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Judge/Calendar: _____

**STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT**

THE WASHINGTON STATE
ATTORNEY GENERAL'S OFFICE,
PUBLIC COUNSEL UNIT,

 Petitioner,

 v.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

 Respondent.

NO.

PETITION FOR JUDICIAL
REVIEW OF FINAL AGENCY
ORDER OF UTILITIES AND
TRANSPORTATION
COMMISSION

Clerk's Action Required

COMES NOW the petitioner, the Public Counsel Unit of the Washington State Attorney General's Office (Public Counsel), by and through Assistant Attorneys General (AAG), Jessica Johanson-Kubin and Tad Robinson O'Neill, and petitions pursuant to chapter 34.05 RCW for judicial review of agency action by the respondent, the Washington Utilities and Transportation Commission (Commission). In support of this petition, the petitioner respectfully shows pursuant to RCW 34.05.546 as follows:

(1) NAME AND MAILING ADDRESS OF PETITIONER:

Public Counsel Unit
Washington State Office of the Attorney General
800 5th Avenue, Suite 2000
Seattle, WA 98104-3188

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(2) NAME AND MAILING ADDRESS OF PETITIONER’S ATTORNEYS:

Jessica Johanson-Kubin
Tad Robinson O’Neill
Public Counsel Unit
Washington State Office of the Attorney General
800 5th Avenue, Suite 2000
Seattle, WA 98104-3188

(3) NAME AND MAILING ADDRESS OF AGENCY WHOSE ACTION IS AT ISSUE:

Washington Utilities and Transportation Commission
621 Woodland Square Loop, S.E.
Lacey, WA 98503;
P.O. Box 47250
Olympia, WA 98504

(4) IDENTIFICATION OF THE AGENCY ACTION AT ISSUE:

At issue is Final Order 07 of the Commission in Docket UG-230393. The Final Order was served on Public Counsel on April 24, 2024. A copy of the order is attached to this petition as Attachment A. For ease of reference, Final Order 07 will be referred to in this petition as the “Final Order.”

(5) IDENTIFICATION OF PARTIES IN ADJUDICATIVE PROCEEDINGS THAT LED TO AGENCY ACTION:

- Washington Utilities and Transportation Commission (complainant below)
- Puget Sound Energy (PSE) (respondent below)
- Washington Utilities and Transportation Commission Staff (Staff)
- Public Counsel Unit of the Washington State Attorney General’s Office
- Alliance of Western Energy Consumers (AWEC) (intervenor)
- Puyallup Tribe of Indians (Puyallup Tribe) (intervenor)

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(6) JURISDICTION AND VENUE:

(a) This is an action seeking judicial review of a final order of the Commission.

This court has jurisdiction pursuant to Part V of the Washington Administrative Procedure Act, RCW 34.05.510-34.05.598. The filing of this petition for judicial review is timely under RCW 34.05.542(2).

(b) Venue is appropriate in Thurston County pursuant to RCW 34.05.514(1)(a).

(7) FACTS THAT DEMONSTRATE THAT THE PETITIONER IS ENTITLED TO OBTAIN JUDICIAL REVIEW:

Petitioner Public Counsel is the unit of the Washington State Attorney General's Office that represents the interests of the people of the state of Washington before the Commission. RCW 80.01.100; RCW 80.04.510. Pursuant to this statutory role, Public Counsel represents the interests of and advocates for customers of Washington's regulated utilities, including electricity and natural gas customers of Puget Sound Energy.

Respondent Washington Utilities & Transportation Commission is an administrative agency of the state of Washington, established under RCW 80.01.010. The Commission must regulate electric and natural gas companies in the public interest and ensure that the rates charged by such companies are fair, just, reasonable, sufficient, and otherwise consistent with the law. RCW 80.01.040; 80.28.010(1); RCW 80.28.020. In so doing, the Commission must consider the consumers' interest in paying the lowest reasonable rate for utility service, sufficient to cover the utility's prudently incurred and lawful costs and to allow an opportunity for a reasonable return on investment.

1 Puget Sound Energy, Inc. (PSE), is a “public service company,” an “electrical
2 company,” and a “gas company,” as those terms are defined in RCW 80.04.010 and used
3 in Title 80 RCW. PSE is engaged in Washington in the business of supplying electric
4 and natural gas utility service to the public for compensation. PSE’s principal place of
5 business is in Bellevue, Washington. PSE provides service to approximately 1.2 million
6 electricity and 900,000 natural gas customers in Washington, primarily in the Puget
7 Sound region.
8

9 *First*, Public Counsel is entitled to obtain judicial review because the
10 Commission failed to properly apply RCW 80.28.425(1). Utility rates for consumers in
11 Washington are normally set based on a detailed review of the company’s financial
12 condition, including an examination of revenues, expenses, utility plant (rate base), and
13 rate of return. Rates are developed by applying a ratemaking formula described by the
14 Washington Supreme Court as the “basic equation,” “commonly accepted and used” by
15 regulatory commissions, including the Commission.¹
16

17 In February 2021, the Legislature also required the Commission to consider
18 additional factors “beginning January 1, 2022.” Specifically, under Substitute Senate bill
19 5295, the Commission “may consider such factors including, but not limited to,
20 environmental health and greenhouse gas emissions reductions, health and safety
21 concerns, economic development, and equity” in determining whether utilities’ costs are
22 in the public interest and so can be passed on to ratepayers.² Despite the Legislature’s
23

24 _____
25 ¹ *People’s Org. for Washington Energy Res. v. Washington Utilities & Transp. Comm’n*, 104
26 Wn.2d 798, 807-809 (1985).

² RCW 80.28.425(1).

1 clear guidance, the Commission did not consider these factors when approving PSE's
2 requested rate increases in 2022.

3 PSE's requested rates included costs to cover the building of a natural gas
4 facility. In 2016, PSE decided to build a liquefied natural gas (LNG) facility in the Port
5 of Tacoma and the Commission approved that decision in 2016.³ The facility was
6 completed in February 2022 and placed in service, becoming eligible for costs to be
7 placed into rates as "used and useful." After being placed into service, the flare process
8 for burning off the concentrated waste gas failed multiple times, leading to multiple
9 notices of violation by the Puget Sound Clean Air Agency. Each of these instances
10 involved spewing pollutants into the airshed, including the immediately adjacent
11 Puyallup Tribe's airshed.⁴

12
13 PSE initially asked for approval to recover LNG costs in its general rate case
14 filed in January 2022. In PSE's 2022 rate case, the Commission found that "the
15 prudence standard should remain focused on what the utility reasonably knew at the
16 time it made its investment decisions" and that PSE's "decisions should not be second-
17 guessed based on facts or changes to the law that occurred after it initiated construction
18 and after the facility was mechanically completed."⁵ In this challenged case, the
19
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21

22 ³ Final Order 07, ¶ 13.

23 ⁴ Cross-Answering Testimony of Ranajit Sahu, Exh. RXS-35T at 11, *Washington Utils. &*
24 *Transp. Comm'n v. Puget Sound Energy*, Docket UG-230393 (Oct 6, 2023) (Filed on behalf of the
25 Puyallup Tribe of Indians as document *230393-PTOI-RS-T-10-6-23.pdf*); Cross-Answering Testimony of
26 Ranajit Sahu, Exh. RXS-37, *Washington Utils. & Transp. Comm'n v. Puget Sound Energy*, Docket UG-
230393 (Oct. 6, 2023).

⁵ Final Order 07, ¶ 110.

1 Commission applied the same framework and “decline[d] to apply the expanded public
2 interest standard in RCW 80.28.425(1) retrospectively.”⁶

3 Although the standard of judicial review is deferential to Commission decisions,
4 the Commission does not possess “untrammelled discretion” and a court may set aside a
5 Commission decision where a statute directive is clear and free from ambiguity.⁷

6 Here, the plain language of the statute is clear: beginning January 1, 2022, the
7 Commission may consider environmental and equity factors in setting rates. Since PSE
8 first brought its rate case in January 2022, the Commission should have considered those
9 factors. By its clear terms, the Commission is required to apply RCW 80.28.425(1), and
10 its failure to do so is outside of the discretion afforded to the Commission on rate
11 matters.
12

13 *Second*, Public Counsel is entitled to judicial review because the Commission
14 failed to disallow all costs related to PSE’s redesign of the pipeline and development of
15 waste gas disposal methods for the primary purpose of providing ultra-refined gas to its
16 maritime fuel customer, TOTE, at an adjacent facility. PSE’s decision to site the Tacoma
17 LNG facility was based on the ability to conveniently deliver natural gas to TOTE. This
18 decision required the construction of an expensive four-mile pipeline to transport gas
19 between the TOTE facility, the LNG facility, and to PSE’s distribution system for
20 ratepayers when there is peak demand for gas.⁸
21
22

23 ⁶ *Id.*, ¶ 111.

24 ⁷ *People’s Org. For Washington Energy Res. V. Washington Utils. & Transp. Comm’n*, 101
25 Wn.2d 425, 429, 679 P.2d 922 (1984).

26 ⁸ Direct Testimony of Ranjit Sahu, Exh. RXS-1T at 47, *Washington Utils. & Transp. Comm’n v. Puget Sound Energy*, Docket UG-230393 (Sept. 8, 2023).

1 PSE had to further refine and purify the gas for TOTE's maritime use. This
2 required added equipment and increased operational expenses in addition to waste gas.
3 PSE decided to dispose of the waste gas through the construction of a complex and
4 unique flare.⁹ The complexity of the flare and the need for additional equipment resulted
5 in increased project costs, including many outside experts and consultants. The
6 Commission disallowed some costs associated with the TOTE redesign, but not all.
7 Having made the determination that the redesign was not prudent, the Commission
8 should have ordered PSE to quantify the costs associated with the redesign. These
9 additional costs were driven by TOTE's for-profit business needs and do not benefit the
10 ratepayers. It is inappropriate for general ratepayers to be forced to bear any costs
11 associated with providing ultra-refined gas for TOTE's maritime use, which has no
12 benefit to the ratepayer.
13

14 *Third*, judicial review is warranted because the Commission failed to conduct an
15 independent determination of reasonable attorney fees. In general, courts "should not
16 simply accept unquestioningly fee affidavits from counsel."¹⁰ The decision to award
17 attorney fees solely on the number of hours without making an independent
18 determination is an abuse of discretion.¹¹
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24 ⁹ Direct Testimony of Ranajit Sahu, Exh. RXS-1T at 45; Sahu, Exh. RXS-35T at 10.

25 ¹⁰ *Mahler v. Szucs*, 135 Wn.2d 398, 434-35, 957 P.2d 632, order corrected on denial of
reconsideration, 966 P.2d 305 (Wash. 1998).

26 ¹¹ *Nordstrom Inc. v. Tampourlos*, 107 Wn.2d 735, 744 (1987).

1 PSE stated, “[p]rior to receiving the final order in Docket UG-151663, which
2 was issued in the fourth quarter of 2016, PSE did not separately track legal costs and
3 therefore, cannot provide the requested information for 2013 through 2016.”¹²

4 In revised testimony, PSE provided a different total after somehow being able to
5 find the data that they “did not separately track” prior to 2017. PSE’s revised testimony
6 provides no more information and support than its original testimony. Indeed, the
7 revised testimony continues to rely upon unsubstantiated statements regarding levels of
8 cost.
9

10 Moreover, PSE refused to provide any billing records showing the substance of
11 the legal expenses. While billing records may contain attorney-client privileged
12 information, attorneys are required to provide the basis for their legal fees when such
13 fees are sought for recovery from another entity.

14 PSE cannot accurately determine or prove its true legal fees for the period at
15 issue, yet the Commission accepted PSE’s legal fees without examining the bills for
16 reasonableness. Accordingly, it violates principals of fairness and public policy to pass
17 the alleged legal fees onto ratepayers.
18

19 **(8) PETITIONER’S REASONS FOR BELIEVING THAT RELIEF SHOULD**
20 **BE GRANTED:**

21 Public Counsel and the PSE ratepayers it represents are and will continue to be
22 adversely affected by the Commission’s Order.
23

24 _____
25 ¹² Response Testimony of Robert L. Earle, Exh. RLE-12, Docket UG-230393, *Washington Utils.*
26 *& Transp. Comm’n v. Puget Sound Energy* (Sept. 8, 2023) (PSE Response to Public Counsel Data Request No. 26).

1 The Final Order violates the procedural and substantive requirements of the
2 Washington Administrative Procedure Act, RCW 34.05.570(3), and of Title 80 RCW in
3 the following respects:

4 **(9) ASSIGNMENTS OF ERROR:**

5 a) The Commission erred by refusing to apply RCW 80.28.425(1): Public
6 Counsel challenges Finding of Fact 4, and Conclusions of Law 4 and 5.

7
8 b) The Commission erred by failing to exclude all costs related to the
9 redesign. Having made Findings of Fact 5 and 7, and Conclusion of Law 11, the
10 Commission failed to order Puget Sound Energy to identify and exclude all costs related
11 to the redesign.

12 c) The Commission erred by granting attorney fees without examining
13 billing records. Public Counsel challenges Finding of Fact 8 and Conclusion of Law 12.

14 **(10) PETITIONER'S REQUEST FOR RELIEF:**

15 Pursuant to RCW 34.05.570 and 34.05.574, Public Counsel respectfully requests
16 relief as follows:

- 17
18 1. Entry of a judgment vacating or setting aside the Final Order of the
19 Commission;
- 20 2. Identify the errors contained in the Final Order;
- 21 3. Find that the rates approved in the Final Order are unlawful;
- 22 5. Find that ratepayers are entitled to refunds; and,
- 23 6. For such other relief as the Court deems just and appropriate.
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RESPECTFULLY SUBMITTED this 24th day of May 2024.

ROBERT FERGUSON
ATTORNEY GENERAL

By: *Jessica Johanson-Kubin*
JESSICA JOHANSON-KUBIN
WSBA No. 55783
TAD ROBINSON O'NEILL
WSBA No. 37153
Assistant Attorneys General
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800 5th Avenue, Suite 2000
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jessica.johanson-kubin@atg.wa.gov
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(206) 521-3211

1 **PROOF OF SERVICE**

2 I certify that I served a copy of *May 24, 2024, Cover Letter signed by Jessica*
3 *Johanson-Kubin, Case Information Cover Sheet, and Petition for Judicial Review with*
4 *Attachment A* on all parties or their counsel of record on the date below as follows:

5 Sent copies via Hand Delivery/Pacific Northwest Legal Support Process Service:

6 **Washington Utilities &**
7 **Transportation:**

8 Jeff Killip,
9 Executive Director of the
10 Transportation Commission
11 621 Woodland Square Loop SE
12 Lacey, WA 98503;
13 PO Box 47250
14 Olympia, WA 98504-0128
15 records@utc.wa.gov
16 Jeff.Killip@utc.wa.gov

6 **Office of the Attorney General:**

7 Jeff Roberson,
8 Assistant Attorney General
9 Utilities and Transportation Division
10 7141 Clean Water Drive SW
11 Olympia, WA;
12 PO Box 40128
13 Olympia, WA 98504-0128
14 jeff.roberson@atg.wa.gov

14 Sent copies via U.S. Mail Postage Prepaid:

15 **Puget Sound Energy**

16 Jon Piliaris
17 Puget Sound Energy
18 PO Box 97034 PSE-08N
19 Bellevue, WA 98009-9734
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16 Byron Starkey
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20 **Alliance of Western Energy**
21 **Consumers**

21 Sommer Moser
22 Davison Van Cleve, PC
23 1750 SW Harbor Way Suite 450
24 Portland, OR 97201
25 sjm@dvelaw.com

20 **Puyallup Tribe of Indians**

21 Nicholas Thomas
22 Ogden Murphy Wallace, PLLC
23 901 5th Avenue, Suite 3500
24 Seattle, WA 98164
25 nthomas@omwlaw.com

1 **Puyallup Tribe of Indians**

2 Lisa Anderson
3 3009 E. Portland Ave
4 Tacoma, WA 98404
5 Lisa.Anderson@puyalluptribe-nsn.gov

6 Sent courtesy copy electronically to e-mail addresses above.

7 I certify under penalty of perjury under the laws of the state of Washington that the
8 foregoing is true and correct.

9 DATED this 24th day of May 2024, at Seattle, WA.

10 *Brice C. Hartman*
11 BRICE C. HARTMAN
12 Paralegal
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ATTACHMENT A

WASHINGTON UTILITIES & TRANSPORTATION COMMISSION

v.

PUGET SOUND ENERGY

DOCKET UG-230393

ORDER 07: FINAL ORDER REJECTING TARIFF SHEETS; AUTHORIZING
AND REQUIRING COMPLIANCE FILING.

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UG-230393

FINAL ORDER 07

REJECTING TARIFF SHEETS;
AUTHORIZING AND REQUIRING
COMPLIANCE FILING

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BACKGROUND

- 1 On May 25, 2023, Puget Sound Energy (PSE or Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective natural gas tariff WN U-2. PSE proposes a new tariff schedule, Schedule 141LNG – Liquefied Natural Gas Rate Adjustment, which will allow PSE to recover the costs incurred with the development, construction, and operation of the Tacoma LNG Facility. PSE filed direct testimony in support of its proposed tariff revisions that same day.
- 2 On June 8, 2023, the Commission entered Order 01, Complaint and Order suspending tariff revisions.
- 3 On July 7, 2023, the Commission entered Order 03, Prehearing Conference (Order 03) setting a procedural schedule and noticing an evidentiary hearing set for November 6, 2023. The Commission also granted petitions to intervene filed by the Alliance of Western Energy Consumers (AWEC) and the Puyallup Tribe of Indians (Puyallup Tribe or Tribe).
- 4 On September 8, 2023, the non-Company parties submitted testimony pursuant to the procedural schedule. This testimony is discussed in detail below.
- 5 On September 27, 2023, PSE filed a Motion to Strike Portions of the Testimony of Robert L. Earle and a Motion to Strike Portions of the Testimony of Dr. Ranajit Sahu. The Commission later denied these motions by order dated October 18, 2023.
- 6 On October 6, 2023, PSE filed rebuttal testimony, and the Puyallup Tribe and AWEC filed cross-answering testimony pursuant to the procedural schedule.
- 7 On October 30, 2023, the Public Counsel Unit of the Attorney General’s Office (Public Counsel) filed a Motion to Strike portions of PSE’s rebuttal testimony. The Commission subsequently denied this motion by an oral ruling at the evidentiary hearing on November 6, 2023.
- 8 On October 31, 2023, Public Counsel and the Puyallup Tribe filed cross-examination exhibits pursuant to the procedural schedule. That same day, PSE filed a Motion for Leave to File Revised Testimony, requesting to update exhibit SEF-4. The Commission subsequently granted this motion by an oral ruling at the evidentiary hearing.
- 9 On November 1, 2023, the Commission convened a public comment hearing in this docket. The Commission heard comments from 29 members of the public, who each spoke against a proposed rate increase or the Facility.

- 10 On November 6, 2023, the Commission held an evidentiary hearing pursuant to the procedural schedule.
- 11 Donna Barnett, Sheree Strom Carson, and Byron Starkey, Perkins Coie, Bellevue, Washington, represent PSE. Jeff Roberson, Assistant Attorney General, Olympia, Washington, represents Commission staff (Staff).¹ Tad O’Neil, Assistant Attorney General, Seattle, Washington, represents Public Counsel. Sommer Moser, Cable Huston LLP, Portland, Oregon, represents AWEC. Andrew Fuller, Ogden Murphy Wallace, PLLC, Tacoma, Washington, and Lisa Anderson, Law Office, Puyallup Tribe of Indians, Tacoma, Washington, represent the Puyallup Tribe.

DISCUSSION

I. Overview of the Tacoma LNG Facility and prior Commission proceedings

- 12 The Tacoma LNG Facility is a dual use project located at the Port of Tacoma, which liquifies natural gas that can be vaporized and injected into PSE’s gas distribution system to serve as a peaking resource for regulated gas customers. This liquified natural gas (LNG) is also sold by Puget LNG, a wholly owned subsidiary of PSE’s parent company, Puget Energy, to shipping customers on a non-regulated basis.² PSE states that, as of December 31, 2022, the total capital costs of the Tacoma LNG project are \$489 million, and PSE proposes to allocate \$243 million to PSE’s regulated customers.³ PSE proposes an additional annual revenue requirement of \$47.6 million, to be recovered through the Schedule 141LNG tracker.⁴
- 13 By way of background, the Commission has reviewed aspects of the Tacoma LNG Facility in earlier proceedings. On November 1, 2016, the Commission issued Final Order 10 in Docket UG-151663 (Order 10), approving and adopting a settlement stipulation that provided the terms and conditions under which PSE could pursue developing its Tacoma LNG Facility, including the joint ownership shares and cost allocators for each component of the Facility.⁵ The settlement stipulation reserved any

¹ In formal proceedings such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. See RCW 34.05.455.

² Free, Exh. SEF-1T at 4:9-14.

³ Roberts, Exh. RJR-1T at 15:14-6.

⁴ Free, Exh. SEF-1T at 10:14-16.

⁵ *In the Matter of the Petition of Puget Sound Energy, Inc., for (i) Approval of a Special Contract*

prudence and cost recovery determinations until a later date.⁶ As a result of this settlement, PSE's parent company, Puget Energy, formed a wholly-owned subsidiary, Puget LNG, for the sole purpose of owning, developing, and financing the Tacoma LNG Facility as a tenant-in-common with PSE. The Facility began commercial operation in February 2022.⁷

- 14 On November 24, 2021, PSE filed an accounting petition proposing deferred accounting treatment of the costs associated with PSE's share of the Tacoma LNG Facility beginning as of the date of commercial operation of the Facility.⁸ This was later consolidated with PSE's general rate case.⁹
- 15 In January 2022, PSE filed a general rate case in Dockets UE-220066 and UG-220067, in which PSE initially requested recovery of its deferred costs and rate base associated with the Tacoma LNG Facility. A multi-party settlement agreement was filed with the Commission on September 9, 2022. The settling parties included PSE, Commission Staff, AWEC, Nucor Steel Seattle, Walmart Inc., and Kroger Co. The settling parties agreed to accept "a determination that the decision to build the regulated portion of the Tacoma LNG Facility was prudent" and agreed that the investment could be "provisionally included in rates in a tracker" to be considered for recovery along with PSE's 2023 Purchased Gas Adjustment (PGA) filing.¹⁰ The settlement also stated that PSE would "continue the Tacoma LNG deferral until recovery of the plant and deferral commences within the tracker."¹¹
- 16 The Tacoma LNG settlement was opposed by Public Counsel, the Puyallup Tribe, and The Energy Project (TEP). The opposing parties argued that the decision to build the Facility was not prudent and that the Facility poses environmental, public health, and safety risks.¹²

for Liquefied Natural Gas Fuel Service with Totem Ocean Trailer Express, Inc., and (ii) a Declaratory Order Approving the Methodology for Allocating Costs Between Regulated and Non-Regulated Liquefied Natural Gas Services, Docket UG-151663, Order 10 ¶ 14 (Nov. 1, 2016) (Order 10).

⁶ *Id.* at ¶ 324.

⁷ Free, Exh. SEF-1T at 5:10-12.

⁸ *In the Matter of the Petition of Puget Sound Energy, Inc., for an Order Authorizing Deferred Accounting Treatment for Puget Sound Energy's Share of Costs Associated with the Tacoma LNG Facility, Docket UG-210918.*

⁹ Order 14/01, Granting Motion to Consolidate, Docket UG-210918 (May 12, 2022).

¹⁰ Amended Tacoma LNG Settlement Stipulation ¶ 18B and D, Dockets UE-220066/UG-220067 and UG-210918 (Consolidated).

¹¹ *Id.* ¶ 18 A.

¹² Final Order 24/10 at ¶¶ 338, 390.

- 17 In the Commission’s Final Order 24/10, the Tacoma LNG settlement was approved with condition.¹³ The Commission ruled that “PSE acted prudently in developing and constructing the Tacoma LNG Facility up through the initial decision to authorize construction of the Facility on September 22, 2016,” and that “the parties may review and challenge the prudence of later construction and operation costs in a future proceeding.”¹⁴
- 18 The Commission’s condition to the settlement addressed the four-mile distribution line installed to supply natural gas to the Facility and to allow the Facility to serve as a peaking resource to core gas customers. The Commission noted that, despite there being recognition that the full cost of the distribution line should not be borne solely by regulated customers, it was not clear from the record or the settlement how the four-mile distribution line would be allocated and recovered between PSE’s regulated customers and Puget LNG.¹⁵ The Commission instead ruled that these costs, which were to be recovered in base rates,¹⁶ may only be allowed in rates provisionally, “to allow for consideration when PSE files for LNG recovery of the appropriate allocation of costs of the distribution line to Puget LNG, as well as the method for PSE recovering the ‘appropriate share’ of costs from Puget LNG, and how it will modify regulated rate base.”¹⁷
- 19 In this proceeding, PSE requests a determination that the costs PSE incurred after its Board of Directors decided to construct the Facility were prudent and should be included in rates.¹⁸ PSE’s proposed \$47.6 million additional annual revenue requirement is driven by several components related to the Tacoma LNG Facility. These include recovery of depreciation expense, return on investment, and O&M expenses associated with the regulated portion of the Tacoma LNG Facility, as well as recovery of the deferred capital costs and O&M expenses being deferred through PSE’s earlier accounting petition.¹⁹ PSE proposes to apply the rate of return (ROR) approved in its recent GRC to the total rate base associated with the Tacoma LNG Facility, including its deferrals.²⁰ PSE states

¹³ *Id.* at ¶ 449.

¹⁴ *Id.*

¹⁵ *Id.* at ¶¶ 408-409.

¹⁶ Amended Tacoma LNG Settlement Stipulation ¶ 18A (4). Dockets UE-220066/UG-220067 and UG-210918 (Consolidated).

¹⁷ *Id.* at ¶¶ 410, 449.

¹⁸ Roberts, Exh. RJR-1T at 9:8-11.

¹⁹ Free, Exh. SEF-1T at 8:4-9.

²⁰ See Free, Exh, SEF-3 (“ROR” worksheet).

that this filing will result in an increase of \$3.34 per month for the average residential gas customer using 64 therms per month.²¹

II. Prudency of Tacoma LNG Facility Costs After September 22, 2016

20 The primary issue in this case is whether the Company acted prudently in constructing and developing the Facility after the decision to initiate construction on September 22, 2016. The Commission addressed the decision to initiate construction of the facility at length in Final Order 24/10. PSE argues that the costs it incurred for the Tacoma LNG Facility after September 22, 2016, were prudent. Staff, Public Counsel, and the Puyallup Tribe challenge the prudency of the Facility to various degrees.

PSE Direct Testimony

21 Testifying on behalf of PSE, Ronald Roberts explains that the Company seeks a prudency determination on the costs it incurred after the September 22, 2016, decision to construct and operate the Tacoma LNG Facility, so it can include those costs in its gas rate base.²²

22 According to Roberts, in the December 22, 2022, order in Dockets UE-220066/UG220067 and UG-210918 (consolidated), the Commission found that “PSE acted prudently in developing and constructing the Tacoma LNG Facility up through the initial decision to authorize construction of the facility on September 22, 2016” and that later incurred operating and construction costs could be reviewed in future proceedings.²³

23 In September 2016, when the PSE Board of Directors decided to move forward with construction, Roberts notes that total plant costs were estimated to be \$422 million, including \$332 million for the Tacoma LNG Facility, \$39 million for PSE’s gas distribution system upgrades, and \$51 million for allowance for funds used during construction/interest during construction (“AFUDC/IDC”). Of the \$332 million estimated for the Tacoma LNG Facility, the PSE regulated portion was approximately \$165 million.²⁴

24 Roberts explains that the \$332 million cost estimate included: \$20 million for development costs, \$197 million for the fixed price engineering, procurement, and construction (EPC) contract, \$55 million for miscellaneous construction, \$16 million for

²¹ Taylor, Exh. JDT-7.

²² Roberts, Exh. RJR-1T at 4: 10-13.

²³ Roberts, Exh. RJR-1T at 4: 17-20.

²⁴ Roberts, Exh. RJR-1T at 8: 4-9.

project management and outside services, \$2 million for insurance, \$14 million for sales tax; \$19 million for contingency, and \$10 million for construction overhead.²⁵

- 25 PSE updated its natural gas resource need analysis in its 2017 Integrated Resource Plan (IRP), 2019 IRP Progress Report, and 2021 IRP. PSE also updated the load forecasts in its F2017, F2018, and F2019 forecasts, and each demonstrated an immediate need for new gas resources to meet peak-day demand.²⁶
- 26 Roberts testifies that in Order 24/10, the Commission stated that it “agree[d] that PSE has demonstrated a need for the Tacoma LNG Facility at least through the initial decision to build the facility...” and that it found arguments challenging PSE’s forecasting methods “unpersuasive.”²⁷ Roberts submits that the Commission also endorsed the design day standard as “intended to ensure a more robust natural gas system that will not run short of resources when they are needed most.”²⁸
- 27 Roberts explains that costs increased over the course of construction and completion of the Facility. As of December 31, 2022, the total capital cost of the Tacoma LNG Project was \$489 million. Of that total cost, \$243 million was allocated to PSE’s regulated business.²⁹
- 28 By November 2, 2017, the estimated capital costs of the Tacoma LNG Project increased by \$29.6 million (\$11 million to PSE).³⁰ Moreover, Roberts contends that many of the cost increases could not have been anticipated by PSE.³¹ The increased costs were due in part to increases in the EPC contract (\$17 million), miscellaneous construction (\$2 million), project management and outside services (\$5 million), increase in the sales tax rate (\$1 million), an increase in the construction overhead rate (\$7 million), and an increase in AFUDC/IDC (\$6 million).³²
- 29 Roberts testifies that although PSE completed the permit application in June 2017, Puget Sound Clean Air Agency (PSCAA) posted a communication on its website in December 2017 stating that it was extending the timing for publication of a draft air permit.³³

²⁵ Roberts, Exh. RJR-1T at 8: 13-18.

²⁶ Roberts, Exh. RJR-1T at 12: 4-6.

²⁷ Roberts, Exh. RJR-1T at 14: 14-18.

²⁸ Roberts, Exh. RJR-1T at 14: 18, 15: 1-2.

²⁹ Roberts, Exh. RJR-1T at 15: 14-15.

³⁰ Roberts, Exh. RJR-1T at 17: 5-6.

³¹ Roberts, Exh. RJR-1T at 17: 8-9.

³² Roberts, Exh. RJR-1T at 17: 11-15.

³³ Roberts, Exh. RJR-1T at 19: 5-8.

Roberts testifies further that on January 24, 2018, PSCAA made the unprecedented decision to require a Supplemental Environmental Impact Statement (“SEIS”) that included a Life Cycle Analysis of project-related greenhouse gas (“GHG”) emissions. PSCAA also estimated that the SEIS would not be completed until October 31, 2018.³⁴

30 Roberts explains that the delay in issuance of the air permit PSE needed from PSCAA was the main reason for the re-evaluation of the Tacoma LNG Project.³⁵ The re-evaluation showed that as of March 1, 2018, the Tacoma LNG Facility continued to be the least-cost resource alternative to meet PSE’s gas peak-day resource need.³⁶ PSE states that when compared to the “Without Tacoma LNG” scenario, the “With Tacoma LNG (full 100% of CAPEX)” scenario demonstrated a \$112.5 million benefit to the existing gas portfolio.³⁷

31 According to Roberts, PSE management recommended, and the PSE Board of Directors approved, a “modified construction” process for the Tacoma LNG Facility.³⁸ The total costs for the modified construction process were estimated to be nearly \$483 million, including \$366 million for the Tacoma LNG Facility (\$158 million for the PSE portion), \$39 million for gas distribution system upgrades, and \$78 million for AFUDC/IDC.³⁹

32 PSE projected that the delay associated with the PSCAA process would increase the budget for the Tacoma LNG Project by \$56 million—from the \$451 million approved by the PSE Board of Directors in November of 2017 to a total of \$507 million.⁴⁰

33 Roberts submits that management provided regular updates to the PSE Board of Directors concerning the Tacoma LNG Facility in the period after August 2020.⁴¹ Since there were no further major decisions for the PSE Board of Directors to make regarding the regulated portion of the Tacoma LNG Facility, most of these updates were oral reports regarding the timeline for construction, the status of litigation regarding the Tacoma LNG Facility air permit, and updates on the budget.⁴²

³⁴ Roberts, Exh. RJR-1T at 19: 8-12.

³⁵ Roberts, Exh. RJR-1T at 19: 4-5.

³⁶ Roberts, Exh. RJR-1T at 23: 15-16.

³⁷ Roberts, Exh. RJR-1T at 23: 17-19.

³⁸ Roberts, Exh. RJR-1T at 26: 10-11.

³⁹ Roberts, Exh. RJR-1T at 26: 17-19 and at 27: 1-2.

⁴⁰ Roberts, Exh. RJR-1T at 29: 21-22. At 30: 1-2.

⁴¹ Roberts, Exh. RJR-1T at 38: 19-20.

⁴² Roberts, Exh. RJR-1T at 39: 2-6.

- 34 Roberts contends that the Facility was used this past winter 2023 to meet the peak shaving needs of its distribution customers.⁴³ The Tacoma LNG Facility was used to vaporize natural gas for delivery to the PSE distribution system in late January 2023, as part of PSE's routine cold-weather reliability testing.⁴⁴
- 35 Roberts notes that the Tacoma LNG Facility was also used to vaporize natural gas for delivery to the PSE distribution system to meet their distribution needs in early February 2023, due to an unplanned outage on Enbridge's Westcoast T-South natural gas pipeline system in British Columbia.⁴⁵
- 36 Roberts posits that the Company's use of the Tacoma LNG Facility to respond to the unplanned outage on the T-South system shows that PSE's need for the Tacoma LNG Facility is not driven only by extreme cold weather or winter storms.⁴⁶ Additionally, the Tacoma LNG Facility was used to vaporize natural gas for delivery to the PSE distribution system to meet peak shaving needs in late February 2023.⁴⁷
- 37 Roberts testifies that the primary advantage of on-system LNG storage is that it provides physical natural gas.⁴⁸ Additionally, the on-system LNG storage provided by the Facility reduces PSE's reliance on Northwest Pipeline and increases the underlying capacity of the adjoining PSE distribution system. LNG storage can also be used to reduce purchased gas costs.⁴⁹
- 38 Roberts argues that construction of the Tacoma LNG Facility improved onsite environmental conditions compared to pre-construction conditions.⁵⁰ PSE testifies further that the Shorelines Hearings Board noted these material improvements at the Tacoma LNG Facility site in a decision denying an appeal by the Puyallup Tribe of the Shoreline Substantial Development Permit issued by the City.⁵¹
- 39 Additionally, Roberts contends that the Tacoma LNG Facility will reduce air emissions by helping to meet the demand for LNG from regional maritime and heavy-duty trucking

⁴³ Roberts, Exh. RJR-1T at 40: 3.

⁴⁴ Roberts, Exh. RJR-1T at 40: 11-13.

⁴⁵ Roberts, Exh. RJR-1T at 41: 3-6.

⁴⁶ Roberts, Exh. RJR-1T at 41: 12-14.

⁴⁷ Roberts, Exh. RJR-1T at 42: 5-6.

⁴⁸ Roberts, Exh. RJR-1T at 43: 8-9.

⁴⁹ Roberts, Exh. RJR-1T at 43: 19-22.

⁵⁰ Roberts, Exh. RJR-1T at 44: 4-5.

⁵¹ Roberts, Exh. RJR-1T at 44: 11-14.

customers.⁵² According to Roberts, PSCAA concluded in the Final SEIS that the Tacoma LNG Project would result in a *net decrease* in GHG emissions.⁵³ The PSCAA and the Pollution Control Hearings Board (PCHB) also determined that air emissions from the Facility are consistent with statutory requirements.⁵⁴

Response Testimony

- 40 Staff raises concerns regarding the costs of redesign, in response to changes in gas composition.⁵⁵ Staff's argument on this issue is addressed in Section III.C, below.
- 41 Public Council witness Robert Earle maintains that proceeding with the Tacoma LNG Project after September 22, 2016, was imprudent and all costs incurred after that date should be disallowed.⁵⁶
- 42 In its GRC 2022 Final Order, the Commission stated, "When we review the prudence of costs included in PSE's 2023 Tacoma LNG tariff filing, the Commission may also consider the extent to which the Facility was used as a peak-shaving resource."⁵⁷ Citing this language, Earle posits that the Commission introduces an element of *ex post* review in its decision making and that when an economic actor with an asymmetric information advantage makes claims about forecasts in the past, it is reasonable to include actual outcomes when evaluating actions based on those forecasts.⁵⁸
- 43 As such, Earle submits that *ex post* outcomes should be weighed in favor of the informationally advantaged party, only if the evidence is overwhelmingly compelling in support of the decision to proceed based on forecasts.⁵⁹ Evidence that shows that the *ex post* outcome is only moderately supportive of the informationally advantage entity should be discounted, and evidence that is not supportive should be counted as evidence against prudence.⁶⁰
- 44 Earle observes further that in determining the public interest, the Commission may consider "environmental health and greenhouse gas emissions reductions, health and

⁵² Roberts, Exh. RJR-1T at 45: 8-10.

⁵³ Roberts, Exh. RJR-1T at 45: 13-14.

⁵⁴ Roberts, Exh. RJR-1T at 45: 15-17.

⁵⁵ Erdahl, Exh. BAE-1CT at 17: 6-8, 15-17.

⁵⁶ Earle, Exh. RLE-1CT at 2: 13-14.

⁵⁷ Earle, Exh. RLE-1CT at 5: 11-13.

⁵⁸ Earle, Exh. RLE-1CT at 5: 18-22.

⁵⁹ Earle, Exh. RLE-1CT at 6: 3-5.

⁶⁰ Earle, Exh. RLE-1CT at 6: 5-8.

safety concerns, economic development, and equity, to the extent such factors affect the rates, services, and practices” of the regulated utility.⁶¹

45 Earle testifies that the “raison d’être” for disallowing the post-September 2016 costs of the Tacoma LNG Project is the design day standard.⁶² According to Earle, PSE testified that it bases resource need on the “Design Peak Day condition when all existing resources are fully utilized and there is still an un-served demand.”⁶³

46 Earle submits that PSE uses the design day standard to dismiss actual outcomes in weather and demand as irrelevant to its decision to proceed with the Tacoma LNG Project.⁶⁴ Staff contends that PSE’s design day standard was outdated by 2016, and therefore the Company’s balancing of benefits to ratepayers versus the cost of the design day standard were misaligned.⁶⁵

47 Earle argues that PSE relied on the 2005 Least Cost Plan in its calculation of gas peak demand forecasts⁶⁶ while the Company states that the standard determined by the 2005 Least Cost plan meets or exceeds 98 percent of peak day temperatures from 1950 to 2003.⁶⁷ Earle contends that PSE has not updated its design day standard since 2005.⁶⁸ In describing the conclusions of its 2023 Gas IRP, PSE states that it was maintaining the 52 heating degree days (HDD) standard but did not report doing an economic analysis of the cost-benefit tradeoffs between the benefits of reliability and the costs of reliability.⁶⁹ Thus, Earle argues that while PSE has reaffirmed this standard as a 1 in 50 years standard, it has not justified it economically since 2005.⁷⁰ Earle notes that, in approving the 2005 standard in its acknowledgement letter, the Commission stated that “the data underlying that analysis is now dated.”⁷¹

⁶¹ Earle, Exh. RLE-1CT at 6: 12-15.

⁶² Earle, Exh. RLE-1CT at 8: 13-14.

⁶³ Earle, Exh. RLE-1CT at 8: 14-16.

⁶⁴ Earle, Exh. RLE-1CT at 9: 1-3.

⁶⁵ Earle, Exh. RLE-1CT at 9: 3-5.

⁶⁶ Earle, Exh. RLE-1CT at 9: 9-10.

⁶⁷ Earle, Exh. RLE-1CT at 11: 2-3.

⁶⁸ Earle, Exh. RLE-1CT at 11: 4-5.

⁶⁹ Earle, Exh. RLE-1CT at 11: 6-8.

⁷⁰ Earle, Exh. RLE-1CT at 11: 8-10.

⁷¹ Earle, Exh. RLE-1CT at 11: 10-11.

- 48 Earle testifies that PSE did not incorporate the costs versus the benefits of maintaining the 2005 standard.⁷² In 2005, PSE calculated the benefits of a 52 HDD standard over a 47 HDD standard to be \$15.1 million.⁷³ This benefit was dwarfed, however, by the overnight capital costs of \$182 million PSE estimated to be allocated to ratepayers in September 2016.⁷⁴ The capital costs grew throughout construction and by the end of December 2021, with the allocation to ratepayers increasing by 31 percent to \$239 million.⁷⁵ Earle argues that over the course of the Project, PSE should have re-evaluated the 52 HDD standard in light of the vast difference between the potential benefits of \$15.1 million and the hundreds of millions of dollars this solution costs ratepayers.⁷⁶
- 49 Earle also contends that based on PSE's discovery responses, testimony, and exhibits, the 2005 design peak day gas requirements were never discussed with its Board.⁷⁷ As a result, Earle recommends that the Commission find continuing with the Tacoma LNG Project to be imprudent after September 2016, and disallow all costs incurred after September 2016.⁷⁸
- 50 Earle further argues that using the 2005 gas planning standard means that PSE's natural gas projections are based on a 1 in 50 years peak using SEATAC temperature data from 1950 to 2003.⁷⁹ The issue is that there has been an increase in winter peak temperatures since 2003; the trend is that the winter minimum temperature has been increasing since 1950.⁸⁰
- 51 Earle argues that the Company's use of the Tacoma LNG Facility in 2023 to achieve peak shaving per design day criteria provides no evidence as to the prudence of costs incurred.⁸¹ At best, any use of the Tacoma LNG Facility to peak shave to meet design day criteria indicates that it can be used to do so, but not that it was the best choice.⁸²

⁷² Earle, Exh. RLE-1CT at 11: 13-14.

⁷³ Earle, Exh. RLE-1CT at 11: 14-15.

⁷⁴ Earle, Exh. RLE-1CT at 11: 15-17.

⁷⁵ Earle, Exh. RLE-1CT at 11: 17-19.

⁷⁶ Earle, Exh. RLE-1CT at 12: 1-3.

⁷⁷ Earle, Exh. RLE-1CT at 12: 15-16.

⁷⁸ Earle, Exh. RLE-1CT at 12: 16-17. At 13: 1-2.

⁷⁹ Earle, Exh. RLE-1CT at 13: 5-6.

⁸⁰ Earle, Exh. RLE-1CT at 13: 6-9.

⁸¹ Earle, Exh. RLE-1CT at 15: 19. At 16: 1-2.

⁸² Earle, Exh. RLE-1CT at 16: 6-7.

- 52 Earle argues that PSE’s vaporization in winter 2022-2023 did not actually constitute peak shaving to meet design day criteria.⁸³ Earle explains that the gas demand on the days when PSE vaporized was far below the projected peak demand day level and far below the level of resources available before the Tacoma LNG Facility was online.⁸⁴ Earle maintains that the vaporization days hardly qualify as anything near peak demand days and recommends that PSE’s description of the vaporization as peak shaving be rejected.⁸⁵
- 53 Earle concludes that the amounts vaporized and the demand on the days of vaporization, when compared with forecasted peak and resources available before Tacoma LNG, show that the vaporizations claimed by PSE as proof of prudence were performative.⁸⁶
- 54 Additionally, Earle testifies that PSE does not provide any evidence that vaporization at Tacoma LNG Facility was necessary, nor does any other evidence support that it was necessary.⁸⁷ Earle recommends that the Commission reject PSE’s claim that the vaporizations in winter 2022-2023 support prudence.⁸⁸ Counsel further states that, as discussed above regarding *ex post* evidence, the weakness of PSE’s claim provides evidence that the decision to proceed with the Tacoma LNG Project was imprudent.⁸⁹
- 55 Earle also contends that PSE’s use of the Tacoma LNG Facility belies its claims about the need for it.⁹⁰ Rather than having anything close to 6.3 million gallons on hand for winter cold snaps, maximum amount of LNG PSE stored for ratepayers throughout the winter of 2022-2023 was 48 percent of what PSE claims it needs to have on hand.⁹¹
- 56 The Tribe contends that PSE oversells the benefits of the Tacoma LNG Project to ratepayers and is attempting to overburden ratepayers with inappropriate costs.⁹² Because of this, and the other public interest factors discussed below, the Puyallup Tribe argues that the costs incurred by PSE for the Tacoma LNG project were [not] responsive to the ratepayer needs articulated by PSE and therefore not prudent.⁹³

⁸³ Earle, Exh. RLE-1CT at 16: 10-11.

⁸⁴ Earle, Exh. RLE-1CT at 16: 14-16.

⁸⁵ Earle, Exh. RLE-1CT at 16: 19-21.

⁸⁶ Earle, Exh. RLE-1CT at 17: 7-9.

⁸⁷ Earle, Exh. RLE-1CT at 17: 20-22.

⁸⁸ Earle, Exh. RLE-1CT at 17: 22. At 18: 1.

⁸⁹ Earle, Exh. RLE-1CT at 18: 2-3.

⁹⁰ Earle, Exh. RLE-1CT at 18: 6.

⁹¹ Earle, Exh. RLE-1CT at 18: 7-9.

⁹² Sau, Exh. RXS-1T at 11: 8-9.

⁹³ Sahu, Exh. RXS-1T at 11: 10-12.

- 57 Tribe witness Ranajit Sahu, Ph.D., testifies that the absence of information in the record regarding the facility's impacts, and how those impacts could best be mitigated, prevents the Commission from making an informed decision on the prudence of costs incurred by PSE after its September 22, 2016 decision.⁹⁴ Sahu contends that PSE continues to request that ratepayers cover the cost of design and construction of portions of the facility that are necessary only for PSE's non-regulated marine fueling business.⁹⁵
- 58 Additionally, Sahu argues that the Tacoma LNG Facility's uncontrolled emissions, including toxic air pollutants, harm the health and safety of those in its vicinity.⁹⁶ The Tacoma LNG Facility also presents the risk of a catastrophic accident that, if it were to occur, would pose a serious risk to human life and the surrounding environment.⁹⁷ Sahu contends that since PSE could have met ratepayer needs in other ways, it is proper to factor the adverse public health impacts of siting this facility in this location in assessing prudence.⁹⁸
- 59 Sahu maintains that PSE sited Tacoma LNG to meet the needs of Totem Ocean Express, Inc. (TOTE), and that it would have been prudent instead to have minimized the costs of this new pipeline by siting the facility closer to the injection point, with PSE bearing any additional cost of building a pipeline to bring LNG to TOTE and any other marine customers.⁹⁹
- 60 Sahu testifies that in the 2022 GRC proceeding, which addressed costs incurred prior to September 22, 2016, PSE stated that it did not consider the impact of the Tacoma LNG facility on Highly Impacted Communities and Vulnerable Populations because it "continues to hold" the belief that the facility would provide benefits to such communities and that such communities were "defined" "long after" the facility was built.¹⁰⁰ Sahu argues that neither of these responses made sense and that characterizing the significant adverse air pollution and safety risks to the surrounding communities as "benefits" is "simply Orwellian."¹⁰¹ Sahu contends that the beneficial actions cited by PSE could have been taken independent of siting the LNG facility at this location.¹⁰²

⁹⁴ Sahu, Exh. RXS-1T at 11: 23-16.

⁹⁵ Sahu, Exh. RXS-1T at 13: 3-5.

⁹⁶ Sahu, Exh. RXS-1T at 20: 7-9.

⁹⁷ Sahu, Exh. RXS-1T at 20: 9-11.

⁹⁸ Sahu, Exh. RXS-1T at 20: 11-14.

⁹⁹ Sahu, Exh. RXS-1T at 20: 18-20 and 23-25. At 21: 1-2.

¹⁰⁰ Sahu, Exh. RXS-1T at 26: 7-11.

¹⁰¹ Sahu, Exh. RXS-1T at 26: 11-13.

¹⁰² Sahu, Exh. RXS-1T at 27: 7-9.

- 61 Sahu emphasizes that PSCAA’s air permit, and the PCHB review of that permit, cannot satisfy the Commission’s inquiry into the equities (or lack thereof) of the Tacoma LNG facility’s negative externalities.¹⁰³ PSCAA’s issuance of the air permit and the PCHB’s subsequent review of that permit do not establish that Tacoma LNG does not disparately impact the Tribe.¹⁰⁴
- 62 Sahu testifies that PSCAA issued “Notices of Violation” for the Tacoma LNG facility on June 8, 2023. According to Sahu, the Company admits that it has not remained in compliance with the conditions in the air permit, which are designed to reduce harm to the surrounding community.¹⁰⁵
- 63 Sahu argues further that PSE admits that the Tacoma LNG Facility has liquefied more than 250,000 gallons of LNG per day, the maximum production limit set forth in the air permit.¹⁰⁶ For this reason, PSE cannot credibly conclude that the Tacoma LNG facility does not diminish the health of people in its vicinity through emissions of pollutants to the air.¹⁰⁷
- 64 Sahu also contends that the PCHB did not conclude that Tacoma LNG’s emissions of air pollutants cannot and will not have disparate impacts to Tribe or the surrounding community.¹⁰⁸
- 65 Sahu argues that, beyond routinely adding pollutants into the air, the operation of LNG production and storage facilities like Tacoma LNG present significant safety risks, including the risk of explosions and other catastrophic events.¹⁰⁹
- 66 Sahu maintains that the issue of whether the Facility meets the requirements of 49 CFR Part 193 is a different and narrower question, compared to the issue of whether it is prudent to build the facility in this location, particularly when PSE had more benign alternatives available for meeting its rate payers limited peak shaving needs.¹¹⁰

¹⁰³ Sahu, Exh. RXS-1T at 28: 6-8.

¹⁰⁴ Sahu, Exh. RXS-1T at 28: 8-9.

¹⁰⁵ Sahu, Exh. RXS-1T at 29: 10-12.

¹⁰⁶ Sahu, Exh. RXS-1T at 29: 14-15.

¹⁰⁷ Sahu, Exh. RXS-1T at 30: 5-7.

¹⁰⁸ Sahu, Exh. RXS-1T at 31: 8-10.

¹⁰⁹ Sahu, Exh. RXS-1T at 31: 21-23.

¹¹⁰ Sahu, Exh. RST-1T at 34: 6-9.

- 67 Sahu testifies that to their knowledge, no worst-case-scenario risk analysis has been performed for Tacoma LNG.¹¹¹ Sahu further argues that during development of the Facility, WUTC staff acknowledged that the “design spill” scenario that PSE modeled for the Facility does not represent all reasonably anticipatable risks posed by the Facility.¹¹²
- 68 Without a complete analysis of all reasonably anticipated risks, Sahu argues that PSE cannot demonstrate that Tacoma LNG presents no danger to the public.¹¹³ The absence of such information prevents the Commission from making an informed decision as to whether construction of Tacoma LNG is in the public interest.¹¹⁴
- 69 Additionally, Sahu submits that PSE has announced aspirations for Tacoma LNG to load rail cars with LNG for transportation elsewhere. In a document produced to the Tribe in litigation, PSE indicates plans for Tacoma LNG to load LNG onto rail cars in the future.¹¹⁵ Tribal members live near the railroad tracks, and important cultural and natural resources are located along the rail lines.¹¹⁶
- 70 Sahu contends that the risks inherent in the LNG rail traffic occasioned by Tacoma LNG cannot be overstated.¹¹⁷ Indeed, PHMSA’s recognition of these risks is illustrated by the fact that the LNG by Rail Rule requires evacuation of a one-mile radius around any incident involving this substance.¹¹⁸
- 71 Sahu explains that, based on the air permit, the Tacoma LNG Facility can operate as a peak shaving facility benefiting rate payers ten days per year *at most*, a constraint proposed by PSE.¹¹⁹
- 72 According to Sahu, prior to PSE’s September 22, 2016, decision to construct the facility, only two consecutive high usage days occurred in a given year—two days in 2013 and two days in 2014.¹²⁰ However, Sahu argues that PSE selected a storage tank size for the

¹¹¹ Sahu, Exh. RXS-1T at 34: 17-18.

¹¹² Sahu, Exh. RXS-1T at 34: 18-20.

¹¹³ Sahu, Exh. RXS-1T at 35: 16-18.

¹¹⁴ Sahu, Exh. RXS-1T at 35: 20-21.

¹¹⁵ Sahu, Exh. RXS-1T at 36: 8-10.

¹¹⁶ Sahu, Exh. RJR-1T at 37: 4-5.

¹¹⁷ Sahu, Exh. RXS-1T at 37: 12-13.

¹¹⁸ Sahu, Exh. RXS-1T at 37: 13-15.

¹¹⁹ Sahu, Exh. RXS-1T at 39: 17-19

¹²⁰ Sahu, Exh. RXS-1T at 41: 6-8.

Facility based on six consecutive days of need without any basis for its determination.¹²¹ PSE did not commence construction of the storage tank or receive the air permit for Tacoma LNG prior to September 22, 2016. Thus, Sahu concludes that the tank size and cost were significantly overestimated based on the information available on that date.¹²²

73 Sahu maintains that the daily delivery data post-September 22, 2016, do not support a tank size capable of six days of consecutive peak shaving either.¹²³ Sahu states that he found no indication that PSE considered options to reduce its tank size commensurate with having to accommodate less than six consecutive days of peak shaving.¹²⁴ Additionally, Sahu argues that PSE's additional storage capacity and withdrawal needs could have been accommodated at its Jackson Prairie storage facility.¹²⁵ Sahu contends that PSE's total seasonal peak shaving represents just 3.2% of Jackson Prairie and would only represent around 7% of its withdrawal capacity.¹²⁶

74 According to Sahu, the Tacoma LNG Facility was expensive to design and construct, but it was even more so mainly due to its design to accommodate TOTE's needs and specifications.¹²⁷

75 Sahu contends that the removal of heavy hydrocarbons during pretreatment "to achieve the desired purity of the liquefied natural gas product" is necessary only because PSE is contractually required to provide LNG to TOTE that meets tight purity specifications.¹²⁸ Sahu further argues that if the removal of heavy hydrocarbons at Tacoma LNG is truly necessary to ensure ratepayers receive natural gas of satisfactory quality during peak shaving, that would indicate that PSE is continuously supplying substandard quality gas to the vast majority of its ratepayers with no concerns at all.¹²⁹

76 Since Tacoma LNG's customers do not use or need LNG for peak shaving, Sahu questions why regulated ratepayers should bear any costs associated with liquefying the gas that comes into the facility or flaring the waste created in the liquefaction process.¹³⁰

¹²¹ Sahu, Exh. RXS-1T at 41: 8-9.

¹²² Sahu, Exh. RXS-1T at 41: 10-12.

¹²³ Sahu, Exh. RXS-1T at 41: 5-6.

¹²⁴ Sahu, Exh. RXS-1T at 41: 18-20.

¹²⁵ Sahu, Exh. RXS-1T at 41: 24-25.

¹²⁶ Sahu, Exh. RXS-1T at 42: 1-3.

¹²⁷ Sahu, Exh. RXS-1T at 43: 9-11.

¹²⁸ Sahu, Exh. RXS-1T at 44: 15-18.

¹²⁹ Sahu, Exh. RXS-1T at 45: 3-6.

¹³⁰ Sahu, Exh. RXS-1T at 46: 3-5.

77 Sahu testifies that at the very most, the costs to be reimbursed by ratepayers, including any possible costs of flaring, should be commensurate with the maximum amount of product that is forecasted to go to rate payers: 2.2%.¹³¹ ¹³²

78 The Puyallup Tribe contends that the Facility is not sufficiently used and useful to warrant the ratepayer expenditure requested by PSE.¹³³ Although PSE attempts to present Tacoma LNG as a peak-shaving facility, Sahu argues that the Company only intends to use a miniscule portion of the facility's end-product for its peak-shaving needs.¹³⁴

79 Although the Facility has vaporized and distributed gas to ratepayers on one occasion, Sahu submits that the occurrence was in response to an incident that reduced available pipeline gas supply and unrelated to peak shaving.¹³⁵ The Tribe argues that the small benefits to Washington and its ratepayers are far outweighed by the costs, in the form of negative externalities, that Tacoma LNG presents.¹³⁶ Sahu testifies that PSE has less-expensive and more-benign ways to meet ratepayer needs without burdening the communities adjacent to the current location of the LNG facility.¹³⁷

Rebuttal Testimony

80 PSE witness Roberts argues that the entire portion of the Tacoma LNG Facility allocated to PSE was used and useful when it was placed into service in February 2022.¹³⁸ The purpose of a peaking resource such as Tacoma LNG is to shave the peak hourly demand down to the relatively steady-state level of service from the pipeline.¹³⁹ Since the Facility was never limited by the outlet pressure at the North Tacoma gate station, Roberts contends that the Tacoma LNG Facility was used and useful when it went in-service on February 1, 2022.¹⁴⁰

81 According to Roberts, in the Final 2022 GRC Order the Commission endorsed PSE's design day standard and ruled that the Company had established the need for the Tacoma LNG Facility.¹⁴¹ Because Public Counsel's testimony regarding the design day standard

¹³¹ Sahu, Exh. RSX-1T at 46: 10-11.

¹³² Sahu, Exh. RSX-1T at 47: 1-3.

¹³³ Sahu, Exh. RSX-1T at 49: 1-2.

¹³⁴ Sahu, Exh. RSX-1T at 49: 3-5.

¹³⁵ Sahu, Exh. RSX-1T at 49: 6-8.

¹³⁶ Sahu, Exh. RSX-1T at 49: 8-9.

¹³⁷ Sahu, Exh. RSX-1T at 49: 9-11.

¹³⁸ Roberts, Exh. RJR-11T at 8: 16-18.

¹³⁹ Roberts, Exh. RJR-11T at 8: 12-14.

¹⁴⁰ Roberts, Exh. RJR-11T at 8: 14-17.

¹⁴¹ Roberts, Exh. RJR-11T at 10: 13-16.

has already been addressed by the Commission, Roberts testifies that Public Counsel's testimony on this topic should be disregarded.¹⁴²

82 Roberts argues that the Commission should give no weight to Public Counsel's claim that PSE views actual weather and demand outcomes as irrelevant.¹⁴³ PSE contends that it adjusted to actual maximum day sales information in the development of each subsequent forecast by adjusting subsequent starting points higher or lower and incorporating other adjustments based on assessment of mitigating factors.¹⁴⁴

83 Roberts notes that in its letter acknowledging PSE's 2017 IRP, the Commission found PSE's analysis of its resource needs over the 20-year planning horizon "generally comprehensive," and the Commission was "satisfied with the scope of analysis and overall presentation."¹⁴⁵ Since the peak gas day was accepted by the Commission in the 2017 IRP, PSE argues it was not "outdated by 2016" as claimed by Public Counsel.¹⁴⁶ Roberts argues that Public Counsel has selectively and misleadingly quoted from the Commission's acknowledgment letter.¹⁴⁷

84 Roberts also disputes Public Counsel's comparison of the benefits of the Facility to the reliability benefits noted in PSE's 2005 Least Cost Plan (LCP).¹⁴⁸ Roberts explains that Public Counsel is comparing a 50-year cost metric with a 1-year benefit metric.¹⁴⁹ The \$15.1 million cost discussed in the 2005 LCP is the levelized annual cost of adding resources to meet a design peak of just 2 degrees colder *at that time for the then-expected planning horizon*.¹⁵⁰ The \$182 million figure is a one-time capital cost of a resource to meet customer demand at the design peak today.¹⁵¹ As such, Roberts argues that the \$15.1 million bears no relationship to the \$182 million and Public Counsel's testimony in this regard should be dismissed.¹⁵²

85 Roberts maintains that the Company continued to inform its Board of Directors about the Tacoma LNG Project and involved the PSE Board of Directors in decisions after

¹⁴² Roberts, Exh. RJR-11T at 11: 1-2.

¹⁴³ Roberts, Exh. RJR-11T at 11: 3-5.

¹⁴⁴ Roberts, Exh. RJR-11T at 13: 3-6.

¹⁴⁵ Roberts, Exh. RJR-11T at 13: 13-17.

¹⁴⁶ Roberts, Exh. RJR-11T at 13: 18-19.

¹⁴⁷ Roberts, Exh. RJR-11T at 14: 11-13.

¹⁴⁸ Roberts, Exh. RJR-11T at 15: 8-11.

¹⁴⁹ Roberts, Exh. RJR-11T at 15: 14-15.

¹⁵⁰ Roberts, Exh. RJR-11T at 15: 15-17.

¹⁵¹ Roberts, Exh. RJR-11T at 15: 18-19.

¹⁵² Roberts, Exh. RJR-11T at 15: 20. At 16: 1-2.

September 2016.¹⁵³ Roberts contends that discussing the design peak day standard, however, would not have assisted the Board of Directors in their decision making on the Tacoma LNG Project.¹⁵⁴

86 Roberts argues that in Final Order 24/10, the Commission rejected Public Counsel’s and the Tribe’s challenges to the third and fourth prudency factors stating “we agree with PSE that it appropriately based planning decisions on its design day standard . . .”¹⁵⁵ The Company testifies that Public Counsel’s claim that PSE’s use of the Tacoma LNG Facility does not support the decision to build the Tacoma LNG Facility is based on its failed arguments and should be rejected.¹⁵⁶

87 According to Roberts, peak shaving mitigates unfavorable results from demand-pressured conditions on the gas system, whether they are operational or economic pressures.¹⁵⁷ He further explains that the Tacoma LNG Facility’s vaporization operations on February 1 and 2, 2023, are a good example of its use for peak shaving.¹⁵⁸ In that circumstance, the transport capacity of the Enbridge pipeline in British Columbia was only 64 percent, which limited PSE’s gas supply.¹⁵⁹ Roberts testifies that it was reasonable and prudent “to commence gas vaporization and injection to maintain PSE’s distribution system stability rather than gambling on Enbridge quickly returning its system to full capacity.”¹⁶⁰

88 Roberts submits that the Tacoma LNG Facility vaporization operation from February 22 through 24, 2023, was an example of using an in-house peak-shaving resource to offset high gas prices, i.e. to mitigate economic pressures.¹⁶¹ PSE used lower-cost gas that was stored in the Facility and vaporized for injection, which otherwise would have been purchased at high market prices.¹⁶² Roberts argues that Public Counsel’s claim that curtailment would not have been “required” absent vaporization from the Tacoma LNG Facility misses the point of having peak-shaving capabilities.¹⁶³

¹⁵³ Roberts, Exh. RJR-11T at 16: 9-11.

¹⁵⁴ Roberts, Exh. RJR-11T at 16: 13-16.

¹⁵⁵ Roberts, Exh. RJR-11T at 17: 2-5.

¹⁵⁶ Roberts, Exh. RJR-11T at 17: 16-19.

¹⁵⁷ Roberts, Exh. RJR-11T at 18:4-8.

¹⁵⁸ Roberts, Exh. RJR-11T at 18: 16-18.

¹⁵⁹ Roberts, Exh. RJR-11T at 18: 18-20.

¹⁶⁰ Roberts, Exh. RJR-11T at 19: 1-3.

¹⁶¹ Roberts, Exh. RJR-11T at 19: 6-10.

¹⁶² Roberts, Exh. RHR-11T at 12-16.

¹⁶³ Roberts, Exh. RJR-11T at 19: 17-19.

- 89 Regarding the Company's responsibility to top off its gas supply, Roberts explains that in November 2022, the company evaluated then-current gas prices and determined it was economically efficient to maintain existing volumes and top-off in Spring 2023.¹⁶⁴
- 90 Roberts testifies that the Tribe's testimony "goes primarily to the first two of the Commission's four primary prudency factors,"¹⁶⁵ and that the Commission found that PSE reasonably considered alternatives, relied on gas demand forecasts, and demonstrated a need for the Facility in Final Order 24/10.¹⁶⁶
- 91 Roberts notes that the Commission also rejected the alleged alternative of Jackson Prairie to meet peak shaving needs when it was offered by Public Counsel.¹⁶⁷ Roberts argues that the Tribe's testimony should be disregarded as seeking to relitigate issues already decided by the Commission.¹⁶⁸
- 92 Roberts does not agree with the Tribe's claim that the revised standard of review in Revised Code of Washington (RCW 80.28.425), which became effective in 2022, is directly relevant to costs incurred by PSE before that date.¹⁶⁹ The Company argues that the Commission determined that RCW 80.28.425 "should not be applied retroactively" and that it would be "unjust and unreasonable to incorporate information available only through hindsight into the prudency determination related to construction that occurred in 2016."¹⁷⁰
- 93 Roberts explains that construction of the Tacoma LNG Facility was 100 percent complete as of July 1, 2021¹⁷¹ and that the Facility was placed in-service on February 1, 2022.¹⁷² Roberts argues that it would be unjust and unreasonable for the Commission to "incorporate information available only through hindsight" into the prudency determination related to costs for construction that was complete at the time RCW 80.28.425 became effective.¹⁷³ Roberts argues that Public Counsel ignores the

¹⁶⁴ Roberts, Exh. RJR-11T at 21: 3-5.

¹⁶⁵ Roberts, Exh. RJR-11T at 21: 16-19.

¹⁶⁶ Roberts, Exh. RJR-11T at 21: 20-22. At 22: 1-3.

¹⁶⁷ Roberts, Exh. RJR-11T at 22: 12-13.

¹⁶⁸ Roberts, Exh. RJR-11T at 22: 13-17.

¹⁶⁹ Roberts, Exh. RJR-11T at 23: 15.

¹⁷⁰ Roberts, Exh. RJR-11T at 23: 17. At 24: 1-3.

¹⁷¹ Roberts, Exh. RJR-11T at 24: 8-9.

¹⁷² Roberts, Exh. RJR-11T at 24: 10-11.

¹⁷³ Roberts, Exh. RJR-11T at 24: 12-16. *See also* Laws of 2021, ch. 188 (noting an effective date of July 25, 2021).

Commission's prior order, Final Order 24/10, which declined to apply this standard retroactively.¹⁷⁴

- 94 Roberts similarly argues that the Tribe ignores the Commission's findings and attempts to relitigate whether equity considerations, or the newly expanded definition of the public interest, would support disallowance of PSE's costs related to the Tacoma LNG Facility.¹⁷⁵
- 95 Roberts testifies that construction of the Tacoma LNG Project improved environmental conditions onsite and in and around the Blair and Hylebos waterways.¹⁷⁶ The benefits of PSE's actions are perpetual and the material improvements at the site of the Tacoma LNG Facility were recited by the Shorelines Hearings Board in its decision denying an appeal by the Tribe.¹⁷⁷
- 96 Roberts maintains that the Tribe's concerns regarding "significant adverse air pollution" were raised by the Tribe in PSE's 2022 GRC and rejected by the Commission in Final Order 24/10.¹⁷⁸
- 97 Roberts contends that the Commission should disregard the Tribe's attempt to insert the Health Impact Assessment (HIA) into this proceeding just as it did in its prudency determination of the Tacoma LNG Facility in the Final GRC Order.¹⁷⁹ In the Final GRC Order, the Commission declined "to require a Health Impact Assessment of the facility, as advocated by the Tribe."¹⁸⁰
- 98 According to Roberts, in Final Order 24/10, the Commission considered and explicitly rejected the Tribe's arguments concerning the risk of catastrophic accident.¹⁸¹
- 99 Roberts argues that the "only inference" to be drawn from the Commission's request for additional information regarding Facility safety is that the Commission did its job to ensure that the Tacoma LNG Facility is properly designed and engineered.¹⁸²

¹⁷⁴ Roberts, Exh. RJR-11T at 26: 8-11.

¹⁷⁵ Roberts, Exh. RJR-11T at 25: 7-10.

¹⁷⁶ Roberts, Exh. RJR-11T at 42: 14-17.

¹⁷⁷ Roberts, Exh. RJR-11T at 27: 17-20. At 28: 1.

¹⁷⁸ Roberts, Exh. RJR-11T at 40: 10-11.

¹⁷⁹ Roberts, Exh. RJR-11T at 44: 13-15.

¹⁸⁰ Roberts, Exh. RJR-11T at 44: 9-11.

¹⁸¹ Roberts, Exh. RJR-11T at 45: 4-6.

¹⁸² Roberts, Exh. RJR-11T at 49: 16-19.

100 Roberts maintains that PSE has no plans to transport LNG by rail and that the Tribe made this same allegation in the 2022 GRC.¹⁸³ In Final Order 24/10, the Commission placed “relatively little weight on claims that PSE may transport LNG by rail” because there was limited evidence to support the claim.¹⁸⁴ PSE contends that the Tribe has offered no new evidence to support its claim.¹⁸⁵

Cross-answering testimony

101 Tribe witness Sahu testifies that despite the short duration of its operations, the Tacoma LNG facility has repeatedly violated multiple conditions in its PSCAA air permit.¹⁸⁶ While the facility’s air permit is intended to ensure compliance with the requirements of the Clean Air Act, the Tribe argues that such compliance does not establish that the emissions allowed under the permit cause no harm to receptors in the surrounding airshed.¹⁸⁷ Sahu argues that PSE’s repeated violation of permit conditions undercuts PSE’s assertions that the Facility is safe because it has been permitted.¹⁸⁸

102 Additionally, Sahu agrees with Public Counsel’s criticisms of PSE’s use of design day calculations and ignoring of actual forecasts for determining the size of Facility equipment.¹⁸⁹

103 Sahu further contends that Staff’s recommended disallowance of \$500,000 related to PSE’s pre-liquefaction treatment is insufficient.¹⁹⁰ Sahu maintains that since there is no ratepayer need for the pre-treatment of gas prior to liquefaction, these costs should be disallowed.¹⁹¹ Sahu testifies that the Commission should not only disallow the costs of the redesign, but the full scope of costs to build and operate this imprudently purchased equipment.¹⁹² Additionally, Sahu posits that PSE only incurred costs for the new flare to accommodate the modified waste gas from their new pre-treatment, which does not provide a benefit to rate payers, and thus these costs should be disallowed.¹⁹³

¹⁸³ Roberts, Exh. RJR-11T at 50: 3-4.

¹⁸⁴ Roberts, Exh. RJR-11T at 50: 4-6.

¹⁸⁵ Roberts, Exh. RJR-11T at 50: 6-7.

¹⁸⁶ Sahu, Exh. RXS-35T at 6: 22-23.

¹⁸⁷ Sahu, Exh. RXS-35T at 6: 23-26.

¹⁸⁸ Sahu, Exh. RXS-35T at 7: 1-3.

¹⁸⁹ Sahu, Exh. RXS-35T at 7: 8-9.

¹⁹⁰ Sahu, Exh. RXS-35T at 9:18-21.

¹⁹¹ Sahu, Exh. RXS-35T at 10: 1-4.

¹⁹² Sahu, Exh. RXS-35T at 9: 16-21.

¹⁹³Sahu, Exh. RXS-35T at 10: 7-13.

104 Sahu notes multiple instances in which waste gases that should have been flared were instead bypassed to the atmosphere, significantly increasing the facility's total actual emissions.¹⁹⁴ These events are particularly concerning to the Tribe because PSE has repeatedly asserted that this type of bypass would rarely or never occur, but now there are records demonstrating that the flare was bypassed at least 30 times between December 31, 2021, and January 1, 2023.¹⁹⁵

105 Sahu argues that these facts make clear that the Commission cannot rely on the existence of the PSCAA air permit as confirmation that the Tacoma LNG facility is not causing harm to the surrounding community.¹⁹⁶

Post hearing briefing

106 In its Brief, PSE argues that its decisions after September 22, 2016, remained prudent, that Public Counsel's challenges to the design day standard are without merit, and that the Company prudently reevaluated the need for the Facility in 2018.¹⁹⁷

107 Public Counsel argues that the Commission did not evaluate the design day standard for the period after September 22, 2016, and that the Company should have reevaluated this standard.¹⁹⁸ Public Counsel also maintains that PSE management should have specifically discussed the design day standard with the Board of Directors.¹⁹⁹

108 In its Brief, the Tribe maintains that the Commission should disallow Facility costs because PSE overstated the need for the project, ignored equitable considerations and changing public policy, incurred significant costs solely for nonregulated customers, and failed to carry its burden of proof to establish that Facility costs were reasonable.²⁰⁰

109 ***Commission Determination.*** PSE acted prudently in developing and constructing the Facility after the initial decision to build on September 22, 2016. However, the Commission is very concerned with the Company's operation of the Facility's flare from 2021 onwards, and we address this issue separately.

¹⁹⁴ Sahu, Exh. RXS-35T at 12: 5-7.

¹⁹⁵ Sahu, Exh. RXS-35T at 12: 14-16.

¹⁹⁶ Sahu, Exh. RXS-35T at 14: 9-11.

¹⁹⁷ PSE Brief ¶¶ 62, 66, 70.

¹⁹⁸ See Public Counsel Brief ¶¶ 13-18.

¹⁹⁹ *Id.* ¶¶ 19-20.

²⁰⁰ *E.g.*, Tribe Brief at 2:6-13.

A. Whether PSE sufficiently considered the need for the Facility

- 110 In PSE’s 2022 rate case, the Commission found that “the prudence standard should remain focused on what the utility reasonably knew at the time it made its investment decisions” and that PSE’s “decisions should not be second-guessed based on facts or changes to the law that occurred after it initiated construction and after the facility was mechanically completed.”²⁰¹ The Commission construed the Tacoma LNG Settlement in that case as “an agreement that the Settling Parties are stipulating to the prudence of the Company’s actions up through the initial decision to build the LNG Facility on September 22, 2016, but that the Settlement allows the parties to review the prudence and reasonableness of costs incurred after that point.”²⁰²
- 111 We apply the same framework in this case. We decline to apply the expanded public interest standard in RCW 80.28.425(1) retrospectively. This statute is expressly concerned with the review of MYRPs proposed by companies “[b]eginning January 1, 2022.”²⁰³ The same analysis that counsels against applying the statute retrospectively to the initial decision to construct the Facility in 2016 also counsels against applying it to decisions made in the immediately following years.
- 112 Furthermore, we consider the prudence of the Company’s actions from September 22, 2016, forward, based on what the Company reasonably knew at the time. Prudence is “continually evaluated during the life of an investment.”²⁰⁴
- 113 In this case, Public Counsel and the Tribe have broadly challenged PSE’s resource planning, raising many of the same arguments addressed in the Company’s 2022 general rate case. We have considered these arguments but again find them unpersuasive. In the years following the September 22, 2016, decision to build the Facility, PSE continued to update its natural gas resource analysis in its 2017 IRP and its 2019 IRP Progress Report.²⁰⁵ By 2021, the Company’s IRP noted the Facility as an existing resource, expected to be available in the winter of 2021-22.²⁰⁶

²⁰¹ 2022 PSE GRC Order ¶ 52.

²⁰² 2022 PSE GRC Order ¶ 393.

²⁰³ RCW 80.28.425(1).

²⁰⁴ *In re the Comm’n Inquiry into the Valuation of Pub. Serv. Co. Property that Becomes Used and Useful after Rate Effective Date*, Docket U-190531, Policy Statement, at 12, n.39 (January 31, 2020).

²⁰⁵ See Roberts, Exh. RJR-1T at 12:13-13:14; see also Roberts, Exh. RJR-5 at 4-5, Roberts, Exh. RJR-6 at 4-6.

²⁰⁶ Roberts, Exh. RJR-1T at 14:5-7; see also Roberts, Exh. RJR-7 at 6, n. 5.

114 PSE management updated the Board of Directors on the Facility’s construction in 2017, 2018, 2019, and 2020.²⁰⁷ The Board of Directors specifically reevaluated the Facility in 2018 and considered three options: modified construction (including updated construction costs), pause and wait, and terminating construction.²⁰⁸ However, even after the Company updated its analysis of peak day resource needs, the “with Tacoma LNG” scenario showed a \$112.5 million benefit to the Company’s portfolio.²⁰⁹ The Company’s Board of Directors then chose the “modified construction” option.²¹⁰ We are not persuaded by any evidence provided by Public Counsel or the Tribe that the Board of Directors should have reevaluated the Facility on other occasions or that it should have chosen a different option in 2018. The Board of Directors acted prudently given the information available at the time, which showed that proceeding with a modified construction plan benefited the Company’s portfolio.

115 Public Counsel’s challenges to the design day standard are unpersuasive. In PSE’s 2022 GRC, we observed that the design day standard was “intended to ensure a more robust natural gas system that will not run short of resources when they are needed most.”²¹¹ As Roberts explains, the Commission acknowledged PSE’s 2017 IRP as complying with applicable legal standards and providing a “generally comprehensive” analysis of the Company’s resource needs.²¹² The Commission similarly acknowledged PSE’s 2021 IRP.²¹³ Given the circumstances, we are not persuaded that the Board of Directors failed to act prudently by not specifically reevaluating the design day standard during the construction of the Facility. Although Public Counsel argues that the design day standard was outdated by 2005,²¹⁴ Roberts explains that this relies on an incomplete quotation from the relevant acknowledgment letter.²¹⁵ It also overlooks the Commission’s continued acknowledgment of PSE’s IRPs over the following years.

116 We are similarly unpersuaded that the design day standard allowed PSE to dismiss actual weather and demand outcomes as irrelevant. Roberts explains that PSE adjusted to actual maximum day sales information in the development of each subsequent forecast by

²⁰⁷ See, e.g., Roberts, Exh. RJR-1T at 30:18 – 32:10; see also Roberts, Exh. RJR-8C at 2-6, 7-25, and 26-37.

²⁰⁸ See Roberts, Exh. RJR-1T at 19:16 – 20:3; see also Roberts, Exh. RJR-8C at 57.

²⁰⁹ See Roberts, Exh. RJR-1T at 23:14–19; see also Roberts, Exh. RJR-1T at 24:1 (Table 5).

²¹⁰ Roberts, Exh. RJR-1T at 26: 10-11.

²¹¹ 2022 PSE GRC Order ¶ 395.

²¹² See Dockets UE-160918 & UG-160919, Correction to WUTC’s Attachment to its Letter Acknowledging PSE’s 2017 Electric and Natural Gas IRP, Att. at 1, 5 (June 19, 2018).

²¹³ See Roberts, Exh. RJR-11T at 14:3-8, see also 2021 IRP at 9-67 and 9-68; 2021 IRP at Appx. L (Temperature Trend Study).

²¹⁴ E.g., Public Counsel Reply Brief ¶¶ 6-7.

²¹⁵ Roberts, Exh. RJR-11T at 14:9-23.

adjusting subsequent starting points higher or lower and incorporating other adjustments based on assessment of mitigating factors.²¹⁶

- 117 Thus, we conclude that PSE continued to act reasonably in developing and constructing the Facility after the initial decision to build on September 22, 2016. To the extent that we have concerns with specific Facility costs, such as preliquefaction treatment costs, or environmental externalities, we address those issues below in Sections II.B and III.C.
- 118 It is not necessary or appropriate at this juncture to delve into the underlying justifications for constructing a dual-use Facility, the siting of the Facility, the justifications for LNG storage, the sizing of the LNG storage tank, the safety of the Facility's design, potential air pollution, potential shipment of LNG by rail, or other issues surrounding the design of the Facility, as these issues were addressed more fully in the prior rate case. Nor is it necessary or appropriate to disallow Facility costs on the incorrect assumption that RCW 80.28.425(1) should apply retroactively. This proceeding is properly focused on the prudence of PSE's actions after September 22, 2016, based on what the Company reasonably knew at the time and in light of the legal framework that existed at the time. The Commission should decline to revisit decisions it has already deemed prudent and instead allow the 2022 PSE GRC Order a proper measure of administrative finality.
- 119 In arriving at our findings, we have applied the Commission's traditional prudence standards, which focus on the information reasonably available to the Company at the time. Although the Commission noted in the prior rate case that it may consider actual use of the Facility after its construction,²¹⁷ this language was mere dicta, stated in the context of approving a nonprecedential settlement. It did not reflect our longstanding ratemaking practice for assessing the prudence of resource acquisitions. We therefore do not reach the parties' arguments about PSE's vaporization of LNG in the winter of 2023-24 when evaluating whether PSE has sufficiently established a need for the Facility.²¹⁸

B. Whether the Company has continued to act prudently in response to alleged air permit violations after the Facility began operation.

- 120 The Tribe argues that the Commission should disallow all Facility costs after September 22, 2016, as imprudent, because the Facility places disproportionate burdens on the

²¹⁶ Roberts, Exh. RJR-11T at 13: 3-6.

²¹⁷ 2022 PSE GRC Order ¶ 405 (“When we review the prudence of costs included in PSE’s 2023 Tacoma LNG tariff filing, the Commission may also consider the extent to which the Facility was used as a peak-shaving resource.”).

²¹⁸ See Public Counsel Brief ¶¶ 22-26 (arguing that the use of the Facility in the winter of 2023-2024 did not constitute true peak-shaving); Sahu, Exh. RSX-1T at 49: 6-8 (challenging PSE’s actual use of the Facility during periods of constrained gas supply).

surrounding community.²¹⁹ Although we agree the Company acted prudently in acquiring and constructing the Facility, we have significant concerns with the operation of the Facility and possible violations of its air permit.

- 121 The Commission’s prudency test considers “what a reasonable board of directors and company management have decided given what they knew or reasonably should have known to be true at the time they made a decision.”²²⁰ Prudency is concerned not only with “the question of need” but also with the “appropriateness of expenditures.”²²¹ It is “continually evaluated during the life of an investment.”²²²
- 122 In Final Order 24/10, the Commission again recognized that the prudency test should avoid second-guessing the company’s decisions on the basis of hindsight. But the Commission also recognized that “RCW 80.28.425 expands the public interest standard to include issues such as equity and environmental health” and that this law “must be applied to prudency going forward . . .”²²³
- 123 In this case, we are concerned that the PSCAA has issued numerous Notices of Violations (NOVs) to the Tacoma LNG Facility since December 2021.²²⁴ More than half of the 45 violations noted by Dr. Sahu relate a “bypass event” or the bypassing of the Facility’s flare.²²⁵ When the flare is bypassed, these pollutants are not destroyed and are released into the airshed.²²⁶ The PSCAA also issued 10 NOVs for the Facility not maintaining the flare at the minimum temperature.²²⁷ These NOVs undermine earlier claims by the Company before the PCHB that “we hope that it [the flare bypass] never gets used” and that it might be used “a couple of times over the lifetime of the

²¹⁹ Tribe Brief at 21-23. *See also id.* at 9.

²²⁰ *WUTC v. Puget Sound Power & Light Company*, Cause No. U-83-54, Fourth Suppl. Order at 66 (September 28, 2014).

²²¹ *Id.*

²²² *In re the Comm’n Inquiry into the Valuation of Pub. Serv. Co. Property that Becomes Used and Useful after Rate Effective Date*, Docket U-190531, Policy Statement, at 12, n.39 (January 31, 2020).

²²³ Final Order 24/10 ¶ 427.

²²⁴ Sahu, Exh. RXS-35T at 11; Sahu, Exh. RXS-37 (containing PSCAA-issued NOVs and PSE response to PSCAA); *see also* Sahu, Exh. RXS-38 (table summarizing NOVs issued by PSCAA to Tacoma LNG on May 12, 2023).

²²⁵ *See* Sahu, Exh. RXS-38.

²²⁶ Sahu, Exh. RXS-35T at 12.

²²⁷ *See* Sahu, Exh. RXS-38.

facility.”²²⁸ Other NOV’s pertain to failing to collect the required quantity of reporting data, which as Dr. Sahu notes is “essential to verify compliance.”²²⁹

124 The Commission therefore requires PSE to file biannual reports with the Commission, describing any further NOV’s issued by the PSCAA; the Company’s response to any such NOV’s; the amounts of any Incentive Payments paid to, or liquidated damages paid by, NAES Corporation pursuant to the NAES O&M agreement;²³⁰ and any repairs, modifications, or improvements to the Facility’s flare or flare bypass. Commercially valuable information, or other information properly marked confidential, in these reports will be subject to the protective order entered in this docket.

125 Although these NOV’s are extremely concerning, we do not reduce PSE’s recovery of Facility costs in this proceeding because of air permit violations or other environmental externalities. RCW 80.28.425 “does not allow the Commission to retrospectively second-guess the determinations of other, more specialized environmental health agencies, such as the Pollution Control Hearings Board.”²³¹ We also recognize that PSE disputes the Tribe’s characterizations of the NOV’s, that the Company states it is cooperating with the PSCAA, and that the PSCAA itself is able to penalize violations.²³² It would appear premature to render any findings on these issues while they are still pending before the PSCAA. We instead find it appropriate to continue to monitor PSE’s operation of the Facility, its responses to the NOV’s, and any subsequent determinations by the PSCAA. The Commission will consider the prudence and appropriateness of Facility expenses as the Company responds to these NOV’s. If warranted, the Commission may also consider decrementing the Company’s rate of return on the Facility prospectively, adopting performance-based regulatory mechanisms, or requiring the Company to make repairs or improvements to the Facility.²³³

126 In the meantime, the Company should be aware that it may be held to account for the actions of its contractor operating the Facility.²³⁴ The Company must take reasonable and

²²⁸ Roberts, Exh. RJR-18X; *see also* Roberts, RJR-19X (PSE counsel relying on Mr. Stobart’s testimony in response to the Tribe’s concerns that the Tacoma LNG facility would violate enforcement permit conditions.)

²²⁹ Sahu, Exh. RXS-35T at 13:11-12.

²³⁰ *See* Roberts, Exh. RJR-11T at 38:3-15.

²³¹ Final Order 24/10 ¶ 427.

²³² PSE Reply Brief ¶ 41.

²³³ *E.g.*, RCW 80.28.130 (providing that the Commission may require repairs, improvements, or other modifications to utility plant).

²³⁴ *See, e.g.*, *WUTC v. Puget Sound Energy, Inc.*, Docket PG-060215 Order 02 (April 3, 2008) (adopting a settlement agreement that imposed a \$1.25 million penalty on PSE for the fraudulent actions of certain contractor employees who falsified pipeline leak inspection records).

appropriate steps to prevent air permit violations. The Company must also file biannual reports with the Commission as required in paragraph 124 above.

III. Tacoma LNG Facility Costs and Deferred Costs

127 The non-Company parties raise a number of specific challenges to PSE’s proposed recovery of Facility costs.

128 PSE witness Roberts states that the total capital cost of the Tacoma LNG Project is \$489 million, as of December 31, 2022.²³⁵ Of this total, PSE proposes to allocate \$243 million to its regulated customers.²³⁶ Roberts states that the allocation of costs proposed by PSE follows the cost allocation methodology established by the Commission in Order 10 of Docket UG-151663.²³⁷ An overview of each component of the capital costs proposed for recovery and their associated allocation is displayed in Table 1 below:

Table 1: Allocation of Capital Costs for Tacoma LNG Project (in thousands)

Capital Cost Component	Amount	Regulated (PSE)	Non-Regulated (Puget LNG)
Liquefaction	\$ 99,091	10%	90%
Storage	\$ 105,830	79%	21%
Bunkering	\$ 30,969	0%	100%
Truck Loading	\$ 6,304	5%	95%
Vaporization	\$ 17,660	100%	0%
Total Before Common Costs	\$ 259,855	\$ 111,491	\$ 149,365
Common Allocation Factor		43%	57%
Common Items	\$ 184,937	\$ 79,495	\$ 105,441
Gross Allocated Capital	\$ 444,792	\$ 190,986	\$ 253,806
Manufacturers Tax Exemption	\$ (27,531)	N/A	\$ (27,531)
AFUDC/IDC	\$ 72,201	\$ 52,213	\$ 19,989
Total Plant Costs	<u>\$ 489,463</u>	<u>\$ 243,199</u>	<u>\$ 246,264</u>

129 Along with seeking recovery of costs associated with the Tacoma LNG Facility, including the costs associated with the four-mile distribution line, which PSE has been authorized to include provisionally in a tracker, PSE also seeks recovery of amounts deferred pursuant to its accounting petition in Docket UG-210918 (Accounting

²³⁵ Roberts, Exh. RJR-1T at 15:14-15.

²³⁶ *Id* at 15:15-16.

²³⁷ *Id* at 4:3-7. See also *Id* at 15:18-16:1, displaying allocation for each capital component of the facility.

Petition).²³⁸ As authorized in Final Orders 24/10, PSE began its deferral of capital and O&M costs associated with the regulated portion of the Tacoma LNG Facility as of February 1, 2022, the date the Facility began commercial operation.²³⁹ The Commission authorized the deferral period to extend until recovery commences in the LNG tracker,²⁴⁰ wherein PSE would begin to amortize the deferred costs.²⁴¹

130 In this filing PSE seeks to recover its ongoing O&M expenses, depreciation expense, and return on investment associated with the regulated portion of the Tacoma LNG Facility.²⁴² PSE also seeks recovery of and on the regulatory assets created through its deferral.²⁴³ The proposed amortization of these deferred costs represents approximately \$10.8 million of the total \$47.6 million revenue requirement.²⁴⁴ PSE requests recovery of its deferred costs over four years, consistent with its original request in its 2022 general rate case.²⁴⁵ The deferred balances, annual amortization expenses, and net operating income impact are shown in Table 2 below.

Table 2: Deferral Balances and Proposed Annual Amortization Expense²⁴⁶

Description	Amortization Expense	AMA Balance as of 10/31/2024
O&M	\$ 2,219,773	\$ 6,137,673
Depreciation	2,692,523	7,444,826
Return	8,788,337	24,299,753
Total	\$ 13,700,634	\$ 37,882,252
FIT Rate	79%	
Net Operating Income	\$ (10,823,501)	

²³⁸ Free, Exh. SEF-1T at 4:4-7.

²³⁹ *WUTC v. Puget Sound Energy*, Dockets UE-220066 *et al.*, Order 24/10 ¶¶ 450, 501 (Final Orders 24/10).

²⁴⁰ *Id.*

²⁴¹ Dockets UE-220066 *et al.*, Amended Tacoma LNG Settlement Stipulation ¶ 18 A.2.

²⁴² Free, Exh. SEF-1T at 8:5-7.

²⁴³ *Id.* at 8:8-9.

²⁴⁴ *Id.* at 12:6-12. Total annual amortization of PSE’s regulatory asset established through its deferral is \$13.7 million. After recognizing the associated accumulated deferred income taxes (ADIT), the net operating impact is \$10.8 million.

²⁴⁵ *Id.* at 12:7-9.

²⁴⁶ Free, Exh. SEF-3 at Page 3.

- 131 Roberts explains that PSE outsources O&M of the Facility through a contract with NAES Corporation, based in Issaquah, WA.²⁴⁷ The agreement has a five-year term that began on January 27, 2020.²⁴⁸ The agreement utilizes a “cost-plus model with metric-based performance bonuses,” which PSE states was based on its existing agreement with NAES for operating its Ferndale Generation Facility.²⁴⁹
- 132 PSE argues that its fixed and variable O&M costs are allocated consistent with the allocation methodology and assumptions established in Order 10 under Docket UG-151663, which outlined the ownership shares and cost allocators for each component of the Facility.²⁵⁰ PSE seeks recovery of its deferred O&M expenses, as allocated to its regulated customers.²⁵¹
- 133 PSE’s regulatory asset created through its deferral also includes depreciation expense associated with the regulated portion of the Facility and return on its rate base.²⁵² PSE also requests a return on the O&M and depreciation expenses deferred under its Accounting Petition.²⁵³ PSE proposes to apply the 7.16% rate of return (ROR) authorized in its recent rate case.²⁵⁴
- 134 As justification for recovery of its deferred return, PSE witness Free references PSE’s petition for its Electric Vehicle Supply Equipment Pilot Programs in Docket UE-190129 (“EV Petition”).²⁵⁵ In its EV Petition, the Commission approved PSE’s request to defer a return on its capital investment “citing the legislature’s intent to encourage growth of transportation electrification as in the public interest.”²⁵⁶ Free states that this deferral was approved for recovery in PSE’s 2022 rate case.²⁵⁷ Free argues that PSE’s investment in the Tacoma LNG facility is also in the public interest, and cites Order 10 of Docket UG-151663, where the Commission states that “the Tacoma LNG facility will promote the

²⁴⁷ Roberts, Exh. RJR-1T at 49:10-50:2.

²⁴⁸ *Id* at 50:11-13.

²⁴⁹ *Id* at 50:15-17.

²⁵⁰ Order 10 ¶ 14.

²⁵¹ Free, Exh. SEF-1T at 8:4-7.

²⁵² *Id* at 8:5-7.

²⁵³ *Id* at 8:8-9 and footnote 12. *See also* Free, Exh. SEF-3 at Pages 1 and 3; BE-4 (PSE’s response to Commission Bench Request No. 4).

²⁵⁴ *Id* at 9:12-14. *See also* SEF-3 at Page 1.

²⁵⁵ *Id* at 8:15-19.

²⁵⁶ *Id* at 8:18-9:1. *See also* Docket UE-190129, Order 01 ¶ 10.

²⁵⁷ *Id.*

public interest as recognized by the legislature in RCW 80.28.280.”²⁵⁸ Free submits that “approval of the deferral and recovery of the authorized rate of return on PSE’s share of the capital investment in the Tacoma LNG facility follows the similar Commission determination in PSE’s EV petition that allowed deferral and recovery of return for investments made in the public interest.”²⁵⁹

A. Deferred Return on Investment

Staff’s Response Testimony

135 Staff witness Betty Erdahl disputes a portion of PSE’s proposed deferred return on its investment in the Facility. Specifically, Erdahl recommends removal of the portion of the deferred return recorded between February 1, 2022 (the date the facility was placed in service) and January 11, 2023 (the date PSE’s 2022 GRC rates went into effect).²⁶⁰ Erdahl notes that this portion represents \$18.9 million of the total return deferral of \$35.2 million.²⁶¹

136 Erdahl argues that the Commission rarely allows a utility to book expenses into deferral, and then only under extraordinary circumstances, and that allowing a utility “to recover not only the return (of an expense), but also the return on a rate base item involves extraordinary ratemaking on top of extraordinary ratemaking.”²⁶²

137 Erdahl disagrees with PSE’s purported equivalency to its EV Petition and argues that allowing PSE to recover the deferred return on rate base “does not promote a defined public policy objective and, therefore, would not incentivize a specific, desired utility behavior.”²⁶³ Erdahl notes that the Legislature directed the Commission to incentivize utilities to build EV infrastructure through the enactment of RCW 80.28.360, and that the Commission did so by allowing PSE to earn a return *on* its investment in EV plant booked in its deferral.²⁶⁴ PSE, Erdahl argues, “modified its behavior, built out EV infrastructure, and was rewarded for conforming its conduct to what the legislature determined was good policy.”²⁶⁵

138 Erdahl notes that the Legislature directed the Commission to incent the build out of marine-vessel LNG fueling station infrastructure through enactment of RCW 80.28.280

²⁵⁸ *Id* at 9:1-5. *See also* Order 10 ¶ 21.

²⁵⁹ *Id* at 9:12-16.

²⁶⁰ Erdahl, Exh. BAE-1T at 9:14-17.

²⁶¹ *Id.*

²⁶² *Id* at 9:21-10:3.

²⁶³ *Id* at 10:10-13.

²⁶⁴ *Id* at 11:6-9.

²⁶⁵ *Id* at 11:9-11.

and 290, however PSE did not modify its behavior as it did with its EV infrastructure investments.²⁶⁶ Erdahl argues that Puget LNG, not PSE, built the marine-vessel fueling station infrastructure, and that PSE “simply built the infrastructure it was already required to build in order to maintain adequate facilities for its natural gas customers.”²⁶⁷ Erdahl argues that an incentive, in the form of a return on the deferral of its plant investment, “is not warranted under those facts.”²⁶⁸

139 However, Erdahl believes that PSE should be allowed to recover the portion of its return deferral that has accumulated after its 2022 GRC rates became effective, “as that is the date the facility otherwise would have been included in rate base,” absent approval of the LNG tracker.²⁶⁹

140 Staff’s removal of the 2022 return deferrals results in an approximate \$3.7 million reduction to the total revenue requirement.²⁷⁰

PSE’s Rebuttal Testimony

141 PSE witness Free argues that recovery of the deferred return on the Company’s investment in the Tacoma LNG Facility, beginning February 1, 2022, is appropriate and consistent with Final Order 24/10, and promotes the public interest.²⁷¹ Free argues that the Commission already allowed PSE to recognize the deferral, including its deferred return, as demonstrated in its Accounting Petition, which was approved in Final Order 24/10.²⁷² PSE notes that Staff signed on to the Tacoma LNG Settlement in which Staff and other settling parties agreed to allow PSE to continue the deferral and did not oppose its Accounting Petition nor the inclusion of the deferred return.²⁷³

142 Free also disputes Staff’s assertion that recovery of a deferred return is only appropriate to incentivize a specific, desired utility behavior, and argues that the primary reasons the Company should be allowed recovery is the magnitude of the investment, the length of time between beginning commercial operation and rate recovery, and the fact that PSE is

²⁶⁶ *Id* at 11:12-16.

²⁶⁷ *Id* at 11:16-20.

²⁶⁸ *Id* at 11:20-21.

²⁶⁹ *Id* at 12:3-6.

²⁷⁰ See Erdahl, Exh. BAE-2, “Total Deferrals (as filed)” worksheet. Staff removes \$4.1 million from PSE’s proposed return deferral. After tax effects, this results in a \$3.7 million reduction to NOI.

²⁷¹ Free, Exh. SEF-4T at 2:13-17.

²⁷² *Id* at 3:13-4:3. See also Final Order 24/10 at ¶ 450.

²⁷³ *Id* at 4:12-15.

underearning on its authorized rate of return.²⁷⁴ Free claims that, contrary to Staff's argument, "PSE spent 15 months in a Commission proceeding, working with parties and the Commission to identify a way that PSE could meet the policy directive of RCW 80.28.280 in a manner consistent with the Commission's jurisdictional determination and also make natural gas service available to PSE's customers on the coldest days of the year."²⁷⁵ Free cites PSE witness Robert's earlier testimony that it was the dual use function of the Tacoma LNG Facility that allowed the facility to be the least cost resource to serve PSE's natural gas customers.²⁷⁶

143 Free also claims that nothing prohibits the Commission from granting recovery of a deferred return on plant, and in fact Staff supports recovery of the deferred return beginning January 2023.²⁷⁷ Free argues that Erdahl "does not provide a clear and cogent reason for differentiating" between the two, aside from claiming that such treatment would be "extraordinary relief."²⁷⁸ Free notes similar dockets in which PSE was granted recovery of a deferred return on investment, depreciation expense, and operating expenses, when a significant capital investment was made and there existed a timing difference between opening of the facility and rate recovery.²⁷⁹ These include PSE's Mint Farm natural gas-fired generating plant and the Wild Horse Expansion wind facility.²⁸⁰

144 In its post-hearing Brief, PSE argues that the Commission granted its accounting petition in the 2022 rate case proceeding and that the Company demonstrated a need for all costs included in the deferral.²⁸¹ PSE argues that past Commission precedent requiring a showing of "extraordinary circumstances" does not apply when the Commission has already granted the deferral requested in the accounting petition.²⁸² Even if the Company

²⁷⁴ *Id* at 5:7-12.

²⁷⁵ *Id* at 7:12-18.

²⁷⁶ *Id* at 7:9-11. See also Final Order 24/10 ¶ 411.

²⁷⁷ *Id* at 8:2-5.

²⁷⁸ *Id* at 9:10-14.

²⁷⁹ *Id* at 9:6-14.

²⁸⁰ *Id* at 9:12-13. See, e.g., *WUTC v. Puget Sound Energy*, Docket UE-111048 Order 08 ¶ 322 (May 7, 2012) (allowing recovery of deferred costs for Lower Snake River wind farm deferred in Docket UE-100882); *WUTC v. Puget Sound Energy*, Dockets UE-090704 and UG-090705 Order 11 (Apr. 10, 2010) (allowing recovery of deferred costs for Mint Farm generating station and Wild Horse Expansion).

²⁸¹ PSE Brief ¶ 37.

²⁸² *Id.* ¶ 38 (citations omitted).

was required to establish extraordinary circumstances, PSE submits that it meets this standard.²⁸³

145 PSE further argues that the Commission authorized recovery of the full deferred amount in the 2022 rate case.²⁸⁴ PSE notes that it took “extraordinary steps” to support the public policy of providing LNG for marine vessel fueling by creating an unregulated subsidiary.²⁸⁵ The Company notes that it obtained a deferred return on other investments, such as the Wild Horse wind facility, and that other, more expensive alternatives to the Tacoma LNG Facility would have included a return on those investments.²⁸⁶

146 Staff maintains that the Commission should not authorize recovery of the Company’s deferred return on its investment in the Tacoma LNG Facility recorded between February 1, 2022, and January 11, 2023.²⁸⁷ For example, Staff distinguishes RCW 80.28.360, which provides for an incentive rate of return on investments in electric vehicle supply equipment.²⁸⁸ Staff argues further that Puget LNG’s behavior should not benefit PSE given the distinctions between the two corporate entities.²⁸⁹

147 **Commission Determination.** We agree with Staff that the Commission should not authorize recovery of the Company’s deferred return on its investment in the Tacoma LNG Facility recorded between February 1, 2022, the date the facility was placed into service, and January 11, 2023, the date PSE’s 2022 GRC rates went into effect. This represents \$18.9 million of the total \$35.2 million amount of deferred return.²⁹⁰

148 We begin our analysis with the Tacoma LNG Settlement, which the Commission approved with conditions in Final Order 24/10. As Staff correctly observes, the Tacoma LNG Settlement expressly preserved the parties’ rights to challenge LNG Facility costs when PSE filed tariff revisions for the tracker.²⁹¹ The Commission also observed that the same Settlement preserved “[a]ll parties . . . rights to challenge LNG costs when PSE

²⁸³ *Id.*

²⁸⁴ *Id.* ¶ 39 (“There is no reasoned basis to limit the recovery of the deferral, which was authorized by the Commission and agreed to by the Tacoma LNG Settling Parties”).

²⁸⁵ *Id.* ¶ 40.

²⁸⁶ *Id.* ¶¶ 41-42.

²⁸⁷ Staff’s Brief ¶ 21.

²⁸⁸ *Id.* ¶¶ 24-28.

²⁸⁹ *Id.* ¶ 29.

²⁹⁰ Erdahl, Exh. BAE-ICT at 9:17.

²⁹¹ Order 24/10 at Appx. C at 4 ¶ 18; *id.* at 114-15 ¶ 393 (“the Settlement allows the parties to review the prudence and reasonableness of costs incurred after” the point at which PSE’s board prudently approved the LNG project).

files tariff revisions for the tracker.”²⁹² By its plain terms, the Tacoma LNG Settlement approved the recording amounts for deferral but preserved the rights of Staff and other settling parties to challenge the recovery of those costs in a later proceeding.

149 The Company’s earlier accounting petition maintains this same distinction. In Final Order 24/10, the Commission also approved PSE’s accounting petition filed in Docket UG-210918.²⁹³ But the petition made clear that PSE was *not* requesting that the Commission address the final ratemaking treatment of any deferred costs.²⁹⁴ It would be incorrect to suggest that the Final Order 24/10 controls the outcome of our decision on this issue today.²⁹⁵

150 We therefore turn to past Commission precedence for guidance in the exercise of our discretion. In *WUTC v. Pacific Power & Light Co.*, the Commission noted the importance of “discouraging companies from filing accounting petitions as a means to secure between-rate-case cost recovery for plant additions.”²⁹⁶ However, the Commission approved Pacific Power’s request for deferred O&M costs and depreciation, describing this as “exceptional” ratemaking treatment that turned “on the unusual nature of the project involved.”²⁹⁷ Even then, the Commission emphasized that the decision was a close call, and it rejected the utility’s request for a portion of its deferred *return on* rate base by agreeing with Staff’s recommendation.²⁹⁸ The *Pacific Power* case underscores the discretionary, case-by-case nature of our determinations on such accounting petitions. It also underscores the fact that “exceptional” ratemaking treatment may not involve the approval of a *return on* an investment prior to it being approved for inclusion in rates.

²⁹² *Id.* at 114-15 ¶ 393 (“the Settlement allows the parties to review the prudence and reasonableness of costs incurred after that point”).

²⁹³ Final Order 24/10 ¶ 450.

²⁹⁴ *In the Matter of the Petition of Puget Sound Energy*, Docket UG-210918, Petition ¶ 8 (November 24, 2021) (“PSE is not requesting in this Petition that the Commission address: (1) the prudence of PSE’s investment in the Tacoma LNG facility; or (2) the final rate treatment for recovery of PSE’s related revenue requirement of the facility or of the deferral requested in this petition. PSE will present its case on these issues in a future GRC.”).

²⁹⁵ Indeed, the distinctions made in both the Tacoma LNG Settlement and Final Order 24/10 appear consistent with the statutory provisions concerning the recovery of deferred return for electrical companies. Pursuant to RCW 80.80.060(6), “[c]reation of such a deferral account does not by itself determine the actual costs of the long-term financial commitment, *whether recovery of any or all of these costs is appropriate*, or other issues to be decided by the commission in a general rate case or other proceeding for recovery of these costs.” (emphasis added)

²⁹⁶ Dockets UE-140762, UE-140617, UE-131384, UE-140094, Order 08, 104 ¶ 245, 107 ¶ 251 (Mar. 25, 2015) (Pacific Power Order).

²⁹⁷ *Id.*

²⁹⁸ *See id. See also id.* ¶ 246.

- 151 When we consider the testimony and evidence in this case in light of *Pacific Power* and ratemaking principles, we conclude that the Company should properly receive a return on the Tacoma LNG Facility for the period *after* January 11, 2023, when its 2022 GRC rates took effect, but not for the earlier period.
- 152 As an initial matter, we find that the Tacoma LNG Facility is sufficiently “unusual” to justify exceptional ratemaking treatment. The Commission in *Pacific Power* commented on the unusual nature of the investment at issue, noting that the utility’s investment in a fish collector allowed it to continue operating a hydropower resource for another 50 years.²⁹⁹ We understand this standard to be focused not merely on whether the project is uncommon or atypical, but whether all of the circumstances surrounding the investment justify extraordinary ratemaking treatment when considered through a public interest standard. The Tacoma LNG Facility meets this standard. PSE has worked with the Staff, Public Counsel, and other parties to develop a Facility that both serves core customers as a peak-shaving resource and supplies LNG for marine refueling. The Facility’s bidirectional pipeline is the only one of its kind on PSE’s distribution system.
- 153 Exceptional ratemaking treatment, however, does not necessarily entail a return on the investment prior to it being approved for inclusion in rates. Much like the Commission in *Pacific Power*, we find that the evidence supports approving deferred O&M expenses and depreciation, but not a return on the investment for the period up to January 11, 2023.
- 154 We are not persuaded by PSE’s citations to statutes and declarations of public policy to award a return on the Facility for the period prior to January 11, 2023. In RCW 80.28.280(1), for example, the legislature declared that the development of compressed natural gas and LNG for marine vessel refueling was in the public interest. But notably, the same section disclaims any intent to change the “regulatory practices of the Commission.”³⁰⁰ This statute does not direct a decision on this issue. It does not change our determination that approving deferred O&M expenses and depreciation is a reasonable result, itself reflecting extraordinary ratemaking treatment.
- 155 In this same vein, PSE notes its history of working with Staff to create a subsidiary, Puget LNG, and to support the delivery of LNG for marine refueling.³⁰¹ PSE argues that denying PSE’s involvement in furthering this public policy does a disserve to all involved.³⁰² PSE is correct that the development of the Tacoma LNG Facility responded

²⁹⁹ *Pacific Power* Order ¶ 251.

³⁰⁰ RCW 80.28.280(1) (“Except as provided in subsection (2) of this section, nothing in this section and RCW 80.28.290 is intended to alter the regulatory practices of the commission or allow the subsidization of one ratepayer class by another.”).

³⁰¹ PSE Reply Brief ¶¶ 12-13.

³⁰² *See id.*

to a public policy announced by the legislature and that RCW 80.28.280(1) remains in effect. To support this public policy, and to provide core customers with a peak-shaving resource, the parties took the relatively unusual step of negotiating for a dual-use Facility that served both regulated and unregulated lines of business. The evidence has shown that PSE saved costs by designing the Facility to serve two different purposes. We consider the public policy implications of PSE's actions in creating Puget LNG, although this factor alone does not necessarily compel a return on the investment prior to it being approved for inclusion in rates.

156 PSE witness Free also refers to RCW 80.80.060, arguing that the Commission approved a return on capital costs for a natural gas turbine and a wind farm in the Company's 2009 rate case.³⁰³ But Free cites to the Commission's summary of the Company's and Staff's respective positions.³⁰⁴ When explaining its own determination, the Commission observed that "RCW 80.80 allows the Company to defer these costs but does not authorize recovery and, indeed, expressly reserves the question of recovery for later determination by the Commission in a general rate case proceeding such as this one."³⁰⁵ The Commission also found that there was "*no reason* to allow PSE to recover yet additional revenue in the form of carrying costs," on the Mint Farm and Wild Horse investments.³⁰⁶ The Commission's decision in the 2009 rate case undermines PSE's attempts to conflate the two distinct determinations involved in our review of accounting petitions and its specific request for recovery of a return on the investment in this case.

157 PSE also argues that the failure to authorize deferral of Facility costs would result in earnings erosion.³⁰⁷ Yet the Commission has already granted the Company's accounting petition and approved the Tacoma LNG Settlement, which created a tracker that allowed the Company to record various costs for later consideration. The Commission has also authorized exceptional ratemaking treatment by allowing the Company to recover deferred O&M costs and depreciation, as discussed above in this section. To the extent that the Company argues that it should be specifically allowed to recover a deferred return on its investment for the period between February 1, 2022, and January 11, 2023, due to earnings erosion, we are concerned that this would involve single-issue ratemaking.

³⁰³ See Free, Exhibit SEF-4Tr at 9:9-13 (citing *WUTC v. Puget Sound Energy*, Order 11, Dockets UE-090704 and UG-090705 at ¶¶ 237-238, 242 (April 10, 2010)).

³⁰⁴ See *id.*

³⁰⁵ *WUTC v. Puget Sound Energy*, Order 11, Dockets UE-090704 and UG-090705 at ¶ 247 (April 10, 2010)

³⁰⁶ *Id.* (emphasis added).

³⁰⁷ PSE Brief ¶ 37.

158 We are also concerned that the Company cites its 2022 Commission Basis Report (CBR) as evidence of under-earnings.³⁰⁸ While this CBR may indicate that the Company failed to realize its authorized rate of return on its natural gas side of business in 2022, it does not reflect the significant rate increases approved in Final Order 24/10, which went into effect in January 2023. It would be far more appropriate to consider the Company's earnings in a holistic manner in its next general rate case, currently pending before the Commission.

159 We observe as well that PSE has requested a return on its deferred O&M and depreciation expenses that were included in the regulatory asset.³⁰⁹ The Commission has approved a return on expenses, such as depreciation, when approving non-precedential settlements.³¹⁰ The Commission has not articulated any specific standard for when a return on such expenses would be appropriate, and we decline to do so here. But we find PSE's request for a return on deferred O&M and depreciation expenses is reasonable given the exceptional circumstances of this case. It provides further assurance that PSE is sufficiently recovering Facility costs in rates and that the Company does not require a return on its investment for the period prior to January 11, 2023. However, the Company should not assume this treatment will be approved in future cases.

B. Whether the Facility was Fully Used and Useful

Staff's Response Testimony

160 Staff also disputes a portion of PSE's proposed depreciation and return deferral, on the basis that the plant was not fully used and useful to ratepayers until the end of 2022.³¹¹ Erdahl notes that the Tacoma LNG Facility was designed to be capable of providing a total of 85,000 decatherms (Dth) per day as a peaking resource for PSE's core natural gas customers, with 66,000 Dth/day in vaporized gas coming from the Facility, and 19,000 Dth/day of natural gas intended for Puget LNG but diverted back into PSE's distribution system.³¹² Erdahl points to Final Order 24/10, where the Commission noted that

³⁰⁸ Free, Exh. SEF-1T at 10:5-10. *See also* Free, Exh. SEF-4Tr at 4:5-6 (citing Exh. SEF-1T at 10:5-10).

³⁰⁹ *See* Exh. BE-4 (Response to Bench Request No. 4) ("Through its inclusion in rate base, Puget Sound Energy ("PSE") requests a rate of return on the regulatory asset that is created by the deferral authorized by the Commission in Docket No. UG-210918 as the deferral is being recovered. PSE is not requesting, and did not calculate, a return on O&M costs or depreciation when accruing the deferral balance prior to recovery.").

³¹⁰ *E.g.*, Order 24/10 App. A, Revenue Requirement Settlement ¶ 23.e (December 12, 2022) (providing for the limited recovery of a return on AMI investments); *In the Matter of the Petition of Puget Sound Energy*, Docket UE-130617, Final Order 06 ¶ 23 (October 23, 2013) (providing for the deferral of the return on and return of certain costs associated with the Snoqualmie and Baker Projects).

³¹¹ Erdahl, Exh. BAE-1CT at 12:21-13:3.

³¹² *Id* at 13:17-21.

“capacity is, by itself, a used and useful resource for customers.”³¹³ Erdahl notes that PSE had originally planned an upgrade to its Bonney Lake lateral to achieve its designed 60,000 Dth/day vaporization capacity, but that that PSE never made those upgrades.³¹⁴ Because of this, Erdahl argues that the Facility’s injection capacity used for vaporization was limited to 50,000 Dth/day in 2022, and therefore, the peak delivery capacity of the Facility was limited to 69,000 Dth/day, or 81 percent of the Facility’s total design capacity.³¹⁵ Noting this, Erdahl argues that the Facility was only 81 percent used and useful to ratepayers in 2022.³¹⁶ Erdahl states that it was learned through discovery that PSE has since remedied this capacity limitation during the winter of 2022-2023, through a revised outlet configuration installed at PSE’s North Tacoma Gate Station, though an exact date was not given, and Erdahl submits that the plant was fully used and useful by January 1, 2023.³¹⁷

161 Accordingly, Erdahl proposes that an 81 percent used and useful factor be applied to PSE’s depreciation and return deferrals until January 1, 2023.³¹⁸ Erdahl states that this results in an approximate \$0.7 million reduction to PSE’s depreciation deferral and reduces the resulting annual amortization expense by \$0.3 million.³¹⁹ Because Staff also proposes removal of PSE’s return deferral during 2022, this adjustment has no effect on this component.³²⁰

PSE Rebuttal Testimony

162 PSE disagrees with Staff’s argument that the Facility was not fully used and useful in 2022, and disputes Staff’s proposal to reduce the associated depreciation deferral and annual amortization expense by a used and useful factor.³²¹ PSE witness Free claims that Staff misconstrued the Commission’s statement that “capacity is, by itself a used and useful resource for customers,”³²² and argues that the Commission did not say that the amount of “available capacity of the facility is the used and useful resource,” as claimed by Staff.³²³ Free contends that either a facility is used or useful or it is not, and Staff’s

³¹³ *Id* at 13:14-17. *See also* Final Order 24/10 ¶ 405.

³¹⁴ *Id* at 14:13-17.

³¹⁵ *Id* at 14:13-19.

³¹⁶ *Id* at 15:8-10.

³¹⁷ *Id* at 15:13-16:2.

³¹⁸ *Id* at 16:5-8.

³¹⁹ *Id* at 16:12-14. *See also* Exh. BAE-2, line 28, column c.

³²⁰ *Id* at 16:15-18.

³²¹ Roberts, Exh. RJR-11T at 5:10-14.

³²² Free Exh. SEF-4T at 12:6-10. *See also* Final Order 24/10 at ¶ 405.

³²³ *Id* at 12:10-12.

proposal to view the standard on “a gradient is not consistent with past Commission practice or Order 24/10.”³²⁴

163 While PSE disagrees with the reasoning behind Erdahl’s proposed adjustment, PSE witness Roberts also contends that the Facility was in fact operating at its designed capacity in January 2022,³²⁵ and that Staff appears to draw its conclusion based on a misunderstanding of the design of the Tacoma LNG Facility.³²⁶ Roberts argues that the 85,000 Dth/day capacity cited by Staff and used in its adjustment represents the total delivery capacity of the Facility once the Bonney Lake lateral is installed.³²⁷ Roberts notes that the Bonney Lake lateral upgrade has been postponed “until such time as an incremental supply source was needed,”³²⁸ and also notes that its proposal does not seek recovery of the planned Bonney Lake lateral upgrade.³²⁹ Roberts contends that the Facility’s vaporization capacity was never limited by the outlet pressure at the North Tacoma gate station as originally believed and that the Facility is able to provide approximately 69,000 Dth/day, consistent with its original design.³³⁰ Roberts also notes that the vaporizer was able to operate at its full 66,000 Dth per day flow rate since its testing in January 2022, meaning it has been fully used and useful since it was placed in service.³³¹

164 In its Brief, PSE maintains that the Tacoma LNG Facility was used and useful for customers as a peak-shaving resource when it began commercial operation in February 2022.³³² PSE also notes that the Facility was actually used to serve customers in January and February 2023, indicating that it was, in fact, used and useful.³³³

165 **Commission Determination.** We reject Staff’s argument that PSE’s recovery should be reduced because the Facility was not fully “used and useful” for customers before the construction of the Bonney Lake lateral.

166 In past decisions, the Commission has recognized that prudent utility planning may justify acquiring a resource before it is needed to meet load. In the Company’s 2011

³²⁴ *Id* at 12:12-14.

³²⁵ Roberts, Exh. RJR-11T at 8:18-9:3.

³²⁶ *Id* at 6:11-12.

³²⁷ *Id* at 8:1-9.

³²⁸ *Id* at 7:19-22.

³²⁹ *Id* at 8:7-9.

³³⁰ *Id* at 8:3-6.

³³¹ *Id* at 9:14-16.

³³² PSE Brief ¶¶ 26-27.

³³³ *Id.* ¶ 31.

GRC, the Commission approved recovery for the Snake River Wind Project and rejected arguments that the resource was not immediately needed.³³⁴ The Commission observed that “in the context of conventional resources, we have allowed resources into rate base before they were needed to meet load.”³³⁵

167 We come to much the same result here. The evidence establishes that the Tacoma LNG Facility, was designed to provide approximately 69,000 Dth per day as a peak-shaving resource, and, in the future when the need on PSE’s system increased, the Bonney Lake lateral would be installed and allow the Tacoma LNG Facility to provide up to 85,000 Dth per day.³³⁶ The Facility was able to provide the capacity as planned.

168 PSE also distinguishes between hourly and daily constraints on its distribution system. Roberts explains that periods of peak demand represent a limited number of hours in a day.³³⁷ And despite the per-day capacity limitations on the North Tacoma Gate Station, the Facility was able to vaporize at the equivalent of more than 2,750 Dth per hour since it began commercial operation in February 2022.³³⁸ Robert’s rebuttal testimony directly undermines Staff’s proposed 19 percent reduction, which is premised on per-day capacity limitations, and it undermines Staff’s argument that the Facility’s vaporization capacity was limited until PSE constructed the Bonney Lake lateral.³³⁹

169 To use the “used and useful” standard to limit recovery for the period prior to the construction of the Bonney Lake lateral would tend to disincentivize prudent decision making. As the Commission recognized in PSE’s 2011 GRC, “Such a policy, if implemented through interpretation of the used and useful requirements, would preclude utilities from undertaking many long-term resource acquisitions.”³⁴⁰ PSE also raises valid concerns that Staff’s approach, if approved, would lead to “prolonged and contentious litigation over what percentages of plant in service are used and useful.”³⁴¹

³³⁴ PSE Brief ¶ 29.

³³⁵ See *WUTC v. Puget Sound Energy*, Docket UE-111048 and UG-111049 (consolidated) Order 08 at ¶ 415 (May 7, 2012) (internal citation omitted).

³³⁶ See Roberts, Exh. RJR-11T at 8:1-15; RJR-12 7:5-15, 8 n.1.

³³⁷ See Roberts, Exh. RJR-11T at 9:7-10.

³³⁸ *Id.* at 8:16-9:17.

³³⁹ See Staff Reply Brief ¶¶ 11-12.

³⁴⁰ *WUTC v. Puget Sound Energy*, Docket UE-111048 and UG-111049 (consolidated) Order 08 at ¶ 417 (May 7, 2012).

³⁴¹ PSE Reply Brief ¶ 16.

- 170 Staff argues that other states have approved recovering only the percentage of a resource that was used and useful for customers.³⁴² But we are persuaded by PSE’s arguments that these cases reflect the application of different statutory language or markedly different facts.³⁴³ For example, in *North Carolina Utilities Commission v. Carolina Water Service, Inc. of North Carolina*, the North Carolina Supreme Court upheld the finding of the state’s utility commission that a water storage tank was not fully “used and useful” for customers, because the tank was built in part to serve customers outside of the utility’s service area.³⁴⁴ However, the Commission has already adopted a settlement providing for the allocation of costs between the Facility’s regulated and non-regulated customers.³⁴⁵ The Commission has further discussed the allocation of pipeline costs in Section E of this Order. *Carolina Water Service* does not provide any basis to reduce further the Company’s recovery for Facility costs given the facts and the history of proceedings before us.
- 171 Because we reject Staff’s argument on this issue given the facts of the case, we do not reach the issue of whether the Commission would have the authority under RCW Title 80 to make percentage-based reductions on the basis that a particular resource is not fully used and useful for customers.

C. Redesign Costs Related to Gas Pretreatment

Staff’s Response Testimony

- 172 Staff witness Erdahl also contests the costs associated with a 2017 redesign of the Facility’s pre-liquefaction treatment equipment, which Erdahl argues was made solely for the benefit of Puget LNG’s customers.³⁴⁶ Erdahl argues that these costs were imprudently incurred on behalf of PSE’s regulated customers and should be removed from the proposed revenue requirement.³⁴⁷ Staff’s proposal results in a \$0.05 million reduction to PSE’s as-filed request, which includes the effects to its deferrals as well as going-forward rate base and depreciation expense.³⁴⁸

³⁴² Staff Brief ¶ 50 n.96 (citing *Illinois Power Co. v. Ill. Comm. Comm’n*, 626 N.E.2d 713, 719, 725 (Ill. App. Ct. 1993), modified upon denial of rehearing (Jan. 14, 1994); *State ex rel. Utils. Comm’n v. Carolina Water Serv., Inc. of N.C.*, 401 S.E.2d 353, 355 (N.C. 1991); *Kansas Gas & Elec. Co. v. Kansas Corp. Comm’n*, 720 P.2d 1063, 1082-87 (Kansas 1986); *Citizens of Fla. v. Fla. Pub. Serv. Comm’n*, 488 So.2d 112 Fla. (Dist. Ct. App. 1986)).

³⁴³ See PSE Reply Brief ¶¶ 20-22.

³⁴⁴ *North Carolina Utilities Commission v. Carolina Water Service, Inc. of North Carolina*, 401 S.E. 2d 353, 355 (1991) (*Carolina Water Service*).

³⁴⁵ Order 10 ¶ 14.

³⁴⁶ Erdahl, Exh. BAE-1T at 18:15-17.

³⁴⁷ *Id* at 19:6-7.

³⁴⁸ *Id* at 19:17-20:2.

173 Erdahl notes PSE witness Roberts' testimony regarding the changes in the composition of natural gas being supplied to PSE, and the subsequent redesign of the Facility, which resulted from these gas composition changes.³⁴⁹ Erdahl argues, however, that the redesign was necessitated by Puget LNG's agreement with TOTE, which imposes certain requirements on the composition of gas supplied to TOTE.³⁵⁰ In a data request to PSE, Staff asked whether these changes would have been necessary "if the facility were being used only for liquefaction and LNG storage to later be vaporized to meet peak-shaving needs,"³⁵¹ to which the company responded "No."³⁵²

174 Erdahl argues that because of this, PSE failed to demonstrate a need for this capital expenditure as it relates to its regulated customers, and therefore it did not act prudently when incurring these expenses.³⁵³

Puyallup Tribe's Response Testimony

175 Puyallup Tribe witness Sahu also contests the costs PSE incurred in its 2017 redesign resulting from gas composition changes.³⁵⁴ Sahu argues that PSE failed to anticipate that pipeline gas composition can vary and did not study fluctuations over a larger historical period, nor discuss this with its suppliers.³⁵⁵ Sahu also contends that this redesign, which was made to remove and dispose of heavy hydrocarbons from its supplied fuel to satisfy TOTE's fuel specifications, was the primary driver of the redesign of the Facility's flare, which is used to dispose of excess hydrocarbons.³⁵⁶ Sahu argues that the costs associated with the flare and construction of the waste gas disposal system should not be passed to regulated ratepayers, as he contends that these were necessary only to meet the needs of non-regulated customers.³⁵⁷

176 Sahu does not propose any specific adjustment amounts, as he argues that the entire Facility should be disallowed.³⁵⁸

PSE Rebuttal Testimony

³⁴⁹ *Id* at 17:11-13. *See also* Roberts, Exh. RJR-1T at 17:15-18:2.

³⁵⁰ *Id* at 17:22-18:2.

³⁵¹ *Id* at 18:9-12.

³⁵² *Id* at 18:15. *See also* Erdahl, Exh. BAE-5.

³⁵³ *Id* at 19:10-14.

³⁵⁴ Sahu, RXS-1T at 50:18.

³⁵⁵ *Id* at 50:18-21.

³⁵⁶ *Id* at 12:19-22.

³⁵⁷ *Id* at 12:23-25.

³⁵⁸ *Id* at 13:5-7.

- 177 PSE disputes both Staff and the Puyallup Tribe's arguments that the redesign of the Facility's pre-liquefaction treatment equipment was imprudent and done solely for the benefit of TOTE. PSE witness Free notes that the Commission considered and rejected this same claim in Order 24/10, stating "We are not persuaded... that PSE incurred unreasonable costs in redesigning the facility due to changing composition of imported natural gas. Roberts testified that high levels of ethane or propane in imported natural gas were a problem for core gas customers as well as non-regulated, Puget LNG customers."³⁵⁹
- 178 Roberts argues that the redesign benefits both PSE's customers and not just TOTE, by eliminating high levels of ethane and propane in the stored LNG which are subject to potential freezing during the liquefaction phase.³⁶⁰ Roberts contends that the redesign was a "necessary expense."³⁶¹ Regarding the Puyallup Tribe's argument that PSE should have anticipated this change in gas quality, Roberts claims that PSE "has never seen gas quality close to the redesigned level [seen in 2016] during the sixty year period that it received gas from British Columbia."³⁶² Roberts argues that PSE would not reasonably have anticipated such a change in feed gas composition.³⁶³
- 179 In its Brief, PSE maintains that the decision to redesign pre-liquefaction equipment at a minor cost benefited all customers.³⁶⁴
- 180 ***Commission Determination.*** We agree with Staff and with the Tribe, in part, that PSE should not recover costs for the redesign of pre-liquefaction treatment equipment from regulated customers.
- 181 In Final Order 24/10, the Commission accepted the Tacoma LNG Settlement subject to condition. The Settlement provided that the decision to build the Facility was prudent and that PSE met its threshold prudence requirement to include the costs in a tracker.³⁶⁵ But the Settlement also provided, "All parties retain all rights to challenge LNG costs when PSE files tariff revisions for the tracker."³⁶⁶
- 182 Staff clearly preserved its right to challenge the prudence of Facility redesign costs. Although the Commission considered arguments regarding the same redesign costs in

³⁵⁹ Free, Exh. SEF-4T at 13:14-20. See also Final Order 24/10 ¶ 403.

³⁶⁰ Roberts, Exh. RJR-11T at 30:15-20.

³⁶¹ *Id* at 31:12.

³⁶² *Id* at 31:20-21.

³⁶³ *Id* at 32:6-7.

³⁶⁴ PSE Brief ¶ 18.

³⁶⁵ Tacoma LNG Settlement ¶ 18.B.

³⁶⁶ *Id.*

Final Order 24/10 and rejected them given the record at the time,³⁶⁷ the Commission was merely concerned with whether to accept the Settlement, accept it subject to conditions, or reject it. Once the Commission accepted the Settlement (subject to conditions later accepted by the settling parties), the relevant portion of the Settlement, section III, took effect,³⁶⁸ and there cannot be any genuine dispute at this point as to whether the parties retained their rights to challenge LNG costs. It is not necessary to distance ourselves from earlier findings in Final Order 24/10 as representing mere dicta, when each proceeding involved different legal standards and the parties expressly reserved their rights to challenge Facility costs.

183 While PSE contends that the redesign of the preliquefaction treatment benefited regulated customers, these benefits are described in only the most general terms.³⁶⁹ By contrast, Staff has presented evidence that changing gas composition risked a breach of contract with a non-regulated customer³⁷⁰ and the Company's own admission in discovery in this proceeding that the redesign was not necessary if the Facility was only used for peak-shaving.³⁷¹ As the Commission has observed, "When a regulated company owns one or more unregulated companies, there is the potential for the companies to engage in coordinated transactions among themselves and thereby to frustrate the Commission's ability to ensure that only reasonable costs are charged to the customers of the regulated company."³⁷² We conclude that the redesign was not a prudent expense incurred on behalf of regulated customers.

184 However, we do not agree with the Tribe's argument that redesign costs went beyond the approximately \$0.5 million identified by Staff. The Tribe argues that the redesign of the Facility required the design and construction of additional equipment.³⁷³ But once the Company found that LNG storage was the least-cost option, this necessarily required the construction of liquefaction equipment and a vaporizer for reinjecting gas back into the distribution system.³⁷⁴

³⁶⁷ See Final Order 24/10 ¶ 403.

³⁶⁸ See Tacoma LNG Settlement ¶ 5.

³⁶⁹ See Roberts, Exh. RJR-11T at 30:17-19 (testifying that high levels of ethane and propane in stored LNG are "not good" for core customers).

³⁷⁰ Erdahl, Exh. BAE-1CT at 17:20-18:6.

³⁷¹ Erdahl, Exh. BAE-5 (response to subpart (c)).

³⁷² See, e.g., *In the Matter of Amending, Adopting and Repealing Certain Sections of Chapters 480-90, 480-100, 480-110, and 480-120 WAC*, Dockets A-021178 and TO-030288, General Order R-518 (February 28, 2005)

³⁷³ E.g., Tribe's Brief at 24:19-25:4.

³⁷⁴ See Roberts, Exh. RJR-11T at 31:3-14. See also Final Order 24/10 ¶ 402.

D. Legal Costs

Public Counsel Response Testimony

185 PSE does not address its legal costs related to the Tacoma LNG Project in its direct testimony. Public Counsel witness Earle argues, however, that the Commission should disallow all legal costs related to the Tacoma LNG Project incurred by PSE after 2016.³⁷⁵ Earle contends that PSE “has refused to provide or cannot provide evidence of their legal costs or their reasonableness for the Tacoma LNG Project.”³⁷⁶ When asked to provide monthly legal costs prior to 2017 for the Project at the request of Public Counsel, PSE stated that it “did not separately track legal costs and therefore, cannot provide the requested information for 2013 through 2016.”³⁷⁷ Earle further argues that, without providing documentation, PSE stated that its “external legal costs... [were] not more than \$1 million per year in total.”³⁷⁸ Earle also claims that PSE refused to provide billing records when requested by Public Counsel.³⁷⁹

186 Earle notes certain “anomalies” contained in a PSE-provided spreadsheet identifying “monthly external legal counsel costs, and monthly internal legal counsel costs and hours from 2017 to present for the Tacoma LNG Project.”³⁸⁰ First, Earle notes certain periods in which PSE recorded no internal legal costs, but reported external legal costs, including the three-month period from September 2022 to November 2022, in which Earle claims that “the litigation concerning the Tacoma LNG project was largely over.”³⁸¹ Earle also notes a three-month period from January 2017 to March 2017 in which PSE recorded no legal costs and claims that this is “highly improbable” based on prior and subsequent trends.³⁸² Earle also calls into question the validity of PSE’s internal labor expenses based on his analysis of the statistical distribution of the last digits contained in PSE’s billings.³⁸³ Earle argues that the last digits of each billing should follow a statistical average distribution, and claims that PSE’s are not “uniformly distributed.”³⁸⁴ Earle

³⁷⁵ Earle, Exh. RLC-1CT at 19:16-18.

³⁷⁶ *Id* at 20:1-2.

³⁷⁷ *Id* at 20:5-8. *See also* Earle, Exh. RLE-12 (PSE Response to Public Counsel Data Request No. 26 with Attachment A, subpart b.).

³⁷⁸ *Id* at 20:8-10.

³⁷⁹ *Id* at 20:10-11.

³⁸⁰ *Id* at 20:14-17.

³⁸¹ *Id* at 20:18-21:5.

³⁸² *Id* at 21:9-13.

³⁸³ *Id* at 21:14-17.

³⁸⁴ *Id* at 22:7-10.

notes that, because PSE refused to provide detailed billing records, he was unable to further examine these anomalies.³⁸⁵

187 Earle contends that, if the Commission allows reimbursement of PSE’s “purported legal costs,” it would “upend the long-standing burden of proof on utilities to justify proposals.³⁸⁶” Earle further argues that PSE should be required to refund to customers a portion of the legal costs incurred before 2017.³⁸⁷ Earle claims that, because PSE admittedly did not separately track legal costs from 2013 through 2016, PSE would not have been able to separate these costs over this period, and unless these costs were borne by shareholders, PSE ratepayers were charged inappropriately.³⁸⁸ Earle argues that PSE ratepayers should be refunded approximately \$2.3 million, “grossed up by any overhead or other charges that were applied,” and including interest based on PSE’s cost of capital.³⁸⁹

188 Based on these findings, Earle also recommends that the Commission should order an independent audit of all of PSE’s legal costs, legal cost controls, and recordkeeping.³⁹⁰ Earle argues that this independent audit should cover a 10-year period, starting in 2013, and should cover all of PSE’s legal costs, not just those related to the Tacoma LNG Project, to be submitted within one year of the Commission’s final order.³⁹¹

Puyallup Tribe’s Response Testimony

189 Dr. Sahu also raises concerns with PSE’s legal costs. Dr. Sahu contends, for example, that several attorneys were present for his depositions during air permit litigation.³⁹² Dr. Sahu argues that if PSE decided to meet ratepayer needs in a way that did not contribute to hazards or pollution, it would have incurred fewer legal costs.³⁹³

PSE Rebuttal Testimony

190 PSE witness Free argues that Public Counsel’s proposal to disallow all legal costs is “without merit and demonstrates a basic misunderstanding of how PSE accounts for legal costs.”³⁹⁴ Free explains that its internal legal costs are charged to an O&M account,

³⁸⁵ *Id* at 22:10-12.

³⁸⁶ *Id* at 23:13-24:3.

³⁸⁷ *Id* at 24:4-5.

³⁸⁸ *Id* at 24:6-11.

³⁸⁹ *Id* at 24:13-25:2.

³⁹⁰ *Id* at 27:4-6.

³⁹¹ *Id* at 27:9-17.

³⁹² Sahu, Exh. RXS-1T at 51:5-18.

³⁹³ *Id.* at 51:16-21.

³⁹⁴ Free, Exh. SEF-4T at 14:10-12.

unless the costs are attributable to a specific project, and its external legal costs are charged to specific matter numbers established by the external law firm, or to general categories, when appropriate.³⁹⁵ Free reiterates that, prior to 2017, PSE was not tracking legal costs to a specific cost category, and instead were accumulated into the larger Tacoma LNG Project capital accounts, but not in a specific legal cost category until Order 10 of Docket 151663 was entered, at which point PSE began to charge these costs to a legal cost category for the Project.³⁹⁶

191 Free argues that PSE did not refuse to provide evidence of its legal costs, and instead provided internal and external monthly costs and hours for the period relevant to this case, from January 2017 through June 2023.³⁹⁷ PSE objected to providing legal costs prior to 2017, as Free argues this period is outside the scope of the proceeding and objected to providing the level of detail Public Counsel requested because its legal invoices contain “descriptions of legal work that is attorney client privileged information.”³⁹⁸ Free notes that Public Counsel did not notify PSE of its concerns that its data request responses were inadequate, nor engage in the procedures for resolving discovery disputes.³⁹⁹

192 In response to Public Counsel’s concerns, Free states that PSE performed additional analysis to determine the amount of external legal costs incurred prior to 2017.⁴⁰⁰ PSE determined that it incurred \$2.7 million in external legal costs, of which 43%, or \$1.2 million were allocated to the regulated business.⁴⁰¹ Free also discusses Public Counsel’s arguments regarding certain periods of time in which no legal costs were incurred by PSE and notes that she is “puzzled by Public Counsel’s apparent contradictory positions that (i) PSE’s internal legal team should have billed additional time to the Tacoma LNG project and (ii) all of PSE’s legal expenses should be disallowed.”⁴⁰² Free explains that because of PSE’s relatively small legal staff of five attorneys, its internal legal costs fluctuate based on internal work flow and other competing demands.⁴⁰³

193 PSE witness Taylor disputes Public Counsel’s “last digits distribution” analysis, and notes that there are several significant methodological concerns with this argument,

³⁹⁵ *Id* at 14:14-17.

³⁹⁶ *Id* at 16:8-15.

³⁹⁷ *Id* at 15:3-6.

³⁹⁸ *Id* at 15:6-11.

³⁹⁹ *Id* at 15:14-20.

⁴⁰⁰ *Id* at 17:4-7.

⁴⁰¹ *Id* at 17:7-11.

⁴⁰² *Id* at 17:15-17.

⁴⁰³ *Id* at 17:18-7.

including the probability distribution selected and the sample size.⁴⁰⁴ Taylor argues that for data which includes salaries, a uniform distribution does not apply, as most salaries end in the last digit of zero, and billings are rounded to the nearest quarter hour.⁴⁰⁵ Taylor also notes that a data set with 65 observations is a small sample size and “one would not expect those values to perfectly align with any probability distribution due to the law of large numbers.”⁴⁰⁶

194 In its Brief, PSE maintains that its legal costs were reasonable given the extensive litigation involving the Facility and that PSE prevailed on every legal challenge presented.⁴⁰⁷ PSE argues that Free established the reasonableness of PSE’s legal costs and explained the Company’s accounting for them.⁴⁰⁸

195 Public Counsel maintains in its Brief that PSE failed to support its legal costs; that the Commission should require an audit of PSE’s legal costs; and that ratepayers should be refunded for these same costs.⁴⁰⁹

196 The Tribe similarly argues that the record does not provide sufficient evidence of PSE’s legal costs and that these amounts should be refunded.⁴¹⁰

197 **Commission Determination.** We again find that PSE’s legal costs were reasonable given the litigation initiated by the Tribe and other parties. We decline to require an audit of the Company’s legal costs as recommended by Public Counsel.

198 It is well established that the Commission may limit recovery of excessive legal or expert witness fees when the evidence establishes that certain expenses are unreasonable or unnecessary.⁴¹¹ In Final Order 24/10, the Commission addressed challenges to PSE’s legal costs following the extensive litigation brought by the Tribe and other parties regarding the Facility. The Commission “agree[d] that PSE incurred litigation costs responding to arguments from the Tribe and other parties related to a number of issues.”⁴¹² However, the Commission was not persuaded by the Tribe’s challenge to PSE’s recovery of litigation costs “when PSE has so far prevailed on the vast majority of

⁴⁰⁴ Taylor, Exh. JDT-8T at 23:4-11.

⁴⁰⁵ *Id* at 24:3-14.

⁴⁰⁶ *Id* at 24:15-18.

⁴⁰⁷ PSE Brief ¶¶ 58-60.

⁴⁰⁸ *Id.* ¶ 61.

⁴⁰⁹ Public Counsel Brief ¶¶ 28-34.

⁴¹⁰ Tribe Brief at 26:15-30:11.

⁴¹¹ *E.g.*, *WUTC v. Puget Sound Pilots*, Docket TP-190976, Order 09 ¶ 287 (November 25, 2020) (internal citation omitted).

⁴¹² Final Order 24/10 ¶ 420.

issues raised by the Tribe in other forums.”⁴¹³ The Commission therefore accepted the Tacoma LNG Settlement, subject to a condition related to the allocation of pipeline costs, and the Company included its legal costs as capital expenses in a tracker, as provided in the Settlement.⁴¹⁴

199 We are now presented with Public Counsel’s and the Tribe’s renewed objections to the legal costs included in the tracker for Facility costs. This issue is properly before the Commission.⁴¹⁵ But first we comment on how this issue has developed in this proceeding.

200 In the 2022 PSE GRC Order, the Commission authorized PSE to include legal costs in a tracker with other Facility costs by approving the Tacoma LNG Settlement subject to conditions.⁴¹⁶ The Commission also rejected the Tribe’s argument that PSE’s legal fees were excessive, noting that the Company prevailed on the “vast majority” of issues regarding the Facility.⁴¹⁷ Because the Commission rejected challenges to PSE’s legal costs and approved their recovery in the tracker, it is understandable that the Company did not raise the issue of its legal costs again in direct testimony in this proceeding.

201 After the filing of direct testimony, however, the parties sought discovery on PSE’s legal costs, and it should have been a simple matter to provide this information. It is the Company’s burden to maintain contemporaneous records of its legal costs. The Company should also be aware that “heavily redacted” invoices may fail to provide any detail as to the nature of the legal services provided and may accordingly fail to establish recovery of those same costs from ratepayers.⁴¹⁸ Regulated companies should be well aware of these requirements.

202 Despite its concerns, Public Counsel did not make any attempt to meet and confer with PSE, as required by Washington Administrative Code (WAC) 480-07-425(1)(a). Public Counsel instead filed response testimony complaining about the Company’s lack of production on an issue that the Company had already prevailed on in the prior case. This delayed resolution of the issue. The requirement to “meet and confer” is not merely a formality before a motion to compel. It provides the responding party, here PSE, the opportunity to conduct further investigation or to resolve disputes informally before being subject to discovery sanctions, such as striking testimony. A timely discovery

⁴¹³ *Id.*

⁴¹⁴ *See* Tacoma LNG Settlement ¶ 18.D.

⁴¹⁵ *See* Tacoma LNG Settlement ¶ 18.B (providing that all parties reserved all rights to challenge costs included in the tracker).

⁴¹⁶ 2022 PSE GRC Order ¶ 420.

⁴¹⁷ *Id.*

⁴¹⁸ *WUTC v. Puget Sound Pilots*, Docket TP-220513 Order 08 ¶ 285 (August 10, 2023).

motion could have prevented this issue from languishing until the Company's rebuttal and revised rebuttal testimony.

203 Having addressed how this issue developed in this case, the Commission finds that it has a sufficient record to review PSE's requested legal costs. Company witnesses Free, Roberts, and Taylor all speak to the reasonableness of PSE's legal costs.⁴¹⁹ Public Counsel witness Earle also sets forth evidence of PSE's legal costs obtained through discovery.⁴²⁰ Although Public Counsel takes issue with PSE's accounting of legal costs, Free explains the Company's accounting for both internal and external legal costs.⁴²¹ In revised testimony, Free explained that "[t]he internal legal costs prior to 2017 were less than \$160,000 and were allocated between PSE and Puget LNG based on the 43 percent/57 percent split approved in Order 10 in Docket UG-151663."⁴²² We are also persuaded by Free's testimony that PSE's internal legal team of five attorneys is relatively small and that these attorneys' workloads can vary from month to month, as they retain outside counsel for many tasks.⁴²³

204 We have considered the Tribe's argument that Free could not sufficiently describe legal fees on cross-examination and that she was unable to opine as to the reasonableness of legal fees.⁴²⁴ The Commission has already rejected challenges to PSE's legal costs in the 2022 PSE GRC Order. And despite its issues with Free's testimony, the Tribe did not cross the Company's other witness Roberts on this issue.⁴²⁵ Roberts specifically addressed legal costs in his rebuttal testimony, explaining the history of the litigation and arguing that PSE's legal costs were appropriate.⁴²⁶ The Tribe's attorney cross-examined Roberts on several other issues, including proceedings before the PCHB but did not touch specifically legal costs or the reasonableness of legal costs at any point.⁴²⁷ If the Tribe wished to challenge Roberts' testimony on these issues it had a free and full opportunity to do so.

205 We have also considered Public Counsel's various objections. Public Counsel witness Earle suggested that the Company's internal legal costs were anomalous by referring to

⁴¹⁹ See Free, Exh. SEF-4Tr at 23:10-12; Roberts, Exh. RJR-1T at 27:8-29:7; Roberts, Exh. RJR-11T at 50:14-55:17; Taylor, Exh. JDT-8T at 23:2-25:5.

⁴²⁰ See Earle, Exh. RLE-12.

⁴²¹ Free, Exh. SEF-4Tr at 14:5-19, 20:1 (Table 1), 20:3 (Table 2).

⁴²² *Id* at 21:13-16.

⁴²³ See *d.* at 17:15-18:7.

⁴²⁴ Tribe Brief at 28:3-29:10.

⁴²⁵ It is notable that Public Counsel did not chose to cross-examine Roberts at the hearing either.

⁴²⁶ See Roberts, Exh. RJR-11T at 50:12-55:17.

⁴²⁷ See *generally* Roberts, TR 46:10-61:14.

the statistical distribution of the last digits.⁴²⁸ Earle does not directly assert fraud, but this is what the method is used to detect.⁴²⁹ Yet despite these claims, Public Counsel did not choose to file a motion to compel on its earlier discovery requests or cross-examine Roberts at the hearing. We reject the implication that a small group of in-house attorneys falsified timesheets, when the evidence shows that PSE was successfully defending a number of proceedings, and we decline to require an audit of the Company's legal costs.

206 We have also considered the Tribe's argument that the Commission should apply the lodestar standard to determine the reasonableness of PSE's attorney fees.⁴³⁰ However, the Commission has not previously applied such a standard in determining the recovery of legal costs, and the Tribe does not cite any authority indicating that this standard should be applied in Commission proceedings.

207 Thus, we find that PSE has sufficiently established the reasonableness of its attorney fees included in the tracker.

E. Four-mile distribution line

208 A portion of the total costs of the Tacoma LNG Facility includes a four-mile, bidirectional pipeline segment which supports the delivery of natural gas to and from the Facility.⁴³¹ This distribution line also required the construction of a meter station, which was installed adjacent to the Tacoma LNG Facility.⁴³² The four-mile pipeline segment was placed into service in 2017 and accounts for the majority of the Facility's distribution costs (\$27.4 million of the total 46.4 million).⁴³³

209 In PSE's 2022 rate case, the Tacoma LNG Settlement provided for recovery of Facility's distribution costs through base rates.⁴³⁴ However, the Commission conditioned this portion of the Settlement, noting that it was not clear how these costs were being allocated between regulated and non-regulated customers.⁴³⁵ In its condition, the Commission ruled that the approximately \$30 million investment associated with the four-mile distribution line may only be allowed in rates provisionally, "to allow for consideration when PSE files for LNG recovery of the appropriate allocation of costs of the distribution line to Puget LNG, as well as the method for PSE recovering the

⁴²⁸ Earle, Exh. RLE-1CT at 21:14-24:3.

⁴²⁹ *See id.* at 21, n. 58.

⁴³⁰ Tribe Brief at 27.

⁴³¹ Donahue, Exh. WFD-1T at 2:15-3:3.

⁴³² *Id.*

⁴³³ *Id.* at 3:5-9.

⁴³⁴ Final Order 24/10 at ¶ 406 – 408.

⁴³⁵ Final Order 24/10 at ¶ 409.

‘appropriate share’ of costs from Puget LNG, and how it will modify regulated rate base.”⁴³⁶ It is currently being recovered through Schedule 141D on a provisional basis, with a total annual revenue requirement of \$2.99 million in 2023 and \$2.91 million in 2024.⁴³⁷

Direct Testimony

- 210 In this filing, PSE proposes to allocate approximately 38 percent of the four-mile distribution line to Puget LNG and approximately 62 percent to its regulated core gas customers.⁴³⁸ PSE witness Donahue argues that a 12-inch distribution line would have been sufficient to serve its transportation customers, but that a 16-inch distribution line is necessary for the Facility to serve as a peaking resource to PSE’s core gas customers.⁴³⁹
- 211 Following this, PSE’s proposed allocation of the four-mile distribution line splits the cost of this hypothetical 12-inch line in half, with half being allocated entirely to PSE, and for the other half, applies 90 percent of the cost to Puget LNG, with the remaining 10 percent being allocated to PSE.⁴⁴⁰ Donahue argues that this 90-10 split is consistent with the settlement approved by the Commission in Docket UG-151663.⁴⁴¹ Finally, Donahue then assigns the full cost of the difference between a 12-inch and 16-inch distribution line to PSE, to be recovered by regulated customers.⁴⁴² Of the \$27.4 million in capital investment associated with the four-mile distribution line, PSE proposes that \$16.9 million would be recovered from regulated customers, and \$10.5 million would be allocated to Puget LNG.⁴⁴³
- 212 Donahue also argues that, based on PSE’s Tariff Rule No. 6 covering Extension of Distribution Facilities, no contribution in aid of construction (CIAC) from Puget LNG is necessary.⁴⁴⁴ Under this rule, if the capital costs of a distribution extension are greater than the capital cost recovery expected from that customer, Rule 6 requires an upfront payment in addition to the revenues generated over the life of the service.⁴⁴⁵ This customer payment, Donahue notes, serves to “reduce the net capitalized rate base of the distribution system upgrades such that no costs of the upgrades are shifted to other

⁴³⁶ Final Order 24/10 at ¶ 410.

⁴³⁷ Donahue, Exh. WFD-1T at 7:16-19. *See also* Donahue, Exh. WFD-3.

⁴³⁸ *Id* at 4:7-9.

⁴³⁹ Donahue, Exh. WFD-1T at 7:8-22.

⁴⁴⁰ *See* Donahue, Exh. WFD-3.

⁴⁴¹ Donahue, Exh. WFD-1T at 6:19-21.

⁴⁴² *Id* at 7:1-6.

⁴⁴³ Donahue, Exh. WFD-3.

⁴⁴⁴ Donahue, Exh. WFD-1T at 9:5-15.

⁴⁴⁵ *Id* at 8:12-19.

ratepayers.”⁴⁴⁶ Donahue submits that based on the allocations proposed, no such CIAC is required from Puget LNG, and PSE would instead recover the costs for Puget LNG’s portion of the distribution upgrades through the tariff rates charged to Puget LNG.⁴⁴⁷ PSE proposes to allocate its costs for providing service to Puget LNG, including a portion of the four-mile pipeline, to a new Schedule 88T, which would apply only to Puget LNG.⁴⁴⁸

Response Testimony

- 213 Staff disputes PSE’s proposed allocation of the four-mile pipeline.⁴⁴⁹ Erdahl argues that PSE’s allocation methodology is inconsistent with the principles of cost causation and recommends a different allocation “based on maximum capacity and how the pipeline will be used to transport gas to and from the facility.”⁴⁵⁰ Of the \$27.4 million cost of the distribution line, Staff proposes that \$19.3 million or 70.4 percent be allocated to Puget LNG, and \$8.1 million, or 29.6 percent be allocated to PSE.⁴⁵¹
- 214 Erdahl explains that for natural gas to be delivered to PSE customers through this pipeline, it must first be vaporized at the Facility.⁴⁵² Erdahl notes the PSCAA’s restrictions and conditions on the Facility, which limits use of the vaporizer to “no more than 240 hours (10 days) per any 12 consecutive month period.”⁴⁵³ Erdahl also notes that vaporized gas traveling to the Facility is limited to a maximum of 21,400 Dth per day based on the liquefaction train’s capacity.⁴⁵⁴
- 215 Erdahl applies the 66,000 Dth per day maximum vaporization capacity to the 10 day operating limit, to arrive at a maximum of 660,000 Dth per year.⁴⁵⁵ Erdahl then takes the remaining 355 days in a year and multiplies this by the maximum liquefaction of 21,400 Dth per day, to arrive at 7,597,000 Dth per year.⁴⁵⁶ Erdahl uses these maximums to arrive at a total annual capacity for gas flowing to and from the Tacoma LNG Facility via the four-mile pipeline, resulting in 8 percent leaving the Facility for distribution to PSE

⁴⁴⁶ *Id* at 8:19-9:1.

⁴⁴⁷ *Id* at 9:5-15.

⁴⁴⁸ *Id* at 11:1-4.

⁴⁴⁹ Erdahl, Exh. BAE-1T at 22:21.

⁴⁵⁰ *Id* at 23:2-5.

⁴⁵¹ *Id* at 24:3-5.

⁴⁵² *Id* at 23:9-11.

⁴⁵³ *Id* at 23:11-15.

⁴⁵⁴ *Id* at 23:19-20.

⁴⁵⁵ *Id* at 24:14-16.

⁴⁵⁶ *Id* at 24:17-19.

customers, and 92 percent flowing to the Facility.⁴⁵⁷ Finally, Erdahl then applies the previously authorized 90/10 liquefaction allocation percentage, and consistent with PSE's proposal, applies the full cost of the cost differential between the 12 and 16-inch line to arrive at Staff's proposed allocation.⁴⁵⁸

216 Based on Staff's proposed allocation, Erdahl recommends that the Commission order PSE to recalculate under Rule No. 6, to determine whether Puget LNG must make a CIAC.⁴⁵⁹ Erdahl argues that, if a CIAC is made to PSE, PSE will need to adjust the booked value of plant by the contribution to prevent double recovery.⁴⁶⁰ Staff also recommends that PSE refund any difference between the rates it has provisionally collected for the pipeline through Sch. 141D and the allocation arrived at in this proceeding.⁴⁶¹

217 Public Counsel also disputes PSE's proposed allocation of its four-mile distribution line.⁴⁶² Public Counsel witness Earle argues that "PSE's allocation method ignores the amount of use of the pipeline and arbitrarily splits the \$23.3 million cost into half attributable to receipts (gas to the facility) and half attributable to delivery (gas from the Facility),"⁴⁶³ and ignores the 10-day-per-year vaporization limit imposed by the PSCAA.⁴⁶⁴ Earle contends that as a result of this, use of the pipeline for deliveries *from* the Facility is less than 3 percent.

218 To help illustrate PSE's proposed allocation methodology, Earle offers an analogy of a pair of friends sharing time at a racetrack that charges based on distance, with one friend arguing that they should pay half of the total cost because they drove part of a lap in reverse, in addition to paying for the laps driven going forward.⁴⁶⁵ Earle contends that it is the use of the pipeline that matters, not the direction of the flow.⁴⁶⁶

219 Earle does not dispute the allocation of the full cost of the upgrade from the 12 to 16-inch line to PSE customers, but offers his own allocation methodology based on the percentage of time the line will be used for delivery from the facility, and the 90/10 split

⁴⁵⁷ *Id* at 25:6-9.

⁴⁵⁸ *Id* at 25:9-18. See also Erdahl, Exh. BAE-3.

⁴⁵⁹ *Id* at 26:11-13.

⁴⁶⁰ *Id* at 27:10-12.

⁴⁶¹ *Id* at 27:16-19.

⁴⁶² Earle, Exh. RLE-1T at 29:6.

⁴⁶³ *Id* at 29:6-8.

⁴⁶⁴ *Id* at 29:8-10.

⁴⁶⁵ *Id* at 29:13-30:3.

⁴⁶⁶ *Id* at 30:6-8.

previously authorized by the Commission.⁴⁶⁷ Earle argues that the overall allocation for the four-mile pipeline should be no more than 25.6 percent to PSE's ratepayers and 74.4 percent to Puget LNG.

220 The Puyallup Tribe's witness Dr. Sahu argues that PSE's customers should bear none of the costs of the four-mile pipeline, claiming that "[i]f the Tacoma LNG facility was constructed closer to its source of feed gas there would be no need for rate payers to contribute to the cost of an expensive and unnecessary four-mile pipeline."⁴⁶⁸ Sahu offers that if the Commission determines that some portion of the pipeline be recovered from regulated ratepayers, it should be based on the cost of a 250-foot pipeline as opposed to the four-mile one PSE built, which would equate to roughly 1 percent of the cost.⁴⁶⁹ Alternatively, Sahu states that basing the allocation based on the volume of gas used for peak shaving versus the volume liquefied for TOTE, "would be at most a few percent."⁴⁷⁰

Rebuttal Testimony

221 In rebuttal, PSE witness Donahue argues that PSE's proposed allocation is appropriate because "the four-mile pipeline segment was designed and built to be operated as a bidirectional pipeline, effectively getting two pipelines for only slightly more than the cost of one."⁴⁷¹ Donahue argues that due to its bidirectional nature, which is unique for distribution infrastructure, the cost allocations must specifically recognize the commitments to flow gas in both directions, and therefore PSE's allocation is appropriate.⁴⁷² Donahue argues that Staff's proposed allocation fails to recognize this bidirectional nature, and "PSE's right to sole use of the pipeline during peak shaving, which could occur at any time."⁴⁷³ Donahue contends that both PSE and Puget LNG's users benefit from the 50/50 sharing of the cost of the pipeline, rather than the cost of separate pipelines, and that Staff's proposal is not based on cost causation principles.⁴⁷⁴ Donahue notes that the Commission policy for allocating distribution pipe costs requires the use of both peak (need) and average (usage) methodology, but that these are only appropriate when direct assignment or functionalization is not available.⁴⁷⁵

⁴⁶⁷ *Id* at 30:9-19. *See also* Earle, Exh. RLE-14.

⁴⁶⁸ Sahu, Exh. RXS-35T at 7:23-8:2 and 8:7-13.

⁴⁶⁹ *Id* at 9:2-6.

⁴⁷⁰ *Id* at 9:7-9.

⁴⁷¹ Donahue, Exh. WFD-5T at 2:19-21.

⁴⁷² *Id* at 3:11-4:13.

⁴⁷³ *Id* at 5:20-6:2.

⁴⁷⁴ *Id* at 6:5-12.

⁴⁷⁵ *Id* at 9:3-11. *See also* *In the Matter of Amending WAC 480-07-510 and Adopting Chapter 480-85 WAC Relating to Cost of Service Studies for Electric and Natural Gas Investor-Owned Utilities*,

- 222 In regard to Staff and Public Counsel’s use of the PSCAA’s 240-hour operating limit in their allocations, Donahue claims that this under-represents the use of the pipeline, as it does not account for the delivery of “boil-off gas” delivered to customers every day that liquefaction does not occur, which is more than 120 days per year.⁴⁷⁶ Donahue provides a series of alternative allocation methodologies under several different usage scenarios, all still utilizing PSE’s proposed functionalization approach of a 50/50 cost split, one for each direction of the bidirectional pipeline.⁴⁷⁷ Donahue claims that these scenarios illustrate the appropriateness of PSE’s proposed allocation.⁴⁷⁸ Donahue also argues that no CIAC is required from Puget LNG, as proposed by Staff, as PSE has appropriately allocated the costs of the pipeline.⁴⁷⁹
- 223 PSE witness Taylor also addresses the functionalization and cost-causation arguments brought forth by Donahue,⁴⁸⁰ and argues that PSE’s approach “is consistent with the guidance provided by the Commission’s General Order R-599 with respect to the allocation of gas pipeline infrastructure expansions.”⁴⁸¹ Taylor also cites a table contained in WAC 480-85-060 that requires “[d]irect assignment of distribution mains to a single customer class where practical,” and “[a]ll other costs assigned based on design day (peak) and annual throughput (average) based on system load factor.”⁴⁸² Taylor also disputes both Staff’s and Public Counsel’s proposed allocation methodologies,⁴⁸³ and argues that no refund is due to customers for the four-mile pipeline being provisionally recovered through Sch. 141D.⁴⁸⁴

Order Amending and Adopting Rules Permanently, Dockets UE-170002 and UG-170003 General Order R-599 ¶ 77 (July 7, 2020) (General Order R-599) (“Accordingly, the Commission modifies the natural gas distribution mains allocation method in Table 4 of proposed WAC 480-85-060(3) to read “Direct assignment of distribution mains to a single customer class where practical. All other costs assigned based on design day (peak) and annual throughput (average) based on system load factor.”).

⁴⁷⁶ *Id* at 7:8-17.

⁴⁷⁷ *Id* at 11:20-12:6. *See also* Donahue, Exh. WFD-6.

⁴⁷⁸ *Id* at 12:22-13:2.

⁴⁷⁹ *Id* at 8:19-9:2.

⁴⁸⁰ *See generally* Taylor, Exh. JDT-8T at 5:5-15:19.

⁴⁸¹ Taylor, Exh. JDT-8T at 15:16-19. The portion of General Order R-599 cited by Taylor states, in general, that direct assignment of distribution costs is appropriate, when possible, under the cost of service principle.

⁴⁸² *Id* at 15:1-5. *See also* WAC 480-85-060 under the section “Distribution Mains” within the “Allocation Method” column.

⁴⁸³ *Id* at 16:1-20:17.

⁴⁸⁴ *Id* at 22:4-17.

Post-hearing Briefing

- 224 In its brief, PSE maintains that the costs for the four-mile segment were prudent and properly allocated. PSE raises two arguments: a) PSE’s cost allocation methodology for the four-mile pipeline segment is based on the principle of cost causation; and b) PSE properly applied its line extension policy to Puget LNG’s use of the distribution system upgrades, including the four-mile pipeline segment.⁴⁸⁵
- 225 With regards to the first argument, PSE argues that it could have considered separate pipeline facilities for delivering gas to and from the Tacoma LNG Facility, but instead “determined that the pipeline needed to deliver PSE’s large volume of vaporized gas could, with appropriate upgrades and service limitations, also deliver the PSE and Puget LNG volumes of feed gas.”⁴⁸⁶ The four-mile pipeline segment was therefore “designed and built to be operated as a bidirectional pipeline, effectively getting two pipelines for only slightly more than the cost of one.”⁴⁸⁷ The bidirectional functionality of the four-mile pipeline segment is possible because there is compression on both ends of the segment.⁴⁸⁸
- 226 PSE submits that a 12-inch pipeline would have been adequate to deliver 21,400 Dth per day to the Tacoma LNG Facility, but a 16-inch pipeline was needed to deliver 66,000 Dth per day from the Tacoma LNG Facility.⁴⁸⁹ PSE adds that the cost of the four-mile pipeline segment was \$27.4 million,⁴⁹⁰ and the estimated cost difference between constructing four miles of 12-inch pipeline and four miles of 16-inch pipeline was approximately \$4.1 million or 15 percent of the total.⁴⁹¹ Witness Donahue allocated 100 percent of the cost differential (\$4.1 million) to PSE because PSE needed the 16-inch pipeline to be able to deliver 66,000 Dth per day from the Tacoma LNG Facility to the PSE distribution system.⁴⁹²
- 227 Citing Donahue’s testimony, PSE submits that the remaining 85 percent of the costs (\$23.3 million) represents the common portion of the four-mile pipeline segment and was split evenly between the dual uses of delivering natural gas to the Tacoma LNG Facility for liquefaction (for both PSE and Puget LNG) and delivering natural gas from

⁴⁸⁵ PSE Post-Hearing Brief at 19 and 25.

⁴⁸⁶ PSE Post-Hearing Brief at 19, ¶ 45; Donahue, Exh. WFD-1T at 2:15-17.

⁴⁸⁷ PSE Post-Hearing Brief at 19, ¶ 45; Donahue, Exh. WFD-5T at 2:19-21.

⁴⁸⁸ PSE Post-Hearing Brief at 19, ¶ 45; *See* Donahue, Exh. WFD-5T at 4:1-9.

⁴⁸⁹ PSE Post-Hearing Brief at 20, ¶ 48; *See* Donahue, Exh. WFD-1T at 6:10-13.

⁴⁹⁰ PSE Post-Hearing Brief at 20, ¶ 48; *See* Donahue, Exh. WFD-3 at (Upgrade 1).

⁴⁹¹ PSE Post-Hearing Brief at 20-21, ¶ 48; *See* Donahue, Exh. WFD-1T at 7:8-9; *see also* Donahue, Exh. WFD-3 (Upgrade 1).

⁴⁹² PSE Post-Hearing Brief at 21, ¶ 48; *See* Donahue, Exh. WFD-1T at 7:9-16.

the Tacoma LNG Facility to the PSE distribution system (for only PSE).⁴⁹³ One-half, or \$11.65 million, was allocated to use of the bidirectional four-mile pipeline segment to deliver natural gas to the Tacoma LNG Facility and attributed by Mr. Donahue in accordance with the settlement approved by the Commission in Docket UG-151663 whereby liquefaction facilities are allocated 90 percent to Puget LNG and 10 percent to PSE.⁴⁹⁴ PSE alleges that the remaining \$11.65 million of the common costs that were allocated to the use of the bidirectional four-mile segment to deliver natural gas from the Tacoma LNG Facility were attributed 100 percent to PSE because PSE is the only entity that needs, or has a right, to deliver gas from the Tacoma LNG Facility.⁴⁹⁵

228 PSE declares that it was reasonable and appropriate to split the cost of the common portion of the bidirectional four-mile pipeline segment evenly between its use for inbound deliveries and its use for outbound deliveries.⁴⁹⁶ PSE claims its methodology achieves the same result but the costs of the bidirectional four-mile pipeline segment are less than two four-mile pipeline segments.⁴⁹⁷

229 In addition, PSE submits that its cost allocation methodology is consistent with Table 4 of WAC 480-85-060, which requires “direct assignment of distribution mains to a single customer where practical.” Costs for inbound use of the bidirectional four-mile pipeline segment were directly assigned to PSE and Puget LNG; and costs for outbound use were directly assigned to PSE.⁴⁹⁸ PSE was allocated \$16,920,000 (61.8 percent) and Puget LNG was allocated \$10,480,000 (38.3 percent) of the costs of the bidirectional four-mile pipeline segment.⁴⁹⁹

230 While PSE notes that Commission Staff’s and Public Counsel’s methodologies are similar with regard to the allocation to the Company of the \$4.1 million cost difference between construction of four miles of 12-inch pipeline and four miles of 16-inch pipeline, PSE asserts that the similarities end there.⁵⁰⁰ PSE contends that Commission Staff and Public Counsel start their analysis with the incorrect belief that PSE is

⁴⁹³ PSE Post-Hearing Brief at 21, ¶ 48; See Donahue, Exh. WFD-3 (Upgrade 1).

⁴⁹⁴ PSE Post-Hearing Brief at 21, ¶ 48.

⁴⁹⁵ PSE Post-Hearing Brief at 21, ¶ 48 See Donahue, Exh. WFD-1T at 6:15 – 7:4; see also Donahue, Exh. WFD-3 (Upgrade 1).

⁴⁹⁶ PSE Post-Hearing Brief at 21, ¶ 49; See Donahue, Exh. WFD-5T at 4:11- 5:5; see also Donahue TR 82:13-83:23.

⁴⁹⁷ PSE Post-Hearing Brief at 21, ¶ 49; See Donahue, Exh. WFD-5T at 2:19-21.

⁴⁹⁸ PSE Post-Hearing Brief at 21-22, ¶ 49.

⁴⁹⁹ PSE Post-Hearing Brief at 21-22, ¶ 49; Donahue, Exh. WFD-1T at 7:16-19; see also Donahue Exh. WFD-3 (Upgrade 1).

⁵⁰⁰ PSE Post-Hearing Brief at 22-23, ¶ 51; See Erdahl, Exh. BAE-1CT at 24:8-10; Exh. RLE-1T at 30:9-13.

constrained from using the bidirectional four-mile pipeline segment to move gas from the Tacoma LNG Facility to the PSE distribution system for more than 10 days per year. This results in Commission Staff concluding the bidirectional four-mile pipeline is used 8 percent of the year to transport gas from the Tacoma LNG Facility and 92 percent of the year to transport gas to the Tacoma LNG Facility.⁵⁰¹

231 According to PSE, Public Counsel simply divides 10 days into 365 days and concludes PSE’s use of the bidirectional four-mile pipeline segment for delivery from the Tacoma LNG Facility is less than 3 percent.⁵⁰² Staff’s proposal allocates \$19.29 million, or 70.4 percent, of the capital costs of the bidirectional four-mile pipeline segment to Puget LNG and \$8.11 million, or 29.6 percent, of the capital costs to PSE, shifting \$8.81 million of capital costs from PSE to Puget LNG, as compared to PSE’s allocation methodology.⁵⁰³ Public Counsel proposes an overall allocation of the bidirectional four-miles of 16-inch pipeline of not “more than 25.6 percent to PSE and 74.4 percent to Puget LNG,”⁵⁰⁴ shifting at least \$9.9 million of capital costs from PSE to Puget LNG as compared to PSE’s methodology for calculating the overall allocation factor.⁵⁰⁵

232 PSE takes issue with Staff’s and Public Counsel’s claim that PSE is limited to using the bidirectional four-mile pipeline segment on only 10 days of the year.⁵⁰⁶ The Company claims that the PSCAA air permit limits use of the vaporizer to 240 hours per year (not 10 days) but it does not limit use of the four-mile pipeline segment. PSE adds that the four-mile pipeline segment is used to deliver boil-off gas (“BOG”) to PSE’s distribution system every day that liquefaction does not occur; under current operating conditions, that use is more than 120 days per year.⁵⁰⁷

233 In addition, PSE asserts that it has a preemptive right to use the full outbound capacity of the four-mile pipeline segment.⁵⁰⁸ In fact, PSE states that this preemptive right is the reason the four-mile pipeline segment was sized to meet PSE’s peak demand requirements.⁵⁰⁹ Not being able to use the four-mile pipeline segment when it is needed

⁵⁰¹ PSE Post-Hearing Brief at 23, ¶ 51; See Erdahl, Exh. BAE-1CT at 25:3-9.

⁵⁰² PSE Post-Hearing Brief at 23, ¶ 51; See Earle, Exh. RLE-1CT at 8-12 (10 days divided by 365 days is 2.7 percent).

⁵⁰³ PSE Post-Hearing Brief at 23, ¶ 51; See Erdahl, Exh. BAE-1CT at 24:3-5 and 26:1-7.

⁵⁰⁴ PSE Post-Hearing Brief at 23, ¶ 51; Earle, Exh. RLE-1CT at 13-21.

⁵⁰⁵ PSE Post-Hearing Brief at 23, ¶ 51.

⁵⁰⁶ PSE Post-Hearing Brief at 23, ¶ 52.

⁵⁰⁷ PSE Post-Hearing Brief at 23-24, ¶ 52; See Donahue, Exh. WFD-5T at 7:10-14.

⁵⁰⁸ PSE Post-Hearing Brief at 23, ¶ 52; See Donahue, Exh. WFD-5T at 8:7-15; see also PSE Response to Bench Request No. 2 (1)-(3).

⁵⁰⁹ PSE Post-Hearing Brief at 23, ¶ 52; See Donahue, Exh. WFD-5T at 6:14 – 7:1; see also PSE Response to Bench Request No. 2 (1)-(3).

to meet peak demand would have made the Tacoma LNG Facility an unreliable peak shaving resource, effectively eliminating its purpose to serve core customers.⁵¹⁰

- 234 The Company further argues that the cost allocation methodologies proposed by Staff and Public Counsel are not based on cost causation principles. To be more specific, PSE contends that Staff's methodology assumes the four-mile pipeline segment will be used to deliver the full volume of 21,400 Dth per day on 355 days of the year and 66,000 Dth per day on 10 days of the year, effectively a 100 percent load factor. PSE witness Taylor explains this is not a common cost allocation methodology in Washington or elsewhere in the United States. Moreover, witness Taylor states that it ignores the fact that the four-mile pipeline segment is used to flow peak-shaving volumes and BOG from the Tacoma LNG Facility to PSE's distribution system on any day the Tacoma LNG Facility is not liquefying.⁵¹¹
- 235 Accordingly, PSE requests that the Commission approve its methodology, which would assign 38.25 percent of the revenues in Schedule 141D to the Exclusive Interruptible customer class,⁵¹² of which Puget LNG is the only customer.⁵¹³
- 236 PSE next addresses whether a CIAC is required from Puget LNG. PSE disagrees with Staff that it should be required to recalculate the line extension calculation using the costs of the four-mile pipeline segment Commission Staff believed should be allocated to Puget LNG.⁵¹⁴ PSE contends that Staff is confusing two regulatory processes, cost allocation and line extension. As testified by Taylor, a line extension calculation is made when the incremental facilities are considered and first needed for the provision of utility service. If a customer increases its annual throughput or uses the facilities at a higher load factor, the utility does not have a mechanism to go back and allocate more costs to that customer's use than was modeled in the initial cost allocation calculation.⁵¹⁵
- 237 The Company states that under the terms of its line extension policy on file with the Commission and under which PSE determined Puget LNG was not required to provide a CIAC, PSE is not authorized to recalculate or true-up its CIAC calculation after the fact in the event a customer's actual usage of PSE's facilities differs from the projected use PSE utilized in the CIAC calculation.⁵¹⁶

⁵¹⁰ PSE Post-Hearing Brief at 23, ¶ 52.

⁵¹¹ PSE Post-Hearing Brief at 24, ¶ 53; See Taylor, Exh. JDT-8T at 20:3-17.

⁵¹² PSE Post-Hearing Brief at 25, ¶ 53; See Taylor, Exh. JDT-4 at 3, column (e) line 11.

⁵¹³ PSE Post-Hearing Brief at 25, ¶ 53.

⁵¹⁴ PSE Post-Hearing Brief at 25, ¶ 55; See Erdahl, Exh. BAE-1CT at 26:11-13.

⁵¹⁵ PSE Post-Hearing Brief at 25, ¶ 57; See Taylor, Exh. JDT-8T at 21:3-20.

⁵¹⁶ PSE Post-Hearing Brief at 25, ¶ 57; See Rule No. 6: Extension of Distribution Facilities, Puget Sound Energy Natural Gas Tariff, Rules and Regulations, Effective January 13, 2017.

- 238 In its brief, Staff sets forth the Commission’s three step process for determining customer plant costs:⁵¹⁷ 1) plant is first categorized based on the broad function it serves; 2) the functionalized plant is classified based on whether it varies according to things like the amount of customer demand or the number of customers; and 3) the classified plant is then either directly assigned to a specific customer or class or allocated among multiple customers classes based on appropriate factors.⁵¹⁸
- 239 Staff recommends allocating 70.4 percent of the \$27.4 million in rate base related to the four-mile distribution pipeline to Puget LNG, with the remaining 29.6 percent of the cost allocated to the relevant PSE customers. According to Staff, this results in allocating \$19.29 million to Puget LNG and \$8.11 million to PSE. The allocation of this rate base is used to determine how much of the \$3 million in revenue requirement related to the four-mile pipe should be paid for by PSE sales customers versus Puget LNG.⁵¹⁹ Staff states that it arrived at this result based on two considerations: 1) the direct assignment of costs to one class of customers; and 2) the use of the facility by PSE and Puget LNG.⁵²⁰
- 240 In further detailing its approach, Staff states that it first directly assigned the cost difference between 12-inch and 16-inch pipes to customers other than Puget LNG.⁵²¹ Staff claims that Puget LNG does not use gas vaporized at the facility, and also that the need to deliver high volumes of vaporized gas required the use of a 16-inch pipe rather than a 12-inch one that would have sufficed for Puget LNG’s needs.⁵²² Thus, Staff maintains that the Commission should allocate the cost difference between a 12-inch and a 16-inch pipe, \$4.1 million, directly to the non-Puget LNG customers.⁵²³
- 241 Next, as part of its analysis, Staff allocated shared costs based on usage. In this regard, Staff alleges that the permit restrictions imposed by the PSCAA have a significant effect.⁵²⁴ Staff assumed that PSE would use the pipe to transport out from the Facility the

⁵¹⁷ Staff’s Post-Hearing Brief at 23 ¶ 56; See WAC 480-85-060; e.g., *Wash. Utils. & Transp. Comm’n v. Puget Sound Power & Light Co.*, Cause No. U-85-53, 1986 Wash. UTC Lexis 37, 74 P.U.R.4th 536 (May 16, 1986) (“[e]ach cost of service study has three steps: 1) Functionalization of plant and expenses between production, transmission, and distribution plant; 2) Classification among demand, energy, and customer categories; and 3) Allocation between classes”).

⁵¹⁸ Staff’s Post-Hearing Brief at 23 ¶ 56.

⁵¹⁹ Staff’s Post-Hearing Brief at 23 ¶ 57.

⁵²⁰ Staff’s Post-Hearing Brief at 23 ¶ 58.

⁵²¹ Staff’s Post-Hearing Brief at 23 ¶ 59; Erdahl, Exh. BAE-1CT at 24:8-13.

⁵²² Staff’s Post-Hearing Brief at 23-24 ¶ 59; Erdahl, Exh. BAE-1CT at 24:8-13.

⁵²³ Staff’s Post-Hearing Brief at 24 ¶ 59; Erdahl, Exh. BAE-1CT at 24:8-10.

⁵²⁴ Staff’s Post-Hearing Brief at 24 ¶ 60; Erdahl, Exh. BAE-1CT at 23:9-18.

maximum amount allowed under the permit, 660,000 dekatherms per year.⁵²⁵ Staff then added that amount to the total amount liquefied on non-vaporization days, or 7,597,000 dekatherms per year, resulting in a total flow of gas in and out of the facility of 8,257,000 dekatherms.⁵²⁶ The result was Staff allocating 92 percent of the cost of the 12-inch pipe to customers using the pipe to transport gas to the facility and 8 percent to the customers using the pipe to transport gas out of the facility.⁵²⁷

242 Further, to calculate the costs of the pipe to customers using it to transport gas to the LNG facility, Staff applied the capital cost allocations that the Commission approved in Docket UG-151663, which represent the customers' usage of the liquefaction equipment.⁵²⁸ Staff asserts that those allocations provide for a 90/10 split of costs between Puget LNG and PSE, respectively.⁵²⁹ Staff accordingly allocated 90 percent of the inbound pipeline costs to Puget LNG and 10 percent to PSE.⁵³⁰ Staff claims that this resulted in a rate base allocation of \$19.29 million to Puget LNG and \$2.14 million to PSE.⁵³¹

243 In allocating the costs of the pipe to customers using it to transport gas from the facility, the calculation is much simpler. Puget LNG does not use the pipe for that purpose so the costs may be allocated solely to PSE's natural gas sales customers.⁵³² This resulted in allocating \$1.86 million in costs to those customers.⁵³³

244 Staff takes issue with PSE's arguments against its proposed allocation for the pipeline.⁵³⁴ Regarding the first point of contention, the functionalization step of cost allocation, Staff asserts that it is not in dispute that the pipeline is used for distribution and claims that the Commission has also characterized it as such.⁵³⁵

⁵²⁵ Staff's Post-Hearing Brief at 24 ¶ 60; Erdahl, Exh. BAE-1CT at 24:14-16.

⁵²⁶ Staff's Post-Hearing Brief at 24 ¶ 60; Erdahl, Exh. BAE-1CT at 24:17-21.

⁵²⁷ Staff's Post-Hearing Brief at 24 ¶ 60; Erdahl, Exh. BAE-1CT at 25:1-5.

⁵²⁸ Staff's Post-Hearing Brief at 24 ¶ 61; Erdahl, Exh. BAE-1CT at 25:6-12.

⁵²⁹ Staff's Post-Hearing Brief at 24 ¶ 61; Erdahl, Exh. BAE-1CT at 25:9-12.

⁵³⁰ Staff's Post-Hearing Brief at 24 ¶ 61; Erdahl, Exh. BAE-1CT at 25:9-12.

⁵³¹ Staff's Post-Hearing Brief at 24 ¶ 61; Erdahl, Exh. BAE-1CT at 25:9-12.

⁵³² Staff's Post-Hearing Brief at 25 ¶ 62; Donahue, Exh. WFD-5T at 5:20-6:2.

⁵³³ Staff's Post-Hearing Brief at 25 ¶ 62; Erdahl, Exh. BAE-1CT at 25:16-18.

⁵³⁴ Staff's Post-Hearing Brief at 25 ¶ 63.

⁵³⁵ Staff's Post-Hearing Brief at 25 ¶ 64; E.g., Order 24/10 at 119 ¶ 407 (PSE's witnesses referring to the pipe as distribution pipe); Donahue, WFD-1T at 2:15-3:9; Erdahl, Exh. BAE-1CT at 19:7-20:15. There is similarly no dispute about the proper classification of this pipe. By rule, distribution pipe is classified on a demand basis. WAC 480-85-060 Table 4; and E.g., Order 24/10 at 120 ¶ 410.

- 245 Staff claims that it did not commit an error in its cost allocation, contrary to PSE’s contention, when it did not functionalize the pipeline based on each direction of flow.⁵³⁶ Instead, Staff argues that utility property is functionalized based on broad categories such as production, transmission, distribution or storage.⁵³⁷ Staff refers to PSE’s example of allocation of the Jackson Prairie Facility, where the facility’s costs were allocated broadly on the basis of its storage and system balancing functions, then classified and allocated to PSE’s customers accordingly.⁵³⁸ Staff argues that PSE’s subdivision of the pipe here into two categories of distribution is inconsistent with this general principle and the Commission’s application of it in recent cases. Staff adds, “It is also inconsistent with the fact that, at root, this pipe serves a single purpose: it distributes gas.”⁵³⁹
- 246 Staff argues that PSE’s subdivision improperly conflates functionalization and allocation, with downstream consequences for PSE’s ultimate allocation of the pipeline. Staff states that the “functions” that PSE argues the pipeline was intended to serve are actually proxies for customer usage: flow to the Facility stands in for Puget LNG’s use of the pipe and flow from the Facility stands in for PSE’s other customers’ use of the pipe.⁵⁴⁰ Staff contends that by “functionalizing” in this manner, PSE artificially allocated the pipe on an equal basis between PSE and Puget LNG, then further allocated those shares based on other factors during the allocation step. Staff argues that the resulting allocation is divorced from the kind of actual use and benefit that is supposed to drive cost allocation, and the Commission should reject it.⁵⁴¹
- 247 According to Staff, PSE asserts that the costs at issue -- the costs of a 16-inch pipeline, less the difference between 16- and 12-inch pipelines, used by both PSE’s sales customers and Puget LNG -- cannot be directly assigned because they are shared.⁵⁴² However, Staff believes that its allocation methodology applies in cases like the one present here, where multiple users share a distribution main on a zero-sum basis and a permitting agency limits the use of one of them. Staff states that in those cases, it is reasonable for any allocation to recognize the zero-sum nature of the pipe’s use and the permit restrictions. Staff posits that the approach PSE offers would involve the direct assignment of all costs of the main to a single customer that does not share the pipe with

⁵³⁶ Staff’s Post-Hearing Brief at 25 ¶ 65; Donahue, Exh. WFD-5T at 6:5-12.

⁵³⁷ Staff’s Post-Hearing Brief at 25 ¶ 65; See fn. 129 of Staff’s Post-Hearing Brief for the court’s treatment of functionalization.

⁵³⁸ Staff’s Post-Hearing Brief at 25-26 ¶ 65; Taylor, Exh. JDT-8T at 12:16-13:5.

⁵³⁹ Staff’s Post-Hearing Brief at 26 ¶ 65.

⁵⁴⁰ Staff’s Post-Hearing Brief at 26 ¶ 66.

⁵⁴¹ Staff’s Post-Hearing Brief at 26-27 ¶ 66.

⁵⁴² Staff’s Post-Hearing Brief at 27 ¶¶ 67-68; See *Wash. Utils. & Transp. Comm’n v. Cascade Nat. Gas Corp.*, Cause No. U-86-100, 1987 Wash. UTC Lexis 99 (May 20, 1987) (“joint and common costs, by definition, cannot be traced directly to specific customers and customer classes”).

anyone. Staff contends that approach is not comparable to the situation here, and PSE's argument does not show that Staff's methodology produces unreasonable results.⁵⁴³

248 Staff argues that the flow of BOG is not a cost causer and therefore irrelevant to the allocation of costs.⁵⁴⁴ It argues that if the Commission accepts Staff's allocation, it should also require PSE to rerun its Rule No. 6 calculation to determine whether Puget LNG must make a contribution in aid of construction.⁵⁴⁵ In response to PSE's opposition to rerunning a Rule No. 6 calculation. Staff points out that the four-mile pipeline has been only provisionally included in PSE's rate base.⁵⁴⁶ Staff argues that this is the first proceeding where the Commission is making a determinative decision about the incremental costs incurred to serve Puget LNG, and it will make that determination based on the allocation of the costs of the four-mile pipe.⁵⁴⁷

249 Staff rejects PSE's argument that Staff's recommendation that PSE refund the provisionally collected rates confuses revenue requirement amounts. Instead, Staff states its allocation of rate base determines how much of the \$3 million in revenue requirement related to the four-mile pipe should be collected from PSE sales customers versus Puget LNG.⁵⁴⁸ Staff claims that its allocation of rate base results in \$2 million of the \$3 million revenue requirement being assigned to Puget LNG. Additionally, Staff claims that since the four-mile pipeline rates are provisional, it stands that Puget LNG should provide PSE sales customers with a refund.⁵⁴⁹

250 In its Brief, Public Counsel maintains that the Commission should reject PSE's proposed allocation of costs related to the four-mile pipeline. Public Counsel asserts that the pipeline does not need to be expanded from 12 inches to 16 inches for the delivery of gas from the Tacoma LNG Facility to the distribution system.⁵⁵⁰ Public Counsel claims that PSE allocates all of the cost of expanding the 4-mile pipe to 16 inches from 12 inches to PSE ratepayers, but splits the cost of the 12 inch portion, allocating 55 percent to PSE ratepayers and 45 percent to Puget LNG rather than 10 percent to PSE ratepayers and 90

⁵⁴³ Staff's Post-Hearing Brief at 27 ¶¶ 67-68.

⁵⁴⁴ Staff's Post-Hearing Brief at 27 ¶ 69.

⁵⁴⁵ Staff's Post-Hearing Brief at 27 ¶ 70; Erdahl, Exh. BAE-1CT at 26:11-28:3.

⁵⁴⁶ Staff's Post-Hearing Brief at 28 ¶ 71.

⁵⁴⁷ Staff's Post-Hearing Brief at 28 ¶ 71.

⁵⁴⁸ Staff's Post-Hearing Brief at 28 ¶ 72.

⁵⁴⁹ Staff's Post-Hearing Brief at 28 ¶ 72: See also Staff's Response to Bench Request 6, filed November 27, 2023, and Corrected Response to Bench Request 6, filed December 4, 2023.

⁵⁵⁰ Public Counsel Post-Hearing Brief at 16, ¶ 35.

percent to Puget LNG per the Settlement approved by the Commission in Docket UG-151663, or by pipeline usage.⁵⁵¹

- 251 In response to PSE’s allocation proposal,⁵⁵² Public Counsel contends that, based on use, 74.4 percent should be allocated to Puget LNG, not 38.3 percent as PSE proposes.⁵⁵³ It contends that PSE’s proposed allocation is driven by its unsupported split of the 12-inch pipeline costs into two halves: costs for deliveries to the Tacoma LNG Facility and costs for deliveries from the Facility.⁵⁵⁴
- 252 Public Counsel claims that PSE introduced two new theories of its directional split for the allocation of the 12-inch component of the 4-mile pipe.⁵⁵⁵ According to Public Counsel, the first new theory is that, because of the use of the pipeline for BOG, ratepayers send gas from the system more often than just the need to peak shave. Public Counsel argues that BOG is produced by more than just the ratepayers’ portion of the gas,⁵⁵⁶ and Puget LNG’s liquefied gas also results in BOG.⁵⁵⁷ However, Public Counsel claims PSE does not compensate ratepayers for receiving and sending Puget LNG’s BOG to the distribution system nor account for this service provided by ratepayers in its allocation of pipeline costs.⁵⁵⁸
- 253 The second new theory, according to Public Counsel, involves PSE’s claim of “sole use of the pipeline during peak-shaving,” and that the Puget LNG scheduling flows are only stopped by ratepayers needs.⁵⁵⁹ Witness Earle asserts that this situation is not frequent and confined to only a few days every few winters.⁵⁶⁰ Public Counsel argues that PSE’s split of costs between incoming and outgoing flows should be rejected: It is unconnected

⁵⁵¹ Public Counsel Post-Hearing Brief at 16-17, ¶ 35; Earle, Exh. RLE-1CT at 28:14-29:4.

⁵⁵² Public Counsel Post-Hearing Brief at 17, ¶ 36; Earle, Exh. RLE-1CT at 28:11-12.

⁵⁵³ Public Counsel Post-Hearing Brief at 17, ¶ 36; Earle, Exh. RLE-1CT at 28:1–31:2.

⁵⁵⁴ Public Counsel Post-Hearing Brief at 17, ¶ 36.

⁵⁵⁵ Public Counsel Post-Hearing Brief at 17, ¶ 37.

⁵⁵⁶ Public Counsel Post-Hearing Brief at 17, ¶ 37; Rebuttal Testimony of William F. Donahue, Exh. WFD-5T at 2:3–21.

⁵⁵⁷ Public Counsel Post-Hearing Brief at 17, ¶ 37; Roberts, RJR-11T at 33:15–18.

⁵⁵⁸ Public Counsel Post-Hearing Brief at 17, ¶ 37; Donahue, Exh. WFD-7X (Puget Sound Energy’s Response to Public Counsel Data Request No. 51, subpart b).

⁵⁵⁹ Public Counsel Post-Hearing Brief at 18, ¶ 38 citing Donahue, Exh. WFD-7X (Puget Sound Energy’s Response to Public Counsel Data Request No. 51, subpart d).

⁵⁶⁰ Public Counsel Post-Hearing Brief at 18, ¶ 38; Earle, Exh. RLE-1CT at 8:1–2.

to both pipeline usage and the Settlement approved by the Commission in Docket UG-151663,⁵⁶¹ unfairly placing more costs than justified on ratepayers.⁵⁶²

- 254 In its Brief, the Tribe takes issue with the Company’s construction of the four-mile pipeline, arguing that PSE’s use of the Project to deliver gas to customers on days when adequate pipeline gas resources are available does not establish that the Facility’s capacity is used and useful as a peak shaving resource.⁵⁶³ The Tribe argues that PSE overstates and misrepresents the need for ratepayer use of the four-mile transmission pipeline in the context of non-peak shaving deliveries of BOG into its customer distribution system during times Tacoma LNG is not conducting liquefaction.⁵⁶⁴
- 255 The Tribe further asserts that PSE’s proposed allocation of pipeline costs is inappropriate because the public purpose of the Project is to provide a peak shaving resource. The delivery of BOG does not meet the definition of peak shaving. Further, the Tribe claims that outbound use of the pipeline is unnecessary for the disposal of BOG because that waste stream can be directed to the flare or reliquefied and returned to the storage tank. The Tribe asserts that PSE, instead of utilizing its existing investments to address the BOG, has manufactured a “use” for the BOG stream to justify its proposed allocation of an inappropriate share of pipeline costs to ratepayers.⁵⁶⁵
- 256 In its Reply Brief, PSE declares that it would directly assign to the Company the cost difference between a 12-inch pipeline and the 16-inch four-mile pipeline that was needed for PSE deliveries from the Tacoma LNG Facility to its distribution system.⁵⁶⁶ PSE argues that Public Counsel uses the wrong allocation percentages when arguing that the common costs could be allocated based on percentages approved in Docket UG-151663.⁵⁶⁷ PSE adds that the common cost allocation percentages approved in Docket UG-151663 are 57 percent to Puget LNG and 43 percent to PSE, not the 90/10 split suggested by Public Counsel.⁵⁶⁸

⁵⁶¹ Public Counsel Post-Hearing Brief at 18, ¶ 39.

⁵⁶² Public Counsel Post-Hearing Brief at 27 ¶ 62.

⁵⁶³ Puyallup Tribe’s Post-Hearing Brief at 16:17-19.

⁵⁶⁴ Puyallup Tribe’s Post-Hearing Brief at 17:3-5; See Exh. WFD-5T at 5:5-10 (referencing “PSE’s firm right to call on outbound capacity for peak-shaving or boil-off gas delivery to the outbound function.”).

⁵⁶⁵ Puyallup Tribe’s Post-Hearing Brief at 17:9-16.

⁵⁶⁶ PSE’s Reply Brief at 10 ¶ 26.

⁵⁶⁷ PSE’s Reply Brief at 11 ¶ 27.

⁵⁶⁸ PSE’s Reply Brief at 11 ¶ 27; Order 10 ¶¶ 61, 111; *see also* Roberts, Exh. RJR-1T at 16 Table 3.

- 257 In response to Staff’s proposal,⁵⁶⁹ PSE asserts that common costs can be directly assigned between regulated and non-regulated customers.⁵⁷⁰ PSE asserts this is because use of the bi-directional four-mile pipeline for deliveries to Tacoma LNG can be traced directly to PSE and Puget LNG, and its use for deliveries from Tacoma LNG can be traced directly to PSE.⁵⁷¹ With regard to Staff’s assertion that BOG is irrelevant,⁵⁷² PSE contends that BOG is not irrelevant to cost allocation nor was it offered as a substitute for peak shaving.⁵⁷³ PSE further contends that deliveries of BOG prove that the air permit restriction on use of the vaporizer to 240 hours per year does not limit PSE’s use of the four-mile pipeline to 10 days per year.⁵⁷⁴ Neither Staff nor Public Counsel use the direct assignment nor peak and average allocation methods, according to PSE. On the other hand, PSE states that Donahue’s Exh. WFD-6 shows that under a broad range of assumed annual operations, use of the peak and average methodology validates the results of PSE’s use of the Commission-preferred direct assignment methodology.⁵⁷⁵
- 258 PSE maintains, despite Public Counsel’s argument, that usage of BOG and PSE’s exclusive right to use the four-mile pipeline when it is needed for peak shaving are not new concepts. PSE points out that it included a BOG meter as part of the distribution facilities from the very beginning.⁵⁷⁶ PSE points to its response to Bench Request 002 as support for its claim that its exclusive right to inject gas into the PSE distribution system is inherent in PSE’s right to operate as a gas company in Washington and that exclusive right was explicitly included in the Gas Supply Service Agreement between PSE and Puget LNG and the Puget LNG Schedule 87T Transportation Service Agreement.⁵⁷⁷
- 259 In response to the Tribe’s claim that BOG is a waste stream,⁵⁷⁸ PSE asserts that BOG is natural gas in vapor form, not waste. It notes that when the liquefier is operating, BOG is

⁵⁷¹ PSE’s Reply Brief at 11 ¶ 28.

⁵⁷² PSE’s Reply Brief at 11 ¶ 28 citing Post-Hearing Brief of Commission Staff at ¶ 67 and ¶ 69, respectively.

⁵⁷³ PSE’s Reply Brief at 11 ¶ 28.

⁵⁷⁴ PSE’s Reply Brief at 11 ¶ 28.

⁵⁷⁵ PSE’s Reply Brief at 11 ¶ 28.

⁵⁷⁶ PSE’s Reply Brief at 11 ¶ 29; See Exh. WFD-3 (including costs of the BOG meter in distribution upgrades).

⁵⁷⁷ PSE’s Reply Brief at 11 ¶ 29; See Exh. WFD-3 (including costs of the BOG meter in distribution upgrades).

⁵⁷⁸ PSE’s Reply Brief at 11 ¶ 30; Tribe’s Post-Hearing Brief at 17:12-13.

directed into the liquefier, and if liquefaction is not occurring, PSE uses BOG to serve its gas customers, reducing its need to purchase gas that day.⁵⁷⁹

- 260 In its Reply Brief, Staff submits that basing its allocation on use of the pipeline to inject vaporized gas 10 days a year⁵⁸⁰ was entirely warranted as the 10-day limit is a legal requirement.⁵⁸¹ Staff goes on to add that the Commission should base any allocation on cost causation principles. Staff says that although PSE notes that it may use the pipeline on non-liquefaction days to transport BOG, PSE also admits that this use in no way drives PSE to incur costs at the facility.⁵⁸² Staff disputes PSE's argument that the plant at issue is not distribution pipe that is generally used, but is instead a peaking resource that is rarely called upon and heavily used when it is.⁵⁸³ Consequently, Staff declares that its load factor assumption is more than reasonable.⁵⁸⁴
- 261 With regards to the possible CIAC, Staff argues that if the Commission concludes that PSE is failing to charge in conformity with its tariff, it may find the practice of doing so unjust and fix the practices "thereafter to be observed and in force."⁵⁸⁵ Staff asserts that any charge made pursuant to that forward looking order would be a charge assessed in the first instance given that the Commission required provisional treatment for the four-mile pipeline. Staff recommends that the Commission order PSE to run the Rule No. 6 calculation and require a CIAC if warranted.⁵⁸⁶
- 262 Staff argues that the Commission should order a refund to those sales customers because they overpaid under the provisional rates in effect since PSE's last general rate case.⁵⁸⁷ Staff states that the proper allocation of the four-mile distribution pipeline shifts costs away from PSE's sales customers.⁵⁸⁸ Finally, Staff states that the total over collection should be netted against any CIAC from Puget LNG and the relevant amounts returned to sales customers.⁵⁸⁹

⁵⁷⁹ PSE's Reply Brief at 11 ¶ 30; See Roberts, Exh. RJR-11T at 33:15- 34:11.

⁵⁸⁰ Staff's Reply Brief at 8 ¶ 18; Erdahl, Exh. BAE-1CT at 24:7-25:18.

⁵⁸¹ Staff's Reply Brief at 8 ¶ 18; Erdahl, Exh. BAE-7.

⁵⁸² Staff's Reply Brief at 8 ¶ 18; Donahue, Exh. WFD-5T at 5:18-6:3.

⁵⁸³ Staff's Reply Brief at 8 ¶ 19.

⁵⁸⁴ Staff's Reply Brief at 8 ¶ 19.

⁵⁸⁵ Staff's Reply Brief at 8 ¶ 22; RCW 80.28.020.

⁵⁸⁶ Staff's Reply Brief at 8 ¶ 22.

⁵⁸⁷ Staff's Reply Brief at 8 ¶ 23; See generally Staff's Corrected Answer to Bench Request No. 6.

⁵⁸⁸ Staff's Reply Brief at 8 ¶ 23.

⁵⁸⁹ Staff's Reply Brief at 8 ¶ 23.

- 263 In its Reply Brief, Public Counsel maintains that the Commission should reject PSE's proposed allocation for the four-mile pipeline addition because PSE proposes to allocate 38.3 percent to Puget LNG rather than the 74.4 percent that evidence supports to be allocated to the unregulated operations, unfairly placing more costs than justified on ratepayers.⁵⁹⁰
- 264 The Tribe argues in its Reply Brief that any cost causation analysis regarding the pipeline must recognize that PSE's siting decision was made to benefit Puget LNG and that costs associated with the non-regulated portion of the Project should not be borne by ratepayers.⁵⁹¹
- 265 The Tribe adds that the Company's proposed methodology overstates ratepayer need for the pipeline. It contends that this justification for allocating pipeline costs to ratepayers fails to consider the fact that PSE incurred costs on two other features at the Tacoma LNG Facility that eliminate the ratepayer need for the outbound pipeline (except during periods of true peak shaving). The Tribe further contends that BOG can be fed back into the liquefaction train to be re-liquefied and returned to the storage tank, or it can be routed to the ground flare for destruction. The Tribe concludes that because two alternatives are available to address the BOG without calling on use of the outbound transmission line, PSE's decision to deliver the BOG to customers cannot be justification for the allocation of a large share of the pipeline costs to ratepayers.⁵⁹²
- 266 ***Commission Determination.*** In this case, we consider the proper allocation of costs for a relatively unique, bidirectional, four-mile pipeline that takes gas both to and from the Facility.
- 267 Upon review of the testimony and briefs in this matter, we find that Staff's approach best reflects the Commission's position in this matter. First, we note that the settlement the Commission approved in Docket UG-151663 identifying allocation of costs for the Facility did not address all of the allocation issues raised by this unique, bidirectional, pipeline, requiring the Parties and the Commission to evaluate proper allocation of costs by applying our traditional cost allocation processes and rules, in addition to the approved allocation of costs for the Facility. Second, as Staff correctly observes, WAC 480-85-060 sets forth the process for determining ratepayers' share of plant cost, in this instance the four-mile distribution pipeline. WAC 480-85-060 reads:

(1) A cost of service study filed with the commission must be calculated using an embedded cost method. [. . .]

⁵⁹⁰ Public Counsel's Reply Brief at 12 ¶ 29.

⁵⁹¹ Puyallup Tribe's Reply Brief at 17:21-18:1-2; See Exh. RXS-35T at 8:20-9:9.

⁵⁹² Puyallup Tribe's Reply Brief at 18:3-13.

(b) Natural gas studies shall use the FERC accounts outlined in Table 3 in subsection (3) of this section to functionalize the cost of service. Costs shall be directly functionalized where information is available. Functionalized costs will be classified and allocated by the methods outlined in Table 4 in subsection (3) of this section.⁵⁹³

268 In short, these are the functionalization, classification, and allocation methods for determining ratepayers' contribution to plant.⁵⁹⁴ This is consistent with past orders where the Commission explained: “[e]ach cost of service study has three steps: 1) Functionalization of plant and expenses between production, transmission, and distribution plant; 2) Classification among demand, energy, and customer categories; and 3) Allocation between classes.”⁵⁹⁵

269 With regard to the functionalization step of cost allocation, we agree with Staff that the pipeline meets the distribution requirement. This question was settled before the Commission in Final Order 24/10. In fact, it was PSE's witness that confirmed such was the case.⁵⁹⁶ Another PSE witness also agreed that the pipeline is for distribution.⁵⁹⁷

270 Concerning the next step, there is no dispute that the distribution pipeline falls under the demand classification. Perusal of our rules reveals that the definition of distribution mains includes the distribution being discussed in this proceeding.⁵⁹⁸

271 Next, we turn to the allocation method itself. In allocating the costs of the pipeline, Staff considered the following two factors: 1) the direct assignment of costs to one class of customers; and 2) the use of the Facility by PSE and Puget LNG.⁵⁹⁹ This approach and the result is consistent with the Commission's regulatory framework and past Commission precedent. We direct PSE to implement Staff's allocation methodology for the four-mile pipeline.

272 Applying the two-factor methodology, Staff recommended allocating 70.4 percent of the \$27.4 million in rate base related to the four-mile distribution pipeline to Puget LNG,

⁵⁹³ WAC 480-85-060 (1)(b) and Table 4.

⁵⁹⁴ WAC 480-85-060 (3) and Table 4.

⁵⁹⁵ *Wash. Utils. & Transp. Comm'n v. Puget Sound Power & Light Co.*, Cause No. U-85-53, 1986 Wash. UTC Lexis 37, 74 P.U.R.4th 536 (May 16, 1986).

⁵⁹⁶ See Docket 240066, Order 24/10 at 119 ¶ 407 (PSE's witnesses referring to the pipe as distribution pipe).

⁵⁹⁷ WFD-1T at 2:15-3:9.

⁵⁹⁸ WAC 480-85-060 Table 4; and E.g., Order 24/10 at 120 ¶ 410.

⁵⁹⁹ Staff's Post-Hearing Brief at 23 ¶ 58.

with the remaining 29.6 percent of the cost allocated to the relevant PSE customers. This results in allocating \$19.29 million to Puget LNG and \$8.11 million to PSE.⁶⁰⁰ We agree with Staff's recommended allocation and the resulting costs.

273 Additionally, Staff utilized the two-factor approach to determine the cost differential among the customer classes regarding 12-inch pipeline versus 16 inch pipeline. Specifically, Staff states that it first directly assigned the cost difference between 12-inch and 16-inch pipes to customers other than Puget LNG.⁶⁰¹ Staff reasons that Puget LNG does not use gas vaporized at the facility, and the need to deliver high volumes of vaporized gas required the use of a 16-inch pipe rather than a 12-inch one, which would have sufficed for Puget LNG's needs.⁶⁰² Staff's approach yielded the cost difference between a 12-inch and a 16-inch pipe of \$4.1 million, and it recommended allocating this amount directly to the non-Puget LNG customers.⁶⁰³ We also note that for this portion of the allocation, PSE and Public Counsel also used this methodology in their respective proposals.⁶⁰⁴ We agree and accept Staff's recommendation.

274 Next, Staff allocated shared costs based on usage. We note that Staff claims that the permit restrictions imposed by the PSCAA have a significant effect.⁶⁰⁵ As part of its analysis, Staff assumed that PSE would use the pipe to transport out from the facility the maximum amount allowed under the permit, 660,000 dekatherms per year.⁶⁰⁶ Then Staff added that amount to the total amount liquefied on non-vaporization days, or 7,597,000 dekatherms per year, resulting in a total flow of gas in and out of the facility of 8,257,000 dekatherms.⁶⁰⁷ The result was Staff allocating 92 percent of the cost of the 12-inch pipe to customers using the pipe to transport gas to the facility and 8 percent to the customers using the pipe to transport gas out of the facility.⁶⁰⁸ The Commission rejects PSE's proposed 50/50 cost allocation in this regard. After review of the evidence, we do not believe that the cost-savings from a bidirectional pipe, or PSE's exclusive right to use the pipeline during peak shaving events,⁶⁰⁹ justifies a 50/50 split of the majority of the total costs between PSE and Puget LNG. Staff's assumption that the pipeline is only available

⁶⁰⁰ Staff's Post-Hearing Brief at 23 ¶ 57.

⁶⁰¹ Staff's Post-Hearing Brief at 23 ¶ 59; Erdahl, Exh. BAE-1CT at 24:8-13.

⁶⁰² Staff's Post-Hearing Brief at 23-24 ¶ 59; Erdahl, Exh. BAE-1CT at 24:8-13.

⁶⁰³ Staff's Post-Hearing Brief at 24 ¶ 59; Erdahl, Exh. BAE-1CT at 24:8-10.

⁶⁰⁴ PSE Post-Hearing Brief at 22-23, ¶ 51; See Erdahl, Exh. BAE-1CT at 24:8-10; Exh. RLE-1T at 30:9-13.

⁶⁰⁵ Staff's Post-Hearing Brief at 24 ¶ 60; Erdahl, Exh. BAE-1CT at 23:9-18.

⁶⁰⁶ Staff's Post-Hearing Brief at 24 ¶ 60; Erdahl, Exh. BAE-1CT at 24:14-16.

⁶⁰⁷ Staff's Post-Hearing Brief at 24 ¶ 60; Erdahl, Exh. BAE-1CT at 24:17-21.

⁶⁰⁸ Staff's Post-Hearing Brief at 24 ¶ 60; Erdahl, Exh. BAE-1CT at 25:1-5.

⁶⁰⁹ Donahue, Exh. WFD-5T at 5:20-6:2.

to inject vaporized gas 10 days a year was entirely appropriate, because it reflects limitations imposed by the Facility's permit.

275 We have also considered the issue of PSE's delivery of BOG through the pipeline. But the evidence does not establish that BOG is delivered in significant amounts⁶¹⁰ or that PSE's choice to deliver BOG to regulated customers is an actual cost-causer.⁶¹¹ Therefore, we agree with Staff's recommended allocation.

276 Staff then applied its analysis to the costs of delivering gas *to* the Facility for regulated customers. Staff asserts that it applied the capital cost allocations that the Commission approved in Docket UG-151663, which represent the customers' usage of the liquefaction equipment.⁶¹² The resulting allocations provide for a 90/10 apportionment of costs between Puget LNG and PSE, respectively.⁶¹³ Staff accordingly allocated 90 percent of the inbound pipeline costs to Puget LNG and 10 percent to PSE,⁶¹⁴ resulting in a rate base allocation of \$19.29 million to Puget LNG and \$2.14 million to PSE.⁶¹⁵ We note as well that while arriving at different results, PSE, Public Counsel, and Staff all utilize this 90/10 established in Docket UG-151663.⁶¹⁶ We agree and affirm Staff's recommended allocation and resulting costs.

277 With regards to the use of the pipeline for delivering gas *from* the Facility to regulated customers, we agree with Staff's 8 percent allocation of the 12-inch line for this purpose, reflecting the portion of the year this function is available to core customers.⁶¹⁷ We further agree that Puget LNG does not use the pipeline specifically for delivering LNG from the Facility to its own customers. The resulting cost allocation for this particular

⁶¹⁰ See BE-1 (PSE Response to Bench Request 1) (indicating that BOG gas volumes delivered to the PSE distribution system vary between 0 and 1,597 Dth/day).

⁶¹¹ See Donahue, Exh. WFD-5T at 7:1-3 ("This volume is far less than the maximum peak-shaving volume, *so it is not a cost driver*, but it does identify boil-off gas volumes ignored by Staff witness Erdahl.") (emphasis added); BE-2 (PSE Response to Bench Request 2) at n.1 ("Puget LNG's share [of BOG] is recorded into an imbalance account, but, because PSE is the only party authorized to put gas in the pipeline for delivery from Tacoma LNG, Puget LNG's share of the BOG is used by PSE for its sales customers. And, because PLNG already bought and transported this gas, PSE credits this volume back in the imbalance account to PLNG.>").

⁶¹² Staff's Post-Hearing Brief at 24 ¶ 61; Erdahl, Exh. BAE-1CT at 25:6-12.

⁶¹³ Staff's Post-Hearing Brief at 24 ¶ 61; Erdahl, Exh. BAE-1CT at 25:9-12.

⁶¹⁴ Staff's Post-Hearing Brief at 24 ¶ 61; Erdahl, Exh. BAE-1CT at 25:9-12.

⁶¹⁵ Staff's Post-Hearing Brief at 24 ¶ 61; Erdahl, Exh. BAE-1CT at 25:9-12.

⁶¹⁶ Order 10 ¶¶ 61.

⁶¹⁷ Staff's Post-Hearing Brief at 24 ¶ 60; Erdahl, Exh. BAE-1CT at 25:1-5.

function attributable to PSE customers is \$1.86 million. Therefore, the \$1.86 million for those costs shall be allocated solely to PSE's natural gas sales customers.⁶¹⁸

278 Another issue of allocation concerned how much of the \$3 million in revenue requirement related to the pipeline should be paid for by PSE sales customers versus Puget LNG.⁶¹⁹ To that point, Staff recommended that PSE refund the provisionally collected rates, while PSE opposed the recommendation on the grounds that these rates would confuse the revenue requirement with rate base amounts. Staff claims that its allocation of rate base results in \$2 million of the \$3 million revenue requirement being assigned to Puget LNG. Additionally, Staff argues that since the pipeline rates are provisional, it stands that Puget LNG should provide PSE sales customers with a refund.⁶²⁰ Staff believes that the Commission should order a refund to those sales customers because they overpaid under the provisional rates in effect since PSE's last general rate case.⁶²¹

279 Finally, Staff argues that the total over collection should be netted against any CIAC from Puget LNG and the relevant amounts returned to sales customers.⁶²² In that regard, Staff recommends that PSE determine whether Puget LNG must make a CIAC.⁶²³ We agree with Staff's position on these issues. Because we have accepted Staff's methodology for allocating pipeline costs, we require PSE to re-run the Rule No. 6 calculation and determine any refund appropriate for PSE customers. In order to ascertain the appropriate amount to refund to customers for the overpayment under the provisional rates, we direct PSE to calculate its CIAC and then to determine the refund due. PSE shall issue the refund to customers for the overpayment after netting the refund against the CIAC. Additionally, we direct the Company to calculate the amount due for a refund without its CIAC. Lastly, we direct the Company to submit these calculations with its compliance filing, providing any necessary workpapers to Staff and the other parties of record.

F. Rate Spread and Rate Design

Direct Testimony

280 PSE proposes the creation of two new tariff schedules, Sch. 141LNG, which would recover the \$47.6 million revenue requirement for recovery of the regulated portion of

⁶¹⁸ Staff's Post-Hearing Brief at 25 ¶ 62; Donahue, Exh. WFD-5T at 5:20-6:2.

⁶¹⁹ Staff's Post-Hearing Brief at 28 ¶ 72.

⁶²⁰ Staff's Post-Hearing Brief at 28 ¶ 72; See also Staff's Response to Bench Request 6, filed November 27, 2023, and Corrected Response to Bench Request 6, filed December 4, 2023.

⁶²¹ Staff's Reply Brief at 8 ¶ 23; See generally Staff's Corrected Answer to Bench Request No. 6.

⁶²² Staff's Reply Brief at 8 ¶ 23.

⁶²³ Staff's Reply Brief at 7 ¶ 16; Erdahl, Exh. BAE-1CT at 27:16-19.

Tacoma LNG Facility,⁶²⁴ and Sch. 88T, which would recover Puget LNG’s share of costs for the four-mile distribution line.⁶²⁵

281 PSE proposes to allocate its additional annual revenue requirement of \$47.6 million between customer classes “using the average winter sales that exceed average summer sales allocator,”⁶²⁶ consistent with how other storage costs were allocated in its 2022 GRC. PSE’s proposed rate design is also based on its GRC rate design and is being applied to volumetric per-therm charges.⁶²⁷ Table 3 below shows PSE’s proposed rate spread:

Table 3: Schedule 141 LNG Rate Spread

Rate Class	Schedules	Allocator (From GRC)	Allocated Revenue Requirement
Residential	16, 23, 53	70.04 %	\$ 33,364,877
Commercial & Industrial	31	22.87 %	\$ 10,894,557
Large Volume	41	4.35 %	\$ 2,072,205
Interruptible	85	1.24 %	\$ 591,174
Limited Interruptible	86	0.54 %	\$ 254,857
Non-Exclusive Interruptible	87	0.96 %	\$ 458,267
Total		100 %	\$ 47,635,937

282 PSE’s filing also proposes a new tariff schedule, Schedule 88T, created specifically and solely for Puget LNG, to recover its portion of the four-mile 16-inch distribution line.⁶²⁸ Pursuant to Final Order 24/10, this \$27.4 million distribution line is being recovered on a provisional basis subject to a later review of the allocation of costs between core customers and Puget LNG and the method of recovery of these costs.⁶²⁹ The associated annual revenue requirement set in its GRC is \$2.99 million in 2023 and \$2.91 million in 2024.⁶³⁰ PSE proposes to assign 38.3 percent, or \$1.1 million of the associated revenue requirement to Sch. 88T, with an offsetting reduction to Sch. 141D.⁶³¹

⁶²⁴ Free, Exh. SEF-1T at 10:13-16.

⁶²⁵ Taylor, Exh. JDT-1T at 4:5-6.

⁶²⁶ Taylor, Exh. JDT-1T at 2:6-12.

⁶²⁷ *Id.* at 3:3-4.

⁶²⁸ Taylor, Exh. JDT-1T at 4:5-6.

⁶²⁹ Final Order 24/10 at ¶ 410. The Final Order quotes a \$30 million cost, while in this case the cost of this line is understood by the parties to be \$27.4 million.

⁶³⁰ Taylor, Exh. JDT-1T at 3:14-16.

⁶³¹ *Id.* at 4:5-16.

283 Until its next GRC is completed, PSE proposes that it recover the same level of revenue from Puget LNG through Sch. 88T as would have been recovered from Puget LNG as a Sch. 87T customer.⁶³² PSE witness Taylor claims that PSE would have recovered \$200,000 more from Puget LNG under its current Sch. 87T than it would through its proposed Sch. 88T. This difference, Taylor notes, is because the Sch. 88T revenue requirement is based specifically on recovering the allocated cost of the four-mile pipeline.⁶³³ Until its next GRC is completed, PSE proposes to recover this \$200,000 difference from its new Sch. 88T, while the \$1.1 million annual revenue associated with Puget LNG's portion of the pipeline would continue to be recovered through a new customer class (Sch. 88T) contained within Sch. 141D.⁶³⁴

284 Taylor also argues that due to increases in revenues associated with Puget LNG that were credited to all customers through Sch. 141N, and the associated decrease in base distribution rates, an adjustment is needed to Sch. 141N to achieve full revenue neutrality.⁶³⁵ PSE proposes to make this adjustment through the creation of a separate supplemental surcharge.⁶³⁶

285 The impact to the average residential customer using 64 therms per month, considering all of PSE's proposed changes to its rate schedules, is an increase of \$3.34 per month or 3.5 percent.⁶³⁷

Response Testimony

286 No party specifically disputes PSE's proposed rate spread and rate design methodology, although Staff witness Erdahl recommends changes to PSE's Sch. 88T and Sch. 141D based on the Commission's determination on the allocation of the four-mile distribution line and potential CIAC contribution from Puget LNG.⁶³⁸

287 ***Commission Determination.*** No party has disputed PSE's proposed rate spread or rate design. However, following the entry of this Order, and in accordance with paragraph 279 herein, PSE should run its calculations to determine whether a CIAC is required from Puget LNG and, more generally, the amount of refund required given our findings regarding the allocation of four-mile pipeline costs.⁶³⁹ The Company's compliance filing

⁶³² *Id* at 5:5-7.

⁶³³ *Id* at 5:9-13.

⁶³⁴ *See* Taylor, Exh. JDT-4 and JDT-5.

⁶³⁵ *Id* at 6:12-15.

⁶³⁶ *Id* at 6:20-7:2.

⁶³⁷ Taylor, Exh. JDT-7.

⁶³⁸ *See* Erdahl, Exh. BAE-1T at 27:16-28:3.

⁶³⁹ *See* Staff's Corrected Response to Bench Request No. 6 at Page 4, describing rate design treatment of the interclass refund and impacts to Sch. 141D, Sch. 141N, and Sch. 88T consistent with Staff's proposal.

must also reflect the various adjustments to Facility costs and other findings in this Order.

FINDINGS OF FACT

288 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefor, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

- 289 (1) The Commission is an agency of the State of Washington vested by statute with authority to regulate natural gas companies in Washington, including PSE.
- 290 (2) The Commission has jurisdiction over PSE and the subject matter of this proceeding.
- 291 (3) On May 25, 2023, PSE filed revisions to its currently effective natural gas tariff WN U-2, proposing Schedule 141LNG to allow PSE to recover the costs incurred in connection with the Tacoma LNG Facility.
- 292 (4) PSE continued to prudently evaluate the need for the Facility after September 22, 2016.
- 293 (5) The Notices of Violation (NOVs) issued by the PSCAA raise significant concerns regarding equity and environmental health impacts.
- 294 (6) The Facility was able to provide capacity to regulated customers as planned.
- 295 (7) The redesign of Facility preliquefaction equipment was not necessary for peak-shaving for regulated customers.
- 296 (8) PSE provided sufficient evidence to establish the reasonableness of its legal costs included in the Tacoma LNG Facility tracker.
- 297 (9) The four-mile pipeline is a gas distribution pipeline.
- 298 (10) The four-mile pipeline serves customer demand for purposes of classification.
- 299 (11) Except for minor amounts of boil off gas (BOG), the PSCAA-issued air permit limits PSE's ability to use the Facility for vaporization and peak-shaving to 10-days per year.

300 (12) BOG is not a significant cost-causer.

CONCLUSIONS OF LAW

301 Having discussed above all matters material to this decision, and having stated the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

- 302 (1) The Commission has jurisdiction over the subject matter of, and parties to, these proceedings.
- 303 (2) PSE is an electric company, a natural gas company, and a public service company subject to Commission jurisdiction.
- 304 (3) At any hearing involving a proposed change in a tariff schedule the effect of which would be to increase any rate, charge, rental, or toll theretofore charged, the burden of proof to show that such increase is just and reasonable will be upon the public service company. RCW 80.04.130(4). The Commission's determination of whether the Company has carried its burden is adjudged on the basis of the full evidentiary record.
- 305 (4) The Commission's prudence standard focuses on what the Company reasonably knew at the time it made its investment decision, and applies throughout the life of the investment.
- 306 (5) The Commission should not apply the expanded public interest standard in RCW 80.28.425(1) retrospectively.
- 307 (6) Prudence is concerned not only with the question of need but also the appropriateness of expenditures.
- 308 (7) The Commission should require PSE to file biannual reports describing any future NOV's from PSCAA, among other items.
- 309 (8) The Commission should not authorize recovery of the Company's deferred return on its investment in the Facility recorded between February 1, 2022, and January 11, 2023.
- 310 (9) RCW 80.28.280(1) does not require that the Commission grant a return on the Facility for the period prior to January 11, 2023.

- 311 (10) The Commission should not reduce the Company’s recovery for Facility costs on the basis that the Facility was not fully used and useful for customers.
- 312 (11) The Company should not recover costs for designing the Facility’s preliquefaction treatment equipment.
- 313 (12) PSE should recover its legal costs included in the Tacoma LNG Facility tracker.
- 314 (13) Staff’s proposed allocation methodology for pipeline costs is consistent with WAC 480-85-060 and Commission precedent.
- 315 (14) PSE should be required to recalculate whether a CIAC is required from Puget LNG.

ORDER

THE COMMISSION ORDERS:

- 316 (1) The Commission rejects the proposed tariff revisions Puget Sound Energy filed in these dockets on May 25, 2023.
- 317 (2) The Commission authorizes and requires Puget Sound Energy to make a compliance filing in this docket including all tariff sheets that are necessary and sufficient to effectuate the terms of this Final Order. The stated effective date included in the compliance filing tariff sheets must allow five business days after the date of filing for Commission Staff’s review.
- 318 (3) The Commission authorizes the Commission Secretary to accept by letter, with copies to all parties to this proceeding, a filing that complies with the requirements of this Final Order.
- 319 (4) The Commission retains jurisdiction over the subject matters and parties to this proceeding to effectuate the terms of this Order.

DATED at Lacey, Washington, and effective April 24, 2024.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

MILTON H. DOUMIT, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.