

**EXHIBIT NO. ___(EEE-3T)
DOCKETS UE-151871/UG-151872
PSE EQUIPMENT LEASING SERVICE
WITNESS: ERIC E. ENGLERT**

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

**Dockets UE-151871
UG-151872**

**PREFILED REBUTTAL TESTIMONY (NONCONFIDENTIAL) OF
ERIC E. ENGLERT
ON BEHALF OF PUGET SOUND ENERGY**

JULY 1, 2016

PUGET SOUND ENERGY
PREFILED REBUTTAL TESTIMONY (NONCONFIDENTIAL) OF
ERIC E. ENGLERT

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1 **PUGET SOUND ENERGY**

2 **PREFILED REBUTTAL TESTIMONY (NONCONFIDENTIAL) OF**
3 **ERIC E. ENGLERT**

4 **I. INTRODUCTION**

5 **Q. Are you the same Eric E. Englert who submitted prefiled direct testimony in**
6 **this proceeding on February 25, 2016, on behalf of Puget Sound Energy**
7 **(“PSE” or “the Company”)?**

8 A. Yes.

9 **Q. What is the purpose of your testimony?**

10 A. First, I respond to consumer protection concerns raised by Commission Staff and
11 Public Counsel, and I discuss the extensive protections for customers that PSE has
12 included in the leasing tariff schedules. Second, I address misapplication of
13 certain ratemaking principles by Commission Staff, including the known and
14 measurable standard that applies to pro forma adjustments in general rate cases.
15 Third, I clarify the Commission’s ruling in the *Cole* case, discussed in Mr.
16 Cebulko’s testimony, and I demonstrate that Staff is relying on the same failed
17 arguments regarding merchandising as it did in *Cole* nearly half-a century ago.
18 Fourth, I refute Commission Staff’s testimony regarding other end use services
19 offered by PSE. Fifth, I address parties’ inappropriate reliance on the Energy
20 Independence Act to oppose PSE’s lease service. Finally, I respond to issues
21 raised by parties regarding non-standard costs and discuss how these types of
22 costs are addressed in other tariffed services.

1 **II. THE TARIFF SCHEDULES CONTAIN EXTENSIVE**
2 **DESCRIPTIONS OF COMPANY AND CUSTOMER**
3 **OBLIGATIONS THUS PROTECTING BOTH THE**
4 **PARTICIPATING CUSTOMERS, THE COMPANY, AND THE**
5 **NON-PARTICIPATING CUSTOMERS**

6 **Q. Do you have any overall comments regarding the consumer protection**
7 **testimony by Commission Staff?**

8 A. Yes. I am surprised by the issues raised. As discussed in more detail later in my
9 testimony, many of the issues Commission Staff raises are already addressed in
10 the Commission rules. Where there are specific rules addressing topics such as
11 late fees, customer complaints, and third-party marketing, PSE did not separately
12 address these issues in its direct testimony, since it is PSE's practice to follow the
13 Commission rules.

14 Moreover, the leasing tariff schedules contain extensive descriptions of customer
15 protections. In the updated tariff filing in February, PSE updated its tariff
16 schedules to address several concerns expressed by parties. For example, PSE
17 clarified that its internal creditworthiness score will be used to qualify customers
18 for the lease service; clarified customer's responsibility for installation costs
19 related to non-standard conditions; provided more detail regarding maintenance
20 and repair responsibilities; revised default terms to include a 30-day notice before
21 PSE may terminate the lease, and made several other changes. The tariff
22 schedules contain over 19 pages of terms and conditions that describe the
23 obligations of the Company and the participating customer. This extensive text
24 for the expanded service comparatively is much more detailed than the existing

1 rental service tariff schedules, which devote less than one page to availability and
2 general rules and regulations, with no terms and conditions section.

3 **Q. How do you respond to Staff's statement that it is not clear if PSE will be**
4 **engaging with participating customers?**

5 A. Staff should not be confused. Lease Solutions is a service directly between PSE
6 and its participating customers. As described above, the interactions between
7 PSE and its leasing customers are detailed in the tariff schedule, with over 19
8 pages of terms and conditions, as well as an Equipment Lease Agreement
9 between the customer and Company.

10 **Q. Do you agree with Staff's concerns about PSE's use of service partners to**
11 **fulfill certain portions of the service to its customers?**

12 A. No. As Staff is aware, PSE routinely works with service providers in various
13 areas of its business, such as, but not limited to: construction services; vegetation
14 management services; outage restoration services; attachment services;
15 conservation program implementation services; and demand response services.
16 All of these service providers are not regulated by the Commission, yet PSE
17 remains responsible for the service providers' actions and for the customer-facing
18 transactions. The Commission has a process in place to handle any complaint
19 resulting from these processes — whether they are services provided directly by
20 PSE or provided by a service provider. Therefore, it will not be difficult for the

1 Commission’s Consumer Protection Staff to appropriately monitor PSE’s leasing
2 service and respond to consumer complaints, should they arise.

3 **Q. Staff hypothesizes that customers may view PSE’s leasing program as**
4 **“exploiting its knowledge of utility customers to extract profits for its**
5 **investors.” How do you respond to Staff’s testimony purportedly seeking to**
6 **“protect ratepayers from such exploitation”?**

7 A. I find this hypothetical baseless, and Staff’s language inappropriate. First, as
8 discussed in the testimony of Mr. McCulloch, customers contact PSE on a regular
9 basis inquiring about leasing water heaters and HVAC equipment. There is a
10 demand for this service that has been documented through surveys, through the
11 historical and continued interest in the legacy rental program, and through
12 continued customer inquiries. Every single day over 33,000 existing rental
13 customers make a decision to continue taking this service. PSE is not exploiting
14 customers by trying to be receptive to a need that customers have expressed.

15 Second, Staff seems to imply there is some improper motive if PSE — a privately
16 owned business — seeks to achieve profits for its investors. PSE must be
17 provided a fair opportunity to recover its costs and earn its Commission-approved
18 rate of return on capital investments. Staff’s reference to “extracting profits” and
19 “exploiting” customers is not only inflammatory but it overlooks the
20 Commission’s dual role of protecting consumers while providing regulated
21 companies a chance to earn a fair profit.

1 **Q. How do you respond to Commission Staff’s concern that PSE has made no**
2 **“commitment to avoid third-party marketers”?**

3 A. There are existing rules on how companies may notify and educate their
4 customers regarding Commission-approved tariffed services. Those rules are
5 contained in WAC 480-90-153 (natural gas service) and WAC 480-100-153
6 (electric service), and prohibit a utility from disclosing private consumer
7 information to a third party for marketing purposes unless the customer has
8 consented. PSE intends to abide by these, and all, existing applicable rules.

9 **Q. How do you respond to Staff’s statement that PSE’s ratepayers may be**
10 **exposed to “pressure sales” and “upselling”?**

11 A. Again, Staff engages in unsupported hypothetical allegations. As previously
12 stated, PSE intends to abide by the Commission rules and will not pressure
13 customers to lease equipment they do not want or they determine that they cannot
14 afford. PSE will present the options contained in Lease Solutions and will
15 educate customers on the benefits of each lease option. Additionally, when
16 responding to customer queries regarding equipment offered as part of Lease
17 Solutions, PSE will provide information relating to alternatives to leasing.
18 Moreover, the view that PSE would “upsell” is baseless and incorrect because
19 PSE will only be able to provide service for product-types that are contained in
20 the Commission-approved tariff schedules at the prices that have been approved
21 by the Commission.

1 **Q. How do you respond to Staff’s assertions that there are no “plans” in place to**
2 **handle customer complaints?**

3 A. PSE did not file extensive testimony addressing how customer disputes would be
4 handled because there are existing rules that address the customer complaint
5 process. The same process that the Commission has in place for handling
6 customer complaints for the existing services would apply to Lease Solutions.
7 WAC 480-90-173 and WAC 480-100-173 require companies to investigate
8 complaints and address customer disputes in a timely manner. The Company is
9 not shifting a new responsibility to the Commission’s consumer protection
10 division. The consumer protection division is already handling complaints from
11 utility customers, when they arise.

12 **Q. Are there really ten different cost components listed in PSE’s tariff**
13 **schedules?**

14 A. Absolutely not. The current tariff schedules on file with the Commission contain
15 only one price for each type of service. Mr. Roberts may be confused by the
16 initially filed Attachment B, which was removed with the substitute filing on
17 February 17, 2016.¹

¹ The advice/cover letter clearly indicated: “... now that PSE has added the monthly rates to the tariff schedules, the attachment and the references to it are no longer needed – they were only needed due to the “2-Phase” structure of PSE’s original filing”

1 **Q. Please address the concerns raised by Staff witness Roberts regarding how**
2 **late fees are assessed on current customers bills.**

3 A. As noted in the tariff schedules, the late fees would be applied consistent with
4 existing tariff terms. On Sheet no. 75-G, the tariff schedule states: “If the
5 monthly lease payment is not received when due, PSE reserves the right to assess
6 the Customer a late fee as approved by the WUTC.” The currently Commission-
7 approved Late Payment Fee is contained in Schedule 80 of PSE’s Electric Tariff,
8 on Sheet No. 80-Z.1, it states:

9 LATE PAYMENT FEE: A late payment fee of 1% per month will
10 be assessed on all balances which remain unpaid more than 10
11 business days after the statement due date and will be added to the
12 Customer’s billing statement at the next subsequent billing date,
13 provided that a late payment fee will not be assessed sooner than
14 30 calendar days after the bill mailing date.

15 **Q. Do the current Commission rules provide adequate guidance about how to**
16 **address delinquent or partial payments?**

17 A. Yes. Although Mr. Roberts has attempted to create another issue to which he sees
18 no solution, the Commission actually has several existing rules that provide
19 guidance on how to address this hypothetical situation.

20 First, absent an agreed upon payment arrangement or an ongoing dispute
21 regarding a particular charge, the commission’s existing rules allow the utility to
22 disconnect service, after appropriate notice, when accounts are not paid in full.²

23 Although Mr. Roberts states the commission rules do not address partial

² See WAC 480-90-128(3) and WAC 480-100-128(3).

1 payments, in fact they do—customer’s bills must be paid in full absent a payment
2 arrangement or in the event they are disputing a particular charge. These rules
3 currently apply to the existing rental program, and they would apply to Lease
4 Solutions.

5 Second, if the partial payment is the result of the customer disputing a particular
6 charge, the customer is protected from disconnection. Specifically, WAC 480-90-
7 128(9) and WAC 480-100-128(9) state, “Service may not be disconnected while
8 the customer is pursuing any remedy or appeal provided by these [disconnection]
9 rules or while engaged in discussion with the utility’s representatives or with the
10 commission. Any amounts not in dispute must be paid when due”.

11 Therefore, it is fair to assume that if customers have a dispute with respect to an
12 amount owed, or if they need to make payment arrangements, they would contact
13 the Company to do so, and the issue of a partial payment resulting in
14 disconnection of service would be moot.

15 Finally, PSE’s proposed Schedule 75 provides flexibility and provides other
16 alternative options to disconnection when the customer is delinquent. As noted in
17 PSE Response to WUTC Staff Data Request No. 070, PSE has indicated that it is
18 amenable to a separate dunning process for equipment leasing services in a
19 manner consistent with the Commission rules. Even though there is no actual
20 problem here, PSE has offered additional “solutions.”

1 **Q. Is the tariff schedule language regarding Default and Remedies on Sheet 75-**
2 **T consistent with Commission rules?**

3 A. Yes. The current language in the tariff schedules meets the requirements of both
4 WAC 480-90-178(2) and WAC 480-100-178(2). Under those rules, a customer
5 payment is due fifteen days after mailing if the mailing comes from Washington,
6 Oregon, or Idaho, or eighteen days if the mailing comes from another state. On
7 Sheet 75-T, PSE is providing customers *thirty* days to pay. Thus, Lease Solutions
8 provides even *more* days for payment rather than the fewer number of days that
9 Mr. Roberts seems to be (incorrectly) implying.

10 **Q. How do you respond to Ms. Kimball's Consumer Protection concerns³?**

11 A. I have several responses to Ms. Kimball's concerns. First, as PSE has stated
12 repeatedly, participating customers will be fully informed of the terms of the lease
13 agreement. Ms. Kimball's suggestion that PSE has not explained what
14 disclosures it intends to provide customers is simply incorrect. Several of Ms.
15 Kimball's issues were addressed in the PSE Response to Public Counsel Data
16 Request No. 20 and PSE Response to WUTC Staff Data Request No. 21. Second,
17 as PSE has always done, when customers contact PSE with energy questions, PSE
18 will seek to assist the customer in finding an energy solution that best meets their
19 needs. Finally, PSE will comply with the laws and regulations that apply to it.
20 Ms. Kimball's reference to various state and federal laws (or proposed laws that

³ Kimball, Exh. No. ____ (MKK-1HCT) 38:15-39:1-7.

1 were not approved by the legislature) that she admits do not govern PSE are not
2 appropriate metrics to evaluate Schedule 75.

3 **III. THE KNOWN AND MEASURABLE PRO FORMA**
4 **ADJUSTMENT AND OTHER RATEMAKING PRINCIPLES**

5 **Q. How do you respond to Ms. O’Connell’s testimony regarding the definition**
6 **of known and measurable?⁴**

7 A. Ms. O’Connell broadly misapplies the known and measurable standard. This
8 standard is set forth in the Commission rules governing general rate cases; it is the
9 standard to be applied to a specific type of accounting adjustment in a general rate
10 case, specifically, it applies to pro forma adjustments to a historical test year in a
11 general rate case and requires the pro forma adjustments to be known and
12 measurable.⁵ Thus, the Commission’s order in PSE’s 2009 general rate case,
13 cited by Ms. O’Connell, which discusses pro forma adjustments in rate cases,
14 must be read in that context.

15 In contrast, the case currently before the Commission is not a general rate case,
16 nor is there a historical test year nor pro forma adjustments to the test year. Such
17 a standard is not possible, nor reasonable, for a new tariff schedule offering, such
18 as the current case, where there are no historical costs for the new service.

⁴ O’Connell, Exh. No. ___(ECO-1THC) 15:17-29.

⁵ WAC 480-07-510(3)(e)(iii) states that “Pro forma adjustments” give effect for the test period to all known and measurable changes that are not offset by other factors.

1 **Q. Are you aware of other situations where the Commission has recognized that**
2 **new services and offerings will not be fully known and measurable when they**
3 **are first offered?**

4 A. Yes. One such example can be found in the 1992 WNG case cited in Commission
5 Staff's testimony. In that case, the Commission accepted WNG's proposal to
6 replace all natural gas water heaters with a 0.6 heat factor or better, and in doing
7 so, directed the company "to file a revised tariff which contained a cost-
8 recovering rate for the new efficient water heaters it proposes to lease."⁶
9 Therefore, in that case, at the Commission's direction, the Company was filing a
10 tariff schedule with a "cost-recovering rate" before it actually rented those water
11 heaters, similar to what the Company has proposed in this case.

12 **Q. Are you aware of current Commission-approved rates that utilize estimated**
13 **costs?**

14 A. Yes. A cursory review of both the electric and natural gas tariff books reveal
15 some examples. For natural gas services, one such example can be found in
16 Schedule 54 – Optional Gas Compression Services, wherein the charge will be
17 based upon the consideration of the estimated annual CNG Service volume and
18 the estimated Company costs and expenses of the CNG Service for the Customer.
19 See Exhibit No. ___(EEE-7) . For electric services, one such example can be
20 found in Schedule 51 – LED Lighting Service Company Owned, wherein the sum

⁶ *WUTC v. WNG*, Docket UG-920840, Fourth Supp. Order at 17 (June 15, 1993).

1 of Lamp and Facility charges are composed of an Estimated Installed Cost and an
2 Estimated System Cost. The Facilities Charge reflects the cost of future
3 replacement and O&M costs based on industry projections. Therefore using
4 estimated costs and costs of future replacements and O&M costs based on
5 projections for the Equipment Leasing Services is an established practice, and a
6 practical policy, that is already approved by this Commission and currently
7 contained in the tariff books and tariff schedules of Puget Sound Energy.

8 **Q. Has the Company put forth any additional proposal to provide additional**
9 **comfort to the Commission and parties that the leased rates are reasonable**
10 **and appropriate?**

11 A. Yes. As discussed in Mr. McCulloch's testimony, when the equipment leasing
12 service tariff schedules are approved, the Company will execute contracts with its
13 service providers and is willing to file a compliance filing to update the proposed
14 rates based upon the contracted prices. In fact, this was exactly the reason PSE
15 initially proposed a two-step process to the equipment leasing service when it first
16 filed its leasing tariffs.

17 **Q. Ms. O'Connell devotes more than five pages of her testimony addressing**
18 **electric equipment and its relationship to rate base and ratemaking. Do you**
19 **agree with her analysis and conclusions?**

20 A. No. One of the key premises on which Ms. O'Connell relies is that the equipment
21 PSE seeks to lease — water heaters and HVAC equipment — are on the customer's

1 side of the meter and thus they cannot be “rate based” or considered as “electric
2 plant” or “natural gas plant.” As explored more fully below, this ignores the past
3 half-century of Commission practice as well as Washington State Supreme Court
4 precedent,⁷ the language of Washington statutes,⁸ and PSE’s current Commission-
5 approved tariff, all of which recognize the opportunity for equipment, behind the
6 meter, to be included in rate base and plant in service. PSE has offered water
7 heaters as part of a rental program since the 1960s and these water heaters were,
8 and still are, classified as rate base and plant in service. Ms. O’Connell has
9 chosen to overlook the undisputed fact that the Commission already has
10 determined that company-owned assets that are included in rate base, can be on
11 the “customer side” of the meter.

12 **Q. Are you aware of any other equipment, other than the currently rented**
13 **water heaters, that is located behind the meter and treated as electric plant**
14 **and included in rate base?**

15 A. Yes. Electric vehicle supply equipment is located on the customer side of the
16 meter and can be included as electric plant in service and included in rate base. In
17 fact, in RCW 80.28.360(2), the Legislature has allowed for an incentive rate of

⁷ *Cole v. Wash. Utilities & Transp. Commission*, 79 Wn.2d 302, 485 P.2d 71 (1971) (en banc).

⁸ For example, RCW 80.04.010(11) broadly includes as electric plant all real estate, fixtures and personal property “operated, owned, used or to be used for or in connection with . . . furnishing of electricity for light, heat, or power for hire.”

1 return for this equipment to encourage regulated electric companies to make
2 capital investments in company-owned equipment behind a customer's meter.

3 **IV. LESSONS LEARNED FROM *COLE***

4 **A. Lease Solutions Is Not Merchandising**

5 **Q. How do you respond to Mr. Cebulko's characterization of the circumstances**
6 **surrounding the inception of the Washington Natural Gas ("WNG") leasing**
7 **program in 1961?"**

8 A. Mr. Cebulko has only shared part of the story. In the late 1950s, WNG
9 experienced a decline in business because the cost of natural gas was not
10 competitive compared to other fuels and it had many gas distribution lines that
11 were going unused. The strain on the company was such that it did not have
12 sufficient resources to strengthen and expand the company. In 1961, WNG began
13 renting gas conversion burners to homeowners so customers could convert their
14 oil furnaces to gas use without having to purchase the equipment outright as many
15 customers could not afford the upfront equipment costs.¹⁰ To further encourage
16 switching, the equipment was also offered to customers below cost. Because of

⁹ Cebulko, Exh. No. ___(BTC-1THC) 10-18.

¹⁰ *Cole v. Wash. Utilities & Transp. Commission*, 79 Wn.2d 302, 304, 485 P.2d 71 (1971) (en banc).

1 the success of the program, in 1964, WNG also began offering gas circulating
2 heaters, furnaces, and water heaters.¹¹

3 **Q. What was the specific purpose of the program?**

4 A. As explained by the Commission, “the purpose [was] to build load and gain gas
5 customers and to give prospective gas customers who could not afford to purchase
6 the necessary equipment the opportunity to have gas service within their means
7 without the necessity of purchasing the appliances.”¹²

8 **Q. What exactly was WNG offering customers?**

9 A. WNG was offering customers the option to rent gas conversion burners, gas
10 circulating heaters, furnaces, and water heaters. Like PSE’s current proposal, the
11 equipment lease included any “normal” installation costs; maintenance and repair
12 service; and replacement if the equipment failed. The cost was simply added to
13 the customer’s bill. A “normal” installation was akin to a “standard” installation
14 as currently proposed by PSE and did not include “any changes, modifications or
15 upgrading of the distribution system.” The customer was responsible for any
16 “excess cost.”¹³

17 **Q. How did the litigation begin?**

¹¹ *Id.*

¹² *Cole v. Wash. Natural Gas Co.*, No. U-9621, at 17 (1968) (“Commission Proposed Order”).

¹³ Exhibit No. ___(EEE-4) (*Cole v. Wash. Natural Gas Co.*, No. U-9621 (1968) (Opening Brief of W.W. Cole, et al, Plaintiffs, In Support of Plaintiffs’ Position Herein, Exhibits).

1 A. In early 1962, the Oil Heat Institute and the Association of Gas Utilities petitioned
2 the Commission challenging WNG’s gas conversion rental program. By letter
3 dated April 10, 1962, the Commission informed the associations that “Gas
4 conversion rental charges appear to be subject to Commission jurisdiction and all
5 utilities will be so advised and where delinquent requested to file necessary
6 tariffs.”¹⁴ Undeterred, in 1965, several customers and the Oil Heat Institute filed
7 a complaint before the Commission challenging the program.

8 **Q. What was Staff’s reaction to WNG’s proposal?**

9 A. Staff strenuously opposed WNG’s proposal. Staff argued that that equipment
10 leases were “non-jurisdictional” because they constituted merchandising under
11 RCW 80.04.270. Staff asked that the Commission disallow the program and
12 “find leasing to be a non-utility function subject to the law of the marketplace
13 rather than regulatory jurisdiction.”¹⁵ Staff argued that WNG’s lease program
14 was the functional equivalent of a sale and that under RCW 80.04.270, leases
15 should be treated as sales.¹⁶

16 **Q. How did the Commission react to Staff’s argument that the rental program**
17 **was merchandising?**

¹⁴ Exhibit No. ___(EEE-5) (Letter from Jack Taylor, Commission Secretary, to Karr, Tuttle, Campbell, Koch and Granberg (Apr. 10, 1962).

¹⁵ Exhibit No. ___(EEE-6) (*Cole v. Wash. Natural Gas Co.*, No. U-9621, at 21 (1968) (Commission Staff Brief)).

¹⁶ *Id.* at 3-4.

1 A. The Commission rejected it. In the Commission’s Proposed Order cited by Mr.
2 Cebulko, after reviewing RCW 80.04.270, the Commission confirmed that
3 WNG’s rental program was within the Commission’s jurisdiction because it was
4 not a sale.¹⁷ In reaching this decision, the Commission also reviewed RCW
5 80.04.130 and 80.04.150 which, according to the Commission, “empower the
6 Commission to determine the reasonableness and justness of any rate schedule,”
7 including expressly “rentals.”¹⁸

8 **Q. Have Staff and others also argued that Lease Solutions should be prohibited**
9 **by RCW 80.04.270?**

10 A. Yes. In fact, Staff’s arguments in this case are remarkably similar to its
11 arguments in *Cole*. Like Staff in *Cole*, Ms. O’Connell goes to great lengths to
12 argue that Lease Solutions should be construed as a sale because she believes that
13 Lease Solutions “has the economic effect of a sale.”¹⁹ Her argument, however,
14 suffers from the same flaw as Staff’s argument did in *Cole* expressly rejected by
15 the Commission: Like the WNG rental program in *Cole*, under Lease Solutions
16 when the lease term ends, the property reverts back to PSE, the lessor. This,
17 according to the Commission, constitutes a lease, not a sale. As explained by the
18 Commission in *Cole* regarding RCW 80.04.270:

¹⁷ *Cole*, Commission Proposed Order at 14.

¹⁸ *Id.* at 15 (emphasis in original).

¹⁹ O’Connell, Exh. No. ___(ECO-1THC) at 11.

1 “[RCW 80.02.270] relates to only a ‘sale.’ Staff counsel argues
2 that it should be so interpreted to include the leasing programs of
3 the defendant. We have examined the arguments made by staff
4 counsel in support of his contentions and entirely disagree with his
5 theories. The distinction between a ‘sale’ and a ‘lease’ is so well
6 known as not to require discussion. . . . By definition and by
7 differing legal effects, a sale and a lease are not the same thing.”²⁰

8 “A rental or lease or a gas appliance is not a ‘sale.’ The statute is
9 not intended to apply to a ‘rental’ or a ‘lease’ of appliances or
10 equipment, and it does not.”²¹

11 Like *Cole*, as much as Staff wants leasing to amount to the functional equivalent
12 of a sale, it is not a sale because it is missing the economic essence of a sale: the
13 actual transfer of ownership.

14 **Q. How do you respond to Ms. O’Connell’s suggestion that PSE is just a**
15 **financier of the program, which function is not appropriate for a utility?**²²

16 A. Ms. O’Connell’s theory that providing capital in support of a utility enterprise is
17 beyond the jurisdictional authority of a utility is not supported by any legal
18 authority. Indeed, as Staff well knows, PSE has provided capital for its existing
19 program for over fifty years, of which the Commission approved of in *Cole*. The
20 Commission also reaffirmed the program in the WNG 1992 rate case, as
21 discussed by Ms. Norton, and the existing service continues to operate today. Ms.
22 O’Connell cannot provide any authority for her position because one of PSE’s
23 primary functions as a public utility is just that: a financier of capital required to

²⁰ Commission Proposed Order at 15, 20 (emphasis in original).

²¹ *Id.* at 45.

²² O’Connell, Exh. No. ___(ECO-1THC) at 10-11.

1 provide utility service and associated services to customers. From the actual
2 power generating facilities, to the transmission lines and pipelines that transport
3 power and gas, to the meters attached to a customer's home or business, to water
4 heaters as part of the existing rental program and lightbulbs for lighting services,
5 PSE provides capital for all of these. Thus, Ms. O'Connell's argument is
6 completely detached from the reality of utility service. The fact that PSE is
7 providing capital for the leasing program does not make PSE's leasing program a
8 sale, nor does it indicate that PSE's proposed program is beyond the jurisdictional
9 authority of a public utility.

10 **Q. Is Lease Solutions an insurance program as Staff suggests?²³**

11 A. No. Lease Solutions provides customers with extensive protections for the
12 equipment including regularly-scheduled maintenance, repair, and lifetime
13 warranty throughout the lease term. This protection is similar to the services
14 provided by WNG to equipment rental customers which continues to PSE's
15 existing service. PSE also provides warranty and repair for other leased
16 equipment such as lighting services, compressed natural gas services and
17 substation distribution services. To the extent Staff is suggesting there is
18 something improper about this service, it has provided no authority for such an
19 assertion.

²³ Cebulko, Exh. No. ___(BTC-1THC) at 23-24.

1 **Q. If Lease Solutions is a leasing program, why can customers elect to purchase**
2 **the equipment?**

3 A. In the Commission Order affirming the continuance of the WNG water heater
4 rental program, WNG offered, and the Commission ordered, WNG to allow
5 customers the option to purchase their rented water heaters.²⁴

6 **B. The Commission Has Authority Over Leased Equipment**

7 **Q. Staff suggests that customer appliances are located behind the meter and**
8 **should therefore not be considered electric plant.²⁵ Did the Commission**
9 **address this issue in *Cole*?**

10 A. Yes. Ms. O’Connell notes in her testimony that “To Staff’s knowledge, the
11 distribution of everyday appliances behind-the meter has never been considered a
12 utility service in and of itself.”²⁶ Ms. O’Connell’s statement is odd, considering
13 in the Commission’s Proposed Order in *Cole* cited repeatedly by Mr. Cebulko, the
14 Commission appears to address this very issue. In analyzing the scope of its
15 jurisdictional authority, the Commission reviewed RCW 80.28.010, which
16 according to the Commission, provides that the Commission has jurisdiction over
17 “all charges . . . by any gas company . . . for gas, . . . or for any service rendered

²⁴ *WUTC v. WNG*, Docket UG-920840, Fourth Supp. Order at 17 (June 15, 1993)

²⁵ See O’Connell, Exh. No. ___ (ECO-1THC) at 11-12, 18.

²⁶ *Id.* at 12.

1 or to be rendered in connection therewith.”²⁷ The Commission also reviewed
2 RCW 80.28.020, and 80.28.100 and determined that both confirm that it has
3 jurisdictional authority over services connected to gas service, including behind-
4 the-meter (as termed by Staff) equipment:

5 “It is clear that the Commission has, by statute, been given
6 jurisdiction and power to regulate rates, charges, rentals for the
7 sale of gas, or any service connected therewith. Certainly, the
8 furnishing of rented conversion burners or other appliances using
9 gas is a service directly connected with the sale of gas.”²⁸

10 “The Commission has statutory jurisdiction and general powers
11 and the duty to regulate utility practices including and specifically
12 rental charges and any service rendered in connection with gas
13 sales.”²⁹

14 **Q. Has PSE ever offered “behind-the-meter” services?**

15 A. Yes. The Commission confirmed in *Cole* that customer appliances connected to
16 utility service are jurisdictional. Ms. O’Connell’s statement that PSE is asking the
17 Commission to expand the definition of plant and to look past the meter to make
18 common appliances utility rate base is simply incorrect.³⁰ Staff’s suggestion that
19 it is not aware of an instance where the Commission has exercised its jurisdiction
20 over “behind-the-meter” appliances is surprising considering that since 1961, as
21 explained in detail by Mr. Cebulko, PSE and its predecessors have operated a

²⁷ *Id.* at 15; RCW 80.04.130.

²⁸ O’Connell, Exh. No. ___(ECO-1THC) at 15 (emphasis in original).

²⁹ *Id.* at 20.

³⁰ *Id.* at 14.

1 “behind-the-meter” leasing program that still has approximately 33,000
2 participants today.

3 **Q. Did the Commission approve of the program?**

4 A. Yes. As stated first in its “Conclusions of Law” section in the proposed order
5 referenced by Mr. Cebulko, the Commission concludes:

6 The Commission is given jurisdiction to regulate rates and charges
7 for supply gas or for any service in connection therewith, including
8 the service of renting gas appliances and rates and charges
9 therefor. Therefore, the terms of the rental contract would fall
10 within the Commission jurisdiction and responsibilities.³¹

11 Thus, the Commission itself is clear that these services are jurisdictional and that
12 the renting of gas appliances is precisely what the Commission should be
13 regulating.

14 **Q. Did the plaintiffs in *Cole* appeal the Commission’s decision?**

15 A. Yes. The plaintiffs first appealed the Commission’s decision to the Thurston
16 County Superior Court, which confirmed that leasing was an appropriate utility
17 function. The plaintiffs then appealed the decision to the Washington Supreme
18 Court, which also confirmed that leasing was jurisdictional.

19 **Q. Did the Commission state that the circumstances surrounding the approval
20 of WNG’s program were the only circumstances by which a utility could
21 offer a leasing program?**

³¹ *Cole*, Commission Proposed Order at 45.

1 A. No. Mr. Cebulko’s “lessons”³² and “enabling purpose”³³ are attempts to create
2 law. Mr. Cebulko appears to be arguing that because the Commission approved
3 the existing service which was designed to increase load factor and customer
4 accessibility to equipment, and because one of the resulting benefits was annual
5 rate decreases (which benefited all customers), that these are the only legal
6 parameters by which leasing may occur.³⁴ Mr. Cebulko states that “In this case,
7 the Company does not purport that its natural gas or electric systems are under-
8 utilized or in need of load factor support. Therefore, the policy reasons
9 supporting the rental program no longer exists.”³⁵

10 Neither the State legislature, any court, nor the Commission, has ever placed the
11 constraints and prerequisites on leasing that Mr. Cebulko appears to be advocating
12 for. Load building is not a statutory prerequisite of leasing as Mr. Cebulko
13 suggests. Rather, as confirmed by the Commission and the Washington Supreme
14 Court, leasing is a recognized jurisdictional activity by a utility, which could have
15 numerous purposes and justifications. The circumstances surrounding why WNG
16 chose to utilize leasing in the 1960s do not create law for all future circumstances
17 for when leasing may be appropriate.

³² Cebulko, Exh. No. ____ (BTC-1THC) at 11.

³³ *Id.*

³⁴ *Id.* at 17.

³⁵ *Id.*

1 **V. EXTENSION OF CURRENT SERVICE**

2 **Q. How do you respond to Mr. Cebulko’s categorization of PSE’s Company-**
3 **owned equipment services?**

4 A. First, as explained above, Staff’s “behind-the-meter” delineation is not recognized
5 by the Commission or the law. Second, while PSE does offer, and has offered, a
6 variety of leasing services, to the extent Mr. Cebulko is attempting to limit PSE to
7 his categories, or suggest that these are the only circumstances by which leasing
8 may occur, Mr. Cebulko provides no authority for his categories. Finally, Mr.
9 Cebulko’s statement that PSE is only permitted to lease equipment that it “is
10 uniquely positioned to offer and where a limited market for these services exists,”
11 not only is inconsistent with PSE’s current lease services, but is also unsupported
12 by any law or authority. Mr. Cebulko’s overly-restrictive categories could
13 unwittingly end up promulgating an unsound policy that excludes all electric
14 companies from leasing solar systems, electric vehicles chargers and battery
15 systems – which include equipment that both the legislature and this Commission
16 have requested that regulated utilities provide as leasing services utilizing
17 company-owned rate-based equipment on the customer side of the meter and to
18 compete more fully with other market participants throughout the state.³⁶

³⁶*See, e.g.,* RCW 80.28.360 (allowing incentive rate of return for electrical companies on capital expenditures for electric vehicle equipment deployed for ratepayers); *In re Amending and Repealing Rules in WAC 480-108 Relating to Electric Companies-Interconnection With Electric Generators*, Docket UE-112133, Interpretive Statement Concerning Commission Jurisdiction and Regulation of Third-Party Owners of Net Metering Facilities, p. 33-34 n. 100 (July 30, 2014).

1 **Q. How do you respond to Mr. Cebulko’s attempts to distinguish the other PSE**
2 **end-use lease services shown in Figure No. 1 of your prefiled direct**
3 **testimony?**

4 A. Mr. Cebulko’s testimony generally confirms my point that most of the previously
5 Commission-approved services listed in Figure No. 1 of my direct testimony are
6 providing services and equipment that are on the end-use side of the meter (or
7 where the meter would be). This confirms that the proposed equipment lease
8 services share strong similarities to the existing lease services that have been
9 approved by the Commission.

10 **Q. How do you respond to Staff’s discussion of the electric lighting schedules?**

11 A. It is not really clear what point Mr. Cebulko is trying to make through the use of
12 the electric lighting schedule, or how it differs from the proposed leasing tariffs in
13 any meaningful way. He concedes the point that the poles and lighting fixtures
14 are owned by PSE, just as the leased equipment will be owned by PSE.

15 **Q. Are customers able to purchase poles and lights for street lights?**

16 A. Yes, customers have the ability to either lease electric street lighting from PSE or
17 to buy poles and lights from various vendors. The Commission allows and
18 approves tariff-based lighting services where the end-use equipment is on the
19 “customer side” of the meter for products and services that are already and readily
20 available in the market. The arguments, by all parties, to the contrary are incorrect
21 and inconsistent with current tariffs and policy of the Commission.

1 **Q. Do you have any other thoughts on Staff’s use of the electric lighting service**
2 **in its testimony?**

3 A. Yes, Staff provides no evidence to support its claim that the current lighting
4 schedules are not burdening the general ratepayer. Based on evidence from the
5 last general rate case, the parity ratio of the electric lighting class is less than
6 100%³⁷ which indicates that current lighting customers are not fully paying their
7 share of the cost of service. Thus, Staff cannot support the assertion that the
8 current lighting schedules are not burdening the general ratepayer, or the
9 implication that the current lighting rates are less likely to be “subsidized” by
10 general ratepayers than the expanded equipment leasing service might be.

11 **VI. PARTIES’ REFERENCES AND RELIANCE ON THE EIA**
12 **REGARDING CONSERVATION IS BOTH INAPPROPRIATE AND**
13 **INACCURATE**

14 **Q. How do you respond to claims by Commission Staff that PSE’s proposed**
15 **leasing service violates RCW 19.285.040?**

16 A. I disagree with this assertion, and I am surprised that Commission Staff would
17 take such a view. PSE’s leasing service is intended to facilitate the replacement
18 of older, inefficient equipment, which is consistent with the spirit of the Energy
19 Independence Act (“EIA”). Moreover, the law does not preclude PSE from
20 offering standard efficiency electric equipment as an option in its equipment

³⁷ *WUTC v. PSE*, Docket UE-111048, Exhibit JAP-04, page 1, column (n), row 49).

1 leasing service, nor does the law obligate PSE or any company to provide only
2 electric equipment that produces conservation benefits.

3 PSE's proposed equipment leasing service is not a conservation program and
4 therefore is not governed by the EIA. However, lease customers may take
5 advantage of rebates and incentives offered through PSE conservation program if
6 they choose to lease certain energy efficient equipment. The bottom line is that
7 PSE's lease service will provide customers who would not otherwise replace their
8 older, inefficient equipment with a mechanism by which to do so, and this will
9 further the goals underlying the EIA, even though PSE's lease service is not a
10 "conservation" program.

11 It is also important to note that the EIA only addresses electric energy
12 conservation. Notably, it does not address natural gas conservation, and there is
13 no plausible argument that PSE's lease of any gas equipment violates the EIA.

14 **Q. How do you respond to Staff's interpretation of the first sentence of RCW**
15 **19.285.040 to prohibit PSE from leasing any equipment but the most energy**
16 **efficient models?**

17 A. RCW 19.285.040(1) sets forth a process by which a utility must establish its ten-
18 year conservation potential and an electric biennial conservation target that will
19 be reviewed and approved by the Commission. The sentence of the law that Staff
20 cites, which requires a qualifying utility to "pursue all available conservation that
21 is cost-effective, reliable, and feasible," is merely a preface to the entire process

1 set forth in the subsequent subsections of this law; it does not create a requirement
2 in the law, separate from the process for setting and approving an electric
3 conservation target identified in the statute. Certainly, it does not preclude a
4 utility from leasing gas and electric equipment, separate and apart from its
5 conservation program. Moreover, as previously discussed, through its
6 conservation program PSE intends to pursue all available conservation that is
7 cost-effective, reliable, and feasible by encouraging leasing customers to lease the
8 most energy efficient equipment through the use of rebates and incentives that
9 will make this equipment more affordable for customers.

10 **VII. RECOVERING NON-STANDARD COSTS ARE COMMON**
11 **PRACTICE AND ARE CURRENTLY FOUND IN BOTH OF PSE'S**
12 **TARIFF BOOKS**

13 **Q. Do you agree with Mr. Cebulko's assertion that "[w]hile non-standard**
14 **installation costs may be a practical reality of installing space and water heat**
15 **appliances, it also provides a loop-hole around charging a tariffed rates."³⁸?**

16 A. I agree with Mr. Cebulko that non-installation costs are a practical reality of
17 installing space and water heat equipment, but I do not agree with his conclusion
18 that it provides a loop-hole around charging tariffed rates. Mr. Cebulko overlooks
19 two facts: 1) charging for non-standard costs is something that occurs throughout
20 PSE's two tariff books; and 2) the fact that there are several examples of charging
21 for non-standard costs in PSE's tariff schedules, by definition, means it is not "a

³⁸ Cebulko, Exh. No. ___ (BTC-1THC) at 23:7-9.

1 loop-hole *around*” tariffed rates since they are, in fact, tariffed rates. A cursory
2 review of PSE’s tariff books reveals several examples of charging for non-
3 standard costs. Exhibit No. ___ (EEE-7), provides several examples.

4 Non-installation costs are not only a practical reality of installing space and water
5 heat equipment, they are a practical reality of several types of existing tariffed
6 services PSE provides to its customers, including line extensions for electric
7 service and facilities extensions for natural gas service, which are a practical
8 reality of serving *every* PSE customer.

9 **VIII. STAFF IMPOSES VALUE SYSTEM RATHER THAN ANALYSIS IN**
10 **CONCLUDING THAT RATES ARE TOO EXPENSIVE**

11
12 **Q. Do any of the WUTC Staff Witnesses provide any testimony supporting that**
13 **the rates in Schedules 75 do not meet the Commission requirement of just,**
14 **fair, reasonable and sufficient?**

15 A. No. There is a noticeable absence of evidence from the WUTC Staff disagreeing
16 that PSE’s Schedule 75 rates meet the Commission requirement of being just, fair,
17 reasonable and sufficient.

18 **Q. Do you have any further comments about Mr. Cebulko’s testimony?**

1 A. Yes. Mr. Cebulko’s testimony is infused with value judgments that are not
2 criteria set forth in the law. For example, he states “the proposed optional leasing
3 service is ‘bad’ for PSE customers, and that it is an “expensive” service. The
4 terms “bad” and “expensive” are not criteria that are contained in the current laws
5 and rules, and these subjective terms do nothing to further the analysis of whether
6 the leasing program is in the public interest. Mr. Cebulko imposes his own
7 personal value judgments rather than undertaking an appropriate analysis of
8 whether Lease Solutions is in the public interest and meets the Commission
9 requirement of “just, fair, reasonable and sufficient.” In the absence of such
10 testimony from the Mr. Cebulko, we can conclude that these proposed rates meet
11 the requirement of “just, fair, reasonable and sufficient.”
12

13 **VIII. CONCLUSION**

14 **Q. Does this conclude your rebuttal testimony?**

15 A. Yes.
16