

**EXHIBIT NO. ___(JKR-1T)
DOCKETS UE-17___/UG-17___
2017 PSE GENERAL RATE CASE
WITNESS: JOHN K. RORK**

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

Docket UE-17___

Docket UG-17___

PREFILED DIRECT TESTIMONY (NONCONFIDENTIAL) OF

JOHN K. RORK

ON BEHALF OF PUGET SOUND ENERGY

JANUARY 13, 2017

PUGET SOUND ENERGY

**PREFILED DIRECT TESTIMONY (NONCONFIDENTIAL) OF
JOHN K. RORK**

CONTENTS

I. INTRODUCTION1

II. HISTORY OF ENVIRONMENTAL REMEDIATION.....2

III. RECOVERY OF INSURANCE PROCEEDS AND OTHER THIRD-
PARTY PAYMENTS6

IV. THE COSTS PSE INCURRED FOR ENVIRONMENTAL
REMEDICATION ARE REASONABLE AND THE RESULT OF
PRUDENT OPERATIONS11

V. CONCLUSION.....14

1 **PUGET SOUND ENERGY**

2 **PREFILED DIRECT TESTIMONY (NONCONFIDENTIAL) OF**
3 **JOHN K. RORK**

4 **I. INTRODUCTION**

5 **Q. Please state your name and business address.**

6 A. My name is John K. Rork, and my business address is 10885 N.E. Fourth Street,
7 Bellevue, Washington 98004. I am employed by Puget Sound Energy (“PSE”) as
8 Manager, Environmental Programs & Sciences Department.

9 **Q. Have you prepared an exhibit describing your education, relevant**
10 **employment experience, and other professional qualifications?**

11 A. Yes. It is the First Exhibit to my Prefiled Direct Testimony, Exhibit No. ___(JKR-2).

12 **Q. Please summarize the purpose of your testimony.**

13 A. The purpose of my testimony is to describe the environmental remediation program
14 undertaken by PSE as required by state and federal laws. First, I provide background
15 information regarding the environmental remediation program. Second, I demonstrate
16 that the costs PSE has deferred for environmental remediation are reasonable and the
17 result of prudent operations.

1 **II. HISTORY OF ENVIRONMENTAL REMEDIATION**

2 **Q. Please generally describe the sites for which PSE has deferred environmental**
3 **remediation costs.**

4 A. Prior to the availability of natural gas in the Pacific Northwest, PSE’s predecessor
5 company, Washington Natural Gas (“WNG”), and its predecessors, manufactured gas
6 using both coal and oil as the fuel to extract methane. This was a common practice in
7 the industry, and this process was used commercially at different sites in PSE’s
8 service territory until approximately 1956 when natural gas was commercially
9 available. During the course of the operation of these facilities, accidental leaks and
10 spills resulted in contamination to both soils and groundwater. Under existing state
11 and federal laws and regulations, PSE has been obligated to undertake appropriate
12 remedial measures at these sites.

13 While the manufactured gas plant sites represent the most significant cost exposure to
14 PSE for remediation responsibilities, there are also other sites associated with PSE’s
15 historical operations that require remediation including steam plants, wood treatment
16 sites, and sites with underground storage tanks.

17 **Q. How does PSE determine which sites require environmental remediation?**

18 A. The sites included in PSE’s environmental remediation program were either the
19 subject of claims against PSE or sites that PSE identified as necessitating a “release
20 report” under Washington’s Model Toxics Control Act (“MTCA”) to assess the
21 potential for contamination that might trigger remediation obligations.

1 **Q. Is the remediation conducted by PSE required by law?**

2 A. Yes. PSE's environmental remediation program is required by both federal and state
3 statutes. Although the vast majority of remediation obligations required of PSE
4 involve accidental leaks and spills arising from historic operations during an era of
5 much less stringent environmental obligations, PSE is responsible for any such
6 contamination. In accordance with law, PSE has worked to fulfill its legal
7 remediation obligations when contamination has been discovered or environmental
8 regulations require remediation in situations where remediation was not necessarily a
9 requirement in the past. The primary applicable federal statute is the Comprehensive
10 Environmental Response, Compensation and Liability Act ("CERCLA"). The
11 primary applicable state statute is MTCA.

12 **Q. Please generally describe the process PSE undertakes when it discovers a site**
13 **that may require environmental remediation.**

14 A. Upon the discovery of a potentially contaminated site (whether it is the subject of a
15 claim or one that is proactively identified by PSE), PSE's Environmental Services
16 Department coordinates an initial investigation of available information to assess
17 both the nature and extent of contamination, and the likelihood that it is linked to PSE
18 operations. Armed with this information, PSE can then make an informed decision
19 about its responsibility, if any, for the site. If the investigation reveals that the site is
20 not linked to PSE's operations, PSE will deny liability. If the site is linked to PSE's
21 operations, PSE will work directly with the claimant to reach settlement or with
22 relevant agency representatives to cost-effectively fulfill its legal obligations with
23 regard to the contamination. PSE also notifies third parties that may also have

1 culpability at the site, and any relevant insurance companies that provided historic
2 comprehensive general liability (“CGL”) insurance to PSE. The purpose of this
3 approach is to manage the remediation in a manner that complies with applicable
4 laws, ensures that other “potentially responsible parties” (“PRP”)¹ assume their legal
5 obligations, and allows PSE to pursue recovery of reasonable remediation costs
6 incurred from relevant third parties and applicable CGL policies.

7 **Q. Please provide examples of sites where the remediation process has occurred.**

8 A. The sites below demonstrate PSE’s remediation processes. These sites comprise a
9 significant portion of PSE’s past environmental remediation costs.

10 Thea Foss Waterway. The Thea Foss Waterway is part of the Commencement Bay
11 Superfund site, which is an EPA-regulated cleanup site. PSE was involved as a PRP
12 due to its past ownership of the 22nd and A Street manufactured gas plant. To address
13 the contamination, PSE engaged other Waterway PRPs in a multi-year process aimed
14 at fairly and equitably allocating liability for cleaning up the Waterway. The process
15 concluded in 2001, and in 2002, PSE began construction of a remedy. PSE, along
16 with other PRPs, completed remedial construction in February 2004 and continues to
17 perform long-term monitoring as required by EPA. On April 29, 2015, PSE signed a
18 National Resources Damages Assessment (“NRDA”) Settlement and Funding
19 agreement. Other than long-term monitoring, this settles PSE’s NRDA liability for
20 the Thea Foss Waterway. Following litigation, PSE also received proceeds from the

¹ For purposes of this testimony, PSE uses the defined term “potentially responsible party” to also include situations where PSE would be defined as a “potentially liable party.”

1 Washington Department of Transportation as a result of their contribution to the
2 contamination of the Thea Foss.

3 Tacoma Tar Pits. The Tacoma Historical Coal Gasification site was named to the
4 Federal Superfund list in 1980. PSE's predecessor, Washington Natural Gas, operated
5 a manufactured coal gasification plant on a portion of the site from the mid-1920s to
6 the late-1950s. Following closure of this plant, coal tar was discovered on the site.
7 Testing of soil and groundwater identified soil and groundwater contamination. PSE
8 worked closely with EPA and other PRPs to design a cost-effective remedy. The
9 initial remedy was successfully completed in 1994. In addition, to effectively protect
10 against migration of contaminated groundwater, a hydraulic containment system was
11 designed and began operating in March 2002. Site cleanup, operation of the
12 containment system, and monitoring remains ongoing.

13 Gas Works Park. Gas Works Park is the site of the former Lake Station Manufactured
14 Gas Plant, a tar refinery, and other industrial activities on the north shore of Lake
15 Union in Seattle, Washington. The gas plant was constructed by PSE's predecessor,
16 Seattle Lighting Company. The gas plant utilized coal gas, water gas, and oil gas
17 processes to supply gas to customers in the Seattle area. Studies of the land identified
18 soil and groundwater contamination. The WDOE named both PSE and the City of
19 Seattle as PRPs. In 1999, the City and PSE entered into a Consent Decree to conduct
20 remedial actions at the site. Costs associated with the remediation are shared between
21 PSE and the City. Investigation of the lake sediment adjacent to Gas Works Park
22 continues. This information will be used to remediate any additional contamination
23 identified associated with Gas Works Park.

1 Bellingham South State Street. In the late 1800s, PSE's predecessors owned and
2 operated a manufactured gas plant on Bellingham Bay. PSE sold the property to
3 Cascade Natural Gas which dismantled the manufactured gas plant and later sold the
4 property to the City of Bellingham, which developed the site as part of Boulevard
5 Park. PSE was notified by the City of Bellingham of potential liability for
6 contamination at the site. PSE entered into a cost-sharing agreement with the City of
7 Bellingham to complete a Remedial Investigation/Feasibility Study for the former
8 site under an Agreed Order with the City and WDOE. The Agreed Order was issued
9 on April 30, 2010 by WDOE. Remediation is ongoing.

10 Elliot Avenue (Bay Station). In the early 1900s, PSE's predecessors owned and
11 operated a manufactured gas plant in Seattle along the waterfront. In 2009, PSE was
12 contacted by the then property owners regarding contamination in the subsurface at
13 this location that appears to be associated with the former manufactured gas plant. A
14 preliminary site investigation was performed in August 2010 and results of soil
15 sampling confirmed the presence of soil contamination consistent with manufactured
16 gas plant releases. PSE is currently evaluating options to address the site.

17 **III. RECOVERY OF INSURANCE PROCEEDS AND OTHER**
18 **THIRD-PARTY PAYMENTS**

19 **Q. Please generally describe the steps PSE took to seek recovery of payments**
20 **from insurance policies and third parties.**

21 A. As environmental laws and regulations were implemented that resulted in
22 remediation obligations, PSE began an effort to both identify third parties that might

1 have remediation obligations at sites where PSE was implicated, and undertake an
2 investigation of PSE archives to identify historic insurance policies that would
3 provide an additional cost recovery opportunity. Both the relevant third parties and
4 the insurance companies were thereafter put on notice of their potential obligations to
5 reimburse PSE for costs incurred at the individual remediation sites. This began a
6 process that has continued for more than two decades. In some instances, third parties
7 and insurance carriers cooperated with PSE and their obligations were resolved
8 without litigation. In other situations, PSE pursued cost recovery actions for
9 environmental remediation costs against other responsible third parties and insurance
10 carriers through the courts.

11 **Q. What is the total amount of proceeds from third parties and insurance that**
12 **PSE has recovered for environmental remediation?**

13 A. As shown in Exhibit No. ___(JKR-3), as of September 2016, PSE has recovered
14 \$55,611,934 from third parties and insurance carriers. For the insurance policies
15 against which PSE has successfully pursued claims, many of the policy limits are
16 now either exhausted, the insurance company that wrote the policy has become
17 insolvent, or there has been a “policy buyback” as part of a settlement. For those
18 relevant policies that are still available for cost recovery claims, PSE continues to
19 pursue recovery of costs.

20 **Q. Please explain what is meant by a “policy buyback.”**

21 A. A policy “buyback” is an insurance term that involves an insurance company buying
22 its policy back from the insured party as a means of settling potential insurance

1 obligations. The common scenario involves an insurance company contesting its
2 liability under historic policies and, in an effort to avoid ongoing defense obligations
3 or the risk of litigation, it settles on a one-time basis for all known and future risks by
4 effectively purchasing its policy back from PSE. For PSE, this approach avoids the
5 potential for multiple lawsuits against a single insurance carrier, the prospect of the
6 insurance company becoming insolvent, or the exhaustion of the limits of the
7 insurance provided to PSE.

8 **Q. Have these insurance recoveries been netted against the costs PSE deferred**
9 **for environmental remediation as required by the Commission?**

10 A. Yes.

11 **Q. Does PSE expect to recover additional proceeds from its insurance policies**
12 **for environmental remediation?**

13 A. As stated above, PSE believes that there are still some insurance policies against
14 which claims can be made. However, the total number of policies against which
15 claims are still viable has been reduced significantly as a result of successful claims
16 and litigation brought by PSE to recover remediation costs incurred to date.
17 Additionally, for those insurance companies that are insolvent or bankrupt, PSE has
18 nevertheless submitted claims to recover at least a pro rata share of remediation costs
19 from resources managed by trustees to distribute. Periodically, PSE continues to
20 receive checks as a result of these claims, but these payments tend to be relatively
21 small and are distributed on a pro rata basis to a large number of claimants.

1 **Q. Does PSE aggregate its insurance recoveries?**

2 A. Partially. As PSE began its efforts to recover remediation costs from insurance
3 companies, there were in excess of 60 different insurance companies that provided
4 insurance to PSE covering individual or multiple sites that are now or were the
5 subject of remediation. In the course of resolving these claims, settlements commonly
6 fell into one of the following categories:

- 7 a) Site-specific settlements;
8 b) Settlements not apportioned to specific sites;
9 c) Cash settlement based on total value of claim by PSE (e.g.,
10 insolvent insurance carrier distribution).

11 For the settlements that were not site-specific, PSE has aggregated those dollars
12 into one fund. These non-site specific settlement dollars are effectively covering
13 known costs, unknown costs, and future known and unknown sites. While PSE
14 has apportioned some of this fund to individual sites, the majority of this fund is
15 not apportioned to individual sites, consistent with the broad scope of the
16 underlying insurance settlement.

17 For all site-specific recoveries, PSE has apportioned those dollars to the
18 corresponding remediation site.

19 **Q. Have these recoveries been netted against the costs PSE deferred for
20 environmental remediation as required by the Commission?**

21 A. Yes.

1 **Q. Does PSE expect to recover additional amounts from other third parties for**
2 **environmental remediation?**

3 A. While there are still some viable third-party claims that remain, PSE believes it has
4 substantially exhausted known third-party claims for remediation sites.

5 **Q. What does PSE do when environmental remediation costs exceed recoveries?**

6 A. Over the years that PSE has implemented its remediation plan, as described above,
7 PSE has simultaneously pursued third-party and insurance recoveries. Initially, the
8 early successes of these third-party and insurance recoveries put PSE in a position of
9 having greater cost recoveries than remediation expenditures. However, in
10 approximately 2011, the remediation costs incurred to date by PSE in the aggregate
11 exceeded third-party and insurance recoveries, reflecting the significant progress PSE
12 has made in its overall remediation work. As PSE continues its remediation efforts, as
13 explained above, the prospect of additional significant insurance recoveries is low
14 because policies are becoming exhausted and some of the insurance companies are
15 now insolvent. At the same time, work continues at the known remediation sites and
16 PSE incurs costs associated with this work. Additionally, PSE continues to face the
17 ongoing risk of potential future remediation sites.

1 **IV. THE COSTS PSE INCURRED FOR ENVIRONMENTAL**
2 **REMEDATION ARE REASONABLE AND THE RESULT OF**
3 **PRUDENT OPERATIONS**

4 **Q. What has the Commission required in terms of further review of these costs**
5 **prior to amortization and recovery in rates?**

6 A. In the final order from Docket UE-070724, the Commission ordered that a “prudency
7 review will be determined in the future once net costs are known and the project is
8 ready to be amortized.”²

9 **Q. Was PSE prudent in the manner in which it managed the sites that required**
10 **remediation?**

11 A. Yes. PSE performs all remediation activities in compliance with applicable federal
12 and state laws and regulations. As previously discussed, PSE thoroughly investigates
13 potential sites to determine if the environmental contamination is the result of PSE’s
14 operations, before undertaking remediation. PSE has utilized a strategy of assuming
15 appropriate responsibility at sites where PSE has concluded it meets the legal
16 definition of a PRP while also pursuing other PRPs. PSE works directly with the
17 applicable agency (usually WDOE) to keep them apprised of the remediation work,
18 solicit their counsel, and ultimately secure their concurrence, if appropriate, when the
19 remedial work is done. This ensures that PSE is performing only the remedial
20 activities required by the applicable agency. The net result is a remediation that
21 complies with applicable laws in a cost-effective fashion.

² *In re Puget Sound Energy, Inc.*, Docket No. UE-070724, Final Order 01 Granting Accounting Petition, ¶ 6(i) (Oct. 8, 2008).

1 In other situations, a state or federal agency takes the lead on the remediation work
2 and PSE assists the effort as a PRP. In this scenario, PSE is still able to provide its
3 expertise with the remediation, and work with the applicable agency to allow that
4 agency to manage the project in a way that is both cost-effective and compliant with
5 applicable laws.

6 Typically, the remediation process is complex and requires implementation over
7 many years. The nature of remediation work also often requires changes and
8 adaptation to issues that arise during the course of both investigating and performing
9 the remediation. However, PSE has provided ongoing quarterly reporting to the
10 WUTC to communicate both the progress of the remediation at individual sites and
11 the ongoing effort to estimate costs and perform the work cost-effectively.

12 **Q. Are the costs incurred for environmental remediation both fulfilling legal**
13 **requirements and reasonable?**

14 A. Yes. In compliance with the law and following the previously described methodology
15 for approaching remediation obligations, PSE has worked to fulfill its remediation
16 obligations cost-effectively. PSE has also pursued third-party and insurance
17 recoveries to further minimize the final cost of the remediations. Exhibit
18 No. ___(JKR-3) provides a summary, as of September 30, 2016, of the total costs
19 incurred at each remediation site together with the recoveries from third parties and
20 insurance carriers. The net result is that PSE manages remediation costs effectively
21 and minimizes costly state and federal agency enforcement actions and litigation,
22 which can include prevailing-party attorney fees.

1 **Q. Do customers benefit from the sites which have been or are currently being**
2 **remediated?**

3 A. Yes. The remediation obligations performed by PSE are mandated by state and/or
4 federal law. Failure to comply with applicable laws could result in significant
5 penalties to PSE. Thus, customers benefit from PSE's commitment to comply with
6 the applicable laws and PSE's endeavor to provide safe, dependable, and efficient
7 energy for its customers.

8 **Q. Does PSE have additional costs for environmental remediation that will be**
9 **deferred in the future?**

10 A. Yes. For the known sites listed in Exhibit No. ___(JKR-3), PSE will have continuing
11 remediation obligations at some sites, and ongoing monitoring obligations at other
12 sites. Under the applicable laws governing remediation, these obligations can
13 continue for substantial periods of time or even indefinitely. As such, PSE expects
14 that some level of continuing environmental remediation costs will continue for the
15 foreseeable future. However, for many of these sites, the most difficult and expensive
16 portion of the remediation work is now complete.

17 **Q. How is PSE proposing the future environmental remediation costs be**
18 **recovered in rates?**

19 A. Please refer to the Prefiled Direct Testimony of Susan E. Free for a summary of
20 PSE's rate recovery recommendation for environmental remediation costs.

V. CONCLUSION

1

2

Q. Does this conclude your testimony?

3

A. Yes, it does.