PSE provides the following essential terms and conditions of the TOTE Special Contract below.

A. Identity of the Customer

17. TOTE is the customer under the TOTE Special Contract.

1 **B. Nature and Characteristics of the Service Provided**

2
3 18. Pursuant to the terms and conditions of the TOTE Special Contract, PSE will
4 provide LNG to TOTE as a marine fuel for two Orca class ships that operate between the
5 Port of Tacoma and the Port of Anchorage on a regimented schedule of sailings departing
6
7
8
9
10 from Tacoma every Wednesday and Friday evening. Using LNG will allow TOTE to
11
12 exceed new, stricter emission standards in the maritime shipping industry. Estimated
13
14 contract quantities are 510,000 barrels of oil equivalent (“BOE”)¹ annually under the TOTE
15
16 Special Contract. This is equivalent to approximately 39.6 million gallons of LNG.
17

18 **C. Duration of the Contract, Including Any Options to Renew**

19 19. The initial term of the TOTE Special Contract is ten years, beginning on
20
21 January 1, 2019, and terminating on December 31, 2028. *See* Exhibit No. ___(CR-4HC) at
22
23 pages 11 and 22. TOTE has the unilateral right to extend the TOTE Special Contract in
24
25 five-year increments under favorable pricing terms for three successive extension periods.
26
27
28
29
30 *See id.* at page 22.
31

32 **D. Charge(s) for Service**

33 20. Pricing under the TOTE Special Contract is a formula based on a cost-of-
34
35 service model, with demand and variable components, and including overhead allocations.
36
37
38 For each month during the term, TOTE will pay to PSE an amount equal to the sum of the
39
40 following components: (a) a fixed facility charge; (b) a fixed operations and maintenance
41
42
43
44

45 _____
46 ¹ The TOTE Special Contract defines a BOE as “a unit of energy that is equivalent to 5.98374 MMBtus
47 measured using the low heating value; the amount of energy in one barrel of IFO-380 based on the low heating value.” Exhibit No. ___(CR-4HC) at page 9.

1 charge; (c) a fuel charge; (d) a variable operations and maintenance charge; (e) a deficiency
2 amount charge, if any; (f) an excess amount charge, if any; and (g) taxes, as applicable.
3
4

5 21. TOTE will be charged a levelized premium (the “short-term contract
6 premium”) to compensate for the ten-year contract term (as compared to the 25-year life of
7 the LNG Facility). TOTE pricing includes the return on and of the capital used to construct
8 the portion of the Tacoma LNG Facility allocated to TOTE, the fixed operations and
9 maintenance expense, and the short-term contract premium as well as any applicable taxes.
10 TOTE will be allocated one hundred percent of the bunkering facilities and will be credited
11 when PSE makes non-regulated fuel sales to third parties using the bunkering facilities.
12
13
14
15
16
17
18
19
20

21 22. The Prefiled Direct Testimony of Clay Riding, Exhibit No. ___(CR-1HCT),
22 provides further details of the contract terms, including, but not limited to, transaction terms
23 related to price, conditions precedent, contract quantities, and force majeure events. *See*
24 Exhibit No. ___(CR-4HC) at pages 43 through 47 (providing the demand and variable
25 components of the charges under the TOTE Special Contract) and page 85 (providing
26 estimated charges under the TOTE Special Contract).
27
28
29
30
31
32
33

34
35 **E. Geographic Location Where Service will be Provided**
36

37 23. PSE will provide LNG to TOTE as a marine fuel under the TOTE Special
38 Contract at the Port of Tacoma.
39
40

41
42 **F. Additional Obligations Specified in the Contract, If Any**
43

44 24. Not applicable.
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

**III. REQUEST FOR APPROVAL OF THE TOTE
SPECIAL CONTRACT PURSUANT TO WAC 480-80-143**

25. PSE seeks approval in this Petition of the TOTE Special Contract as a special contract pursuant to WAC 480-80-143. In accordance with Sections 480-80-143(1)(b) and 480-80-143(5)(a) of the regulations, PSE is filing the TOTE Special Contract as a contract that will provide a utility service not specifically addressed in PSE's existing gas tariff. Please see the Third Exhibit to the Prefiled Direct Testimony of Clay Riding, Exhibit No. ___(CR-4HC), for a complete copy of the TOTE Special Contract. The essential terms and conditions in the TOTE Special Contract will be considered a part of the PSE's filed gas tariffs and enforced, supervised, regulated, controlled, and subject to public inspection as such. PSE is seeking approval of the TOTE Special Contract on or before November 3, 2015. The TOTE Special Contract will become effective on January 1, 2019, the effective date in the TOTE Special Contract.

26. PSE is filing the TOTE Special Contract as a contract that will provide a utility service not specifically addressed in PSE's existing gas tariff. Indeed, PSE offers no sales of LNG for vehicular fuel or industrial end uses, and TOTE will be the sole customer of PSE taking such regulated service. The TOTE Special Contract, therefore, meets the requirements of RCW 80.28.090 (prohibiting unreasonable preference) and RCW 80.20.100 (prohibiting rate discrimination) because there are no similarly situated customers of PSE.

27. The pricing in the TOTE Special Contract meets the requirements in WAC 480-80-143(5)(c) that the contract charges recover all costs resulting from providing

1 the service during its term, and provide a contribution to the PSE's fixed costs. As
2
3 explained in the Prefiled Direct Testimony of Clay Riding, Exhibit No. ____ (CR-1HCT),
4
5 PSE will provide pricing under the TOTE Special Contract using a cost-of-service model,
6
7 with demand and variable components, and including overhead allocations. Typical
8
9 cost-of-service ratemaking applies, with the following exceptions:
10
11

- 12 • TOTE will be charged a levelized premium to compensate
13 for a ten-year contract term (the "short-term contract
14 premium").
15
- 16 • Subject to TOTE giving proper notice to extend, extension
17 pricing will include capital recovery at reduced rates,
18 recognizing that TOTE will have paid the short-term
19 contract premium during the initial term.
20
21
22

23 Natural gas and electricity costs will be passed through to TOTE at market rates.
24

25 28. PSE will collect a short-term premium above the amount PSE would collect
26
27 under a traditional cost-of-service rate, due to the shorter initial term of the TOTE Special
28
29 Contract as compared to the Tacoma LNG Facility's depreciable life (i.e., 25 years). The
30
31 short-term premium accrues to the benefit of PSE's core natural gas customers, and by doing
32
33 so provides an additional contribution to PSE's fixed costs. Revenues under the TOTE
34
35 Special Contract will cover the incremental cost-of-service for the portion of the Tacoma
36
37 LNG Facility allocated to TOTE.
38
39

40 29. Additional information regarding the basis of the charges proposed in the
41
42 TOTE Special Contract and further explanation of the derivation of the proposed charges
43
44 including all cost computations involved (WAC 480-80-143(5)(d)), is provided in the work
45
46
47

1 paper supporting the Prefiled Direct Testimony of Roger Garratt, Exhibit No. ____ (RG-1CT),
2
3 and the Prefiled Direct Testimony of Clay Riding, Exhibit No. ____ (CR-1HCT). The
4
5 Prefiled Direct Testimony of Jon A. Piliaris, Exhibit No. ____ (JAP-1T), provides further
6
7 explanation of how the TOTE Special Contract pays its share of allocated costs and an
8
9 allocation of first year revenue surplus from the TOTE Special Contract to PSE's core
10
11 natural gas customers.
12
13

14
15 **IV. REQUEST FOR A DECLARATORY ORDER APPROVING THE**
16 **METHODOLOGY FOR ALLOCATING COSTS BETWEEN REGULATED**
17 **AND NON-REGULATED LIQUEFIED NATURAL GAS SERVICES**
18

19 **A. Description of Regulated and Non-Regulated Services**
20

21 30. PSE is proposing to offer regulated and non-regulated fuel sales from the
22
23 Tacoma LNG Facility. Under its regulated and non-regulated fuel sales proposal, PSE will:
24
25

- 26 (i) offer the already subscribed capacity of the Tacoma LNG
27 Facility (i.e., the capacity associated with peak shaving and
28 sales to TOTE of LNG as marine fuel) as regulated services
29 and
30
31 (ii) offer the unsubscribed capacity of the Tacoma LNG
32 Facility (i.e., the capacity not associated with either peak
33 shaving or sales to TOTE of LNG as marine fuel) as non-
34 regulated services.
35
36

37
38 As discussed in the Prefiled Direct Testimony of Roger Garratt, Exhibit No. ____ (RG-1CT),
39
40 the Prefiled Direct Testimony of Clay Riding, Exhibit No. ____ (CR-1HCT), and the Prefiled
41
42 Direct Testimony of Susan E. Free, Exhibit No. ____ (SEF-1T), PSE is proposing to allocate
43
44 costs and revenues associated with the Tacoma LNG Facility operations pursuant to the
45
46
47

1 current cost allocation methodology approved by the Commission in Docket Nos. UE-
2
3 960195 and U-072375.
4

5 31. PSE is seeking a declaratory order approving the methodology for purposes
6
7 of allocating costs between its regulated and non-regulated fuel sales from the Tacoma LNG
8
9 Facility. There is uncertainty whether PSE will be allowed to use the existing, Commission-
10
11 approved cost allocation methodology for allocating costs between the regulated and non-
12
13 regulated fuel sales that PSE is proposing to provide from the Tacoma LNG Facility;
14
15 therefore, a declaratory order is the appropriate regulatory mechanism for resolving that
16
17 uncertainty.
18
19

20
21 32. As explained in the Prefiled Direct Testimony of Roger Garratt, Exhibit
22
23 No. ___(RG-1CT), by offering the already subscribed capacity of the Tacoma LNG Facility
24
25 (i.e., the capacity associated with peak shaving and sales to TOTE of LNG as marine fuel) as
26
27 regulated services, PSE will recover its investment as it would any other rate-based asset:
28
29

30
31 PSE is offering sales of LNG to TOTE for use as a marine fuel as a
32
33 regulated service to achieve the economies of scale to ensure that
34
35 PSE can provide its gas customers with a least-cost resource to
36
37 meet peaking needs. PSE could seek to offer sales of LNG to
38
39 TOTE as a non-regulated service, but PSE's core gas customers
40
41 would not receive some of the benefits of regulated fuel sales to
42
43 TOTE, including, for example, the short-term contract premium to
44
45 be paid by TOTE under the TOTE Special Contract. This would
46
47 increase the cost to core gas customers of the portions of the plant
for peaking service as compared to PSE's proposal of including
TOTE as a regulated service.

Prefiled Direct Testimony of Roger Garratt, Exhibit No. ___(RG-1CT), at page 31, lines 9-
17.

Petition of Puget Sound Energy, Inc. for
Commission Approval of a Special Contract for
Providing LNG Service and a Declaratory Order
Approving a Cost Allocation Methodology

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: 425.635.1400
Fax: 425.635.2400

1 33. By offering the unsubscribed capacity of the Tacoma LNG Facility (i.e., the
2
3 capacity not associated with either peak shaving or sales to TOTE of LNG as marine fuel) as
4
5 non-regulated fuel sales, PSE will offer fuel sales to non-TOTE third parties at non-
6
7 regulated prices. Neither core gas customers nor TOTE will be responsible for costs
8
9 associated with the capacity allocated to non-regulated service. Costs and revenues
10
11 associated with the non-regulated fuel sales will be part of PSE's "non-utility" book. The
12
13 non-regulated operations will credit core gas customers for expenses incurred on behalf of
14
15 the non-regulated fuel sales (i.e., use of the distribution service to serve non-regulated sales
16
17 or support of corporate shared services). The cost allocation is further described in the
18
19 Prefiled Direct Testimony of Roger Garratt, Exhibit No. ___(RG-1CT), and the Prefiled
20
21 Direct Testimony of Clay Riding, Exhibit No. ___(CR-1HCT).
22
23

24
25
26 34. PSE considered alternative structures for the Tacoma LNG Facility, including
27
28 building a plant with capacity to meet only the needs of the peak shaving resource and
29
30 TOTE. PSE's analysis determined that the cost savings associated with reducing the
31
32 capacity of the plant were rather small (i.e., less than two percent of the budgeted costs of
33
34 the Tacoma LNG Facility). As described in the Prefiled Testimony of Roger Garratt,
35
36 Exhibit No. ___(RG-1CT), PSE's core gas customers benefit from lower capital costs for the
37
38 peak shaving portion of the Tacoma LNG Facility because portions of the facility are being
39
40 allocated to non-regulated fuel sales.
41
42

43
44 35. PSE believes the future market for LNG fuel in the Puget Sound region is
45
46 robust, but is proposing to not place the risk associated with unsubscribed capacity on PSE
47

1 core gas customers by recovering the entire Tacoma LNG Facility investment in regulated
2 rates. Instead, PSE is seeking to recover only the investment associated with peak shaving
3 service and TOTE sales in regulated rates. Shareholders would, therefore, remain at risk for
4 all costs not associated with those two functions.
5
6
7
8

9
10 36. By offering LNG fuel sales to third parties other than TOTE as a non-
11 regulated service, PSE shields its core gas customers from the risks inherent in the
12 unsubscribed capacity of the Tacoma LNG Facility, thereby mitigating risks to PSE's core
13 gas customers associated with such capacity. However, PSE's core gas customers would not
14 benefit from any additional revenues associated the non-regulated LNG fuel sales to third
15 parties. Although revenues from non-regulated sales will not directly offset rates for PSE's
16 core gas customers, regulated customers still benefit from the non-regulated service because
17 a large portion of the capital and fixed operating expenditures associated with the Tacoma
18 LNG Facility will not be recovered in regulated rates.
19
20
21
22
23
24
25
26
27
28
29

30
31 **B. Jurisdictional Basis for Offering Regulated and Non-Regulated Fuel Sales**
32

33 37. PSE's use of the Tacoma LNG Facility to liquefy, store and deliver LNG to
34 peak shaving facilities or large industrial end-users on its distribution system is exempt from
35 FERC regulation and instead regulated by the Commission. Section 1(b) of the Natural Gas
36 Act ("NGA") provides that FERC jurisdiction under the NGA does not apply to the local
37 distribution of natural gas or to the facilities used for such distribution:
38
39
40
41
42
43

44 The provisions of this chapter shall apply to the transportation of
45 natural gas in interstate commerce, to the sale in interstate
46 commerce of natural gas for resale for ultimate public consumption
47

1 for domestic, commercial, industrial, or any other use, and to
2 natural-gas companies engaged in such transportation or sale, and
3 to the importation or exportation of natural gas in foreign
4 commerce and to persons engaged in such importation or
5 exportation, *but shall not apply* to any other transportation or sale
6 of natural gas or *to the local distribution of natural gas or to the*
7 *facilities used for such distribution* or to the production or
8 gathering of natural gas.
9

10
11 15 U.S.C. § 717(b) (italics added).
12

13
14 38. As described herein, PSE will use the Tacoma LNG Facility as a peak-
15 shaving facility at which PSE will liquefy and store natural gas until needed to supplement
16 gas supplies during periods of peak demand. The natural gas will be liquefied over the
17 summer months and will be delivered to the facility via interstate pipeline and PSE's
18 distribution system. During periods of high demand, the LNG will be vaporized and
19 injected into the PSE distribution system, or delivered into a tank truck for offsite
20 vaporization and injection into PSE's distribution system. The United States currently has
21 more than 110 active LNG facilities;² the FERC has jurisdiction over 24 of these LNG
22 facilities because they either (i) import LNG to or export LNG from the U.S. or (ii) are part
23 of an existing interstate pipeline system. The remaining 86 facilities, such as PSE's Gig
24 Harbor LNG Satellite Plant and the proposed Tacoma LNG Facility, liquefy and store
25 natural gas for peak-shaving purposes subject to the local distribution exemption under
26 Section 1(b) of the NGA.
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

² FERC, *LNG*, available at <http://www.ferc.gov/industries/gas/indus-act/lng.asp>.

1 39. PSE’s use of the Tacoma LNG Facility to liquefy, store and deliver natural
2
3 gas to LNG-fueled vehicles, vessels or bunkering barges is also exempt from FERC
4
5 regulation. Under section 1(d) of the NGA, the sale or transportation of “vehicular natural
6
7 gas” will not subject a company to FERC jurisdiction if the company is either (i) not
8
9 otherwise a “natural-gas company” (defined under Section 2 of the NGA as “a person
10
11 engaged in the transportation of natural gas in interstate commerce, or the sale in interstate
12
13 commerce of such gas for resale”³); or (ii) is subject primarily to regulation by a state
14
15 commission, regardless of whether the state commission actually exercises jurisdiction over
16
17 the sale or transportation of vehicular natural gas.⁴
18
19
20

21 40. PSE is subject primarily to regulation by the Commission and therefore,
22
23 meets the second test. Because PSE meets at least one of the tests, the sale or transportation
24
25 of LNG to LNG-fueled ships and trucks would not subject PSE to FERC section 7
26
27 jurisdiction, assuming the LNG sales from the Tacoma LNG Facility qualify as “vehicular
28
29 natural gas.”
30
31

32 41. Section 2 of the NGA defines “vehicular natural gas” as “natural gas that is
33
34 ultimately used as a fuel in a self-propelled vehicle.”⁵ In implementing the NGA, FERC has
35
36 further defined “vehicular natural gas” in its regulations as “natural gas that will be used, *in*
37
38
39
40
41
42

43
44 ³ 15 U.S.C. § 717a(6).

45 ⁴ 15 U.S.C. § 717(d).

46 ⁵ 15 U.S.C. § 717a(10).
47

1 *either a gaseous or liquefied state, as fuel in any self-propelled vehicle.”*⁶ In Order
2
3 No. 543,⁷ the FERC broadened its then-proposed definition of “vehicular natural gas” or
4
5 “VNG,” to include LNG and the full array of vehicles that may utilize natural gas, including
6
7 gas-fueled boats, locomotives and any other self-propelled vehicles.⁸
8
9

10 42. Based on this definition, the sale or transportation of LNG to LNG-fueled
11
12 vessels and trucks qualifies as vehicular natural gas exempt from FERC jurisdiction. The
13
14 vehicular natural gas exemption would apply regardless of whether the LNG is delivered
15
16 directly from the Tacoma LNG Facility into the fuel tanks of LNG-fueled vessels or
17
18 vehicles, or whether it is delivered from the Tacoma LNG Facility by bunker barge to the
19
20 vessels or by tank truck to truck fueling stations or public transit fueling centers.⁹
21
22

23 43. The process of liquefying natural gas, storing it until needed for peak
24
25 shaving, vaporizing the LNG for delivery as natural gas into PSE’s distribution system, or
26
27 delivering it into a tank truck for delivery and then vaporizing it for use in PSE’s distribution
28
29 system at a remote location, would be regulated as part of the bundled distribution service
30
31 PSE currently provides. There is no reason for this activity to be treated any differently than
32
33
34
35

36 ⁶ 18 C.F.R. § 152.1(b)(1)(i) (emphasis added).
37

38 ⁷ Order No. 543, *Regulations Covering Vehicular Natural Gas*, 60 FERC ¶ 61,032 at p. 5 (July 16,
39 1992).
40

41 ⁸ Order No. 543 at p. 6 (“Specifically, the revised definition of ‘VNG’ is as follows: ‘VNG is natural
42 gas that will be used, in either a gaseous or liquefied state, as fuel in any self-propelled vehicle.’ This
43 definition shall be broadly construed to include, among other things, automobiles, trucks, buses, trains, aircraft,
44 boats, non-road farm vehicles, and construction vehicles, or any other self-propelled vehicle.”).
45

46 ⁹ *See Pivotal LNG, Inc.*, 137 FERC ¶ 62,108 (2011) (Commission disclaimed jurisdiction over
47 operation of an LNG facility to liquefy and store natural gas received off of an interstate pipeline for delivery
by truck to vehicle fueling depots.) (“*Pivotal LNG*”).

1 PSE's current operation of the Gig Harbor LNG Satellite Plant. The liquefaction and
2
3 storage services would be supporting PSE's distribution service whether the LNG is
4
5 delivered to the distribution system directly from the Tacoma LNG Facility, or delivered to
6
7 the Gig Harbor LNG Satellite Plant or to other locations if PSE were to install storage and
8
9 vaporization facilities elsewhere on its distribution system.
10

11
12 44. In addition, the delivery by PSE of LNG to a container ship as contemplated
13
14 under the TOTE Special Contract could also be regulated by the Commission as part of
15
16 PSE's distribution service. PSE is a gas utility and provides gas service under a CPCN
17
18 issued by the Commission. PSE has a natural gas tariff on file with the Commission and its
19
20 natural gas operations and the rates it charges are subject to the regulatory jurisdiction of the
21
22 Commission. The delivery of LNG under the TOTE Special Contract, therefore, can be
23
24 regulated as distribution service.
25
26

27
28 45. At the same time, the LNG services other than peak-shaving and those to be
29
30 provided under the TOTE Special Contract can be provided as non-regulated services. As
31
32 described above, the vehicular natural gas exception applies whether or not the services are
33
34 regulated by the state commission provided the company is otherwise regulated by the state
35
36 commission.¹⁰ The acts by PSE of liquefying natural gas, storing it and then delivering it
37
38 into a bunker barge for fueling a container ship or other marine vessel or into a tank truck
39
40 for delivery to other industrial end-users could be provided by PSE as a non-regulated
41
42
43
44

45
46 ¹⁰ Under the second prong of the test, the vehicular natural gas exception applies solely by reason of
47 the entity being subject primarily to regulation by a state commission, regardless of whether the state
commission actually exercises jurisdiction over the sale or transportation of vehicular natural gas.

1 service provided the appropriate cost allocation methodology is developed and implemented.
2
3 PSE is seeking this declaratory order to ensure it can use the existing, Commission-approved
4
5 cost allocation methodology allocated costs of both regulated and non-regulated LNG
6
7 services from the Tacoma LNG Facility. Additional information concerning PSE's
8
9 proposed cost allocation methodology is provide below and in the Prefiled Testimony of
10
11 PSE's witnesses.
12
13

14 **C. Proposed Cost Allocation Methodology**

15
16 46. PSE is proposing to allocate costs and revenues associated with the Tacoma
17
18 LNG Facility operations pursuant to the current cost allocation methodology approved by
19
20 the Commission in Docket Nos. UE-960195 and U-072375. This proposal is fully described
21
22 in the Prefiled Direct Testimony of Susan E. Free, Exhibit No. ____ (SEF-1T).
23
24

25
26 47. PSE will allocate the capital used to develop and construct the Tacoma LNG
27
28 Facility amongst the various services provided by the plant. The actual costs allocated to
29
30 each service will be set when the Tacoma LNG Facility is put into service and final costs are
31
32 known. The services are specifically: liquefaction, storage, bunkering, truck loading, and
33
34 vaporization. The capital costs associated with liquefaction include the costs of facilities
35
36 used to receive natural gas, treat the gas, cool the gas below its boiling point and deliver the
37
38 gas to onsite storage. The capital costs associated with storage include the costs of the
39
40 site-erected full containment cryogenic storage tank as well as the costs of foundations and
41
42 other supporting facilities.
43
44
45
46
47

1 48. The capital costs associated with bunkering include facilities used to move
2
3 the LNG from the onsite storage tank to the marine loading facility, which will be located at
4
5 TOTE’s berthing location. Pursuant to the TOTE Special Contract, the facilities devoted to
6
7 bunkering will be fully allocated to TOTE. Any sales made by the non-regulated service
8
9 that utilizes the bunkering facilities will generate a revenue credit to TOTE. The effect will
10
11 be to reduce regulated revenue from TOTE and offset the corresponding revenue deficiency
12
13 with a transfer from the nonregulated sales.
14
15

16
17 49. Capital costs that cannot be directly assigned to the services are assigned as
18
19 “common project costs” and are then allocated to use (i.e., peak shaving, TOTE fuel sales,
20
21 and non-regulated fuel sales) based on their utilization of the two primary facility services:
22
23 liquefaction and storage. The estimated capital allocated to each service and the estimated
24
25 contribution from each of the uses (i.e., peak shaving, TOTE fuel sales, and non-regulated
26
27 fuel sales) are described in the Prefiled Direct Testimony of Roger Garratt, Exhibit
28
29 No. __ (RG-1CT).
30
31

32
33 50. PSE will direct assign operational costs to customers based on their
34
35 utilization of the services of the Tacoma LNG Facility as described in the Prefiled Direct
36
37 Testimony of Clay Riding, Exhibit No. __ (CR-1HCT). When it is not possible to direct
38
39 assign operational costs, the costs will be allocated to facility services based on the drivers
40
41 of those costs.
42
43

44 51. PSE will allocate costs associated with the general corporate overheads of
45
46 PSE on a formulaic basis, using Commission-approved methodologies. Please see the
47

1 Prefiled Direct Testimony of Susan E. Free, Exhibit No. ___(SEF-1T), and the Prefiled
2
3 Direct Testimony of Jon A. Piliaris, Exhibit No. ___(JAP-1T), for a discussion of the
4
5 calculation of these costs.
6

7
8 **V. APPROPRIATENESS OF DECLARATORY ORDER**
9

10 52. By authority of WAC 480-07-930 and RCW 34.05.240(1), the Commission
11
12 may enter a declaratory order upon a showing:
13

- 14 (a) That uncertainty necessitating resolution exists;
15
16 (b) That there is actual controversy arising from the uncertainty
17 such that a declaratory order will not be merely an advisory
18 opinion;
19
20 (c) That the uncertainty affects the petitioner;
21
22 (d) That the adverse effect of uncertainty on the petitioner
23 outweighs any adverse effects on others or on the general
24 public that may likely arise from the order requested; and
25
26 (e) That the petition complies with any additional requirements
27 established by the Commission under subsection (2) of
28 RCW 34.05.240.
29
30
31
32

33 The declaratory order requested by PSE meets these requirements, as set forth below.¹¹
34

35 **A. Uncertainty Necessitating Resolution**
36

37 53. As described above, PSE believes its existing, Commission-approved cost
38
39 allocation methodology is appropriate for use in allocating both regulated and non-regulated
40
41 costs and revenues of the Tacoma LNG Facility. *See* Declaration of Roger Garratt (“Garratt
42
43
44

45 ¹¹ The Commission has not established additional requirements under RCW 34.05240(1)(e), but rather
46 requires that a petition for declaratory order comply with the remaining subsections of RCW 34.05.240(1).
47 *See* RCW 34.05.240(2).

1 Decl.”) at ¶3. There is uncertainty, however, regarding whether the existing, Commission-
2
3 approved cost allocation methodology will be deemed by the Commission as appropriate for
4
5 allocating both the regulated and non-regulated costs of the Tacoma LNG Facility between
6
7 its regulated and non-regulated operations. *Id.*
8
9

10 **B. Actual Controversy Arising from the Uncertainty**
11

12 54. Parties have argued that PSE should offer natural gas sales for vehicular fuel
13
14 and industrial end uses as non-regulated services. Garratt Decl. at ¶4. As discussed above,
15
16 PSE can offer LNG fuel sales as either a regulated or non-regulated services, but PSE is
17
18 proposing to offer both regulated and non-regulated fuel sales from the Tacoma LNG
19
20 Facility. Under its regulated and non-regulated fuel sales proposal, PSE will:
21
22

- 23 (i) offer the already subscribed capacity of the Tacoma LNG
24 Facility (i.e., the capacity associated with peak shaving and
25 sales to TOTE of LNG as marine fuel) as regulated
26 services; and
27
28 (ii) offer the unsubscribed capacity of the Tacoma LNG
29 Facility (i.e., the capacity not associated with either peak
30 shaving or sales to TOTE of LNG as marine fuel) as non-
31 regulated services.
32
33
34

35 Garratt Decl. at ¶4.
36

37 55. PSE acknowledges the unique nature of its request in the proceeding (i.e.,
38
39 offering the subscribed portion of the Tacoma LNG Facility capacity as regulated fuel sales
40
41 service and the unsubscribed portion of the Tacoma LNG Facility capacity as non-regulated
42
43 fuel sales service). Garratt Decl. at ¶5. PSE’s proposal provides benefits to core gas
44
45 customers and TOTE by virtue of reducing the capital costs of the Tacoma LNG Facility to
46
47

1 be allocated to those customers and shields its core gas customers from the risks inherent in
2
3 the unsubscribed capacity of the Tacoma LNG Facility. *Id.* Before embarking on this
4
5 unique structure, PSE needs to resolve the controversy and uncertainty to ensure that it can
6
7 project how the costs and revenues associated with the regulated and non-regulated
8
9 operations of the Tacoma LNG Facility can be allocated. *Id.* Therefore, PSE is seeking a
10
11 declaratory order approving the methodology it is proposing for allocating costs between its
12
13 regulated and non-regulated LNG service from the Tacoma LNG Facility.
14
15

16
17 **C. The Uncertainty Adversely Affects the Petitioner**

18
19 56. The uncertainty regarding whether PSE's existing, Commission-approved
20
21 cost allocation methodology will be deemed by the Commission as appropriate for
22
23 allocating costs of the Tacoma LNG Facility between its regulated and non-regulated fuel
24
25 sales adversely affects PSE. Garratt Decl. at ¶6.
26
27

28
29 **D. The Adverse Effect of Uncertainty on the Petitioner Outweighs any Adverse**
30
31 **Effects on Others or on the General Public That May Likely Arise From the**
32
33 **Order Requested**

34
35 57. PSE is unaware of any potential or actual adverse effects on others or on the
36
37 general public that might arise from the requested declaratory order. Garratt Decl. at ¶7.
38
39 Indeed, the declaratory order would allow PSE's core gas customers to receive some
40
41 benefits of the economies of scale associated with constructing a larger facility and the
42
43 offering of diverse services and result in decreased costs to core gas customers. *Id.* In
44
45 addition, by combining the complementary load profiles of its peak shaving needs and the
46
47 needs of the marine, heavy-duty trucking and other fuel markets, PSE can optimize the

1 Tacoma LNG Facility and minimize peaking-resource costs for PSE's retail natural gas
2
3 customers. *Id.* Rather than creating adverse effects on others, resolving the uncertainty
4
5 faced by PSE paves the way for PSE to achieve these benefits for its core gas customers and
6
7 provides opportunities for increased use of LNG in the developing LNG fuel markets in the
8
9 region. *Id.*
10
11

12 VI. REQUESTED ORDER

13
14 58. PSE requests: (1) an order approving the TOTE Special Contract by and
15
16 between TOTE and PSE; and (2) a declaratory order approving the methodology for
17
18 allocating costs between the regulated and non-regulated fuel sales that PSE proposes to
19
20 provide from the Tacoma LNG Facility.
21
22

23
24 Dated this 11th day of August, 2015
25
26

27 PERKINS COIE LLP

28
29
30
31
32
33 By: 

34 _____
35 Jason Kuzma, WSBA No. 31830
36 Pamela J. Anderson, WSBA No. 37272
37 The PSE Building
38 10885 N.E. Fourth Street, Suite 700
39 Bellevue, WA 98004-5579
40 Telephone: 425.635.1400
41 Facsimile: 425.635.2400
42 Email jkuzma@perkinscoie.com
43 pjanderson@perkinscoie.com
44

45 Attorneys for Puget Sound Energy, Inc.
46
47

Petition of Puget Sound Energy, Inc. for
Commission Approval of a Special Contract for
Providing LNG Service and a Declaratory Order
Approving a Cost Allocation Methodology

Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: 425.635.1400
Fax: 425.635.2400