

Evidentiary Hearing
WUTC v. Puget Sound Energy
November 6, 2023



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
)
Complainant,) DOCKET UG-230393
)
v.)
)
PUGET SOUND ENERGY,)
)
Respondent.)

EVIDENTIARY HEARING

BEFORE ADMINISTRATIVE LAW JUDGES
MICHAEL BROWN AND JAMES BROWN, II

DATE TAKEN: NOVEMBER 6, 2023
REPORTED BY: LAURA L. OHMAN, RPR, CCR 3186

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Commissioner Ann Rendahl
Commissioner Milt Doumit
* * * * *

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1 LACEY, WASHINGTON; NOVEMBER 6, 2023

2 9:01 A.M.

3 -o0o-

4

5 JUDGE HOWARD: Good morning. It is Monday,

6 November 6th, and the time is 9:01 a.m.

7 My name is Michael Howard, and I'm joined by

8 James Brown, II. We are administrative law judges with

9 the Commission, and we are presiding on this matter

10 along with the commissioners, who will be joining us

11 shortly.

12 We are here today for an evidentiary hearing in

13 Docket UG-230393. This case is captioned WUTC v. Puget

14 Sound Energy. This proceeding is concerning PSE's

15 Tacoma liquid natural gas or LNG facility and the

16 recovery for those costs and rates.

17 Let's start by taking appearances beginning with

18 PSE.

19 MS. CARSON: Good morning, Your Honor.

20 Sheree Strom Carson with Perkins Coie, representing

21 Puget Sound Energy --

22 MS. GAFKEN: Judge Howard, I'm not sure if

23 you're speaking into the microphone for the hearing, but

24 I was not getting audio.

25 JUDGE HOWARD: Thank you for those of you

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1 online for letting me know.
 2 Can you hear me now?
 3 Can you hear me now?
 4 I'm going to be a Verizon commercial.
 5 Can you hear me now, Ms. Gafken?
 6 All right. Record Center is working on that.
 7 If we could maybe drop a note in the chat. We are on
 8 the record, and Record Center is working on having my
 9 microphone carry through online. We're just taking
 10 appearances from the parties right now.
 11 Can we have an appearance for commissioned
 12 staff?
 13 MR. ROBERSON: Good morning, Judge Howard
 14 and Judge Brown. Jeff Roberson, AAG for commissioned
 15 staff.
 16 JUDGE HOWARD: Thank you.
 17 Ms. Gafken, are you able to hear me now?
 18 MS. GAFKEN: I am, yes.
 19 Would you like me to give my appearance now?
 20 JUDGE HOWARD: Please. Thank you.
 21 MS. GAFKEN: Perfect. My name is Lisa
 22 Gafken, Assistant Attorney General, appearing on behalf
 23 of public counsel.
 24 JUDGE HOWARD: Thank you.
 25 And I appreciate everyone bearing with us while

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1 we do our first hybrid adjudication.
 2 Can we have an appearance for AWEC, Alliance of
 3 Western Energy Consumers?
 4 MS. MOSER: Yes. Good morning. Sommer
 5 Moser on behalf of AWEC.
 6 JUDGE HOWARD: Thank you.
 7 And can we have an appearance for the Puyallup
 8 Tribe?
 9 MR. FULLER: Good morning.
 10 Can you hear me?
 11 Sorry about that. We've got two computers in
 12 the room. We're just going to close one of them to try
 13 to get past that. Apologies.
 14 This is Andrew Fuller representing the Puyallup
 15 Tribe of Indians. My colleague Nick Thomas is also here
 16 with me.
 17 JUDGE HOWARD: Thank you, Mr. Fuller, and I
 18 can hear you fine -- just fine now.
 19 MS. CARSON: Your Honor, if I might, I also
 20 wanted to introduce Byron Starkey and Pamela Anderson,
 21 who are also from Perkins Coie representing Puget Sound
 22 Energy.
 23 JUDGE HOWARD: Certainly.
 24 MS. CARSON: We got cut off, but wanted to
 25 make sure for the record that they are listed.

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1 JUDGE HOWARD: Thank you. I appreciate it.
 2 All right. I would like to start out by giving a
 3 brief roadmap for our hearing today. We'll begin in a
 4 moment ruling on the two recent motions. Next we will
 5 admit evidence and address any objections to the
 6 evidence.
 7 After the commissioners join us, we will then
 8 allow the parties an opportunity to provide brief
 9 opening statements, limited to ten minutes each. We'll
 10 then turn to the cross-examination of witnesses,
 11 following the order of presentation provided by the
 12 parties and that I circulated as well.
 13 The parties estimate that there will be
 14 approximately three hours of cross-examination today.
 15 If we account for opening statements, a brief midmorning
 16 break, and a lunch break, it is quite likely our hearing
 17 will end by early afternoon.
 18 This is our first adjudication at the Commission
 19 as being held on a hybrid basis both in person here at
 20 the hearing room and online over Zoom. It's great to
 21 see many of you here in person, and I appreciate
 22 everyone bearing with us through some technical issues
 23 at first.
 24 If you're here in person, please try to speak
 25 directly into the bench microphone so that our court

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1 reporter can make a clear record and those online can
 2 hear you as well.
 3 And if a witness is appearing in the hearing
 4 room, they may feel free to sit next to the attorney of
 5 their party.
 6 If you're listening in online, I would remind
 7 the parties to keep their microphones muted unless
 8 they're speaking and also only to use video for those
 9 portions of the hearing when they have a speaking role.
 10 If you are having any technical issue or you
 11 observe that someone has dropped off the call, please
 12 feel free to mention that in the chat, which should be
 13 reserve for technical issues and requests for breaks
 14 only.
 15 Are there any questions or housekeeping matters
 16 before we go on to the issue of the recent motions?
 17 All right. Hearing none --
 18 MR. FULLER: Your Honor, I do have one thing
 19 to inquire about on behalf of the Tribe, and it's
 20 regarding the request for class certification.
 21 We filed a petition for class certification. I
 22 believe AWEC has as well. We recently saw that the
 23 Commission issued a determination in a related hearing
 24 that their petitions have been filed more recently and
 25 just would like to inquire as to the status of the

1 response to the Tribe's petition, and I imagine AWEC may
 2 be interested in that response as well.
 3 JUDGE HOWARD: Do you have the docket number
 4 where a petition class certification was filed? Was
 5 that filed with the Commission?
 6 MR. FULLER: Yes. It was -- the tribe's was
 7 filed on July 28th, 2023. AWEC's was filed on July
 8 19th, 2023. It would be in this docket. I can pull up
 9 the docket number really quick.
 10 JUDGE HOWARD: Oh, I see. Are you asking
 11 about the -- the Docket 220066 where we entered the
 12 order for case certifications?
 13 MR. FULLER: The one that was recently
 14 issued was -- the one that was issued in the recent
 15 matter was on October 31st, and I believe that is the
 16 correct docket number. And here, let's see, one quick
 17 second. I'll pull up the actual docket number of our
 18 petition. I guess it's within Docket No. 230393.
 19 It doesn't have a specific docket entry number.
 20 It's a petition that was filed by the Tribe on July
 21 28th, 2023. A similar petition for case certification
 22 and notice to -- intent to request fund grant was filed
 23 by AWEC on July 19th, 2023. I do not believe that
 24 there's been any ruling issued on this.
 25 JUDGE HOWARD: Thank you for alerting me to

1 costs were not specifically at issue, which would help
 2 address why this issue developed in the way it did in
 3 the testimony in this case. The motion to revise
 4 testimony filed by PSE is granted. I'm persuaded that
 5 this revision -- that these revisions to Susan Free's
 6 testimony are very limited in scope. They're reflecting
 7 the company's additional investigation, and that, again,
 8 the company relied upon language in the earlier final
 9 order that legal costs were not specifically at issue --
 10 suggesting that legal costs would not be specifically at
 11 issue in this proceeding. And those are our rulings on
 12 those motions.
 13 And I just want to add that I'm not directly
 14 trying to -- I'm not trying to speak for the
 15 commissioners or how they might rule in their final
 16 order in this case on any of these issues.
 17 With that, let's turn to the admission of the
 18 pretrial testimony and exhibits.
 19 In my e-mail to the parties last week, I
 20 circulated our exhibit list. I included all pre-filed
 21 exhibits and testimony up to and including cross
 22 exhibits. This morning on my own copy, I add the
 23 revision to Susan Free's testimony, SCF-4T showing it
 24 was revised on October 31st.
 25 Do the parties stipulate to the admission of all

1 that issue. I will certainly look into that and we'll
 2 provide any necessary rulings after this hearing today.
 3 I apologize. At first, I thought you said class
 4 certification, so I was questioning what I heard for a
 5 moment.
 6 MR. FULLER: I may have misspoke. My
 7 apologies.
 8 JUDGE HOWARD: No problem.
 9 So turning to the two recent motions, we have
 10 public counsel's motion to strike portions of PSE's
 11 rebuttal testimony and PSE's motion for lead to file
 12 revised testimony. Both motions are related because
 13 they concern PSE providing additional testimony about
 14 its legal costs in rebuttal. I'm going to keep my
 15 rulings on this fairly concise.
 16 The motion to strike is denied. This is a --
 17 essentially a discovery dispute over a failure --
 18 alleged failure to supplement discovery responses, and,
 19 of course, the duty to supplement is a serious duty.
 20 But at the same time, there was a failure to confer in
 21 this instance, and response testimony does not equate to
 22 conferring with a meeting of the rules in an effort to
 23 resolve the discovery dispute.
 24 I'm also persuaded that PSE relied on language
 25 in Final Order 2410 in the last rate case that legal

1 the pre-filed exhibits and testimony, or do they have
 2 any objections? I would turn first to the Company?
 3 MS. CARSON: PSE has no objections to the
 4 pre-filed testimony and exhibits.
 5 JUDGE HOWARD: All right. Thank you.
 6 Can I hear from the staff?
 7 MR. ROBERSON: Staff will also stipulate to
 8 the admission of the exhibits and the testimony -- the
 9 pre-filed exhibits and the testimony.
 10 JUDGE HOWARD: Thank you.
 11 Ms. Gafken, can I hear from public counsel?
 12 MS. GAFKEN: Yes. Public counsel will also
 13 stipulate to the admission of the pretrial exhibits and
 14 testimony. I apologize. I didn't quite hear at the
 15 beginning when you were asking us for these statements.
 16 Were you also including any of the cross exhibits that
 17 were offered?
 18 JUDGE HOWARD: Yes.
 19 MS. GAFKEN: Or just --
 20 JUDGE HOWARD: This includes all the cross
 21 exhibits and the revised testimony as well.
 22 MS. GAFKEN: Perfect. Thank you. My
 23 stipulation remains unchanged.
 24 JUDGE HOWARD: Thank you.
 25 And can I hear from AWEC?

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1 MS. MOSER: Thank you, Your Honor. AWEC
 2 stipulates.
 3 JUDGE HOWARD: Certainly.
 4 Ms. Moser would you mind repeating yourself? It
 5 came through a little unclear on my end.
 6 MS. MOSER: I apologize. Can you hear me?
 7 JUDGE HOWARD: Yes.
 8 MS. MOSER: Okay. AWEC will also stipulate
 9 to the admission of the testimony exhibits.
 10 JUDGE HOWARD: Thank you.
 11 Can I hear from the Puyallup Tribe?
 12 MR. FULLER: Yes. The Puyallup Tribe also
 13 stipulates to the admission of the testimony exhibits.
 14 JUDGE HOWARD: All right. Thank you all.
 15 I'm going to indicate that all the pre-filed testimony
 16 and exhibits, as I've discussed, are admitted without
 17 exception, including the recent revision to SCF-4T.
 18 And I will provide a copy of the exhibit list to
 19 the court reporter so that will be made part of the
 20 record after our hearing today.
 21 And the commissioners should be joining us in
 22 just a moment. Let's go off the record for just for a
 23 minute or two.
 24 (Pause in the proceedings.)
 25 JUDGE HOWARD: Let's be back on the record.

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1 All right. The commissioners have joined us in
 2 the hearing room, and I will just note for the
 3 commissioners that all the pre-trial testimony and
 4 exhibits have been admitted, including the revised
 5 SCF-4T that I e-mailed you to you just now.
 6 COMMISSIONER DOUMIT: You didn't put in an
 7 attachment?
 8 JUDGE HOWARD: I just sent over an e-mail.
 9 All right. Can we have the parties provide
 10 brief appearances for the commissioners, beginning with
 11 PSE.
 12 MS. CARSON: Good morning, Commissioners.
 13 My name is Sheree Strom Carson with Perkins Coie. I
 14 represent Puget Sound Energy. Also with me are Pamela
 15 Anderson and Byron Starkey, also with Perkins
 16 representing PSE.
 17 MR. ROBERSON: Judge Howard, I note that Ms.
 18 Gafken just dropped in the chat that they're not getting
 19 audio again, so we may want to halt for a second.
 20 JUDGE HOWARD: All right. Thank you for
 21 letting me know.
 22 Ms. Gafken, can you hear me right now?
 23 Okay. Ms. Gafken, can you hear me right now?
 24 MS. GAFKEN: Yes, we can.
 25 JUDGE HOWARD: It helps if I turn on my

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1 microphone.
 2 Mr. Roberson, go ahead.
 3 MR. ROBERSON: Good morning, Judges Howard
 4 and Brown, Commissioners. My name is Jeff Roberson.
 5 I'm an AAG attorney for staff.
 6 JUDGE HOWARD: All right. Ms. Gafken, would
 7 you like to give your appearance.
 8 MS. GAFKEN: Yes. Good morning. My name is
 9 Lisa Gafken. I'm the assistant attorney general
 10 appearing on behalf of public counsel.
 11 JUDGE HOWARD: Can we hear from AWEC?
 12 MS. MOSER: Good morning, Judges Howard and
 13 Brown. My name is Sommer Moser, and I'm appearing on
 14 behalf of AWEC.
 15 JUDGE HOWARD: Thank you.
 16 Can we hear from the tribe?
 17 MR. FULLER: Good morning, Judge Howard.
 18 Good morning, Commissioners.
 19 My name is Andrew Fuller. I work for Ogden
 20 Murphy Wallace, and today I represent the Puyallup Tribe
 21 of Indians. My colleague Nicholas Thomas from Ogden
 22 Murphy Wallace is also here.
 23 JUDGE HOWARD: All right. Thank you.
 24 As I indicated, we will allow each party the
 25 opportunity for brief opening statement today.

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1 Let's go first to the Company.
 2 MS. CARSON: Good morning, Chair Danner,
 3 Commissioner Rendahl, Commission Doumit, Judge Howard,
 4 and Judge Brown.
 5 Thank you for the opportunity to provide this
 6 opening statement.
 7 There are four points from PSE's testimony that
 8 I want to highlight this morning. First is the proper
 9 scope of this proceeding, which is the reasonableness of
 10 costs incurred by PSE after the decision to build the
 11 Tacoma LNG facility in 2016. Second, post 2016 costs
 12 were reasonable, prudent, and should be allowed in
 13 rates. Third, Tacoma LNG facility has been a capacity
 14 resource for customers since February 2022 and is used
 15 and useful. And fourth, PSE improved the Tacoma LNG
 16 site and surrounding areas and those benefits continue
 17 to accrue to the residence of the area, including the
 18 Tribe.
 19 So let's start with the scope of the proceeding.
 20 In paragraph 52 of the 2022 general rate case final
 21 order, the Commission concluded PSE acted prudently in
 22 developing and constructing the facility up through the
 23 board of the directors' decision to authorize
 24 construction on September 22, 2016. The Commission
 25 allowed the parties to review and challenge subsequent

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1 construction and operation costs in this proceeding.
2 And again, in an order in this proceeding, the
3 Commission stated, the Commission considers -- the
4 Commission will consider the prudence and reasonableness
5 of the investments and decisions the company made after
6 September 22, 2016, when the decision to build Tacoma
7 LNG facility was made.
8 There are several issues that parties seek to
9 relitigate, and the Commission should decline to do so.
10 First, these are the design day standards, which public
11 counsel, again, argues is outdated despite the
12 Commission stating that PSE appropriately based planning
13 decisions on its design day standard. This is the same
14 standard PSE has used in subsequent IRPs in 2017 and
15 2021, which were acknowledged by the Commission.
16 Another issue that parties seek to relitigate is
17 the fact that PSE customers benefit from changes to the
18 liquefaction equipment to address changes in the
19 composition of feed gas, specifically removing more of
20 the heavy hydrocarbons from the feed gas. And air
21 quality issues, these issues are within the purview of
22 the Puget Sound Clean Air Agency, or PSCAA, and the
23 Pollution Control Hearings Board, or the PCHB. These
24 are the agencies with expertise in all air qualities
25 issues. The Commission has indicated it will not second

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1 guess determinations by more specialized environmental
2 health agencies.
3 And another issue is a false allegations that
4 PSE plans to transport LNG by rail. All those issues
5 were address in the 2022 general rate case and should
6 not be relitigated.
7 My second point is post 2016 costs are
8 reasonable and appropriate and should be recovered in
9 rates. The pre-file direct testimony of Ron Roberts
10 sets forth the details of the construction of the
11 company LNG facility and demonstrates that the
12 construction and the operation costs were reasonable,
13 appropriate, and prudent. PSE proceeded with
14 construction after the Commission issued its cost
15 allocation order in Docet UG-151663, and PSE has
16 properly allocated costs between PSE and Puget LNG.
17 In 2018, PSE conducted a reevaluation of the
18 need and alternatives when PSCAA required a supplemental
19 EIS. The Tacoma LNG facility remained the prudent
20 alternative.
21 Factors beyond PSE's control have increased the
22 cost of the project. These factors include protracted
23 litigation by the Tribe and other that increased legal
24 costs and permitting delays due to the requirement of a
25 supplemental environmental impact statement, which

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1 affected the timing of the construction, contract with
2 Chicago Bridge and Iron.
3 It's important to remember that PSE's IRPs and
4 updated load forecasts continue to show a need for the
5 resource, for the Tacoma LNG resource throughout the
6 construction of the facility, in 2017 IRP, and 2019 IRP
7 progress report, and in the 2021 IRP.
8 Also important to remember is that when the new
9 public interest standard in RCW 80.28.425 took effect
10 July 1, 2021, which of course allowed but does not
11 require the Commission to consider such factors as
12 equity and environmental health, at this time,
13 construction of the Tacoma LNG facility was 100 percent
14 complete, as Mr. Roberts has testified.
15 As in the 2020 general rate case, the Commission
16 should not retroactively apply a legal standard that was
17 not yet enacted to this facility.
18 My third point, Tacoma LNG has been available as
19 a capacity resource since February 2022. The plant
20 began commercial operations in February 2022 and has
21 been available to provide capacity to PSE natural gas
22 customer since that time, and as the Commission stated
23 in the final order in the 2022 GRC, capacity by itself
24 provides a benefit for customers and is a used and
25 useful resource.

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1 On several days during the winter of 2023, the
2 Tacoma LNG facility provided service of PSE customers
3 for cold weather action plans and when the BC pipeline
4 was curtailed. Customers are benefitting from this
5 capacity resource.
6 And my fourth point, PSE improved the site of
7 the Tacoma LNG facility and the area around the
8 facility, and the benefits continue to accrue to the
9 surrounding communities. PSCAA and the Pollution
10 Control Hearing Board, the agency is charged with
11 ensuring our air is clean, determined that Tacoma LNG is
12 a minor source and its emissions are consistent with
13 statutory requirements designed to avoid harm to human
14 health.
15 In addition, PSE's work on Tacoma LNG provided
16 benefits to the surrounding community, including the
17 Tribe. PSE built Tacoma LNG on ground fill sites that
18 contained multiple abandoned buildings, chipping led
19 paint, asbestos, and uncontrolled storm water releases.
20 PSE remediated and demolished over 350,000 square feet
21 of buildings, recycling 83 percent of the materials,
22 cleaned up the site, planted vegetation along portions
23 of the green buffer, and installed a storm water system
24 that provides for treatment of diffuse water sources
25 prior to discharge into the Hylebos Waterway.

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1 Off site, PSE removed creosote-treated piles
 2 from the Blair Waterway and its ferry ocean terminal,
 3 removed creosote -- treated over-water decking from the
 4 Hylebos Waterway and it's ferry ocean terminal, and the
 5 Shorelines Hearings Board found that the removal of
 6 creosote-treated materials will benefit surface water
 7 quality and salmon habitat by removing a source of
 8 contamination.

9 Just a few final points in closing: PSE has
 10 self-reported to PSCAA vari- -- variations and
 11 violations from the permit. Some of these resulted in
 12 monetary penalties totaling \$46,000. It is PSCAA, the
 13 agency charged with regulating air quality in
 14 Washington, that should address these issues with PSE,
 15 as it has and continues to do.

16 PSE should be allowed to recover its full return
 17 on the Tacoma LNG facility that was deferred from
 18 February 2022. The magnitude of the expense, PSE's
 19 earnings erosion, and inability to time the in-service
 20 date with a rate effective date justify recovery of the
 21 deferred return. To do otherwise would bias PSE's
 22 decision in favor of more costly pipeline alternatives,
 23 where it is customary for PSE to recover its prudently
 24 incurred deferred cost through its PGA mechanisms.

25 The cost of the four-mile distribution pipeline

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1 is also at issue and bidirectional pipeline. It is
 2 properly allocated between PSE and PLNG. PSE's -- it's
 3 important to remember that PSE has the superior right to
 4 use the outgoing pipeline to service its regulated
 5 customers at any time up to 240 hours per years and this
 6 right supersedes the right of Puget LNG to use the
 7 pipeline in the inbound direction.

8 All of these issues are addressed in PSE's
 9 pretrial testimony and exhibits.

10 PSE's witnesses are prepared to answer your
 11 questions this morning. Thank you for the opportunity
 12 to address these issues.

13 JUDGE HOWARD: All right. Thank you.
 14 Would Staff like to give an opening statement.

15 MR. ROBERSON: Good morning. I will be
 16 brief.

17 In PSE's last general rate case, the
 18 commissioners approved a number of settlements, one of
 19 them was the LNG settlement. That settlement allowed
 20 PSE to recover the cost of the LNG facility through a
 21 tracker subject to a future proceeding where the parties
 22 can challenge cost. This is that proceeding.

23 There are four major issues that Staff raises
 24 for the Commission's consideration. The first is as --
 25 well, as noted in Mr. Earl's testimony, the deferred

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1 return on the investment by PSE. Traditionally, this
 2 allowing recovery of a returned -- deferred return on is
 3 an exceptional rate making tool that the Commission only
 4 allows in rare circumstances. PSE has not justified it
 5 here. This is basically a piece of plant that was
 6 supposed to go into service. PSE controls the timing of
 7 its rate cases. It controls whether or not it settles
 8 and gets something into rate base at the end of a rate
 9 case.

10 The second issue that Staff raises is the --
 11 it's -- think of it as the use and useful issue, which
 12 is, as PSE has pointed out, the facility was online and
 13 it was able to vaporize as of February of, excuse me,
 14 2022. The issue there is that PSE's customer base could
 15 not absorb the full volume of gas coming out of the
 16 facility until PSE made distributions to some upgrades.
 17 It did not do that until later. Based on that, staff
 18 urges the Commission to reduce the amount of deferred
 19 depreciation and return on, assuming that you reject the
 20 earlier deferred return on argument I made based on
 21 bedrock use and useful principles.

22 The third issue raised by Staff is the
 23 pre-liquefaction modifications that occurred after PSE
 24 started building the plant. This issue is ripe for
 25 determination here because, as discussed just a second

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1 ago, all the settlements for the rate case did was defer
 2 these issues to this proceeding. Cost recovery was
 3 supposed to be handled here. Staff didn't litigate the
 4 pre-liquefaction modifications in the GRC because of
 5 that fact.

6 The Commission should disallow the incremental
 7 costs. They're not large, but they are -- it's
 8 something like half a million dollars, based on the fact
 9 that PSE's decision to invest in that was not prudent
 10 for its regulated customers. The first step in any
 11 prudence investigation is the determination of whether a
 12 project is needed. When Staff specifically put that
 13 question to PSE, its answer was succinct, no, it was not
 14 needed for its regulated customer. Based on that, the
 15 Commission should determine that the investment -- the
 16 incremental investment made to modify the
 17 pre-liquefaction equipment was not prudent.

18 The final issue Staff raises is the allocation
 19 of the four-mile pipeline. They're basically kind of
 20 stark differences between the parties. PSE has kind of
 21 arbitrarily decided that you should split it evenly
 22 between two customer bases, Puget LNG on one hand and
 23 PSE's customer base on the other hand. Staff testimony
 24 provides a principle way to do that based on actual use,
 25 recognizing the limits on PSE's permit.

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1 Staff's witnesses are also here and ready to
 2 take your questions.
 3 And with that, I will stop.
 4 JUDGE HOWARD: All right. Could we hear
 5 from the Public Counsel?
 6 MS. GAFKEN: Good morning. Public Counsel
 7 recommends in this case, as it did in the Puget Sound
 8 Energy 2022 general rate case that the Commission find
 9 the Tacoma liquefied natural gas facility impudent and
 10 disallow costs for that facility in rates. This case,
 11 unlike the 2022 general rate case, has a limited focus
 12 on Puget's post-2016 decisions and investment in the
 13 facility.
 14 In the rate case, the Commission approved
 15 Puget's initial decision on September 22nd, 2016, to
 16 build the Tacoma LNG facility. I want to be very clear
 17 that Public Counsel's analysis and recommendation are
 18 limited to Puget's actions after its initial decision to
 19 build on September 22nd, 2016.
 20 That leaves the vast majority of Puget's
 21 decision making with the facility that are at issue in
 22 this case. Only the initial decision to build was
 23 addressed in the rate case. In this case, the
 24 Commission will evaluate Puget's decisions to continue
 25 investing in LNG and the ultimate construction of the

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1 facility. Prudence is not a one and done concept but
 2 rather spans the entire life of a project, so why is
 3 Puget's investment in Tacoma LNG imprudent. First,
 4 Puget's reliance on its chosen design day standard was
 5 imprudent. Second, Puget's use of vaporization during
 6 this last winter does not establish that this facility
 7 is needed. Third, the facility is inequable and
 8 inconsistent with the State's energy policies.
 9 Pointing first to the design date issue, when
 10 the Commission found the design day standard to be
 11 acceptable for Puget's initial decision to build in
 12 September 2016, Puget's -- I'm sorry. I lost my train
 13 on thought on that. While the Commission found that the
 14 design day standard to be acceptable for Puget's initial
 15 decision to build, in September 2016, Puget's continued
 16 reliance on the design day standard was imprudent. The
 17 design day standard is a criteria in heating degrees
 18 that is used for system planning. The design day
 19 standard Puget used in evaluating Tacoma LNG was
 20 developed in the company's 2005 IRP. Puget has not
 21 updated its design day standard since its 2025 -- I'm
 22 sorry, 2005 IRP. Even when it was developed, it was
 23 based on outdated data. In Puget's most recent IRP, the
 24 company stated that it was maintaining the design day
 25 standard developed during the 2005 IRP, but it did not

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1 report doing any economic analysis to support that
 2 decision.
 3 As it relates to Tacoma LNG, Puget did not
 4 incorporate the costs versus the benefits of maintaining
 5 the design day standard, even as the capital cost of the
 6 projects grew 31 percent over the amount estimated.
 7 Further, Puget did not discuss with its board of
 8 directors the underlying basis for the design day
 9 standard. In discovery, Public Counsel specifically
 10 asked Puget whether it provided the board of directors
 11 with any additional materials on the design day standard
 12 that were not already part of the exhibits presented in
 13 this docket. Puget confirmed there were no additional
 14 materials. Additionally, Puget uses the design day
 15 standard to disregard actual weather and demand outcomes
 16 as irrelevant as it continued to construct and invest in
 17 Tacoma LNG.
 18 Because the design day standard was based on
 19 such outdated data, the balancing of the benefits to
 20 rate payers versus the cost of the design day standard
 21 were misaligned and Puget's reliance on the design day
 22 standard was imprudent.
 23 Turning to vaporization, Puget claims its use of
 24 the facility to vaporize gas during this last winter
 25 justifies a finding of prudence. This is simply not the

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1 case. Puget's stated justification for the facility is
 2 that it was required for peak shaving. Puget's use of
 3 vaporization does not show that the facility is
 4 necessary for peak shaving because the demands were
 5 significantly lower than Puget's pre-Tacoma LNG level of
 6 resources. And Puget vaporized a tiny amount of gas,
 7 making the use of Tacoma LNG performative at best.
 8 Turning to equities, Washington leads the nation
 9 in requiring the Commission to require -- to consider
 10 equity in evaluating the public interest. The impact of
 11 the Tacoma LNG facility on nearby communities has been
 12 raised many times over the course of Puget's development
 13 of the facility. The impact of the Tacoma LNG facility
 14 will carry forward for decades to come and it's absurd
 15 to argue that parties and the Commission should simply
 16 ignore that fact. Washington is very -- has a very
 17 clear statutory mandate that equity be centered in the
 18 Commission's decision making. This includes ensuring
 19 that the Commission's decision making not perpetuate
 20 historic harms, and, in this case, approving the Tacoma
 21 LNG facility would perpetuates historic harms.
 22 There are some additional issues I will cite
 23 here but not discuss in greater detail. I will discuss
 24 them in our legal briefing.
 25 Puget's legal costs associated with the Tacoma

1 LNG facility should be disallowed and the Commission
2 should order an audit of its legal expenses, cost
3 controls, and recordkeeping. And in the event that the
4 Commission allows Puget to include Tacoma LNG end rates,
5 it should reject Puget's proposed allocation for the
6 four-mile pipe upgrade, as Public Counsel's witness, Dr.
7 Robert Earl, demonstrates that the gas utility uses no
8 more than 25.6 percent of the upgraded pipe.

9 To conclude, the Commission should reject
10 Puget's investment into LNG, rule that the investment
11 was imprudent, and disallow all post-September 2016
12 costs for rates.

13 Public Counsel's expert witness, Dr. Robert
14 Earl, is present and ready to answer any and all of your
15 questions today. Thank you.

16 JUDGE HOWARD: Thank you.

17 Would AWEC like to give an opening statement?

18 MS. MOSER: Thank you.

19 Good morning, again, to Commissioner Rendahl,
20 Commissioner Doumit, Judge Howard, Judge Brown. I just
21 have a couple of brief remarks.

22 As you may have noticed, AWEC did not file
23 testimony in this proceeding. We were signatories to
24 the Tacoma LNG stipulation from the rate case, which
25 addressed prudence, revenue requirement, rate spread,

1 Tacoma LNG project and its potential and actual impacts
2 to the Tribe and its members through this work on behalf
3 of the Tribe.

4 The Tribe is presenting Dr. Sahu's testimony
5 because it provides the Commission important context
6 regarding the disproportionate burdens that are created
7 by the Tacoma LNG project in which fall on the Tribe and
8 surrounding communities. Dr. Sahu's testimony falls
9 into three broad topics. First, he speaks to the
10 metaphorical dark clouds that are over the Tacoma LNG
11 project, and I refer -- I'm referring to the negative
12 externalities that are associated to the facility.

13 These negative externalities disproportionately burden
14 the Tribe and other nearby highly impacted communities,
15 and these externalities are the source of the Tribe's
16 ongoing opposition to the project and why it has
17 intervened in this matter.

18 Second topic that Mr. Sahu's testimony touches
19 on is why the permits that have been issued to the
20 Tacoma LNG facility should not be interpreted as
21 evidence that the facility cannot or that it has not
22 already caused inequable impacts to the Tribe and its
23 surrounding communities.

24 The Tribe will present in evidence that PSE has
25 repeatedly violated its air permit and that excess

1 rate design, and the cost recovery mechanism associated
2 with Tacoma LNG facility. We did review all testimony
3 as it was filed, all discovery in this case, and did not
4 find that the concerns and issues raised by other
5 parties implicated issues that AWEC felt the need to
6 respond to. But we will -- are continuing to monitor
7 the evidentiary portion of this proceeding and will
8 address any non-evidentiary issues or legal issues in
9 briefing as necessary.

10 JUDGE HOWARD: Thank you.

11 Would the Puyallup Tribe like to give an opening
12 statement?

13 MR. FULLER: Yes, Your Honor.

14 Excuse me. Good morning, Judge Howard,
15 Commissioners Doumit, Brown, Danner, and Rendahl.

16 The Tribe has long expressed its concerns about
17 the impacts and the inequities of the Tacoma LNG
18 project, which is why it's before the Commission here
19 today. The Commission has recognized that the Tribe has
20 a substantial interest in this proceeding and that its
21 participation here is in the public interest.

22 As in the prior proceeding regarding the Tacoma
23 LNG settlement, the Tribe has retained Dr. Ranajit Sahu
24 to provide testimony here. As his previous testimony
25 shows, Dr. Sahu has developed extensive knowledge of the

1 emissions associated with those violations are, in fact,
2 harmful to the Tribe.

3 Finally, regarding the specific costs that PSE
4 seeks to recoup through this proceeding, Dr. Sahu
5 discusses why many of the costs that were incurred by
6 PSE after September 22nd, 2016, are for features or
7 activities that provide little or no benefit to
8 ratepayers, particularly when those benefits are
9 considered relative to the substantial benefits that
10 these investments are providing to PSE's for-profit
11 operations.

12 And because the Tacoma LNG facility poses a very
13 real threat to the Tribe and its members, it should be
14 no surprise that the Tribe was very disheartened by the
15 portion of the Commission's decision in Final Order 2410
16 regarding the prudence of the Tacoma LNG project, and it
17 was particularly disappointing that even though Dr. Sahu
18 was present and available throughout the previous
19 proceeding, the Commission did not ask him any questions
20 about his testimony or the basis of his conclusions.
21 And worst, in the absence of any inquiry to probe Dr.
22 Sahu's credentials or to resolve any questions about his
23 testimony, Dr. Sahu's credibility was then subsequently
24 impugned and the Tribe's concerns were largely dismissed
25 in the Commission's Final Order 2410.

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1 Today, despite its frustration with its
 2 treatment during the prior proceeding, the Tribe has
 3 again provided testimony from Dr. Sahu, and the purpose
 4 of that testimony is to assist the Commission's inquiry
 5 into the prudence of PSE's post-September 2016 costs.
 6 Dr. Sahu has again been made available here at
 7 this hearing to answer the Commission's questions, and I
 8 sincerely hope you take advantage of this opportunity to
 9 address any concerns you may have with his pre-submitted
 10 testimony and -- and learn more about the information
 11 that he's developed about the facility and its impacts.
 12 Now, having touched on the testimony that's been
 13 submitted by the Tribe, I'm going to shift gears and
 14 briefly discuss the scope of the prudence analysis that
 15 the Commission has engaged in in this proceeding.
 16 Judge Howard recently discussed the scope of the
 17 ongoing prudence analysis in the Recent Order No. 4
 18 which denied PSE's motions to strike portions of the
 19 testimony that was submitted by the Tribe and Public
 20 Counsel. And there, in Order 4, Judge Howard explained
 21 that the Commission has yet to determine whether and
 22 where to apply the expanded public interest standards
 23 set forth in RCW 80.28.425(1) during its continued
 24 review of the Tacoma LNG facility.
 25 Further, Order 4 notes that the Commission

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1 agrees with the tribe -- with the Tribe that the
 2 Commission cannot hope to rectify historic or ongoing
 3 inequities without first developing such a record --
 4 developing a record of such inequities. Systemic
 5 inequities must be acknowledged before they can be
 6 addressed. In that context, Mr. Sahu's testimony is
 7 relevant and it serves the public interest by ensuring
 8 that the commissioners are aware of and can take into
 9 account the scope of inequities created by the Tacoma
 10 LNG project as they're determining whether PSE's
 11 decisions were prudently made and made on behalf of
 12 ratepayers.
 13 So as each of you weighs whether the cost PSE
 14 seeks to recoup during this proceeding were incurred in
 15 the public interest or instead to serve the company's
 16 for-profit interests, I would like you to consider the
 17 following question, which gets at the reason why the
 18 Tribe is participating in this hearing: Is there a
 19 reason --
 20 JUDGE HOWARD: Sorry. If you're observing,
 21 you might want to make sure your line is muted.
 22 Sorry, Mr. Fuller.
 23 MR. FULLER: No problem.
 24 So my question to the commissioners is this: I
 25 would ask you to think about this throughout this

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1 proceeding and then as you analyze the evidence that
 2 comes in: Is there a reasonable explanation for the
 3 Tribe's continuing strong opposition to the Tacoma LNG
 4 project other than that they have a sincere belief that
 5 the project presents unacceptable risks to the Tribe and
 6 its members? I hope that Dr. Sahu's testimony and any
 7 questions that you have for him today help you answer
 8 that question and come to an understanding that the
 9 Tribe's concerns are well-founded, very real, and not at
 10 all theoretical.
 11 When considering the costs that PSE is
 12 requesting from ratepayers, the Commission should give
 13 significant weight to the fact that the Tacoma LNG
 14 project is very unique in that it's a dual purpose
 15 facility that has been constructed in no small part to
 16 generate profits for Puget LNG and PSE's for-profit
 17 funds.
 18 In that process, as the Commission determines
 19 how to apply the updated public safety standards during
 20 this prudence analysis, we ask it carefully hold PSE to
 21 its burden of proving that any costs to be recovered
 22 from ratepayers were, in fact, incurred prudently and in
 23 the public interest.
 24 And speaking of that burden of proof, one last
 25 comment before I wrap up, regarding PSE's legal costs, I

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1 believe the commissioners should ask themselves the
 2 following question: Why would PSE resist an independent
 3 audit if its legal costs if such an audit is directed at
 4 ensuring that they were, in fact, reasonable and that
 5 they were incurred in the public interest.
 6 Thank you for all of your time. That concludes
 7 my opening statement.
 8 JUDGE HOWARD: All right. Thank you, Mr.
 9 Fuller. That's the end of our opening statements, and
 10 with that, we would turn to the examination of
 11 witnesses.
 12 And our first witness on the order of
 13 presentation is Ronald Roberts for PSE.
 14 Mr. Roberts, if you would please raise your
 15 right hand, I'll swear you in.
 16
 17 RONALD ROBERTS, having been first duly sworn by the
 18 Judge, testified as follows:
 19
 20 JUDGE HOWARD: Ms. Carson, if you could
 21 please introduce the witness and confirm whether there
 22 are any changes to the witness's testimony.
 23 MS. CARSON: Please state your name and
 24 spell your name and state your title for the record.
 25 THE WITNESS: Ronald Roberts, R-o-b-e-r-t-s.

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1 Title is vice president of energy supply.
 2 MS. CARSON: Do you have before you what has
 3 been marked for identification as Exhibit Nos. RJR-1T
 4 through RJR-10 and RJR-11T through RJR-17 in this
 5 docket?
 6 THE WITNESS: I do.
 7 MS. CARSON: Do these exhibits constitute
 8 your pretrial direct and rebuttal testimony and related
 9 exhibits?
 10 THE WITNESS: They do.
 11 MS. CARSON: Do you have any revisions to
 12 these other than what has been submitted to the
 13 Commission?
 14 THE WITNESS: No, I do not.
 15 MS. CARSON: Thank you.
 16 With that, Mr. Roberts is available for
 17 cross-examination.
 18 JUDGE HOWARD: All right. Thank you.
 19 And Public Counsel indicated cross?
 20 MS. GAFKEN: Your Honor, public counsel can
 21 waive cross as I was primarily going to show him the
 22 exhibits and identify them and then move them into the
 23 record, and if they have already been admitted into the
 24 record, I can save us a little bit of time and waive our
 25 cross.

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1 JUDGE HOWARD: No problem. That's your call
 2 to make.
 3 The Puyallup Tribe also indicated cross for this
 4 witness.
 5 MR. FULLER: Yes, Your Honor.
 6 JUDGE HOWARD: Please proceed.
 7 MR. FULLER: I believe this will be brief.
 8 CROSS EXAMINATION
 9 BY MR. FULLER:
 10 **Q. Mr. Roberts, thank you for your time this**
 11 **morning.**
 12 **First I would like to ask, are you familiar with**
 13 **the terms of the air permit that were issued to the**
 14 **Tacoma LNG facility by the Puget Sound Clean Air Agency?**
 15 A. I'm familiar with most of them. I can't repeat
 16 them off the top of my head without the document in
 17 front of me, but yes.
 18 **Q. Understood. Thank you.**
 19 **And am I correct that Condition 15 of the permit**
 20 **requires that -- and this is a quote: The owner and,**
 21 **slash, or operator shall ensure the enclosed ground flare**
 22 **achieves a minimum of 99 percent destruction of all**
 23 **volatile organic compounds?**
 24 A. That is correct.
 25 **Q. Thank you.**

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1 **And is it your understanding that this**
 2 **destruction efficiency requirement that is set forth in**
 3 **Condition 15 was intended to limit the amount of**
 4 **hazardous and toxic air pollutants that are released**
 5 **from the facility?**
 6 A. It was intended to ensure the efficiency of the
 7 flare when it is in operation, and, yes, it has exceeded
 8 95 percent efficiency.
 9 **Q. I'll repeat my question.**
 10 **What I'm trying to get at is, was the intent of**
 11 **including a high destruction efficiency, 99 percent, to**
 12 **ensure the destruction of toxic and hazardous air**
 13 **pollutants that would otherwise be released to the air**
 14 **shed?**
 15 MS. CARSON: Objection; foundation. This
 16 witness can't speak to the intent of the permit.
 17 JUDGE HOWARD: Mr. Fuller, can we -- I'm
 18 going to grant the objection. Can we --
 19 MR. FULLER: I'll ask a different question.
 20 Mr. Roberts --
 21 JUDGE HOWARD: Just for clarity, because my
 22 microphone was not on again, I will grant the objection,
 23 and if we can please back up and establish foundation.
 24 BY MR. FULLER:
 25 **Q. Mr. Roberts, why does the enclosed ground flare**

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1 **at the Tacoma LNG facility operate? What is the purpose**
 2 **of the ground flare?**
 3 A. It is a thermal destruction unit to destroy VOCs
 4 coming out of the stack during the operation of the
 5 facility.
 6 **Q. And, Mr. Roberts, why is it important that the**
 7 **VOCs are destroyed?**
 8 A. Because they're a hazardous air pollutant.
 9 **Q. Thank you.**
 10 **In May 2023, the Puget Sound Clean Air Agency**
 11 **issued a number of notices of violation to PSE in**
 12 **response to violations of conditions of the Tacoma LNG's**
 13 **air permit -- facilities air permit; is that correct?**
 14 A. That is correct. There were a number of
 15 self-reported incidents that were carried out and
 16 reported to the Puget Sound Clean Air Agency.
 17 **Q. And a number of those violations were issued for**
 18 **the Tacoma LNG facilities use of the flare bypass which**
 19 **resulted in releases of unburned waste gases directly to**
 20 **the air shed; is that correct?**
 21 A. Could you rephrase that one more time for me,
 22 please?
 23 **Q. Sorry. I'll break that up.**
 24 A. Yeah.
 25 **Q. Puget Sound -- the Puget Sound Clean Air Agency**

1 issued a number of notices of violations to PSE for the
2 Tacoma LNG facility's violation of the air permit;
3 correct?

4 A. That is correct.

5 Q. And some of those violations, the notice of
6 NOVs, were issued for use of the flare bypass at the
7 Tacoma LNG facility; correct?

8 A. They were issued for times when the flare bypass
9 did open. That is correct. Those are driven by
10 malfunctions in the flare.

11 Q. And, Mr. Roberts, for those violations that were
12 issued related -- that are related to uses of the flare
13 bypass, were those events that were classified as
14 violations events that resulted in releases of unburned
15 waste gas from the Tacoma LNG facility directly into the
16 air shed?

17 A. Which is the basis for PSCAA's violations, yes.

18 Q. So yes?

19 Okay. And I'll ask, has PSE quantified the
20 actual emissions released by the Tacoma LNG facility
21 during these bypass events?

22 A. I have not.

23 Q. Has PSE quantified the actual commission -- the
24 emissions of the facility during those bypass events?

25 A. I'm not aware of that. But that's not saying

1 Q. Okay. Are you aware of the representations that
2 were made by PSE's witnesses and counsel to the PCHB
3 during the challenge to the air permit regarding the
4 likelihood of the flare bypass at the Tacoma LNG
5 facility being used?

6 A. I was not made aware of those commitments until
7 I read them in the cross documents that you sent.

8 Q. Okay. So speaking of the cross documents, I
9 would like you to take a look at what has been marked as
10 it's Exhibit RJR-18X.

11 Do you have that in front of you?

12 A. Yes.

13 Q. And off the front page, can you read to me what
14 this exhibit is, the description at the bottom of the
15 page?

16 A. "Excerpt of opening statement of Joshua Frank,
17 PSE Counsel" --

18 Q. Oh, sorry. I'm looking to what I believe is
19 RJR-18X. This would be the Stobart document.

20 A. Let me see that one. Okay. That's excerpted
21 testimony of Matthew -- sorry. I was missing the
22 numbers on the X.

23 Q. No problem.

24 A. Yeah.

25 Q. And so can you turn to page 1, 2, 3, 4, 5, 6, 7,

1 that we have not worked with PSCAA on this and come to
2 some numbers, but I'm not aware of those.

3 Q. Okay. Thank you.

4 And are you aware of whether PSE has challenged
5 or appealed any of the notices of violation that were
6 issued to the Tacoma LNG facility in May 2023?

7 A. I'm not aware of that.

8 Q. Okay. I'm going to shift gears and ask a few
9 questions about some materials that you submitted in
10 your testimony.

11 So in your direct testimony in this matter,
12 which is marked as Exhibit RJR-1T, you referred to the
13 proceedings that were before the Puget -- or the
14 Pollution Control Hearings Board in response to the
15 challenge to the PSCAA air permit for the Tacoma LNG
16 facility, which was docket -- PCHB Docket P19087C;
17 correct?

18 A. Correct.

19 Q. And you've attached decisions from that
20 proceeding to your testimony as exhibits RJR-15 and
21 RJR-16; correct?

22 A. Correct.

23 Q. Were you present at the PCHB proceedings that
24 those decisions come out of?

25 A. No, I was not.

1 to page 9 of that exhibit, which the top of the page,
2 the page number is page 2041.

3 A. Okay.

4 Q. And can you read to me lines 11 through 17 of
5 that page, which starts with "Q. Okay."

6 MS. CARSON: Objection. The exhibit speaks
7 for itself. This is cross-examination, so there should
8 be a question, not just reading the exhibit.

9 JUDGE HOWARD: Certainly. Objection
10 granted.

11 Perhaps the witness can review this portion and
12 then answer any necessary questions about it.

13 MR. FULLER: Thank you.

14 BY MR. FULLER:

15 Q. Mr. Roberts, please review that section, lines
16 11 through 17, and let me know once you've read through
17 that.

18 A. (Witness peruses document.) I have read through
19 it.

20 Q. All right. And this is a question. This is
21 a -- the testimony of Mr. Stobart, and he's being
22 questioned regarding the use of the flare bypass; is
23 that correct?

24 A. Correct.

25 Q. And he states in response to the question: How

1 often would the bypass be expected to be used once the
2 facility begins normal operations, his response is: I
3 hope it never gets used, but it's a safety device, just
4 like release valves are a safety device. They're there
5 in case you need them, but we hope that it never gets
6 used. It might get used over a couple of times over the
7 lifetime of the facility.

8 Was my reading of that accurate?

9 A. Yes.

10 Q. Thank you.

11 Now we'll shift to -- and I'm skipping for a
12 moment Exhibit RJR-19X. We're going to now ask you to
13 take a look at Exhibit RJR-20X, the excerpt of the
14 testimony of Steven Van Slyke.

15 A. Okay. That's PSE's supplemental response to the
16 UTC Discovery Request 32? Is that it?

17 Q. Sorry. No. This is RJR-20X. It looks very
18 similar to the previous one. At the bottom of the page,
19 it should read "Excerpt of testimony of Steven Van
20 Slyke."

21 A. Got it. Okay.

22 Q. All right. And turning to -- turning to page 7
23 of that document, which at the top of that page is
24 listed as page 1861, can you read to yourself lines 10
25 through 18 and let me know when you're complete.

1 Q. So does Mr. Van Slyke indicate that this permit
2 does -- that such events are not compliant with the
3 permit?

4 A. Yes.

5 Q. And next I'll ask you to take a look at RJR-20X,
6 and I'll have you turn to page 7, which is -- the number
7 at the top of the page is page 1861. I flipped to the
8 wrong exhibit. Actually, that's the one I was just
9 looking at. They all do look the same.

10 This Exhibit RJR-19X at page 6 of this exhibit,
11 this one is labelled page 1783, and here at lines 5
12 through 20, can you read those to yourself really
13 quickly?

14 A. (Witness peruses document.) I've read it.

15 Q. So this is a statement from PSE counsel Joshua
16 Frank in the PCHB hearing discussing the allegations
17 made by the Tribe in that hearing about potential harms
18 associated with the Tacoma LNG facility.

19 It discusses two of the -- the potential
20 violation of two enforcement permit limits, and am I
21 correct that the violation that has been described here
22 and which are being dismissed in counsel's testimony to
23 PCHB as very unlikely and that these types of violations
24 have now occurred.

25 First, that the Tacoma LNG will violate permit

1 A. (Witness peruses document) I'm complete.

2 Q. Thank you.

3 It appears that Ms. Dold (phonetic) was asking
4 Mr. Van Slyke, who is -- as indicated after the first
5 page -- sorry, I should have made this clear. He's the
6 PSCAA director of compliance. She asks questions about
7 emission controls, and his response, he states: As an
8 example, there's been a discussion about bypasses or
9 upsets and that the agency permit conditions prohibit
10 those --

11 MS. CARSON: Your Honor, I object to this
12 just reading of exhibits that are already in the record.
13 I didn't hear a question.

14 JUDGE HOWARD: Granted.

15 I would -- I would encourage Mr. Fuller to move
16 on to his questions now that the witness has had a
17 chance to review that portion of the testimony.

18 MR. FULLER: All right. I'll cut to the
19 chase.

20 BY MR. FULLER:

21 Q. Does Mr. Van Slyke indicate that it is
22 permissible under the permits for Tacoma LNG to utilize
23 the flare bypass valve at the facility?

24 A. It is not contained in the permit, but that is
25 why there are NOVs issued for that.

1 conditions requiring 99 percent destruction of VOCs in
2 the flare, has that occasion occur?

3 MS. CARSON: I object to the form of the
4 question. It's compound and ambiguous.

5 JUDGE HOWARD: I can grant it.

6 If we can just break up in that question in two
7 distinct parts. Thank you.

8 BY MR. FULLER:

9 Q. Am I correct that Mr. Frank notes that the first
10 violation noted by the Tribe would require PSE not
11 meeting 99 percent destruction of VOCs in the flare?

12 A. That is his statement there.

13 Q. And is his second statement that the Tribe
14 hypothesizes that the -- all gas would be routed to the
15 flare -- that is routed to the flare would instead be
16 sent to an emergency safety bypass that Mr. Stobart of
17 CBNI does not believe will ever operate?

18 MS. CARSON: Again, I object to the
19 characterization of the testimony -- or the opening
20 statement here. That's in the record. Rather than
21 paraphrase it, the record stands for itself.

22 MR. FULLER: Okay. I'll move on. Thank
23 you.

24 BY MR. FULLER:

25 Q. Mr. Frank testifies that the Tribe is concerned

1 that the 99 percent destruction efficiency requirement
2 will be violated.

3 **Has that destruction efficiency been violated at
4 the Tacoma LNG facility?**

5 MS. CARSON: Objection or clarification.
6 This is not testimony from Mr. Frank.

7 MR. FULLER: My -- this is a representation
8 made to the PCHB, and my question for Mr. Roberts is,
9 has such a violation occurred.

10 JUDGE HOWARD: I'm going to grant the
11 objection to the characterization of this testimony
12 being given as an argument by counsel, but if you
13 could -- if the witness could please answer that last
14 question posed by Mr. Fuller.

15 THE WITNESS: To my knowledge, there has not
16 been an level below the 99 percent per our reporting
17 with PSCAA on a design efficiency standard.

18 BY MR. FULLER

19 **Q. Mr. Roberts, are you aware of what the
20 destruction efficiency of the flare achieved during the
21 flare bypass events?**

22 A. No, because the flare bypass events occur at a
23 time when the flare is malfunctioning and there's a loss
24 of flame inside the flare, which it's no longer safe to
25 put gas through that facility. That's when the bypass

1 ask a question about, and then he can pose a question
2 following that.

3 MR. FULLER: I'll reframe that.

4 BY MR. FULLER:

5 **Q. Does Mr. Frank represent in this transcript that
6 Dr. Sahu's concerns about the emergency bypass events
7 continuing for long durations, that those would --
8 sorry. Am I correct that that is his representation,
9 that Dr. Sahu will claim that these bypass events will
10 continue for a long duration?**

11 A. The events where the bypass opens are very short
12 duration. And, like I said, it's usually related to --

13 **Q. Mr. Roberts, I'm asking about the document in
14 front of us here and the representation of the document.**

15 MS. CARSON: So I'm going to object. It
16 seems like, again, characterizing an opening statement
17 and referring to what a witness says, and the opening
18 statement addresses it. It's not something that this
19 witness can speak to.

20 JUDGE HOWARD: I would agree. And I would
21 just encourage Mr. Fuller, if you can just perhaps refer
22 the witness to the lines at issue and then pose your
23 question to the witness about his position or his
24 testimony.

25 BY MR. FULLER:

1 valve opens, and so when we do have a bypass event, the
2 flare is not actually operating at that time. That's
3 the reason for the bypass.

4 **Q. So would it be an appropriate interpretation
5 that when the flare is not operating and the waste gases
6 are bypassing the flare, the destruction efficiency of
7 the flare is zero percent for those waste gases that are
8 released for those periods of flare bypass?**

9 A. The bypass is there as a safety feature, so when
10 the flare is not operating, yes, it does bypass gas
11 outside of the flare itself for short periods of time.

12 **Q. And the flare is not effectively destroying any
13 of the waste gases; is that correct?**

14 A. It can't because it's not operating at that
15 time.

16 **Q. Thank you.**

17 **And my last question about this exhibit is Dr.
18 Sahu -- Mr. Frank testifies that Dr. Sahu is concerned
19 that these emergency bypass events will continue for a
20 long duration, even if the permit requires the facility
21 to stop operating if the flare goes out --**

22 MS. CARSON: So I renew my objection.

23 That's not testimony from Mr. Frank. My apologies.

24 JUDGE HOWARD: Granted, but I believe I'll
25 allow Mr. Fuller to refer to the sentence he wishes to

1 **Q. Mr. Roberts are you aware of the total period of
2 time that flare bypass events have occurred at the
3 Tacoma LNG facility?**

4 A. All of those flare diversion events have been
5 reported to PSCAA. I do not know the duration of each
6 event in total off the top of my head, but all of those
7 have been self-reported to PSCAA, and they're dealing
8 with that as we speak, and we're dealing with PSCAA as
9 we speak.

10 **Q. Okay. I'll just ask two -- I believe my last
11 two questions.**

12 **Is it your testimony in your rebuttal testimony
13 that PSE has worked diligently to identify and address
14 the root causes of the incidents notified -- or sorry,
15 of the incidents identified in the NOV's and taken
16 appropriate action to reduced the likelihood of
17 occurrence?**

18 A. Yes.

19 **Q. And having taken those actions and identified
20 the root causes and addressed them, is PSE now prepared
21 to commit to removing or disabling the flare bypass to
22 prevent such violations from occurring in the future?**

23 A. I think that presents a safety issue at the
24 plant. Our primary operation of the facility is to
25 provide for the safe operation of that facility. That

1 is a safety feature of the plant. I do not want to put
2 gas into a hot environment without a flame in it. That
3 presents an issue. So, to me, the safety feature that
4 is there is there for a reason and it will be utilized
5 and needs to be utilized at times. The number of
6 occurrences that happened, albeit there were quite a few
7 earlier in the development of the project and earlier in
8 the start up of the project, we have done a tremendous
9 amount of work bringing outside consultants in to help
10 with the flare design, to help troubleshoot and help
11 come to the root causes of the issues at hand, which has
12 been flame stability in the flare.

13 **Q. Thank you, Mr. Roberts. That's the end of my**
14 **questions.**

15 JUDGE HOWARD: All right. Do we have any
16 redirect?

17 REDIRECT EXAMINATION

18 BY MS. CARSON:

19 **Q. Has the flare been out for a day, as Mr. Sahu**
20 **claimed?**

21 A. No. It's minutes. Usually several minutes up
22 to I think the longest I saw was 41 minutes, but
23 certainly not 24 hours in any stretch.

24 **Q. Are some of them less than 41 minutes?**

25 A. Yes, yes, most of them are. And, again, this is

1 that's getting liquefied. We have exceeded that a
2 couple of times primarily due to blow-off gas from the
3 top of the tank is closed. It's already been liquefied
4 once. It gets recirculated back in and reliquefies, so
5 we believe the intent of the 250,000 gallons a day was
6 to account for pipeline gas coming in, not the boil-off
7 gas. Subsequent to the concerns from Puget Sound Clean
8 Air Agency, we did include that boil-off gas as part of
9 it and have not gone over that limit since.

10 **Q. Okay. So I was going to ask if you have**
11 **resolved this permit issue, and it sounds like you have?**

12 A. Yes, ma'am.

13 **Q. Okay. Thank you.**

14 COMMISSIONER RENDAHL: And that's all I
15 have.

16 JUDGE HOWARD: All right. Any further
17 questions from the bench?

18 It appears we have none.

19 Thank you, Mr. Roberts, for your testimony
20 today. You're excused.

21 Our next witness is William Donahue for the
22 company. Would it -- let's probably continue through
23 Mr. Donahue's examination, and then we can take our
24 mid-morning break, if that sounds agreeable.

25 All right. Mr. Donahue, if you're ready, please

1 a flare that is designed to run at high efficiency. The
2 operation of it during start-up is a bit of a challenge,
3 but we did bring outside experts in to work on that, and
4 we continue to bring them in to stay focused on how do
5 we stay focused to reduce that event.

6 **Q. Is PSE working diligently to resolve this issue?**

7 A. Very. We've thrown a lot of resources at it
8 both internal and external. We've brought in many
9 consultants, experts in the field to work on the flare
10 itself.

11 **Q. Thank you. Nothing further.**

12 JUDGE HOWARD: All right. Thank you.

13 Do we have any questions from the bench for Mr.
14 Roberts.

15 EXAMINATION

16 BY COMMISSIONER RENDAHL:

17 **Q. Good morning, Mr. Roberts.**

18 A. Good morning.

19 **Q. So I'm going to ask another issue that's been**
20 **identified for -- by Staff and the Tribe, and this has**
21 **to do with the production limit of 250,000 gallons.**

22 **So if -- has the facility exceeded its daily LNG**
23 **production limit of 250,000 gallons a day?**

24 A. The way we view that 250,000 per day limit is
25 that's the amount of pipeline gas that's coming in

1 raise your right hand and then I'll swear you in.

2
3 WILLIAM DONAHUE, having been first duly sworn by the
4 Judge, testified as follows:

5
6 JUDGE HOWARD: Thank you.

7 Ms. Carson, if you can introduce the witness and
8 confirm if there's any changes to his testimony.

9 MS. CARSON: Good morning, Mr. Donahue.
10 Please state your name and title and spell your last
11 name for the court reporter.

12 THE WITNESS: William F. Donahue,
13 D-o-n-a-h-u-e. I guess my title is consultant. I'm a
14 recent retiree of -- from 30 years at PSE and consult
15 exclusively to PSE.

16 MS. CARSON: Do you have before you what has
17 been marked for identification as Exhibit Nos. WFD-1T
18 through WFD-4 and WFD-5T through WFD-6 in this docket.

19 THE WITNESS: Yes.

20 MS. CARSON: And do these exhibits
21 constitute your pre-filed direct and rebuttal testimony
22 and exhibits related to this proceeding.

23 THE WITNESS: Yes, they do.

24 MS. CARSON: Do you have any corrections to
25 these, other than what we have submitted to the

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1 Commission?
 2 THE WITNESS: No, I do not.
 3 MS. CARSON: Thank you.
 4 Mr. Donahue is available for cross-examination.
 5 JUDGE HOWARD: All right. Staff indicated
 6 cross.
 7 Before Mr. Roberson begins, Mr. Donahue, you may
 8 want to bring your bench microphone a little closer just
 9 because these tend to have a very short range.
 10 Okay. Mr. Roberson, you may proceed.
 11 CROSS-EXAMINATION
 12 BY MR. ROBERSON:
 13 **Q. Good morning, Mr. Donahue.**
 14 A. Good morning.
 15 **Q. Do you have a copy of your rebuttal testimony in**
 16 **front of you?**
 17 A. I do.
 18 **Q. Would you please turn to page 4, beginning at**
 19 **line 16.**
 20 A. Yes, I'm there.
 21 **Q. So you began discussing function of the**
 22 **four-mile pipe there; is that correct?**
 23 A. That's correct.
 24 **Q. Does PSE debate this is a distribution pipe?**
 25 A. It's a unique distribution pipe, yes. It is a

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1 distribution pipe.
 2 **Q. It's -- okay. When you went to functionalize,**
 3 **did you look at the Commission's rules governing costs**
 4 **of service, which is WAC -- as relevant here, it's WAC**
 5 **480.85.060?**
 6 A. I did not look directly at that. I discussed
 7 what our -- what the priorities were in terms of my
 8 understanding was direct assignment wherever possible
 9 and then to look at, you know, the functionalization,
 10 and then ultimately if there were no other direct
 11 assignment options available, my understanding was
 12 that's when peak and average is utilized.
 13 **Q. So did you -- do you do kind of independently**
 14 **research on cost allocations, or did you just discuss**
 15 **this with other people at PSE?**
 16 A. I believe I've discussed it with a couple of
 17 other people at PSE.
 18 **Q. Okay. And did you discuss kind of the level of**
 19 **granularity that's usually applied to cost**
 20 **functionalization?**
 21 A. I did not.
 22 **Q. Have you ever seen cost functionalization?**
 23 A. Yes.
 24 **Q. So generally when a commission -- or**
 25 **functionalizes cost, it assigns kind of broad**

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1 **categories, correct, like storage, production,**
 2 **transmission?**
 3 A. Well, that's one level. Ultimately --
 4 **Q. That's functionalization; correct?**
 5 A. -- it's spread out down at the lower levels,
 6 yes.
 7 **Q. That's classification and allocation; correct?**
 8 A. It could be. I think it's often characterized
 9 that way, but there still may be multiple levels of
 10 functionalization.
 11 **Q. Okay. If you turn to page 5, starting on line**
 12 **21, and going on to the next page, you discuss PSE's**
 13 **right of sole use of the line during peak shaving;**
 14 **correct?**
 15 A. Yes.
 16 **Q. That's limited by the permit, though; correct?**
 17 A. No.
 18 **Q. Okay. If PSE uses the facility to vaporize for**
 19 **240 hours in January, can it vaporize again?**
 20 A. In a calendar year, it's limited to 240 hours of
 21 vaporization. That does not limit the use by PSE of
 22 that pipeline. It is a limit on vaporization at the
 23 plant.
 24 **Q. Okay. So the facility was built as a peak**
 25 **shaver; correct?**

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1 A. It is a dual function.
 2 **Q. For PSE's purposes, it's --**
 3 A. Yes.
 4 **Q. -- a peak shaver?**
 5 A. Yes, it is.
 6 **Q. For Puget LNG --**
 7 THE COURT REPORTER: We need to speak one at
 8 a time, please.
 9 MR. ROBERSON: That's my fault. I
 10 apologize.
 11 I apologize, Mr. Donahue.
 12 THE WITNESS: No worries.
 13 BY MR. ROBERSON:
 14 **Q. For Puget LNG, it's a marine fuelling station;**
 15 **correct?**
 16 A. Yes, and truck.
 17 **Q. Okay. Fair enough.**
 18 **I have another set of questions, and then I**
 19 **think I don't have any more for you.**
 20 **Page 6, lines 11 and 12, you claim that staff**
 21 **seeks an allocation that results in the lowest possible**
 22 **allocation for PSE; correct?**
 23 A. That's what I said, yes.
 24 **Q. Did you read that in Mr. Earl's testimony?**
 25 A. I took it, the utilization of the 240-hour

1 vaporization limit as the -- the -- I think Staff's
2 interpretation of that as the cost causation to be quite
3 limited. The reality is we designed the pipe long
4 before there was an air permit limitation stated. The
5 need for the pipe was the fact that there had to be
6 physical capacity built to flow gas, whether it's an
7 hour, a minute, or whether it's 240 hours or every day.
8 That pipe had to be built, and that was the primary cost
9 driver.

10 **Q. So --**

11 A. To argue later that, oh, but they can only use
12 it ten days a year, so they shouldn't be having to pay
13 for it, that did not make sense. It's not consistent
14 with direct allocation of cost, and it's not -- not
15 consistent with how rate design is done on most
16 pipelines, so that's why --

17 **Q. So you're --**

18 A. -- I had an issue with the -- ignoring the cost
19 driver.

20 **Q. Okay. You're inferring from the result that
21 that was less than ten?**

22 A. I couldn't figure out another way to explain it.

23 **Q. Okay. Puget LNG is a corporate affiliate of
24 PSE; correct?**

25 A. Yes.

1 on the cost causation principles, which I've argued for
2 in numerous other cases in other jurisdictions, is that
3 it would be based on what is the cost driver. And,
4 again, this is a case where how big the pipe needed to
5 be and who was it being built for. I came to the
6 conclusion both, you know, the need to take gas out of
7 the plant and into the plant were separate functions.
8 Fortunately, we're in a location where we could build
9 only one -- we were able to only need to build one pipe,
10 and, therefore, what was the fair, just, and reasonable
11 way to allocate the cost, not about who was a winner and
12 who was a loser.

13 **Q. Okay. Then let's circle back around because you
14 just talked about functionalization, two functions.**

15 **When commissions or utilities functionalize, do
16 they recognize sub functions like the flow in one
17 direction or another?**

18 A. You may, depending on the circumstance.

19 **Q. Does the Commission's rules just generally
20 assign things to distribution and transmission, or does
21 it recognize sub functions?**

22 A. I don't know; however, I don't believe the
23 Commission has ever dealt with a true bidirectional
24 pipeline.

25 **Q. Okay. But there are other parts of PSE's system**

1 **Q. And costs that aren't allocated to PSE are
2 allocated to Puget LNG; correct?**

3 A. And vice versa, yes.

4 **Q. And you work for PSE --**

5 A. Yes.

6 **Q. -- as a consultant?**

7 A. Yes.

8 **Q. And you've worked there for 30 years?**

9 A. I was an employee for over 30 years.

10 **Q. How long?**

11 A. 31 and a half years.

12 **Q. You rose through the ranks there?**

13 A. Yes, yeah.

14 **Q. Kind of your corporate home?**

15 A. Yeah.

16 **Q. Okay. Is it fair to say that PSE has an
17 incentive to shift costs to itself to spare its
18 corporate affiliate those costs?**

19 A. No, I don't.

20 **Q. It wouldn't reduce Puget LNG's profitability if
21 those costs are shifted to it dollar for dollar?**

22 A. I have -- I have no idea whether it would affect
23 it materially or not. It might affect it, but I can't
24 imagine that it would be material. The reality is, we
25 were looking at what was fair and reasonable. And based

1 **where energy flows both ways; correct?**

2 A. Not contractually.

3 **Q. You --**

4 A. That's the difference here.

5 **Q. Net metering? There's a tariff; right?**

6 A. There may be. I don't know.

7 **Q. Does PSE functionalize both directions its
8 distribution system for electricity?**

9 A. I honestly don't know.

10 MR. ROBERSON: Okay. That's all the
11 questions I have for Mr. Donahue. Thank you.

12 JUDGE HOWARD: Okay. Any redirect following
13 the Staff's cross?

14 MS. CARSON: No redirect. Thank you.

15 JUDGE HOWARD: All right. Public Counsel
16 also indicated cross for this witness.

17 MS. GAFKEN: Thank you, Your Honor.

18 Based -- similar to the last witness, Public Counsel
19 will waive cross of Mr. Donahue and save us a little
20 time. Thank you.

21 JUDGE HOWARD: All right. The Tribe also
22 indicated cross.

23 MR. FULLER: Yes, I'll be brief.

24 ///

25 ///

1 CROSS-EXAMINATION
 2 BY MR. FULLER:
 3 **Q. Good morning, Mr. Donahue. I believe staff has**
 4 **touched on some of the things I was going to ask about.**
 5 **I'll touch on just a quick question about the**
 6 **functionalization and allocation of the four-mile**
 7 **pipeline.**
 8 **You were involved in that process; correct?**
 9 A. Yes, I was.
 10 **Q. Okay. And you've testified that that four-mile**
 11 **pipeline is a unique facility because of its**
 12 **bidirectional functionality; correct?**
 13 A. Yes, and there's multiple parts to the
 14 bidirectional, yes.
 15 **Q. All right. Am I correct that PSE is not aware**
 16 **of any singular pipe segment on its own distribution**
 17 **system that has this bidirectional characteristic?**
 18 A. That is my testimony.
 19 **Q. Okay. So knowing that this is a unique facility**
 20 **and it's the only one on PSE's system, is it correct**
 21 **that this is the only functionalization and allocation**
 22 **of a bidirectional pipeline that PSE has presented to**
 23 **the Commission for review and approval?**
 24 A. I don't know the long history of what may or may
 25 not have been presented, but to the best of my

1 **injected into the distribution system only on the days**
 2 **when that supply of gas is insufficient that the**
 3 **nonboil -- sorry the inter- -- the pipeline gas is --**
 4 **there's not sufficient quantity to meet ratepayers'**
 5 **needs?**
 6 A. I think I finally understood what you're
 7 referring to. No, boil-off gas occurs every day. It
 8 is -- it is not a choice. It happens. It is -- my
 9 understanding is it's the physics of the project, any
 10 LNG project. So that gas, as it comes off the tank, is
 11 entirely in a closed system. It goes to -- towards the
 12 outlet of the plant to where it would connect to the PSE
 13 distribution system. Now, if we are liquefying that
 14 gas, whether it's PSE or PLNG, that gas does not go
 15 through the pre-liquefaction treatment process because
 16 it's already been treated and it gets liquefied. If
 17 we're not liquefying at the plant, that goes into the
 18 distribution plant, and PSE uses that gas which is
 19 around thousand dekatherms on average and delivers that
 20 to PSE gas customers in lieu of buying gas at Sumas' or
 21 Rocky's or withdrawing from another storage project. So
 22 it's there to serve customers every day whether or not
 23 we fully utilize the interstate capacity.
 24 **Q. Okay. Yeah, and that -- that -- so the**
 25 **interstate capacity, regardless of whether there is**

1 knowledge, PSE has never had to deal with a true
 2 bidirectional pipeline on their system, so I doubt that
 3 we've brought anything before the Commission before.
 4 **Q. So it appears to be a question of first**
 5 **impression?**
 6 A. Yeah.
 7 **Q. Thank you.**
 8 **And quickly I'll just -- I would like to ask a**
 9 **couple of quick questions about your discussion with**
 10 **boil-off gas which was a new issue for me. I believe it**
 11 **came up for the first time in your rebuttal testimony,**
 12 **just a real quick question about it.**
 13 **Does PSE inject boil-off gas into the**
 14 **distribution system only on days when PSE's pipeline**
 15 **capacity is exceeded and, therefore, it's -- there's**
 16 **insufficient pipeline gas to serve PSE ratepayer needs?**
 17 A. Could you repeat that? Which pipeline are we
 18 referring to?
 19 **Q. Sorry. That was -- could have been more clear.**
 20 **Does PSE inject boil-off gas into the**
 21 **distribution system only on days that PSE -- I may --**
 22 **excuse me. I may be using the wrong term.**
 23 **The interstate pipeline sources firm commitments**
 24 **of gas that are available for its ratepayers on the**
 25 **day-to-day, and on those -- does boil-off gas get**

1 **sufficient interstate capacity or insufficient**
 2 **interstate capacity where liquefaction-- at times**
 3 **liquefaction is not occurring, the boil-off gas is**
 4 **available to the distribution system?**
 5 A. It doesn't matter.
 6 **Q. Understood.**
 7 **Thank you. That concludes my questions. I**
 8 **appreciate your time, Mr. Donahue.**
 9 JUDGE HOWARD: Any redirect?
 10 MS. CARSON: No redirect. Thank you.
 11 JUDGE HOWARD: All right. Do we have any
 12 questions from the bench for Mr. Donahue?
 13 COMMISSIONER DOUMIT: Yes, Your Honor.
 14 EXAMINATION
 15 BY COMMISSIONER DOUMIT:
 16 **Q. So a few questions on the pipeline. Thanks, Mr.**
 17 **Donahue.**
 18 **First of all, directing your attention to the**
 19 **settling parties in the settlement in the first case,**
 20 **which is that document UG-151662, Appendix A to the**
 21 **Final Order 10, and when you have that, I'll ask a**
 22 **question.**
 23 **So at paragraph 29, settling parties agree the**
 24 **cost of distribution system upgrades shall be allocated**
 25 **in accordance with the principle of cost causation.**

1 **You see that, right?**
 2 MS. CARSON: Excuse me. Is the reference to
 3 the settlement stipulate?
 4 COMMISSIONER DOUMIT: Yeah.
 5 MS. CARSON: So it's Attachment A.
 6 THE WITNESS: Oh, it's the attachment.
 7 Sorry.
 8 BY COMMISSIONER DOUMIT:
 9 **Q. Sorry. Appendix A.**
 10 A. Yes, I -- I think I'm there with you.
 11 **Q. Okay. Great.**
 12 **So the simple question based on that statement**
 13 **in the settlement, did the settlement, in your opinion,**
 14 **provide enough or any guidance on the allocation of the**
 15 **bidirectional four-mile pipeline?**
 16 A. Just that which what I would presume to be
 17 absent a limitation. It's the direction that you should
 18 use cost causation, which is what I believe I did.
 19 **Q. Okay. That was -- that was essentially a**
 20 **question you felt you -- your calculation was in accord**
 21 **with the settlement stipulation?**
 22 A. I believe it is, yes.
 23 **Q. Okay. And along the same lines, at paragraph**
 24 **26, the same document, the settlement provided for a**
 25 **90/10 split on liquefaction, and you partially factored**

1 Rendahl has a follow-up on that question.
 2 EXAMINATION
 3 BY COMMISSIONER RENDAHL:
 4 **Q. Mr. Donahue, so my understanding is the Company**
 5 **for the portion of the -- I might have this wrong. The**
 6 **portion of the pipeline that is the additional capacity**
 7 **for the distribution, so there's the 12-inch pipeline**
 8 **and expanded it to 16 inch for the distribution;**
 9 **correct?**
 10 A. That's on the leaving the plant for the
 11 vaporization, yes.
 12 **Q. Okay. So as I understand PSE's allocation, the**
 13 **Company has allocated 50 percent for PSE customers and**
 14 **50 percent for Puget LNG, and then the portion of Puget**
 15 **LNG's is then -- is then further allocated by the 90/10**
 16 **split.**
 17 **Do I have that correct?**
 18 A. Respectfully, no.
 19 **Q. Okay. So can you please explain? Because**
 20 **that's the way I read the testimony.**
 21 A. Sure. Well, first I looked at 50 percent of the
 22 nominal 12-inch pipe. The cost of a 12-inch pipe
 23 equivalent. 50 percent of that is functionalized to
 24 putting gas in, 50 percent to taking gas out. And then
 25 who uses that? Why is it needed? Who uses it? 90

1 **that into the Company's proposed allocation for the**
 2 **four-mile pipeline.**
 3 **Why is that 90/10 split appropriate to the**
 4 **Company's functionalized approach in the case of the**
 5 **pipeline?**
 6 A. Well, again, there were two purposes for the
 7 pipeline: One to put gas in, one to take out. I don't
 8 want it to be lost that we pulled 15 percent of the
 9 total cost out of the equation because it represented
 10 the cost of making the pipe larger for coming out of the
 11 plant. And then we looked at, okay, you're left with
 12 effectively a 12-inch pipe in and out. How is that
 13 used? What causes it to be built? And 90 percent of
 14 the capacity of that pipe was needed for Puget LNG to
 15 put gas in and the other 10 percent for PSE to put gas
 16 in. And then on coming out, it's 100 percent PSE on the
 17 vaporization, and so that -- the liquefaction limitation
 18 is what limits the use into the plant.
 19 **Q. Okay. Thank you.**
 20 A. That's how I draw it.
 21 **Q. Yeah.**
 22 A. Puget LNG and PSE each needed to liquefy a
 23 certain quantity consistent with their rights to use the
 24 plant.
 25 COMMISSIONER DOUMIT: And Commissioner

1 percent of the going-in part is related to Puget LNG.
 2 10 percent of the going-in part is for PSE. And then on
 3 the coming out, it's 100 percent PSE because PLNG has no
 4 right to put gas into the system at that location.
 5 **Q. Okay. So that's for the 12-inch portion, and**
 6 **then the full amount of the remaining 4 inches**
 7 **capacity --**
 8 A. Right.
 9 **Q. -- goes to Puget customers?**
 10 A. That's correct. Well, it goes, yes, to PSE's
 11 vaporization use, yes.
 12 **Q. All right. But I guess the question still**
 13 **stands. You've already split it. It's a bidirectional**
 14 **pipe. You split it 50/50 to recognize the different**
 15 **uses of the pipe.**
 16 **Why is it necessary to go to the additional**
 17 **calculation of the allocation -- if you're not going to**
 18 **use the allocation from the original settlement for**
 19 **the -- for the allocation, why are you then adding it on**
 20 **now to add additional costs to customers?**
 21 A. Well, okay, I don't believe there was any
 22 allocation of the cost of this pipe to anyone prior to
 23 what we're doing here today.
 24 **Q. Correct. But I'm asking you, if the -- if the**
 25 **decision was to allocate it 50/50 between the**

1 liquefaction portion and the distribution portion, why
2 do you then add on the additional functionality to add
3 additional costs to customers if you've already split it
4 half and half, recognizing the bidirectional function of
5 the pipeline?

6 A. Okay. I need to step back. I understand your
7 question now. My apologies.

8 Again, cost causation, if you are -- if you are
9 building a pipe to take gas to the liquefaction pipe,
10 how much do you need? 21,000, 3 or 4 hundred a day.
11 That's what the plant will take. That's -- that is the
12 plant -- that's the size of pipe that was needed. And
13 that would be a 12-inch pipe. So we looked at that and
14 said, Okay, that's cost causation. You're going to
15 build a 12-inch pipe in and you're going to build it and
16 take it out. But the out customer, in this case, the
17 vaporization need, needed a much bigger pipe. It needed
18 a 16-inch pipe. All we did was we compared what was the
19 cost of a 12-inch versus a 16. You only needed a
20 12-inch to go in. You needed 16 to come out. Why would
21 you allocate the cost of the -- of the larger pipe going
22 in when they didn't ask for it. No party did. In fact,
23 originally, the consideration was that there might be
24 two pipes because we didn't know where we were going to
25 connect the vaporization portion of the project into the

1 Q. So the -- one would think then the use of the
2 PSE customers of the liquefied gas and it's revaporized,
3 when they're using it, is the same -- same amount, I
4 guess that would be used to serve the LNG customers,
5 50/50 in terms of use; is that sort of what you're
6 saying?

7 A. Yes. I mean, both needs were important. Again,
8 we think about it as, you could have built two
9 pipelines, one to go in and one to go out because they
10 might have gone to different locations. If you did
11 that, you would have two 12 -- well, two \$23 million
12 pipelines, and if you can consolidate them and to use --
13 to get them to functionally work for separate uses but
14 non simultaneously, you can lower the cost. That's what
15 we did.

16 Q. Okay.

17 A. But a 50/50 allocation is what is typically used
18 on many interstate pipelines, many Canadian pipelines,
19 when there's a multiple parties using and they're
20 separately contracting to go in opposite directions, you
21 spread the cost to the two directions first, and then
22 spread the cost out among the contracting parties. I
23 use that same principle here.

24 Q. Okay. All right. Thank you.

25 I just want to move on to a couple of points

1 system. We knew -- we thought we knew where we were
2 going to get the gas, but we didn't know where we needed
3 to tie in to spread it out to all distribution
4 customers. So, again, one pipe might have been a 12
5 inch; one might have been a 16. All we did is we
6 separated that extra, and that's only 15 percent of the
7 cost. We tied that to the vaporization, the withdrawal
8 part.

9 Q. Okay. I'm not sure you're answering my
10 question, but that's -- I'll be done.

11 EXAMINATION (continued)

12 BY COMMISSIONER DOUMIT:

13 Q. So if I can go back to 50/50, why -- principle
14 cost causation, why 50/50 on a 12-inch pipe?

15 A. Well, which came first: The need to put gas
16 into the tank or to take gas out of the tank. Both were
17 equally needed, so assuming that PSE would have been
18 comfortable with only vaporizing 22,000 a day, we could
19 have built one 12-inch pipe and it would have been
20 allocated 50 percent in and 50 percent out. There was a
21 larger pipe needed on the withdrawal side.

22 Q. I understand that.

23 I'm just saying, even on the 12-inch pipe,
24 you're saying basically in and out is 50/50?

25 A. Right.

1 that you addressed with staffing with the Tribe on the
2 boil-off and then on the superior right as well.

3 So in your rebuttal testimony WFD-5T at page 6,
4 paragraph 18 through 7, paragraph 14, you discussed the
5 boil-off gas back into the distribution system, PSE's
6 distribution system, and it sounds like you said that
7 that averages a thousand dekatherms a day.

8 Does PSE have accurate measurements of that on a
9 daily basis?

10 A. Yes. There is a flow meter. There are three
11 meters at the intersection of the plant with the
12 four-mile pipe, and there's three meters, two for --
13 well, one for inbound, one for vaporization, and one for
14 boil-off coming back into the system.

15 Q. Okay.

16 A. So that is metered every day. It's also
17 internal to the plant. It is measured because we keep
18 track of it being recycled when it's liquefied again.

19 Q. Okay.

20 A. So we track that.

21 Q. So those records are accessible?

22 A. Yes, they are.

23 Q. So and I guess then one could count -- the next
24 question I was going to ask is, how do the volumes
25 compare to the maximum peak shaving volume used by Staff

1 and Public Counsel and their allocations? I guess you
2 can determine that based on these records, but what's
3 the -- what percentage of that thousand dekatherms a
4 day, I guess, needs to be the larger peak shaving
5 volumes that you use.

6 Does that make sense?

7 A. I'm not sure what time period we're talking
8 about.

9 Q. Yeah. I think -- let me think about that one in
10 a moment, and I'll just ask the next question.

11 Can you explain in more detail how the boil-off
12 gas factored into the proposed cost allocation or
13 that -- you referenced it, but I don't know how the --
14 did you factor it into your actual cost causation -- or
15 your cost allocation?

16 A. I consider it -- I considered it, but it did not
17 change the math. And the reason is, again, cost
18 causation, a contract to take gas to the plant and a
19 contract to take gas from the plant, and basically on
20 the way in, one customer has a need of over 19,000 a day
21 and the other one for about 2,000 a day, that's PLNG and
22 PSE on liquefaction. And then PSE 66,000 of withdraw
23 going the other direction. That was -- that's what
24 drove the need for the pipe and the size of the pipe.
25 That difference between 22 and 66 being that extra 15

1 A. What's it --

2 Q. What's the value? What's the monetary value?

3 A. I would say the monetary value is the cost of
4 the 15-percent increment and the -- and the 50 percent
5 of the cost of the four -- of the 12-inch nominal
6 portion of the pipeline. I mean, that's ultimately the
7 cost. Now, value, the value is part of a larger
8 equation that would include the alternative of building
9 a pipeline from Northern British Columbia to Tacoma --

10 Q. Well, you're saying staff --

11 A. -- as an alternative resource.

12 Q. And -- I'm sorry. Sorry about that.

13 In Staff's testimony, did you say -- you said
14 they didn't take into account the -- essentially, the
15 exclusive right of use during peak shaving events?

16 A. What I was referring to there is Staff and to
17 some extent public counsel have been arguing that
18 they -- the air permit says you can only vaporize 240
19 hours a year, right, but it's 240 hours where a pipe has
20 to be there ready to operate and ready to push others
21 out of the way from using it because it can only flow in
22 one direction at a time, and so when you have a higher
23 right, that firm right to push others out of the way,
24 that -- it doesn't matter how often you do it. The fact
25 is, you have the right to do it at any time. In

1 percent to build a larger pipe.

2 Q. Okay. Good, but --

3 A. That --

4 Q. Go ahead. I'm sorry.

5 A. That is their demand, their required peak volume
6 usage that both parties are reserving, so any time they
7 use less of it, they're within their rights. So the
8 thousand a day of boil-off gas is well within PSE's
9 rights to use up to 66,000, and so it's -- it's another
10 use, but it doesn't really matter. I have to build the
11 larger pipe anyway.

12 Q. Okay. One last question.

13 On the -- on the superior rights, which I think
14 you -- you claim it to be, this would be your rebuttal
15 testimony, right, at the bottom of -- last line of page
16 5 and the top of page 6, the right of sole use during
17 peak shaving?

18 A. Yes.

19 Q. What is that worth?

20 A. What is that worth?

21 Q. What is that right worth?

22 A. It is -- it's the ability to --

23 Q. I think I know what it is. It is exclusive
24 right. But, in your mind, do you have any idea what
25 it's worth?

1 addition, there was the consideration that when we did
2 the allocation, the cost of the pipe, there was no air
3 permit limit. Now the air permit limit is there, I
4 would have built a different pipe, but you still needed
5 it for the 240 hours.

6 Q. One last question: So on the right, where is
7 that embodied in the contract?

8 A. I don't know that it's in a specific contract.
9 It may be part of the ownership and operating agreement
10 between PSE and PLNG, that they have the right at the
11 plant. There is no contract between PSE and itself for
12 the pipe, but there is a contract between PSE and PLNG,
13 and there it states their right is -- is not firm. It
14 can be interrupted when PSE chooses to vaporize.

15 Q. And that contract is available?

16 A. It's been file would the Commission.

17 Q. Okay. Thank you. Nothing further. Thanks.

18 EXAMINATION

19 BY COMMISSIONER RENDAHL:

20 Q. It's been filed in this proceeding?

21 A. I don't think so, but I'll let counsel determine
22 that. It was the subject of an affiliate -- it was a
23 discussion with staff and an affiliate filing related to
24 the sale of gas. I don't know if the tariff-mandated
25 standard rate schedule was filed or not.

1 **Q. Okay. My issue is just whether it's in the case**
2 **or not.**

3 COMMISSIONER RENDAHL: Ms. Carson?
4 MS. CARSON: Yes. I do not believe it's
5 filed in the case. I think it was filed in Docket
6 UG-210111. If you would like it filed in this case, we
7 can certainly do that.

8 CHAIR DANNER: I think it should unless we
9 can take notice of evidence. So if we can take notice
10 of it. But let's get confirmation it was filed in that
11 case before we don't put it in this one.

12 MS. CARSON: We can confirm that.

13 COMMISSIONER RENDAHL: Okay. And if not,
14 we'll do a bench request for that. So after the break,
15 if you can let us know, that would be helpful.

16 COMMISSIONER DOUMIT: Thank you.
17 EXAMINATION

18 BY CHAIR DANNER:

19 **Q. Good morning, Mr. Donahue. So when you were**
20 **getting questions from Mr. Roberson, he said, you know,**
21 **for PSE, it's peak shaving. For LNG, he says, that's**
22 **for transportation. And you said, Yes, and truck.**

23 **And I want to just get your understanding. When**
24 **we're talking about use of the LNG facility for trucking**
25 **or for loading into trucks, where are you putting that**

1 **it's transportation, and you said, Yes, and truck. So,**
2 **in fact, it's not allocated to LNG; it's allocated to**
3 **PSE and ratepayers for 90 percent of that?**

4 A. No. I'm sorry. I think we got confused. I
5 was -- his question, my recollection of that, no
6 offense, but was that he said it was for marine --
7 marine fuel, and I said marine and truck, so --

8 **Q. Okay. And --**

9 A. -- Puget LNG is there to serve both markets.
10 They have done very little to serve the truck market to
11 date.

12 **Q. Okay. So you weren't talking about allocation**
13 **then. You were just talking about what the facility is**
14 **capable of doing?**

15 A. That was my recollection of the context, yes.

16 MS. CARSON: Your Honor and Chair Danner,
17 I'll just point you to Exhibit RJR-1T page 15 and 16
18 that has that allocation for each different function of
19 the plant.

20 BY CHAIR DANNER:

21 **Q. Okay. That's fine. I just have confusion**
22 **because the -- I thought the discussion between you and**
23 **Mr. Roberson was talking about allocation. So thank**
24 **you.**

25 **And since we're on the subject of other things,**

1 **allocation? Is that -- is any of that being allocated**
2 **to the -- to the distribution system, or is that all on**
3 **the LNG -- on the PLNG sides? And how much -- how much**
4 **are we talking about there?**

5 A. Well, in the old settlement agreement, I'm not
6 going to remember the name of the docket, but the one
7 where we -- where the creation of a separate affiliate
8 was hired and there was a general -- there was an
9 agreement on the allocation of the four or five major
10 component costs of the LNG facility, truck loading was
11 one of those parcels of facility, so you had
12 liquefaction, vaporization, storage, marine loading, and
13 truck loading, and then I think general plan.

14 So truck loading is there's two -- there's two
15 lanes where you can hook up -- bring in a semi truck and
16 hook it up and fill it with LNG, a tanker. That's been
17 used by PSE quite a bit, more than PLNG has used it, and
18 yet I believe a significant portion -- I want to -- I
19 want to say by memory, maybe 90 percent of the cost of
20 that truck loading equipment was allocated to PLNG, and
21 that's, to my knowledge, only been used two or three
22 times; whereas, I know there's been at least 20
23 truckloads of LNG hauled to Gig Harbor.

24 **Q. Okay. So that is different than what you**
25 **responded to Mr. Roberson, because he said, And for LNG,**

1 **LNG by rail, can you tell me specifically what role**
2 **there is for this plant for LNG by rail?**

3 A. None that I'm aware of. The first I heard of it
4 was somebody else's testimony in this case. I never
5 heard anything of it.

6 **Q. Okay. That's a little less than a hard no,**
7 **so --**

8 A. I'll say no.

9 **Q. Okay.**

10 A. But I'm not -- I'm no longer an employee, so I
11 can't speak for the Company on that score.

12 **Q. All right. Thank you. No further questions.**

13 JUDGE HOWARD: Okay. Any further questions
14 from the bench?

15 All right. Hearing none, Mr. Donahue, thank you
16 for your testimony. You are excused.

17 THE WITNESS: Thank you.

18 JUDGE HOWARD: With that, let's take our
19 mid-morning break. Let's take a 15-minute break, and
20 we'll resume at 11:17. We were are off the record.

21 (A break commenced from
22 11:02 a.m. to 11:21 a.m.)

23 JUDGE BROWN: And we are back on record.
24 The next witness is John Taylor.

25 MS. CARSON: Good morning, Mr. Taylor.

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1 Can you please state your name and title and
 2 spell your name for the court reporter.
 3 JUDGE BROWN: Before we do that, let's swear
 4 him in.
 5 MS. CARSON: Sorry.
 6
 7 JOHN TAYLOR, having been first duly sworn by the
 8 Judge, testified as follows:
 9
 10 JUDGE BROWN: Proceed.
 11 MS. CARSON: Thank you.
 12 Okay. Mr. Taylor, please state your name and
 13 title for the record and spell your name for the court
 14 reporter.
 15 THE WITNESS: John Taylor, J-o-h-n,
 16 T-a-y-l-o-r, managing partner of Atrium Economics.
 17 MS. CARSON: Mr. Taylor, do you have before
 18 you what has been marked for identification as Exhibit
 19 Nos. JDT-1T through JDT-7 and JDT-18 in this docket?
 20 THE WITNESS: Yes, I do.
 21 MS. CARSON: Do these exhibits constitute
 22 your pre-filed, direct, and rebuttal testimony and
 23 exhibits?
 24 THE WITNESS: Yes, they do.
 25 MS. CARSON: Do you have any corrections to

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1 this testimony and exhibits?
 2 THE WITNESS: No, I do not.
 3 MS. CARSON: Thank you. Mr. Taylor is
 4 available for cross-examination.
 5 JUDGE BROWN: As I have it right now, it
 6 doesn't seem as if any of the parties will be
 7 cross-examining the witness.
 8 Are there any -- I'm sorry. Staff, please
 9 proceed.
 10 MR. ROBERSON: That's actually okay. I plan
 11 on waiving cross of Mr. Taylor.
 12 JUDGE BROWN: Well, that worked out.
 13 Any questions from the bench?
 14 CHAIR DANNER: Yeah, I have a question.
 15 EXAMINATION
 16 BY CHAIR DANNER:
 17 **Q. Good morning, Mr. Taylor.**
 18 A. Good morning.
 19 **Q. So in your direct testimony, and that's JDT-1T**
 20 **on page 5, you discussed the Company's proposal to**
 21 **recover the expected \$200,000 in revenue that the**
 22 **company would have recovered from Puget LNG under**
 23 **Schedule 807T until the next general rate case.**
 24 **Do you see that testimony? Do you have that in**
 25 **front of you?**

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1 A. Yes, I have it in front of me.
 2 **Q. Okay. Yeah.**
 3 **Can you explain to me, why is it appropriate for**
 4 **PSE to recover this revenue in excess of the amount that**
 5 **was allocated to Puget LNG under schedule 808T?**
 6 A. Yeah, sure.
 7 **Q. So there's 808T and 807T, so --**
 8 A. Right.
 9 **Q. Yeah.**
 10 A. So under the settlement that came out of the
 11 last GRC, we had revenue targets and rates that were
 12 approved and filed with the compliance filing. Puget
 13 LNG would have -- and they are currently an 807T
 14 customer with an estimated annual revenue of \$1.3
 15 millions under 807T. With the direct assignment of the
 16 bidirectional pipeline that's currently recovered in
 17 141-D, they will pay under the Company's proposal
 18 approximately \$1.1 million under schedule 141-D, and so
 19 to keep the revenue targets and the outcomes from the
 20 GRC, they needed to create a rate 808T for Puget LNG
 21 that would recover that delta, the difference between
 22 the \$1.1 million they will pay under 141-D and the \$1.3
 23 they would have paid under 807T.
 24 **Q. Okay. So that would be recovered just through**
 25 **this tariff, so not -- so there's -- how would you --**

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1 **how would you treat this 200,000 in the next rate case,**
 2 **or would you have to?**
 3 A. I think the next rate case, there will be an
 4 opportunity to directly assign facilities to 808T to
 5 look at, you know, the resulting cost of service and
 6 cost to serve all rate classes and either the parties
 7 through settlement or litigated outcome will set the
 8 expected revenues for each of the classes or rather the
 9 target revenues, and one of those classes would be 808T,
 10 and so it would be an opportunity to, you know, decide
 11 what the revenue level is for all classes in the next
 12 GRC.
 13 **Q. Okay. So -- all right. So we would treat that**
 14 **in the GRC? That's the plan?**
 15 A. Yes.
 16 **Q. Okay.**
 17 A. I see this as kind of setting up the foundation
 18 and the various parts of 141-D and then that direct
 19 assignment to 808T and then proposing a new 808T as a
 20 tariff rate class, that would be included in, you know,
 21 the next GRC as a -- as a class in the class cost to
 22 service and ability to see what the total revenue
 23 requirement is and what the revenue target should be for
 24 that class like you do for all classes.
 25 **Q. All right. Thank you. That's all I have.**

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1 JUDGE BROWN: That will be all. Thank you.
 2 The next witness is Susan Free.
 3 Ms. Free, raise your right hand please.
 4
 5 SUSAN FREE, having been first duly sworn by the
 6 Judge, testified as follows:
 7
 8 JUDGE BROWN: You may proceed.
 9 MS. CARSON: Thank you, Your Honor. Ms.
 10 Free, please state your name and title for the record,
 11 and spell your name for the court reporter.
 12 THE WITNESS: My name is Susan Free,
 13 S-u-s-a-n, F-r-e-e. I'm the director of revenue
 14 requirements and regulatory compliance for PSE.
 15 MS. CARSON: Ms. Free, do you have before
 16 you what has been marked for identification as Exhibit
 17 Nos. SEF-1T through SEF-3 and SEF-4TR in docket -- in
 18 this docket?
 19 THE WITNESS: I do.
 20 MS. CARSON: Do these exhibits constitute
 21 your pretrial direct and rebuttal testimony and related
 22 exhibits?
 23 THE WITNESS: They do.
 24 MS. CARSON: Do you have any changes other
 25 than what has been provided to the Commission?

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1 THE WITNESS: I do not.
 2 MS. CARSON: Thank you.
 3 Ms. Free is available for cross-examination.
 4 JUDGE BROWN: You may proceed, Staff.
 5 MR. ROBERSON: Staff will also waive its
 6 cross of Ms. Free.
 7 JUDGE BROWN: Next we have the Puyallup
 8 Tribe. You may proceed.
 9 MR. THOMAS: Thank you, Your Honor.
 10 Nicholas Thomas here taking over for Andrew Fuller for
 11 this witness.
 12 CROSS-EXAMINATION
 13 BY MR. THOMAS:
 14 **Q. Ms. Free, thank you for being here. I have a**
 15 **couple of questions for you. I'll try to move through**
 16 **this quickly. If you don't know the answer to a**
 17 **question, that's fine. Please don't speculate because**
 18 **it's going to require a bunch of time and follow-up from**
 19 **me to figure out if you're speculating.**
 20 **Fair enough?**
 21 A. Totally fair.
 22 **Q. Okay. Puget Sound Energy employs in-house**
 23 **counsel; correct?**
 24 A. Correct.
 25 **Q. And PSE's in-house counsel are salaried**

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1 **employees of PSE.**
 2 **Do I have that right?**
 3 A. Yes.
 4 **Q. Okay. And I want to talk a little bit about**
 5 **what PSE has referred to as internal legal costs.**
 6 **And you recently amended your testimony with**
 7 **respect to internal legal costs; correct?**
 8 A. Yes.
 9 **Q. All right. From your testimony, I'm a little**
 10 **unclear.**
 11 **Can you explain to us who specifically charged**
 12 **these internal legal costs to PSE?**
 13 A. Internal in-house counsel of PSE charged their
 14 time.
 15 **Q. Okay. And anyone besides in-house counsel, like**
 16 **consultants, expert witnesses, anything like that?**
 17 A. Yes. There would have been charges to the
 18 project for the -- for certain consultants likely, but
 19 there -- I'm not sure exactly what costs you're talking
 20 about.
 21 **Q. Yeah, I'm just -- what PSE is claiming in this**
 22 **matter is internal legal costs. I'm wondering if that's**
 23 **just in-house counsel related costs or costs from people**
 24 **who aren't attorneys like consultants.**
 25 A. I don't believe -- I believe what has been

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1 reported as in-house -- as legal costs are in-house or
 2 external legal.
 3 **Q. Okay. So attorneys only?**
 4 A. To the best of my knowledge, yes.
 5 **Q. Okay. Do you know -- again, I don't -- I don't**
 6 **want you speculating or guessing.**
 7 A. I haven't looked at every single invoice.
 8 **Q. Okay. All right. Let's take a quick look at**
 9 **page 23 of your amended testimony, because I guess that**
 10 **is the active one, and on page 23, you state: PSE's**
 11 **legal fees related to the Tacoma LNG project are**
 12 **reasonable and appropriate.**
 13 **Do you see that? Am I reading that right?**
 14 A. Yes.
 15 **Q. All right. Can you tell all of us what makes a**
 16 **legal fee reasonable versus unreasonable?**
 17 A. I'm not really the expert on the type of legal
 18 costs that are charged. I know that where they were
 19 charged and to the project and how we account for them
 20 at PSE. I think it's up to the attorneys to know the
 21 work they're doing and how they charge the time to the
 22 projects that get assigned to the accounting.
 23 **Q. Okay. Same question for the word "appropriate"**
 24 **that you used in your testimony.**
 25 **Can you tell all of us what makes a legal fee**

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1 **appropriate versus inappropriate?**
 2 A. I think that in my testimony when I say it was
 3 appropriately charged, we followed our procedures
 4 internally to determine that the attorneys were working
 5 on the LNG, that they were responding to legal matters
 6 on the LNG project, and internally we followed our
 7 procedures to charge them correct to the project.
 8 **Q. So the words "reasonable" and "appropriate" mean**
 9 **procedurally reasonable and appropriate, not necessarily**
 10 **in terms of the amounts charged? Am I understanding**
 11 **what you're saying right?**
 12 A. That's not what I -- that's not my testimony,
 13 no. I think that the procedures provide that the type
 14 of work done and the amounts charged are appropriate.
 15 That's the intention of the procedures that were
 16 followed.
 17 **Q. Okay. So then again, what makes a legal fee**
 18 **reasonable -- reasonable versus unreasonable, just as a**
 19 **general matter?**
 20 A. I think I stated earlier that the attorneys were
 21 responding to legal matters related to LNG and
 22 appropriately charged them to the project, which were
 23 then appropriately allocated between PSE customers on
 24 the nonregulated side.
 25 **Q. Okay. I'm not sure I'm understanding the**

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1 **answer, but I'll move on.**
 2 **Do you understand that there are accepted**
 3 **methods of determining the appropriateness of legal fees**
 4 **and costs?**
 5 A. I'm not clear of what -- I'm sorry. I don't
 6 understand the question.
 7 **Q. All right. So, you know, I'm an attorney and,**
 8 **you know, in, you know, this world, you know, there's**
 9 **parties sometimes seek reimbursement of their legal fees**
 10 **from a court.**
 11 **And I'm -- first of all, are you aware of that**
 12 **fact?**
 13 A. Generally, I think you just informed me, yes.
 14 **Q. Okay. And there's accepted methods of**
 15 **determining whether the legal fees a party seeks are**
 16 **appropriate or inappropriate.**
 17 **Are you aware of that, that there's a ways of**
 18 **making those decisions?**
 19 A. Not -- no.
 20 **Q. Okay. You've never heard of that?**
 21 A. No.
 22 **Q. Okay. All right. Will PSE commit to providing**
 23 **the Commission with the legal bills PSE wants reimbursed**
 24 **so the Commission can analyze the appropriateness of the**
 25 **fees PSE is seeking to have ratepayers reimburse?**

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1 MS. CARSON: Objection; that's not for this
 2 witness to answer. Those invoices are attorney/client
 3 privileged documents, and so we would object.
 4 MR. THOMAS: Your Honor, may I meet that?
 5 JUDGE BROWN: I'll listen to what you have
 6 to say before I make my ruling, go ahead.
 7 MR. THOMAS: Thank you, Your Honor.
 8 I'm not asking the witness to disclose anything
 9 that's privileged or confidential in this hearing at
 10 all. It was -- it was a question regarding committing
 11 to providing those to the UTC for the UTC's own review.
 12 It is very, very common where a party seeks an award of
 13 legal fees to provide those for in camera review to a
 14 tribunal, in this case, the UTC.
 15 JUDGE BROWN: Is there a way we can word it
 16 differently?
 17 MR. THOMAS: I mean, I'm not sure, Your
 18 Honor. I just asked if PSE would commit to providing
 19 those to the UTC. It doesn't seek anything privileged
 20 or confidential. It seeks a commitment or a refusal to
 21 commit.
 22 JUDGE BROWN: What do you want to say,
 23 Counsel?
 24 MS. CARSON: PSE will commit to providing
 25 anything that the Commission requests PSE to provide,

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1 but we do have concerns about providing detailed
 2 descriptions of legal work that have been done,
 3 particularly to a party opponent in another proceeding.
 4 JUDGE BROWN: I'll grant the objection.
 5 MR. THOMAS: I'll move on.
 6 BY MR. THOMAS:
 7 **Q. Let's talk about the cases that the fees are**
 8 **related to.**
 9 **First of all, Ms. Free, can you list out all of**
 10 **the pieces of litigation for which PSE is seeking**
 11 **reimbursement of its legal fees?**
 12 A. I cannot at the time do that. I don't have that
 13 knowledge on the top of my head, no.
 14 **Q. Okay. All right. Let's -- let's look at page**
 15 **18, lines 10 to 12 of your testimony. Hopefully my**
 16 **laptop cooperates with me here.**
 17 **Let me know when you're there, please.**
 18 A. Okay.
 19 **Q. Okay. You beat me.**
 20 **Okay. Lines 10 to 12, quote, The core arguments**
 21 **for the attached and appeals have been simply repeated**
 22 **in these different forums in the hopes of getting a**
 23 **different answer, do you see that?**
 24 A. Yes.
 25 **Q. Okay. Specifically, what are the core arguments**

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1 that have been simply repeated in different forums in
 2 the hopes of getting a different answer?
 3 A. I'm not the best witness to answer that
 4 question.
 5 **Q. This is your testimony. Okay. All right. I'm**
 6 **sorry. But I have to continue asking questions about**
 7 **this to make the record.**
 8 **Was Tacoma LNG's compliance with air quality**
 9 **standards litigated before the Washington Shoreline**
 10 **Hearings Board in SHB Case No. 16-002, if you know?**
 11 MS. CARSON: I'm going to object. She said
 12 she's not the witness to answer these questions. Mr.
 13 Roberts would be the appropriate witness.
 14 JUDGE BROWN: The objection --
 15 MR. THOMAS: Your Honor, before ruling, I'm
 16 simply asking the witness about the witness's testimony.
 17 That is what this cross-examination is for.
 18 JUDGE BROWN: Mr. Roberts was available for
 19 as a witness earlier, so --
 20 MR. THOMAS: Understood, Your Honor, but I'm
 21 not asking about Mr. Roberts' testimony. I'm asking
 22 this witness about her testimony.
 23 JUDGE BROWN: That's not how it sounded to
 24 me. The objection is granted.
 25 BY MR. THOMAS:

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1 **Q. All right. All right. Let's take a look at**
 2 **another piece from your testimony, Ms. Free, same page**
 3 **and lines 12 to 13 this time: PSE ultimately prevailed**
 4 **on all of these appeals and did so by repeating its core**
 5 **defenses in each of the various forums, end quote.**
 6 **Do you see that?**
 7 A. Yes.
 8 **Q. Okay. And I'm reading from your testimony, not**
 9 **Mr. Roberts'; correct?**
 10 A. Yes.
 11 **Q. Okay. Thank you.**
 12 **First of all, wasn't the air permit remanded**
 13 **because the Tribe prevailed on multiple grounds?**
 14 A. I don't know the details, the exact details of
 15 all of the proceedings. I do know that from others that
 16 I've consulted with, that this part of my testimony is
 17 supported.
 18 **Q. Can you please tell all of us, what are the,**
 19 **quote, core defenses that you are referring here to in**
 20 **your testimony?**
 21 A. I think I just answered the question that I
 22 don't have all of the details.
 23 **Q. Okay. Well, I was asking about the core**
 24 **defenses.**
 25 **Do you have the details on what constitutes the**

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1 **core defenses --**
 2 A. No.
 3 **Q. -- that you testified?**
 4 A. I have the details with how these costs were
 5 charged.
 6 **Q. But you said no as to the core defenses?**
 7 A. Correct. I said no.
 8 **Q. Okay. All right. Are you familiar with the**
 9 **litigation concerning the permit that Tacoma LNG**
 10 **received pursuant to Section 401 of the Clean Water Act?**
 11 A. No.
 12 **Q. Okay. Were safety risks that Tacoma LNG poses**
 13 **to the surrounding community a part of that case, if you**
 14 **know?**
 15 MS. CARSON: So I object. This witness
 16 testifies to the appropriateness of the legal fees and
 17 how they were accounted for at PSE, and at a very high
 18 level, testifies about the nature of the appeal ongoing
 19 by the Tribe. The details of that are in Ron Roberts'
 20 testimony, so he would be the appropriate witness to ask
 21 about those details.
 22 MR. THOMAS: Again, Your Honor, this witness
 23 has referenced litigation and had made some specific
 24 statements with respect to that litigation. I'm simply
 25 asking the questions about the testimony she provided.

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1 JUDGE BROWN: I understand your point. The
 2 objection is granted.
 3 BY MR. THOMAS:
 4 **Q. Okay. Let's move on to page 19, line 2, where**
 5 **it reads, quote, Although PSE prevailed at every level**
 6 **in each of the three rounds of appeals filed by the**
 7 **Tribe?**
 8 **Do you see that, Ms. Free?**
 9 A. Yes.
 10 **Q. And that's your testimony; correct?**
 11 A. I haven't flipped the page yet, so yes, it's
 12 still my testimony.
 13 **Q. Okay. Well, I -- the language at page 19, line**
 14 **2?**
 15 A. Yes.
 16 **Q. Okay. All right. So I understand this, what**
 17 **are the three rounds of appeals filed by the Tribe that**
 18 **you are referring to here in your testimony?**
 19 A. I don't have those details.
 20 **Q. Okay. All right. Let's take a look at page 19,**
 21 **lines 8 to 11, and please give that a quick look and let**
 22 **me know when you're ready.**
 23 A. (Witness peruses document.) I'm sorry. Can you
 24 give me the line numbers again?
 25 **Q. Yes. 8 to 11.**

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1 A. Thank you. I see it.
 2 **Q. Okay. So having just read that, is it your**
 3 **testimony that PSE responded to three amicus briefs in**
 4 **the still-pending litigation before the Court of**
 5 **Appeals?**
 6 A. That testimony was written in response to a
 7 comment I think in Dr. Earl's testimony that indicated
 8 there shouldn't be any costs during this time period,
 9 and so this is response to indicate why there would be
 10 costs.
 11 **Q. But your testimony is PSE responded to two**
 12 **amicus briefs?**
 13 A. That's what it says, yes.
 14 **Q. Okay. Can you tell us what are the two amicus**
 15 **briefs that PSE responded to?**
 16 A. I don't know those details.
 17 **Q. Okay. Isn't it true that PSE only responded to**
 18 **one amicus brief, the one filed by the Washington**
 19 **Attorney General's Office?**
 20 A. I don't have those details.
 21 **Q. Okay. I -- okay. We can move on.**
 22 **Let's look at page 20, Table 1.**
 23 A. I'm there.
 24 **Q. Okay. And this is called "Internal Legal Hours**
 25 **Worked and External Legal Costs"; yes?**

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1 A. Correct.
 2 **Q. Okay. First of all, internal legal hours worked**
 3 **by who?**
 4 A. Internal counsel for PSE.
 5 **Q. Okay. All right. Now, still looking at this**
 6 **table, what constitutes an external legal cost being**
 7 **claimed in this table?**
 8 A. External legal representation.
 9 **Q. Okay. So that's what that "External Costs"**
 10 **column is here?**
 11 A. Yes.
 12 **Q. Okay. Thank you.**
 13 **All right. Now let's look at Table 2 just below**
 14 **Table 1.**
 15 **All right. Table 2, "Internal Legal Hours Time**
 16 **Entry," this table reflects time worked by who?**
 17 A. Internal -- internal legal counsel for PSE.
 18 **Q. Okay. Okay. I'm just reviewing these tables,**
 19 **if you'll give me a moment.**
 20 **Ms. Free, if you can tell me, exactly how much**
 21 **is PSE asking ratepayers to reimburse it for external**
 22 **legal costs in this matter?**
 23 A. I believe that was disclosed in Exhibit RLE-12.
 24 I don't have the total --
 25 **Q. Okay.**

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1 A. -- handy.
 2 **Q. Yeah, fair enough. Fair enough.**
 3 **Can you tell me, does the claimed amount,**
 4 **whatever that amount is, is that -- does that include**
 5 **litigation costs separate from attorney fees? Does that**
 6 **include litigation costs for things like expert**
 7 **witnesses, consulting experts and the like, or is it**
 8 **only attorney fees?**
 9 A. I think you asked me that before, and I'm pretty
 10 sure I said I don't think so, but you didn't want me to
 11 speculate, so... (Pause.)
 12 **Q. Yeah, and I don't again. I'm sorry if I asked**
 13 **the same question twice.**
 14 **But fair to say PSE received bills each month**
 15 **from outside counsel for work performed; correct?**
 16 A. Correct.
 17 **Q. Okay. Did -- and I may have asked a similar**
 18 **question earlier, but I'm asking a little bit more about**
 19 **procedure now.**
 20 **Did PSE review the bills that came in from**
 21 **outside counsel? Did PSE review the bills to make sure**
 22 **they were appropriate?**
 23 A. There's a process to review bills when they come
 24 in as they're being paid to make sure that they're being
 25 charged correctly.

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1 **Q. And who performed the review?**
 2 A. I don't know. It would have been probably
 3 some -- sorry. It would be somebody in our accounts
 4 payable department.
 5 **Q. To your knowledge, did PSE ever dispute any of**
 6 **the legal costs from outside counsel that it had**
 7 **incurred in connection with the Tacoma LNG facility?**
 8 A. Not to my knowledge.
 9 **Q. Okay. All right. Now coming back to your**
 10 **reasonable and appropriate testimony from page 23, can**
 11 **you tell us the market rate for environmental attorneys**
 12 **in Western Washington in 2016?**
 13 MS. CARSON: Objection; that's outside this
 14 witness's knowledge and testimony.
 15 JUDGE BROWN: Sustained.
 16 MR. THOMAS: Your Honor, okay, should I be
 17 responding to objections, because it's happening often
 18 fast before I can meet the objection?
 19 JUDGE BROWN: I'll let you respond, and I'll
 20 rule again.
 21 MR. THOMAS: Yeah, if the witness doesn't
 22 know, she can simply say she doesn't know, but this goes
 23 to the legal fees incurred by PSE and their
 24 reasonableness. It's fair for me to at least ask the
 25 question. And if the witness doesn't know, she can say

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1 she doesn't know, but she provided testimony that the
 2 fees were reasonable and appropriateness. It's fair for
 3 me to explore that with her on cross-examination.
 4 JUDGE BROWN: I'll allow you to answer that.
 5 THE WITNESS: Could you please repeat the
 6 question?
 7 BY MR. THOMAS:
 8 **Q. Yup.**
 9 **I'm asking if you can tell us the market rates**
 10 **for environmental attorneys in Western Washington in**
 11 **2016?**
 12 A. No, I cannot.
 13 **Q. Okay. In 2017, same question.**
 14 A. No.
 15 **Q. Okay. In 2018, same question.**
 16 A. No.
 17 **Q. In 2019?**
 18 A. I cannot tell you the market rate for any year
 19 that you will ask me.
 20 **Q. All right. Thank you.**
 21 JUDGE BROWN: And just for the -- just for
 22 the integrity of the record, I will overrule on that
 23 objection. Thank you.
 24 MR. THOMAS: Thank you, Your Honor.
 25 JUDGE BROWN: Thank you.

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1 BY MR. THOMAS:
 2 **Q. Ms. Free, are you familiar with Tom Wood of the**
 3 **Stoel Rives law firm?**
 4 A. No.
 5 **Q. You're not?**
 6 **Okay. So if I asked you whether PSE is seeking**
 7 **reimbursement of Mr. Woods's time from the Clean Air Act**
 8 **litigation before the PHCB, you wouldn't be able to tell**
 9 **me; is that fair?**
 10 A. I don't have that handy, no.
 11 **Q. All right. Let's talk a little bit about fees**
 12 **incurred in connection with the Shoreline Management Act**
 13 **litigation.**
 14 **First of all, Ms. Free, are you able to tell us**
 15 **what outside attorneys billed PSE for time worked on SHB**
 16 **Case 16-002?**
 17 A. I don't have that information handy.
 18 **Q. Okay. And so then you wouldn't be able to tell**
 19 **me the hourly rate that PSE paid each attorney**
 20 **representing it in that case; is that fair?**
 21 A. That is correct. I cannot.
 22 **Q. All right. Well, let's then talk about the**
 23 **Clean Water Act litigation as PCHB Case No. 16-120C.**
 24 **Can you tell us what outside attorneys billed**
 25 **PSE for time worked on that case?**

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1 A. No.
 2 **Q. Okay. And then you would not be able to tell me**
 3 **the hourly rate that PSE paid each attorney there; is**
 4 **that correct?**
 5 A. Correct. I cannot tell you that.
 6 **Q. All right. Then let's talk about the Puget**
 7 **Sound Clean Air Agency permit legal costs very quickly,**
 8 **and that's PCHB Case No. 19-087C.**
 9 **Can you tell us what outside attorneys billed**
 10 **PSE for time worked on this case?**
 11 A. No.
 12 **Q. Okay. And then one by one, you're not able to**
 13 **tell me the hourly rate that PSE paid each attorney; is**
 14 **that fair?**
 15 A. Correct. I cannot tell you that.
 16 **Q. Thank you.**
 17 **All right. So outside of those three pieces of**
 18 **litigation, are there any other cases for which PSE is**
 19 **asking the Commission to make ratepayers responsible for**
 20 **legal costs incurred by PSE?**
 21 MS. CARSON: Objection; overbroad, not clear
 22 what all ratepayers you're referring to, whether it's
 23 this case or in general, so I object.
 24 MR. THOMAS: Your Honor, I can clean the
 25 question up, if I may.

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1 JUDGE BROWN: Yes. Please rephrase your
 2 question.
 3 MR. THOMAS: All right. Thank you.
 4 BY MR. THOMAS:
 5 **Q. All right. For the ratepayers we are talking**
 6 **about at issue in this case, are there any other legal**
 7 **costs for which PSE is asking the Commission to make**
 8 **ratepayers responsible beyond the three pieces of**
 9 **litigation that I just asked you about?**
 10 A. I don't have those details handy.
 11 **Q. Okay. All right. Ms. Free, thank you for your**
 12 **time. Those are all the questions I have.**
 13 JUDGE BROWN: Is there any redirect?
 14 MS. CARSON: Yes, there is. Thank you, Your
 15 Honor.
 16 JUDGE BROWN: Proceed, please.
 17 REDIRECT EXAMINATION
 18 BY MS. CARSON:
 19 **Q. Ms. Free, in your role as director of revenue**
 20 **requirement, is it your -- tell us about how you pull**
 21 **together costs that are submitted to the Commission for**
 22 **recovery in a case like this or in rate cases as well.**
 23 A. So there is multiple departments at PSE who are
 24 responsible for accounting for the costs that are
 25 charged to various projects and, you know, O&M accounts

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1 and, you know, essentially making sure the financials
 2 are accurate, and I rely on those departments to help
 3 build my testimony so I can get a general understanding
 4 of how things are done. And, for instance, attorneys --
 5 internal attorneys' time gets charged to regular O&M
 6 unless they're working on a project, when they actually
 7 go through a process to charge their time directly to a
 8 capital project, and I can be -- I'm aware of that
 9 through, you know, working with those in my company who
 10 are, you know, the ones that are actually doing that
 11 work.
 12 **Q. And so in this case, is it fair to say that you**
 13 **consult with the legal department in terms of legal**
 14 **costs that are -- were -- that PSE is submitting in this**
 15 **case?**
 16 A. Correct.
 17 MR. THOMAS: Object, Your Honor. Counsel is
 18 leading her own witness.
 19 MS. CARSON: Well, I'll rephrase it.
 20 BY MS. CARSON:
 21 **Q. So tell me how you are able, in this case, to**
 22 **put forward this testimony about the legal fees.**
 23 A. So I did work with the legal folks at my
 24 company, and they are the ones that, you know, are
 25 responsible for overseeing the work that's done that's

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1 charged to the project, and it's their opinion that it
 2 was charged directly, and so I carry that into my
 3 testimony. I also know that Ron Roberts has a lot of
 4 detailed testimony around this and was definitely a lot
 5 more aware of all the details that I was requested to
 6 answer.
 7 **Q. And are there others at PSE who might look at**
 8 **invoices more closely than you that are charged with**
 9 **that?**
 10 A. Most definitely, yes.
 11 MR. THOMAS: Objection. That calls for
 12 speculation. She's asking the witness what might
 13 happen. The witness is here to provide knowledge, what
 14 she knows, not speculate about who might do what.
 15 JUDGE BROWN: Objection denied. Proceed.
 16 THE WITNESS: Yeah, I don't actually -- the
 17 procedures that -- at PSE prevent me from actually
 18 posting entries into the system. I'm not the one that
 19 actually does that work, but, again, I rely on the
 20 people who do do the reviews and actually record the
 21 entries to help prepare my testimony.
 22 MS. CARSON: I have no further questions.
 23 JUDGE BROWN: Any questions from the bench?
 24 CHAIR DANNER: So I just -- yeah, thank you.
 25 EXAMINATION

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1 BY CHAIR DANNER:
 2 **Q. Good morning. So I just want to be clear.**
 3 **You're making basically reasonability -- reasonableness**
 4 **determinations based on documents that were submitted to**
 5 **you by others, and you're saying you really don't have a**
 6 **basis for reviewing those, and so what are you basing**
 7 **the reasonableness on?**
 8 A. On working with others in the legal department
 9 who were directly involved in the proceedings that were
 10 brought up here and their representation that -- that
 11 they followed the procedures that are instituted at PSE
 12 to make sure that the costs were charged appropriately
 13 to the work orders.
 14 CHAIR DANNER: Okay. And I have a question.
 15 There was -- Mr. Thomas was -- he raised -- I
 16 don't know. It's not exactly testimony, but he raised
 17 there was one amicus brief you responded to and not two.
 18 And you said you didn't know.
 19 Is it possible we get clarification on that, or
 20 should we do a bench request on that, or is it possible
 21 we can get that into the record somehow?
 22 MS. CARSON: Yes, we're happy to respond to
 23 a bench request.
 24 CHAIR DANNER: All right. Thank you.
 25 JUDGE BROWN: Any further questions from

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1 the --
 2 CHAIR DANNER: Yes, yes, I'm not done yet,
 3 Your Honor.
 4 JUDGE BROWN: I'm sorry.
 5 CHAIR DANNER: It's all right.
 6 BY CHAIR DANNER:
 7 **Q. Can you look at your rebuttal testimony, SEF-4T**
 8 **at page 3.**
 9 A. I'm there.
 10 **Q. Great.**
 11 **This is where you discuss the recovery of PSE's**
 12 **deferred costs under the accounting petition in the**
 13 **Docket 210915.**
 14 **Can you clarify whether PSE requests in this**
 15 **case a return on its deferred operation and maintenance**
 16 **expenses at PSE's currently authorized rate of return?**
 17 A. I'm sorry. Could you ask that again.
 18 **Q. Sure.**
 19 **Can you clarify whether PSE requests in this**
 20 **case a return on the deferred O&M expenses as PSE's**
 21 **current rate of return?**
 22 A. We are not requesting anything -- anything --
 23 sorry. We are not requesting a rate of return on top of
 24 O&M expenses.
 25 **Q. You are not?**

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1 A. We are not.
 2 **Q. Okay. That's what wasn't clear to me.**
 3 CHAIR BROWN: So thank you. I have no
 4 further questions.
 5 JUDGE BROWN: Are there any other questions
 6 from the bench?
 7 All right. You may step down.
 8 At this time, I would like to ask, are there any
 9 questions from the bench for Betty Erdahl for Staff or
 10 Robert Earl from Public Counsel?
 11 COMMISSIONER RENDAHL: I have a question for
 12 Betty Erdahl, but I don't have questions for Mr. Earl.
 13 JUDGE BROWN: Is Ms. Erdahl available?
 14 Are you ready?
 15 THE WITNESS: I'm getting Zoom pulled up. I
 16 don't know if this is working. Is it?
 17 JUDGE BROWN: You have to push the button.
 18 THE WITNESS: Oh. Thought I did. That's
 19 good. I'm just getting my camera on.
 20 Okay. I'm ready.
 21
 22 BETTY ERDAHL, having been first duly sworn by the
 23 Judge, testified as follows:
 24 ///
 25 JUDGE BROWN: We'll proceed with your

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1 questioning.
 2 EXAMINATION
 3 BY COMMISSIONER RENDAHL:
 4 **Q. Good morning, Ms. Erdahl.**
 5 A. Good morning.
 6 **Q. It's actually slightly afternoon now.**
 7 **So you just heard the testimony of Ms. Free**
 8 **about recovering a return on O&M on deferral; correct?**
 9 A. Yes.
 10 **Q. Was that your understanding of the request for**
 11 **the Company?**
 12 A. My understanding is that they are requesting a
 13 return on the deferral.
 14 **Q. And that includes the O&M?**
 15 A. I believe it does. Let me take a quick look.
 16 **Q. According to Exhibit BAE-2, the deferral --**
 17 THE COURT REPORTER: Can you restate the
 18 exhibit number, please?
 19 THE WITNESS: BAE-2, the deferral shows
 20 there is an O&M deferral balance.
 21 BY COMMISSIONER RENDAHL:
 22 **Q. Okay. And it's your understanding that with a**
 23 **request to earn a return on the deferral balance at the**
 24 **Company's authorized rate of return, that that would**
 25 **include O&M?**

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1 A. Yes.
 2 **Q. Okay.**
 3 **So switching to another topic -- actually, what**
 4 **would be the justification for earning a return on**
 5 **operating expenses, if the Company were asking for that?**
 6 A. Typically, in the past, the Commission has only
 7 allowed a return on investment that's deferred in a
 8 couple of cases. One is if there's an incentive for
 9 something like EV, electric vehicles, and that's
 10 actually in law, and another is the extraordinary
 11 circumstance, which means that it's out of PSE's
 12 control, not that it's an extraordinary cost.
 13 **Q. And so your concern about this -- why is it**
 14 **specifically your concern in this case about earning the**
 15 **return on O&M?**
 16 A. Well, I don't think it's an extraordinary
 17 circumstance. PSE had control over when it made the
 18 investment, when it filed its rate case. It actually
 19 filed the rate case a month before the facility went
 20 into service, so why give the deferral in addition?
 21 Another point that the Company made in its
 22 direct case is that similar -- the Tacoma LNG facility
 23 is similar to EV investment, and it's not, according to
 24 the law. We have RCWs that state for EV, the Commission
 25 may provide a return on investment. Under the Tacoma

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1 LNG WAC -- I can't remember -- let's see what the name
 2 is. Compressed natural gas. It actually states that
 3 the Commission, that their intent is to not alter the
 4 Commission's practices, so... (Pause.)
 5 **Q. But the Commission granted deferral for these**
 6 **expenses, including the rate base; correct?**
 7 A. That was done in the settlement.
 8 **Q. Correct. And we approved that settlement?**
 9 A. We approved the deferral, but not the actually
 10 cost recovery or necessarily the return on. That was
 11 all up for discussion in this case.
 12 **Q. Okay. Thank you for that.**
 13 A. Yeah.
 14 **Q. So to turn to another question, can you tell me**
 15 **where in your testimony you described the revenue**
 16 **requirement impact of the deferred return on the O&M**
 17 **expenses? Is that clarified and identified in the**
 18 **exhibit or in your testimony? It's specifically the**
 19 **revenue requirement impact.**
 20 A. Yes. BAE-2 shows a revenue requirement impact,
 21 and in testimony --
 22 **Q. Can you identify which line on BAE-2?**
 23 A. So the difference were basically, I provide
 24 Staff's recommended amount of recovery and then what the
 25 company had filed, and then the difference, so the

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1 difference is \$5 million from Staff's position versus
 2 the Company's.
 3 **Q. Okay. But that's specifically for the O&M**
 4 **expense?**
 5 A. Oh, specifically for the O&M, well, actually,
 6 the difference shows as zero. I think we basically
 7 looked at their deferral in the revenue requirement
 8 model. I would have to go back and take a look at that.
 9 All right. So in testimony, I've got to
 10 backtrack, page 2.
 11 **Q. And this is 1T?**
 12 A. Correct.
 13 **Q. Okay.**
 14 A. So Staff recommends disallowing PSE from
 15 recovering a return on \$18 million, which was a return
 16 on investment that it deferred, disallowing point-7
 17 million in deferred depreciation.
 18 CHAIR DANNER: I'm sorry. Ms. Erdahl, what
 19 page? I'm not finding it.
 20 THE WITNESS: Starting on page 2, page 2 and
 21 3, and then BAE-2 actually shows those amounts in Column
 22 C.
 23 COMMISSIONER RENDAHL: Okay. And maybe we
 24 issue a follow-up bench request for clarification
 25 because it appears the BAE-2 doesn't show any return or

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1 any difference between what the Company is requesting,
 2 so if it's necessary for Staff to correct that exhibit,
 3 then that will be -- we'll prepare a bench request and
 4 submit it. Thank you.
 5 THE WITNESS: Yup.
 6 COMMISSIONER RENDAHL: And with that, I
 7 don't have any further questions.
 8 JUDGE BROWN: Ms. Erdahl, you may step down.
 9 MR. ROBERSON: Your Honor, if I may, just a
 10 follow-up question just to clarify.
 11 JUDGE BROWN: Go ahead and proceed.
 12 CROSS-EXAMINATION
 13 BY MR. ROBERSON:
 14 **Q. Good afternoon, Ms. Erdahl.**
 15 **In your answer to Commissioner Rendahl there,**
 16 **you referred to a WAC and then you read a title, which**
 17 **was, "Compressed Natural Gas."**
 18 **Is it possible that's a statute?**
 19 A. Correct. It's a statute.
 20 **Q. Is that RCW 80.28.280?**
 21 THE COURT REPORTER: I need you to slow down
 22 and repeat that.
 23 MR. ROBERSON: I apologize.
 24 BY MR. ROBERSON:
 25 **Q. RCW 80.28.280.**

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1 A. Correct.
 2 **Q. Thank you.**
 3 JUDGE BROWN: Anything further? Anything
 4 from the bench?
 5 Okay. Now, Ms. Erdahl, you may step down.
 6 The next witness is Dr. Ranajit Sahu for the
 7 Tribe.
 8 MR. THOMAS: Thank you, Your Honor.
 9 So we're going to take Dr. Sahu at this time,
 10 yes?
 11 JUDGE BROWN: Yes. That's correct.
 12 MR. THOMAS: Okay. Dr. Sahu, if you could
 13 please come online.
 14 THE WITNESS: I am. Can you guys hear me?
 15 JUDGE BROWN: We can hear you -- excuse me,
 16 we can hear you just fine.
 17 THE WITNESS: Thank you, Your Honor.
 18 JUDGE BROWN: Can I have --
 19 MR. THOMAS: Yeah, sorry.
 20 JUDGE BROWN: You've got to hold your
 21 horses.
 22
 23 RANAJIT SAHU, having been first duly sworn by the
 24 Judge, testified as follows:
 25 JUDGE BROWN: Please introduce your witness

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1 and confirm whether there are any changes to his
 2 testimony.
 3 MR. THOMAS: Yes, Your Honor. Thank you.
 4 Good afternoon, Dr. Sahu.
 5 Do you have available to you your pre-filed
 6 testimony, rebuttal testimony, and corresponding
 7 exhibits? I think those are memorialized in RXS-1T
 8 through RXS-34, and then RXS-35T through RXS-38. Do you
 9 have all of that available?
 10 THE WITNESS: I do.
 11 MR. THOMAS: All right. Are there any
 12 changes to your testimony or exhibits as submitted?
 13 THE WITNESS: I am not aware.
 14 MR. THOMAS: Okay. All right. Then the
 15 witness is available for cross-examination. Thank you.
 16 JUDGE BROWN: Sorry. Was there anything
 17 else?
 18 MR. ROBERSON: I'm just asking for the go
 19 ahead to ask some questions.
 20 MR. THOMAS: Yes.
 21 MR. ROBERSON: Sorry.
 22 CROSS EXAMINATION
 23 BY MR. ROBERSON:
 24 **Q. Okay. Good afternoon Dr. Sahu.**
 25 **Do you have a copy of your rebuttal testimony,**

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1 **which is I believe RXS-35T?**
 2 A. Yes, I do have it here.
 3 MS. CARSON: Excuse me. Just a point of
 4 clarification.
 5 I don't believe Dr. Sahu submitted rebuttal
 6 testimony.
 7 MR. ROBERSON: Sorry.
 8 THE WITNESS: Cross.
 9 MR. ROBERSON: Cross.
 10 THE WITNESS: I have that number. Yes, I
 11 apologize. I misspoke.
 12 JUDGE BROWN: Understood. Proceed with the
 13 question.
 14 Thank you for the clarification.
 15 BY MR. ROBERSON:
 16 **Q. If you can turn to page 9, starting on lines 7**
 17 **through 8.**
 18 A. Page 9, I'm just going to get there.
 19 I am there. Please -- did you say lines 7
 20 through 9?
 21 **Q. Just beginning there, yeah.**
 22 **You discuss an alternative allocation based on**
 23 **gas volumes.**
 24 **I'm a little unclear how the boil-off gas**
 25 **figures into this.**

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1 **Did you consider boil-off gas when you were**
 2 **doing these alternative cost allocations?**
 3 A. I was told that boil-off gas is a very small
 4 amount of gas.
 5 And you're talking about boil-off gas that
 6 happens every day when the facility is not liquefying,
 7 just to be -- just to be sure; is that right, Mr.
 8 Roberson?
 9 **Q. That is correct.**
 10 A. Yes, my understanding is that that amount is
 11 small. It's also my understanding the facility is
 12 designed in part to even handle some of the boil-off gas
 13 in the cryogenic burners in the flare in addition to
 14 just going back out in the pipeline or being recycled
 15 back or reliquefied, so there's multiple places for the
 16 boil-off gas to go and that the amounts are small.
 17 **Q. So I believe this morning it was maybe Mr.**
 18 **Donahue said it was up to 1200 dekatherms a day?**
 19 **What do you consider small, I guess is my**
 20 **question?**
 21 A. Yeah, he mentioned I think a thousand
 22 dekatherms, if I'm not mistaken, if I heard him
 23 correctly, and that gas could be recycled. Of course,
 24 when there's liquefaction going on, it couldn't possibly
 25 go back into the same pipeline, and that only in days

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1 where there's no liquefaction going on, that means
 2 there's no gas coming into the facility that that
 3 thousand could leave the facility through that, is what
 4 I heard, and the vaporization capacity I think is
 5 66,000, so I consider that small.
 6 **Q. Okay. So in your alternative cost allocation,**
 7 **you're basically not allocating for the boil-off gas?**
 8 A. It would be a small amount and certainly not
 9 anywhere close to the allocations that I've seen so far
 10 by others.
 11 **Q. Okay. And then speaking more generally to your**
 12 **testimony, you raise a number of issues dealing with**
 13 **externalities of the LNG plant but PSCAA has rejected**
 14 **those arguments; correct?**
 15 A. Well, when you say that PSCAA, they're only
 16 focused on the air permitting aspects, is my
 17 understanding. The externalities I'm raising go beyond
 18 just what PSCAA was looking at in issuing their permit.
 19 **Q. Okay. So your contention is that the Commission**
 20 **should consider those externalities because in so far as**
 21 **they weren't considered in the permit, they weren't**
 22 **considered; is that correct?**
 23 A. If I can say, yes, the short answer is yes, and
 24 the reason is a permit only deals with a subset of
 25 externalities at best. In other words, if full

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1 compliance with the permit is even ensured, it only
 2 deals with certain air emissions and representations
 3 made by PSE to PSCAA in doing the application that was
 4 submitted. There are externalities that we haven't
 5 heard in this proceeding that -- whether they deal with
 6 accidental risk, whether they deal with issues
 7 pertaining to bypass, whether they deal with
 8 externalities pertaining to transport of LNG through
 9 trucks from -- from this facility to Gig Harbor.
 10 There's lots of externalities that affect the Tribe's
 11 interest that go beyond what PSCAA was looking at at
 12 best, and so externalities is -- are much broader than
 13 just in the PSCAA proceeding.
 14 MR. ROBERSON: Those are all my questions.
 15 Thank you.
 16 JUDGE BROWN: Is there any redirect?
 17 MR. THOMAS: Yes. Just very briefly. Thank
 18 you.
 19 REDIRECT EXAMINATION
 20 BY MR. THOMAS:
 21 **Q. Dr. Sahu, do you recall whether the Puget Sound**
 22 **Clean Air Agency made a determination on whether it had**
 23 **jurisdiction to look at issues of equity and disparate**
 24 **impacts?**
 25 A. My recollection is they did not think they had

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1 jurisdiction, so that was not looked at as part of their
 2 proceeding -- their purview of granting the permit.
 3 **Q. Okay. And a little earlier, we heard testimony**
 4 **regarding direct venting of waste gas, and I want to**
 5 **stay on Mr. Roberson's questions regarding externalities**
 6 **for a moment.**
 7 **Does the direct venting of waste gas and the**
 8 **permit violations that have been discussed today, do**
 9 **those disparately impact the Tribe and those located**
 10 **near the Tacoma LNG facility?**
 11 A. Yes. Because they're locational, they're local,
 12 and I did hear that testimony. They were -- they
 13 certainly disproportionately affect the local area which
 14 is where the Tribe's interests are.
 15 **Q. Okay. And is the direct venting of waste gas,**
 16 **is that a big deal, or is that not really a problem in**
 17 **your view?**
 18 A. Well, when direct venting happens, as we heard
 19 others testify, Mr. Roberts, that there's no destruction
 20 of the constituents in that waste gas and those
 21 constituents are, therefore, directly remitted into the
 22 air in that immediate vicinity, and so it is interesting
 23 to me. I heard him say that they have to do that for
 24 safety, implying that direct venting somehow is also not
 25 unsafe. So, yes, direct venting of all those toxic air

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1 pollutants is, itself, unsafe and, therefore, it has
 2 adverse impacts when it does occur.
 3 **Q. Okay. And are those impacts uniformly**
 4 **distributed throughout the State of Washington or not?**
 5 A. Those impacts would be felt in the immediate
 6 vicinity or in the vicinity of the plant. It would not
 7 be distributed throughout the State of Washington.
 8 **Q. Okay. And as you sit here today, do you have an**
 9 **understanding of just how much time Tacoma LNG, as**
 10 **reported by Puget Sound Energy, has spent direct venting**
 11 **waste gas to the air shed?**
 12 A. Again, going by the reported numbers that PSE
 13 has disclosed thus far, and they go through I believe
 14 the first quarter of 2023, it was something slightly shy
 15 of 400 minutes, I think 390-some minutes of waste gas
 16 venting. There's also some minutes of non-waste gas
 17 venting. Setting that aside, it was something in that
 18 range.
 19 MR. THOMAS: Thank you very much, Dr. Sahu.
 20 I don't have anything further.
 21 JUDGE BROWN: Any questions from the bench
 22 for Dr. Sahu?
 23 ///
 24 ///
 25 EXAMINATION

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1 BY CHAIR DANNER:
 2 **Q. This morning we had some questions about the**
 3 **quantifications of those emissions, and you've given the**
 4 **number of minutes.**
 5 **Do you have any basis to make an estimate of or**
 6 **calculation of the actual emissions?**
 7 A. That's a great question. I have the minutes
 8 that are reported. What I don't have are the
 9 composition of the waste gases. In other words, that
 10 are -- I have not seen that reported, what was the
 11 composition, how much of different hazardous
 12 constituents were in that gas when those gases were
 13 direct vented. I can make assumptions, but I have not
 14 done so, about what that is based on design information
 15 that I have from previous proceedings, and it would be
 16 since the -- even if you achieve a destruction
 17 efficiency of 99 percent that you heard here, that means
 18 just a simple matter of arithmetic, every minute of
 19 waste gas venting is like a -- close to 100 minutes of
 20 flare venting, and so that 99 percent means you're not
 21 getting 99 percent removal of destruction that the flare
 22 would have given you, and so it would be for each
 23 minute, just roughly speaking, 100 minutes of flaring of
 24 that same composition would be the same as one minute of
 25 venting. I have not done the calculation, though,

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1 because of the composition that has not been disclosed.
 2 **Q. Okay. So that is not a calculation; that is an**
 3 **assumption?**
 4 A. The assumption is that 99 percent is a
 5 destruction efficiency. That's the permanent condition.
 6 That's not an assumption. The flare, when it operates,
 7 it's supposed to operate at that or higher level of
 8 efficiency, and that's a requirement of the permit, and
 9 I'm saying the trade-off between venting and nonventing
 10 is about 100 times, but the exact how many pounds of
 11 Constituent X is emitted would require knowledge of the
 12 actual contaminates that have been vented. That has not
 13 been disclosed by PSE that I know of publicly.
 14 **Q. All right. Thank you.**
 15 CHAIR DANNER: That's my only question.
 16 JUDGE BROWN: Any question?
 17 COMMISSIONER DOUMIT: One question from me.
 18 EXAMINATION
 19 BY COMMISSIONER DOUMIT:
 20 **Q. Thanks you, Dr. Sahu.**
 21 **So at page 36 of your direct testimony --**
 22 A. Okay. Let me just go to that one. Page 36,
 23 okay, I'm almost there.
 24 **Q. Page 8, you cite to an exhibit, your Exhibit 33**
 25 **on the rail.**

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1 A. Yes.

2 **Q. And to say that in your testimony here that PSE**

3 **has announced plans to transport LNG by rail, are you --**

4 **did you listen to the testimony earlier of Mr. Donahue,**

5 **I believe it was, who --**

6 A. Yes.

7 **Q. -- said -- so does that -- is there a**

8 **distinction between the announced capabilities of the**

9 **plant and, as you state, the plans; in other words, are**

10 **you comforted that there are -- at this point, based on**

11 **the testimony that we heard, that there's no plans to**

12 **ship LNG by rail?**

13 A. I did hear Mr. Roberts' testimony, and I think

14 that's what he said. I was going by what has been

15 announced as an option. I've heard, as you have seen in

16 this proceedings, plans, for example, not to vent and

17 those have come to pass, and so I'm aware of plans

18 versus reality, and I say that with some experience

19 here.

20 **Q. All right. Thank you.**

21 COMMISSIONER DOUMIT: Nothing further from

22 me. Thanks.

23 JUDGE BROWN: Seeing that there are no

24 further questions, that concludes the examinations of

25 our witnesses today.

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1 But before we adjourn, there's some housekeeping

2 I would like to go over.

3 For the public comment exhibit, how long does

4 Public Counsel need to prepare the Public Counsel

5 exhibit?

6 MS. GAFKEN: Judge Brown, we set the date

7 for that at the public comment hearing that was held

8 last week, and I understand that Staff required a bit of

9 time because there's staffing issues and just they --

10 the amount of work that's before the Commission at this

11 time. I don't have a date right at my fingerprints, but

12 it was towards the end of the month. I think we settled

13 on the 29th, November 29th for that filing to come in.

14 I do have a question about what bench exhibit

15 number it should be given?

16 JUDGE BROWN: Bench Exhibit No. 1 once it's

17 completed and submitted.

18 MS. GAFKEN: Great. We will submit that

19 under Bench Exhibit No. 1. Thank you.

20 JUDGE BROWN: Great.

21 With regard to briefing, we have the initial

22 post-hearing briefs due on December 8th, 2023. These

23 briefs may be up to 50 pages in length. We also have

24 reply briefs due December 21st, and these briefs may be

25 up to 20 pages in length.

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1 And are there any questions from the parties at

2 this point?

3 CHAIR DANNER: So, Your Honor, just looking

4 at my notes from the public comment hearing, I would say

5 that Public Counsel is correct that they will submit

6 that public comment exhibit on the 29th, and today,

7 close of business is the deadline for written comments,

8 written public comments in this proceeding.

9 JUDGE BROWN: Thank you.

10 Is there anything else we need to address today?

11 Okay. Thank you to all the parties, witnesses,

12 representatives. We are adjourned. We are now off the

13 record.

14 (Proceedings concluded at 12:28 p.m.)

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1 CERTIFICATE

2

3 STATE OF WASHINGTON

4 COUNTY OF KING

5

6 I, Laura L. Ohman, a Certified Shorthand Reporter

7 in and for the State of Washington, do hereby certify

8 that the foregoing evidentiary hearing on

9 November 6, 2023, is true and accurate to the best of my

10 knowledge, skill and ability.

11 IN WITNESS WHEREOF, I have hereunto set my hand

12 and seal this 20th day of November, 2023.

13

14

15

16  

17 LAURA L. OHMAN, RPR, CCR 3186

18

19

20 My commission expires:

21 MARCH 2024

22

23

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