

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,**

**Complainant,**

**v.**

**PUGET SOUND ENERGY,**

**Respondent.**

**Docket UG-230393**

**INITIAL BRIEF OF  
PUGET SOUND ENERGY**

**December 8, 2023**

**PUGET SOUND ENERGY**

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## I. INTRODUCTION

1. Puget Sound Energy (“PSE”) respectfully requests the Commission approve the relief requested in this case and allow the costs of the Tacoma LNG Facility to be recovered in rates. As the evidence demonstrates, these costs were prudently incurred.
2. As discussed in this brief, the issue in this proceeding is narrow: whether the costs to construct the Tacoma LNG Facility were prudent. PSE filed this case to recover the Tacoma LNG Facility costs following PSE’s 2022 general rate case (“GRC”) where the Commission approved a settlement and determined that PSE’s decision to build the Tacoma LNG Facility was prudent. The Commission ruled PSE demonstrated the need, considered alternatives, and adequately kept the PSE Board of Directors informed, but deferred a determination on the prudence of the costs of constructing the Tacoma LNG Facility for another proceeding. PSE was required to place the costs for the Tacoma LNG Facility in a tracker and could request recovery of those costs at a later time. This proceeding is the opportunity to review the construction and operation costs that occurred after the decision to build the Tacoma LNG Facility in 2016.
3. PSE’s testimony and evidence demonstrate: (1) the costs incurred to construct the Tacoma LNG Facility were prudent, including legal costs necessitated by extensive appeals of permitting decisions; (2) the Tacoma LNG Facility has been used and useful since February 2022; (3) PSE’s recovery of deferred costs is appropriate; and (4) the costs of the four-mile pipeline segment were properly allocated. PSE also shows other actions and decisions made after the Board of Directors approved the decision to build, although not directly tied to costs, were otherwise appropriate and prudent. These include: (1) PSE updated its resource needs; (2) PSE appropriately used the design day standard; (3) PSE re-evaluated the need for the Tacoma LNG Facility, and considered alternatives during construction; (4) PSE’s Board of Directors was kept informed; and (5) PSE is operating the Tacoma LNG Facility in a responsible manner.
4. While other parties attempt to relitigate many of the issues already addressed in the 2022 GRC, the Tacoma LNG Facility has been a used and useful resource since February 2022,

providing necessary gas peak shaving service for PSE's customers. The Tacoma LNG Facility was the least cost option to meet a demonstrated need when PSE made the decision to build the facility, and again when PSE re-evaluated that decision in 2018. PSE has demonstrated that the Tacoma LNG Project benefits customers because it allows PSE to reliably serve its natural gas customers and maintain distribution system stability on any given day. If PSE is unable to meet customer needs on the coldest peak days, customers who rely on natural gas to heat their homes when they need it most would be unable to do so.

5. Finally, the Commission should reject any request that it retroactively apply the new public interest standard in this proceeding to a facility that was 100 percent constructed before the newly revised standard went into effect. The Commission should evaluate the Tacoma LNG Facility based on the standards that were in effect at the time decisions were made and actions taken. In this proceeding concerning the recovery of costs of the Tacoma LNG Facility, the Commission is acting primarily in its capacity as an economic regulator and it should not substitute its judgment for that of agencies with other areas of expertise. This proceeding is not the forum to relitigate the highly technical matters involved in the air permit, the Supplemental Environmental Impact Statement ("SEIS"), the shoreline permit, or the numerous other permits PSE successfully obtained to construct and operate the Tacoma LNG Facility. The Tacoma LNG Facility was designed and constructed pursuant to the required permits and PSE is working with those other regulators as it operates the Tacoma LNG Facility in accordance with its operating permits.

6. The Tacoma LNG Facility provides a variety of benefits to the surrounding community, has been providing a peaking resource to customers, was the least cost alternative, and is in the public interest. PSE respectfully requests the Commission determine that the post-2016 costs of the Tacoma LNG Facility are prudent and allow PSE to recover those costs in rates as set forth in the case it has presented.



## II. LEGAL STANDARDS

### A. Rates Must Be Fair, Just, Reasonable, and Sufficient

7. The ultimate legal question in a rate proceeding before the Commission is whether the rates and charges proposed by a utility are in the public interest and are fair, just, reasonable, and sufficient.<sup>1</sup> In making these determinations, the Commission is bound by the statutory and constitutional mandate that a regulated utility is entitled to (i) reasonable and sufficient compensation for the service it provides,<sup>2</sup> and (ii) the opportunity to earn “a rate of return sufficient to maintain its financial integrity, attract capital on reasonable terms, and receive a return comparable to other enterprises of corresponding risk.”<sup>3</sup>

### B. The Newly Enacted Public Interest Standard Should Not Be Applied Retroactively and Does Not Change the Fact that the Commission Is Primarily an Economic Regulator

8. The amended public interest standard expands the factors that may be considered by the Commission when determining whether proposed rates and services are consistent with the “public interest.”

In determining the public interest, the commission *may* consider such factors including, but not limited to, environmental health and greenhouse gas emissions reductions, health and safety concerns, economic development, and equity, to the extent such factors affect the rates, services, and practices of a gas or electrical company regulated by the commission.<sup>4</sup>

9. The Commission recently clarified how it would apply the expanded public interest standard in the context of a plant constructed prior to the enactment of the expanded standard. With respect to the Tacoma LNG Facility, the Commission stated that the applicable definition of the public interest is the one in effect at the time PSE decided to build the Tacoma LNG

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<sup>1</sup> RCW 80.28.020; *People’s Org. for Wash. Energy Res. v. WUTC*, 104 Wn.2d 798, 808 (1985) (en banc) (“POWER”); see also RCW 80.28.425(1) (the Commission can also consider equitable factors to the extent such factors affect the rates, services, and practices of a gas or electrical company regulated by the commission).

<sup>2</sup> *POWER*, 104 Wn.2d at 808; *Puget Sound Traction Light & Power Co. v. Pub. Serv. Comm’n*, 100 Wn. 329, 334 (1918) (en banc); RCW 80.28.010(1).

<sup>3</sup> *WUTC v. Avista Corp.*, Dockets UE-991606, *et al.*, Third Supp. Order ¶ 324 (Sept. 29, 2000).

<sup>4</sup> RCW 80.28.425(1) (emphasis added).

Facility.<sup>5</sup> The Commission further explained how it viewed the expanded public interest standard in the context of the Tacoma LNG Facility:

We emphasize that the Commission serves primarily as an economic regulator. While RCW 80.28.425 expands the public interest standard to include issues such as equity and environmental health, we recognize that this law must be applied to prudence going forward but should not be applied retroactively. We further conclude that the law does not allow the Commission to retrospectively second-guess the determinations of other, more specialized environmental health agencies, such as the Pollution Control Hearings Board, which is responsible for reviewing agencies' actions in siting and permitting the plant.<sup>6</sup>

**C. Prudence Must Be Reviewed Based on What a Reasonable Utility Knew or Should Have Known at the Time the Decision to Move Forward With a Project Was Made**

10. The Commission has long recognized the standard for considering whether plant investments made by utilities are prudent. Although the Commission reviews the prudence of such investments retrospectively, the review is based on what a reasonable utility knew or should have known at the time the decision was made to move forward with the project,<sup>7</sup> which gives a level of certainty to utilities and investors, who contribute substantial funds towards these investments.

11. In PSE's 2003 power cost only rate case proceeding the Commission reaffirmed the standard it applies in a prudence review. The standard the Commission applies to measure prudence is what a reasonable board of directors and company management would decide based on what they knew or reasonably should have known at the time the decision was made.<sup>8</sup> The Commission recently affirmed that the prudence analysis is not based on hindsight but rather is determined at the point in time when a company made its decision. Once that time is identified, "the Commission can consider whether the Company's decision was prudent *at the time it was*

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<sup>5</sup> *WUTC v. PSE*, Dockets UE-220066 et al. Order 24/10 ¶ 428 (Dec. 22, 2022) ("Order 24/10").

<sup>6</sup> *Id.* ¶ 427.

<sup>7</sup> *WUTC v Puget Sound Energy*, Docket UE-031725, Order 12 ¶ 19 (Apr. 7, 2004).

<sup>8</sup> *WUTC v Puget Sound Energy*, Docket UE-031725, Order 12 ¶ 19 (Apr. 7, 2004).

made, in light of what the Company knew or reasonably should have known.”<sup>9</sup> The Commission addressed this more explicitly in the final order in PSE’s 2022 GRC (“Order 24/10”):

We also conclude that the prudence standard should remain focused on what the utility reasonably knew at the time it made its investment decisions. PSE’s decisions should not be second-guessed based on facts or changes to the law that occurred after it initiated construction and after the facility was mechanically completed.<sup>10</sup>

12. In addition to the reasonableness standard, the Commission has cited several specific factors that inform the question of whether a utility’s decision to construct or acquire a new resource was prudent. The utility must first determine that the new resource is necessary.<sup>11</sup> Once a need has been identified, the utility must determine how to cost effectively fill that need. When considering acquiring or constructing a resource to meet its need, the utility must evaluate that resource against other potential resources.<sup>12</sup> The utility must keep its board of directors involved in the resource purchase decision process and informed about the resource cost.<sup>13</sup> Last, the utility must also keep contemporaneous records that will allow the Commission to evaluate its actions with respect to the process of deciding to construct or purchase the resource.<sup>14</sup>
13. As described above, the Commission’s prudence standard has remained generally the same for decades, which is important as it provides a level of certainty to utilities and investors as they contemplate constructing and investing in long-lived projects. If the Commission were to create a shifting standard for utility prudence decisions regarding construction and acquisition of plant, it would raise due process concerns from a legal standpoint. From a practical standpoint, investors might choose to invest elsewhere where the regulatory environment is more stable and predictable.

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<sup>9</sup> *WUTC v Avista Corp.*, Dockets UE-200900 *et al.*, Order 08/05 ¶ 267 (Sept. 27, 2021) (emphasis added).

<sup>10</sup> *WUTC v. PSE*, Dockets UE-220066 *et al.* Order 24/10 ¶ 52.

<sup>11</sup> *See, e.g., WUTC v. Puget Sound Power & Light Co.*, Dockets UE-921262, *et al.*, Nineteenth Supp. Order p. 11 (Sept. 27, 1994).

<sup>12</sup> *Id.* at 11.

<sup>13</sup> *Id.* at 37, 46.

<sup>14</sup> *Id.* at 2, 37, 46.

**D. The Scope of This Proceeding Is Limited to the Prudence of Construction and Operations Costs of the Tacoma LNG Facility that PSE Incurred After the Decision to Build in 2016**

14. The Commission clearly delineated the scope of this proceeding in Order 24/10, the final order in PSE’s 2022 GRC. First, the Commission made clear what had been reviewed and decided in the 2022 GRC with respect to the prudence and costs of the Tacoma LNG Facility. The Commission agreed “that PSE has demonstrated a need for the Tacoma LNG Facility at least through the initial decision to build the facility on September 22, 2016.”<sup>15</sup> The Commission also concluded “that PSE has adequately considered alternatives to the Tacoma LNG Facility.”<sup>16</sup> In reaching this conclusion, the Commission pointed to the 2016 and 2018 PSE management presentations to the PSE Board of Directors showing the Tacoma LNG Facility to be a least-cost resource.<sup>17</sup> With respect to the third prudence factor, the Commission agreed “that PSE’s Board of Directors was sufficiently informed and involved at least through its decision to authorize construction of the facility on September 22, 2016.”<sup>18</sup> And the Commission also found “that PSE provided adequate documentation of its decision-making as it developed and constructed the Tacoma LNG Facility.”<sup>19</sup> The Commission summarized the decided issues and the remaining issues as follows:

PSE acted prudently in developing and constructing the [Tacoma LNG] facility up through the Board of Director’s decision to authorize construction on September 22, 2016. The parties may review and challenge subsequent construction and operation costs in a later proceeding. We also conclude that the prudence standard should remain focused on what the utility reasonably knew at the time it made its investment decisions. PSE’s decisions should not be second-guessed based on facts or changes to the law that occurred after it initiated construction and after the facility was mechanically completed.<sup>20</sup>

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<sup>15</sup> *WUTC v. PSE*, Dockets UE-220066 et al. Order 24/10 ¶ 394.

<sup>16</sup> *Id.* at ¶ 412.

<sup>17</sup> *Id.* at ¶ 412.

<sup>18</sup> *Id.* at ¶ 417.

<sup>19</sup> *Id.* at ¶ 418. There were several other issues raised by parties opposing PSE’s Tacoma LNG Facility in the 2022 multiyear rate plan that the Commission ruled on in its final order, which are discussed later in this brief.

<sup>20</sup> *Id.* at ¶ 52.

15. Based on the Commission’s determinations and direction in Order 24/10, the scope of review for this proceeding should be limited to review of construction and operation costs that occurred after the decision was made to build the Tacoma LNG Facility in 2016.

### III. ARGUMENT

16. PSE’s testimony and evidence demonstrates the costs incurred for the Tacoma LNG Project after PSE’s Board of Directors approved the decision to build the facility were prudent. Additionally, to the extent the Commission will consider PSE’s other decisions not directly tied to specific costs after the Board of Directors approved the decision to build, those decisions were otherwise reasonable, appropriate, and prudent. The Commission should approve PSE’s costs to build the Tacoma LNG Facility and allow those costs to be included in rates.

#### A. PSE Prudently Incurred Costs Post-Decision to Build

##### 1. The Costs in the Tracker Should Be Approved.

17. The Commission should approve PSE’s costs to build the Tacoma LNG Facility because the costs were reasonable and necessary to construct the plant and meet PSE’s customers’ gas needs. As the Commission determined in Order 24/10, PSE established a need to build the Tacoma LNG Facility.<sup>21</sup> PSE also sufficiently evaluated alternatives, and the Tacoma LNG Facility was the least cost option to meet the peaking needs.<sup>22</sup> By the time PSE’s Board of Directors approved the decision to build the facility, the estimated capital cost for the Tacoma LNG Project was \$422 million and approximately \$165 million was allocable to PSE.<sup>23</sup> PSE continued to evaluate the decision to construct the Tacoma LNG Facility, and compared its costs to the costs of alternatives, and the Tacoma LNG Facility continued to be the least cost option.<sup>24</sup> As of December 31, 2022, the total capital cost of the Tacoma LNG Project was \$489 million and the portion allocable to PSE was \$243 million.<sup>25</sup>

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<sup>21</sup> Order 24/10 at ¶ 394, *see also* ¶¶ 395-399.

<sup>22</sup> Order 24/10 at ¶ 412, *see also* ¶¶ 413-416.

<sup>23</sup> *See* Roberts, Exh. RJR-1T at 8:4-10.

<sup>24</sup> *See* Roberts, Exh. RJR-1T at 23:14-19 and 26:8-10.

<sup>25</sup> *See* Roberts, Exh. RJR-1T at 15:11-16:1.

18. Costs for the Tacoma LNG Project were regularly monitored from the outset, and to the extent costs were above the initial estimated capital costs, they were reasonable for a new construction project the size and scale of the Tacoma LNG Project.<sup>26</sup> Some of the costs were due to the change in pipeline gas quality which could not have been reasonably anticipated at the time of the estimate; pretreatment of the gas is required for liquefaction, therefore the resulting redesign was reasonable.<sup>27</sup> PSE's decision to redesign the pre-liquefaction equipment at a minor overall cost benefited all customers because it addressed the change in gas quality coming from Canada and avoided potential issues with the liquefaction process.<sup>28</sup> Other items, like the increased costs for outside services, were similarly due to factors outside PSE's control. Specifically, some of the costs were related to permitting activities, extended timelines for permits, and supplemental environmental assessments, among others.<sup>29</sup>
19. PSE appropriately re-evaluated the need for the Tacoma LNG Project in 2018, after the unprecedented decision by the Puget Sound Clean Air Agency ("PSCAA") to require a SEIS before the air permit was issued.<sup>30</sup> PSE compared the cost to move forward with the Tacoma LNG Project to the least-cost resource alternative that would meet PSE's peak capacity need. This alternative, which would require the expansion of pipeline capacity from northern British Columbia to PSE's system, was still substantially more costly than the Tacoma LNG Project. Continuing with the Tacoma LNG Facility demonstrated a \$112.5 million benefit to PSE's gas portfolio and was clearly the least cost option.<sup>31</sup>
20. PSE's management approved the decision to proceed and updated its cost estimates based on a modified construction process which accounted for the delays in the air permit and other unforeseen circumstances. The result of the modified construction process was an updated total

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<sup>26</sup> See Roberts, Exh. RJR-1T at 17:6-8 and Exh. RJR-11T at 32:10-19.

<sup>27</sup> See Roberts, Exh. RJR-11T at 31:16 – 32:7; *see also*, Order 24/10 at ¶ 403.

<sup>28</sup> See Roberts, Exh. RJR-11T at 30:1-20.

<sup>29</sup> See Roberts, Exh. RJR-1T at 27:8 to 30:3.

<sup>30</sup> See Roberts, Exh. RJR-1T at 19:8-12.

<sup>31</sup> See Roberts, Exh. RJR-1T at 23:12-26:5; Roberts, Exh. RJR-8C at 76.

cost estimate of \$483 million.<sup>32</sup> The modified construction process approved by the PSE Board of Directors properly adjusted the work schedule based on the circumstances and PSE continued to proceed with the least cost resource.<sup>33</sup>

21. PSE also incurred additional capital costs for outside services due to the extended air permit litigation. PSCAA issued the Final SEIS in March, 2019 and the notice to proceed with construction was issued in December, 2019. A group of appellants, including the Puyallup Tribe, appealed the Final SEIS and the notice of construction (air permit) issued by the PSCAA. PSE ultimately prevailed, with final orders being issued by the Pollution Control Hearings Board (“PCHB”) on November 19, 2021, almost two years after the notice to proceed with construction was issued. The delays caused by the legal maneuvering of the appellants, in large part, is the reason the allowance for funds used during construction (“AFUDC”) and for interest during construction (“IDC”) increased; AFUDC/IDC costs for the Tacoma LNG Facility increased by approximately \$20 million.<sup>34</sup>

22. Due to the delay in issuance of the Final SEIS and the permit, PSE was unable to proceed with certain construction efforts resulting in additional increased capital costs. PSE’s construction contractor, Chicago Bridge & Iron (“CB&I”), had mobilized its employees to the Tacoma LNG Project site, and due to the delay, there was a risk of costs substantially increasing. PSE and CB&I worked together to resolve and soften the likely cost impacts of delay created by the extended PSCAA process. PSE and CB&I agreed on pricing and terms and conditions for a change order necessitated by the delay where PSE agreed to pay a firm price of \$10,837,951 to CB&I, with an approximate \$2 million PSE allowance for escalation and an approximate \$100,000 allowance for additional warranty extensions on key components. PSE projected the delays associated with the PSCAA process would increase the budget for the Tacoma LNG

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<sup>32</sup> See Roberts, Exh. RJR-1T at 26:6-27:2, \$366 million for the Tacoma LNG Facility (\$158 million to PSE), \$39 million for gas distribution upgrades, and \$78 million for AFUDC/IDC; Roberts, Exh. RJR-8C at 58.

<sup>33</sup> See Roberts, Exh. RJR-1T at 26:8-17.

<sup>34</sup> See Roberts, Exh. RJR-1T at 27:8-29:7.

Project by \$56 million from the total approved by the PSE Board of Directors in November of 2017, for a total of \$507 million.<sup>35</sup>

23. PSE's Board of Directors was regularly updated and monitored the budgetary status of the Tacoma LNG Project.<sup>36</sup> The permit and SEIS delay meant that PSE could only construct elements of the Tacoma LNG Facility that were non-emitting, while construction on any emitting elements were on hold until the permit was issued by PSCAA. PSE worked with CB&I to develop estimates for alternative construction scenarios and determined moving forward with construction of non-emitting elements of the Tacoma LNG Project was the most efficient alternative and would avoid further delay after the PSCAA permit was issued.<sup>37</sup> By altering the construction schedule and focusing on elements that could be constructed while the permit necessary for the construction of the emitting elements was tied up, PSE avoided even further delay and increased costs.

24. PSE management evaluated how the Tacoma LNG Plant should be operated and determined the most efficient strategy would be to outsource the operations to NAES. The NAES operating agreement uses a cost-plus model with metric-based performance bonuses.<sup>38</sup> If NAES does not meet certain performance factors, including safety or environmental factors, it will receive a reduced incentive payment or in extreme situations, will be required to pay PSE.<sup>39</sup> PSE has an asset manager that works with NAES to form the annual budget and meets regularly to review operating costs and variances.<sup>40</sup> The operating costs are properly allocated between PSE and Puget LNG consistent with the allocation methodology established in Docket UG-151663.<sup>41</sup>

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<sup>35</sup> See Roberts, Exh. RJR-8C at 95, 99-100.

<sup>36</sup> See Roberts, Exh. RJR-8C at 26-37, 30, 36, 38- 78.

<sup>37</sup> See Roberts, Exh. RJR-1T at 33:16-34:4.

<sup>38</sup> See Roberts, Exh. RJR-1T at 49:10-50: 18.

<sup>39</sup> See Roberts, Exh. RJR-1T at 51:7-16.

<sup>40</sup> See Roberts, Exh. RJR-1T at 51:1-5.

<sup>41</sup> *In the Matter of the Petition of Puget Sound Energy, Inc. for (1) 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*, Docket UG-151663, Order 10 ¶ 112 (October 31, 2016) ("Order 10").



Using NAES has proven to be an efficient operating strategy and PSE built proper operating incentives into the contract.

25. The Commission should allow PSE to recover its costs for the Tacoma LNG Facility because it was the least cost option when PSE made the decision to build, the costs incurred during construction were prudent for a project of this size, and even though construction costs increased due to factors beyond PSE’s control, PSE continued to evaluate whether proceeding with constructing the Tacoma LNG Facility remained the least cost option, which it did.

**2. The Tacoma LNG Facility is Used and Useful**

26. The evidence in this case demonstrates that the Tacoma LNG Facility was used and useful beginning in February 2022, when it began commercial operation. Plant is used and useful under Washington law when it is “employed for service in Washington and capable of being put to use for service in Washington.”<sup>42</sup> The Commission has recognized that “*capacity* is, by itself, a used and useful resource for customers when it is supported by credible forecasts for customer demand.”<sup>43</sup>

27. The un rebutted testimony in this case demonstrates that the Tacoma LNG Facility began commercial operation in February 2022 and has been available to provide peak-shaving to PSE natural gas customers since that time.<sup>44</sup> Indeed, the Commission recognized in Order 24/10 that the Tacoma LNG Facility was “fully commissioned and ready to serve customers.”<sup>45</sup>

28. The ability of the Tacoma LNG Facility to provide natural gas for customers since February 2022 means that it has been a used and useful plant since that time. The Tacoma LNG Facility stood ready to provide natural gas to PSE’s customers when the need arose. All components of the Tacoma LNG Facility were fully operational at that time<sup>46</sup> and testing of the vaporization equipment in January 2022 demonstrated “it was able to vaporize at a rate of 2,750

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<sup>42</sup> *People’s Org. for Wash. Energy Res. v. WUTC*, 101 Wn.2d 425, 430 (1984).

<sup>43</sup> *WUTC v. PSE*, Dockets UE-220066 et al. Order 24/10 ¶ 405 (emphasis in original).

<sup>44</sup> See Roberts, Exh. RJR-11T at 5:14.

<sup>45</sup> *WUTC v. PSE*, Dockets UE-220066 et al. Order 24/10 ¶ 405.

<sup>46</sup> See Roberts, Exh. RJR-11T at 8:18-9:3.

dekatherms (“Dth”) per hour (or 66,000 Dth per day), indicating the equipment worked as designed.”<sup>47</sup> This is consistent with the original design of the Tacoma LNG Facility, which projected the Tacoma LNG Facility would initially provide approximately 69,000 Dth per day (19,000 Dth per day supply diversion and 50,000 Dth per day injection), and, in the future when the need on PSE’s system increased, the “Bonney Lake lateral” would be installed and allow the Tacoma LNG Facility to provide up to 85,000 Dth per day.<sup>48</sup>

29. In light of the above, the Commission should reject the flawed argument that the Tacoma LNG Facility was not fully used and useful in 2022 based on an incorrect theory that it was not able to provide full design capacity.<sup>49</sup> The Commission has rejected similar arguments in the past. For example, with respect to the Lower Snake River Wind Project, the Commission disregarded claims that it was not used and useful because it was not immediately needed to meet load at the time it went into service.<sup>50</sup> As the Commission noted, “in the context of conventional resources, we have allowed resources into rate base before they were needed to meet load.”<sup>51</sup> Here, the fact that in the future, there may be a need for 85,000 Dth per day, which was recognized as a future need at the time the Tacoma LNG Project was designed, does not change the fact that the Tacoma LNG Facility was fully used and useful beginning in February 2022.

30. Not only has the Tacoma LNG Facility been available to meet customer needs, it has provided natural gas to PSE’s customers, a fact the Commission expressed interest in considering in this proceeding.<sup>52</sup> In late January 2023, the Tacoma LNG Facility vaporized natural gas to prepare for and serve PSE’s customers during a cold weather action plan.<sup>53</sup> Again, in late

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<sup>47</sup> Roberts, Exh. RJR-11T at 5:15-19.

<sup>48</sup> See Roberts, Exh. RJR-11T at 8:1-15; RJR-12 7:5-15, 8 n.1.

<sup>49</sup> See Erdahl, Exh. BAE-1CT at 13:11-17:2.

<sup>50</sup> See *WUTC v. PSE*, Docket UE-111048 and UG-111049 (consolidated) Order 08 at ¶¶ 406-418 (May 7, 2012).

<sup>51</sup> *Id.* at ¶ 415 (citing Renewable Resource Policy Statement, Docket UE-100849 at ¶¶ 55-56).

<sup>52</sup> See *WUTC v. PSE*, Dockets UE-220066 et al. Order 24/10 ¶ 405 (“When we review the prudence of costs included in PSE’s 2023 Tacoma LNG tariff filing, the Commission may also consider the extent to which the Facility was used as a peak-shaving resource.”).

<sup>53</sup> See Roberts, Exh. RJR-1T at 40: Table 8 and errata (filed 10/31/23).

February 2023, the Tacoma LNG Facility vaporized gas to serve customers during activation of PSE’s cold weather action plan.<sup>54</sup>

31. Additionally, in late January and early February, PSE vaporized gas to serve customers during the curtailment of the British Columbia Enbridge pipeline, which limited PSE’s gas supply.<sup>55</sup> As set forth in PSE’s Response to Public Counsel Data Request No. 024, provided by Public Counsel as Exh. RLE-8:

PSE implemented Vaporizer gas-injection operations upon being informed of Enbridge’s Westcoast T-South natural gas pipeline system (“T-South system”) experiencing a curtailment on one of two main lines which limited transport capacity to less than 64 percent of capacity. At the time, it was unknown whether further restrictions on both pipelines were imminent, which would limit all gas transport from Canada. PSE placed Tacoma LNG on-line for gas-injection in a preparatory position to buttress system reliability and mitigate any potential trickle-down effects of a full B.C. Pipeline curtailment.<sup>56</sup>

32. This is the type of need that the Tacoma LNG Facility is intended to address, and it demonstrates how the Tacoma LNG Facility benefits customers now and in the future. There should be no dispute that the Tacoma LNG Facility provided peak-shaving to customers as discussed above, and it would be a mistake to limit the definition of peak shaving use to situations that meet “design day criteria” as Public Counsel proposes.<sup>57</sup>

33. As Mr. Roberts testified:

In generalized terms, peak-shaving is the process of adding a non-base loaded resource (i.e. intermittently operated) into the supply system to mitigate unfavorable results from demand-pressured conditions. . . . Peak resources provide buffer room for scenarios where demand (and price) is high, or the supply in the system is low relative to demand.<sup>58</sup>

34. Peak shaving is intended to shore up the stability of the system such that supply equals demand, system pressures are maintained, gas curtailments are prevented, and a loss of gas

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<sup>54</sup> *See id.*

<sup>55</sup> *See id.*; Exh. RJR-11T at 18:15-19:3.

<sup>56</sup> *See* Exh. RLE-8 at 1.

<sup>57</sup> *See* Earle, RLE-1CT at 16:14-18:3.

<sup>58</sup> Roberts, Exh. RJR-11T at 18:3-14.

supply does not occur.<sup>59</sup> Moreover, as the Commission has recognized “[t]he design day standard is intended to ensure a more robust natural gas system that will not run short of resources when they are needed most.”<sup>60</sup> To assume that a resource like the Tacoma LNG Facility would be used only when the design day criteria is met (i.e. 13 degrees F.),<sup>61</sup> would undermine the intent of the standard and the usefulness of the resource.

35. In summary, the Tacoma LNG Facility has been used and useful since February 2022 when it was tested, fully commissioned, and ready to provide gas to PSE’s customers when needed. At that time, the Tacoma LNG Facility was capable of being put to use for service when the capacity need arose.<sup>62</sup> The Tacoma LNG Facility vaporized natural gas to serve PSE’s customers when the need arose—on cold days and when the Enbridge pipeline was curtailed in January and February 2023. It has also provided opportunities for economic dispatch of PSE resources, further benefitting customers.<sup>63</sup>

### 3. PSE Should Be Allowed to Recover Deferred Costs

36. The Commission should authorize recovery of the full deferral that the Commission allowed,<sup>64</sup> and the parties to the Tacoma LNG Settlement agreed to in the 2022 multiyear rate plan.<sup>65</sup> The components of the deferral were set forth in PSE’s accounting petition (“LNG Accounting Petition”),<sup>66</sup> and in the Tacoma LNG Settlement Stipulation.<sup>67</sup> They include operations and maintenance (“O&M”) costs, depreciation, and return on plant balances. In response to questions from the Bench at the evidentiary hearing, PSE clarified that it did not accrue interest or a rate of return on its O&M and depreciation expense while it was being deferred. Once these deferrals are converted to a regulatory asset, however, they will earn a

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<sup>59</sup> See Roberts, Exh. RJR-11T at 18:8-13.

<sup>60</sup> *WUTC v. PSE*, Dockets UE-220066 et al. Order 24/10 ¶ 395.

<sup>61</sup> See Earle, Exh. RLE-1CT at 11:2.

<sup>62</sup> See *People’s Org. for Wash. Energy Res. v. WUTC*, 101 Wn.2d 425, 430 (1984).

<sup>63</sup> Roberts, Exh. RJR-11T at 19:4-16.

<sup>64</sup> *WUTC v. PSE*, Dockets UE-220066 et al. Order 24/10 ¶ 450 (granting PSE’s petition for deferred accounting).

<sup>65</sup> *WUTC v. PSE*, Dockets UE-220066 et al. Order 24/10 App. C, ¶18.A.2 (“PSE will start amortization of deferred Tacoma LNG costs as requested in Docket UG-210918 in the tracker proposed below.”)

<sup>66</sup> Docket UG-210918, Accounting Petition ¶¶ 18-22.

<sup>67</sup> *WUTC v. PSE*, Dockets UE-220066 et al. Order 24/10 App. C, ¶18.D.

return in the same way that other regulatory assets earn a return.<sup>68</sup> This is consistent with the treatment of other deferred costs once they are converted to a regulatory asset and amortized for recovery in rates.<sup>69</sup> This treatment is also uncontested by Staff.<sup>70</sup>

**a. Cases addressing criteria for deferral do not apply, where the right to defer has already been granted by the Commission.**

37. In the LNG Accounting Petition, which the Commission granted,<sup>71</sup> PSE demonstrated a need for all aspects of the deferral. PSE showed that a failure to allow deferral results in earnings erosion,<sup>72</sup> due to the magnitude of the financial investment for a plant that took more than five years to complete and could not be timed to commence operation with the rate effective date in PSE's multiyear rate plan.<sup>73</sup> The evidence presented by PSE witness Susan E. Free in this case further demonstrates that PSE has sustained earnings erosion in 2022, as anticipated, based on the Commission Basis Report filed in 2023.<sup>74</sup>

38. Claims that PSE should not be allowed to defer costs of the Tacoma LNG Facility because it is not an extraordinary circumstance do not apply here where the Commission has already granted PSE's accounting petition and allowed the deferral requested in that petition. Moreover, even if an "extraordinary circumstance" standard were to apply to *recovery* of a deferral, the construction of a \$243 million facility (regulated portion) to meet the needs of PSE's natural gas customers on the coldest days is consistent with prior cases in which the Commission has allowed both deferral and recovery. For example, the Commission has allowed deferral and recovery for: incremental third-party costs relating to compliance with maximum allowable

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<sup>68</sup> See PSE Response to Bench Request No. 4.

<sup>69</sup> See *id.* at 2-3.

<sup>70</sup> See Staff Response to Bench Request No. 7.

<sup>71</sup> *WUTC v. PSE*, Dockets UE-220066 et al., Order 24/10 ¶ 450.

<sup>72</sup> See *In the Matter of the Petition of Puget Sound Energy For an Order Authorizing Deferred Accounting Treatment for Puget Sound Energy's Share of Costs Associated with the Tacoma LNG Facility*, Docket UG-210918, Accounting Petition ¶ 13.

<sup>73</sup> *Id.* ¶ 14.

<sup>74</sup> See Free, Exh. SEF-1T 10:5-10 (citing Docket UG-230209 showing PSE's gas earnings 62 basis points below PSE's authorized rate of return).

operating pressure requirements,<sup>75</sup> costs to offer a fee-free credit card payment program<sup>76</sup> development costs of demand response programs,<sup>77</sup> and costs for Renewable Energy Credit purchases for multiple years and on multiple occasions,<sup>78</sup> to name just a few.

**b. Recovery of the full deferral is appropriate.**

39. There is no reasoned basis to limit the recovery of the deferral, which was authorized by the Commission and agreed to by the Tacoma LNG Settling Parties. As discussed above, the Tacoma LNG Facility has been used and useful since February 2022, when it stood ready to provide natural gas to PSE’s customers as the need arose. For the reasons discussed above, the Commission should reject baseless theories that the Tacoma LNG Facility was not “fully used and useful” from February 2022 through January 2023 and therefore the full deferred amounts corresponding to that time frame should not be allowed in rates.<sup>79</sup>

40. The rebuttal testimony of PSE witness Susan E. Free provides substantial evidence justifying recovery of the deferral as PSE has requested. Ms. Free describes the steps PSE took as a regulated utility to meet the Legislature’s preferred policy outcome to build out LNG refueling stations to reduce vessel emissions and decrease dependence on petroleum-based fuels.<sup>80</sup> While PSE initially proposed to provide this as a regulated service, when the

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<sup>75</sup> See *In the Matter of the Petition of Cascade Natural Gas Corp. For an Accounting Order Authorizing Deferred Accounting Treatment of Expenses Related to the Maximum Allowable Operating Pressure Determination and Validation*, Docket UG-160787 Order 01 (November 10, 2016); *WUTC v. Cascade Natural Gas Corp.*, Docket UG-200568 Order 05 ¶¶ 30-31 (reflecting uncontested adjustment for MAOP deferral).

<sup>76</sup> See *In the Matter of the Petition of Puget Sound Energy For an Order Authorizing Accounting and Ratemaking Treatment of Fees For Payments Made by Residential and Small Business Customers*, Docket UE-160203/UG-160204 Order 01 (March 24, 2016); *WUTC v. PSE*, Dockets UE-170033/UG-170034 Order 08 ¶ 65, Appx A., Appx B at ¶¶ 58-59 (December 5, 2017) (approving uncontested adjustments for payment processing costs).

<sup>77</sup> See *In the Matter of the Petition of Puget Sound Energy For An Accounting Order Authorizing Accounting Treatment of the Development of the Company’s Demand Response Programs*, Docket UE-170277 Order 01 (April 28, 2017) (authorizing deferral for later recover in Schedule 120).

<sup>78</sup> See *In the Matter of the Petition of Pacific Power & Light Co. For An Accounting Order Authorizing Deferral of Costs related to the Purchase of Unbundled Renewable Energy Certificates*, Docket UE-161067 Order 01 (February 9, 2017) (authorizing deferral and recovery of costs); *In the Matter of the Petition of Pacific Power & Light Co. For An Accounting Order Authorizing Deferral of Costs related to the Purchase of Unbundled Renewable Energy Certificates*, Docket UE-143915 Order 01 (December 22, 2016) (authorizing deferral and recovery of costs).

<sup>79</sup> See Erdahl, Exh. BAE-1CT at 13:11-17:2.

<sup>80</sup> See RCW 80.28.280 (“The legislature declares that the development of compressed natural gas and liquefied natural gas motor vehicle refueling stations and vessel refueling facilities are in the public interest.”).

Commission and other parties rejected such an approach, PSE worked for 15 months with the Commission and parties to Docket UG-151663 to find an acceptable approach to support the important public policy of providing marine vessel fueling stations.<sup>81</sup> Ultimately, PSE agreed to form an unregulated affiliate to provide this service, which no party opposed. However, that should in no way diminish the extraordinary steps PSE took as a regulated company to find a way to meet this important state policy goal. Nor should the achievement of addressing this important public policy be assigned solely to an unregulated subsidiary<sup>82</sup> when it is the creation of this very corporate structure that allowed the public policy objectives to be met. In light of this history, testimony from Commission Staff that PSE should not be allowed to recover its full deferred return<sup>83</sup> should be rejected.

41. Additionally, as Ms. Free testified in rebuttal,<sup>84</sup> PSE has been allowed to recover deferred costs for several large generating plants in prior cases.<sup>85</sup> Generally, the deferrals were due to a timing difference between the commercial operation dates of the plants and the dates the plant cost would go into rates, similar to the case here. For example, in PSE's 2010 general rate case, the Commission approved deferral of PSE's capital costs, return on the capital costs, and operating expenses related to the Mint Farm natural gas-fired generating plant and the Wild Horse Expansion wind facility, and recovery was allowed without opposition.<sup>86</sup>

42. It is also important to recognize that other, more expensive, alternatives to providing for PSE's peak needs would include a return. As Ms. Free testified:

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<sup>81</sup> See Free, Exh. SEF-4Tr 5:13-7:18 (citing Docket UG-151663 Order 10 ¶43 that "the Commission provided parties the opportunity to explore alternative corporate structures and business models within the scope of the Commission's authority that would enable PSE to proceed with the development of the Tacoma LNG Facility.").

<sup>82</sup> See Erdahl, Exh. BAE-1CT at 11:14-20.

<sup>83</sup> See *id.*

<sup>84</sup> See Free, Exh. SEF-4Tr 9:4-10:14.

<sup>85</sup> See, e.g., *WUTC v. Puget Sound Energy*, Docket UE-111048 Order 08 ¶ 322 (May 7, 2012) (allowing recovery of deferred costs for Lower Snake River wind farm deferred in Docket UE-100882); *WUTC v. Puget Sound Energy*, Dockets UE-090704 and UG-090705 Order 11 (Apr. 10, 2010) (allowing recovery of deferred costs for Mint Farm generating station and Wild Horse Expansion).

<sup>86</sup> See *WUTC v. Puget Sound Energy*, Order 11, Dockets UE-090704 and UG-090705 at ¶¶ 237-238, 242 (Apr. 10, 2010) (allowing deferral and recovery of deferred costs including a return on rate base but denying recovery of additional carrying costs).

[H]ad PSE elected the alternative of acquiring additional gas pipeline transmission capacity to satisfy PSE's peak day needs (a more costly alternative), rather than choosing the Tacoma LNG Facility including its return, the cost of that pipeline capacity would have been included in PSE's Purchased Gas Adjustment ("PGA") mechanism, which includes a deferral component for collection from customers in a future PGA period. Therefore, it is appropriate to allow deferral of the costs and return associated with PSE's share of the Tacoma LNG facility, which will be used to satisfy peak day needs as the deferral treatment is in line with current business practice for the alternative resources over which the LNG facility was selected. Additionally, had PSE contracted for capacity instead of investing in the Tacoma LNG Facility, the contracted rate would have been the counterparty's total cost rate which would have included a rate of return for the counterparty. Finally, not allowing deferral of these costs and return would signal that uneven financial incentives exist between alternatives for meeting the same capacity need.<sup>87</sup>

43. In summary, the Commission has authority to order recovery of the deferred costs, including the deferred return, for the Tacoma LNG Facility, a point no party disputes. As discussed above, and shown by the evidence in this case, it is consistent with prior practice to allow full recovery of the O&M, depreciation and return deferrals, including the rate base treatment that occurs with the creation of a regulatory asset for the deferred O&M and depreciation expense. The Tacoma LNG Facility has been an available natural gas resource for customers since it was put into service in February 2022. Moreover, it is not always possible to align the in-service date for long-lead time plant investments with rate effective dates, and a failure to allow recovery for a portion of the investment can exacerbate the earnings erosion that PSE has demonstrated is occurring. For these reasons, the Commission should authorize PSE to recover the full deferred costs associated with the Tacoma LNG Facility.

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<sup>87</sup> Free, Exh. SEF-4Tr at 10:18-11:13.



**4. PSE’s Costs for the Four-Mile Pipeline Segment Were Prudent and Properly Allocated**

**a. PSE’s cost allocation methodology for the four-mile pipeline segment is based on cost causation.**

44. As described by PSE witness, Mr. Roberts, the Tacoma LNG Project included, among other things, “improvements to PSE’s gas distribution system needed to integrate the Tacoma LNG Facility into PSE’s gas system.”<sup>88</sup> Specifically, these gas distribution system improvements included: a pressure increase on an existing section of pipe and construction of the Golden Givens Limit Station; modifying the existing Frederickson Gate Station; and adding approximately four miles of piping.<sup>89</sup> Only costs of the four miles of piping are at issue in this proceeding, and as described by PSE witness, Mr. Donahue, the four-mile pipeline segment is “used to supply natural gas to the Tacoma LNG Facility for liquefaction and to transport vaporized natural gas from the Tacoma LNG Facility to customers in the Tacoma area of the PSE distribution system.”<sup>90</sup>

45. PSE could have considered separate pipeline facilities for delivering gas to and from the Tacoma LNG Facility but instead, “PSE determined that the pipeline needed to deliver PSE’s large volume of vaporized gas could, with appropriate upgrades and service limitations, also deliver the PSE and Puget LNG volumes of feed gas.”<sup>91</sup> The four-mile pipeline segment was therefore “designed and built to be operated as a bidirectional pipeline, effectively getting two pipelines for only slightly more than the cost of one.”<sup>92</sup> The bidirectional functionality of the four-mile pipeline segment is possible because there is compression on both ends of the segment.<sup>93</sup>

46. In Order 24/10, the Commission noted that this four-mile pipeline segment accounted for a majority of the Tacoma LNG distribution costs (\$30 million out of \$46.4 million not including

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<sup>88</sup> Roberts, Exh. RJR-1T at 3:16-23.

<sup>89</sup> See Donahue, Exh. WFD-1T at 3 n. 3.

<sup>90</sup> Donahue, Exh. WFD-1T at 3:1-5.

<sup>91</sup> Donahue, Exh. WFD-1T at 2:15-17.

<sup>92</sup> Donahue, Exh. WFD-5T at 2:19-21.

<sup>93</sup> See Donahue, Exh. WFD-5T at 4:1-9.

AFUDC), and that it was placed into service in 2017.<sup>94</sup> The Commission also found that although there was agreement that the cost of the four miles of distribution line should not be borne solely by core customers, it was not clear how PSE would recover the shared costs of this distribution plant from Puget LNG.<sup>95</sup> The Commission allowed PSE to recover the costs of the four-mile segment in rates on a provisional basis and required that issues regarding the appropriate allocation and method of recovery of those costs be addressed when PSE requested recovery of the Tacoma LNG Facility costs.<sup>96</sup>

47. The methodology for determining the factors that would be used to allocate the costs of the bidirectional four-mile pipeline segment that should be paid by Puget LNG versus core customers was developed by PSE witness, Mr. Donahue, using cost causation principles. The first step in Mr. Donahue's analysis was to examine how the bidirectional four-mile pipeline segment would be used. He determined:

[T]he four-mile segment can be used to deliver 21,400 Dth/day of natural gas *to* the Tacoma LNG Facility and, at other times, to deliver 66,000 Dth/day of natural gas *from* the Tacoma LNG facility to other portions of the PSE distribution system.<sup>97</sup>

48. A 12-inch pipeline would have been adequate to deliver 21,400 Dth per day to the Tacoma LNG Facility, but a 16-inch pipeline was needed to deliver 66,000 Dth per day from the Tacoma LNG Facility.<sup>98</sup> The estimated cost of the four-mile pipeline segment was \$27.4 million<sup>99</sup> and the estimated cost difference between constructing four miles of 12-inch pipeline and four miles of 16-inch pipeline was approximately \$4.1 million or 15 percent of the

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<sup>94</sup> See Order 24/10 at ¶ 406 n. 788.

<sup>95</sup> See Order 24/10 at ¶ 408.

<sup>96</sup> See Order 24/10 at ¶ 410.

<sup>97</sup> Donahue, Exh. WFD-1T at 6:6-9 (emphasis in original); see also Donahue, Exh. WFD-5T at 4:1 – 5:4 (the cost allocation methodology functionalizes the bidirectional four-mile segment into two uses, inbound and outbound; only outbound use needed the 16-inch pipe, so the cost differential is attributed to outbound use and the remaining cost is split in half and attributed equally to inbound use and outbound use).

<sup>98</sup> See Donahue, Exh. WFD-1T at 6:10-13.

<sup>99</sup> See Donahue, Exh. WFD-3 at (Upgrade 1).

total.<sup>100</sup> Mr. Donahue allocated 100 percent of the cost differential (\$4.1 million) to PSE because PSE needed the 16-inch pipeline to be able to deliver 66,000 Dth per day from the Tacoma LNG Facility to the PSE distribution system.<sup>101</sup> The remaining 85 percent of the costs (\$23.3 million) represents the common portion of the four-mile pipeline segment and was split evenly between the dual uses of delivering natural gas to the Tacoma LNG Facility for liquefaction (for both PSE and Puget LNG) and delivering natural gas from the Tacoma LNG Facility to the PSE distribution system (for only PSE).<sup>102</sup> One-half, or \$11.65 million, was allocated to use of the bidirectional four-mile pipeline segment to deliver natural gas to the Tacoma LNG Facility and attributed by Mr. Donahue in accordance with the settlement approved by the Commission in Docket UG-151663 whereby liquefaction facilities are allocated 90 percent to Puget LNG and 10 percent to PSE. The remaining \$11.65 million of the common costs that were allocated to use of the bidirectional four-mile segment to deliver natural gas from the Tacoma LNG Facility were attributed 100 percent to PSE because PSE is the only entity that needs, or has a right, to deliver gas from the Tacoma LNG Facility.<sup>103</sup>

49. It was reasonable and appropriate to split the cost of the common portion of the bidirectional four-mile pipeline segment evenly between its use for inbound deliveries and its use for outbound deliveries.<sup>104</sup> PSE could have built two pipelines instead of one bidirectional pipeline. If two pipelines had been built, the cost of the inbound 12-inch pipeline would have been borne by PSE and Puget LNG while PSE would have borne the entire cost of the outbound 16-inch pipeline.<sup>105</sup> PSE's methodology achieves the same result but the costs of the bidirectional four-mile pipeline segment are less than two four-mile pipeline segments.<sup>106</sup> In addition, PSE's cost allocation methodology is consistent with Table 4 of WAC 480-85-060

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<sup>100</sup> See Donahue, Exh. WFD-1T at 7:8-9; see also Donahue, Exh. WFD-3 (**Upgrade 1**).

<sup>101</sup> See Donahue, Exh. WFD-1T at 7:9-16.

<sup>102</sup> See Donahue, Exh. WFD-3 (**Upgrade 1**).

<sup>103</sup> See Donahue, Exh. WFD-1T at 6:15 – 7:4; see also Donahue, Exh. WFD-3 (**Upgrade 1**).

<sup>104</sup> See Donahue, Exh. WFD-5T at 4:11- 5:5; see also Donahue TR 82:13-83:23.

<sup>105</sup> See Donahue, Exh. WFD-5T at 2:7-14.

<sup>106</sup> See Donahue, Exh. WFD-5T at 2:19-21.

which requires “direct assignment of distribution mains to a single customer where practical.” Costs for inbound use of the bidirectional four-mile pipeline segment were directly assigned to PSE and Puget LNG; and costs for outbound use were directly assigned to PSE. PSE was allocated \$16,920,000 (61.8 percent) and Puget LNG was allocated \$10,480,000 (38.3 percent) of the costs of the bidirectional four-mile pipeline segment.<sup>107</sup>

50. PSE’s methodology for allocating the costs of the bidirectional four-mile pipeline segment is well documented in this proceeding. The methodology was fully explained in the Prefiled Direct Testimony of Mr. Donahue<sup>108</sup> as well as in Mr. Donahue’s Prefiled Rebuttal Testimony.<sup>109</sup> In addition, PSE witness, Mr. Taylor, provides support for PSE’s functionalization of the bidirectional four-mile pipeline segment, the first step in PSE’s allocation methodology. Mr. Taylor testified that functional analyses “determine what portion of a plant facility or set of plant costs relates to the provision of different services by the utility,” and allow “for a more accurate treatment of the underlying costs for recovery from different customers.”<sup>110</sup> Mr. Taylor testified further that it was “necessary” to functionalize the costs of the bidirectional four-mile pipeline segment “between costs to provide the connection with the Tacoma LNG Facility for peak shaving and costs to provide gas to Puget LNG.”<sup>111</sup> Mr. Taylor also testified that the approach PSE took in functionalizing the bidirectional four-mile pipeline segment “is consistent with the guidance provided by the Commission’s General Order R-599” and “should be relied upon for ratemaking purposes.”<sup>112</sup>

51. Using faulty assumptions and flawed methodologies, witnesses for Commission Staff and Public Counsel dispute PSE’s methodology for allocating costs of the bidirectional four-mile pipeline segment and propose their own methodologies. Consistent with PSE’s methodology, Commission Staff and Public Counsel accept that the cost difference between constructing four

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<sup>107</sup> See Donahue, Exh. WFD-1T at 7:16-19; *see also* Donahue Exh. WFD-3 (**Upgrade 1**).

<sup>108</sup> See Donahue, Exh. WFD-1T at 4:6 – 7:21; Exh. WFD-3.

<sup>109</sup> See Donahue, Exh. WFD-5T 2:3 – 5:15.

<sup>110</sup> Taylor, Exh. JDT-8T at 12:11-16.

<sup>111</sup> Taylor, Exh. JDT-8T at 15:8-11.

<sup>112</sup> Taylor, Exh. JDT-8T at 15:16-19.

miles of 12-inch pipeline and four miles of 16-inch pipeline, \$4.1 million, should be allocated 100 percent to PSE.<sup>113</sup> The similarities between PSE’s methodology and Staff’s methodology or Public Counsel’s methodology end there. Commission Staff and Public Counsel start their analysis with the incorrect belief that PSE is constrained from using the bidirectional four-mile pipeline segment to move gas from the Tacoma LNG Facility to the PSE distribution system for more than 10 days per year. This results in Commission Staff concluding the bidirectional four-mile pipeline is used 8 percent of the year to transport gas from the Tacoma LNG Facility and 92 percent of the year to transport gas to the Tacoma LNG Facility.<sup>114</sup> Public Counsel simply divides 10 days into 365 days and concludes PSE’s use of the bidirectional four-mile pipeline segment for delivery from the Tacoma LNG Facility is less than 3 percent.<sup>115</sup> Staff’s proposal allocates \$19.29 million, or 70.4 percent, of the capital costs of the bidirectional four-mile pipeline segment to Puget LNG and \$8.11 million, or 29.6 percent, of the capital costs to PSE, shifting \$8.81 million of capital costs from PSE to Puget LNG, as compared to PSE’s allocation methodology.<sup>116</sup> Public Counsel proposes an overall allocation of the bidirectional four-miles of 16-inch pipeline of not “more than 25.6 percent to PSE and 74.4 percent to Puget LNG,”<sup>117</sup> shifting at least \$9.9 million of capital costs from PSE to Puget LNG as compared to PSE’s methodology for calculating the overall allocation factor.

52. Commission Staff’s and Public Counsel’s claims that PSE is limited to using the bidirectional four-mile pipeline segment on only 10 days of the year are wrong. The PSCAA air permit limits use of the vaporizer to 240 hours per year (not 10 days) but it does not limit use of the four-mile pipeline segment. Indeed, the four-mile pipeline segment is used to deliver boil-off gas (“BOG”) to PSE’s distribution system every day that liquefaction does not occur; under

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<sup>113</sup> See Erdahl, Exh. BAE-1CT at 24:8-10; Exh. RLE-1T at 30:9-13.

<sup>114</sup> See Erdahl, Exh. BAE-1CT at 25:3-9.

<sup>115</sup> See Earle, Exh. RLE-1CT at 8-12 (10 days divided by 365 days is 2.7 percent).

<sup>116</sup> See Erdahl, Exh. BAE-1CT at 24:3-5 and 26:1-7.

<sup>117</sup> Earle, Exh. RLE-1CT at 13-21.

current operating conditions, that use is more than 120 days per year.<sup>118</sup> In addition, and importantly, PSE has a preemptive right to use the full outbound capacity of the four-mile pipeline segment.<sup>119</sup> In fact, as demonstrated in PSE's testimony, this preemptive right is the reason the four-mile pipeline segment was sized to meet PSE's peak demand requirements.<sup>120</sup> Not being able to use the four-mile pipeline segment when it is needed to meet peak demand would have made the Tacoma LNG Facility an unreliable peak shaving resource, effectively eliminating its purpose to serve core customers.

53. Another flaw in the cost allocation methodologies proposed by Commission Staff and Public Counsel is that they are not based on cost causation principles. Commission Staff's methodology assumes the four-mile pipeline segment will be used to deliver the full volume of 21,400 Dth per day on 355 days of the year and 66,000 Dth per day on 10 days of the year, effectively a 100 percent load factor. As Mr. Taylor explains this is not a common cost allocation methodology in Washington or elsewhere in the United States. Moreover, it ignores the fact that the four-mile pipeline segment is used to flow peak-shaving volumes and BOG from the Tacoma LNG Facility to PSE's distribution system on any day the Tacoma LNG Facility is not liquefying.<sup>121</sup> Although Public Counsel claims its methodology reflects cost causation related to use of the four-mile pipeline segment,<sup>122</sup> in reality it is based solely on Public Counsel's misperception that the air permit limits use of the four-mile pipeline segment to 10 days per year and ignores actual use of the four-mile pipeline segment.<sup>123</sup> PSE's 50/50 allocation of the common capital costs of the four-mile pipeline segment results from the only allocation methodology presented in this proceeding that is supported by actual facts. As such, it should be used for purposes of calculating the overall allocation factor used to determine the amount of

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<sup>118</sup> See Donahue, Exh. WFD-5T at 7:10-14.

<sup>119</sup> See Donahue, Exh. WFD-5T at 8:7-15; see also PSE Response to Bench Request No. 2 (1)-(3).

<sup>120</sup> See Donahue, Exh. WFD-5T at 6:14 – 7:1; see also PSE Response to Bench Request No. 2 (1)-(3).

<sup>121</sup> See Taylor, Exh. JDT-8T at 20:3-17.

<sup>122</sup> See Earle, Exh. RLE-1CT at 30:6-7 and 14-18.

<sup>123</sup> See Taylor, Exh. JDT-8T at 18:19 – 19:22.

revenues that Puget LNG and PSE's sales customers should contribute to the revenue requirement recovered for the four-mile pipeline segment. Accordingly, PSE's proposed assignment of 38.25 percent of the revenues in Schedule 141D to the Exclusive Interruptible customer class,<sup>124</sup> of which Puget LNG is the only customer, should be approved.

**b. PSE properly applied its line extension policy to Puget LNG's use of the distribution system upgrades, including the four-mile pipeline segment.**

54. Once PSE had determined the appropriate allocation of costs of the bidirectional four-mile pipeline segment, PSE applied its Commission-accepted line extension policy to determine whether Puget LNG was required to make an upfront "customer payment" or "contribution in aid of construction" ("CIAC") for its use of the distribution system upgrades. The PSE line extension policy compares the capital cost of distribution system upgrades necessary to provide service to a new customer to the capital cost recovery portion of revenues earned from the expected service to that customer. If the capital costs are greater than the capital cost recovery from the customer, the customer is required to make an upfront customer payment or CIAC.<sup>125</sup> PSE's calculation showed that the capital cost recovery expected from Puget LNG was greater than the capital costs attributable to service to Puget LNG, therefore, an upfront customer payment was not required.<sup>126</sup>

55. Commission Staff recommended that PSE be required to recalculate the line extension calculation using the costs of the four-mile pipeline segment Commission Staff believed should be allocated to Puget LNG.<sup>127</sup> According to Commission Staff, if the recalculation would show that Puget LNG is required to make an upfront customer payment or CIAC, PSE would need to adjust the amount of booked plant by the value of the contribution.<sup>128</sup> In that circumstance,

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<sup>124</sup> See Taylor, Exh. JDT-4 at 3, column (e) line 11.

<sup>125</sup> See Donahue, Exh. WFD-1T at 8:13-19; see also Taylor, Exh. JDT-8T at 6:4 to 10:5 (discussing the role and application of line extension policies).

<sup>126</sup> See Donahue, Exh. WFD-1T at 9:5-12.

<sup>127</sup> See Erdahl, Exh. BAE-1CT at 26:11-13.

<sup>128</sup> See Erdahl, Exh. BAE-1CT at 27:10-12.

Commission Staff recommends that PSE refund the difference between the rates it has provisionally collected and the rates that would result from booked plant adjusted to reflect the costs of the four-mile pipeline segment derived under Commission Staff's allocation methodology.<sup>129</sup>

56. As described above, PSE's testimony in this proceeding demonstrates that Commission Staff's proposed methodology for allocating capital costs of the four-mile pipeline segment is factually flawed and not based on cost causation principles. The resulting capital costs of the four-mile pipeline segment that Commission Staff would allocate to PSE's core customers and Puget LNG are just as flawed. Therefore, the Commission should not require PSE to recalculate the line extension calculation using the erroneous cost of the four-mile pipeline segment that Commission Staff would allocate to Puget LNG.

57. In claiming that PSE should recalculate the line extension calculation and adjust its plant accounts accordingly, Commission Staff is confusing two regulatory processes, cost allocation and line extension. As testified by Mr. Taylor, a line extension calculation is made when the incremental facilities are considered and first needed for the provision of utility service. If a customer increases its annual throughput or uses the facilities at a higher load factor, the utility does not have a mechanism to go back and allocate more costs to that customer's use than was modeled in the initial cost allocation calculation.<sup>130</sup> Indeed, under the terms of PSE's line extension policy on file with the Commission and under which PSE determined Puget LNG was not required to provide a CIAC, PSE is not authorized to recalculate or true-up its CIAC calculation, after the fact, in the event a customer's actual usage of PSE's facilities differs from the projected use PSE utilized in the CIAC calculation.<sup>131</sup> Moreover, in Exh. WFD-6, Mr. Donahue modeled seven scenarios of hypothetical annual usage of the four-mile pipeline

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<sup>129</sup> See Erdahl, Exh. BAE-1CT at 27:16-19.

<sup>130</sup> See Taylor, Exh. JDT-8T at 21:3-20.

<sup>131</sup> See Rule No. 6: Extension of Distribution Facilities, Puget Sound Energy Natural Gas Tariff, Rules and Regulations, Effective January 13, 2017.



segment by PSE and Puget LNG and applied the Commission preferred peak and average cost allocation methodology.<sup>132</sup> The resulting hypothetical allocation factors range from 37.1 percent to 39 percent which further supports the 38.3 percent allocation to Puget LNG that was used in the CIAC calculation and used by Mr. Taylor for developing the cost of service for Schedule 88T.<sup>133</sup> As Mr. Taylor testified, since PSE’s line extension calculation was appropriately calculated and applied, Staff’s recommendation to require PSE to recalculate the line extension, adjust PSE’s plant balances, and provide refunds to PSE’s ratepayers should be rejected.<sup>134</sup>

#### **5. PSE’s Legal Costs Were Prudent and Properly Allocated**

58. The Tacoma LNG Facility was extensively litigated through the development, permitting, and construction phases. Almost every major permit for the Tacoma LNG Facility was challenged once it was issued. Although PSE has ultimately prevailed on every legal challenge to the Tacoma LNG Facility permits and construction, its costs were higher than initially expected because of the aggressive opposition legal strategy.

59. The Commission is aware of the extensive nature of the legal proceedings involving the Tacoma LNG Facility. In the 2022 GRC Order 24/10, the Commission noted it is “not credible for the Tribe to challenge PSE’s recovery of litigation costs in this proceeding when PSE has so far prevailed on the vast majority of issues raised by the Tribe in other forums.”<sup>135</sup> Although the Tribe and Public Counsel once again are targeting PSE’s legal costs, PSE’s legal costs defending the permits have been necessary, reasonable, and successful. It would be wrong to disallow or discount PSE’s legal expenses, which increased significantly because of the many challenges brought by the intervenor in this case, particularly when has PSE repeatedly prevailed in those legal challenges.

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<sup>132</sup> See Donahue, Exh. WFD-6; *see also* Exh. WFD-5T at 11:20 – 13:2 (explaining the modeling in Exh. WFD-6).

<sup>133</sup> See Donahue, Exh. WFD-5T at 12:22 – 13:2; *see also* Exh. WFD-6.

<sup>134</sup> See Taylor, Exh. JDT-8T at 22:5-17.

<sup>135</sup> Order 24/10 at ¶ 420.

60. After PSE's Board of Directors made the decision to build the Tacoma LNG Facility, the primary legal challenge was to the PSCAA air permit. The extent of the legal expenses for a specific challenge may vary, but here, some of the challenges were particularly technical in nature because of the environmental and air permit determinations involved.<sup>136</sup> The litigation regarding the air permit was broad in scope and involved multiple challenges in different forums simultaneously. The Tribe and other parties appealed the air permit issued by PSCAA and the SEIS itself. In total, over forty issues were raised, 140 hours of depositions taken, 1,500 exhibits to the record were filed, resulting in a ten day hearing requiring testimony from nineteen different witnesses on technical and scientific principles.<sup>137</sup> The PCHB issued two orders, PCHB Decision 11447 and PCHB Decision 11448 upholding the permit, which were then appealed.<sup>138</sup> By any measure, this was an aggressively litigated set of issues, and PSE's response was necessary, and directly responsive to the issues and tactics used by opponents of the Tacoma LNG Project. PSE's legal spend was largely driven by the Tribe and its litigation strategy to challenge the permits on a wide range of issues, which the PCHB ultimately did not find persuasive. This broad strategy substantially increased PSE's legal costs. PSE successfully responded to every legal challenge to the Tacoma LNG Facility's permits thus far.<sup>139</sup>

61. PSE properly accounted for and billed its legal costs for the Tacoma LNG Project. The legal costs related to the Tacoma LNG Project, both internal and external, are set forth in the record.<sup>140</sup> PSE witness Susan E. Free testified that the legal costs were reasonable and appropriate;<sup>141</sup> in providing this testimony, she relied on and consulted with PSE's internal legal team as well as witnesses and others familiar with the work done and issues litigated,<sup>142</sup> just as she routinely does when testifying about costs in PSE rate proceedings before the

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<sup>136</sup> See Free, Exh. SEF-4Tr at 19:1-19.

<sup>137</sup> See Roberts, Exh. RJR-1T at 27:17-28:14.

<sup>138</sup> See Roberts, Exh. RJR-1T at 28:10-20.

<sup>139</sup> PSE is awaiting one decision from the court of appeals.

<sup>140</sup> See Earle, Exh. RLE-12.

<sup>141</sup> See Free, Exh. SEF-4Tr at 23:10-12; see also Roberts, Exh. RJR-1T at 27:8-29:7 and Exh. RJR-11T at 50:14-55:17; Taylor, Exh. JDT-8T at 23:2-25:5.

<sup>142</sup> See Free, TR 116:19 -117:11; 117:21-118:6; 119:2-13.

Commission.<sup>143</sup> PSE’s internal and external legal costs are tied to specific projects and categories.<sup>144</sup> Once the decision to build was made, PSE’s internal legal costs and external legal costs attributable to the Tacoma LNG Project were charged to a “legal” cost category for the Tacoma LNG Project as is done for other capital projects.<sup>145</sup> PSE properly allocated legal costs in accordance with Order 10 in Docket UG-151663. PSE attorneys also kept apprised of the legal activities regarding the Tacoma LNG Project, and monitored outside legal counsel handling the various permit appeals or other issues that could not be handled by PSE’s small internal legal staff based on capacity limitations or areas of expertise.<sup>146</sup> PSE maintained accurate records of its legal spend and contrary to Public Counsel’s testimony, any inference of record anomalies are not based in fact.<sup>147</sup> Further, Public Counsel’s request for a general audit of all PSE’s legal costs is outside the scope of this proceeding and should be rejected by the Commission.

**B. PSE’s Post-Decision-to-Build Actions Were Prudent**

62. As described above, in Order 24/10, the Commission found that “PSE acted prudently in developing and constructing the Tacoma LNG Facility up through the initial decision to authorize construction of the facility on September 22, 2016” and that later-incurred construction and operation costs could be reviewed in a future proceeding.<sup>148</sup> After September 22, 2016, PSE continued to update its gas resource need and in 2018, PSE performed a comprehensive re-evaluation of the Tacoma LNG Project. These analyses demonstrated that PSE continued to need the Tacoma LNG Facility and supported PSE’s decision to complete construction.

**1. PSE’s Updates of Its Gas Resource Need Were Prudent**

63. In Order 24/10, the Commission found that PSE had “demonstrated a need for the Tacoma LNG Facility at least through the initial decision to build the facility on September 22,

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<sup>143</sup> See Free, TR 116:19-117:11.

<sup>144</sup> See Free, Exh SEF-4Tr at 14:13-19.

<sup>145</sup> See Free, Exh SEF-4Tr at 16:13-15.

<sup>146</sup> See Free, Exh SEF-4Tr at 17:1-19.

<sup>147</sup> See Free, Exh. SEF-4Tr at 14:13-19, 21:15-22:3; Taylor, Exh. JDT-8T at 23:2-25:5.

<sup>148</sup> Order 24/10 at ¶ 449; see also *id.* ¶¶ 473, 497.

2016.”<sup>149</sup> The Commission also found that “PSE reasonably relied on its forecasts for gas demand, which showed a need for an LNG peak-shaving facility,”<sup>150</sup> and that PSE had adequately considered alternatives to the Tacoma LNG Facility.<sup>151</sup>

64. In his Prefiled Direct Testimony, Mr. Roberts explained that PSE updated its natural gas resource analysis in its 2017 Integrated Resource Plan (“IRP”),<sup>152</sup> its 2019 IRP Progress Report,<sup>153</sup> and its 2021 IRP.<sup>154</sup> In the 2021 IRP, the Tacoma LNG Facility was shown as an existing resource because “the facility is currently under construction and anticipated to be in service and available late in the winter of 2021-22.”<sup>155</sup>

65. In Order 24/10, the Commission stated that it found arguments challenging PSE’s forecasting methods “unpersuasive.”<sup>156</sup> As described by Mr. Roberts, PSE used the same load forecasting techniques and methods to analyze the need for natural gas resources throughout the time-period it was developing and constructing the Tacoma LNG Facility.<sup>157</sup> The Commission should find that PSE demonstrated a need for the Tacoma LNG Facility up through the 2021 IRP, when the Tacoma LNG Facility was included as part of the natural gas resource stack, and that PSE’s decision to continue constructing the Tacoma LNG Facility was prudent.

## **2. Public Counsel’s Claims Related to PSE’s Design Day Standard Are Meritless**

66. Public Counsel claims that all post-September 2016 costs for the Tacoma LNG Facility should be disallowed based on PSE’s use of the design day standard to determine gas resource need.<sup>158</sup> More specifically, Public Counsel claims that PSE “uses the design day standard to

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<sup>149</sup> Order 24/10 at ¶ 394.

<sup>150</sup> Order 24/10, ¶ 394; *see also id.* ¶¶ 395-399.

<sup>151</sup> *See* Order 24/10, ¶ 412; *see also id.* ¶¶ 413-416.

<sup>152</sup> *See* Roberts, Exh. RJR-1T at 12:13 – 13:4; *see also* Roberts, Exh. RJR-5 at 4-5.

<sup>153</sup> *See* Roberts, Exh. RJR-1T at 13:7-14; *see also* Roberts, Exh. RJR-6 at 4-6.

<sup>154</sup> *See* Roberts, Exh. RJR-1T at 14:3-4; *see also* Roberts, Exh. RJR-7 at 6.

<sup>155</sup> Roberts, Exh. RJR-1T at 14:5-7; *see also* Roberts, Exh. RJR-7 at 6, n. 5.

<sup>156</sup> *See* Order 24/10 at ¶ 394.

<sup>157</sup> Roberts, Exh. RJR-1T at 14:12-14.

<sup>158</sup> Earle, Exh. RLE-1CT at 8:13 – 15:9.

dismiss actual outcomes in weather and demand as irrelevant”<sup>159</sup> and that PSE’s “design day standard was outdated by 2016...”.<sup>160</sup> As described below, neither of these claims is true. Moreover, in Order 24/10, the Commission endorsed PSE’s design day standard as “intended to ensure a more robust natural gas system that will not run short of resources when they are needed most.”<sup>161</sup> The Commission also stated that it “agree[d] with PSE that it appropriately based planning decisions on its design day standard[.]”<sup>162</sup>

67. Contrary to Public Counsel’s claim that PSE uses the design day standard to dismiss actual weather outcomes, PSE showed in Mr. Roberts’ testimony that it adjusts its forecast to reflect weather. Figure 1 at page 12 of Exh. RJR-11T compares PSE’s weather-normalized actual maximum day sales volumes to its net design peak forecasts. As Mr. Roberts testified, PSE adjusted for actual maximum day sales when it developed subsequent forecasts by adjusting the subsequent starting points either higher or lower.<sup>163</sup>

68. Public Counsel’s claim that PSE’s design day standard was outdated in 2016 is false. The Commission stated in its letter acknowledging PSE’s 2017 IRP that PSE’s “2017 Electric and Natural Gas IRP complies with the statute and rules governing IRPs...”<sup>164</sup> In addition, the Commission found PSE’s analysis of its resource needs over the 20-year planning horizon “generally comprehensive,” and the Commission was “satisfied with the scope of analysis and overall presentation.”<sup>165</sup> Further, PSE’s 2021 IRP confirmed that: (1) PSE’s gas planning standard is based on reliability and safety and is in line with industry best practices; and (2) the results of the 2021 IRP analysis show that lower demand, which may result from a revised peak day planning standard, would not change the resource alternatives needed to serve future

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<sup>159</sup> Earle, Exh. RLE-1CT at 9:1-2.

<sup>160</sup> Earle, Exh RLE-1CT at 9:3-4.

<sup>161</sup> See Order 24/10 at ¶ 395; see also ¶ 419 (“we agree with PSE that it appropriately based planning decisions on its design day standard...”).

<sup>162</sup> Order 24/10 at ¶ 419.

<sup>163</sup> See Roberts, Exh. RJR-11T at 13:3-5.

<sup>164</sup> See Dockets UE-160918 & UG-160919, Correction to WUTC’s Attachment to its Letter Acknowledging PSE’s 2017 Electric and Natural Gas IRP, Att. at 1 (June 19, 2018).

<sup>165</sup> *Id.* Att. at 5.

loads.<sup>166</sup> Use of the peak gas design day was accepted by the Commission in PSE’s 2017 IRP and confirmed in PSE’s 2021 IRP; it was therefore, not “outdated by 2016” as claimed by Public Counsel.

69. Other claims regarding the design day standard made by Public Counsel were addressed in the Prefiled Rebuttal Testimony of Ronald J. Roberts. For example, Mr. Roberts showed that Public Counsel’s allegation that the Commission found the data underlying PSE’s 52 heating degree day (“HDD”) analysis dated was at best misleading. Instead, the Commission was commending PSE for its work related to the design day peak.<sup>167</sup> As another example, Mr. Roberts responded to Public Counsel’s testimony that compared a \$182 million 50-year cost metric to a \$15.1 million 1-year benefit metric. Mr. Roberts testified that since those metrics bear no relationship to one another, Public Counsel’s testimony is simply not relevant.<sup>168</sup> Public Counsel’s claim that “PSE has never discussed the 2005 design peak day gas requirements with its Board,” is refuted in the discussion in section III.B.4 below

### **3. PSE’s 2018 Re-Evaluation of the Tacoma LNG Facility Was Prudent**

70. In early 2018, PSE preformed a re-evaluation of the Tacoma LNG Facility. This re-evaluation was undertaken primarily because of the PSCAA decision in January 2018 to require a Supplemental Environmental Impact Statement (“SEIS”). PSE management had reported to the PSE Board of Directors in June 2017 that the Tacoma LNG Facility was considered a minor source of emissions under the Clean Air Act and the project plan was based upon securing notice of construction and a permit from PSCAA during the early phase of construction work.<sup>169</sup> This unprecedented decision to require an SEIS for a minor source of air emissions pushed the completion date for the SEIS out to October 31, 2018.<sup>170</sup>

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<sup>166</sup> See Roberts, Exh. RJR-11T at 14:3-8, *see also* 2021 IRP at 9-67 and 9-68; 2021 IRP at Appx. L (Temperature Trend Study).

<sup>167</sup> See Roberts, Exh. RJR-11T at 14:9-23.

<sup>168</sup> See Roberts, Exh. RJR-11T at 15:11 – 16:2.

<sup>169</sup> See Roberts, Exh. RJR-1T at 31:19 – 32:2; *see also* Roberts, Exh. RJR-8C at 18.

<sup>170</sup> See Roberts, Exh. RJR-1T at 19:4-12.

71. In light of the expected increased costs and delays created by the decision to require an SEIS, PSE management identified three potential construction scenarios for the Tacoma LNG Facility:

- (1) modified construction – suspend construction involving emissions regulated by PSCAA until the air permit is issued, but continue with other parts of construction;
- (2) pause and wait – suspend all elements of construction until the air permit is issued; or
- (3) termination – terminate construction of the Tacoma LNG Project.<sup>171</sup>

As part of the re-evaluation, PSE management re-evaluated the resource need, the alternatives analysis, and the Tacoma LNG Project cost and availability analysis.<sup>172</sup>

72. PSE updated its peak day resource need in February 2018 by: changing the available online date for the Tacoma LNG Project to winter 2020-2021; revising its gas price forecast (based on a fall 2017 update from Wood-Mackenzie and forward marks in the early years); and using a F2017 load forecast which showed a peak-day need of 27.22 Mdt per day (27,220 Dth per day) in 2017-2018.<sup>173</sup> The 2018 updated gas resource need is shown in Figure 1 below.<sup>174</sup>

**Figure 1. February 2018 Gas Resource Need Update (No DSR)**



<sup>171</sup> See Roberts, Exh. RJR-1T at 19:16 – 20:3; see also Roberts, Exh. RJR-8C at 57.

<sup>172</sup> See Roberts, Exh. RJR-1T at 20:4 – 26:5.

<sup>173</sup> See Roberts, Exh. RJR-4 at line 2017-18 (column F2017).

<sup>174</sup> Roberts, Exh. RJR-1T at 20.

73. PSE used the SENDOUT model to derive a gas resource portfolio cost “with Tacoma LNG” and a gas resource portfolio cost “without Tacoma LNG.” PSE then compared the net present value of the cost of the “with Tacoma LNG” resource portfolio over the Tacoma LNG Facility’s 50-year useful life to the net present value of the cost of the “without Tacoma LNG” resource portfolio over the same period. This comparison showed the “with Tacoma LNG” scenario demonstrated a \$112.5 million benefit to the existing gas portfolio as compared to the “without Tacoma LNG” scenario.<sup>175</sup>
74. The 2018 re-evaluation showed that the Tacoma LNG Facility continued to be the least-cost resource to meet PSE’s gas peak-day resource need. PSE management recommended and the PSE Board of Directors approved a modified construction process.<sup>176</sup> The total costs for the modified construction process were estimated to be nearly \$483 million, including \$366 million for the Tacoma LNG Facility (\$158 million for PSE), \$39 million for gas distribution system upgrades, and \$78 million for AFUDC/IDC.<sup>177</sup>
75. The 2018-re-evaluation of the Tacoma LNG Project supports a finding that PSE’s decisions and actions after September 2016 to construct and operate the Tacoma LNG Facility were prudent. The 2018 re-evaluation showed that the Tacoma LNG Facility remained the least-cost resource alternative to meet PSE’s gas design-day peak need, and that a comparison of a “with Tacoma LNG” scenario to a “without Tacoma LNG” scenario showed a \$112.5 million benefit to PSE’s gas portfolio.

**4. PSE’s Board Was Properly Informed and Involved in Decisions Regarding the Tacoma LNG Facility after September 2016**

76. As required by the third factor the Commission considers in making a prudence determination, PSE’s Board of Directors was informed about the Tacoma LNG Project after it

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<sup>175</sup> See Roberts, Exh. RJR-1T at 23:14–19; see also Roberts, Exh. RJR-1T at 24:1 (Table 5).

<sup>176</sup> See Roberts, Exh. RJR-1T at 26:8-17; see also Roberts, Exh. RJR-8C at 60.

<sup>177</sup> See Roberts, Exh. RJR-1T at 26:17 – 27:2; see also Roberts, Exh. RJR-8C at 58.



made the decision to execute the Engineering, Procurement, and Construction contract with CB&I, and the PSE Board of Directors was involved in decision making after September 2016. In 2017, PSE management provided three informational reports to the PSE Board of Directors regarding initial work performed during the construction phase of the Tacoma LNG Project.<sup>178</sup> In 2018, PSE management provided six informational updates to the PSE Board of Directors that largely focused on PSCAA permitting activities and the modified construction process as described above.<sup>179</sup>

77. PSE management updated the PSE Board of Directors in September 2019 and informed them that the most efficient operating strategy would be to outsource operation of the Tacoma LNG Facility.<sup>180</sup> PSE management provided two informational updates to the PSE Board of Directors in 2020.<sup>181</sup> PSE management continued to provide regular updates to the PSE Board of Directors after 2020; most of these updates were oral reports regarding the timeline for construction, the status of litigation regarding the air permit, and updates on the budget. In addition, reports on the status of the Tacoma LNG Facility were included in monthly letters sent by PSE's Chief Executive Officer to the Asset Management Committee of the PSE Board of Directors.<sup>182</sup>

78. The involvement of the PSE Board of Directors is well-documented in this proceeding. The reports made by PSE management and recommendations for action to be taken by the Board of Directors are described in Mr. Roberts' testimony, Exh. RJR-1T at 30-39. In addition, PSE provided all of the documents that were provided to the PSE Board of Directors over the course of the PSE's Board's evaluations and decisions approving activities in the post-September 2016 time period in Exh. RJR-8C.

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<sup>178</sup> See Roberts, Exh. RJR-1T at 30:18 – 32:10; *see also* Roberts, Exh. RJR-8C at 2-6, 7-25, and 26-37.

<sup>179</sup> See Roberts, Exh. RJR-1T at 32:13 – 37:3; *see also*, Roberts Exh, RJR-8C at 38-47, 48-78, 79-90, 91-102, 103-110, 111-117, and 118-128.

<sup>180</sup> See Roberts, Exh. RJR-1T at 37:6-16; Roberts, Exh. RJR-8C at 129-144.

<sup>181</sup> See Roberts, Exh. RJR-1T at 37:19 – 38:16; *see also*, Roberts, Exh. RJR-8C at 145-154 and 155-165.

<sup>182</sup> See Roberts, Exh. RJR-1T at 38:19 – 39:9.

79. Public Counsel is the only party that makes any claims regarding the adequacy of information provided to PSE’s Board of Directors. As described earlier, Public Counsel claims PSE did not “communicate with its Board of Directors concerning the design day standard,” therefore “continuing with the Tacoma LNG Project” after 2016 was imprudent and “all costs” incurred after 2016 should be disallowed.<sup>183</sup> Mr. Roberts refuted Public Counsel’s claims and testified instead that discussing “the design peak day standard would not have assisted the Board of Directors in their decision making on the Tacoma LNG Project.”<sup>184</sup>

80. In Order 24/10, the Commission found that “PSE’s Board of Directors was sufficiently informed and involved at least through its decision to authorize construction of the facility on September 22, 2016.”<sup>185</sup> The Commission also found that “PSE provided adequate documentation of its decision-making as it developed and constructed the Tacoma LNG Facility.”<sup>186</sup> Mr. Roberts testified in this proceeding that “PSE management continued to inform the PSE Board of Directors about the Tacoma LNG Project” and the “PSE Board of Directors was involved in decision making after September 2016.”<sup>187</sup> Consistent with its finding in Order 24/10, the Commission should find in this proceeding that since September 2016, PSE management kept the PSE Board of Directors informed about the Tacoma LNG Facility and the PSE Board was involved in decisions related to the Tacoma LNG Facility.

**5. PSE Is Operating the Tacoma LNG Facility in a Responsible Manner, It Provides Benefits to the Surrounding Community, and It Is in the Public Interest**

81. In Order 24/10, the Commission determined that RCW 80.28.425 “should not be applied retroactively” and that it would be “unjust and unreasonable to extensively incorporate information available only through hindsight into the prudence determination related to

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<sup>183</sup> Earle, Exh. RLE-1CT at 12:4-5.

<sup>184</sup> Roberts, Exh. RJR-11T at 16:11-16.

<sup>185</sup> Order 24/10 at ¶ 417.

<sup>186</sup> Order 24/10 at ¶ 418.

<sup>187</sup> Roberts, Exh. RJR-1T at 30:10-13; Roberts Exh. RJR-11T at 16:6-11.

construction that occurred in 2016.”<sup>188</sup> That reasoning should continue to apply equally to the costs incurred for the Tacoma LNG Facility’s construction after 2016 because as Mr. Roberts testified, the decision to build was already made, construction was complete before the new standard was effective, and almost all of the costs were incurred or due by the time the updated public interest standard became effective.<sup>189</sup> Furthermore, PSE’s construction of the Tacoma LNG Facility provides a variety of benefits to the surrounding environment as determined in the SEIS, and importantly, the facility provides a needed peaking resource at the lowest cost compared to other alternatives. Abandoning the project as suggested by Public Counsel or the Tribe would have resulted in additional expense to ratepayers to ultimately meet the peaking need PSE demonstrated and the Commission agreed existed. Accordingly, the Tacoma LNG Facility is in the public interest, the decisions related to costs post-decision-to-build prudent, and the Commission should approve cost recovery.

82. As of July 1, 2021, before RCW 80.28.425 became effective, construction of the Tacoma LNG Facility was complete and capital costs allocable to PSE equal to \$226,801,000 had been incurred.<sup>190</sup> After a commissioning process, the Tacoma LNG Facility was placed in-service on February 1, 2022, and total allocable capital costs to PSE at that time were \$241,649,000. It would be unjust and unreasonable for the Commission to, as the Tribe and Public Counsel advocate, “incorporate information available only through hindsight” into the prudence determination based on a statute that was effective *after* construction was complete.<sup>191</sup> Even if the public interest standard in RCW 80.28.425 applied, when evaluating costs for purposes of prudence review, the Commission “may consider” certain other factors listed in the revised statute. The Commission noted in Order 24/10, RCW 80.28.425 “does not require the Commission to upend its longstanding principles of prudence review,”<sup>192</sup> and it should not do so

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<sup>188</sup> Order 24/10 at ¶ 427-428.

<sup>189</sup> See Roberts, Exh. RJR-11T at 24:6-17.

<sup>190</sup> See Roberts, Exh. RJR-11T at 24:6-17.

<sup>191</sup> Order 24/10 at ¶ 427-428.

<sup>192</sup> Order 24/10 at ¶ 429.

here. The Commission should reject the arguments by Public Counsel and the Tribe that RCW 80.28.425 should be retroactively applied to the continued construction of the Tacoma LNG Project, after the Commission already determined the decision to build the facility was prudent. The positions taken by Public Counsel and the Tribe, which effectively argue PSE should have abandoned the Tacoma LNG Project after it was constructed but before it was placed in service, would require PSE to pursue one of the more expensive alternatives.<sup>193</sup> This scenario would be substantially more expensive for ratepayers because the Tacoma LNG Facility was the least cost option and pursuing a more costly alternative would not have been in the public interest.

83. PSE engaged with customers and people living in the communities surrounding the Tacoma LNG Facility early in the process of developing the Tacoma LNG Project.<sup>194</sup> PSE's outreach strategy was comprehensive – it briefed neighborhood councils, local community groups, Port of Tacoma tenants, provided comment at City Council meetings, and provided tours of the Tacoma LNG Project site.<sup>195</sup> PSE also made efforts to engage with the Tribe in 2014 and 2015 regarding the Tacoma LNG Project, even though many of those attempts were rebuffed.<sup>196</sup> Although the Commission's prudence standard for approving construction costs does not require community engagement, PSE chose to engage the customers and communities surrounding the Tacoma LNG Facility early in the process.

**a. The Commission should reject attempts to relitigate arguments about environmental externalities.**

84. The Tribe's witness attempts to relitigate a variety of issues previously raised about negative externalities.<sup>197</sup> These arguments were found to be either not credible or overstatements of the alleged impact by the PCHB, including, but not limited to those related to: toxic air pollutants,<sup>198</sup> volatile organic compounds,<sup>199</sup> and hazardous air pollutants.<sup>200</sup> Much of the Tribe's

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<sup>193</sup> See Roberts, Exh. RJR-1T at 19:1-27:2 (demonstrating PSE re-evaluated the need, alternatives, and cost).

<sup>194</sup> See Roberts, Exh. RJR-11T at 27:3-11.

<sup>195</sup> See Roberts, Exh. RJR-11T at 27:3-11.

<sup>196</sup> See Roberts, Exh. RJR-11T at 27:3-11.

<sup>197</sup> Compare Sahu Exh. RXS-1T at 21:3-26:4, with 2022 PSE GRC Sahu Exh. RXS-1T at 17:9-21:9.

<sup>198</sup> See Roberts, Exh. RJR-15, at 34 and 77-83 (PCHB Order at ¶¶ 54, 148-160).

testimony on these issues is contrary to the findings of the PSCAA or the PCHB, or ignores the other benefits of the facility.<sup>201</sup> The Tacoma LNG Facility provides a variety of benefits to the surrounding community, including the benefits to the Blair and Hylebos waterways. Construction of the Tacoma LNG Facility improved onsite environmental conditions as compared to pre-construction conditions.<sup>202</sup> The Tacoma LNG Facility was constructed on a brownfield site that contained historic warehouses, chipping lead paint, asbestos, and uncontrolled stormwater releases.<sup>203</sup> PSE cleaned up the site, planted vegetation along portions of the 50-foot marine buffer, and installed a stormwater system that provides for treatment of water sources prior to discharge into the waterway. These are material improvements to the site that other agencies charged with monitoring these types of construction, like the Shorelines Hearings Board (“SHB”), have noted in other proceedings.<sup>204</sup>

85. As with any construction project, the Tacoma LNG Project will have some impact on the area surrounding the site. But, the SHB, the agency tasked with approving one of the required permits, reviewed and weighed PSE’s mitigation efforts. As part of its mitigation efforts, PSE removed creosote-treated piles from the Blair Waterway and the Sperry Ocean Terminal, removed creosote-treated overwater decking from the Hylebos Waterway and Sperry Ocean Terminal, all to an off-site mitigation site. The SHB found that “removal of creosote-treated materials will benefit surface water quality and salmonid habitat by removing a source of contamination.”<sup>205</sup> and that the Revised Mitigation Plan “achieves no net loss of ecological functions”.<sup>206</sup> Contrary to the assertions by the Tribe, there are overall benefits to the surrounding area which have been extensively documented and litigated before various agencies.

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<sup>199</sup> See Roberts, Exh. RJR-15, at 58 (PCHB Order at ¶ 105).

<sup>200</sup> See Roberts, Exh. RJR-15, at 77-83 (PCHB Order at ¶¶ 148-160).

<sup>201</sup> See Roberts, Exh. RJR-11T at 42:3-44:15.

<sup>202</sup> See Roberts, Exh. RJR-1T at 44:1-45:10.

<sup>203</sup> See Roberts, Exh. RJR-1T at 44:1-45:10.

<sup>204</sup> See Roberts, Exh. RJR-9 (SHB Decision 9283 in SHB No. 16-002).

<sup>205</sup> Roberts, Exh. RJR-9, Findings of Fact 50 at 31:11-13.

<sup>206</sup> Roberts, Exh. RJR-9, Finding of Fact 51 at 32:2-8.

86. In addition, both the PSCAA and the PCHB determined that air emissions from the Tacoma LNG Facility are consistent with statutory requirements which are designed to protect human health and the environment.<sup>207</sup> The Final SEIS submitted to the PSCAA concluded that the Tacoma LNG Project would result in a net decrease in GHG emissions.<sup>208</sup> The PSCAA is tasked with implementing standards and monitoring PSE's compliance with the permits under its jurisdiction. PSE is actively working to operate the Tacoma LNG Facility in compliance with the permits and their requirements.

**b. The Commission should reject requests for duplicative reporting mechanisms.**

87. PSE is working to improve its operational efficacy and cooperating with those agencies tasked with monitoring PSE's compliance with permit conditions for the Tacoma LNG Facility. While there have been some instances where PSE has been issued a notice of violation ("NOVs"), most were the result of self-reporting by PSE.<sup>209</sup> The Tacoma LNG Facility operator works to minimize operational incidents and comply with the parameters of the air permit.<sup>210</sup> PSE has worked diligently with the Tacoma LNG Facility operator and the permitting agency, PSCAA, to identify and address the root causes of the incidents in the NOVs and taken actions to reduce the likelihood of recurrence.<sup>211</sup> Notably, PSE's contract with the Tacoma LNG Facility operator includes a cost-plus model with metric-based performance measures. This could reduce the overall payment to the operator if its operation of the Tacoma LNG Facility does not meet certain performance factors, including environmental factors.<sup>212</sup>

88. The NOVs are within the jurisdiction of the PSCAA and some are still under review.<sup>213</sup> The fact that NOVs have been issued does not indicate PSE was imprudent in expending costs

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<sup>207</sup> See Roberts, Exh. RJR-1T at 45:13-17.

<sup>208</sup> See Roberts, Exh. RJR-1T at 27:8-11.

<sup>209</sup> See Roberts, Exh. RJR-11T at 36:1-37:19.

<sup>210</sup> See Roberts, Exh. RJR-11T at 36:1-37:19.

<sup>211</sup> See Roberts, Exh. RJR-11T at 36:1-37:19.

<sup>212</sup> See Roberts, Exh. RJR-11T at 36:1-37:19.

<sup>213</sup> Roberts, TR at 60:4-9, 60:23-61:12.

constructing the Tacoma LNG Facility; they are tied to the operation of the Tacoma LNG Facility and, as discussed above, are being addressed by PSE. The Commission is not an environmental regulator<sup>214</sup> and is generally hesitant to interfere in determinations by “other, more specialized environmental health agencies[.]”<sup>215</sup> The Commission should continue to allow PSCAA to proceed in its regulatory role without imposing additional restrictions on PSE that may be unnecessary or duplicative of the PSCAA process. If there are instances where PSE is not compliant with certain permit conditions, the permitting agencies have enforcement mechanisms available and the expertise to evaluate the circumstances of any alleged violation. The Commission should not substitute its judgment or otherwise override the determinations of an agency with expertise in these issues.

#### IV. CONCLUSION

89. The Tacoma LNG Facility has been in service, available to provide for PSE’s gas supply needs since February 2022, and has served as a peaking resource for PSE’s gas customers. The evidence presented by PSE demonstrates that the post-2016 construction and operating costs were prudent. PSE appropriately allocated costs between Puget LNG and PSE. Accordingly, PSE respectfully requests the Commission allow PSE to recover in rates the costs of the Tacoma LNG Facility as set forth in PSE’s evidence in this case.

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<sup>214</sup> Order 24/10 at ¶ 427.

<sup>215</sup> Order 24/10 at ¶ 427.

DATED this 8th day of December, 2023.

**Respectfully submitted**

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