PUGET SOUND ENERGY

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Filed Via Web Portal

Ms. Amanda Maxwell
Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

Re: ***Washington Utilities and Transportation Commission v. Puget Sound Energy,*** **Dockets UE-190529, UG-190530 et al.**
In the Matter of the Petition of Puget Sound Energy for an Order Authorizing Accounting for Tracking Revenues Subject to PSE's Private Letter Ruling Requesting a Decision on the Proper Ratemaking Treatment of Protected Excess Deferred Income Taxes, **Dockets UE-200843 and UG-200844**
Puget Sound Energy's Reply to Notice of Opportunity to File Written Reply

Dear Ms. Maxwell,

Puget Sound Energy ("PSE") submits this reply pursuant to the Notice of Opportunity to File Written Reply ("Notice") issued by the Washington Utilities and Transportation Commission (the "Commission") on September 17, 2021. The Notice requests that PSE reply to non-company parties' responses addressing the Internal Revenue Service ("IRS") Private Letter Ruling 101961-21 ("PLR") and PSE's proposal to comply with the PLR.

PSE appreciates the Commission's expeditious resolution of this matter and thanks the Commission for the opportunities for comments. In this reply, PSE briefly addresses issues raised in the responses filed by Parties, noting that Commission Staff and Public Counsel do not take issue with PSE's methodology for implementing the PLR. PSE points to the text of the PLR to clarify misinterpretations and correct misstatements in some of the submitted comments. In light of the opportunities for comments and the direction provided to PSE by the IRS, PSE

requests that the Commission authorize the filing of tariffs set forth in PSE's response and reply consistent with the IRS's direction in the PLR

A. Summary of the Non-Company Parties' Responses

Commission Staff supports consolidating the GRC dockets with the accounting petition dockets and does not take issue with PSE's calculation methodology in the workpapers PSE provided. Commission Staff also believes that the "plus" portion of the electric and natural gas protected-plus balances is sufficiently small as to be immaterial in this context. Finally, Commission Staff believes that PSE's position with regard to immediate recovery of the cumulative deferral balance is consistent with the IRS's PLR, and Commission Staff is in favor of resolving the recovery of the cumulative deferral balance now rather than as part of PSE's next GRC. PSE and Commission Staff appear to be in agreement on the issues raised by the Commission and PSE provides no reply to Commission Staff's response.

Public Counsel does not take a position on PSE's calculation regarding the protected EDIT and does not have a separate calculation to provide for consideration. Public Counsel believes that reopening the 2019 general rate case dockets to revisit the Commission's order in light of the private letter ruling is appropriate and notes that waiting until PSE's next general rate case may be inconsistent with the PLR. With regard to the corrective actions set forth by the IRS in the PLR, Public Counsel recommends the Commission should evaluate whether additional or different action is required to address the EDIT issues, and further suggests that the Commission should take a comprehensive approach to determining what action to take. PSE will address these last two points in its reply.

The Alliance of Western Energy Consumers ("AWEC") recommends that a consistency adjustment be applied not just to protected-plus EDIT, but also to other aspects of revenue requirement and recommends removing all end of period ("EOP") and pro forma adjustments that the Commission authorized in its Final Orders. AWEC also claims there is a deferral of protected-plus EDIT for the period January 1, 2018 through February 28, 2019 that should be deferred until PSE's next general rate case. AWEC recommends that to the extent factual disputes arise from the comments, the Commission reopen the record to receive evidence. PSE will address AWEC's response in its reply.

No other party to the 2019 general rate case provided a substantive response.

B. The PLR Is Not Premised on a Strict Historical Test Year, as AWEC Claims, and There Is No Basis For Removal of EOP and Pro Forma Adjustments

As a preliminary matter, contrary to AWEC's assertion, the PLR is not premised on a strict historical test year. PSE provided to the IRS the Commission Final Orders as part of PSE's request for a PLR, which make clear that the Commission uses a modified historical test period.[1]

AWEC's proposal to provide a consistency adjustment to all aspects of the revenue requirement is not required by the PLR, and as discussed later, would violate the rule against retroactive ratemaking. The items AWEC claims are inconsistent do, in fact, conform to the normalization rules and do not represent normalization violations. Specifically, moving from AMA to EOP does not violate the normalization rules related to EDIT because it is adjusting plant that came into service after the passage of the TCJA, and because, as part of rate base, the EDIT is also adjusted to its end of period value as are the associated plant, depreciation and deferred taxes, consistent with the normalization rules. Similarly including pro forma adjustments in PSE's revenue requirement has no bearing on the normalization rules because the pro forma plant was put in service in 2019, after the passage of the TCJA in 2017. There is no EDIT associated with this plant as it was placed in service after the tax law change. That is why the IRS expressly states that the pro forma adjustments are not a topic of this PLR.[2] For these reasons, AWEC's recommendation in Tables 1-3 to remove all end of period and pro forma adjustments and achieve a "fully consistent cost of service calculation" is not appropriate or required by the PLR or the consistency rule.

Moreover, AWEC's reference to the PLR is taken out of context and misses the point. The PLR specifically points to the fact that the violations it finds within the final order do not relate to pro forma adjustments:

> Order then requires an adjustment to cost of service by removing the test year ARAM amortization of EDIT and substituting for that amount, as a reduction in cost of service, the estimated EDIT amortization for the year following the test year plus the next year which includes part of the rate year (in total, a 24-month period). No other similar adjustments are made for depreciation expense, income tax expense, ADIT (including EDIT) or rate base, which were, instead, based on the historical test period (again not including pro forma adjustments which are not a topic of this PLR).[3]

AWEC focuses on the last sentence of this paragraph without acknowledging the crux of the normalization issue: the Commission substituted the test year amount of ARAM amortization of

[1] "Modified historical test year" is referenced numerous times in Order 08, including the Commission statement in paragraph 78 that "we calculate PSE's revenue requirement based on a modified historical test year with limited pro forma adjustments that include pro forma capital additions through December 31, 2019, and we value rate base on an EOP basis."
[2] PLR at 5.
[3] PLR at 4-5.

EDIT with an estimate of the EDIT amortization for a 24-month future period, without similarly adjusting depreciation expense, income tax expense, ADIT (including EDIT) and rate base. The reference here is to the test year depreciation expense, income tax expense, ADIT (including EDIT) and rate base, not to the pro forma adjustments which were not a subject to the PLR for the reasons stated above.

In summary, there is no need to re-examine all aspects of revenue requirement approved in the Final Order as AWEC proposes. The IRS was aware of the hybrid test year including the use of pro forma adjustments outside the test year, but found these irrelevant to the normalization issues as there is no EDIT associated with this plant. The normalization violation arises from a failure to treat EDIT in the same manner as test year depreciation expense, tax expense, ADIT and rate base, whether the Commission uses a strict historical test year or a modified historical test year.

C. PSE Treated EDIT in the "Interim Period" Consistent with the PLR

AWEC is incorrect about the EDIT reversal from January 1, 2018 through February 28, 2019, which AWEC calls the interim period. There was no deferral recorded on PSE's books for EDIT reversals for this period,[4] which is consistent with the accounting required in the PLR. Contrary to AWEC's statement that "[t]hose amounts were clearly being deferred",[5] they were not. As the PLR makes clear, there can be no deferral of EDIT amortization unless there is a similar deferral of book depreciation, tax expense, rate base, and ADIT. The portion of the EDIT reversal recorded in the historical test year is to be used in setting base rates, as described in the PLR, and lowers rates for customers. PSE recorded the reversal of EDIT for 2018 to tax expense so that rate-setting for that time period would include the EDIT benefit. Customers have already received the benefit of the reversal of EDIT in 2018 through lower rates.

Contrary to AWEC's comment that "the ruling does not provide any guidance on how to handle the Interim Period protected-plus EDIT amortization ...",[6] the PLR could not be more clear. "The Normalization Rules ... do not permit Taxpayer to adjust its EDIT ARAM amortization based on the test year [which includes the Interim Period] to the EDIT ARAM based on one or more subsequent years without making similar adjustments to rate base, ADIT, book depreciation expense, and tax expense."[7] This means that protected-plus EDIT amortization recorded in the test year must be used when setting customers rates that are based on that test year.

Finally, the Commission should reject AWEC's conclusion that following the tax laws and the specific instruction set forth by the IRS in the PLR, as PSE is obligated to do, is contrary to the public interest. To *fail* to comply with the PLR and the tax laws would be contrary to the public interest and would expose PSE and its customers to the denial of accumulated deferred income taxes that provide a substantial offset to PSE's rate base. Moreover, AWEC's assumption that

[4] *See* Exh. MRM-1Tr 30:10-15.
[5] AWEC Response at 10.
[6] AWEC Response at 10.
[7] PLR at 10, Conclusion (1).

"other utilities were able to develop solutions with respect to interim period protected-plus EDIT amortization without violating the consistency requirements"[8] lacks any foundational support, particularly in light of the PLR issued by the IRS two months ago.

D. No Further Process Is Required for the Commission to Act

There is no further process needed for the Commission to issue an order authorizing the corrective actions proposed by PSE, consistent with the PLR. PSE has no objection to the filed responses being included in the evidentiary record as AWEC requests. PSE's reply should also be included, as should the PLR. The Commission may take official notice of the PLR, as AWEC proposes. Or, the Commission can include the PLR in the record based on its commitment to revisit its order with respect to EDIT, if PSE obtained a PLR from the IRS upholding PSE's interpretation of the normalization rules, which commitment was made as part of the stipulated dismissal.[9] Either way, there is no need for additional process. Parties have had an opportunity to review the PLR, which was filed with the Commission and served on parties August 24, and they have had an opportunity to respond to the PLR and PSE's proposal to comply with the PLR.

With respect to suggestions from Public Counsel and AWEC that the Commission should "take a comprehensive approach"[10] and more broadly open up the record to "evaluate Order 08 in a holistic manner when incorporating the PLR conclusions,"[11] such action would violate the rule against retroactive ratemaking. The accounting petition allows the tracked differences between the EDIT reversal ordered by the Commission and the EDIT reversal required by the PLR to be accounted for and recovered in rates. The Commission may not retroactively adjust other aspects of its Final Orders that were not addressed by the accounting petition, such as removing pro forma and EOP adjustments as AWEC proposes. Moreover, with respect to Public Counsel's suggestion that the Commission open up the record to consider different corrective actions than those set forth in the PLR, PSE cautions against moving forward with corrective actions that differ from those approved by the IRS in the PLR, as a failure to adequately correct the

[8] AWEC Response at 11.
[9] The language of the voluntary dismissal and stipulation that PSE, the Commission, AWEC and Public Counsel signed states that "if PSE obtains a Private Letter Ruling ("PLR") from the Internal Revenue Service that upholds PSE's interpretation of the Tax Cuts and Jobs Act of 2017 and the applicable normalization rules at issue in this proceeding, that the Commission will immediately open a proceeding and revisit what the Commission ordered with respect to the treatment of excess deferred income taxes in the Final Order and the order modifying the Final Order in that Docket." *PSE v. WUTC,* King Co. Superior Ct., Case No. 20-2-12279-3SEA, Order for Voluntary Dismissal; Stipulation.
[10] Public Counsel Response at 2.
[11] AWEC Response at 3.

inadvertent violations could result in the denial of accumulated deferred income taxes which provide a substantial offset to PSE's rate base and would harm customers.

In conclusion, PSE appreciates the opportunity to provide this reply and respectfully requests the Commission authorize the filing of tariffs set forth in PSE's response, consistent with the IRS's direction in the PLR.

Sincerely,

Jon A Piliaris
Director, Regulatory Affairs

cc: Service List