

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

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DOCKET NO. U-180680

TESTIMONY OF

ERIN HUTSON

LABORERS INTERNATIONAL UNION OF AMERICA

REVISED February 12, 2019

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Witness's Exhibit List

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

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

1 I. INTRODUCTION AND SUMMARY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 CONTRACTORS

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

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

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

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

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

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

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

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

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

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

13 **Q. Please continue.**

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

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

21 **A:** No. The only workforce-related settlement commitment made by the Joint
22 Applicants covers PSE’s direct employees, *i.e.*, workers who have direct collective
23 bargaining relationships with PSE. Commitment 28 pertains to honoring existing labor

1 contracts and commitment ~~340~~ pertains to maintaining staffing and presence. Multiparty
2 Settlement Agreement filed on January 15, App.A. Joint Application, App. A.

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

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

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

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

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

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

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

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

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

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

22

23

1 **Table 1.**

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

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

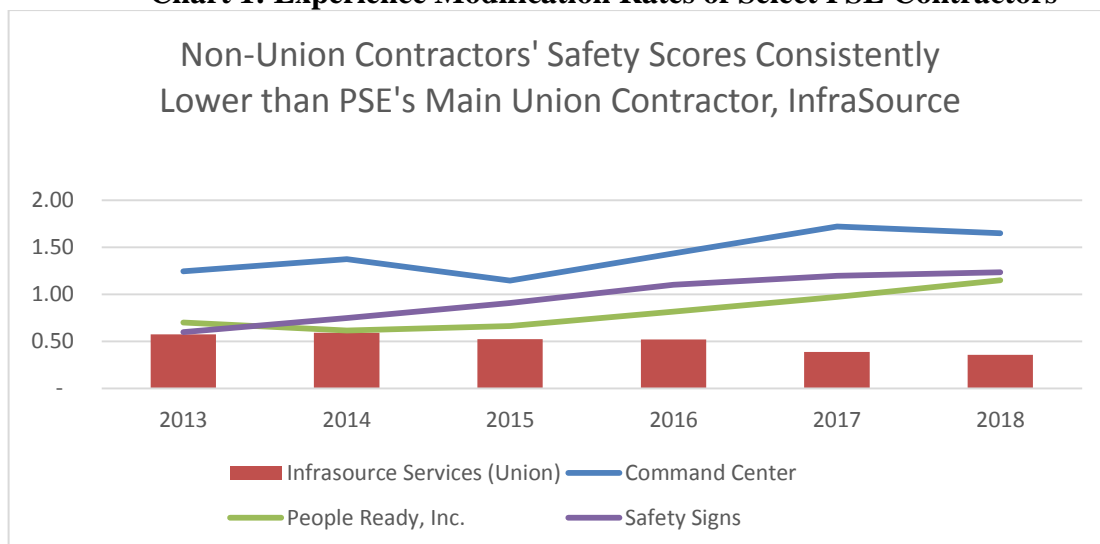
15 Flaggers working on the PSE system are responsible for taking actions aimed at
16 preventing such accidents. Before work on the PSE electric or gas system can commence,
17 flaggers first physically establish a work zone by placing cones and warning signs. They are
18 then responsible for protecting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

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

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

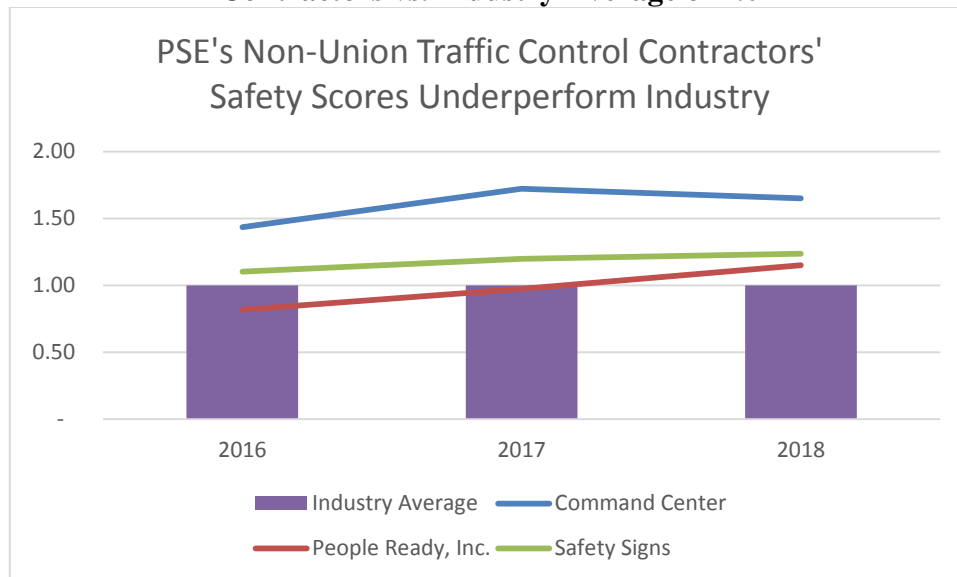
7 **A:** Yes. As a result of their ability to retain experienced workers, union signatory
 8 contractors tend to have better safety track records than non-union contractors. This
 9 statement is supported by Washington Labor and Industries statistics. The Washington
 10 Department of Labor & Industries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

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



17

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **A:** Yes.

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

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

14 **Q. Is WNIDCL covered by Joint Applicant’s current Commitment 28, “Puget**
15 **Holdings and PSE commit that PSE will honor its labor contracts”?**

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

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

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

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

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

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

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

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

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

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

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

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

14 **A:** Joint Applicants have emphasized that the proposed sale would result in a
15 continuation of its current standards (*see e.g.* commitment number 340, to maintain local
16 staffing and presence in the communities in which PSE operates at levels sufficient to
17 maintain the provision of safe and reliable service and cost-effective operations). But, as
18 described above, none of the proposed commitments apply to the contracted-out workforce.
19 Further, while PSE reports various service quality and reliability metrics, there are only
20 three explicit contractor-specific safety-related benchmarks. In addition, the contractor-
21 specific benchmarks only apply to PSE’s two primary service providers and relate
22 exclusively to response or service restoration times. Exh. EH-5 (PSE Service Quality and

1 Electric Service Reliability Report, Filed March 29, 2018). This demonstrates the
2 need for and importance of standards that fill the gap by ensuring safe and reliable
3 operations with respect to all contractors performing gas distribution work.

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

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

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

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

22 Currently, several PSE contractors (including InfraSource, Traffic Control Inc., and
23 AA Asphaltting) have access to the Northwest Laborers Employers Training Trust

1 (“NWLETT”) for apprenticeship and training courses such as OSHA 10, traffic control,
2 First Aid/CPR, rigging and signaling. But other PSE contractors rely upon in-house
3 training. In our experience, this unfortunately often involves cutting corners and pushing
4 workers out to job sites as fast as possible at the expense of adequate training.

5 The training problem is even worse when it comes to temp workers like those that
6 perform work on the PSE system from Command Center and Labor Ready, as there is often
7 a disconnect between who is responsible for training the temp workers – the temp agency or
8 the employer to whom the temp workers are sent. A ProPublica report on dangers facing
9 temp workers states that disputes over who is responsible for temp worker safety and
10 training are common. Exh. EH-18 (ProPublica, Temporary Work, Lasting Harm, December
11 18, 2013).

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

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

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

22 Apprenticeship utilization is also important because it helps to ensure that the next
23 generation of Laborers is in place and ready to work for contractors. Through WNIDCL’s

1 ongoing recruitment efforts, and involvement in training and supplying Laborer apprentices,
2 WNIDCL is helping to ensure that the next generation of natural gas construction Laborers
3 will be able to supply labor to work on the PSE system as needed.

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

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

22 As a ProPublica report on the unique dangers temporary workers face noted, "The
23 very nature of temp work increases the risk of injury. Temps are often working in a new

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

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

21 This disturbing trend of relying on temporary labor agency-supplied workers is
22 precisely what is currently playing out in PSE's contracting out of traffic control work, with
23 PSE contracting out directly to two temp agencies, and two other firms that rely upon temp

1 agencies. As noted earlier, each of the two temporary staffing agencies include in the EMF
2 risk class for traffic control on public utilities – People/Labor Ready and Command Center –
3 have significantly higher than industry average EMF ratings (and the reality is likely even
4 worse given the underreporting that is common amongst temp workers).

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

9 Litigation records and extensive OSHA violations highlight some of the risks
10 associated with temporary staffing agencies. For example, subsidiaries of TrueBlue, Inc.,
11 which include PSE sub-contractor People/Labor Ready, have amassed significant penalties
12 for unsafe working conditions. In total, TrueBlue subsidiaries have been cited with
13 approximately 30 OSHA violations and penalties totaling \$90,000 over the last five years.
14 Exh. EH-21 (OSHA Violations, Department of Labor). Since 2007, there have been 3
15 worker fatalities at TrueBlue subsidiaries, including a worker who died of heat stroke, and a
16 worker who was struck by a vehicle. In both of these cases, OSHA cited TrueBlue with
17 failure to protect workers from recognized hazards that were causing or likely to cause death
18 or serious physical harm to employees (OSHA inspection numbers 469439.015 and
19 1229944.015).

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

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

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

9 **Q: Have other utilities committed to utilizing union contractors in recognition**
10 **of the benefits you've described?**

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

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

20 **A:** Yes. Using a highly trained and skilled contractor workforce is the best way to
21 ensure that work performed on the PSE system will be done professionally, safely, on-time,
22 and on budget. As I've discussed, a skilled, well trained, safe workforce is able to operate
23 more safely and efficiently, and is able to be more productive. A recent study from February

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

20 **Q: How else do the proposed commitments you’ve described terms dealing with**
21 **contract labor benefit ratepayers?**

22 **A:** Another way in which this provision would benefit ratepayers is through
23 increased transparency with respect to PSE’s capital expenditures. PSE currently does not

1 document the comparative performance of contractors who have worked on PSE's
2 competitively-bid capital or maintenance projects. Exh. EH-6 (PSE response to WNIDCL
3 Data Request 015). It likewise does not track training spending by contractors, although
4 union signatory contractors InfraSource and Potelco each contribute certain identified
5 amounts for all employees, enabling the UTC and ratepayers to know the precise amount
6 contractors invest in training, and whether their profitability is based on skimping on
7 important training. This lack of tracking makes it difficult to determine whether ratepayers
8 are benefiting from good (or being hurt by poor) labor productivity rates and investments in
9 training.

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

11 **A.** Yes. Better transparency in the contracted workforce is an issue that other State
12 Commissions have looked at. For example, the New York State Public Service Commission
13 recently concluded a staffing audit of all regulated utilities. The Commission hired a
14 consultant that made recommendations to each utility and staffing audits specifically looked
15 at the role of the contracted workforce as part of overall staffing levels, and the ability to
16 evaluate unit cost comparisons for in-house employees versus contractors. Specifically, the
17 staffing audit found that although gas utilities were substantially increasing their reliance on
18 contractors, they were not paying sufficient attention to the challenge of expanding available
19 contractor resource pools. The audit recommended that gas utilities explore strategies to
20 increase their contractor resource pools beyond current levels to meet the significant
21 increase in work associated with accelerated pipe replacement programs. Exh. EH-24
22 (Operations Audit of Staffing Levels at the Major NY State Energy Utilities). The New
23 York Commission issued an order on December 14, 2017 that accepted the utilities'

1 implementation plans to make recommended changes. Exh. EH-25 (NY PSC Case No. 13-
2 01886 “In the Matter of Focused Operations Audit of the Internal Staffing Levels and the
3 Use of Contractors for Selected Core Utility Functions at Major New York Energy
4 Utilities.”).

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

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

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

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

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

2 **A: Yes.**