

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKETS UE-230393 & UG-210918
(*Consolidated*)

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

REPLY BRIEF OF COMMISSION STAFF

December 21, 2023

ROBERT W. FERGUSON
Attorney General

Jeff Roberson, WSBA No. 45550
Senior Assistant Attorney General
Office of the Attorney General
Utilities and Transportation Division
P.O. Box 40128
Olympia, WA 98504-0128
(360) 522-0614
jeff.roberson@atg.wa.gov

TABLE OF CONTENTS

I. INTRODUCTION 1

II. ARGUMENT..... 1

 A. Revenue Requirement Issues 1

 1. Deferred Return On 2

 2. Used and Useful 3

 3. The Pre-Liquefaction Equipment 6

 B. The 4-Mile Pipeline..... 7

 1. Cost Allocation 7

 2. Rule 6..... 9

 3. Refund of Provisionally Collected Rates 10

 C. Prudent Operation 10

III. CONCLUSION..... 13

TABLE OF AUTHORITIES

Cases

Continental Mt. Sav. Bank v. Elliott,
166 Wash. 283, 6 P.2d 638 (1932) 3

People’s Org. for Wash. Energy Res. v. Wash. Utils. & Transp. Comm’n,
104 Wn.2d 798, 711 P.2d 319 (1985)..... 6, 10

Statutes

Chapter 70A.15 RCW 11

RCW 80.01.040 11

RCW 80.28.010 3

RCW 80.28.020 9, 11

RCW 80.28.080(1)(a) 9

RCW 80.28.425(1)..... 11

Administrative Authorities

In re Petition of PSE,
Dockets UE-200780 & UG-200781, Order 01 (Dec. 10, 2020) 3

Wash. Utils. & Transp. Comm’n v. Puget Sound Energy,
Dockets UE-220066, UG-220067 & UG-210918, Order 24/10 (Dec. 22, 2022)..... 2

Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Inc.,
Dockets UE-111048 & UG-111049, Order 08 (May 7, 2012) 5, 6

Wash. Utils. & Transp. Comm’n v. Puget Sound Pilots,
TP-190976, Order 14 (Apr. 11, 2022) 2

Wash. Utils. & Transp. Comm’n v. Pac. Power & Light Co.,
Dockets UE-140762, UE-140617, UE-131384 & UE-140094,
Order 08 (Mar. 25, 2015)..... 2, 3

Other Authorities

Black’s Law Dictionary (11th ed. 2019) 12

Federal Energy Regulatory Commission, Cost of Service Rates Manual (1999) 8

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Utility Cost of Service Manual (1992) 8

I. INTRODUCTION

1 Before the Commission are tariff revisions that would create a tracker to allow PSE to recover the costs of the LNG facility it built on the Tacoma waterfront. Staff continues to make three broad recommendations to the Commission: (1) adjust the tracker's revenue requirement by disallowing PSE from recovering deferred return on its investment, certain deferred amounts booked for 2022 associated with plant that was not used and useful, and the redesign of the pre-liquefaction equipment; (2) reject PSE's allocation of the four-mile distribution pipe connecting the facility with PSE's distribution system and instead accept Staff's, require PSE to refund provisionally collected rates as appropriate, and then require the company to determine whether Puget LNG owes a contribution in aid of construction given the proper allocation of the pipe; and (3) order PSE to take certain steps to address the equitable concerns created by the LNG facility's operations.

II. ARGUMENT

2 As just noted, Staff and PSE contest three issues before the Commission: (1) Staff's recommended revenue requirement adjustments, (2) Staff's recommendations related to the four-mile pipe, and (3) Staff's recommended operational changes. Staff addresses each in turn.

A. Revenue Requirement Issues

3 Three revenue requirement issues related to the LNG facility itself remain in dispute between PSE and Staff: (1) the deferred return on investment, (2) the deferral amounts booked for 2022 associated with plant that was not used and useful, and (3) the unnecessary redesign of the pre-liquefaction equipment. The Commission should disallow all of those costs.

1. Deferred Return On¹

4 As Staff explained in its opening brief, the Commission rarely allows utilities to
recover deferred return on investment because doing so incents the addition of rate base
outside of a general rate case, something the Commission disfavors.² The Commission should
apply that general principle here and deny PSE the ability to recover the deferred return on its
investment in the LNG facility.

5 PSE, however, urges the Commission to reject the argument that it “should not be
allowed to defer the costs of the Tacoma LNG Facility because it was not an extraordinary
circumstance.”³ But no one has made that argument.⁴ Again, the settling parties stipulated to
allowing PSE to defer costs when settling PSE’s last GRC,⁵ and the Commission approved the
settlement containing that stipulation.⁶ Put otherwise, the deferral is not at issue here, but the
ratemaking treatment of the deferral very much is.

6 Relatedly, PSE appears to contend that the Commission should not limit PSE’s
recovery of the deferral because it authorized the deferral in the first instance.⁷ Whether to
grant a deferral turns on the propriety of shifting the time an expense or revenue is recognized.⁸

¹ To the extent that PSE maintains that it should recover the deferred return on because it took steps “to meet the Legislature’s preferred policy outcome to build LNG refueling stations,” Initial Br. of Puget Sound Energy (PSE’s Br.) at 16-17 ¶ 40, that the Commission has repeatedly allowed PSE to recover deferred return on in similar circumstances, PSE’s Br. at 17 ¶ 41, and that it could have chosen a different resource in order to ensure recovery of its return on, PSE’s Br. at 17-18 ¶ 42, Staff addressed each of those arguments in its opening brief and will not reiterate what it said there. Post-Hearing Br. of Commission Staff (Staff’s Br.) at 13 ¶¶ 30-31 (answer to the public policy argument), 15-16 ¶¶ 37-38 (answer to the allegedly analogous case argument), 16 ¶ 39 (answer to PSE’s argument about the selection of different resources).

² *Wash. Utils. & Transp. Comm’n v. Pac. Power & Light Co.*, Dockets UE-140762, UE-140617, UE-131384 & UE-140094, Order 08, 104 ¶ 245, 107 ¶ 251 (Marc. 25, 2015).

³ PSE’s Br. at 15 ¶ 38.

⁴ See generally Staff’s Br.; Post-Hearing Br. of Public Counsel; The Puyallup Tribe of Indians’ Post-Hearing Br. (PTOI’s Br.).

⁵ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-220066, UG-220067 & UG-210918, Order 24/10, Appx. C at 4 ¶ 18 (Dec. 22, 2022) (Order 24/10).

⁶ Order 24/10 at 139 ¶ 510.

⁷ PSE’s Br. at 16 ¶ 39.

⁸ *Wash. Utils. & Transp. Comm’n v. Puget Sound Pilots*, TP-190976, Order 14, 7 ¶ 24 (Apr. 11, 2022).

Whether to allow cost recovery of a deferral turns on whether amortizing the deferred cost or revenue creates fair, just, reasonable and sufficient rates.⁹ The Commission requires different showings at different times given the different questions involved,¹⁰ and it should not collapse the inquiries here, as PSE would have it do.

7 PSE argues that “even if an ‘extraordinary circumstances’ standard were to apply to recovery of a deferral,” the facts here justify it. Two things. First, to the extent that PSE argues that Staff has incorrectly stated the governing law, it is simply wrong. Staff has faithfully applied the relevant standard.¹¹ Second, to the extent that PSE argues that something exceptional has happened here, it has built and placed in service plant needed to serve its customers. It does so often. If this is an exceptional circumstance, then everything is. And while PSE cites orders where the Commission may have allowed the recovery of deferred return on, none of those discussed the propriety of that ratemaking treatment, and thus offer they offer PSE no support here.¹²

2. Used and Useful

8 In 2022, constraints built into PSE’s distribution system limited the LNG facility’s ability to supply natural gas to roughly 81 percent of capacity.¹³ As Staff has recommended, the Commission should, accordingly, reduce the value of the deferred operations and

⁹ RCW 80.28.010.

¹⁰ *In re Petition of PSE*, Dockets UE-200780 & UG-200781, Order 01, 6-7 ¶ 17 (Dec. 10, 2020) (“[m]any of the Joint Commenters’ positions . . . are concerned with the recovery of the deferred amounts rather than the deferrals themselves. Accordingly, those arguments should be raised at the time PSE seeks to recover the deferred costs in rates.”).

¹¹ *Pac. Power & Light Co.*, Dockets UE-140762, UE-140617, UE-131384 & UE-140094, Order 08, at 104 ¶ 245, 107 ¶ 251.

¹² *Continental Mt. Sav. Bank v. Elliott*, 166 Wash. 283, 300, 6 P.2d 638 (1932) (“An opinion is not authority for what is not mentioned therein and what does not appear to have been suggested to the court by which the opinion was rendered.”).

¹³ Erdahl, Exh. BAE-1CT at 14:16-19.

maintenance costs, as well as the deferred return on investment,¹⁴ for that year to reflect that the facility was not fully used and useful.

9 PSE maintains that the Commission should find the LNG facility used and useful because “the un rebutted testimony” shows that the facility has been able to provide peak shaving capacity since 2022.¹⁵ The Commission should reject that argument for two reasons. First, “the un rebutted testimony”¹⁶ also shows that constraints limited PSE’s ability to make full use of the facility during 2022,¹⁷ and those constraints form the basis of Staff’s used and useful challenge.¹⁸ Second, in making this argument, PSE invokes the Commission’s statement in Order 24 that “capacity is, by itself, a used and useful resource for customers when it is supported by credible forecasts for customer demand.”¹⁹ But Staff did not understand the Commission to be saying that capacity is a beneficial resource in isolation. Capacity is a tool for satisfying demand, and the Commission measures its usefulness as a resource in that light. For example, a storage tank containing a million gallons of LNG but having no connection to a distribution system does not provide meaningful capacity, and the Commission would not consider it used and useful. A similar principle applies here. During the year 2022, the LNG facility was effectively a giant storage tank connected to PSE’s grid in a somewhat limited fashion. Any valuation should reflect that fact and discount the plant value that PSE could not put to use providing capacity given those distribution limits.

¹⁴ Again, disallowance of the deferred return on booked for plant in 2022 becomes moot if the Commission generally disallows all deferred return on as Staff urges it to do above.

¹⁵ PSE’s Br. at 11 ¶¶ 26-27.

¹⁶ PSE’s Br. at 11 ¶ 26.

¹⁷ See generally Donahue, Exh. WFD-5T; Free, Exh. SEF-4Tr; Roberts, Exh. RJR-11T; Taylor, Exh. JDT-8T.

¹⁸ Erdahl, Exh. BAE-1CT at 14:13 – 15:10.

¹⁹ PSE’s Br. at 11 ¶ 26 (quoting Order 24/10 at 118 ¶ 405).

10 PSE also asks the Commission to find the LNG facility used and useful based on its treatment of PSE’s Lower Snake River Wind Project (LSR) in the Company’s 2011 GRC.²⁰ In doing so, the Company places great weight on a line from a Commission policy statement noting that the Commission has “allowed resources into rate base before they were needed to meet load.”²¹ Notably, in the LSR case, the Commission found that the project was in service and “providing capacity and energy to PSE’s customers.”²² It noted that those were the types of benefits that supported a finding that a facility was used and useful, footnoting that statement with a citation to the following statement:

we interpret the phrase used and useful for service in this state to mean benefits to ratepayers in Washington, either directly (e.g., flow of power from a resource to customers, and/or indirectly . . . Under either circumstance, the Company must demonstrate a quantifiable benefit to Washington ratepayers. *When a facility is actually used to provide service, its costs and benefits can be readily identified and allocated appropriately.*²³

LSR and its forerunner thus, as PSE notes, address whether the Commission should consider a facility used and useful when it is in service and providing quantifiable benefits but not yet specifically needed to meet load requirements.

11 The controversy here is not about whether the LNG facility was in-service before the requisite load materialized; it is instead about whether the Commission should consider the facility completely used and useful in 2022.²⁴ As Staff has explained, the Commission should conclude that it was not because PSE needed to make upgrades to its distribution plant to make

²⁰ PSE’s Br. at 12 ¶ 29.

²¹ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Inc.*, Dockets UE-111048 & UG-111049, Order 08, 151 ¶ 415 (May 7, 2012) (LSR Order) (quoting *in re the Wash. Utils. & Transp. Comm’n’s Inquiry on Regulatory Treatment for Renewable Energy Res.*, Docket UE-100849, Report and Policy Statement, ¶ 52 (Jan. 3, 2011)).

²² LSR Order at 151 ¶ 416.

²³ LSR Order at 15-152 ¶ 416 (internal quotations omitted).

²⁴ Staff’s Br. at 18-20 ¶¶ 45-50; Erdahl, Exh. BAE-1CT at 13:11 – 17:2.

use of the LNG facility's full capacity. PSE thus found itself unable to use a portion of the plant to provide service and quantifiable benefits to customers.

12 Another hypothetical helps. Imagine that PSE had a disruption on its system in 2022 such that it had a capacity deficit equal to the full capacity of the facility. Could PSE have used the LNG facility to meet that demand? No; at least not all of it, because PSE's distribution system could not handle the pressure created by putting that much natural gas onto the system. Instead, PSE could put roughly 81 percent of the facility's full capacity on its system. The Commission, accordingly, should determine that 19 percent of the plant was "not used and useful for the provision of service in this state" and value the property accordingly for purposes of the deferral amounts recorded in 2022.

3. The Pre-Liquefaction Equipment

13 Staff recommends disallowing the incremental costs incurred to redesign the pre-liquefaction equipment.²⁵ It based that recommendation on PSE's frank admission in discovery that the redesign was not needed to serve sales customers,²⁶ and that admission means that PSE thus did not prudently incur those costs on behalf of those ratepayers.²⁷

14 PSE, however, urges the Commission to include the incremental cost at issue in revenue requirement because the redesign benefited customers.²⁸ But in any prudence analysis, the question of need is the first factor considered.²⁹ PSE did not need to incur these costs,³⁰ and that should end the analysis.³¹

²⁵ Staff's Br. at 21-22 ¶¶ 51-55.

²⁶ Erdahl, Exh. BAE-5.

²⁷ Staff's Br. at 21-22 ¶¶ 51-55.

²⁸ PSE's Br. at 8 ¶ 18.

²⁹ *Puget Sound Energy*, Dockets UE-111048 & UG-111049, Order 08, at 148 ¶ 409.

³⁰ Erdahl, Exh. BAE-5.

³¹ *See People's Org. for Wash. Energy Res. v. Wash. Utils. & Transp. Comm'n*, 104 Wn.2d 798, 810, 711 P.2d 319 (1985) (expenses must be prudent for PSE to recover them).

B. The 4-Mile Pipeline

15 PSE and Staff also dispute three issues related to the four-mile pipeline: the proper allocation for the pipeline, whether PSE should re-examine the propriety of requiring Puget LNG to make a contribution in aid of construction, and whether the Commission should require refunds of any portion of the provisional rates approved in PSE’s last general rate case. The Commission should accept Staff’s allocation and, accordingly, require PSE to rerun the Rule 6 calculation.

1. Cost Allocation³²

16 Staff recommends that the Commission allocate 70.4 percent of the costs of the four-mile pipeline to Puget LNG, with the remaining 29.6 percent allocated to PSE’s sales customers.³³ Given that recommendation, Staff recommends requiring PSE to refund to sales customers a portion of the provisionally collected rates recovering the pipe’s costs after requiring PSE to determine whether Puget LNG must make a contribution in aid of construction.³⁴

17 With regard to Staff’s proposed allocation, PSE argues that it “could have considered separate pipeline facilities for delivering gas to and from the Tacoma LNG Facility”³⁵ and that, had it done so, the inbound pipe would have been split between PSE’s sales customers and Puget LNG, but that PSE’s sales customers would have borne responsibility for the outbound one.³⁶ The fact that the Commission could allocate things differently if PSE had built two different pipes does not answer the question of how the Commission should allocate the pipe

³² To the extent that PSE contends that costs must be directly assigned where possible, PSE’s Br. at 21-22 ¶ 49, Staff has already addressed that argument.

³³ Erdahl, Exh. BAE-1CT at 24:3-5.

³⁴ Erdahl, Exh. BAE-1CT at 27:16-19.

³⁵ PSE’s Br. at 19 ¶ 45, 21 ¶ 49.

³⁶ PSE’s Br. at 21 ¶ 49.

here. The Commission should answer that question on the basis of traditional cost of service principles, which means proper functionalization, classification and allocation. As Staff describes in its brief, its methodology follows those traditional principles,³⁷ and the Commission should apply it.

18 PSE also contends that Staff based its analysis on the “faulty” assumption that PSE could only use the 4-mile pipeline for 10 days per year.³⁸ While Staff did base its allocation on use of the pipeline to inject vaporized gas 10 days a year,³⁹ that “assumption” was entirely warranted: the 10-day limit is a legal requirement.⁴⁰ And, as PSE notes, the Commission should base any allocation on cost causation principles.⁴¹ Although PSE notes that it may use the pipeline on non-liquefaction days to transport boil off gas, PSE also frankly admits that this use in no way drove PSE to incur costs at the facility.⁴² And the evidence confirms that admission – Staff invites the Commission to comb through the long administrative record concerning the LNG facility to look for any mention of boil off gas or the necessity of the four-mile pipe to deal with it.

19 PSE also contends that the Commission should ignore Staff’s proposed allocation because the use of a “100 percent load factor . . . is not a common cost allocation methodology.”⁴³ The plant at issue is not distribution pipe that is generally used, but instead a peaking resource that is rarely called upon, but heavily used when it is. PSE assures the

³⁷ Staff’s Br. at 23-28 ¶¶ 56-72.

³⁸ PSE’s Br. at 22-24 ¶¶ 51-53.

³⁹ Erdahl, Exh. BAE-1CT at 24:7-25:18.

⁴⁰ Erdahl, Exh. BAE-7.

⁴¹ See Federal Energy Regulatory Commission, Cost of Service Rates Manual, at 33-39 (1999); National Association of Regulatory Utility Commissioners, Electric Utility Cost of Service Manual, at 13 (1992).

⁴² Donahue, Exh. WFD-5T at 5:18-6:3.

⁴³ PSE’s Br. at 24 ¶ 53.

Commission that the LNG facility and the four-mile pipe are appropriately sized for such use. Staff's load factor assumption is thus more than reasonable.

2. Rule 6

20 PSE takes exception to Staff's recommendation that it rerun the Rule 6 calculation if it accepts Staff's allocation of the 4-mile pipeline (and it should, as discussed above).⁴⁴ PSE's argument here nullifies the Commission's authority, and the Commission should reject it.

21 As PSE has explained, it performs the Rule 6 calculation to ensure that existing customers do not subsidize new customers through line extensions.⁴⁵ Staff recommends rerunning the Rule 6 calculation in order to ensure that such cross-subsidization does not occur here.

22 PSE, however, contends that the Commission is basically powerless to ensure that PSE accurately applied Rule 6 because "PSE is not authorized" under the rule "to recalculate or true-up its [contribution in aid of construction] calculation . . . after the fact." But PSE must charge, or refrain from charging, its customers in conformity with its tariff.⁴⁶ If the Commission concludes that PSE is failing to charge in conformity with its tariff, it may find the practice of doing so unjust and fix the practices "thereafter to be observed and in force."⁴⁷ And any charge made pursuant to that forward looking order would be a charge assessed in the first instance given that the Commission required provisional treatment for the four-mile pipeline. The Commission should, accordingly, order PSE to run the Rule 6 calculation and require a contribution in aid of construction if warranted by the rule.

⁴⁴ PSE's Br. at 26-27 ¶ 57.

⁴⁵ Donahue, Exh. WFD-1T at 8:12-9:1.

⁴⁶ RCW 80.28.080(1)(a).

⁴⁷ RCW 80.28.020.

3. Refund of Provisionally Collected Rates

23 Because the proper allocation of the four-mile distribution pipe shifts costs away from
PSE's sales customers, the Commission should order a refund to those sales customers because
they overpaid under the provisional rates in effect since PSE's last general rate case.⁴⁸ The total
over collection should be netted against any contribution in aid of construction from Puget
LNG and the relevant amounts returned to sales customers.

24 PSE argues that no refund is warranted because PSE correctly allocated the pipe and
correctly applied Rule 6.⁴⁹ Staff has addressed those arguments above and the Commission
should reject them again here.

C. Prudent Operation

25 A set of issues arises because PSE has received a number of notices of violation of the
LNG facility's air quality permit from the Puget Sound Clean Air Agency (PSCAA). Staff
recommended that the Commission take two actions: (1) order PSE to report any violations of
the permit to the Commission when it reports them to the PSCAA,⁵⁰ and (2) order PSE to
renegotiate the contract with the facility's third-party operator in order to better incent
compliance with the LNG facility's air quality permit.⁵¹

26 With regard to the first recommendation, PSE makes three arguments. The Commission
should reject each of them.

27 PSE first contends that "[t]he fact that NOV's have been issued does not indicate PSE
was imprudent in expending costs constructing the Tacoma LNG Facility; they are tied to

⁴⁸ See generally Staff's Corrected Answer to Bench Request No. 6.

⁴⁹ PSE's Br. at 27 ¶ 57.

⁵⁰ Staff's Br. at 29 ¶ 75.

⁵¹ Staff's Br. at 29 ¶ 75.

operation of the Tacoma LNG Facility.”⁵² Staff does not see how this helps PSE. PSE must prudently incur any costs in order to recover them from ratepayers.⁵³ If PSE has imprudently spent money on operations (and Staff does not at this point say that it has), it should be accountable for making such a choice in this or a future proceeding where it seeks to recover operations costs. The reporting Staff recommends here will allow parties to evaluate the prudence of PSE’s operations at the LNG facility, and the Commission should order it.

28 Second, PSE contends that it is addressing the operational failures at the plant. If so, the data will back that up. But the Commission should require the reporting so that the parties can verify PSE’s claim.

29 Third, PSE quotes the Commission’s statement that it is not an “environmental regulator” and urges the Commission to leave matters to more specialized permitting agencies like the PSCAA.⁵⁴ While the Commission is primarily an economic regulator,⁵⁵ Staff offers three observations on this score after considering the briefing from the other parties.

30 First, as the Puyallup Tribe notes,⁵⁶ the Legislature granted to the Commission the authority to consider (and indeed imposed on it the duty to consider) equitable matters as far as they touch on a utility’s rates or practices.⁵⁷ The other agencies to which PSE would have the Commission defer to are not tasked with considering equity with regard to utility rates,⁵⁸ meaning PSE’s argument creates the potential for equitable concerns to fall into a gap the Legislature did not intend if the Commission passes on addressing them here.

⁵² PSE’s Br. at 40-41 ¶ 88.

⁵³ *People’s Org. for Wash. Energy Res.*, 104 Wn.2d at 810.

⁵⁴ PSE’s Br. at 40-41 ¶ 88.

⁵⁵ *E.g.*, RCW 80.28.020.

⁵⁶ PTOI Br. at 18:4-19:13.

⁵⁷ RCW 80.01.040; RCW 80.28.425(1).

⁵⁸ *See generally* chapter 70A.15 RCW.

31 Second, Staff concludes that the Puyallup Tribe has attempted to meet the Commission within the sphere the Commission has marked as its own. The Puyallup Tribe couches its equity claims in terms of externalities. An externality is “[a] consequence or side effect of one’s economic activity, causing another to benefit without paying or to suffer without compensation.—Also termed spillover; neighborhood effect.”⁵⁹ Put otherwise, the Puyallup Tribe is speaking the language of economics to the Commission, asking for consideration of equitable concerns as costs (externalities) paid by communities near the facility.

32 Third, and finally, PSE’s briefing largely speaks past the equity concerns that the Puyallup Tribe is raising (and which fall within the Commission’s mandate). PSE’s on-site remediation and mitigation efforts does nothing to address the Puyallup Tribe’s correct statement that “permitted pollution is still pollution,”⁶⁰ and that such pollution constitutes an externality that falls most heavily on the already heavily burdened communities, including the Puyallup Tribe, that live around the LNG facility.⁶¹

33 Given all that, the Commission should require the reporting recommended by Staff. Nothing about the reporting treads on the regulatory jurisdiction of other agencies – those agencies set the permit limits that PSE must operate under, and would be responsible for enforcing any permit violations. But the reports would provide the Commission with the information it needs to ensure that PSE’s operations at the LNG facility do not exacerbate inequities through informed use of its ratemaking powers.

34 PSE also takes issue with Staff’s second recommendation, renegotiation of the contract for the operation of the LNG facility by a third party to better incent compliance with the air

⁵⁹ Black’s Law Dictionary (11th ed. 2019).

⁶⁰ Sahu, Exh. RXS-1T at 28:5-6.

⁶¹ Sahu, Exh. RXS-1T at 17:1-32:17.

quality permit, describing that step as unnecessary.⁶² But the sizable number of violations in such a short span of time unnerves Staff, and calls for corrective action. The Commission should require the renegotiation to ensure that operation of the facility complies with all legal requirements, minimizing the equitable concerns raised in this proceeding.

III. CONCLUSION

35 For the foregoing reasons, the Commission should adjust PSE's revenue requirement, allocate the four-mile pipe as advocated by Staff, require PSE to recalculate whether Puget LNG must make a contribution in aid of construction and refund an appropriate amount of the provisionally collected rates to sales customers, and order PSE to notify it of any permit violations and renegotiate the contract governing the operation of the facility by a third party.

RESPECTFULLY SUBMITTED this 21st day of December, 2023.

ROBERT W. FERGUSON
Attorney General

/s/ Jeff Roberson, WSBA No. 45550
Assistant Attorney General
Office of the Attorney General
Utilities and Transportation Division
P.O. Box 40128
Olympia, WA 98504-0128
(360) 810-0509
jeff.roberson@atg.wa.gov

⁶² PSE's Br. at 40 ¶ 87.