

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UG-230393

**POST-HEARING REPLY BRIEF  
OF PUBLIC COUNSEL**

December 21, 2023

**TABLE OF CONTENTS**

I. INTRODUCTION.....1

II. EQUITY CONSIDERATIONS APPLY TO THE COMMISSION’S DECISION IN THIS CASE AND REQUIRE THAT THE COMMISSION DISALLOW COSTS OF TACOMA LNG IN UTILITY RATES.....1

III. PSE’S DESIGN DAY STANDARD IS BASED ON OUTDATED DATA AND CONTINUED RELIANCE ON OUTDATED DATA WAS IMPRUDENT AFTER SEPTEMBER 22, 2016.....3

IV. THE LNG FACILITY HAS NOT BEEN USED FOR PEAK SHAVING. ....5

V. PSE’S ARGUMENT THAT DEVELOPING THE LNG FACILITY MAY HAVE FURTHERED WASHINGTON STATE POLICY TO REDUCE DEPENDENCE ON PETROLEUM-BASED FUELS IS IRRELEVANT AND MISLEADING. ....8

VI. PUBLIC COUNSEL CONTINUES TO REQUEST AN INDEPENDENT AUDIT OF PSE’S LEGAL EXPENSES.....11

VII. CONCLUSION .....12

**TABLE OF AUTHORITIES**

**State Statutes**

RCW 80.28.280 ..... 9  
RCW 80.28.425(1)..... 2, 9

**State Court Cases**

*Cole v. Wash. Utils. & Transp. Comm’n*, 79 Wn.2d (1971)..... 9

**UTC Orders and Decisions**

*Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*,  
Docket UG-151663, Order 10 (Oct. 31, 2016)..... 7, 9, 10, 11  
*Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*,  
Dockets UE-220066, UG-220067, & UG-210918 (*consol.*), Final Order 24/10  
(Dec. 22, 2022) ..... 1, 6, 7, 9, 11

## I. INTRODUCTION

1. The Public Counsel Unit of the Washington Attorney General’s Office (Public Counsel) continues to urge the Utilities and Transportation Commission (UTC or Commission) to disallow post-September 22, 2016, costs associated with Puget Sound Energy’s (PSE) Tacoma Liquefied Natural Gas (LNG) project. The Tacoma LNG project is imprudent and not in the public interest.

## II. EQUITY CONSIDERATIONS APPLY TO THE COMMISSION’S DECISION IN THIS CASE AND REQUIRE THAT THE COMMISSION DISALLOW COSTS OF TACOMA LNG IN UTILITY RATES

2. PSE continues to argue that equity and environmental considerations should not apply to its Tacoma LNG project.<sup>1</sup> This interpretation of the expanded public interest standard, as enacted by the Legislature in 2021, is too narrow. While the Commission did not apply the expanded public interest standard to PSE’s September 22, 2016, decision to build Tacoma LNG,<sup>2</sup> the Commission left open the question of whether the expanded public interest standard would apply to decisions made after September 22, 2016.<sup>3</sup> In particular, the Commission distinguished between an initial decision to build and “threshold prudence” versus the “continuous demonstration of prudence over the life of an investment now that equity and environmental health considerations have been incorporated into ratemaking.”<sup>4</sup> The question in this case involves the continuous demonstration of prudence.

---

<sup>1</sup> PSE Initial Brief, ¶¶ 8–9 (filed Dec. 8, 2023).

<sup>2</sup> *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-220066, UG-220067, & UG-210918 (*consol.*), Final Order 24/10 ¶ 426 (Dec. 22, 2022) (hereinafter Final Order 24/10).

<sup>3</sup> *Id.* ¶ 425.

<sup>4</sup> *Id.* ¶ 425.

3. PSE points to the Commission’s function as an “economic regulator.”<sup>5</sup> While the Commission is an economic regulator, it is important that this designation not become a trope used to perpetuate the very systemic harms that the Legislature recognizes and wishes to be undone. By incorporating equity and environmental harms into ratemaking, the Legislature is directing the Commission to do something other than business as usual. This entails altering longstanding procedures to prevent the perpetuation of systemic harms. It involves assigning economic value to externalities, such as equity and environmental harms, which the Commission had not previously considered. It requires an expanded consideration beyond the mere accounting and ledger aspects of an investment.
4. As Public Counsel argued in our Initial Brief, the adverse impacts of Tacoma LNG will carry forward for generations, making it imperative that the Commission consider equity and environmental harms in this case.<sup>6</sup> Under PSE’s logic, implementation of equity and environmental harms consideration would be delayed decades as projects come online that were developed prior to 2021. This is contrary to the Legislature’s directive that the Commission consider equity and environmental harms “beginning January 1, 2022.”<sup>7</sup>
5. PSE also emphasizes that the Commission *may* consider equity and environmental harms under the expanded public interest standard. While the statute uses permissive language, it would not be in the public interest for the Commission to ignore evidence of future harm. The evidence in this case establishes the harm that will be caused by the Tacoma LNG facility, and the

---

<sup>5</sup> PSE Initial Brief, ¶ 9.

<sup>6</sup> Public Counsel Initial Brief, ¶¶ 40–52 (filed Dec. 8, 2023).

<sup>7</sup> RCW 80.28.425(1).

Commission must consider that evidence in its decision.<sup>8</sup> Public Counsel strongly urges the Commission to disallow costs of the Tacoma LNG facility.

**III. PSE’S DESIGN DAY STANDARD IS BASED ON OUTDATED DATA AND CONTINUED RELIANCE ON OUTDATED DATA WAS IMPRUDENT AFTER SEPTEMBER 22, 2016**

6. PSE attempts to argue that its design day standard was not outdated by 2016.<sup>9</sup> By 2016, the design day standard was based on data dating back 21 years to 1995 along with a study conducted in 2005.<sup>10</sup> PSE curiously claims that Public Counsel is “misleading” by pointing out that the Commission stated that the data underlying the 2005 analysis was dated at the time of the study.<sup>11</sup> However, the Commission plainly stated that the data was outdated. In its acknowledgement letter on the 2005 study, the Commission noted that “the data underlying that analysis is now dated.”<sup>12</sup> If the data used in 2005 was dated then, it was even more so by 2016.

7. While the Commission commended PSE’s efforts on the study, it very clearly stated that the data was already out of date in 2005. It is one thing to praise the modeling and calculations, and another thing to recognize that the data used in the modeling and calculations is outdated. For example, one might praise the model (e.g., Aurora) for being an accurate representation of a system, while also recognizing that it is not reasonable to use 21-year-old data to forecast next year’s power system costs.

---

<sup>8</sup> Public Counsel Initial Brief, ¶¶ 45–52.

<sup>9</sup> PSE Initial Brief, ¶ 68.

<sup>10</sup> Resp. Test. of Robert L. Earle, Exh. RLE-1CT at 12:12–14.

<sup>11</sup> PSE Initial Brief, ¶ 69.

<sup>12</sup> Earle, Exh. RLE-1CT at 11:10–11.

8. Even though PSE trumpets the Commission's praise of its model and calculations, PSE oddly did not preserve those model and calculations so it could update the study with new data or justify reliance on the results in subsequent decades.<sup>13</sup> PSE's inability to provide underlying documentation should give the Commission pause and reason enough to find PSE proceeding with the Tacoma LNG project after 2016 to be imprudent.

9. In its Initial Brief, PSE mischaracterizes Public Counsel's criticism of its reliance on an undocumented model and out-of-date data as rejection of the design day standard concept.<sup>14</sup> Public Counsel nowhere rejects the use of a design day standard. Rather, Public Counsel rejects PSE's imprudent use of an undocumented and outdated design day standard to justify the Tacoma LNG Facility after 2016. Out-of-date data produces in out-of-date results. Specifically, the design day calculations and weather normalization results<sup>15</sup> provided out-of-date results. The Commission should reject PSE's arguments on its reliance on outdated results from its design day standard and results of its weather normalization.

10. PSE assertion that the Commission endorsed the use of a design day standard is irrelevant. The Commission did not endorse the use of an undocumented and out-of-date design day standard even though it recognized that a design day standard was an appropriate tool. The Commission should reject PSE's arguments that the Commission endorses the use of an undocumented and out-of-date design day standard.

---

<sup>13</sup> Earle, Exh. RLE-1CT at 13, fn.32. Earle, Exh. RLE-5.

<sup>14</sup> PSE Initial Brief ¶¶ 66, 68.

<sup>15</sup> PSE Initial Brief ¶ 67.

11. PSE claims that the \$182 million cost (now \$242 million) of the facility “bears no relationship” to the \$15.1 million benefit discussed in the 2005 Least Cost Plan.<sup>16</sup> In this case, PSE is seeking an annual revenue requirement of \$47.6 million through its Schedule 141LNG tracker.<sup>17</sup> PSE claims that, by being described as “levelized in the 2005 Least Cost plan, the \$15.1 million in benefits are annualized.”<sup>18</sup> However, the 2005 Least Cost Plan does not say whether \$15.1 million are annual benefits. Moreover, PSE could not provide underlying documentation for the 2005 Least Cost Plan that might clarify whether \$15.1 million is annualized or not.<sup>19</sup>

12. PSE’s 2021 Integrated Resource Plan, which PSE cites in its Initial Brief,<sup>20</sup> “levelized” costs clearly refers to the 20 or 24 year net present value of total costs and not annualized costs.<sup>21</sup> The Commission should reject PSE’s claim that \$182 million in costs are not comparable with \$15.1 million in benefits, and find PSE’s decision after 2016 to be imprudent in light of the small benefits provided in contrast with the high costs.<sup>22</sup>

#### **IV. THE LNG FACILITY HAS NOT BEEN USED FOR PEAK SHAVING**

13. In support of its request for recovery of costs incurred for the Tacoma LNG Project, PSE says that it “provided natural gas to PSE’s customers.”<sup>23</sup> But, PSE mischaracterizes the

---

<sup>16</sup> PSE Initial Brief, ¶¶ 38, 69.

<sup>17</sup> Direct Test. of Susan E. Free, Exh. SEF-1T at 10:11–16.

<sup>18</sup> Ronald J. Roberts, RJR-11T at 15:11–15.

<sup>19</sup> Earle, Exh. RLE-1CT at 13, fn.32. Earle, Exh. RLE-5.

<sup>20</sup> PSE Initial Brief, ¶ 68, fn.166.

<sup>21</sup> 2021 IRP at App’x. A at 1176, 1190, 1193 (this document is not consecutively paginated; the pincite references the pdf. page number).

<sup>22</sup> Even if the “levelized” amount is an annual amount, one only needs to compare \$15.1 million to PSE’s requested annual revenue requirement request of \$47.6 million to see that the costs far outweigh the benefits.

<sup>23</sup> PSE Initial Brief, ¶ 30.



Commission’s interest in the use of the facility over the 2022/2023 winter. The Commission said, “When we review the prudence of costs 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>24</sup> The Commission was interested in whether the facility was used as a **peak-shaving resource**, not just as a general resource. PSE mischaracterizes the Commission’s interest as whether the Facility “provided natural gas.”

14. PSE attempts to characterize *any* provision of natural gas to PSE’s customers as “peak shaving.”<sup>25</sup> This definition of peak shaving contradicts the clear record of its intended usage in both this Docket and in the previous dockets. In this Docket, PSE’s own Initial Brief says the purpose of the facility is to “meet the needs of PSE’s natural gas customers on the coldest days.”<sup>26</sup> Public Counsel witness Dr. Earle demonstrated that the use of the Tacoma LNG Facility in the winter of 2022/2023 was not to “meet the needs of PSE’s natural gas customers on the coldest days.” Specifically, the average gas demand levels were 44 percent below the pre-Tacoma LNG resource capacity. The highest demand day within the days PSE vaporized was 29 percent of pre-Tacoma LNG resource capacity.<sup>27</sup>

15. Thompson’s Natural Gas Transportation Information Service glossary defines peak shaving as, “Drawing from a supplemental source of gas when demand for gas is so high that the

---

<sup>24</sup> PSE Initial Brief, ¶ 30, fn.52, citing *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-220066, UG-220067, & UE-210918, Final Order 24/10 ¶ 405.

<sup>25</sup> *Id.* ¶ 30.

<sup>26</sup> *Id.* ¶ 38.

<sup>27</sup> Earle, Exh. RLE-1CT at 16:12–18:18.

primary source is inadequate.”<sup>28</sup> That is, peak shaving occurs on peak demand days. The record makes this abundantly clear, though PSE now tries to deny this.

16. In Docket UG-151663, the Commission explains, citing to PSE, that the putative regulatory need for Tacoma LNG was based on PSE’s need to meet its peak day requirements.<sup>29</sup> In Dockets UE-220066 *et al.*, the Commission explains, again citing PSE, that the claimed purpose of the facility for ratepayers is to serve “peak day gas requirements.”<sup>30</sup> However, the days on which PSE claims it peak shaved were not peak demand days.<sup>31</sup>

17. PSE further mischaracterizes the issue by saying, “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.), would undermine the intent of the standard and usefulness of the resource.”<sup>32</sup> Public Counsel makes no such assumption. The citation by PSE to Dr. Earle’s testimony merely states that the optimal peak-day planning standard was 52 HDD (13 °F).<sup>33</sup> The justification for the ratepayers’ portion of the cost of the facility, as discussed above, is that the facility would peak shave on **peak demand days**. The facility has done no such thing to date.

18. That the facility has not been used for peak demand days, and was not intended to do so by PSE, in winter 2022/2023 is further illustrated by two facts. First, PSE would not answer whether absent the vaporizations in winter 2022/2023 curtailments to PSE core customers would have been required. PSE would not even say, when asked, that the Tacoma LNG Facility was

---

<sup>28</sup> Adam Rich, Ed. *Nat. Gas Transp. Info. Service Glossary* (Apr. 2002) WL 33834981.

<sup>29</sup> *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Docket UG-151663, Order 10 ¶¶ 18, 27 (Oct. 31, 2016).

<sup>30</sup> Final Order 24/10, ¶¶ 330, 345.

<sup>31</sup> Earle, RLE-1CT at 16:14–21.

<sup>32</sup> PSE Initial Brief, ¶ 34.

<sup>33</sup> Earle, RLE-1CT at 11:2.

necessary to provide the supposed reliability benefits it provided.<sup>34</sup> Second, PSE has claimed that in order to use the Tacoma LNG Facility to meet projected demand on peak demand days, it would store 6.3 million gallons going into winter. However, PSE only filled the ratepayers' share of the storage tank to 48 percent of the ratepayers' capacity. PSE did not prepare going into winter 2022/2023 for peak shaving. As PSE stated, "The LNG that is used for peak shaving (6.3 million gallons) needs to be liquefied and sitting in the storage tank by the beginning of each year."<sup>35</sup>

19. The Commission should reject PSE's contention that the Facility has been used for peak shaving.

**V. PSE'S ARGUMENT THAT DEVELOPING THE LNG FACILITY MAY HAVE FURTHERED WASHINGTON STATE POLICY TO REDUCE DEPENDENCE ON PETROLEUM-BASED FUELS IS IRRELEVANT AND MISLEADING**

20. PSE states in its Initial Brief that PSE's development of the LNG facility meets "the Legislature's preferred policy outcome to build out LNG refueling stations to reduce vessel emissions and decrease dependence on petroleum-based fuels."<sup>36</sup> Any greenhouse gas emissions reductions realized from switching marine fuel to LNG is irrelevant, because the marine fuel component of the Tacoma LNG facility is a non-regulated activity. The Commission should reject PSE's argument.

21. The Washington Supreme Court in *Cole* recognized that the Commission could not consider the impact on an unregulated business by a regulated utility.<sup>37</sup> Similarly, the

---

<sup>34</sup> *Id.* 17:10–16.

<sup>35</sup> Earle, RLE-1CT at 18:4-18.

<sup>36</sup> PSE Initial Brief, ¶ 40.

<sup>37</sup> *Cole v. Wash. Utils. & Transp. Comm'n*, 79 Wn.2d at 305–306 (1971).

Commission in this case should not consider any purported non-regulatory impact of the LNG plant on marine traffic emissions. The *non-regulatory* business, or its potential environmental impact, has no bearing on whether the *regulated* portion of the facility is in the public interest. Indeed, RCW 80.28.425(1) limits the inquiry to “the extent such factors affect the rates, services, and practices” of a regulated utility. Thus, the relevant greenhouse gas emissions are those from the regulated portion of the facility, and the Commission has stated that it will not rely on any reduction in non-regulated greenhouse gas reductions.<sup>38</sup>

22. PSE states that it “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>39</sup> The Commission ruled in Docket UG-151663 that the marine fuel operations were not within its jurisdiction, but requested further briefing and oral argument on jurisdiction in light of RCW 80.28.280.<sup>40</sup> The Commission was particularly concerned about how to balance risks between shareholders and ratepayers for the Tacoma LNG project.<sup>41</sup> Ultimately, parties entered into mediation to resolve issues presented by PSE’s desire to develop the Tacoma LNG project.<sup>42</sup>

23. The Commission approved a settlement that placed unregulated marine fuel operations into an entity called “Puget LNG.”<sup>43</sup> Puget LNG and PSE are both subsidiaries of Puget

---

<sup>38</sup> Final Order 24/10, ¶ 447.

<sup>39</sup> PSE Initial Brief, ¶ 40.

<sup>40</sup> *Puget Sound Energy*, Docket UG-151663, Final Order 10, ¶ 32–34.

<sup>41</sup> *Id.* ¶ 34.

<sup>42</sup> *Id.* ¶ 39 and fn.33. Public Counsel was among the parties that participated in the mediation.

<sup>43</sup> *Id.* ¶ 43.

Energy.<sup>44</sup> Puget LNG is a special purpose limited liability company formed for the sole purpose of owning, developing, and financing the Tacoma LNG project as a tenant-in-common with PSE.<sup>45</sup> Neither Puget LNG nor the sale of LNG as transportation fuel are subject to the Commission's jurisdiction.<sup>46</sup> The only portion of the Tacoma LNG facility that is subject to the Commission's jurisdiction is the peaking resource used to serve PSE's core natural gas customers.<sup>47</sup>

24. While PSE characterizes the work in Docket UG-151663 as being focused on ensuring that PSE could develop marine vessel fueling stations,<sup>48</sup> the driving force was protecting PSE's utility ratepayers from the unregulated activities of Puget Energy and Puget LNG.<sup>49</sup> In particular, the Commission approved several ring-fencing provisions to protect PSE's regulated ratepayers from unregulated LNG activities.<sup>50</sup> First, Puget LNG and PSE are separate entities having several—and not joint or collective—obligations and liabilities.<sup>51</sup> Second, PSE was required to obtain a non-consolidation opinion concluding that the ring-fencing provisions are sufficient that a bankruptcy court would not order the substantive consolidation of PSE's assets and liabilities of Puget Energy or Puget LNG.<sup>52</sup> Third, PSE's customers will be held harmless from the liabilities and financial losses of any non-regulated activity of the Tacoma LNG facility.<sup>53</sup>

---

<sup>44</sup> *Id.* ¶ 46.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Puget Sound Energy*, Docket UG-151663, Final Order 10, ¶ 47.

<sup>48</sup> PSE Initial Brief, ¶ 40.

<sup>49</sup> *Puget Sound Energy*, Docket UG-151663, Final Order 10, ¶ 51.

<sup>50</sup> *Id.* ¶¶ 51–55.

<sup>51</sup> *Id.* ¶ 51.

<sup>52</sup> *Id.* ¶ 52.

<sup>53</sup> *Id.* ¶ 53.

Fourth, PSE and Puget LNG were required to enter into a Joint Ownership Agreement that was not to create an association, joint venture, trust or partnership.<sup>54</sup> Fifth, the Joint Ownership Agreement must apply to any new buyer of the non-regulated operations of Tacoma LNG.<sup>55</sup>

25. The Commission should continue to recognize that the impact on the unregulated LNG business is beyond its authority to consider.<sup>56</sup> Further, the Commission should reject PSE's misleading characterization of Docket UG-151663 as furthering marine fuel, as the focus was protecting the regulated utility and its ratepayers from the unregulated marine fuel business.

## **VI. PUBLIC COUNSEL CONTINUES TO REQUEST AN INDEPENDENT AUDIT OF PSE'S LEGAL EXPENSES**

26. The Puyallup Tribe states that an audit of PSE's legal expenses is unnecessary because PSE has failed to establish that its legal fees and costs are reasonable and appropriate.<sup>57</sup> While Public Counsel agrees with the premise that PSE failed to establish that its legal fees and costs should be included in rates, the evidence supports a finding that PSE may not be employing the appropriate cost controls and oversight for its legal fees and costs generally.<sup>58</sup> The audit Public Counsel requests is not limited to legal fees and costs related to Tacoma LNG, but rather overall management of the utility's legal fees and costs generally.<sup>59</sup> Therefore, disallowance of the Tacoma LNG legal fees and costs—while appropriate and necessary—does not fully address Public

---

<sup>54</sup> *Id.* ¶ 54.

<sup>55</sup> *Id.* ¶ 55.

<sup>56</sup> Final Order 24/10, ¶ 447.

<sup>57</sup> Puyallup Tribe Initial Brief at 30:6–11 (filed Dec. 8, 2023).

<sup>58</sup> Public Counsel Initial Brief, ¶¶ 31–33.

<sup>59</sup> *Id.* ¶ 33.

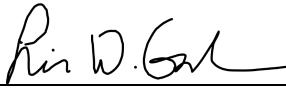
Counsel's concern. The Commission should order an audit of all legal costs incurred by PSE between 2013 and 2023.

## VII. CONCLUSION

27. Public Counsel continues to advance the arguments made in our Initial Brief. The Commission should disallow all costs and expenses related to the Tacoma LNG project after PSE's initial decision to build on September 22, 2016. As argued here and in our Initial Brief, Public Counsel has shown that the project fails the Commission's prudence evaluation and the public interest standard.
28. Additionally, the Commission should disallow PSE's legal expenses related to Tacoma LNG as unsupported by sufficient evidence. The Commission should also refund certain amounts from 2013 through 2016 that should have been allocated to Puget LNG. Further, the Commission should order an independent audit of PSE's legal expenses.
29. Lastly, the Commission should reject PSE's proposed allocation for the four-mile pipeline addition because PSE proposes to allocate 38.3 percent to Puget LNG rather than the 74.4 percent that evidence supports to be allocated to the unregulated operations, unfairly placing more costs than justified on ratepayers.

DATED this 21st day of December, 2023.

ROBERT FERGUSON  
Attorney General

/s/ 

---

LISA W. GAFKEN, WSBA No. 31549  
Assistant Attorney General, Unit Chief  
Lisa.Gafken@ATG.WA.GOV

*Attorney for Public Counsel Unit*

Attorney General of Washington  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104