

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKETS UG-230393

**POST-HEARING BRIEF
OF PUBLIC COUNSEL**

December 8, 2023

Shaded Information is Designated as Confidential per WAC 480-07-160

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I. INTRODUCTION

1. Puget Sound Energy's (PSE or Company) Tacoma Liquefied Natural Gas (LNG) project is imprudent and not in the public interest. PSE's continued reliance on outdated information was imprudent. Moreover, the Tacoma LNG Facility causes and perpetuates the type of disparate environmental and equitable harms that factor into the public interest standard, resulting in the Facility not being in the public interest. The Public Counsel Unit of the Washington Attorney General's Office (Public Counsel) urges the Utilities and Transportation Commission (UTC or Commission) to disallow post-September 22, 2016, costs associated with Tacoma LNG.

II. LEGAL STANDARDS APPLIED TO UTILITY RATES AND PRUDENCE

2. Rates must be fair, just, reasonable, and sufficient, and the Commission is authorized to set rates after hearing by order.¹ The Commission has defined fair, just, reasonable, and sufficient to mean:

[F]air to customers and to the Company's owners; just in the sense of being based solely on the record developed in the proceeding following principles of due process of law, reasonable in light of the range of possible outcomes supported by the evidence, and sufficient to meet the needs of the Company to cover its expenses and attract necessary capital on reasonable terms.²

PSE carries the burden to prove the requested rates are fair, just, reasonable, and sufficient.³ The Commission's findings must be based on evidence in the record.⁴

¹ RCW 80.28.020.

² *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Dockets UE-090704 & UG-090705 (*consol.*), Order 11, ¶ 18 (Apr. 2, 2010) (emphasis added).

³ RCW 80.04.130(4) ("At any hearing involving any change in any schedule, classification, rule, or regulation the effect of which is to increase any rate, charge, rental, or toll theretofore charged, the burden of proof to show that such increase is just and reasonable shall be upon the public service company."); *see also* RCW 80.28.010(1); RCW 80.28.020.

⁴ RCW 34.05.461(4).

3. The public interest governs the Commission’s decision-making. Under RCW 80.28.425(1), the public interest includes environmental health and greenhouse gas emissions reduction, health and safety, economic development, and equity—to the extent that such factors affect the rates, services, and practices of the regulated utility. The burden to ensure that systemic harms are not perpetuated does not rest solely on the Commission, but “regulated companies should inquire whether each proposed modification to their rates, practices, or operations corrects or perpetuate inequities.”⁵ The Commission recognizes that ensuring equity requires a comprehensive understanding of how systemic racism and other inequities are self-perpetuating in the existing regulatory framework without corrective intervention.⁶ The Commission applies an equity lens to its public interest considerations and has a duty to ensure that its current decision-making meets the public interest standard in RCW 80.28.425(1).⁷

4. Utility plant is not included in customer rates unless the plant is prudent. In PSE’s last rate case, the Commission approved the Tacoma LNG Settlement and found that PSE was prudent in its initial decision to build the Tacoma LNG Facility.⁸ The Commission noted in its Used and Useful Policy Statement that prudence is “always part of the investment threshold question *and is continuously evaluated during the life of an investment.*”⁹

⁵ *Wash. Utils. & Transp. Comm’n v. Cascade Nat. Gas Corp.*, Docket UG-210755, Order 09, ¶ 58 (Aug. 23, 2022). This burden to evaluate systemic harms should be borne by all parties appearing before the Commission.

⁶ *Id.* ¶ 58.

⁷ *Id.* ¶¶ 58–60.

⁸ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE- 220066, UG-220067, & UG-210918 (*consol.*), Final Order 24/10 ¶ 320 (Dec. 22, 2022) (hereinafter Final Order 24/10).

⁹ *In re the Comm’n Inquiry into the Valuation of Pub. Serv. Co. Property that Becomes Used and Useful after Rate Effective Date*, Docket U-190531, Policy Statement, at 12, n.39 (Jan. 31, 2020) (hereinafter *Used and Useful Policy Statement*) (emphasis added).

5. Prudence is a reasonableness standard. “The Commission has consistently applied a reasonableness standard when reviewing the prudence of decisions relating to power costs, including those arising from power generation asset acquisitions.”¹⁰ That reasonableness standard requires the Commission to test what a reasonable board of directors and company management would have decided given what they knew or reasonably should have known to be true at the time of the decision.¹¹ “This test applies to both the question of need and the appropriateness of the expenditures.”¹²
6. PSE bears the burden of proving that all stages of the project were prudent: initiation, construction, and continuation of the project.¹³ Indeed, even if a decision to begin a project is prudent, construction or completing a projected is not necessarily prudent.¹⁴ “The Commission believes that a company must continually evaluate a project as it progresses to determine if the project continues to be prudent from both the need for the project and its impact on the company’s ratepayers.”¹⁵
7. The Commission enumerated factors that it typically focuses on in determining prudence, although no single set of factors determines prudence. Those factors are:¹⁶

1) *The Need for the Resource*: The utility must first determine whether new resources are necessary. Once a need has been identified, the utility must determine how to fill that need in a cost-effective manner. When a utility is considering the purchase of a resource, it must evaluate that resource against the standards of what

¹⁰ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Docket UE-031725, Order 12, ¶ 19 (Apr. 7, 2004).

¹¹ *Id.* ¶ 19.

¹² *Id.* ¶ 19.

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

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-111048 & UG-111049 (*consol.*), Order 08, ¶ 409 (May 7, 2012) (hereinafter 2011 Puget GRC).

other purchases are available, and against the standard of what it would cost to build the resource itself.

2) *Evaluation of Alternatives*: The utility must analyze the resource alternatives using current information that adjusts for such factors as end effects, capital costs, dispatchability, transmission costs, and whatever other factors need specific analysis at the time of a purchase decision. The acquisition process should be appropriate.

3) *Communication With and Involvement of the Company's Board of Directors*: The utility should inform its board of directors about the purchase decision and its costs. The utility should also involve the board in the decision process.

4) *Adequate Documentation*: The utility must keep adequate contemporaneous records that will allow the Commission to evaluate the Company's decision-making process. The Commission should be able to follow the utility's decision process; understand the elements that the utility used; and determine the manner in which the utility valued these elements.

III. THE TACOMA LNG FACILITY FAILS THE PRUDENCE STANDARD AND IS NOT IN THE PUBLIC INTEREST; THE COMMISSION SHOULD DISALLOW ALL COSTS

8. Public Counsel and the Puyallup Tribe of Indians (Puyallup Tribe or the Tribe) oppose the Tacoma LNG Project because it is not in the public interest. As in PSE's 2022 general rate case, Public Counsel conducted a prudence review of the facility, focusing this time on all post-September 22, 2016, actions and decisions. Public Counsel continues to oppose the Tacoma LNG Project as imprudent. Not only is PSE's investment in the facility not prudent, it also perpetuates systemic inequities that harm vulnerable populations, including the Puyallup Tribe and the surrounding communities. The facility is imprudent both because it does not meet the Commission's prudence standard and because it does not meet the public interest standard. Therefore, costs associated with Tacoma LNG should not be included in customer rates going forward, and certain costs should be refunded to customers.

A. PSE’s continued Investment in the Regulated Portion of the Tacoma LNG Project Fails the Prudence Standard.

9. PSE initially requested a prudence determination of its Tacoma LNG project in its 2022 general rate case in Dockets UE-220066 and UG-220067. Ultimately, PSE settled all issues raised in the rate case through three settlement agreements.¹⁷ The agreement relevant to the instant case is the Tacoma LNG Settlement, which addressed only “threshold prudence.” Public Counsel, Puyallup Tribe, and The Energy Project opposed the Tacoma LNG Settlement.¹⁸ Not only did Public Counsel and the Tribe oppose the Tacoma LNG Settlement, but both parties opposed the entire project and urged the Commission to disallow the project as imprudent.

10. The Tacoma LNG Settlement allowed PSE to begin recovering costs of the Tacoma LNG project, largely on a provisional basis through a separate schedule.¹⁹ The agreement made clear that it was limited to threshold issues; it states that “PSE met its ‘threshold’ prudence requirement” and that PSE would seek to recover Tacoma LNG facility costs through a separate tracker when it files its 2023 Purchase Gas Adjustment (PGA).²⁰ The settling parties incorporated Tacoma LNG distribution costs into the rate case revenue requirement, agreeing that all other Tacoma LNG costs would be filed along with PSE’s 2023 PGA filing.²¹

11. Because the Tacoma LNG Settlement was imprecise in its prudence request, the Commission had to discern what prudence determination it was being asked to make.²² The

¹⁷ The three settlements were referred to as the Revenue Requirement Settlement, the Green Direct Settlement, and the Tacoma LNG Settlement. *See*, Final Order 24/10 ¶¶ 47, 50, & 51.

¹⁸ Final Order 24/10 ¶ 320.

¹⁹ *Id.*

²⁰ *Id.* ¶ 328.

²¹ *Id.*

²² *Id.* ¶ 393.

Commission held that the Settlement reflected “an agreement that the Settling Parties are stipulating to the prudence of the Company’s actions up through the initial decision to build the LNG Facility on September 22, 2016, but that the Settlement allows the parties to review the prudence and reasonableness of costs incurred after that point.”²³ The Commission limited its focus to the initial decision to build the facility.²⁴ The Commission did not determine whether PSE’s actions with respect to Tacoma LNG *after* September 22, 2016, were prudent.

12. In the current case, PSE seeks to include post-September 22, 2016, Tacoma LNG costs in rates. Public Counsel continues to oppose including the Tacoma LNG Facility in rates.

1. PSE was imprudent in its continued reliance on its outdated design day standard.

13. PSE developed the Tacoma LNG Facility for two stated reasons. First, the Facility would provide the ability to meet peak demand for a few days every few winters. Second, the Facility would provide unregulated marine and trucking fuel.²⁵ Only the first reason is subject to the Commission’s jurisdiction.

14. Prudence is considered not only as an investment threshold question, it “is continually evaluated during the life of an investment.”²⁶ Prudence is not a static concept, but rather must be maintained from the initial decision to build through the continued construction and completion of a project.²⁷ PSE has the burden of proving that every stage of the project was prudent if it

²³ Final Order 24/10 ¶ 393.

²⁴ *Id.*

²⁵ Resp. Test. of Robert L. Earle, Exh. RLE-1CT at 7:21–8:10.

²⁶ *Used and Useful Policy Statement* at 12, n.39.

²⁷ *Wash. Water Power Co.*, Docket U-83-26, Fifth Supplemental Order at 13 (Jan. 19, 1984).

seeks to recover related costs in its consumer rates.²⁸ With respect to Tacoma LNG, the Commission determined only that PSE met its burden regarding the initial decision to build in September 2016. Specifically, while the Commission’s Order addressed Dr. Earle’s design day arguments in the rate case, it did so in the context of PSE’s initial decision to build. The Commission did not address the design day arguments as they relate to post-September 2016 investment and decisions, and they are still at issue here.

15. PSE’s design day standard posed significant issues for the Company’s continued development of the Tacoma LNG Facility. First, PSE relies exclusively on the design day standard, dismissing actual weather and demand outcomes, including changes in weather due to climate change, as irrelevant to its decision-making.²⁹ Second, the design day standard was outdated by 2016, meaning that the balancing of benefits to ratepayers versus the cost of the design day standard was misaligned.³⁰ PSE continued to use its outdated design day standard throughout development of the Tacoma LNG Facility, and has not updated its design day standard even in its most recent Integrated Resource Plan (IRP).³¹

16. The design day standard is a heating degree days (HDD) benchmark used for system planning, and the gas system capacity is generally designed to meet the demands of the design day HDD.³² PSE last developed its design day standard in its 2005 IRP, where it developed a cost-benefit analysis that considered “customers’ value of reliability of service with the

²⁸ *Id.*

²⁹ Earle, Exh. RLE-1CT at 9:1–3, 11:5–6.

³⁰ *Id.* at 9:3–5.

³¹ *Id.* at 9:6–15:9.

³² *Id.* at 9:7–10.

incremental costs of the resources necessary to provide that reliability at various temperatures.”³³

PSE’s 2005 Least Cost Plan established a design day standard of 52 HDD. The Commission’s acknowledgment letter to the 2005 IRP noted that the data underlying PSE’s analysis was “now dated.”³⁴

17. Despite the design day standard being based on dated data at the time it was originally developed, PSE still has not updated its economic analysis nearly 20 years later. In its most recent 2023 Gas IRP, PSE stated that it was maintaining the 52 HDD standard, but it did not report doing an economic analysis of the cost-benefit tradeoffs between the costs and benefits of reliability.³⁵

18. Even if the design day standard was sufficient for PSE’s initial decision to build, as the Commission found in the Final Order of the 2022 rate case, PSE did not revisit that standard, even in light of the significant costs incurred to build the Tacoma LNG Project. In 2005, PSE calculated the economic benefits of the 52 HDD standard as compared to a 47 HDD standard to be \$15.1 million.³⁶ Whether “levelized” means an annual number or the total amount over time,³⁷ the benefits of the 52 HDD standard are dwarfed by the costs of Tacoma LNG. In 2016,

³³ *Id.* at 9:9–13, citing App’x. I Gas Planning Standard, at 1, *In re Puget Sound Energy 2005 Elec. and Nat. Gas Least Cost Plan*, Docket UE-050664 (filed May 2, 2005).

³⁴ Earle, Exh. RLE-1CT at 11:10–11, citing Puget Sound Energy Acknowledgment Letter at 5, *In re Puget Sound Energy 2005 Elec. and Nat. Gas Least Cost Plan*, Docket UE-050664 (filed Aug. 29, 2005).

³⁵ Earle, Exh. RLE-1CT at 11:4–10, citing Puget Sound Energy Compliance Filing, App’x. D, at D.11–D.13, *In re PSE 2023 Gas Util. Integrated Resource Plan*, Docket UG-220242 (filed May 31, 2023).

³⁶ Earle, Exh. RLE-1CT at 11:14–15 (Levelized 20-year benefits of \$12.3 million inflated to 2016. Puget Sound Energy Least Cost Plan, App’x. I Gas Planning Standard, at 3, *In re Puget Sound Energy 2005 Elec. and Nat. Gas Least Cost Plan*, Docket UE-050664 (filed May 2, 2005)).

³⁷ PSE argued in its Response to Public Counsel’s Motion to Strike that “levelized” meant the net present value of a future stream of numbers, annualized over the number of years in that stream. Puget Sound Energy, Resp to Mtn. to Strike ¶ 15 (filed Nov. 03, 2023). Juxtapose this argument with PSE’s use of levelized to reflect all costs of a policy

PSE estimated the “overnight capital costs” to be \$182 million, and those capital costs grew 31 percent over the course of the project \$239 million at the end of December 2021.³⁸ PSE is now seeking an annual revenue requirement of \$47.6 million through its Schedule 141LNG tracker.³⁹ During the course of the project, PSE should have re-evaluated the 52 HDD standard in light of the immense difference between the potential \$15.1 million in benefits and the project costs.⁴⁰ Failing to do this re-evaluation was imprudent.

19. Furthermore, PSE did not communicate with the Board of Directors after September 22, 2016, concerning the design day standard. As in PSE’s last rate case, the Company presented the information provided to the Board of Directors in its evidence.⁴¹ Nowhere in the information provided is there discussion of the design peak day gas requirements, outside a graph [REDACTED]

[REDACTED]

[REDACTED]⁴² Post-September 22, 2016, PSE did not discuss the 2005 design day standard with its Board in any detail, and as a result, continuing the Tacoma LNG Project was imprudent.

20. Not only did PSE fail to adequately discuss the design day standard with the Board of Directors, evidence strongly suggests that the design day standard is inaccurate, which would likely impact the economic cost-benefits analysis and impact whether the Tacoma LNG Facility

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in its 2021 IRP App’x A, at 1176, 1190, 1193. In any event, Public Counsel’s argument with respect to the economic cost benefits stands, regardless of whether leveled is an annual number or a total cost number.

³⁸ Earle, Exh. RLE-1CT at 11:15–19.

³⁹ Direct Test. of Susan E. Free, Exh. SEF-1T at 10:11–16.

⁴⁰ Earle, Exh. RLE-1CT at 11:19–12:3.

⁴¹ Ronald J. Roberts, Exh. RJR-8C.

⁴² Earle, Exh. RLE-1CT at 12:4–14.

was needed. It appears that a more appropriate benchmark would be 43 HDD rather than 52 HDD.⁴³ PSE ignored climate change along with the actual weather and demand outcomes as it continued to construct and invest in Tacoma LNG. PSE’s failure to re-evaluate its design day standard and update it accordingly is imprudent because the benefits to ratepayers versus the costs of the design day standard were grossly misaligned.

21. The record does not support a finding that the Tacoma LNG Project is prudent to include in PSE utility rates. As a result, the Commission should disallow all costs incurred after September 22, 2016, for the Tacoma LNG Project.

2. PSE’s use of the Tacoma LNG Facility for vaporization does not establish that the Facility is necessary for peak shaving.

22. PSE argues that using the Tacoma LNG Facility “demonstrates” prudence of costs incurred after its initial decision to build.⁴⁴ However, using the facility to vaporize gas during the 2022-2023 winter only establishes that the facility operates. Use of the facility does not show prudence because prudence looks at the decision-making process and costs of a project. Additionally, prudence looks at the purpose of the facility. The stated purpose of building the facility was to address peak shaving. PSE’s use of the Facility during the 2022-2023 winter does not demonstrate prudence because the Facility was not used for peak shaving. Even if it were, such use would not demonstrate that it was the best choice to meet peak shaving.

⁴³ *Id.* at 13:3–15:9.

⁴⁴ Roberts, Exh. RJR-1T at 39:10–45:17.

23. In the Final Order to PSE’s 2022 rate case, the Commission stated that it might consider the extent to which the Facility is used as a peak-shaving resource.⁴⁵ PSE used the Tacoma LNG Facility to vaporize gas on days where the gas demand levels were significantly lower than the level of resources before the Facility became available. Specifically, the average gas demand levels were 44 percent below the pre-Tacoma LNG resource capacity. The highest demand day within the days PSE vaporized was 29 percent of pre-Tacoma LNG resource capacity.⁴⁶ The vaporization days during the 2022-2023 winter were not peak demand days.⁴⁷

24. Additionally, PSE vaporized a very small amount of gas during the vaporization days, further contradicting PSE’s claim that the use of the Facility demonstrates its use for peak shaving. The amounts vaporized ranged from 0.2 percent to 57.8 percent of the Facility’s capacity. As compared to demand, vaporization amounts ranged from a scant 0.08 percent to a mere 7.45 percent of demand.⁴⁸ Use of vaporization was simply performative. Indeed, PSE would not say that use of the Tacoma LNG Facility substantially impacted its system during the 2022-2023 winter: it would not say that core customers would have experienced curtailment absent vaporization at the Tacoma LNG Facility, nor would it say that the Tacoma LNG Facility was necessary to positively impact reliability or mitigate any potential impacts of a full BC Pipeline curtailment.⁴⁹

⁴⁵ Order 24/10 ¶ 405.

⁴⁶ Earle, Exh. RLE-1CT at 16:12–21.

⁴⁷ *Id.* at 16:19–21.

⁴⁸ Earle, Exh. RLE-1CT at 17:1–6; Earle, Exh. RLE-7 (Vaporization Day Comparison).

⁴⁹ Earle, Exh. RLE-1CT at 17:10–16; Earle, Exh. RLE-8 (PSE Response to Public Counsel Data Request No. 24).

25. As Public Counsel witness Dr. Earle testified, “PSE has manufactured a situation to try to meet the Commission’s ex post criterion of peak shaving. Its vaporizations were not peak shaving, but simply a reduction of dependence on other resources when demand is far from peak.”⁵⁰ PSE has not demonstrated that vaporization was needed from the Tacoma LNG Facility, and the Commission should reject PSE’s claim. Rather, as noted by Dr. Earle, the weakness in PSE’s claim shows that the decision to proceed with constructing and completing the Tacoma LNG Facility was imprudent.⁵¹

26. Looking forward, it is unlikely that the Tacoma LNG Facility will be needed for peak shaving in future years.⁵² PSE’s F2022 forecast through winter 2043–2044 has a maximum forecast of 984 MDth over the two-year forecast.⁵³ This F2022 forecast is already overstated, but it only shows 11 MDth over the resources it had prior to constructing the Tacoma LNG Project.⁵⁴ “History will prove the folly of the Tacoma LNG Project and the unnecessary damage done to PSE ratepayers.”⁵⁵

B. Whether the Commission agrees that the Tacoma LNG Project was imprudent or not, the Commission should disallow all legal costs incurred after September 2016.

27. PSE has failed to demonstrate that its legal expenses associated with the Tacoma LNG Project after Sept. 22, 2016, are reasonable, and ratepayers should not be required to bear those

⁵⁰ Earle, Exh. RLE-1CT at 17:18–20. Puyallup Tribe witness Dr. Ranajit Sahu agrees. *See* Cross-answering Test. of Ranajit Sahu, Exh. RXS-35T at 7:5–13.

⁵¹ Earle, Exh. RLE-1CT at 18:1–3.

⁵² *Id.* at 17:8–11.

⁵³ *Id.* at 17:11–13.

⁵⁴ *Id.* at 17:11–13.

⁵⁵ *Id.* at 17:13–14.

costs. PSE's lack of evidence demonstrates that an audit of the Company's legal expenses, cost controls, and recordkeeping is warranted.

1. PSE's legal expense is not supported by the record.

28. PSE seeks to include its legal expenses associated with the Tacoma LNG Project in customer rates. PSE's evidence does not establish that such expenses are reasonable. In discovery, PSE stated, "Prior to receiving the final order in Docket UG-151663, which was issued in the fourth quarter of 2016, PSE did not separately track legal costs and therefore, **cannot provide the requested information for 2013 through 2016.**"⁵⁶ Public Counsel relied upon PSE's statement that it could not provide the requested information, which included the monthly legal costs and associated labor hours from the inception of the Tacoma LNG Project to present, distinguishing inside counsel costs and outside counsel costs. PSE subsequently revised its rebuttal testimony to provide testimony based on this very information. Initially, PSE estimated that external legal costs would not be more than \$1 million per year in total. In revised testimony, PSE provided a different total after somehow being able to find the data that they "did not separately track" prior to 2017. PSE's revised testimony provides no more information and support than its original testimony. Indeed, the revised testimony continues to rely upon unsubstantiated statements regarding levels of cost.

⁵⁶ Earle, Exh. RLE-12 (PSE Response to Public Counsel Data Request No. 26) (emphasis added). This response was consistent with PSE witness Susan Free's testimony in Exh. SEF-4T at 21:11-14. This text was replaced in revised testimony to state, "The internal legal costs 14 prior to 2017 were less than \$160,000 and were allocated between PSE and Puget 15 LNG based on the 43 percent/57 percent split approved in Order 10 in Docket 16 UG-151663." Exh. SEF-4Tr at 21:10-16.

29. Moreover, PSE refused to provide any billing records showing the substance of the legal expenses. While billing records may contain attorney-client privileged information, attorneys are required to provide the basis for their legal fees when such fees are sought for recovery from another entity. Billing records are commonly provided in support of fee requests. Here, PSE seeks to recover such legal expenses from ratepayers, and in order to do so, PSE must establish that the costs they wish to recover are reasonable.

30. Customers should not be required to pay for expenses that are not sufficiently proven. Even if the Commission finds that the project was prudent after the initial decision to build, which it was not, the Commission should reject PSE's request to recover its legal expenses with respect to the Tacoma LNG Project.

2. The Commission should order an audit of PSE's legal expenses, cost controls, and recordkeeping.

31. PSE's insufficient evidence and incomplete responses to discovery regarding its legal expenses supports a finding by the Commission that the Company's legal expenses, cost controls, and recordkeeping should be audited. Dr. Earle testified about the anomalies he observed, including amounts expended, periods where no amounts were spent, and hours claimed to be associated with the project.⁵⁷

⁵⁷ Earle, Exh. RLE-1CT at 19:16-24:3.

32. PSE's recordkeeping with respect to the project's legal costs were "sloppy at best,"⁵⁸ as evidenced by the revised testimony submitted on the eve of hearing.⁵⁹ PSE's failure to separately account for legal costs related to the Tacoma LNG Project for four years raises concerns about whether PSE is adequately tracking the areas and reasons why it is incurring legal costs.⁶⁰ At the very least, adequate billing records are a basic information that should be readily available through PSE's accounting systems and should identify the subject matter.⁶¹ Additionally, the rate at which fees were incurred along with months where no internal legal work was conducted raises questions, along with a host of other questions that are unanswered by the evidence in this case.⁶² The totality of circumstances surrounding PSE's legal fees issue supports the Commission ordering PSE to submit to an independent audit.

33. The audit should cover the timeframe of the Tacoma LNG Project, beginning in 2013 through 2023. This will provide 10-years of data to be able to assess PSE's legal costs, cost controls, and recordkeeping. The review should include more than just the Tacoma LNG Project, but should cover all of PSE's legal costs to determine whether any problems with legal costs and recordkeeping apply to other PSE activities.⁶³ This independent audit should be submitted within one year from the date of the final order in this case and should be provided to the Commission, Commission Staff, and Public Counsel for review.⁶⁴

⁵⁸ *Id.* at 23:5–7.

⁵⁹ This statement is not meant to indicate that there are no circumstances under which revisions are necessary or reasonable. This statement is limited to this particular revision in this particular case.

⁶⁰ Earle, Exh. RLE-1CT at 25:3–11.

⁶¹ *Id.* at 25:7–9.

⁶² *Id.* at 25:3–27:6.

⁶³ *Id.* at 27:7–14.

⁶⁴ *Id.* at 27:15–17.

3. Ratepayers are entitled to a refund of legal expenses included in rates.

34. While PSE initially estimated the amount included in rates to be no more than \$1 million per year for years 2013 to 2016, the Company reduced its estimate to \$160,000. Regardless of which figure is used, ratepayers are entitled to a refund of those amounts allocated under the common cost allocators.⁶⁵ This refund is based on PSE's inability to separate the Tacoma LNG Project legal costs from other costs, leaving PSE ratepayers to bear the entire costs rather than sharing the costs with Puget LNG.⁶⁶ Under the common cost allocators, ratepayers are only responsible for 43 percent of the legal costs incurred from 2013 through 2016.⁶⁷ As a result, ratepayers should be refunded 57 percent of the legal fees they paid for 2013 through 2016.

C. The Commission should reject PSE's allocation of the costs related to the four-mile pipe upgrade.

35. The Commission should reject PSE's proposed allocation of costs related to the four-mile pipe. PSE claims that a 12-inch pipe was needed to deliver gas to the Tacoma LNG Facility, but needed to be expanded to 16-inches for delivery of gas from the Tacoma LNG Facility to the distribution system. PSE allocates all of the cost of expanding the 4-mile pipe to 16 inches from 12 inches to PSE ratepayers, however, it splits the cost of the 12 inch portion allocating 55 percent to PSE ratepayers and 45 percent to Puget LNG rather than the 10 percent to PSE

⁶⁵ *Id.* at 24:12–18.

⁶⁶ *Id.* at 24:4–11.

⁶⁷ Earle, Exh. RLE-1CT at 24:16–17, citing *In re Puget Sound Energy*, Order 10, ¶ 61, Docket UG-151663 (Nov. 1, 2016).

ratepayers and 90 percent to Puget LNG per the Settlement approved by the Commission in Docket UG-151663, or by pipeline usage.⁶⁸

36. Taking both the 12-inch costs and 16-inch costs into account, PSE proposes to allocate 61.8 percent of the pipe cost to ratepayers and 38.3 percent to Puget LNG.⁶⁹ PSE's proposed allocation ignores the amount of use the regulated operations will have of the pipeline. Based on use, 74.4 percent should be allocated to Puget LNG, not 38.3 percent as PSE proposes.⁷⁰ PSE's proposed allocation is driven by its bizarre split of the 12-inch costs into two halves: costs for deliveries *to* the Tacoma LNG Facility and costs for deliveries *from* the Facility.

37. In Rebuttal Testimony, PSE developed two new theories of its directional split for the allocation of the 12-inch component of the 4-mile pipe. The first new theory is that ratepayers send gas from the system more often than just the need to peak shave because of boil-off gas.⁷¹ But boil-off gas is produced by more than just the ratepayers's portion of the gas. Puget LNG's liquefied gas also results in boil-off gas.⁷² However, PSE does not compensate ratepayers for receiving and sending Puget LNG's boil-off to the distribution system nor account for this service provided by ratepayers in its allocation of pipeline costs.⁷³

38. The second new theory that PSE introduced in its Rebuttal Testimony is PSE's "sole use of the pipeline during peak-shaving."⁷⁴ However, according to PSE, the scheduling of flows by

⁶⁸ Earle, Exh. RLE-1CT at 28:14-29:4.

⁶⁹ Earle, Exh. RLE-1CT at 28:11-12.

⁷⁰ *Id.* at 28:1-31:2.

⁷¹ Rebuttal Testimony of William F. Donahue, Exh. WFD-5T at 2:3-21.

⁷² Roberts, RJR-11T at 33:15-18.

⁷³ Donahue, Exh. WFD-7X (Puget Sound Energy's Response to Public Counsel Data Request No. 51, subpart b).

⁷⁴ Donahue, Exh. WFD-5T at 5:21-6:2.

Puget LNG are only stopped by ratepayers needs if ratepayers will not reserve for the pipe for peak shaving purposes, not other purposes.⁷⁵ This situation is not frequent and confined to only a few days every few winters.⁷⁶

39. PSE’s split of costs between incoming and outgoing flows is unconnected to both pipeline usage and the Settlement approved by the Commission in Docket UG-151663, and unsupported by the evidence and should be rejected.

D. Tacoma LNG is not in the Public Interest Because it Perpetuates Environmental Inequities and Overburdens an Already Burdened Community.

40. The Commission’s core function is to regulate in the public interest the rates, services, facilities, and practices of all persons engaged in the business of supplying utility service.⁷⁷ While RCW 80.01.040 does not define “public interest,” it does refer to “the public service laws.”⁷⁸ The public service laws include all laws affecting public service companies.⁷⁹ The public interest that the Commission is to protect is the interest of the regulated utility’s customers.⁸⁰ Recently, the Legislature codified the Commission’s ability to consider equity in its public interest analysis in RCW 80.28.425(1). RCW 80.28.425(1) defines the public interest to include environmental health and greenhouse gas emissions reductions, health and safety

⁷⁵ Donahue, Exh. WFD-7X (Puget Sound Energy’s Response to Public Counsel Data Request No. 51, subpart d).

⁷⁶ Earle, Exh. RLE-1CT at 8:1–2.

⁷⁷ RCW 80.01.040.

⁷⁸ RCW 80.01.040(2) and (3).

⁷⁹ See RCW 80.04.470.

⁸⁰ *Cole v. Wash. Utils. & Transp. Comm’n*, 79 Wn.2d 302, 306, 485 P.2d 71, 73–74 (1971).

concerns, economic development, and equity to the extent such factors affect a utility's rates, services, and practices.

41. In PSE's 2022 rate case, the Commission stated that it would not apply the public interest standard to include equitable considerations to PSE's initial decision to build.⁸¹ That decision was made on September 22, 2016. While the Commission did not state whether it would apply equitable considerations to future determinations regarding prudence of the Tacoma LNG Project, it recognized the tension between "the absence of equity and environmental health considerations in ratemaking as it relates to the threshold prudence of PSE's decision to construct the facility and the continuous demonstration of prudence over the life of the investment now that equity and environmental health considerations have been incorporated into ratemaking."⁸²

42. Additionally, the Commission viewed the Tacoma LNG Settlement in context of the two other settlements, which together resolved the entire rate case.⁸³ It was in that context that the Commission found the Tacoma LNG Settlement in the public interest.⁸⁴ The public interest standard demands a different outcome in this case as it focuses on PSE's continued investment in and construction of the Tacoma LNG after its initial decision to build.

43. The Commission recognizes that applying an equity lens in decision making is not additive, but rather is foundational, to its review of all requests, proposals, and recommendations.⁸⁵ The "equity lens" must be applied in all public interest considerations going

⁸¹ Final Order 24/10 ¶ 426.

⁸² *Id.* ¶ 425.

⁸³ *Id.* ¶ 430.

⁸⁴ *Id.* ¶ 431.

⁸⁵ Final Order 24/10 ¶ 421; *Cascade Natural Gas Corp.*, Order 09 ¶ 58 (Aug. 23, 2022).

forward. This is imperative because utility projects take time to be presented to the Commission. The Tacoma LNG Project is a keen example of this, as the Commission was first presented the idea of the project in 2015 in Docket UG-151663. While PSE did not present the project for cost recovery until its 2022 rate case, the Commission has taken public comments from members of the public about the LNG Project at every major PSE public comment hearing since and including Docket UG-151663.

44. Applying the equity lens to all public interest considerations is imperative because adverse impacts will carry forward for generations, harming the communities surrounding the facility. Because the facility is located within PSE's service territory, PSE ratepayers will directly be impacted by the negative environmental and equitable externalities that the Commission must consider in making its public interest determinations. Not only will PSE ratepayers generically be impacted, but the specific communities surrounding the Tacoma LNG Facility include Highly Impacted Communities, including the Puyallup Tribe. It is contrary to the Legislature's clear intent that equity be considered for the Commission to turn a blind eye to the detrimental impact that will be dispensed upon the Puyallup Tribe in particular and ratepayers generally.

45. The Puyallup Tribe presented Dr. Ranajit Sahu, an air pollution expert with over 30 years of experience.⁸⁶ Dr. Sahu is specifically familiar with PSE's Tacoma LNG Project through his work with the Puyallup Tribe, not only in this case but in other matters involving the project.⁸⁷

⁸⁶ Direct Testimony of Ranajit Sahu, Exh. RXS-1T at 6:12–8:2.

⁸⁷ *Id.* at 8:13–9:14.

Dr. Sahu testified about the environmental burdens in the area around the Tacoma LNG facility, providing specific detail regarding the environmental and equitable considerations to be considered under the public interest standard.⁸⁸

46. Dr. Sahu testified that Tacoma LNG will create negative externalities for communities within the surrounding vicinity due to toxic air pollutants that will be released by the facility. Additionally, neighboring communities face the risk of catastrophic accident, which would pose serious risk to human life and the surrounding environment.⁸⁹

47. The Washington Environmental Health Disparities Map ranks Washington neighborhoods for the cumulative risks from environmental factors influencing health outcomes. The Disparities Map shows that the population situated near the Tacoma LNG Facility already suffers from disproportionately high environmental burdens. These populations include the Puyallup Tribe, but also includes Tacoma residential neighborhoods with substantial minority, low-income, and children populations.⁹⁰ Some of the highest levels of air pollution exist within the Puyallup Reservation, even prior to the presence of the Tacoma LNG Facility.⁹¹

48. The Disparities Maps show the Tacoma Tidelands, where the Tacoma LNG Facility is located.⁹² The Tidelands are ranked 10 out of 10 for Environmental Health Disparities. Surrounding areas are ranked between 5 and 10 out of 10.⁹³ Overall environmental disparities are

⁸⁸ Sahu, Exh. RXS-1T; Exh. RXS-35T at 10:14–14:13.

⁸⁹ Sahu, Exh. RXS-1T at 20:6–11. Dr. Sahu provides a detailed analysis of the emissions expected from the Tacoma LNG facility. *Id.* at 18:1–38:19.

⁹⁰ Sahu, Exh. RXS-1T at 24:15–20.

⁹¹ *Id.* at 24:20–25:2.

⁹² *Id.* at 25:10–12. The Maps are presented in Sahu, Exh. RXS-23 (Washington Environmental Health Disparities Map Rankings).

⁹³ Sahu, Exh. RXS-1T at 25:12–14.

based on rankings in four sub-factors, including Environmental Effects and Environmental Exposures.⁹⁴ The surrounding areas ranked between 8 and 10 out of 10 for Environmental Effects and between 7 and 10 out of 10 for Environmental Exposures.⁹⁵ The Disparities Maps clearly show that the areas surrounding the Tacoma LNG Facility already bear disproportionate environmental burden.

49. It is undeniable that the LNG facility will negatively impact the environmental health of the Puyallup Tribe, whose land the facility abuts. It is also undeniable that the negative environmental health impacts are attributable to the regulated portion of the facility (in addition to the unregulated portion of the facility).

50. Indeed, locating the Tacoma LNG facility on the border of the Puyallup Tribe's land perpetuates systemic harm by continuing to overburden an already overburdened population. The Commission correctly recognizes that its analysis should include the objective of ensuring that vulnerable populations “do not receive an inordinate share of the burdens.”⁹⁶ The Commission faces an environmental justice issue in deciding whether to approve the Tacoma LNG Project.

51. PSE failed to consider equity in developing the LNG Project, despite its own consideration of anticipated or approved laws and regulations, the evolving political atmosphere concerning equity and fossil fuels, its own awareness of equity considerations, and the Puyallup Tribe’s stated concerns about the project in various venues.⁹⁷ PSE’s failure to consider equity in

⁹⁴ *Id.* at 25:14–16.

⁹⁵ *Id.* at 25:16–19.

⁹⁶ *Cascade Natural Gas Corp.*, Order 09, ¶ 56.

⁹⁷ Earle, Exh. RLE-1CT at 3–14.

developing the LNG Project is a striking example of the type of historical harms that the Legislature has been clear that it wants to eradicate.

52. PSE’s proposed operations cause negative environmental impact on neighboring communities, perpetuating inequities instead of correcting them. Allowing the costs of the Tacoma LNG Project to be recovered in customer rates would likewise perpetuate inequities. As a result, the Commission should find Tacoma LNG to be imprudent and that it is not in the public interest due to the environmental impact on neighboring communities.

IV. PUBLIC COMMENTS REFLECT MANY OF PUBLIC COUNSEL’S THEMES ABOUT TACOMA LNG.

53. This case generated substantial public participation, and people generally expressed deep concern and opposition regarding the Tacoma LNG Project. In total, customers submitted 765 written comments to the Commission and Public Counsel.⁹⁸ Over 80 people participated in the virtual Public Comment Hearing on November 1, 2023, with 29 attendees offering oral comments opposing the rate increase and Tacoma LNG project.⁹⁹

54. Customers overwhelmingly expressed their support of the Puyallup Tribe, who have opposed PSE’s efforts to develop this facility, and the Tacoma community. One customer posed a rhetorical question, “Did anyone have any doubt that every person speaking tonight would be speaking in opposition to this [Facility]?”¹⁰⁰ Many customers expressed strong feelings about the

⁹⁸ See Offer of Public Comment Exh. No. BR-8, UTC Comment Matrix and PCU Tally (filed Nov. 29, 2023).

⁹⁹ See Public Comment Hearing TR. Vol. 2 (filed Nov 1, 2023).

¹⁰⁰ Joseph Sellers, TR. 59:19–21; Public Comment Hearing Recording at 38:43–38:52 (filed Nov. 1, 2023) (the recording is available for download using this link:

<https://apiproxy.utc.wa.gov/cases/GetDocument?docID=412&year=2023&docketNumber=230393>).

facility and their status as PSE customers, some characterizing themselves as “hostage customers,” being forced to use PSE’s services, and being a “reluctant customer.”¹⁰¹

55. Customers also pointed out that they have commented many times to the Commission on this issue. One customer stated, “I have testified before you, at least three other times, perhaps four, opposing the building of the LNG plant without permit. And so it is a complete moral offense to me that I would be asked to pay more for something that I have opposed from the beginning.”¹⁰² Another customer stated, “I am disappointed to be here yet again, speaking out yet again on a subject like this that should’ve been resolved a long time ago in the interest of our planet and people and ratepayers.”¹⁰³

56. Customers pleaded with the Commission to consider the harm the LNG Facility will cause. Many spoke about the greenhouse gas impact of the facility and climate anxiety.¹⁰⁴ One customer poignantly expressed how the Tacoma LNG Facility fits into the concern about the climate:

I and other people in my generation and generations to come deal with daily, severe climate anxiety because we see the trajectory we are on and it’s a trajectory towards a climate that is not livable ... [H]ere comes PSE, squaring us up, looking us dead in the eye, and it is saying, “Pay us. Pay us for doing this to you.” And it is horrendous.¹⁰⁵

¹⁰¹ Lynn Fitz-Hugh, TR. 51:24–25 and Public Comment Hearing Recording at 27:15–27:25; Katherine Barlow, TR. 55:2–3 and Public Comment Hearing Recording at 31:30–31:41; Maia Syfers, TR. 70:3 and Public Comment Hearing Recording at 52:47–52:32; Philipp Michel, TR. 76:20 and Public Comment Hearing Recording at 1:01:53–1:01:56.

¹⁰² Fitz-Hugh TR. 52:4–8 and Public Comment Hearing Recording at 27:54–28:27.

¹⁰³ Syfers, TR. 70:11–14 and Public Comment Hearing Recording at 53:15–53:32.

¹⁰⁴ Fitz-Hugh, TR. 52:8–11 and Public Comment Hearing Recording at 27:54–28:27; Dakota Rash, TR. 53:18–21 and Public Comment Hearing Recording at 29:37–31:15; Barlow, TR. 55:9–15 and Public Comment Hearing Recording at 32:01–32:25; Syfers, TR. 70:11–14 and Public Comment Hearing Recording at 52:47–54:44.

¹⁰⁵ Rash, TR. 53:17–24 and Public Comment Hearing Recording at 29:45–30:14.

The customer continues to describe the perspective that PSE does not care for future generations or “any of us.”¹⁰⁶ From this perspective, PSE’s driving motivating factor is money. The customer concluded with a plea to the Commission to “please be the historic turning point that we need to stand up to [PSE].”¹⁰⁷

57. Many customers also spoke about the equitable impact of the facility and its impact on the Puyallup Tribe. Some noted that the Puyallup Tribe asked that the facility not be located in close proximity to or on their land.¹⁰⁸ Customers expressed that the Tacoma LNG Facility represented a “continuation of colonization,” which is a reference to the systemic harms that vulnerable populations, like the Puyallup Tribe, have experienced throughout the history of regulation. This type of systemic harm is exactly what the Legislature tasks the Commission with combating in RCW 80.28.425(1).

58. Customers recognize that the Commission is an economic regulator, but also asked the Commission to consider the non-monetary externalities regarding the Tacoma LNG facility. One customer stated,

You have stated before that you do not have the power to stop PSE from doing certain things, but that you do have the power to regulate their rates. Do not reward them for doing this thing against the Tribe’s will. Make them bear the cost of this immoral behavior.¹⁰⁹

¹⁰⁶ Rash, TR. 54:7–9 and Public Comment Hearing Recording at 30:36–30:46.

¹⁰⁷ Rash, TR. 54:14–16 and Public Comment Hearing Recording at 30:47–31:13. (“You all are leaders. You all are in positions of responsibility. And so now it is your calling to please stand between us and this monster that wants to consume us all for its own short-sighted gratification. Please do that. Please be the historic turning point that we need to stand up to these bullies.”)

¹⁰⁸ Fitz-Hugh, TR. 52:13–18 and Public Comment Hearing Recording at 27:54–28:27; Barlow, TR. 55:16–21 and Public Comment Hearing Recording at 32:27–32:47.

¹⁰⁹ Fitz-Hugh, TR. 52:19–24 and Public Comment Hearing Recording at 28:37–28:58.

Another customer stated, “I know that the cost of projects is often what the UTC looks at, and I just want you to consider that it is not always a financial cost that comes with these things.”¹¹⁰ Customers also addressed the financial impact that the rate increase related to the Tacoma LNG Facility would have on customers. “Families are already struggling to pay their bills and shouldn’t have to pay for PSE’s poor investment choices.”¹¹¹ “People are already struggling. Right now is a terrible moment for a rate hike.”¹¹² In asking the Commission to take action to disallow the Tacoma LNG Facility, customers urged the Commission to “act in the interest of the public”¹¹³ and characterized the decision as posing “a moral choice.”¹¹⁴ One customer expressed that they still hold “faith that you just might do [the right thing].”¹¹⁵

59. PSE’s customers highlight the community’s very real concerns about the Tacoma LNG Facility, and they illustrate the prudence and public interest issues addressed in Public Counsel’s case. Public Counsel urges to Commission to consider these customers’ concerns when considering the outcome of this case.

V. CONCLUSION

60. Public Counsel opposes the Tacoma LNG Facility as imprudent and failing to meet the public interest. Public Counsel asks the Commission to disallow all costs and expenses related to the project after PSE’s initial decision to build on September 22, 2016. Public Counsel has shown that the project fails the Commission’s prudence evaluation and the public interest

¹¹⁰ Barlow, TR. 56:3–4 and Public Comment Hearing Recording at 33:03–33:13.

¹¹¹ Aife Pasquale, TR. 56:20–22 and Public Comment Hearing Recording at 34:01–34:09.

¹¹² Sellers, TR. 59:10–12 and Public Comment Hearing Recording at 38:11–38:16.

¹¹³ Syfers, TR. 71:2–3 and Public Comment Hearing Recording at 54:26–54:29.

¹¹⁴ Patrick McKee, TR. 76:10–11 and Public Comment Hearing Recording at 1:04:44–1:04:48.

¹¹⁵ Sellers, TR. 60:1–2 and Public Comment Hearing Recording at 39:14–39:25.

standard. Allowing PSE to recover the costs of the Tacoma LNG Project in customer rates perpetuates systemic injustices that the Commission has acknowledged should be avoided and remedied. Thus, the Commission should disallow the post-September 2016 costs of the Tacoma LNG Project as both imprudent and not in the public interest.

61. Additionally, the Commission should disallow PSE's legal expenses related to Tacoma LNG as unsupported by sufficient evidence. The Commission should also refund certain amounts from 2013 through 2016 that should have been allocated to Puget LNG.

62. Lastly, the Commission should reject PSE's proposed allocation for the four-mile pipeline addition because PSE proposes to allocate 38.3 to Puget LNG rather than the 74.4 percent that evidence supports to be allocated to the unregulated operations, unfairly placing more costs than justified on ratepayers.

DATED this 8th day of December, 2023.

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