

**Exhibit No. EH-1T**  
**Docket U-180680**  
**Witness: Erin Hutson**

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DOCKET NO. U-180680

TESTIMONY OF

**ERIN HUTSON**

LABORERS INTERNATIONAL UNION OF AMERICA

February 8, 2019

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## Witness's Exhibit List

- Exh. EH-2 PSE's Response to WNIDCL's Data Request No. 006
- Exh. EH-3 PSE White Paper, "Distribution Outsourcing – Puget Sound Energy's Experience"
- Exh. EH-4 PSE Report of Essential Utilities Services Contracts
- Exh. EH-5 PSE Service Quality and Electric Service Reliability Report, Filed March 29, 2018
- Exh. EH-6 PSE's Response to WNIDCL's Data Request No. 015
- Exh. EH-7 WSDOT Collision Facts
- Exh. EH-8 WSDOT Work Zone Safety Facts
- Exh. EH-9 Analysis and L&I Data
- Exh. EH-10 PSE's Response to WNIDCL's Data Request No. 009
- Exh. EH-11 PSE's Response to WNIDCL's Data Request No. 017
- Exh. EH-12 PSE's Response to WNIDCL's Data Request No. 002
- Exh. EH-13 PSE's Responsible Supplier and Contractor Guidelines
- Exh. EH-14 Macquarie Responsible Contractor Policy October 23, 2006
- Exh. EH-15 Union Leaders Praise JFK Airport Update, October 5, 2018
- Exh. EH-16 PSE's Response to WNIDCL's Data Request No. 003
- Exh. EH-17 Macquarie Infrastructure and Real Assets, Credentials
- Exh. EH-18 ProPublica, Temporary Work, Lasting Harm, December 18, 2013
- Exh. EH-19 L&I SHARP Publication
- Exh. EH-20 American Journal of Industrial Medicine Article
- Exh. EH-21 OSHA Violations, Department of Labor
- Exh. EH-22 Consolidated Edison Company of New York, Inc. Standard Terms and Conditions for Construction Contracts, October 15, 2014

- Exh. EH-23 McKinsey Global Institute, Reinventing Construction, February 2017
- Exh. EH-24 Operations Audit of Staffing Levels at the Major NY State Energy Utilities
- Exh. EH-25 NY PSC Case No. 13-01886 “In the Matter of Focused Operations Audit of the Internal Staffing Levels and the Use of Contractors for Selected Core Utility Functions at Major New York Energy Utilities.”
- Exh. EH-26 MD Case No. 9449 “In the Matter of the Merger of AltaGas Ltd. and WGL Holdings, Inc.”

1 I. INTRODUCTION AND SUMMARY

2 **Q: State your name, affiliation, and address.**

3 **A:** My name is Erin Hutson. I am the Director of Corporate Affairs for the Laborers  
4 International Union of North America (“LIUNA”), which is located at 905 16<sup>th</sup> Street NW,  
5 Washington, D.C. 20006.

6 **Q: Please summarize your relevant background and professional expertise.**

7 **A:** I have been LIUNA’s Director of Corporate Affairs for the past four years. Prior  
8 to assuming that position, I was LIUNA’s Manager of Investment Relations, a position I  
9 held for five years. The Corporate Affairs Department’s key activities involve directing and  
10 coordinating LIUNA’s Capital Stewardship Program, which works to make sure that  
11 LIUNA’s \$50 Billion in affiliated pension fund assets are deployed in ways that benefit  
12 LIUNA’s membership. The Department also develops company analysis; monitors  
13 corporate transactions; and provides capital market research and strategy formulation.  
14 During the past ten years, one of the main issues on which the Department has been focused  
15 is pension investment into infrastructure assets.

16 I have a degree in World History from Hamilton College and a minor in  
17 Economics. I have spoken at several major infrastructure conferences including the “I3,” or  
18 Institutional Investing in Infrastructure Conference, the Council of Institutional Investors  
19 Conference and the Harvard Trustee Leadership Forum.

20 **Q: Please summarize your testimony.**

21 **A:** My understanding is that the proposed sale cannot be approved absent a showing  
22 that it meets a “no harm” standard. The purpose of my testimony is to explain the ways in  
23 which the proposed settlement presents risks of harm to PSE ratepayers and contracted-out

1 employees because of the absence of settlement commitments regarding PSE's contracted-  
2 out workforce. The proposed settlement agreement does not meet the no harm standard  
3 because it fails to ensure that, post-sale, the status quo will remain in place.

4 I will make this showing by addressing four main topics.

5 First, I will describe the critical role played by contracted-out employees in the day  
6 to day operations on the PSE system.

7 Second, I will explain why it is essential to system safety and reliability that only  
8 properly trained and experienced contractor employees perform work on the PSE system.

9 Third, I will explain the potential impact of Macquarie's departure, by focusing on  
10 the impact of the sale on the implementation at PSE of policies that comport with  
11 Macquarie's Responsible Contractor Policies.

12 Fourth, I will discuss the terms of the proposed settlement, and will explain why any  
13 approval of the settlement should be conditioned on the inclusion of commitments ensuring  
14 that, post-sale, PSE will continue to rely upon experienced, well-trained contractor  
15 employees. Continuing compliance with current contractor procurement practices will help  
16 control costs, ensure efficient and quality construction standards, and maximize safe and  
17 reliable operations. Absent this commitment, LIUNA is concerned that the proposed sale  
18 may harm PSE ratepayers.

19 Finally, if the Commission declines to grant relief in this proceeding, then LIUNA  
20 asks that the Commission open a separate investigation into PSE policies applicable to the  
21 procurement of outside contractors. My testimony explains why the utilization by PSE of  
22 inadequately-trained contractor employees is an issue that should be addressed by the  
23 Commission—either in this or another proceeding. One core purpose of the investigation

1 would be examine the extent to which the Company’s procurement practices ensure that  
2 only demonstrably well-qualified and experienced personnel are being retained to conduct  
3 operations on the PSE system, and, if necessary, to direct the implementation by PSE of  
4 remedial measures.

## 5 II. OVERVIEW OF PSE’S OPERATIONS AND RELIANCE ON

### 6 CONTRACTORS

7 **Q: Please describe the extent of PSE’s use of outside, contractor employees in**  
8 **the conduct of its operations.**

9 **A:** PSE’s use of contractor employees to conduct utility operations is extensive. In  
10 2018, of the \$676,903,466 PSE spent on construction-related activities, \$546,579,936 – 84%  
11 - was expended on contractors as opposed to in-house labor. Exh. EH-2 (PSE Response to  
12 WNIDCL Data Request 006). And PSE’s reliance on contractors has been increasing  
13 steadily.

14 PSE has made no secret of the fact that outsourcing and reliance on outside  
15 contractors is a strategic decision made by the Company to control costs and increase  
16 shareholder value. Exh. EH-3 (PSE White Paper, “Distribution Outsourcing – Puget Sound  
17 Energy’s Experience”). While WNIDCL is supportive of controlling costs, doing so  
18 through extensive reliance on outside contractors poses two issues relevant to this  
19 proceeding. First, the Commission should assess the extent to which the proposed  
20 transaction and accompanying settlement commitments impact PSE’s hybrid  
21 business/staffing model (through which utility operations are performed by a combination of  
22 in-house and contracted-out employees). Second, certain of the proposed settlement  
23 commitments address safety, reliability, and services that are provided by contractors.

1 Consideration of the efficacy of those commitments must include an analysis of how PSE  
2 identifies those contractors.

3 PSE currently relies primarily on InfraSource (the gas subsidiary of Quanta Gas) to  
4 perform its gas distribution work. InfraSource sources all of their skilled craft laborers from  
5 WNIDCL. PSE entered into an eight-year contract with InfraSource in 2013 that expires in  
6 2020. Exh. EH-4 (PSE Report of Essential Utilities Services Contracts). PSE also generally  
7 utilizes contractors when the project requires traffic flaggers. WNIDCL represents workers  
8 at some of those contractors, including InfraSource, Traffic Control Inc., and AA Asphaltting  
9 (which provides flaggers and other services in its work for PSE). PSE also relies on  
10 multiple other construction firms, including Command Center, Safety Signs, People Ready,  
11 K&D Services, HydroMax USA, Altus Traffic Management, Advanced Government  
12 Solutions, and Asplundh Tree Expert LLC. WNIDCL does not represent workers at these  
13 firms.

14 PSE's use of such contracted labor appears to have significantly expanded during the  
15 period since the utility went private in 2008, following which it has been under the  
16 ownership of Canadian pension funds and Macquarie. Indeed, contractor usage at PSE has  
17 nearly doubled in the past four years alone. Exh. EH-2 (PSE Response to WNIDCL Data  
18 Request 006).

19 **Q: What does PSE say about the role of contractors in ensuring safe, reliable**  
20 **service?**

21 **A:** Information about contractor activities at PSE can be found in the Company's  
22 Service Quality reports, which are filed annually with the Commission. PSE first  
23 implemented its Service Quality Program (the SQ Program) when the UTC authorized the



1 merger of Washington Natural Gas Company and Puget Sound Power & Light Company in  
2 1997. The stated purpose of the SQ Program was to “provide a specific mechanism to assure  
3 customers that they will not experience deterioration in quality of service” and to “protect  
4 customers of PSE from poorly-targeted cost cutting.”

5 In its most recent (2018) report, PSE explicitly outlines the essential role contractors  
6 play, stating that “PSE monitors and assesses the performance of its primary natural gas and  
7 electric service providers (Quanta Gas and Quanta Electric).” The performance metrics  
8 include measuring new construction service appointments, and safety response and  
9 restoration time. Each measure is designed to monitor and improve PSE’s service. The  
10 same report notes that PSE transitioned all natural gas construction and maintenance work to  
11 Quanta Gas as of April 30, 2011. Exh. EH-5 (PSE Service Quality and Electric Service  
12 Reliability Report, Filed March 29, 2018).

13 **Q. Please continue.**

14 **A:** More broadly, the 2018 Service Quality report shows that contractors and their  
15 employees are integrally intertwined with PSE’s day to day operations and the service  
16 provided to customers. In fact, PSE’s contracted-out employee workforce (including  
17 WNIDCL members working under the umbrella of Quanta Gas) is the front line for many  
18 core utility functions.

19 **Q. Are there any commitments in either the 2008 UTC order or the current**  
20 **proposed settlement agreement that address contracted-out workers?**

21 **A:** No. The only workforce-related settlement commitment made by the Joint  
22 Applicants covers PSE’s direct employees, *i.e.*, workers who have direct collective  
23 bargaining relationships with PSE. Commitment 8 pertains to honoring existing labor

1 contracts and commitment 10 pertains to maintaining staffing and presence. Joint  
2 Application, App. A.

3 **Q. Does WNIDCL have concerns about the metrics currently used to assess**  
4 **service providers/contractors?**

5 **A.** WNIDCL's has two concerns. First, despite PSE's reliance on outside  
6 contractors, the Company does not appear to be reporting metrics to the Commission that  
7 would lead to increased productivity and more safe and reliable operations among the  
8 contracted-out workforce (such as workforce turnover rates or contractor injury rates).  
9 Further, PSE appears to require certain safety and health disclosures from prospective  
10 contractors, and has certain performance metrics for its service providers, however, it is  
11 unclear how PSE utilizes this information to compare contractor performance. Exh. EH-6  
12 (PSE's Response to WNIDCL's Data Request No. 015). Second, it is unclear to what extent  
13 the Company evaluates all traffic control subcontractors, despite the significant ratepayer  
14 costs associated with these services. Certain PSE contractors provide these services in-  
15 house while others utilize subcontractors. Exh. EH-11 (PSE Response to WINDCL Data  
16 Request 017).

17 **Q: What, if any, concerns does WNIDCL have with regard to PSE's contracted**  
18 **out workforce?**

19 **A:** Unfortunately, low wages (at or close to minimum wage), high turnover, and  
20 safety problems have characterized PSE's approach to contracting out its traffic control  
21 services. WNIDCL undertook a survey of PSE traffic control contractor employees to gain  
22 a better sense of their working conditions and safety issues. The results showed that these  
23 workers consistently face dangerous work-place conditions – many observed distracted

1 drivers and traffic accidents – and that understaffing of both traffic control personnel and  
2 supervisory staff is widespread.

3 The surveys also indicate that many flaggers are recruited directly from daily labor  
4 firms such as Labor Ready, Command Center Temporary Labor, and Aerotek. Flaggers  
5 reported receiving wages at or close to minimum wage, having no training, being badly  
6 understaffed, not receiving mandatory work breaks, being hit by cars and witnessing multi-  
7 vehicle accidents. As I will discuss in more detail, PSE’s use of temporary staffing agencies  
8 for work in an extremely dangerous job is of concern because the practice presents  
9 significant safety risks for PSE workers, and the general public.

10 **III. SAFETY AND RELIABILITY ISSUES RELATED TO CONTRACTED**  
11 **LABOR**

12 **Q: What are some of the safety issues that affect contracted out employees and**  
13 **the general public?**

14 **A:** WNIDCL members working on gas pipeline infrastructure face dangerous  
15 working conditions.

16 A review of 2017 and 2018 PHMSA “serious” or “significant” pipeline incidents  
17 show examples where a contractor was onsite during the incident. (PHMSA, through its  
18 federal pipeline safety regulations, does not differentiate between the direct employees of a  
19 utility or the contracted-out employees). To be clear, my purpose in presenting these data is  
20 not to assert that contractors are at fault in any (let alone all) of these incidents, but rather to  
21 show the integral role that contractors play in pipeline safety.

22

23

1 **Table 1.**

<b>Incident Date</b>	<b>Location</b>	<b>Utility</b>	<b>Contractor on Site?</b>
June 2018	Maryland	Baltimore Gas & Electric	Yes
September 2018	Massachusetts	Columbia Gas	Yes
February 2017	Texas	Centerpoint Resources	Yes

2 The safety risks facing WNIDCL members who perform flagging services are  
3 different from those facing gas pipeline workers. PSE contractors perform work on the  
4 electric and gas infrastructure in, under, and above public right-of-ways. Flagging is  
5 difficult and physically demanding work. The work takes place in all weather – extreme  
6 heat, pouring rain, freezing temperatures, etc. It requires constant vigilance to prevent  
7 accidents or injury. These work zones are dangerous. According to the State Department of  
8 Transportation, there were 1,703 work zone collisions reported to police in 2017. Exh. EH-  
9 7 (WSDOT Collision Facts). Ninety-six percent of the people hurt in these collisions were  
10 motorists, their passengers or pedestrians. Exh. EH-8 (WSDOT Work Zone Safety Facts).  
11 The leading reasons for the collisions were distracted drivers, drivers following cars too  
12 closely, and drivers speeding. *Id.* Distracted driving accidents in work zones are a  
13 particular concern as they have increased 66% in the last ten years, probably due to  
14 increased cell phone usage. Exh. EH-7.

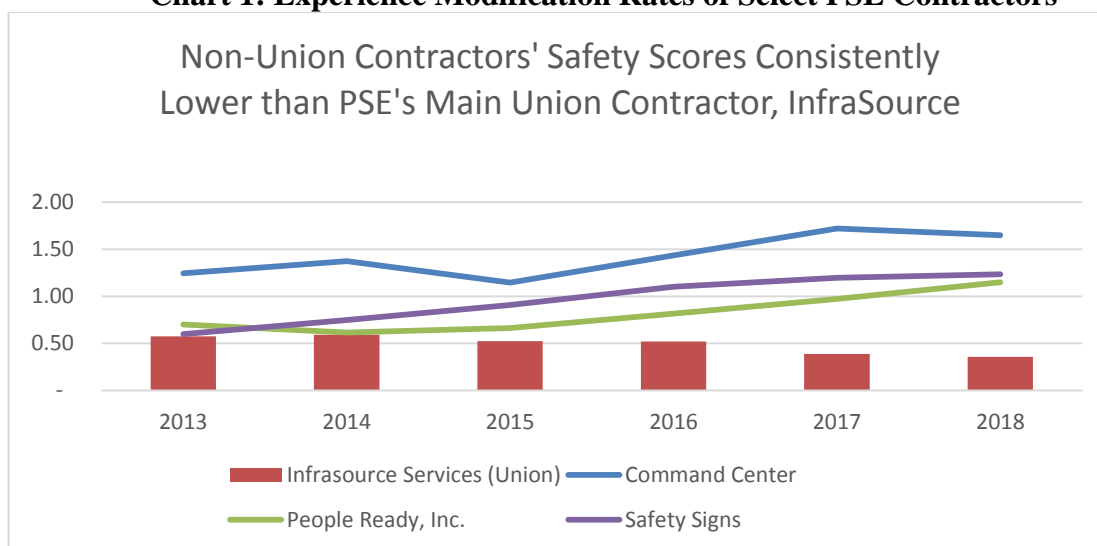
15 Flaggers working on the PSE system are responsible for taking actions aimed at  
16 preventing such accidents. Before work on the PSE electric or gas system can commence,  
17 flaggers first physically establish a work zone by placing cones and warning signs. They are  
18 then responsible for protecting the work zone during project operations. This can be done  
19 by workers operating in pairs, using visual contact and paddles, by radio contact if there are  
20 rises or blind corners, or with a pilot car. In traveling through a work zone, members of the

1 public can drive off the side of the road, have a pipe go through their car, get hit by a  
 2 construction vehicle, hit site workers, or hit another member of the public. In the most  
 3 extreme cases, when a flagger fails to do their job, someone, usually a member of the public,  
 4 dies.

5 **Q. Is there empirical evidence to support your assertion that union companies**  
 6 **have superior safety track records compared to non-union firms?**

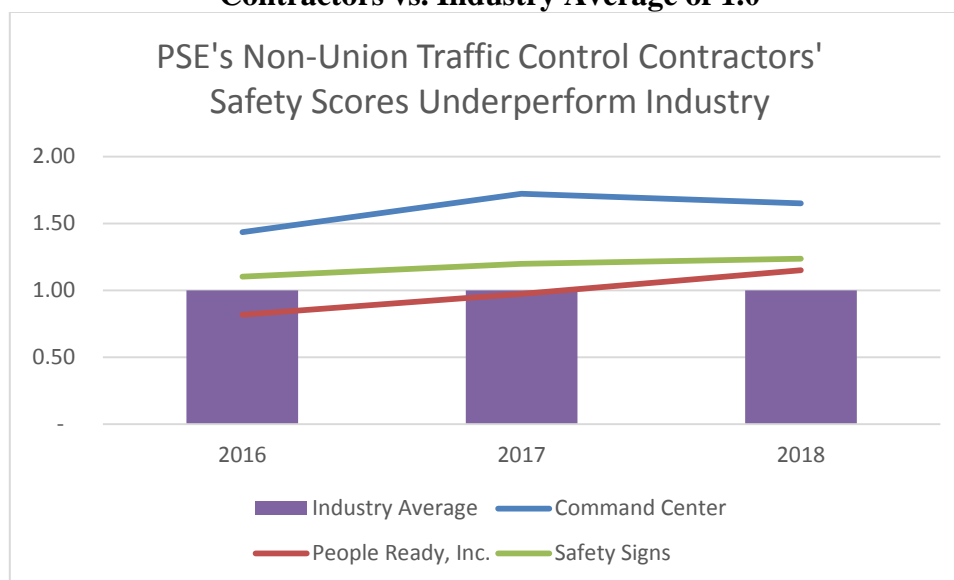
7 **A:** Yes. As a result of their ability to retain experienced workers, union signatory  
 8 contractors tend to have better safety track records than non-union contractors. This  
 9 statement is supported by Washington Labor and Industries statistics. The Washington  
 10 Department of Labor & Industries (“L&I”) and OSHA recognize that workers employed via  
 11 temporary staffing agencies face great safety risks. The L&I calculates the risk of injury for  
 12 job classifications to assess workers’ compensation premiums and then applies an  
 13 ‘experience modification factor’ (“EMF”) for each employer, adjusting the employer’s  
 14 premiums for past history of accidents. An experience modification factor greater than one  
 15 indicates that the company experiences higher insurance claims than the industry norm.

16 **Chart 1: Experience Modification Rates of Select PSE Contractors**



17

1 **Chart 2: Experience Modification Rate of Certain PSE Non-Union Traffic Control**  
 2 **Contractors vs. Industry Average of 1.0**



3  
 4 In reviewing these data, it is clear that companies with unionized workforces fare  
 5 much better as concerns worker safety. I conducted a review of L&I-published data  
 6 concerning the various traffic control companies that perform work in PSE’s service  
 7 territory and concluded that the union signatory contractors currently utilized by PSE tend to  
 8 have superior safety track records. I used that information to create the above charts. A  
 9 copy of my analysis and the pertinent data published from L&I is attached as Exhibit EH-9.  
 10 PSE identified eight traffic control firms it currently considers to be “active vendors” –  
 11 Traffic Management, Inc., Advanced Government Services, Labor/People Ready, Northwest  
 12 Safety Signs, K&D Services, AA Asphaltting, Altus Traffic Management, and Traffic  
 13 Control Services, Inc. Exh. EH-10 (PSE Response to WNIDCL Data Request 009). In  
 14 addition to these eight companies, WNIDCL has identified Command Center as another  
 15 traffic control company utilized on PSE job sites.

16 Some of PSE’s service providers utilize in-house traffic control personnel, including  
 17 Potelco, InfraSource, AA Asphaltting, Asplundh Tree Expert Co., and HydroMax. Exh. EH-

1 11 (PSE Response to WNIDCL Data Request 017). Of those firms, three use unionized  
2 workforces – Traffic Management, Inc., AA Asphaltting (at least partially), and InfraSource.  
3 Those three firms each have better than average safety ratings (0.81, 0.77, and 0.36,  
4 respectively). Exh. EH-9.

5 In contrast, and as identified in the charts above, many of the other flagging  
6 companies identified by PSE use non-union workforces with poor EMF scores. Even for  
7 those PSE flagging contractors that do not at first glance appear to have poorer than average  
8 EMF scores, at least two (K&D Services and Altus Traffic Management) rely upon  
9 temporary staffing agencies such as People Ready to supply flaggers. In other words, five of  
10 the firms PSE relies upon for traffic control utilize workers from firms within the group of  
11 companies with the worst safety records. Flaggers for all of these flagging companies are at  
12 greater risk for accidents than the industry average, as are members of the public traveling  
13 through those work zones.

14 In addition to the obvious safety concerns a higher than average EMF score  
15 indicates, there are also economic benefits for ratepayers associated with using safer firms  
16 with lower EMF scores. Having a lower EMF means that a contractor pays a lower hourly  
17 rate for each of its employees for workers' compensation premiums (not to mention that the  
18 employees' contribution is also lower). For example, PSE primary contractor InfraSource  
19 has the lowest EMF score compared to other companies in its risk class (Classification 0107  
20 - Utility line and pipelaying construction, WAC 296-17A-0107). Exh. EH-9. InfraSource's  
21 2018 EMF score of 0.36 means its workers compensation premium for utility line and  
22 pipeline construction workers is 64 percent lower than the average. This results in savings  
23 for ratepayers.

1 **IV. THE IMPACT OF MACQUARIE'S DEPARTURE FROM THE PSE**  
2 **CONSORTIUM OF OWNERS**

3 **Q: Does PSE have its own Responsible Contractor Policy?**

4 **A:** Yes. PSE adopted its Responsible Supplier and Contractor Guidelines on April  
5 19, 2008. Exh. EH-12 (PSE response to WNIDCL Data Request 002). Notably, Macquarie  
6 was involved in PSE's adopting these guidelines. *Id.* A full copy of PSE's Responsible  
7 Supplier and Contractor Guidelines is attached as Exhibit EH-13. The policy provides that  
8 PSE may consider various factors when selecting contractors, including whether the  
9 contractor is (a) minority-owned; (b) operates in compliance with applicable laws, including  
10 applicable environmental laws and regulations; and (c) has a record of significant violations  
11 of laws, rules, or regulations. The policy also provides that PSE may take into account  
12 considerations such as a Supplier or Contractor's qualifications, safety, experience, customer  
13 service, cost, ability to meet schedule, financial health, and related risks.

14 **Q: Did Macquarie have any policies in place that would have impacted PSE's**  
15 **contracting practices?**

16 **A:** Yes. Macquarie adopted a Responsible Contractor Policy in 2006. A full copy of  
17 the Policy is attached as Exhibit EH-14.

18 **Q: Are Responsible Contractor Policies Common in the U.S. Infrastructure**  
19 **market?**

20 **A.** Yes, Responsible Contractor Policies are a defining difference between US and  
21 Canadian institutional investors and infrastructure projects. Many of the largest public  
22 employee pension funds in the United States have Responsible Contractor Policies as do the  
23 largest infrastructure fund managers. For example, in September 2017, Blackstone's new



1 infrastructure fund business announced the adoption of a Responsible Contractor Policy. In  
2 October 2018 when New York's Governor Andrew Cuomo announced a \$13 billion plan to  
3 update New York City's John F. Kennedy International Airport that included pension fund  
4 and infrastructure fund investors (Carlyle, JLC, and Ullico), it was noted that many of the  
5 infrastructure investors had Responsible Contractor Policies in place. Exh. EH-15 (Union  
6 Leaders Praise JFK Airport Update, October 5, 2018). Macquarie's early adoption of a  
7 Responsible Contractor Policy led to broad spread application across the infrastructure  
8 market in the United States.

9 **Q: Do any of the other entities that will comprise the consortium of owners if**  
10 **the transaction is approved have a responsible contractor policy?**

11 **A:** Not to my knowledge. This is one of the reasons that the Laborers are so  
12 concerned about Macquarie's departure, especially given the absence of commitments in the  
13 proposed settlement that pertain to the contracted out workforce.

14 **Q: How does PSE's policy compare to Macquarie's?**

15 **A:** The PSE policy is unquestionably weaker, meaning that the PSE policy provides  
16 less rigorous guidelines to ensure that PSE selects contractors with the safest practices.

17 First, the PSE policy is merely aspirational, providing a list of non-binding  
18 considerations it will take into account when selecting contractors (for instance, the policy  
19 introduces the list of factors that make up the guidelines as "factors [that] may be taken into  
20 account"). In fact, PSE notes that whether a contractor complies with the policy is not used  
21 directly in making contractor termination decisions. Exh. EH-16 (PSE Response to  
22 WNIDCL Data Request 003). In contrast, the Macquarie policy provides that a Responsible  
23 Contractor will be given a preference in hiring when certain requirements are met, including

1 consideration of a contractor's competitive risk-adjusted returns, demonstrated skill,  
2 experience, dependability, fees, safety record, and adherence to the Policy, as well as  
3 compliance with local, state, and national laws (Sec. IV). The Macquarie policy also  
4 requires all contracts pertaining to infrastructure investments to include the terms of the  
5 Policy, and further provided that compliance with the Policy would be part of any  
6 consideration of contract renewal (Sec. VI.D).

7 Moreover, the PSE policy includes no provisions that ensure transparency or  
8 accountability. There is no affirmative obligation under the policy to disseminate any  
9 information or to report on implementation, meaning that neither the UTC nor PSE  
10 ratepayers will know whether PSE is following its policy. In contrast, the Macquarie policy  
11 had several provisions to ensure it was meaningfully applied. It required the Fund to issue  
12 an annual report to Fund investors reporting on policy compliance (Sec. VI.E.1.e). The  
13 policy contains provisions requiring that it be provided to all Fund staff and operating  
14 company managers, and that it be included in all requests for proposals and invitations to bid  
15 (Sec. VI.B-C). The policy also conferred responsibilities upon specific staff aimed at  
16 ensuring policy implementation (Sec. VI.E).

17 **Q: How would Macquarie's Responsible Contractor Policy have impacted**  
18 **PSE's contracting practices?**

19 **A:** Macquarie's policy is aimed specifically at the infrastructure companies in which  
20 Macquarie invests. The policy was intended to apply to companies like PSE.

21 **Q: Even though at the time of the proposed sale Macquarie no longer had a**  
22 **greater than 50% interest in PSE, do you believe its Responsible Contractor Policy**  
23 **continued to impact PSE's contracting practices?**

1           **A:** Yes. Macquarie is currently the largest single shareholder. While it did not have  
2 a majority stake in PSE, Macquarie still had a significant voice at the table. Its preference  
3 for the employment of Responsible Contractors likely played a role in PSE’s corporate  
4 culture and its selection of contractors for large capital projects. In my experience,  
5 negotiating and enforcing Responsible Contractor Policies is often challenging when there  
6 are minority ownership stakes. Most institutional investors, like Macquarie, will include  
7 language that urges the policy to be applied in spirit even if a strict ownership threshold  
8 doesn't apply. Macquarie included such language in its policy: “when the Policy is not  
9 applicable by its terms [] operating company managers shall be encouraged to make a good  
10 faith effort to comply with the spirit of the policy, consistent with their fiduciary duty. Good  
11 faith efforts shall include, but are not limited to, encouraging the use of and advocating for  
12 Responsible Contractors, supplying the Fund with timely information on all applicable  
13 bidding opportunities for interested Responsible Contractors, and facilitating meetings with  
14 interested stakeholders, when possible.” Exh. EH-14.

15           My understanding is Macquarie's Responsible Contractor Policy was one of its major  
16 investment policies covering both MIP I and MIP II as referenced by Macquarie’s own  
17 Corporate Timeline. Exh. EH-17 (Macquarie Infrastructure and Real Assets,  
18 Credentials). PSE’s recent major capital projects, including the current Tacoma LNG  
19 project, are employing Responsible Contractors. We view this as evidence that Macquarie's  
20 influence continued even with a reduced ownership stake.

21           Further, Puget Holdings’ governance structure was such that even though the three  
22 Macquarie entities initially owned 51.4 percent of Puget Holdings, this was not a controlling  
23 share under Puget Holdings’ governance structure, which requires a vote of 55 percent of the

1 shares to support any action and a vote of 80 percent or more of the shares for certain  
2 significant corporate decisions. Thus if PSE management had wanted to depart substantially  
3 from a model of Responsible Contracting with which Macquarie felt comfortable (say for  
4 major capital projects which required board approval for significant budgetary resources)  
5 Macquarie could have blocked that decision with even a 43% ownership stake.

6 **Q: Do you believe PSE ratepayers could be harmed as a result of Macquarie's**  
7 **departure?**

8 **A:** Yes, absent an expanded set of settlement commitments addressing contractor  
9 workforces.

10 **Q: How might PSE ratepayers be harmed as a result of the proposed sale?**

11 **A:** As outlined above, in one year, 2020, the "Essential Contract" PSE has with  
12 Quanta Gas (and Infrasource) ends. The local labor pool comprised of WNIDCL members  
13 who are skilled, experienced, and trained in essential gas pipeline work could be replaced if  
14 the new and existing owners are not obligated to ensure the continued use of qualified  
15 contractor employees.

16 This is not conjecture. No commitments regarding contracted labor were included in  
17 the 2008 commitments to ensure supply chain or workforce training standards. This failure  
18 has led an increase in contracting out being implemented without some necessary  
19 safeguards, and has led to a race to the bottom contracting strategy, with traffic control firms  
20 in particular.

21 **V. THE PARTIAL SETTLEMENT AND ADDITIONAL COMMITMENTS**  
22 **THAT SHOULD BE IMPOSED TO ENSURE NO HARM**

23 **Q: Have you reviewed the joint application and the proposed settlement?**

1           **A:** Yes.

2           **Q: Do the joint application or the proposed settlement include any**  
3 **commitments with respect to PSE’s utilization of contractors and contracted out**  
4 **employees?**

5           **A:** No, none of the proposed commitments in the original application or the  
6 additional commitments set forth in the proposed settlement pertains specifically to PSE’s  
7 contracted workforce. PSE has made commitments pertaining to its in-house workforce, but  
8 none with respect to contractors, even though 84% of its capital construction budget went to  
9 contractors in 2018, and PSE has made clear its intent to continue relying heavily on  
10 contractors. Exh. EH-2 (PSE Response to WNIDCL Data Request 006); Exh. EH-3 (PSE  
11 White Paper, “Distribution Outsourcing – Puget Sound Energy’s Experience”). This is a  
12 major hole in the commitments PSE and settling parties are proposing as part of the  
13 proposed transaction.

14           **Q. Is WNIDCL covered by Joint Applicant’s current Commitment 8, “Puget**  
15 **Holdings and PSE commit that PSE will honor its labor contracts”?**

16           **A.** No. WNIDCL does not have a collective bargaining relationship with Joint  
17 Applicants nor any existing labor contract.

18           **Q: What, if any, additional commitments do you believe are necessary in order**  
19 **to ensure that the transaction meets the “no harm” standard?**

20           **A:** There are three additional commitments I believe are necessary for the proposed  
21 transaction to meet the “no harm” standard.

22           First, PSE and Puget Holdings should commit to maintaining the status quo by  
23 ensuring that any contractors performing PSE gas pipeline distribution operations are

1 members of the Distribution Contractors Association (“DCA”) or the Pipeline Contractors  
2 Association (“PLCA”), which should help to ensure continued utilization of a well-trained  
3 and experienced contractor workforce. This proposed commitment would not bind PSE to  
4 hiring any one particular contractor, but rather would provide workforce continuity for the  
5 Washington State workers who currently perform the work and would continue to perform  
6 the work on a going-forward basis. There are numerous highly experienced contractors  
7 available to PSE.

8           Second, the new board of PSE and Puget Holdings should adopt a new Responsible  
9 Contractor Policy that strengthens the metrics considered for contractors and specifically  
10 precludes the use of staffing agencies to supply labor.

11           Third, PSE and Puget Holdings should commit to utilizing contractors with access to  
12 high quality training and apprenticeship programs. Specifically, all contractors doing work  
13 on the PSE system should be required to: 1) have access to third party training programs that  
14 are jointly trusted by labor and management and that utilize independently certified  
15 instructors, and 2) have “approved training agent” status with an apprenticeship program  
16 registered with the Washington State Apprenticeship and Training Council (“WSATC”) as  
17 well as a demonstrated history of utilizing apprentices.

18           **Q: Would any of these commitments impact the jurisdiction of PSE’s current**  
19 **in-house workforce or the role of other labor organizations in representing those**  
20 **workers?**

21           **A:** No – none of these commitments would impact the work that PSE performs in-  
22 house using IBEW 77 or UA 32 members. Each of these proposed additional commitments  
23 pertains to work that PSE contracts out, not to in-house work.

1           **Q: What are the “DCA” and “PCLA”?**

2           **A:** The DCA is the Distribution Contractors Association. The PCLA is the Pipeline  
3 Contractors Association. Each of those organizations negotiates national agreements with  
4 the various trade unions whose members perform work on gas distribution and gas pipelines  
5 across the country (Laborers International Union of North America, International  
6 Brotherhood of Teamsters, United Association of Plumbers and Pipefitters and the  
7 International Union of Operating Engineers). Both groups also work with contractors in the  
8 industry to encourage safe practices in gas distribution and transmission pipeline  
9 construction. PSE essential contractor InfraSource Services LLC is a member of the DCA  
10 and PLCA.

11           **Q: Why would an additional commitment obligation PSE to utilize DCA or**  
12 **PCLA member contractors help to ensure that PSE customers suffer no harm as a**  
13 **result of the transaction?**

14           **A:** Joint Applicants have emphasized that the proposed sale would result in a  
15 continuation of its current standards (*see e.g.* commitment number 10, to maintain local  
16 staffing and presence in the communities in which PSE operates at levels sufficient to  
17 maintain the provision of safe and reliable service and cost-effective operations). But, as  
18 described above, none of the proposed commitments apply to the contracted-out workforce.  
19 Further, while PSE reports various service quality and reliability metrics, there are only  
20 three explicit contractor-specific safety-related benchmarks. In addition, the contractor-  
21 specific benchmarks only apply to PSE’s two primary service providers and relate  
22 exclusively to response or service restoration times. Exh. EH-5 (PSE Service Quality and  
23 Electric Service Reliability Report, Filed March 29, 2018). This demonstrates the need for

1 and importance of standards that fill the gap by ensuring safe and reliable operations with  
2 respect to all contractors performing gas distribution work.

3 Currently, PSE already uses DCA member contractor, InfraSource, for its gas  
4 distribution service provider contract. But PSE's contract with InfraSource expires in 2020  
5 and there is no commitment proposed to ensure that PSE will thereafter continue to perform  
6 its gas distribution work using a contractor workforce that is at least well-trained and  
7 experienced as is currently the case. We seek assurance that PSE's current practice with  
8 respect to the retention/utilization of gas pipeline distribution contractors will be continued  
9 after the transaction.

10 WNIDCL is concerned that absent a commitment to maintain PSE's status quo  
11 practice of utilizing well-trained and experienced contractors, the new consortium of owners  
12 could drive PSE towards utilizing lower-cost, lesser-trained contractor personnel. This  
13 concern is based in part on the particular risks created by Macquarie's departure, as  
14 discussed above.

15 **Q: Why would the additional commitment that PSE utilize contractors with**  
16 **access to certain types of training help to ensure that PSE customers suffer no harm as**  
17 **a result of the transaction?**

18 **A:** Ensuring that contractors have access to independently managed training  
19 programs is the best way to make certain that the contractors performing work on the PSE  
20 system will meet all applicable safety and reliability standards.

21 Currently, several PSE contractors (including InfraSource, Traffic Control Inc., and  
22 AA Asphaltting) have access to the Northwest Laborers Employers Training Trust  
23 ("NWLETT") for apprenticeship and training courses such as OSHA 10, traffic control,



1 First Aid/CPR, rigging and signaling. But other PSE contractors rely upon in-house  
2 training. In our experience, this unfortunately often involves cutting corners and pushing  
3 workers out to job sites as fast as possible at the expense of adequate training.

4 The training problem is even worse when it comes to temp workers like those that  
5 perform work on the PSE system from Command Center and Labor Ready, as there is often  
6 a disconnect between who is responsible for training the temp workers – the temp agency or  
7 the employer to whom the temp workers are sent. A ProPublica report on dangers facing  
8 temp workers states that disputes over who is responsible for temp worker safety and  
9 training are common. Exh. EH-18 (ProPublica, Temporary Work, Lasting Harm, December  
10 18, 2013).

11 **Q: Why would the additional commitment that PSE utilize contractors that**  
12 **have “approved training agent” status with the WSATC and a demonstrated history of**  
13 **using apprentices be required to ensure that PSE customers did not suffer any harm as**  
14 **a result of the transaction?**

15 **A:** Ensuring that PSE utilizes contractors with access to apprentices registered  
16 through a state-approved training program means that PSE will continue to have access to a  
17 reliable and well-trained workforce.

18 NWLETT offers training and apprenticeship opportunities to union signatory  
19 contractors and non-union contractors alike. Any employer can participate in the  
20 apprenticeship program.

21 Apprenticeship utilization is also important because it helps to ensure that the next  
22 generation of Laborers is in place and ready to work for contractors. Through WNIDCL’s  
23 ongoing recruitment efforts, and involvement in training and supplying Laborer apprentices,

1 WNIDCL is helping to ensure that the next generation of natural gas construction Laborers  
2 will be able to supply labor to work on the PSE system as needed.

3 **Q: Why would the additional commitment that PSE not utilize contractors that**  
4 **use temp agencies help to ensure that PSE customers suffer no harm as a result of the**  
5 **transaction?**

6 **A:** Washington's own Department of Labor and Industries recognizes the problems  
7 with using temporary labor in the flagging industry, yet this is precisely what PSE has been  
8 doing by using temp agencies like Command Center and Labor Ready to supply flaggers for  
9 PSE projects. Temporary agency employed workers have higher worker compensation  
10 claim incidence rates than those in standard employment arrangements. Exh. EH-19 (L&I  
11 SHARP Publication); Exh. EH-20 (American Journal of Industrial Medicine Article). The  
12 rate ratios are two-fold higher in the construction sector in Washington State, meaning that  
13 temporary staffing agencies in the construction field are twice as likely to experience claims  
14 through Labor and Industries due to a workplace injury. *Id.* Further, as shocking as these  
15 trends are, the reality is likely much worse. As discussed below, temp workers face many  
16 incentives not to report occupational injuries for fear that if they *do* report them, the temp  
17 agency will not assign them to more jobs. For this reason, the number of workers comp  
18 claims filed by temp workers is likely just the "tip of the iceberg" of the *actual* number of  
19 workplace injuries temps face, meaning that temp agencies are likely even worse than twice  
20 as high as industry average when it comes to safety.

21 As a ProPublica report on the unique dangers temporary workers face noted, "The  
22 very nature of temp work increases the risk of injury. Temps are often working in a new  
23 environment, operating machines or handling tasks they don't have experience with and

1 using muscles they might not normally use.” Exh. EH-18. Temp agencies are often utilized  
2 to insulate employers from responsibility for their workers. For instance, as the ProPublica  
3 report notes, “The workers’ comp system was designed to encourage safety through  
4 economic pressure; companies with higher injury rates pay higher insurance premiums,” but  
5 “Hiring temp workers shields companies from those costs,” because it is the temp agency’s  
6 premiums that will go up if a temp worker is injured, even though the temp agency has no  
7 control over the worksite. *Id.* OSHA investigators looking into a temp worker’s death noted  
8 that typical hazards temp workers face include employers that, “put profits over safety,  
9 train[] workers to cut corners, and treat[] temps as second class citizens.”

10 The ProPublica report discusses one fatality involving a Labor Ready temp worker  
11 who died after being prolonged to nine hours of working outdoors in 90 degree heat. This  
12 example is notable, as it involves the same temp agency used by PSE, and involving some of  
13 the same hazards that PSE flaggers face. Another example recounted in the report involved  
14 flaggers sent by a temp agency who were stranded for nine hours in 100-degree heat with no  
15 break and without access to water. When one of the temp flaggers left his post to find out  
16 when he could leave, the flagging company marked he and the coworker as “DNR” – do not  
17 return – indicating to the temp agency not to send the workers back to the flagging job. This  
18 is an example of the huge disincentive to report safety concerns as a temp worker that the  
19 ProPublica report found to be a major trend.

20 This disturbing trend of relying on temporary labor agency-supplied workers is  
21 precisely what is currently playing out in PSE’s contracting out of traffic control work, with  
22 PSE contracting out directly to two temp agencies, and two other firms that rely upon temp  
23 agencies. As noted earlier, each of the two temporary staffing agencies include in the EMF

1 risk class for traffic control on public utilities – People/Labor Ready and Command Center –  
2 have significantly higher than industry average EMF ratings (and the reality is likely even  
3 worse given the underreporting that is common amongst temp workers).

4 This problem is primed to get worse, as the only member of the Puget Holdings  
5 consortium with any sort of responsible contractor policy is exiting. Additional  
6 commitments are needed to make sure that PSE’s use of bad actor traffic control firms does  
7 not increase following the departure of Macquarie.

8 Litigation records and extensive OSHA violations highlight some of the risks  
9 associated with temporary staffing agencies. For example, subsidiaries of TrueBlue, Inc.,  
10 which include PSE sub-contractor People/Labor Ready, have amassed significant penalties  
11 for unsafe working conditions. In total, TrueBlue subsidiaries have been cited with  
12 approximately 30 OSHA violations and penalties totaling \$90,000 over the last five years.  
13 Exh. EH-21 (OSHA Violations, Department of Labor). Since 2007, there have been 3  
14 worker fatalities at TrueBlue subsidiaries, including a worker who died of heat stroke, and a  
15 worker who was struck by a vehicle. In both of these cases, OSHA cited TrueBlue with  
16 failure to protect workers from recognized hazards that were causing or likely to cause death  
17 or serious physical harm to employees (OSHA inspection numbers 469439.015 and  
18 1229944.015).

19 Ensuring that PSE contractors are not obtaining employees from temporary staffing  
20 agencies will ensure that PSE is not subject to the well-known risks associated with utilizing  
21 temporary labor agencies in the construction industry.

22 **Q: Taken together, how do each of the additional commitments you have**  
23 **described help to ensure rate payers are not harmed?**

1           **A:** The proposed commitments would provide some guardrails on PSE’s contracting  
2 practices to ensure they do not backslide toward putting profits before safety. This is a real  
3 risk in the absence of additional commitments in light of: 1) PSE’s increased trend of relying  
4 on outside contractors to carry out its capital expenditure programs, and 2) the departure of  
5 the single largest shareholder and the only shareholder with a responsible contractor policy  
6 in place.

7           **Q: Have other utilities committed to utilizing union contractors in recognition**  
8 **of the benefits you’ve described?**

9           **A:** Yes. Other utilities, including Consolidated Edison of New York, have adopted  
10 agreements or procurement policies ensuring that contracted personnel are covered by  
11 certain minimum standards. Exh. EH-22 (Consolidated Edison Company of New York, Inc.  
12 Standard Terms and Conditions for Construction Contracts, October 15, 2014). For  
13 instance, Consolidated Edison adopted a procurement policy that requires contractors to pay  
14 the prevailing scale of union wages, and to require contractors to utilize only employees who  
15 are represented by a union and who are competent and skilled in the work required. *Id.*

16           **Q: Do ratepayers benefit from a highly skilled, well trained, contractor**  
17 **workforce?**

18           **A:** Yes. Using a highly trained and skilled contractor workforce is the best way to  
19 ensure that work performed on the PSE system will be done professionally, safely, on-time,  
20 and on budget. As I’ve discussed, a skilled, well trained, safe workforce is able to operate  
21 more safely and efficiently, and is able to be more productive. A recent study from February  
22 2017 by the McKinsey Global Institute entitled, “Reinventing Construction: A Route to  
23 Higher Productivity,” emphasizes the importance of having a highly trained workforce on

1 increasing productivity in the construction industry. Exh. EH-23 (McKinsey Global  
2 Institute, Reinventing Construction, February 2017). That study focused on ways in which  
3 the construction industry can close the gap in productivity from which construction sector  
4 labor-productivity has suffered compared to productivity growth in the overall economy. In  
5 the United States, for instance, the construction sector's labor productivity is lower now than  
6 it was in 1968. *Id.* at 3. "Reskilling the workforce" was one of seven ways identified to  
7 improve productivity and address current market failures in the construction industry,  
8 concluding that, "Change in the construction sector cannot be achieved without investment  
9 in retooling a workforce that is aging and changing its makeup through migration.  
10 Construction firms and workers need to continuously reskill and train to use the latest  
11 equipment and digital tools." *Id.* at 16. As discussed in Glen Freiberg's testimony, training  
12 Laborers on the latest equipment and techniques, as well as core skills, and training  
13 apprentices is exactly what NWLETT focuses on. This increase in productivity related to  
14 the increase in quality training like that offered by NWLETT benefits ratepayers directly.  
15 An increase in labor productivity means that higher volumes of work can be performed with  
16 the same or fewer resources, which translates into lower costs for ratepayers, a more stable  
17 workforce, and higher wages for workers.

18 **Q: How else do the proposed commitments you've described terms dealing with**  
19 **contract labor benefit ratepayers?**

20 **A:** Another way in which this provision would benefit ratepayers is through  
21 increased transparency with respect to PSE's capital expenditures. PSE currently does not  
22 document the comparative performance of contractors who have worked on PSE's  
23 competitively-bid capital or maintenance projects. Exh. EH-6 (PSE response to WNIDCL

1 Data Request 015). It likewise does not track training spending by contractors, although  
2 union signatory contractors InfraSource and Potelco each contribute certain identified  
3 amounts for all employees, enabling the UTC and ratepayers to know the precise amount  
4 contractors invest in training, and whether their profitability is based on skimping on  
5 important training. This lack of tracking makes it difficult to determine whether ratepayers  
6 are benefiting from good (or being hurt by poor) labor productivity rates and investments in  
7 training.

8 **Q. Have other State Utility Commissions looked at the role of contracted labor?**

9 **A.** Yes. Better transparency in the contracted workforce is an issue that other State  
10 Commissions have looked at. For example, the New York State Public Service Commission  
11 recently concluded a staffing audit of all regulated utilities. The Commission hired a  
12 consultant that made recommendations to each utility and staffing audits specifically looked  
13 at the role of the contracted workforce as part of overall staffing levels, and the ability to  
14 evaluate unit cost comparisons for in-house employees versus contractors. Specifically, the  
15 staffing audit found that although gas utilities were substantially increasing their reliance on  
16 contractors, they were not paying sufficient attention to the challenge of expanding available  
17 contractor resource pools. The audit recommended that gas utilities explore strategies to  
18 increase their contractor resource pools beyond current levels to meet the significant  
19 increase in work associated with accelerated pipe replacement programs. Exh. EH-24  
20 (Operations Audit of Staffing Levels at the Major NY State Energy Utilities). The New  
21 York Commission issued an order on December 14, 2017 that accepted the utilities'  
22 implementation plans to make recommended changes. Exh. EH-25 (NY PSC Case No. 13-  
23 01886 "In the Matter of Focused Operations Audit of the Internal Staffing Levels and the

1 Use of Contractors for Selected Core Utility Functions at Major New York Energy  
2 Utilities.”).

3 **Q. Has the role of contracted labor been considered in other utility merger**  
4 **proceedings?**

5 **A.** Yes. The Public Service Commission of Maryland considered the merger of  
6 AltaGas, Ltd. and WGL Holdings, Inc. The Maryland Commission Order No. 88631  
7 approving the merger on April 4, 2018 referenced the Community Benefits Agreement  
8 between AltaGas and affiliated local LIUNA unions to ensure protections afforded to in-  
9 house employees were also extended to contractor employees. Exh. 26- (MD Case No. 9449  
10 “In the Matter of the Merger of AltaGas Ltd. and WGL Holdings, Inc.”).

11 **Q. If the Commission declines to order the relief proposed here, are there**  
12 **alternative actions that you recommend the Commission consider?**

13 **A.** Yes. The utilization by PSE of inadequately-trained contractor employees is an  
14 issue that should be addressed by the Commission, either in this or another UTC  
15 proceeding. If the Commission is not inclined to impose my requested additional  
16 commitments, then LIUNA asks that the Commission open a separate investigation into the  
17 PSE procurement policies applicable to outside contractors. A core purpose of the  
18 investigation would be examine the extent to which the Company’s procurement practices  
19 ensure that only demonstrably well-qualified and experienced personnel are being retained  
20 to conduct operations on the PSE system, and, if necessary, to direct the implementation by  
21 PSE of remedial measures.

22 **Q: Does that conclude your testimony?**

23 **A:** Yes.