BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of PUGET SOUND ENERGY, INC. For Approval of a Power Purchase Agreement for Acquisition of Coal Transition Power, as Defined in RCW 80.80.010, and the Recovery of Related Acquisition Costs	DOCKET NO. 121373
In the Matter of the Petition of PUGET SOUND ENERGY, INC. and NW ENERGY COALITION For an Order Authorizing PSE to Implement Electric and Natural Gas Decoupling Mechanisms and to Record Accounting Entries Associated with the Mechanisms	DOCKET NOS. UE-121697 and UG-121705 (Consolidated)
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND ENERGY, INC., Respondent.	DOCKET NOS. UE-130137 and UG-130138 (Consolidated)

INITIAL BRIEF OF PUGET SOUND ENERGY, INC.

MAY 30, 2013

PUGET SOUND ENERGY, INC.

TABLE OF CONTENTS

PUGET SOUND ENERGY, INC.

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules and Regulations

Commission Decisions

I. INTRODUCTION

1. Puget Sound Energy, Inc. ("PSE") respectfully requests that the Commission issue an order approving the Multiparty Settlement Re: Coal Transition PPA and Other Pending Dockets ("Multiparty Settlement"). A significant cross-section of stakeholders supports the Multiparty Settlement including PSE, Commission Staff, the NW Energy Coalition ("the Coalition"), The Energy Project, and the Northwest Industrial Gas Users ("NWIGU") (hereafter referred to as "Settling Parties").

2. The Multiparty Settlement comports with the Commission's direction in recent general rate case orders and policy statements. It implements revenue decoupling—a tool designed to eliminate a utility's reliance on increased customer energy usage as a means to recover fixed costs—and allows PSE to commit to a higher level of conservation achievement. It includes a K-factor rate plan that requires PSE to be lean in terms of operating efficiency during a rate case stay-out period.

3. The Multiparty Settlement bolsters the State's energy policy by facilitating the closure of Washington's sole remaining coal plant, consistent with the policy set forth in the Coal Transition Energy Bill. With the approval of the Multiparty Settlement, PSE will move forward with the purchase of coal transition power that allows for the smooth transition away from coal-fired generation in Washington in the next decade.

4. The Multiparty Settlement allows the Commission the opportunity to utilize periodic rate increases that reduce regulatory lag, and to move away from time-consuming, expensive, and repeated general rate cases. The Commission has recognized the value of pursuing new and innovative approaches to ratemaking that break the cycle of almost continuous rate cases. This is an objective that has been embraced by the Governor's ratemaking discussion group as well.

This innovative approach to ratemaking provides increased rate certainty for PSE and its customers and removes some of the regulatory lag that has hampered PSE's ability to earn its authorized returns.

5. There are three key components of the Multiparty Settlement—the expedited rate filing ("ERF"), including the unopposed Property Tax Tracker; the decoupling mechanisms and K-factor rate plans; and the reconsideration of the final order in Docket UE-121373, the Coal Transition PPA docket. Each of these components furthers the public interest and stands on its own merits. However, the Settling Parties reached agreement on these elements as part of a broader global settlement of issues pending for PSE. Thus, while each component can stand up individually to scrutiny without support from the other components, each is tied together in the Multiparty Settlement as an integral element of the negotiated settlement. For that reason, as with any settlement, substantial conditions or changes imposed by the Commission will give the Settling Parties the option to reject the settlement as conditioned.

6. The Multiparty Settlement is a carefully balanced agreement that benefits customers, PSE, and the State of Washington. Both PSE and its customers benefit from the more efficient ratemaking processes and rate predictability allowed by the settlement. Both PSE and its customers benefit from the increased conservation commitments that PSE makes as a part of the Multiparty Settlement. Both PSE and its customers benefit from increased operating efficiencies that the K-factor component of the Multiparty Settlement is intended to achieve, and from the resulting sharing of earnings with customers—that does not currently exist. Low-income customers benefit from increased bill assistance and energy efficiency assistance. And the State as a whole benefits from the transition away from coal generation in Washington.

7. The evidence demonstrates that Multiparty Settlement furthers the public interest and should be approved. Accordingly, PSE respectfully requests that the Commission approve the Multiparty Settlement, as proposed.

II. LEGAL STANDARD

A. Settlements

8. The Commission's procedural rules govern the process for reviewing proposed settlement agreements. The Commission "may accept [a] proposed settlement, with or without conditions, or may reject it."[1] If the Commission imposes conditions and a party rejects a proposed condition, the settlement is deemed rejected. The Commission must "determine whether a proposed settlement meets all pertinent legal and policy standards."[2] The Commission may approve settlements "when doing so is lawful, when the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the Commission."[3]

B. Ratemaking in General

9. The ultimate legal question is whether the rates and charges proposed by PSE are fair, just, reasonable, and sufficient.[4] In making these determinations, the Commission is bound by the statutory and constitutional mandate that a regulated utility is entitled to (i) reasonable and sufficient compensation for the service it provides,[5] and (ii) the opportunity to earn "a rate of

[1] WAC 480-07-750(2).
[2] WAC 480-07-740.
[3] WAC 480-07-750(1).
[4] RCW 80.28.020; *People's Org. for Wash. Energy Res. v. WUTC*, 104 Wn.2d 798, 808 (1985) (en banc) ("*POWER*").
[5] *POWER*, 104 Wn.2d at 808; *Puget Sound Traction Light & Power Co. v. Pub. Serv. Comm'n*, 100 Wn. 329, 334 (1918) (en banc); RCW 80.28.010(1).

return sufficient to maintain its financial integrity, attract capital on reasonable terms, and receive a return comparable to other enterprises of corresponding risk."[6]

10. Unless a utility is given the opportunity to earn a reasonable return on its investment and recover its costs, customers as well as investors are harmed:

> It is just as important in the eye of the law that the rates shall yield reasonable compensation as it is that they shall be just and reasonable and non-discriminatory from the standpoint of the customer, because unless every rate does yield reasonable compensation, public service companies must resort to discrimination in order to live or must eventually be forced out of business.
>
> Every statutory element must be recognized in the fixing of rates, or the result will be to defeat the legislative purpose.[7]

11. The Multiparty Settlement meets these standards. It will allow PSE a reasonable opportunity to earn its authorized rate of return—something PSE has not actually done for several years.

III. THE MULTIPARTY SETTLEMENT MEETS ALL PERTINENT LEGAL AND POLICY STANDARDS AND SHOULD BE APPROVED

12. The Multiparty Settlement meets the standards set forth in WAC 480-07-750(1). Approval of the Multiparty Settlement is lawful, the settlement terms are supported by an appropriate record, and the result of the Multiparty Settlement is consistent with the public interest in light of all the information available to the Commission. Accordingly, the Commission should approve the Multiparty Settlement.

A. The Multiparty Settlement Grew Out of State Energy Policy and Commission Direction in the 2011 PSE General Rate Case

13. The Multiparty Settlement flows from a confluence of events in energy policy in Washington State:

[6] *WUTC v. Avista Corp.*, Docket Nos. UE-991606, *et al.*, Third Supp. Order ¶ 324 (Sept. 29, 2000).
[7] *Wash. ex rel. Puget Sound Power & Light Co. v. Dep't of Pub. Works of Wash.*, 179 Wash. 461, 466 (1934).

- The Commission spent the past several years investigating and developing a policy position on decoupling.[8] Those efforts resulted in the Commission's Decoupling Policy Statement in 2010. Over the next two years, the Commission's views on decoupling were further fleshed out through PSE's 2011 general rate case and the Coalition's decoupling proposal in that case. In the final order in that case the Commission encouraged PSE and the Coalition to work together on a decoupling proposal, even if it differed somewhat from the tenets set forth in the Commission's Decoupling Policy Statement.[9] In response, PSE and the Coalition filed a joint decoupling proposal with the Commission in October 2012, and engaged in two technical workshops in November 2012 and January 2013 obtaining stakeholder input on the proposal and modifying the proposal in response to this input.[10]
- In response to repeatedly expressed concerns by PSE and other regulated utilities that they were unable to earn their authorized rate of return due to regulatory lag, both the Commission and the Governor's ratemaking discussion group encouraged the development of an expedited rate filing.[11] PSE met with stakeholders following the conclusion of its 2011 general rate case to discuss this filing, but had not been successful in gaining a consensus as to the form of the filing.[12]

[8] *See In re WUTC Investigation into Energy Conservation Incentives*, Docket U-100522, Report and Policy Statement on Regulatory Mechanisms, including Decoupling, To Encourage Utilities To Meet or Exceed Their Conservation Targets at (Nov. 4, 2010) ("Decoupling Policy Statement").

[9] *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-111048 and UG-111049, Order 08, n. 617 (May 7, 2012) ("The Commission remains open to proposals for a full decoupling mechanism, even to one that may vary somewhat from what is described in our Policy Statement.").

[10] Cavanagh, Exh. No. RCC-3T 3:1-8.

[11] Schooley, Exh. No. TES 1T 5:18-6:18; Exh. No. TES-2.

[12] *See* Barnard, Exh. No. KJB-1T (ERF) 4:5-6.

- After the Legislature passed the Coal Transition Energy Bill, PSE entered into a Coal Transition PPA with TransAlta Centralia. PSE presented the agreement to the Commission for approval as provided by the Coal Transition Energy Bill. The Commission approved the Coal Transition PPA with conditions. The conditions left too much uncertainty for PSE in terms of future prudence and cost recovery such that PSE would be required to terminate the PPA if the conditions were not revised. PSE worked with TransAlta Centralia to revise the PPA and filed a Petition For Reconsideration of the Commission's Final Order and Motion To Reopen the Record.[13]

14. Commission Staff and PSE saw an opportunity to work together to address all of these pending policy issues, and from those efforts the Multiparty Settlement evolved.

B. The Multiparty Settlement Is Lawful

1. The Commission can approve a settlement that resolves multiple, diverse dockets

15. The Multiparty Settlement resolves issues in several dockets pending before the Commission. The Commission may consider several dockets in one settlement agreement as is the case here, and such a settlement does not violate Washington law. For example, in 2002 the Commission considered a settlement that resolved PSE's general rate case as well as a separate pending complaint filed by Public Counsel relating to the allocation of residential exchange credits under the terms of the merger agreement.[14] The general rate case and complaint proceeding were not consolidated, but the Commission elected to hold a hearing on the settlement as a joint proceeding in the dockets.

[13] *In re Petition of Puget Sound Energy, Inc. for Approval of a Power Purchase Agreement for Acquisition of Coal Transmission Power, as Defined in RCW 80.80.010, and the Recovery of Related Acquisition Costs*, Docket UE-121373, Petition for Reconsideration and Motion to Reopen the Record (January 22, 2013).

[14] *See WUTC v. Puget Sound Energy, Inc.*, Dockets UE-011570 and UG-011571 9th Supp. Order (March 28, 2002).

> The Complaint docket is not consolidated with Docket Nos. UE-011570/UG-011571, but is considered jointly here with those proceedings in connection with a proposed settlement that addresses issues in all three dockets.
>
> . . . .
>
> The Commission conducted an evidentiary hearing on the proposed settlement of Docket No. UE-011411 in joint session with the settlement hearing in Docket Nos. UE-011570/UG-011571, which was conducted on March 25, 2002, as previously discussed.[15]

16. Similarly, the Commission also considered an "omnibus" settlement involving multiple diverse dockets involving GTE Corporation. The dockets included in the settlement were: (i) the merger of GTE Corporation and Bell Atlantic Corporation, (ii) a complaint against GTE alleging unlawful access charges, and (iii) an informal earnings review investigation commenced by the Commission's regulatory staff.[16] The dockets were not consolidated but were considered at a joint hearing.

17. Here, as in the above settlements, the Multiparty Settlement can resolve multiple diverse dockets, even though the Commission has not consolidated the dockets. The dockets remain separate proceedings, but the Commission can consider the Multiparty Settlement in joint proceedings or without a hearing.[17] The fact that the Commission considers the dockets in one settlement hearing does not convert the dockets into one filing or one proceeding.[18]

---

[15] *Id.* ¶¶ *13-14.*

[16] *See In the Matter of the Application of GTE Corp. and Bell Atlantic Corp.* Docket UT-981367, 4th Supp. Order (Dec. 1999); *WUTC v. GTE Northwest Inc.* Docket UT-990672, 4th Supp. Order (Dec. 1999); *Informal Staff Investigation of GTE Northwest's Earnings and Revenue*, Docket UT-991164 (Dec. 1999).

[17] *See* WAC 480-07-740(1)(d) ("The Commission will schedule a hearing to consider a proposed settlement if the commission believes that a hearing will assist it to decide whether to adopt the proposal.").

[18] Thus, the ERF and decoupling dockets remain separate proceedings, filed with the Commission several months apart. PSE filed its decoupling proposal in October 2012 and requested approval by the end of the calendar year 2012—before the ERF was filed. The inclusion of these separate proceedings in one global settlement does not convert them now into a single filing that should be considered a general rate case pursuant to WAC 480-07-505, as some parties have argued.

2. A settlement can propose resolution of a Commission final order that has been challenged

18. The Multiparty Settlement includes a resolution of the Coal Transition PPA Final Order, which has been challenged by PSE. Washington law does not prohibit the Commission from considering a proposed settlement that would resolve a final order that has been challenged, as is the case in this docket.[19] Cases are routinely settled, on appeal, after a party challenges a final order. When PSE challenged the final order in Docket UE-121373 by filing a Petition For Reconsideration and Motion To Reopen the Record, the validity of the Final Order in that docket was called into question. Further, as stated in the Petition for Reconsideration, because the Final Order left too much uncertainty for PSE in terms of potential ongoing prudence disallowances and cost recovery, without a revision to the Final Order PSE would find it necessary to terminate the Coal Transition PPA.

19. In light of these circumstances, the decision by PSE, Commission Staff, and the Coalition to propose a settlement that resolves challenged issues in the Coal Transition PPA docket as well as addressing other pending issues and dockets, is appropriate and reasonable. Opposing parties have cited to no law or rule that prohibits parties from proposing a settlement to the Commission that resolves a challenged final order.

20. The Multiparty Settlement does not violate the "nondelegation rule" as Public Counsel suggested at hearing. Public Counsel apparently argues that by proposing an agreed resolution to the Petition For Reconsideration and Motion to Reopen the Record in Docket UE-121373, the Settling Parties are somehow removing from the Commission the discretion to uphold the final order or reconsider and revise the final order. Such is not the case. The Settling Parties are not

[19] *See, e.g., Joint Application of Qwest Communications International, Inc. and CenturyTel, Inc. for Approval of Indirect Transfer of Control,* Docket UT-100820 (the Commission and CenturyLink engaged in settlement discussions after CenturyLink's appeal of the Final Order).

seeking to "remove discretion from the commission or to seek to bind the commission with regard to its decisions" as Public Counsel has suggested.[20] The Settling Parties have proposed a Multiparty Settlement that would settle contested issues in five different dockets—including the Coal Transition PPA docket. As with any settlement, the Commission may approve it, reject it, or approve it with conditions. The power to act on the proposed settlement remains with the Commission. It has not been delegated.

C. The Multiparty Settlement Is Supported By the Record

21. The Multiparty Settlement is supported by the record. The Multiparty Settlement spans five different dockets and the record in each docket supports that particular component of the Multiparty Settlement. The record in the ERF dockets, including the Multiparty Settlement filed in those dockets, supports approval of the ERF. The record in the decoupling dockets, including the Multiparty Settlement filed in those dockets, supports approval of decoupling. The record in the Coal Transition PPA docket, including the Petition For Reconsideration, Motion To Reopen the Record, Affidavit of Roger Garratt, and Multiparty Settlement filed in that docket, support the proposed revisions to the Coal Transition PPA Final Order that is set forth in the Multiparty Settlement. Thus, each component of the Multiparty Settlement stands on its own, based on its own record. The Multiparty Settlement is therefore fully supported by the record – both as a whole and through its individual components.

D. The Multiparty Settlement Is Consistent With the Public Interest

22. Each aspect of the Multiparty Settlement is consistent with the public interest, and when viewed as a whole, the Multiparty Settlement meets the public interest standard. The Commission has long recognized the benefits of revenue decoupling and has encouraged PSE to

[20] ffitch TR. 118:17-19 (citing WAC 480-07-700).

work with the Coalition to develop a mutually agreeable decoupling proposal. The Commission and the Governor's ratemaking discussion group have recognized the value of expedited rate filings, and the Multiparty Settlement presented here allows the Commission to move forward, for a limited time period, with such a proposal. The Legislature and the Commission have recognized the benefits of coal transition power, which allows Washington to move away from coal power generation in the state in the upcoming years, and the Multiparty Settlement allows PSE to move forward with the Coal Transition PPA. Each of these components is addressed in the Multiparty Settlement.

23. Customers benefit from several components of the Multiparty Settlement in addition to the above. Customers have a new opportunity to share in PSE's earnings, an opportunity that does not currently exist. Customers benefit from the efficiencies PSE will need to achieve if it is to earn its authorized return under the K-factor rate plan. Customers benefit from accelerated energy efficiency that PSE has committed to achieve.

E. The Multiparty Settlement Can Be Approved Through One Order Approving the Settlement or Multiple Orders in Separate Dockets Approving the Components of the Settlement

24. The Commission may elect to approve the Multiparty Settlement through multiple orders approving the components of the Multiparty Settlement in their respective dockets; or it may approve the Multiparty Settlement in one order, addressing all dockets that comprise the Multiparty Settlement.

25. As previously discussed, the Commission may consider a settlement that addresses multiple dockets by holding joint proceedings in those dockets, even if the dockets are not consolidated. One final order approving the Multiparty Settlement can be entered in all of the dockets in which the joint proceedings were held.

26. Alternatively, the Commission may choose to enter an order on the Settlement Agreement in the joint proceedings held in the ERF and decoupling dockets, and issue a separate order ruling on the Petition For Reconsideration and the proposed settlement of that Petition For Reconsideration. The Commission can reach the same result by entering multiple orders in separate dockets or by entering a single order approving the Multiparty Settlement.

IV. THE EXPEDITED RATE FILING IS CONSISTENT WITH COMMISSION DIRECTION AND PUBLIC POLICY

A. The ERF Is a One-Time True up of Delivery Expenses, Revenues and Rate Base that Comports With Direction From the Commission and the Governor's Ratemaking Discussion Group

1. The Commission and the Governor's ratemaking discussion group have commented favorably on expedited rate filings

27. The expedited rate filing in this case follows the direction the Commission provided in PSE's last general rate case. In that case Commission Staff proposed an expedited rate proceeding that would address PSE's documented regulatory lag:

> The Company has presented testimony regarding ongoing costs associated with infrastructure additions, replacements and maintenance. This testimony warrants a proper response, but one that is consistent with Commission practice and long-standing rate making principles embodied in an historical rate base matched with test period revenues and expenses that are normalized and include accepted adjustments to the test period.
>
> . . . .
>
> Immediately following the determination of a fully contested rate case, PSE could file an "expedited" rate case using an updated test year. Basically, the case would be an update to the relationships between rate base, revenues and expenses. The Company could not request a change in the rate of return, except to update debt costs for known changes. To reduce controversy, the filing would contain restating adjustments only, such as adjustments for temperature normalization, unbilled revenues and other adjustments (*e.g.*, eliminate charitable contribution, club dues, etc., if any) to "clean" the books in order to reflect proper ratemaking. Finally, there should be no rate spread

> or rate design changes: the Company should follow the most recent Commission decision on those issues.[21]

28. The Commission viewed favorably this proposal by Commission Staff and recommended that PSE and Commission Staff work together to confirm mutual expectations for the filing:

> *Commission Discussion:* We are not called upon to make any specific determination in connection with Staff's proposal for "an expedited form of general rate relief." We nevertheless find it worthy of comment.
>
> As suggested by the preceding discussion, the Commission recognizes the dynamic nature of the financial and economic tides that affect utilities, including PSE, and its customers. The Commission strives to maintain reasonable and appropriate flexibility in its regulatory process to address this ebb and flow. We appreciate Staff's willingness to bring forward the outline of a proposed process mechanism to help address the particular problems associated with PSE's current position in a cycle of capital investment that places unusually high demands on utilities from time to time as they face the need to maintain and replace significant amounts of aging infrastructure.
>
> Again, however, we have no specific proposal before us. If PSE accepts Staff's invitation "to meet with PSE to confirm mutual expectations" for a filing along the lines Staff suggests, or the Company on its own initiative makes such a filing, we certainly will give it fair consideration. Alternatively, Staff and PSE may enter into a broader discussion with other interested participants in the regulatory process and bring forward for consideration specific proposals that may satisfy a range of both common and diverse interests. In this connection, the Commission would be particularly interested in proposals that might break the current pattern of almost continuous rate cases. This pattern of one general rate case filing following quickly after the resolution of another is overtaxing the resources of all participants and is wearying to the ratepayers who are confronted with increase after increase. This situation does not well serve the public interest and we encourage the development of thoughtful solutions.[22]

29. Not long after the Commission's Final Order in PSE's 2011 general rate case, the Governor's ratemaking discussion group made a similar recommendation to encourage expedited

[21] *WUTC v. Puget Sound Energy, Inc.* Dockets UE-111048 and UG-111049 (consolidated) Elgin, Exh. No. KLE-1T 81:5-14.

[22] *WUTC v. Puget Sound Energy, Inc.* Dockets UE-111048 and UG-111049 (consolidated) Order 08 ¶¶505-07 (May 7, 2012) .

rate filings. This group—consisting of experts from the Commission, consumers, regulated utilities, energy advocates and others—had been convened by former Governor Christine Gregoire in response to concerns expressed by regulated utilities that existing rate-setting practices and timelines have made it difficult for the utilities to recover costs related to infrastructure investments.[23] The group came to agreement on a number of administrative actions the Commission could take under their existing authority. One specific recommendation made by the group is as follows:

> Establish by rule a mechanism by which investor-owned utilities may seek expedited treatment of a request for a rate increase that updates test period information on investment (including generation, transmission and distribution facilities), revenues, and expenses since the last formal rate proceeding. The purpose is to hold some elements of rates constant, such as recently determined rate of return and capital structure, and focus on changes in investment, revenues and expenses in order to minimize regulatory lag. The rule should include the prerequisite for such a request, limitations on its use, and the process by which it will be considered.[24]

2. The ERF is consistent with the direction from the Commission and the Governor's ratemaking discussion group

30. The Multiparty Settlement is built upon the direction the Commission provided in PSE's 2011 general rate case and the recommendations of the Governor's ratemaking discussion group. PSE and Commission Staff took to heart the direction received from the Commission in the Final Order in PSE's 2011 general rate case to work together to confirm mutual expectations regarding an expedited rate filing along the lines recommended by Commission Staff. As Ms. Barnard testified, in preparing the ERF, PSE used the Commission Basis Report and included only

[23] Exh. No. TES-2 at 1.

[24] *Id.* at 3. In response to Governor Gregoire's letter, in a letter dated January 15, 2013, Chairman Goltz responded that in PSE's recent rate case, the Commission endorsed expedited rate proceedings that could help break the cycle of almost annual rate cases, akin to the type endorsed by the discussion group, and that PSE and Commission Staff have had discussions on how best to accomplish this for that utility. *Id.* at 4.

restating adjustments.[25] PSE did not make changes to the rate of return, other than its proposal to update it for known changes in long-term debt costs resulting from the refinancing of Pollution Control Hearings Bonds.[26] PSE used the same methodology for rate spread and rate design as it did in its last general rate case. The ERF is a one-time true up for changes to delivery expenses and revenues from the test year in PSE's last general rate case, intended to minimize regulatory lag.[27]

31. Although Public Counsel opposed an expedited rate filing in PSE's 2011 general rate case, in this case Public Counsel witness Jim Dittmer conceded the value of the ERF for addressing regulatory lag and proposed the use of consecutive ERFs, rather than decoupling with a K-factor.[28]

B. The ERF Is Intended To Be a True-Up and Should Not Include Adjustments To Cost of Capital, Pro Forma Adjustments or Changes To Existing Methodologies

32. The Commission should reject adjustments that were never intended to be a part of the expedited rate filing, such as changes to capital structure and cost of capital, pro forma adjustments, and changes to the methodology for restating adjustments. As previously discussed, the ERF evolved out of proposals considered by the Commission in PSE's 2011 general rate case and from recommendations from the Governor's ratemaking discussion group that included representatives of ICNU, PSE, and the Coalition, among others. Both of these proposals recognized that the purpose of the ERF was to update rate base, revenue and expenses

[25] At Staff's request, PSE pro formed in the revenues resulting from the Final Order in the 2011 general rate case. Barnard, Exh. No. KJB-1T (ERF) 8:8-11.
[26] Barnard, Exh. No. KJB-1T (ERF) 4:10-13. *See also* Exh. No. B-2 (PSE's Response to Bench Request No. 2).
[27] *See* Schooley, TES-1T 4:5-13.
[28] *See* Dittmer, Exh. No. JRD-1T 42:10-13.

while keeping the cost of capital and capital structure constant. PSE followed this approach when developing the ERF.

33. The Commission should reject adjustments that differ from those allowed and used in PSE's most recent general rate case. ICNU challenges PSE's restating adjustments for incentive pay and pension costs despite the fact that PSE calculated these adjustments consistent with the 2011 general rate case—a point ICNU does not dispute. With respect to the incentive pay adjustment, ICNU challenges the appropriateness of recovering incentive pay in rates despite the Commission's determination in PSE's 2011 general rate case that recovery of incentive pay was appropriate.[29] With respect to pension contributions, ICNU proposes a new methodology that differs from the four-year average methodology used in PSE's last general rate case. The four-year average smoothes variations in contributions from year to year.[30] Moreover, PSE presented evidence demonstrating that the four-year average is consistent with the current annual pension contribution.[31]

C. The Development of a Mid-Year Commission Basis Report Is Consistent with Commission Practice

34. PSE's use of a Commission Basis Report for the year ending June 30, 2012 to develop the ERF is entirely appropriate, and the Commission should not be distracted by meritless arguments that a test year may only be presented on a calendar year basis. As Ms. Barnard testified, the Commission does not have specific rules regarding the timing of a test year, and it is quite common for a test period to be set on a time period other than a calendar year basis.

> [A]lthough the Commission's rules currently require that the Commission Basis Report be filed annually within four months of the end of the calendar

[29] Gorman, Exh. No. MPG-1T 17:13-17. *See also WUTC v. Puget Sound Energy, Inc.* Dockets UE-111048 and UG-111049 (consolidated) Order 08 ¶123 (May 7, 2012).
[30] *See* Barnard, Exh. No. KJB-11T 18:18-20.
[31] Doyle, Exh. No. DAD-1T 24:21-25:12.

> year, the Commission's rules also require that utilities file quarterly reports on actual results of operations and that such reports provide both the monthly results of operations as well as the latest 12 months' ending balances. The results of operations report for the 12 months ending June 30, 2012 was the basis for the actual results of operations presented on page 2 of Exhibit Nos. ___(KJB-3) and ___(KJB-4) column (A) in the ERF and there is no basis to assume that an additional Commission Basis Report cannot be prepared on a mid-year basis. In fact, prior to June, 2001, the Commission required a filing of a Commission Basis Report on a semi-annual basis.[32]

35. The fact that the 2012 Commission Basis Report was filed April 30, 2013—approximately three months after PSE filed its ERF—does not in any way invalidate the filing or require an updated filing based on the latest report. First, the cycle of updated revenue, expenses and rate base is endless, and the availability of constantly newer data should not paralyze PSE or the Commission and prohibit them from moving forward. Indeed, arguments for newer, more updated test years could be made in every general rate case, as there is always newer, more updated information on revenues, expenses, and rate base that the Commission could consider. Second, the ERF was intended to follow closely on the heels of PSE's 2011 general rate case. The Commission encouraged PSE and Commission Staff to meet to confirm mutual expectations regarding the ERF, [33] and PSE worked with Staff and stakeholders for several months seeking to reach agreement on the ERF.[34] Ultimately, Staff and PSE reached agreement on the form of the filing as part of the Multiparty Settlement, and PSE filed the ERF on February 1, 2013 based on a test year ending June 30, 2012. Under these circumstances, where PSE has been working to implement the ERF since the Commission entered its Final Order in the 2011 general rate case, parties' arguments seeking updated information should not be accepted. PSE should not be

[32] Barnard, Exh. No. KJB-11T 7:19-8:7 (citing WAC 480-100-275 and 480-90-275).

[33] *WUTC v. Puget Sound Energy, Inc.* Dockets UE-111048 and UG-111049 (consolidated), Order 08 ¶507 (May 7, 2012).

[34] *See* Barnard, Exh. No. KJB-1T (ERF) 4:3-6.

required to continually wait for more updated information and, in essence, never move forward with its filing.

D. Use of End-of-Period Rate Base Is Appropriate and No Further Adjustment Is Needed

36. The ERF appropriately uses the end-of-period rate base as a means to address and mitigate the regulatory lag that PSE has faced over the past several years, and which has contributed to PSE's failure to earn its authorized rate of return for more than five years.[35] The use of end-of-period rate base is consistent with the Final Order in PSE's 2011 general rate case, in which the Commission expressly acknowledged the availability of end-of-period rate base as a method of addressing regulatory lag.[36] Indeed, end-of-period rate base calculations have been used by the Commission, in certain circumstances, for decades. For example, in 2002, the Commission approved the use of end-of-period rate base in the Olympic Pipeline general rate case, Docket TO-011472. The Commission relied upon Commission Staff witness Maurice Twitchell's testimony that cited the Commission's Third Supplemental Order in Cause No. U-80-111. In the U-80-111 order the Commission stated that the "utilization of average rate base was not cast in stone" and year-end rate base is an appropriate regulatory tool *under one or more* of the following conditions: (a) abnormal growth in plant; (b) inflation and/or attrition; (c) as a means to mitigate regulatory lag; (d) failure of utility to earn its authorized rate of return over an historical period.[37]

[35] *See* Barnard, Exh. No. KJB-1T (Decoupling) 4:20-6:5; Schooley, Exh. No. TES-3 (documenting PSE's failure to earn its authorized return since at least 2006).

[36] *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-111048 and UG-111049 (consolidated), Order 08 ¶97 (May 7, 2012).

[37] *WUTC v.Wash. Nat. Gas Co.*, 44 P.U.R. 4th 435, 438 (Sept. 24, 1981).

37. Public Counsel witness Mr. Dittmer joins with the Settling Parties in supporting the use of end-of-period rate base to address regulatory lag.[38] However, the Commission should reject his one-sided and incomplete "revenue annualization adjustment," through which he proposes to add end-of-period customer counts to the ERF.[39] First, and foremost, the use of end-of-period rate base to address regulatory lag does not violate the matching principle or require the use of end-of-period customer counts and revenue. To the contrary, by *adding* end-of-period revenues, without including the corresponding end-of-period depreciation and other offsets to revenue, Public Counsel's adjustment violates the matching principle. As Ms. Barnard testified, Public Counsel's proposed adjustment 1) does not consider the additional bad debt, state utility tax, or the regulatory fees associated with the revenues that he proposes to include; and 2) does not annualize the depreciation expense that is also associated with the use of end of period rate base. When Mr. Dittmer's adjustment is corrected for these omissions, the adjustment would have reduced net operating income and therefore *increased* the revenue deficiency for electric operations.[40] Similar and additional adjustments are required for natural gas.[41] The bottom line is that Mr. Dittmer's adjustment is unnecessary, incomplete, and when corrected, only demonstrates the reasonableness of PSE's requests in the ERF.

[38] Dittmer TR. 290:16-292:1. Although supporting use of end-of-period rate base as a general proposition to address regulatory lag, Mr. Dittmer apparently has concerns that the WAC prohibits the use of end-of-period rate base when preparing the Commission Basis Report. *Id.* 289:23-290:7. Given the Commission's statement acknowledging the availability of end-of-period rate base to address regulatory lag in PSE's last general rate case, and given that the very purpose of the ERF is to address regulatory lag, it seems reasonable to use end-of-period rate base in the Commission Basis Report for purposes of the ERF. PSE has not proposed to use end-of-period rate base for future Commission Basis Reports or for calculating its earnings for purposes of the earnings cap.

[39] Dittmer, Exh. No. JRD-1T 15:12-16:7.

[40] Barnard, Exh. No. KJB-11T 3:3-4:3.

[41] Barnard, Exh. No. KJB-11T 4:4-7:3; Exh. No. KJB-14.

V. THE DECOUPLING MECHANISMS ARE CONSISTENT WITH COMMISSION DIRECTION AND PUBLIC POLICY

38. The Commission has a long history with decoupling as documented in the record in this proceeding[42] and in the Commission Decoupling Policy Statement.[43] The Commission's views on decoupling have evolved over time and continue to evolve. As discussed below, the decoupling mechanisms proposed as part of the Multiparty Settlement generally conform with the direction the Commission provided in its Decoupling Policy Statement in 2010 as well as direction provided by the Commission in PSE's 2011 general rate case. However, as the Commission itself has recognized, the fact that the proposed decoupling mechanisms may vary in certain respects from the Decoupling Policy Statement is not a sufficient legal basis for rejecting the mechanisms. In the Final Order in PSE's 2011 general rate case, the Commission recognized that the Decoupling Policy Statement did not set forth immutable doctrine on the issue of decoupling.[44] Indeed, this is consistent with Washington statutes and rules recognizing that policy statements are advisory only,[45] as well as the Washington Supreme Court's determination that "advisory statements have no legal or regulatory effect."[46] Thus, the Commission must fairly review the decoupling mechanisms presented as part of this Multiparty Settlement, whether or not they match up precisely with the elements discussed by the Commission in its Decoupling Policy Statement.

39. The decoupling mechanisms contained in the Multiparty Settlement have evolved from the decoupling mechanisms originally proposed by PSE and the Coalition in the decoupling

[42] Cavanagh, Exh. No RCC-1T 2:17-5:5.
[43] *See* Decoupling Policy Statement at App. 5.
[44] *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-111048 and UG-111049, Order 08 ¶461 (May 7, 2012) .
[45] RCW 34.05.230(1) ("Current interpretive and policy statements are advisory only.").
[46] *Wash. Education Ass'n v. Wash State Public Disclosure Comm'n,* 150 Wn.2d 612, 619 (2003); *see also Pac. Gas & Elec. Co. v. Fed Power Comm'n,* 506 F.2d 33, 38-39 (D.C. Circ. 1974).

dockets. The decoupling mechanisms were refined to address issues raised by stakeholders during the two technical workshops.[47] As Mr. Piliaris and Mr. Cavanagh testify, the resulting decoupling mechanisms are consistent with that proposed by the Coalition in PSE's 2011 general rate case and consistent in spirit with the Commission's Decoupling Policy Statement.[48]

A. The Decoupling Mechanisms Are Generally Consistent With the Commission's Decoupling Policy Statement and the Commission's Direction in PSE's 2011 General Rate Case

40. The decoupling mechanisms with K-factor presented as part of the Multiparty Settlement are consistent with the general guidance of the Commission's Decoupling Policy Statement and should be approved by the Commission. In PSE's 2011 general rate case the Commission considered a decoupling mechanism proposed by the Coalition and determined that it "largely follows the guidance of the Decoupling Policy Statement."[49] PSE argued against that proposal because the proposal failed to address PSE's concerns regarding the financial consequences of its energy efficiency program, particularly as it relates to recovery of its fixed costs not recovered through the PCA and PGA.[50] The Commission encouraged PSE and the Coalition to work together to develop a mutually agreeable decoupling mechanism and stated that it "remained open to proposals for a full decoupling mechanism, even to one that may vary somewhat from what is described in our Policy Statement." [51]

41. PSE and the Coalition have produced such a proposal in this case. The revised proposal, jointly offered by PSE and the Coalition, has garnered the support of all the Settling Parties, which represent customer groups, Commission Staff and the Company. Moreover, one of the

[47] Piliaris, Exh. No. JAP-8T 2:6-15; Cavanagh, Exh. No. RCC-3T 3:1-8.
[48] Cavanagh, Exh. No. 3T 1:14-18, 2:16-3:8; Piliaris, Exh. No. JAP-8T 29:10-31:5.
[49] *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-111048 and UG-111049 (consolidated) Order 08 ¶453 (May 7, 2012) .
[50] *Id.*
[51] *Id,*. n. 617.

principal authors of the proposal that the Commission viewed favorably in PSE's 2011 general rate case has testified that the current mechanism is "entirely consistent with, and is in some ways an improvement upon" the decoupling mechanism proposed in PSE's 2011 general rate case.[52] The current proposal is an improvement because it includes (i) electric as well as gas customers, (ii) more customer classes, (iii) a commitment to increased energy efficiency, and (iv) additional funding for low income customers.[53] Moreover, the K-factor addresses PSE's concerns regarding PSE's recovery of fixed costs in a way that is consistent with the Regulatory Assistance Project ("RAP") study and with decoupling mechanisms approved in other jurisdictions.

1. Off-system sales are properly addressed in PSE's Power Cost Adjustment Mechanism

42. The impact of PSE's conservation program on its off-system electricity sales are properly addressed through PSE's Power Cost Adjustment mechanism rather than in the decoupling mechanism. In the Final Order in PSE's 2011 general rate case the Commission rejected PSE's proposed Conservation Savings Adjustment mechanism, in part, because it relied on "engineering estimates of conservation savings that are ill-suited to development of revenue requirement."[54] In other words, the Commission concluded that PSE's reported conservation savings should not be used for ratemaking purposes. In rejecting the approach in the Joint Decoupling Proposal to simply let the impacts of conservation flow through PSE's Power Cost Adjustment mechanism, ICNU apparently is arguing that PSE should use these "engineering estimates" for purposes of identifying, and then subsequently monetizing, the impact of PSE's

[52] Cavanagh, Exh. No. RCC-1T 2:10-13.
[53] Cavanagh, Exh. No. RCC-1T 5:19-6:16.
[54] *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-111048 and UG-11104 (consolidated) Order 08, synopsis (May 7, 2012) .

conservation program on its off-system sales.[55] ICNU's approach conflicts with the Commission's very recent decision on the impermissible use of reported conservation savings figures for ratemaking.

2. Found margin

43. ICNU and Kroger incorrectly argue that the growth in customers constitutes found margin. However, as Mr. Piliaris testified, these parties fail to acknowledge that substantial costs are incurred by PSE to serve new customers and that the additional revenue from new customers has repeatedly fallen short of overcoming the Commission-determined revenue deficiencies for PSE over the past decade. Moreover, the Joint Decoupling Proposal offers ample protections to ensure that PSE does not unjustly benefit due to revenues from new customers.[56]

B. The Simplified K-factor Strikes the Necessary Balance Between Allowing PSE the Opportunity to Earn its Authorized ROE During a Limited Rate Case Stay Out Period While Also Requiring PSE To Stretch and Increase its Efficiency

44. The K-factor has been revised from the original proposal in response to feedback from stakeholders. The revised K-factor is a carefully balanced component of the Multiparty Settlement that paves the way for a general rate case stay-out period while providing PSE an opportunity to earn its authorized return. The K-factor diminishes the regulatory lag that has hampered PSE's ability to earn its authorized return, but it also requires PSE to stretch in terms of efficiency of operations, if it is to actually earn its authorized return.

[55] Deen, Exh. No. MCD-1T 34:10-35:13.
[56] *See* Piliaris, Exh. No. JAP-24T 5:11-16.

1. The K-factor evolved as a result of input at technical conferences

45. The K-factor, as originally proposed, was based on Company-sponsored conservation that was not reflected in the test year used to set rates.[57] The K-factor as revised, addresses concerns raised by stakeholders during technical conferences in November and January, as Mr. Cavanagh testified:

> Some parties had complained that the original K-factor was too complex, inconsistent with the Regulatory Assistance Project's (RAP) revenue decoupling manual, and an insufficient antidote to the linkage between PSE's financial health and its energy sales. The new K-factor addresses all these objections; it makes revenue recovery completely independent of throughput (both short-term and long-term), requires no complex (or indeed any) calculations, and adopts the RAP model of a K-factor adjustment in annual authorized revenue per customer that anticipates changes in the utility's cost of service (as opposed to its energy efficiency performance).[58]

46. Moreover, as Mr. Piliaris testified, the K-factor is a key component of the Multiparty Settlement because it allows PSE to commit to a general rate case stay-out period. At hearing, Mr. Piliaris discussed the evolution of the current K-factor. After the January 15 technical workshop, in which stakeholders reacted positively to the concept of a K-factor divorced from the conservation-based K-factor in the October decoupling proposal, there began to be a confluence of the decoupling discussions, ERF discussions, and Coal Transition PPA reconsideration discussions—and the possibility of a settlement that would address broader, more diverse issues:

> The notion of a rate case stay-out was starting to bubble to the surface. And so the question was, well, what would it take from the standpoint of a K-factor to accomplish that? So at that point, we need to do the analysis, look at the cost trends and see what it would take to get to that point, and that led to what has been filed most recently on March 1.[59]

[57] *See* Piliaris, Exh. No. JAP-8T 8:10-15.
[58] Cavanagh, Exh. No. RCC-3T 4:3-11.
[59] Piliaris TR. 155:20-156:1.

47. Thus, the evolution of the K-factor in the current proposal is a central element of the Multiparty Settlement. The K-factor, as revised, allowed the Settling Parties to enter into a broad settlement that addresses common and diverse issues that proposes to "break the current pattern of almost continuous rate cases"[60] in accordance with the Commission's direction in the 2011 general rate case. Care must be taken when attempting to evaluate the current decoupling proposal without the proposed K-factor. Without the K-factor, there would be no general rate case stay-out period.[61]

2. The K-factor is mainstream and consistent with decoupling in other jurisdictions

48. Mr. Cavanagh, one of the foremost experts in decoupling in the United States, testified that the K-factor used in the decoupling mechanisms proposed as part of the Multiparty Settlement is mainstream and a conservative proposal.[62] Mr. Cavanagh testified at hearing that the K-factor falls within the family of attrition mechanisms that are quite common in revenue decoupling mechanisms across the country.[63] The K-factor is conservative in that it only addresses delivery revenues, a relatively small portion of revenues, whereas other decoupling mechanisms address a larger fraction of utilities revenues.[64]

49. The RAP study recognizes the use of K-factors in decoupling mechanisms and confirms that this is a mainstream approach to dealing with cost increases during the course of the decoupling program.

---

[60] *See WUTC v. Puget Sound Energy, Inc.*, Dockets UE-111048 and UG-111049 (consolidated) Order 08 ¶ 507 (May 7, 2012) .

[61] *See* PSE's Response to Bench Request No. 1 ("[I]n the absence of the K-factor—and in the absence of the general rate case stay-out period that accompanies the K-factor as proposed in the Multiparty Settlement—Test Year Allowed Delivery Revenue Per Customer can be expected to increase as a result of general rate case filings during this time period.").

[62] Cavanagh TR. 172:11-173:10.

[63] *Id.; see also* Exh. No. RCC-5 at 12.

[64] *Id.*

> The new formulation of the K-factor follows very closely with the description of a K-factor provided in Section 5.4 of *Revenue Regulation and Decoupling: A Guide to Theory and Application,* published in June 2011 by the Regulatory Assistance Project ("RAP Manual"). Section 5.4 of the RAP Manual describes the K-factor as "an adjustment used to increase or decrease overall growth in revenues between rate cases." It goes on to note that "a successful revenue [K-factor] function would be one that keeps the utility's actual revenue collection as close as possible to its actual cost of service throughout the period between rate cases." As discussed in the Prefiled Direct testimony of Katherine J. Barnard, Exhibit No.___(KJB-1T), this aligns well with the intent of the K-factor in this case. In application, the RAP Manual suggests that the K-factor could be used "as an adjustment to the RPC allowed revenue determination. . . . [T]his is how the K-factor is being applied in this modified proposal (i.e., to allowed revenue per customer).[65]

3. The K-factor requires PSE to stretch and operate efficiently in order to earn its authorized ROE

50. PSE provided evidence demonstrating that the K-factor creates a stretch goal for PSE, requiring PSE to operate even more efficiently and keep its costs down if it is to earn its authorized rate of return. As part of the decoupling mechanisms agreed to in the Multiparty Settlement, PSE accepted an escalation factor well below the escalation factor justified by its historical growth in expenses as reflected in past general rate cases. Thus, as Ms. Barnard testified, although PSE's experience over the past five years justified a delivery-related escalation factor of 4.06 percent for electric (i.e., a K-factor of 1.0406), PSE agreed to a three percent escalation factor (i.e., a K-factor of 1.03). Similarly, for natural gas, although PSE's experience over the past five years justified an annual delivery-related escalation factor of 3.8 percent (i.e., a K-factor of 1.038), PSE agreed to a 2.2 percent escalation factor (i.e., a K-factor of 1.022). PSE relied on the forecasted average Consumer Price Index ("CPI") for the 2013 to 2015 period less a one-half percent productivity factor for operating expense (excluding rate base and depreciation), which is significantly below PSE's actual growth in operating expenses

[65] Piliaris, Exh. No. JAP-8T 9:14-10:9.

over the past five years.[66] Although one may debate whether the CPI minus productivity is the proper escalation factor for non-rate base and non-depreciation expense, it cannot be disputed that this escalation factor is significantly lower than PSE's historical level of delivery expenses. Thus, PSE must tighten its belt further during the stay-out period and under the K-factor. Without the K-factor and stay-out period, PSE could file a general rate case and seek full recovery of these delivery expenses—which history has shown to be considerably higher than the CPI less productivity factor.

51. Public Counsel's claim that the escalation factor is flawed because it does not account for customer growth does not withstand scrutiny. Ms. Barnard demonstrated that when analyzing the historical growth rate on a per customer basis, the growth in both rate base and depreciation expense resulted in K-factors in excess of the K-factors proposed in the Multiparty Settlement.[67]

52. Moreover, although regulatory lag will be reduced as a result of the K-factor, it will still exist. For example, the K-factor is initially applied in mid-2013 to revenue per customer that is based on the level of costs experienced as of June 30, 2012; however, the level of incremental rate base is substantially higher in 2013, as reflected in Exhibit No. KJB-17. Therefore, the K-factor adjusted revenue per customer will still lag PSE's projected cost per customer for the

[66] Both the electric and natural gas K-factor values represent a weighted average escalation factor based on the percentage of non-production related revenue requirements for the following: 1) non-production rate base, 2) depreciation expense and 3) all other operating expenses, which include O&M, Customer Service and Administrative and General expenses. The "all other operating expenses," which comprises 50 percent of the electric ERF revenue requirement and 44 percent of the natural gas ERF revenue requirement, is based on the CPI less productivity factor. The rate base and depreciation expense components of escalation factors are based upon the historical compound growth rate in these costs as shown in the approved general rate case compliance filings from 2006 through 2011. *See* Barnard, Exh. No. KJB-1T (Decoupling) 6:8-15; Exh. No. KJB-4T (Decoupling) at 1. Ms. Barnard testified that historical trends are a fair representation of PSE's anticipated investment through the general rate case stay-out period. *See* Barnard, Exh. No. KJB-1T (Decoupling) 8:19-9:14; Exh. No. KJB-5 (Decoupling).

[67] *See* Barnard, Exh. No. KJB-11T 23:3-24:2; Exh. No. KJB-16. Utilizing the customer adjusted growth rates results in a K-factor value of 3.44% for electric operations, which supports the conclusion that the proposed 3.0% K-factor is reasonable. Similar calculations were performed for gas operations and the resulting K-factor value for gas operations would be 2.71%, which supports the conclusion that the proposed 2.2% K-factor is reasonable. *Id.*

remainder of 2013.[68] To the extent regulatory lag is seen as a positive factor driving PSE to operate more efficiently, regulatory lag is not eliminated, only contained.

4. PSE will not double recover through the K-factor and the CRM

53. Concerns that PSE will double recover for pipeline replacement through the K-factor and the Cost Recovery Mechanisms ("CRM") provided for in Docket UG-120715 are without merit. The CRM is intended to promote *accelerated* replacement of certain elevated risk pipe. The K-factor does not recover this accelerated level of pipe replacement for certain high-risk pipes identified by the Commission in its policy statement.[69] Moreover, PSE has committed that any pipeline replacement costs it seeks to recover in the CRM will be above and beyond the level of replacement contained in the K-factor.[70]

5. The rate impacts resulting from decoupling and ERF are modest

54. The rate impacts from decoupling are modest. Electric residential customers face an initial rate impact of 1.6 percent and natural gas residential customers face an initial rate impact of 1.8 percent for decoupling. An electric residential customer using 1,000 kWh per month would experience a monthly increase of $1.63. A natural gas residential customer using 68 therms per month would experience a monthly increase of $1.43.[71]

55. Opposing parties' characterization of the rate impacts must be closely analyzed. Public Counsel quantifies the rate impacts of the K-factor and the ERF on a cumulative basis, over the maximum course of the rate plan until new rates would go into effect. So, for example, in

[68] *See* Barnard, Exh. No. KJB-11T 29:13-19. Additionally, because expenses are calculated in PSE's ERF on an average monthly basis, the expenses allowed in the K-factor lag the end-of-period rate base used in ERF by six months. *Id.*

[69] *See* Docket UG-120715, Commission Policy on Accelerated Replacement of Pipeline Facilities with Elevated Risk (December 31, 2012).

[70] *See* Barnard, Exh. No. KJB-1T (Decoupling) 10:1-5; Barnard, Exh. No. KJB-11T 32:4-6.

[71] *See* Piliaris, Exh. No. JAP-8T 28:6-29:9.

calculating a $465 million[72] rate impact, Public Counsel multiplied the one-time additional ERF revenue requirement of $31 million by the number of years in the rate plan. Thus, the one time $31 million increase for the ERF is characterized as having a $124 million rate impact. Public Counsel treats the decoupling increases similarly. Under Public Counsel's math, the $77 million electric and natural gas increase the Commission granted PSE's last May[73] now has a $154 million rate impact, and the rate impacts will grow annually into eternity, unless and until rates are decreased below the level approved by the Commission in May 2012.

56. The bottom line is that the rate increase should be viewed in the proper context. In this regard, PSE's combined electric and gas revenues at current rates are approximately $12 billion over this same time period. Moreover, the three percent rate cap that limits the amount of rate increases from decoupling in a given year is not projected to be exceeded even once during the course of the rate plan and in fact consistently fell far short of the cap.[74]

6. Net operating loss and accumulated deferred income taxes do not justify changes to the K-factor

57. The Commission should reject Public Counsel's speculative and flawed use of accumulated deferred income tax to challenge the validity of the K-factor. Public Counsel speculates about probable "significant growth" in accumulated deferred income tax relating to possible utilization of prior period net operating losses ("NOL"). Public Counsel relies on this speculation in questioning the use of historical growth in rate base to predict future growth.[75]

58. The most obvious flaw in Public Counsel's theory is that there is no assurance that the NOL will turn around over the course of the rate plan, as Public Counsel assumes. If bonus

[72] *See* Dittmer, Exh. No. JRD-1T 3:18-23.
[73] *See WUTC v. Puget Sound Energy, Inc.* Dockets UE-111048 and UG-111049 (consolidated) Order 08 ¶6 (May 7, 2012).
[74] *See* Piliaris, Exh. No. JAP-24T 11:1-11.
[75] *See* Dittmer, Exh. No. JRD-1T 25:12-17.

depreciation continues at the 50 percent rate or higher, as has been the case for the past five years, then the NOL is not projected to turnaround.[76] Moreover, Public Counsel commits a simple but significant error by assuming that the entire NOL relates to property that is the subject of this filing. It does not. It includes production property as well as non-production property. "The speculative NOL reversals are predicated on Company-wide estimates of taxable income—which includes much beyond the scope of this filing."[77]

59. Even if there were merit to Public Counsel's speculation on the reversal of the NOL, the evidence demonstrates that using the historical growth in rate base is still appropriate. As Ms. Barnard testified:

> Even if the entire benefit associated with the NOL was to be utilized in 2013, the increase in forecasted rate base would still exceed the level supported through customer growth and therefore utilizing the historical trend is appropriate. Many of the parties speculated that the reversal of the NOL benefits would completely reverse the need for the K-factor, however this exhibit proves that their assumption is incorrect.[78]

C. Sharing of Overearnings Provides a Benefit To Customers that Does Not Currently Exist

60. PSE customers gain a benefit from the proposed earnings cap that does not exist today. Currently, if PSE earns in excess of its authorized rate of return, customers have no right to share in those earnings. The soft-earning cap strikes an appropriate balance between allowing customers to share in some earnings above the authorized rate of return, while still encouraging PSE to operate efficiently so that it might have an opportunity to increase its earnings. Moreover, if PSE is able to operate efficiently and earn in excess of its authorized rate of return, those efficiencies will ultimately benefit customers in PSE's next general rate case.

[76] Marcelia, Exh. No. MRM-3.
[77] Marcelia, Exh. No. MRM-1T 4:10-12.
[78] Barnard, Exh. No. KJB-11T 27:1-7; Exh. No. KJB-17.

61. The Commission has recognized the benefits of allowing companies to keep a portion of the earnings in excess of their authorized return as an incentive to operate more efficiently:

> In the course of consideration of the Settlement, Avista proposed a cap on its earnings at the 9.8 percent ROE level. We decline to accept that offer. It would send the wrong signal to the Company. Under ratemaking theory applied by this and other state commissions for decades, companies should have every incentive to manage the company efficiently in order to earn more for the company shareholders. We should not set an artificial cap on earnings that could diminish the incentive for efficient management. Further, if Avista were to "overearn" through savings efforts, those savings would become the new norm in the next rate case which would serve to benefit ratepayers in the future. Indeed, the Company's efforts to save money through efficiency are a key element to earning its allowed rate of return.[79]

62. The 25 basis point buffer above PSE's authorized rate of return in which PSE retains any "overearning" is reasonable, particularly when one considers the several years that PSE has not earned its authorized return. Although PSE's customers have not been required to contribute towards bringing up PSE's actual earnings to the level authorized by the Commission in past years when PSE has not earned its authorized return, they will have the opportunity to share in the benefits if PSE is successful in earning 25 basis points above its authorized return. Moreover, in light of PSE's historical inability to earn its authorized return, it is unknown whether PSE will even now reach or exceed its authorized rate of return. But, to the extent PSE is successful in exceeding its authorized rate of return, customers can share in the benefit both in terms of earnings sharing and in terms of efficiencies in operations that benefit customers in the long run.

63. When compared to earnings caps and bands in other jurisdictions, the soft earnings cap proposed is reasonable. For example, the earnings sharing for Cascade Natural Gas in Oregon

[79] *WUTC v. Avista*, Dockets UE-120436 and UG-120437 (consolidated), Order 09 ¶79 (December 26, 2012).

applied once the utility's earnings exceeded 175 basis points over its allowed ROE and only one-third was returned to customers.[80]

D. The Evidence Does Not Support a Prospective Downward Adjustment to PSE's Return on Equity or Equity Ratio

64. The Commission should reject proposals to (i) adjust PSE's return on equity or equity ratio as a result of implementing decoupling, (ii) adjust PSE's return on equity to reflect changes in capital markets since PSE's last general rate case, and (iii) calculate return on equity and capital structure based on generally accepted accounting principles ("GAAP") rather than on a regulated basis. The decoupling mechanisms protect customers by including an earnings test that allows earnings in excess of 25 basis points of PSE's authorized rate of return to be shared evenly with PSE's customers.[81] It makes no sense to lower PSE's authorized return on equity where, as here, PSE has been underearning its ROE and the proposals contained in the Multiparty Settlement are designed to remove obstacles that limit PSE's ability to earn its authorized return.

1. Substantial evidence rebuts arguments that decoupling should include a prospective downward adjustment to ROE or capital structure

65. Substantial evidence in the record supports PSE's position that the Commission should not prospectively adjust downward PSE's rate of return or equity ratio. PSE and the Coalition jointly petitioned the Commission for approval of the decoupling mechanisms they developed,

---

[80] *See In the Matter of Cascade Natural Gas Corp. Request for Authorization to Establish a Decoupling Mechanism and Approval of Tariff Sheets No. 30 and No. 30-A*, Docket UG 167, Order 06-191(April 14, 2006); *see also In the Matter of MDU Resources Group, Inc., Application for Authorization to Acquire Cascade Natural Gas Corp*, Docket UM 1283, Order No. 07-221at p. 4 (extending decoupling to September 2012) (June 5, 2007); *see also In re: Atmos Energy Corp's Georgia Rate Adjustment Mechanism ("GRAM") 2012 Petition*, Docket 34734, Order Adopting Atmos's Rate Adjustment Request at 2. (Jan. 31, 2013) (approving decoupling mechanism in which authorized revenues change annually according to a comparison of historic test year and a forward looking test year and the adjustments necessary to bring authorized revenues up to a 10.5 percent ROE or down to a 10.9 percent ROE--20 basis points to either side of the authorized 10.7 percent ROE).

[81] Piliaris, Exh. No. JAP-1T 34:5-16.

and in support of the petition, Mr. Ralph Cavanagh, a nationally-recognized expert in decoupling, testified that the vast majority of jurisdictions have not prospectively reduced a utility's ROE or equity ratio when implementing decoupling. In response to a question from Commissioner Jones at hearing regarding his experience testifying in decoupling proceedings, Mr. Cavanagh testified as follows:

> Q: In how many cases of those have you testified?
>
> A: A substantial majority, Commissioner Jones. And let me just say that, although when I first testified on the revenue decoupling for Puget Sound Energy 20 years ago to the week, I would not have claimed to be an expert on return-on-equity issues and decoupling.
>
> I do now in part of as a result of all of that experience. And, Commissioner Jones, I must—I bristle just a little at the suggestion that it was only a small or glancing reference in my testimony in this issue.
>
> So just to reinforce the record, precisely because too often this gets discussed with commissions with either side cherry-picking the national record, I want to emphasize that you have in front of you an assessment of every ROE decision in a revenue decoupling case compiled by Pamela Morgan updated to March of 2013.
>
> And here are the numbers. 76 relevant decisions. 60 declining to make a prospective ROE adjustment. You will, of course, have an opportunity to look at the history, look at the experience, and decide if an adjustment is appropriate. But in 60 of 76 cases, there is no adjustment. In nine more there's a ten basis point adjustment, half of them as a result of settlement.
>
> What is proposed to you on ROE in the joint settlement is the mainstream of commission experience with this issue.[82]

66. As noted in the testimony above, Mr. Cavanagh presented an exhaustive study of decoupling decisions in the United States, performed by Pamela Morgan, which found that in 60 of 76 commission decisions, ROE was not reduced.[83] The bottom line is that there is no

[82] Cavanagh, TR. 166:10-167:9.

[83] *See* Exh. No. RCC-5 at 14. In the remaining 16 decisions, 9 of them involved ROE reductions of 10 basis points. Almost one-half of these were approvals of settlement agreements.

empirical evidence that decoupling decreases business risk, although, in contrast, one empirical study concludes that decoupling may actually i*ncrease* a utility's overall business risk.[84] Decoupling deferrals may result in refunds to customers or surcharges, depending on customer usage, weather, the economy, and other factors that affect customers' use of energy. Further, the evidence in the record demonstrates that adjustments resulting from decoupling are minimal. Ms. Morgan points to two primary findings that shed light on the empirical questions involved in the ROE issue:

> First, it is clear that decoupling adjustments are both surcharges for under-collections of revenues for fixed costs and refunds of over-collections of such revenues. *In the refund situation, the utility has foregone the opportunity to collect more revenue (for fixed costs) than the amount authorized in its last general rate case.* While opponents of decoupling tend to testify extensively about the risk reduction associated with the possibility of surcharges, acknowledgements of lost opportunity associated with possible refunds are far more infrequent. Whether these changes in risk and opportunity affect income depends on whether those fixed costs are the same, less or more than the authorized amount. . . . Without looking at substantial amounts of empirical data, it is difficult to conclude that the risk of under-collecting fixed-cost revenue is greater than the lost opportunity of overcollecting fixed costs, assessed in consideration of changes between authorized and actual prudent fixed costs.
>
> Second, regardless whether refund or surcharge, decoupling adjustments are, by and large, small. It appears that neither the under-recovery risk reduction or over-recovery lost opportunity are very significant. Given the relatively small amounts of the decoupling adjustments, however, it is not apparent that this reductions is very significant.[85]

67. Here, PSE is giving up several opportunities as part of the decoupling mechanisms and the Multiparty Settlement. PSE gives up the ability to recover revenues resulting from increased customer usage due to colder than normal temperatures or for any other reason. PSE is forgoing its opportunity to seek recovery of its actual delivery costs during the next several years, instead

[84] *See* Exh. No. RCC-5 at 16, (citing "The Impact of Decoupling on the Cost of Capital—An Empirical Investigation," a 2011 Discussion Paper by the Brattle Group and authored by Joseph B. Wharton).

[85] Exh. No. RCC-5 at 16 (emphasis added).

agreeing to a K-factor that is below its historical increases over the past several years. Additionally, PSE will forgo the opportunity to keep all earnings in excess of its authorized return, instead agreeing to share returns over 25 basis points above its authorized rate of return with customers. In light of these tradeoffs, there is no empirical evidence that PSE's business risk will decline materially, or at all.

68. In contrast to this substantial evidence, ICNU, Public Counsel and Kroger rely on supposition to support their proposed decrease in rate of return or equity ratio. Mr. Gorman admitted at hearing that he had not been successful in convincing other state regulatory commission's to explicitly adjust the utility's ROE downward when approving a decoupling mechanism.[86] Moreover, his testimony at hearing appears to support the approach advocated by PSE and the Coalition that the Commission should not *prospectively* adjust ROE but wait and see the quantifiable effects of decoupling on ROE. When asked for the evidence in this case and from other jurisdictions supporting his proposed 25 basis point decrease in ROE due to decoupling, Mr. Gorman did not point to any cases supporting a specific ROE adjustment. Rather he opined that over time, the difference between an A-rated utility bond and a Baa-rated utility bond is approximately 25 basis points.[87]

69. The Settling Parties' position is consistent with the Commission's Decoupling Policy Statement in which the Commission requests evidence evaluating the impact of decoupling on risks to investors and ratepayers and its effect on ROE.[88] PSE and the Coalition presented substantial evidence that the effect of decoupling on cost of capital or capital structure cannot be known prospectively and should be based on actual changes to cost of capital or capital structure

[86] Gorman TR. 210:1-5.
[87] Gorman TR. 206:9-207:24.
[88] Decoupling Policy Statement at 17.

that may result from having a decoupling mechanism in place for a period of time. No one has provided empirical evidence of the decreased risk to investors as a result of decoupling and no witness can point to evidence supporting a specific decrease in ROE or equity ratio as a result of implementing decoupling. In contrast, one study in the record demonstrates increased business risk as a result of decoupling.[89] The vast majority of jurisdictions that have implemented decoupling have not prospectively adjusted ROE or equity structure downward.[90] Supposition, gut instincts, and anecdotal evidence proffered by ICNU, Public Counsel and Kroger does not trump the substantial evidence provided by PSE and the Coalition demonstrating that a prospective adjustment to ROE or equity ratio is not justified.

2. The Commission should not update ROE and capital structure in this proceeding, other than to pass through lower cost of long-term debt

70. The Commission should resist arguments that the ROE and capital structure should be adjusted in this proceeding, irrespective of the decoupling mechanism. The current case is not a general rate case—the usual vehicle for establishing cost of capital. Moreover, the Joint Parties filed the initial decoupling petition only a few months after the Commission issued the Final Order in PSE's 2011 general rate case. In that case, the Commission set a capital structure with 48 percent equity and an allowed return on equity of 9.8 percent for the rate year May 2012 through April 2013, which was a decrease from PSE's previous authorized ROE of 10.1. Additionally, just a few months ago, in the recent settlement in the Avista general rate case, the Commission approved a settlement that included an ROE of 9.8 percent—the same ROE that is currently in place for PSE—finding that ROE to be within a zone of reasonableness.[91] Given the recent adjustment of PSE's ROE in a general rate case, and the Avista ROE set at the same rate,

[89] *See* Exh. No. RCC-2, 22:5-11.
[90] *See* Exh. No. RCC-5 at 14.
[91] *WUTC v. Avista,* Dockets UE-120436 and UG-120437, Order 09 ¶74 (December 26, 2012).

the Commission should not adjust PSE's cost of capital in this proceeding. This is consistent with the Commission's previous decision approving decoupling outside of a general rate case—without an adjustment to ROE—when Avista had recently been before the Commission in a general rate case.[92] In that case the Commission stated: "Although this petition is not part of a general rate case, the fact that Avista had such a case before us within the past *13* months is sufficient in this context to guide our decision."[93]

71. Even the evidence proffered by ICNU does not support a downward adjustment to ROE. PSE looked at the authorized return on equity for the regulated utilities within the holding companies in ICNU's proxy group:

> According to the SNL Energy database, the average authorized return on equity for the operating utilities within ICNU's proposed proxy group is 10.08%, and the average capital structure for the operating utilities within ICNU's proposed proxy group contains 48.80% equity. . . . Thus, each of the average authorized return on equity and the average authorized capital structure of the operating utilities in ICNU's proposed proxy group is substantially higher than that advocated for PSE in this proceeding.[94]

72. ICNU and Public Counsel baldly assert that because utility bond yields have fallen, so too should return on equity. They provide no evidence regarding the correlation of utility bond yields to equity returns. And, when the data from ICNU's own proxy group is scrutinized, it flies in the face of this unsupported assertion. Simple averages from Mr. Gorman's proxy group materially undermine the entire premise of his testimony and his proposed return on equity. The return on equity awarded to operating companies in Mr. Gorman's proxy group for the third

---

[92] *See In re Petition of Avista Corp. for an Order Authorizing Implementation of a Natural Gas Decoupling Mechanism and to Record Accounting Entries Associated with the Mechanism*, Docket UG-060518, Order 04 ¶30 (February 1, 2007); *see also In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of a Distribution Decoupling Rider*, Case No. 11-5905 EL-RDR (May 30, 2012).

[93] *See In re Petition of Avista Corp. for an Order Authorizing Implementation of a Natural Gas Decoupling Mechanism and to Record Accounting Entries Associated with the Mechanism*, Docket UG-060518, Order 04 ¶30 (February 1, 2007).

[94] *See* Doyle, Exh. No. DAD-1T 7:1-6; Exh. No. DAD-3.

quarter of 2012 through the first quarter of 2013 (after the Final Order in PSE's 2011 general rate case was entered) average 10.08. The average for first quarter 2013 only remains at 9.88—still above PSE's current authorized return on equity.[95]

73. Bench Exhibit B-6C further supports the premise that PSE's current authorized return on equity of 9.8 percent should not be further reduced in this proceeding. The 9.8 percent return on equity ordered by the Commission in May 2012 was already below the average return on equity awarded in 2012 for both gas and electric utilities, according to the evidence in Exhibit B-6C. One could infer that the Commission already reflected the downward trend that Mr. Gorman now claims is occurring when it decreased PSE return on equity to 9.8 percent last year. Moreover, the average return on equity for electric utilities for first quarter 2013 is far closer to PSE's current return on equity than those proposed by ICNU and Public Counsel. For gas utilities, the three decisions in the first quarter of 2013 are too few to draw any conclusion as to the direction of return on equity for gas utilities.

74. Moreover, the stay-out period, by itself, does not support a downward adjustment to ROE or equity ratio. As Mr. Hill conceded at hearing, it is unknown whether interest rates will go up or down during the course of the stay-out period.[96] With interest rates at all-time lows, there is certainly a reasonable likelihood that interest rates will increase and ROEs will move upward rather than downward during the course of the stay-out period. The bottom line is that in these unprecedented and uncertain economic times, when interest rates are at artificially low levels due to unprecedented Federal Reserve monetary policy, the Commission should use extreme caution in following traditional methods of evaluating ROE particularly when it has no information

[95] *See* Exh. No. DAD-3.

[96] Hill TR. 295:7-10 ("I do admit, as Mr. Doyle points out, that there is a possibility, that if the economy catches fire, that interest rates could go back up.").

before it to evaluate how the artificially low interest rates should be viewed, adjusted or treated.[97]

75. PSE has proposed to update its cost of long-term debt as part of this proceeding, in light of the current refinancing of Pollution Control Hearing bonds that is taking place at the present time.[98] Because the interest rate is known to PSE, it is reasonable to pass through to PSE's customers these savings resulting from actual decreases in long-term debt costs. However, it does not make sense to speculate on the interest rate for future refinancings that may occur during the course of the general rate case stay-out period.

3. PSE's capital structure and ROE must be considered on a regulated basis rather than on an unadjusted GAAP basis

76. ICNU and Public Counsel attempt to resurrect positions that the Commission rejected in PSE's 2011 general rate case. Specifically, ICNU witness Mr. Gorman disregards the Commission's determination in PSE's 2011 general rate case that these calculations should be viewed on a regulated basis rather than on a GAAP basis. Mr. Gorman calculated PSE's capital structure and equity return on a GAAP-basis and reached the inaccurate conclusion that PSE is earning in excess of its authorized return on equity in 2012, and that PSE's actual capital structure contains less equity than its authorized 48 percent.[99] Mr. Gorman's misunderstanding of the Commission's determination in PSE's 2011 general rate case caused him to reach these erroneous calculations. Mr. Gorman mistakenly testified that "[t]he capital structure used to set rates in PSE's last rate case was a hypothetical capital structure that included a larger common equity ratio than PSE's actual capital structure mix."[100] In contrast to Mr. Gorman's testimony,

[97] *See* Doyle, Exh. No. DAD-1T 7:9-16.
[98] Exh. No. B-2 (PSE's Response to Bench Request No. 2).
[99] Gorman, Exh. No. 3:18-4:4.
[100] Gorman, Exh. No. MPG-1T 7:5-7.

the Commission made clear in PSE's 2011 general rate case that PSE's actual average common equity in the test year exceeded 48 percent:

> Commission Determination: We find the evidence establishes that PSE's actual average capital structure during the test year was as portrayed by the Company through Mr. Gaines's testimony: 48.5 percent equity, 49.5 percent long-term debt and 2.0 percent short-term debt. Thus, the capital structure PSE proposes in this case contains slightly less equity than was in place during the test period.[101]

In reaching this determination, the Commission was "persuaded by Mr. Gaines's testimony responding to Mr. Gorman's concerns about removal of common equity supporting non-regulated subsidiaries and the adjustment to regulated common equity for OCI."[102]

77. These same principles upheld by the Commission in PSE's 2011 general rate case dispel the claims by ICNU and Public Counsel that PSE is currently earning an ROE of 10.75 percent, in excess of its authorized return on equity of 9.8 percent. ICNU and Public Counsel continue to make the same mistake that Mr. Gorman made in PSE's 2011 general rate case—failing to remove equity supporting non-regulated subsidiaries and other comprehensive income ("OCI"). As Mr. Doyle testified, ICNU and Public Counsel begin with capital structure and equity calculations determined on a GAAP basis, and they fail to make the adjustments and reconcile items that are treated differently on the regulated side of the equation such as OCI, non-regulated subsidiaries and gains and losses from derivatives. To mix and match these measurements—as Public Counsel and ICNU have done—is inappropriate.[103]

---

[101] *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-111048 and UG-111049 (consolidated), Order 08 ¶52 (May 7, 2012) ; *see also id* ¶ 56 ("Retaining PSE's current equity ratio of 46 percent *while the Company is actually capitalized at 48 percent* and may be experiencing attrition could be viewed unfavorably by the financial markets and rating agencies.")(emphasis added).

[102] *Id.*, n. 63.

[103] *See* Doyle TR. 255:9-256:2. The Commission should be wary of any use of unadjusted financial data, which is likely to commingle regulatory and GAAP concepts in an impermissible way. Additional examples include pension accounting and income taxes.

E. PSE's Approach To Calculating Deferrals Is Valid and Arguments To the Contrary Are Not Supported By the Weight of the Evidence

78. At hearing, Kroger introduced a new line of argument that, because conservation will reduce energy consumption more than billed demands,[104] the way PSE calculates its actual delivery revenue will necessarily lead to overstated decoupling deferrals.[105] However, Kroger ignores the obvious truth that conservation is not the only factor that influences the relationship between PSE's energy sales and billed demand. This failure to recognize, quantify, or even acknowledge, potential offsetting factors affecting this relationship undermines the validity of Kroger's concern. Indeed, PSE's investigation into this issue for the current proposal led to the conclusion that this was a non-issue.[106] Further, with no proven changes in the future relationship between PSE's energy sales and billed demands, Kroger's related concerns about PSE's demand ratchets are moot since revenues from these ratchets, which are already reflected in the deferral calculations, would not be materially affected.[107] PSE's approach to calculating the deferrals was further validated in its examination of other utilities' decoupling mechanisms, which typically use the same approach.[108] Based on the weight of this evidence, the Commission should reject claims that the approach used to calculate deferrals in the current proposal is somehow biased in favor of PSE.

F. Schedule 449 Customers Are Treated Fairly

79. ICNU's claim that Schedule 449 customers would face higher rate increases than other customers is misleading. As Mr. Piliaris testified, this claim needs to be put into proper context. The costs of electric energy for customers served under Schedule 449 can be broken up into

[104] Boehm TR 225:15-17.
[105] Boehm TR 225:25-226:2.
[106] Piliaris TR 225:7-11.
[107] Piliaris TR 225:23-24.
[108] Piliaris TR 226:13-16.

three primary categories; costs recovered directly through Schedule 449, costs recovered through PSE's Open Access Transmission Tariff ("OATT") and costs recovered by the customers' power suppliers. While PSE does not have access to information regarding these customers' power supply costs, they typically make up a substantial fraction of the overall cost of electricity for large customers like these. Of the remaining two components, the vast majority of the costs are currently recovered through PSE's OATT.[109] The rate increases referenced in ICNU's testimony do not apply to the OATT component of their bills. If PSE's ERF and rate plan are adopted as proposed, the combined charges for Schedule 449 customers for delivery services will have decreased by about $2.0 million, or almost 25 percent, from 2011 general rate case levels. Each subsequent application of the K-factor would increase their charges by approximately $10,000 on overall delivery costs of approximately $6.25 million, or less than 0.2 percent per year. If power supply costs are also taken into consideration, this percentage would be far lower.[110]

VI. OTHER COMPONENTS OF THE MULTIPARTY SETTLEMENT

A. Allocation of Gain From the Sale of Jefferson County Service Territory Will Be Brought To the Commission in a Separate Proceeding After the True Up Is Completed

80. The Commission should reject arguments by opposing parties that PSE's sale of a small portion of its service territory[111] to Jefferson County Public Utility District No. 1 ("JPUD") calls into question the Multiparty Settlement. As the Multiparty Settlement and other evidence makes clear, PSE intends to make a filing with the Commission relating to the allocation of gain from

[109] PSE's new OATT rates were formally approved by the Federal Energy Regulatory Commission on May 6, 2013.

[110] Piliaris, Exh. No. JAP-24T 13:3-14:10.

[111] Barnard, Exh. No. KJB-11T 22:11-13 (PSE's Jefferson County service territory represented approximately 18,000 customers or 1.7% of its electric customer base).

the sale of a portion of its service territory to Jefferson County Public Utility District No. 1.[112] Ms. Barnard testified that there is a 90-day true-up period after the April 1, 2013 closing of the transaction, which concludes on or about July 1, 2013. PSE will make a filing with the Commission after the 90-day true up period is concluded.[113]

81. PSE expects the reduction in its electric delivery system costs in Jefferson County to be offset by a commensurate reduction in rate revenue from Jefferson County customers.[114] Also, based on PSE preliminary analysis, the rate base per customer in Jefferson County is slightly less than the rate base per customer for all PSE's customers, and the loss of the Jefferson County customers will have a negligible impact on the rate base per customer for PSE's remaining customers.[115] The transfer of PSE's service territory reduces the number of customers PSE serves and reduces the allowed revenue in the decoupling mechanism.[116] Thus, ICNU's concerns that the Multiparty Settlement is somehow distorted due to the sale of the Jefferson County service territory is not supported by the record.

B. No Party Has Opposed the Property Tax Tracker Which Has Been Proposed as Directed by the Commission in PSE's 2011 General Rate Case

82. PSE proposed a Property Tax Tracker in its expedited rate filing. This is consistent with the Commission's Final Order in PSE's 2011 general rate case in which the Commission directed PSE to bring forward a proposal that will allow for property taxes—no more and no less—to be recovered in rates by means of a rider.[117] The Multiparty Settlement recommends

[112] Barnard, Exh. No. KJB-11T 20:7-10.
[113] Barnard, Exh. No. KJB-11T 20:4-12.
[114] Barnard, Exh. No. KJB-11T 21:15-17.
[115] Barnard, Exh. No. KJB-11T 21:19-22:4, Exh. KJB-15.
[116] Barnard, Exh. No. KJB-11T 22:6-8.
[117] *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-111048 and UG-111049 (consolidated) Order 08 ¶143 (May 7, 2012).

approval of the Property Tax Tracker, and no party has opposed the Property Tax Tracker. Accordingly, the Commission should approve the Property Tax Tracker, Schedule 140, as filed.

C. Increased Low Income Funding Is Consistent With the Public Interest

83. The Multiparty Settlement as amended with The Energy Project's Joinder increases benefits to low-income customers while also addressing Commission Staff's previously stated concerns about the need to review the methodology for low-income funding.[118] Low-income funding through the HELP program will increase by $1.5 million, which brings the total low-income bill assistance to $21.7 million until new rates go into effect in PSE's next general rate case. PSE and Commission Staff have committed to work with The Energy Project and other interested parties to address "the merits of the existing HELP program and other potential design options prior to PSE's next general rate case."[119] PSE's investors have also agreed to contribute an additional $100,000 per year in low-income energy efficiency funding.

D. Significant Reporting Requirements Currently Exist or Will Be Undertaken Under the Terms of the Multiparty Settlement

84. The Commission will have available significant information to monitor PSE's performance during the course of the rate case stay-out period. PSE will file a Commission Basis Report on an annual basis that will be used to determine PSE's actual rate of return on a regulated basis. The Commission Basis Report provides PSE's actual and restated results of operations, including operating revenues, rate base, net operating income and restating adjustments and is the foundation for the earnings sharing mechanism that is proposed in the settlement to provide balanced and appropriate safeguards against excessive overearning during the stay-out period. PSE currently provides the Commission Basis Report on an annual basis but

[118] Exh. No. S-2 at ¶2.
[119] *Id.* at ¶3.

is willing to provide it twice a year if requested by the Commission.[120] Mr. Johnson testified at hearing that PSE does not object to providing annual reports documenting the infrastructure replacement and capital expenditures during the previous year[121] and is willing to engage with the Commission, Commission Staff and other parties to determine what additional reporting might be helpful.[122] As Mr. Schooley testified, the key to additional reporting is that it provides helpful information to the Commission.[123] Additionally, the Commission will be able to monitor PSE's compliance with accelerated conservation targets through its annual conservation filings.

85. While PSE has no objection to the reporting discussed above, the Multiparty Settlement provides for a rate plan and rate case stay-out period, and reporting requirements should not seek to alter these key conditions of the settlement. Reporting—which will keep the Commission informed on the progress PSE is making in terms of earnings, infrastructure investment, conservation achievement, etc.—must be distinguished from re-openers of the rate plan, K-factor or stay-out period. Changes to these key terms would call into question PSE's ability to move forward with the Multiparty Settlement.

E. The Commission Will Have the Opportunity To Fully Evaluate the Decoupling Mechanisms in PSE's Next General Rate Case

86. The Commission will have the opportunity to fully evaluate the decoupling mechanisms in PSE's next general rate case. The Commission will be aided in its review by an independent third-party evaluation of the decoupling mechanisms. Factors to be evaluated are set forth in the Amended Decoupling Petition.[124]

[120] *See* Barnard TR. 181:6-11.
[121] *See* Johnson TR. 141:1-3.
[122] *See* Johnson TR. 180-6-19.
[123] *See* Schooley TR. 179:24-180: 5.
[124] Amended Decoupling Petition ¶37.

87. The decoupling mechanisms will initially remain in effect until new rates from PSE's next general rate case go into effect. Any party may propose cancellation or modification of the decoupling mechanisms in PSE's next general rate case. The decoupling mechanisms can continue to operate upon request for their continuation in PSE's next general rate case, subject to approval by the Commission.

VII. PSE'S REQUEST FOR RECONSIDERATION OF COAL TRANSITION PPA PROPOSES REASONABLE MODIFICATIONS TO THE FINAL ORDER

88. The Multiparty Settlement proposes a reasonable resolution of the Petition for Reconsideration and Motion to Reopen the Record filed by PSE in Docket UE-121373. As stated in its Petition for Reconsideration, the conditions the Commission placed on the approval of the Coal Transition PPA create too much uncertainty for PSE in terms of the potential for ongoing prudence disallowances and cost recovery. Thus, without reconsideration of the Final Order, PSE must reject the Coal Transition PPA.

89. The parties to the Multiparty Settlement recognize that it furthers public policy for PSE to move forward with the Coal Transition PPA, which facilitates the transition away from coal power generation within Washington State. Thus, the Settling Parties agree to support the Motion To Reopen the Record to allow into evidence the Affidavit of Roger Garratt and the amendment to the Coal Transition PPA. PSE, Commission Staff and the Coalition agree that the contract amendment that PSE negotiated with TransAlta Centralia remedies the prudence concerns raised by the Commission in the Final Order. The Multiparty Settlement also sets forth a cost recovery mechanism—either through compliance filings or power cost only rate cases—that provides for more certainty in terms of PSE's timely recovery of the PPA costs, which is consistent with the letter and spirit of the Coal Transition Energy Bill. Further, as part of the Multiparty Settlement, PSE agrees to withdraw its request for reconsideration of the equity

component.

90. The resolution of Docket UE-121373 as proposed in the Multiparty Settlement addresses the Commission's concerns, PSE's concerns and Commission Staff's concerns. It is a reasonable resolution of a disputed final order, which will advance public policy in the State of Washington. These elements of the Multiparty Settlement relating to Docket UE-121373 should also be approved—either as part of a single final order approving the Multiparty Settlement in its entirety, or as a separate final order, issued in conjunction with a final order approving the ERF and decoupling mechanisms.

VIII. CONCLUSION

91. For the reasons set forth above and in the evidence that is before the Commission, PSE respectfully requests that the Commission issue an order approving its requested relief.

DATED this 30th day of May, 2013.

Respectfully submitted

PERKINS COIE LLP

By 

Sheree Strom Carson, WSBA # 25349
Jason Kuzma, WSBA #31830
Donna L Barnett, WSBA #36794
Attorneys for Puget Sound Energy, Inc.