

ATTACHMENT B

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

PUGET SOUND ENERGY, INC.

for (i) Approval of a Special Contract for Liquefied Natural Gas Fuel Service with Totem Ocean Trailer Express, Inc. and (ii) a Declaratory Order Approving the Methodology for Allocating Costs Between Regulated and Non-regulated Liquefied Natural Gas Services

Docket No. UG-151663

**REPLY BRIEF OF
PUGET SOUND ENERGY**

**REDACTED
VERSION**

DECEMBER 2, 2015

PUGET SOUND ENERGY

TABLE OF CONTENTS

I. INTRODUCTION1

II. ARGUMENT2

 A. Portions of the Staff Brief Are Outside the Limited Scope of the Issues
 Contemplated by Order 03.....2

 B. Portions of the Staff Brief Are Not Supported by Evidence5

 C. Portions of the Staff Brief Involve Asserted Facts that PSE Would Contest
 in the Proceeding7

 1. PSE Would Contest the Characterizations Made in the Staff Brief
 Regarding the Commodity to be Provided Pursuant to the TOTE
 Special Contract.....7

 2. PSE Would Contest the Characterization Made in the Staff Brief
 that Service Pursuant to the TOTE Special Contract Would be a
 “Behind-the-Meter” Service10

 3. PSE Would Contest the Characterization Made in the Staff Brief
 that It is Improper for PSE to Take Title to Natural Gas it
 Distributes.....10

 4. PSE Would Contest the Characterizations Made in the Staff Brief
 Suggesting that It is Somehow Inappropriate for a Gas Company to
 Include a Specified Term of a Number of Years in a Special
 Contract.....11

 5. PSE Would Contest the Characterizations Made in the Staff Brief
 Suggesting that Regulation of LNG Sales by PSE Would
 Somehow Inhibit the Development of the Market for LNG.....12

 6. PSE Would Contest the Characterizations Made in the Staff Brief
 Suggesting that Section 2.3.1(c) of the TOTE Special Contract
 Somehow Caps the Contract Price12

III. CONCLUSION.....14

PUGET SOUND ENERGY
TABLE OF AUTHORITIES

Other Authorities

Pub. L. 102-486, title IV, § 404(b) 12

Regulations

WAC 480-80-143 5

WAC 480-80-153 6

WAC 480-90-023 8

Commission Decisions

In the Matter of the Application of Cascade Natural Gas Corporation, Inc., for Authority to Implement a Special Contract for Gas with E-Next Generation LLC, Docket UG-010957, (Aug. 8, 2001) 11

In the Matter of the Petition of Puget Sound Energy, Inc. for (i) Approval of a Special Contract for Liquefied Natural Gas Fuel Service with Totem Ocean Trailer Express, Inc. and (ii) a Declaratory Order Approving the Methodology for Allocating Costs Between Regulated and Non-regulated Liquefied Natural Gas Services, Docket UG-151663, Order 03 (Oct. 15, 2015) *passim*

In the Matter of the Petition of Puget Sound Energy, Inc. for (i) Approval of a Special Contract for Liquefied Natural Gas Fuel Service with Totem Ocean Trailer Express, Inc. and (ii) a Declaratory Order Approving the Methodology for Allocating Costs Between Regulated and Non-regulated Liquefied Natural Gas Services, Docket UG-151663, Order 01 (Sept. 8, 2015) 1

WUTC v. Cascade Natural Gas Corp., Docket UG-921047, Order 01 (Mar. 27, 2008) 11

Secondary Sources

Northwest Pipeline LLC, Daily Gas Quality Values, available at http://www.northwest.williams.com/NWP_Portal/gasQualityValues.action (last accessed Dec. 1, 2015) 8

Northwest Pipeline LLC, FERC Gas Tariff, Fifth Revised Volume No. 1, at Fifth Revised Sheet No. 204 through Third Revised Sheet No. 205-B, available at

http://www.northwest.williams.com/Files/Northwest/tariff/tariff_GTC.pdf (last accessed Dec. 1, 2015)8

Puget Sound Energy, Inc., Rules and Regulations Rule No. 15: Discontinuance of Service, available at https://pse.com/aboutpse/Rates/Documents/gas_rule_15.pdf (last accessed Dec. 1, 2015)11

I. INTRODUCTION

1. On August 11, 2015, Puget Sound Energy (“PSE”) filed with the Washington Utilities and Transportation Commission (“Commission”) a petition for approval of, among other things, the LNG Fuel Supply Agreement, dated October 27, 2014 (the “TOTE Special Contract”), between PSE and Totem Ocean Trailer Express, Inc. (“TOTE”).¹ On September 8, 2015, the Commission adopted a preliminary procedural schedule including technical conferences on September 18 and 21, and October 8, 2015.² The parties agreed to reconvene in prehearing to discuss their progress on the afternoon of October 13, 2015.³
2. At the prehearing conference on October 13, 2015, the parties agreed to continue seeking common ground on certain legal and policy matters and to either report success in this regard, or to file simultaneous briefs on November 20, 2015, stating their respective positions on the threshold jurisdictional issues that do not involve contested facts. On October 15, 2015, the Commission issued Order 03 in this proceeding that reflected this agreement among the parties.⁴
3. On November 24, PSE, Public Counsel and Staff filed briefs. Each of PSE’s and Public Counsel’s Brief focused on the threshold jurisdictional question contemplated by Order 03—whether the Commission can exercise jurisdiction, pursuant to Title 80 RCW, over sales of liquefied natural gas (“liquefied natural gas” or “LNG”) by PSE to TOTE pursuant to the TOTE Special Contract. Portions of the Staff Brief on Issues of Law and Fact (“Staff Brief”) are

¹ See, e.g., PSE Petition.

² *In the Matter of the Petition of Puget Sound Energy, Inc. for (i) Approval of a Special Contract for Liquefied Natural Gas Fuel Service with Totem Ocean Trailer Express, Inc. and (ii) a Declaratory Order Approving the Methodology for Allocating Costs Between Regulated and Non-regulated Liquefied Natural Gas Services*, Docket UG-151663, Order 01 (Prehearing Conference Order; Notice of Prehearing Conference) (Sept. 8, 2015).

³ *Id.*

⁴ *In the Matter of the Petition of Puget Sound Energy, Inc. for (i) Approval of a Special Contract for Liquefied Natural Gas Fuel Service with Totem Ocean Trailer Express, Inc. and (ii) a Declaratory Order Approving the Methodology for Allocating Costs Between Regulated and Non-regulated Liquefied Natural Gas Services*, Docket UG-151663, Order 03 (Prehearing Conference Order, Notice of Hearing) (Oct. 15, 2015) (“Order 03”).

(i) outside the limited scope of the issues contemplated by Order 03, (ii) not supported by evidence, or (iii) involve asserted facts that PSE would contest in the proceeding. PSE is therefore filing this Reply Brief to address claims made in the Staff Brief that are outside the scope of the issues the parties were requested to brief, clarify the record, and correct errors.

II. ARGUMENT

A. Portions of the Staff Brief Are Outside the Limited Scope of the Issues Contemplated by Order 03

4. Order 03 in this proceeding directed parties to file simultaneous briefs on November 20, 2015, stating their respective positions on these issues that do not involve contested facts:

The parties have identified and are working to resolve issues of law and policy that raise threshold questions, the resolution of which could be determinative. The parties agreed to continue seeking common ground and to either report success in this regard, or to file simultaneous briefs on November 20, 2015, stating their respective positions on these issues that do not involve contested facts. The Commission will endeavor to act on these threshold matters, whether in response to a common proposal from the parties or by deciding any contested points of law or policy, by mid-December.⁵

During the prehearing conference, these threshold issues were introduced by counsel for Staff as whether the service provided by PSE to TOTE pursuant to the TOTE Special Contract can be subject to the jurisdiction of the Commission:

I addressed with the -- with [PSE] and others that were on the line the question of whether the service proposed for TOTE is jurisdictional to the Commission. Is this really another -- a different kind of service?⁶

With regard to the character of the service PSE proposes to provide to TOTE, Counsel for Staff stated again that the question is whether the parties could come to an agreement and avoid filing

⁵ Order 03 at ¶ 3.

⁶ Oshie, TR. 45:19-23.

“...a motion to dismiss based on some concerns we may have about the Commission’s jurisdiction in this area.”⁷

5. Counsel for Public Counsel stated that Public Counsel sees the same issues as Staff and identified, among other things, the issue of whether the service PSE proposes to provide to TOTE is a regulated service.⁸ Counsel for PSE concurred that although PSE has filed for a regulated service, parties had raised policy issues regarding that request and if it becomes an issue of whether the Commission has jurisdiction, that legal issue with a policy basis could be addressed through filing a statement of facts and law with briefing on the issue.⁹

6. The Administrative Law Judge opined that it sounded like at this stage, the issues are policy and legal issues and not factual issues.¹⁰ He pointed to the 2000/2001 time frame and early telecommunications cases in which “threshold jurisdictional issues” were taken up first and he suggested using that approach here.¹¹ This resulted in the parties agreeing to see if they could develop a common position on the threshold jurisdictional issues or instead, have one round of briefing on their respective positions. These understandings were described in Order 03 as “issues of law and policy that raise threshold questions” that would either be resolved by the parties or the subject of simultaneous briefs.¹²

7. Consistent with the agreement made at the prehearing conference on October 13, 2015, and Order 03, PSE identified the threshold issue in the PSE Brief as the following:

⁷ Oshie, TR. 47:9-11.

⁸ ffitich, TR 48:22-49:2.

⁹ Kuzma, TR. 59:11-25.

¹⁰ Moss, TR. 60:13-61:15.

¹¹ Oshie, Moss, ffitich, Kuzma, TR. 64:17-25, and 65:6-8.

¹² Order 03 at ¶ 3.

Can the Commission exercise jurisdiction, pursuant to Title 80 RCW, over sales of liquefied natural gas by PSE to TOTE pursuant to the TOTE Special Contract?¹³

Also consistent with the agreement made at the prehearing conference on October 13, 2015, and Order 03, Public Counsel identified the following threshold issue in the Public Counsel Memorandum of Law Regarding Jurisdiction (“Public Counsel Brief”):

Is the Commission granted jurisdiction to regulate sales of liquefied natural gas by gas companies for use as transportation fuel, in particular the sales of LNG to TOTE for use as marine fuel under the TOTE Special Contract.¹⁴

Both PSE and Public Counsel limited their briefs to the threshold question of whether the Commission *can* exercise jurisdiction over sales of LNG by PSE to TOTE pursuant to the TOTE Special Contract.

8. Rather than defining the threshold issue identified at the prehearing conference of October 13, 2015, and Order 03, the Staff Brief presents the following “Relief Requested by Staff” that addresses a secondary question¹⁵ as to whether the Commission *should* exercise jurisdiction over sales of LNG by PSE to TOTE pursuant to the TOTE Special Contract:

A Commission determination that it declines to exercise jurisdiction over PSE’s contract with TOTE, and allows PSE to form a subsidiary consistent with the applicable merger requirements in order to promote the development of LNG without creating unnecessary regulatory barriers to non-regulated parties.¹⁶

The Staff Brief exceeds the scope of the type of policy, legal and threshold jurisdictional issues discussed at the prehearing conference on October 13, 2015, and contemplated by Order 03.

¹³ PSE Brief at ¶ 2.

¹⁴ Public Counsel Brief at ¶ 16.

¹⁵ The Public Counsel Brief suggests that Public Counsel agrees that the threshold question in the proceeding is whether the Commission *can* exercise jurisdiction over sales of LNG by PSE to TOTE pursuant to the TOTE Special Contract and that the question of whether the Commission *should* exercise jurisdiction over such sales is a secondary question: “If the Commission finds that it does not have jurisdiction, it need not reach the question of contract approval as requested by PSE.” Public Counsel Brief at ¶ 17.

¹⁶ Staff Brief at ¶ 3.

9. Moreover, the Staff Brief exceeds the scope of the two issues presented by PSE in its Petition. The Petition requests that the Commission (i) approve the TOTE Special Contract as a special contract pursuant to WAC 480-80-143 and (ii) issue a declaratory order approving the methodology for allocating costs between regulated and non-regulated liquefied natural gas services. Although the Commission has the authority to decide these two issues, the Commission lacks the authority to address the relief requested by Commission Staff. The Commission could disclaim jurisdiction over the TOTE Special Contract, but it lacks the authority to require PSE to establish a special subsidiary to make sales of LNG.

10. As discussed above, Order 03 required parties to file briefs as to the threshold question over whether the Commission has jurisdiction to consider the first request of PSE (i.e., that the Commission approve the TOTE Special Contract as a special contract pursuant to WAC 480-80-143). The Commission has the jurisdiction to consider and decide the threshold question of whether the Commission *can* exercise jurisdiction over the TOTE Special Contract and the secondary question of whether the Commission *should* exercise jurisdiction over the TOTE Special Contract. Only the first question is at issue in the briefing contemplated by Order 03.

B. Portions of the Staff Brief Are Not Supported by Evidence

11. Considerable portions of the Staff Brief are dedicated to the proposition that the distribution of LNG as a transportation fuel is a competitive enterprise.¹⁷ These portions of the Staff Brief could be fairly summarized as suggesting that (a) the Commission only has jurisdiction over monopoly services offered by utilities; (b) competitive services and monopoly services cannot coexist; and (c) if there are no monopoly services or there are services between a

¹⁷ See Staff Brief at ¶¶ 35-49.

utility and two sophisticated corporate entities that may engage in arms-length bargaining, then regulation is unnecessary.¹⁸

12. Certain portions of the Staff Brief address interim gas supply contemplated by the TOTE Special Contract. The Staff Brief incorrectly states that PSE is required to deliver LNG to TOTE prior to construction of the Tacoma LNG Facility and that PSE is obligated under certain conditions to provide alternative LNG fuel after deliveries to TOTE begin. Staff's Brief relies on its misunderstanding of the interim gas supply provisions to conclude that LNG is available in an unregulated market and therefore regulation is not needed to ensure LNG fuel supplies.¹⁹

13. The Staff Brief purports to analyze the TOTE Special Contract under the Commission's legal framework for evaluating special contracts. Staff's Brief states that PSE is not facing any form of traditional bypass threat due to the nature of the LNG fuel service and its mechanics, which allegedly make it nearly impossible to bypass PSE's distribution system. There is nothing in the record, however, to support this claim. The Staff Brief then opines that because it was negotiated at arms-length, the TOTE Special Contract is a commercial agreement. Staff's Brief jumps to the conclusion that when two sophisticated parties are involved in a contract for service there is no role for the Commission because its regulation is inextricably tied to the economic protection of users of a regulated service.²⁰ This conclusion is belied by the very existence of the Commission's rule governing special contracts. *See* WAC 480-80-153.

14. PSE disagrees with Staff Brief's largely philosophical view of the nature of the authority of the Commission which rests on assertions not supported by evidence in the record. No party to this proceeding has provided evidence of any kind indicating that the distribution of LNG as a

¹⁸ *See* Staff Brief at ¶¶ 37-40.

¹⁹ *See* Staff Brief at ¶¶ 22-25.

²⁰ *See* Staff Brief at ¶¶ 73-75.

transportation fuel is a competitive enterprise or would constitute a monopoly service. Staff Brief cannot assert its viewpoint, which is not demonstrated by evidence in this proceeding, as fact and have the Commission make a determination premised on this unsupported viewpoint.

C. Portions of the Staff Brief Involve Asserted Facts that PSE Would Contest in the Proceeding

1. PSE Would Contest the Characterizations Made in the Staff Brief Regarding the Commodity to be Provided Pursuant to the TOTE Special Contract

15. The Staff Brief incorrectly suggests that PSE will be providing a “highly refined product requiring significant refining and pre-treatment to produce the nearly pure methane required by TOTE, as demonstrated by the approximately \$300-\$350 million dollar cost of PSE’s proposed refining and storage facility.”²¹ There are numerous incorrect factual assertions in this statement that PSE must contest.

a. PSE Is Not “Refining” Natural Gas

16. PSE is not “refining” natural gas. As recognized in the Commission’s regulations, natural gas is not a homogenous product, and the chemical composition of natural gas can vary widely. PSE is merely removing those components of the natural gas that have a higher freezing point (e.g., carbon dioxide, water) than the -260 degrees Fahrenheit to convert natural gas into a liquid state. If PSE were not to remove these components, then they would freeze prior to the conversion of natural gas into its liquid state, and the resulting dry ice (in the case of carbon dioxide) and ice (in the case of water) would cause problems with respect to the heat exchange process and equipment. The sole purpose of the pretreatment process is to protect PSE’s liquefaction equipment, not to satisfy any specific chemical composition desired by TOTE.

²¹ Staff Brief at ¶ 56.

b. PSE Is Not Providing “Nearly Pure Methane” Distinguishable from Natural Gas Generally

17. The Staff Brief is correct that PSE is providing “nearly pure methane” but only in the sense that almost all natural gas provided by PSE is “nearly pure methane.” The Northwest Pipeline tariff contains multiple quality standards that natural gas must meet to be transported on the Northwest Pipeline system.²² The Northwest Pipeline natural gas has historically fluctuated by more than four percent methane content (92 percent to 96 percent) while still meeting all quality standards and tariff requirements.²³ The pretreatment process necessary to protect the liquefaction equipment results in natural gas with a higher concentration of methane than that received from Northwest Pipeline, but that difference is negligible. Indeed, the usual variations in the chemical composition of the natural gas received from Northwest Pipeline is greater than variations in the chemical composition of the natural gas that will be at that the Tacoma LNG Facility due to the pretreatment processes necessary to protect the liquefaction equipment. All are “natural gas,” as defined by WAC 480-90-023 (i.e., “a mixture of gaseous hydrocarbons (chiefly methane) and nonhydrocarbons that occur naturally in the earth.”)

c. TOTE Does Not Require “Nearly Pure Methane”

18. As discussed previously, the natural gas pretreatment process is necessary to protect the liquefaction equipment against natural gas components with freezing points higher than –260 degrees Fahrenheit. The pretreatment processes are not performed to meet some methane concentration desired by TOTE. Indeed, TOTE will use the LNG supplied by PSE pursuant to the TOTE Special Contract in a manner no different than residential customers use natural gas in

²² See, e.g., Northwest Pipeline LLC, FERC Gas Tariff, Fifth Revised Volume No. 1, at Fifth Revised Sheet No. 204 through Third Revised Sheet No. 205-B, available at http://www.northwest.williams.com/Files/Northwest/tariff/tariff_GTC.pdf (last accessed Dec. 1, 2015).

²³ See, e.g., Northwest Pipeline LLC, *Daily Gas Quality Values*, available at http://www.northwest.williams.com/NWP_Portal/gasQualityValues.action (last accessed Dec. 1, 2015).

their homes. For residential customers, PSE will vaporize the LNG into a gaseous state on the customer's behalf. TOTE, however, prefers to store the natural gas in its liquid state on its vessel because liquefied natural gas is 1/600th of the volume of gaseous natural gas. TOTE will then vaporize the LNG on the vessel and use the natural gas in its gaseous state in the marine engine. Thus, the sole difference between TOTE and residential customers is that PSE will provide the vaporization service for residential customers, and TOTE will self-provide the vaporization on the vessel. The natural gas used by residential customers and TOTE will be essentially the same in composition.

d. The Pretreatment Process is Not “Refining”

19. The Staff Brief suggests, in error, that the “significant refining and pre-treatment to produce the nearly pure methane required by TOTE” is the predominant factor in the approximately \$300-\$350 million cost of the Tacoma LNG Project. The vast majority of the capital costs necessary to construct the Tacoma LNG Project would exist, however, even if PSE were to size the project to meet its peaking needs alone. PSE is offering sales of LNG to TOTE for use as a marine fuel as a regulated service to achieve the economies of scale and scope to ensure that PSE can provide its gas customers with a least-cost resource to meet peaking needs. In other words, PSE can spend slightly more to increase the plant capacity to meet the needs of a market complementary to PSE's peaking needs in a manner that lowers the costs to PSE's core customers and TOTE.

2. PSE Would Contest the Characterization Made in the Staff Brief that Service Pursuant to the TOTE Special Contract Would be a “Behind-the-Meter” Service

20. The Staff Brief erroneously asserts that “PSE has manufactured a behind-the-meter business opportunity with [the TOTE Special Contract].”²⁴ PSE addressed aspects of this line of argument in the portion of the PSE Brief that demonstrates that the TOTE Special Contract requires PSE to meter and transfer title to the natural gas to TOTE as the LNG is loaded into the manifold of the TOTE vessel,²⁵ and PSE does not address these issues again in this Reply Brief.

3. PSE Would Contest the Characterization Made in the Staff Brief that It is Improper for PSE to Take Title to Natural Gas it Distributes

21. The Staff Brief claims that the TOTE Special Contract somehow is inappropriate because it “obligates PSE to take ownership of the TOTE-destined gas, thus shielding TOTE from PSE’s tariffed transportation retail prices.”²⁶ It is unremarkable that PSE owns and does not transfer title to the natural gas until the LNG is metered and dispensed into the TOTE vessel. Indeed, PSE owns and does not transfer title to natural gas provided to its core customers until the natural gas is metered and used by core customers. The Staff Brief appears to analogize TOTE to transport-only customers for whom PSE transports but never has title to the natural gas. TOTE, by contrast, will not be a transport-only customer and will be purchasing LNG as an end-use product at the TOTE berthing station. It is incorrect to consider TOTE to be a transportation customer. TOTE will buy LNG from PSE at a bundled rate that recovers (i) PSE’s cost of the natural gas commodity, (ii) PSE’s cost to transport that natural gas to its distribution system, (ii) PSE’s cost to move the natural gas on its distribution system, and (ii) PSE’s cost to liquefy and store the natural gas.

²⁴ See Staff Brief at ¶ 37.

²⁵ PSE Brief at ¶¶ 41-43.

²⁶ Staff Brief at ¶ 10.

4. PSE Would Contest the Characterizations Made in the Staff Brief Suggesting that It is Somehow Inappropriate for a Gas Company to Include a Specified Term of a Number of Years in a Special Contract

22. The Staff Brief further points to the fact that the TOTE Special Contract has a specified term of ten years to suggest that service under the contract is not a utility service.²⁷ It is erroneous to claim that gas utilities do not require certain customers to commit to take service for an extended period. In fact, the Commission has approved special contracts of gas utilities for specific terms. For example, the Commission has approved special contracts of Cascade Natural Gas Company for contracts with terms of 30 years and 15 years.²⁸ Moreover, Section 1 of PSE's Gas Rule 15 specifically contemplates and allows contracts between PSE and its customers for specified terms of service:

An agreement between the customer and the company is created by the company's acceptance of the customer's application or request for service, or by the customer's use of gas prior to such application or request. Where no contract for a facilities extension or term of service is involved, the agreement will continue in full force and effect until terminated by the customer giving at least one day's notice to a company business office relative to the intent to discontinue service.²⁹

Thus, the Staff Brief may be correct in that the default position is that there is often no requirement that a customer agree to remain a customer for a time certain and that customers are free to leave the system or to decline to take utility service of any kind, but that default position can and, at least with respect to special contracts, is modified by a contract agreed to between the utility and its customer.

²⁷ Staff Brief at ¶¶ 15-18.

²⁸ See *In the Matter of the Application of Cascade Natural Gas Corporation, Inc., for Authority to Implement a Special Contract for Gas with E-Next Generation LLC*, Docket UG-010957, Order Dismissing Complaint and Order Suspending Contract; Granting Contract Approval (Aug. 8, 2001) (approving a special contract with a 30-year term); *WUTC v. Cascade Natural Gas Corp.*, Docket UG-921047, Order 01 (Mar. 27, 2008) (approving a four-year extension of a special contract with a primary term of 15 years).

²⁹ Puget Sound Energy, *Rules and Regulations Rule No. 15: Discontinuance of Service*, available at https://pse.com/aboutpse/Rates/Documents/gas_rule_15.pdf (last accessed Dec. 1, 2015).

5. PSE Would Contest the Characterizations Made in the Staff Brief Suggesting that Regulation of LNG Sales by PSE Would Somehow Inhibit the Development of the Market for LNG

23. The Staff Brief suggests that “the competitive market will advance the market development for LNG much faster than treating it as a regulated service.”³⁰ Similarly, the Staff Brief incorrectly states that “if the Commission determines LNG to be a regulated service, then any other LNG providers doing business in Washington now and in the future would be included under the Commission’s regulatory umbrella.”³¹ As discussed in the PSE Brief,³² section 404(b) of the Energy Policy Act of 1992³³ preempts state regulation of sales of vehicular natural gas by entities other than public utilities. Therefore, the Commission’s jurisdiction over PSE’s sales of LNG to TOTE would not subject non-utility companies in the business of selling vehicular natural gas to the Commission’s jurisdiction and would not inhibit the development of a competitive marketplace for vehicular gas within the state.

6. PSE Would Contest the Characterizations Made in the Staff Brief Suggesting that Section 2.3.1(c) of the TOTE Special Contract Somehow Caps the Contract Price

24. The Staff Brief incorrectly suggests that section 2.3.1(c) of the TOTE Special Contract somehow caps the price paid by TOTE for LNG supplied pursuant to that agreement:

The amount of plant assigned to TOTE and used by PSE to calculate the contract price is described in Section 2.3.1(c) of the TOTE agreement. Here, it is set at an amount [REDACTED] by way of its engineering and design study completed in August of 2013.³⁴

³⁰ Staff Brief at ¶ 41.

³¹ Staff Brief at ¶ 88.

³² PSE Brief at ¶ 47.

³³ Pub. L. 102-486, title IV, § 404(b).

³⁴ Staff Brief at ¶ 28.

REDACTED

Section 2.3.1(c) of the TOTE Special Contract is a condition precedent that allows PSE to terminate the agreement if PSE cannot enter into an engineering, procurement, and construction contract (an “EPC contract”) for the construction of the Tacoma LNG Facility on a lump-sum turnkey basis [REDACTED]

[REDACTED] engineering and design study completed in August of 2013 by Chicago Bridge and Iron.³⁵ This provision limits PSE’s cost-exposure by allowing PSE [REDACTED] [REDACTED] than the August 2013 design study.

25. Similarly, the Staff Brief misunderstands the manner in which PSE is constructing the Tacoma LNG Facility in suggesting that “the actual construction costs are largely unknown and subject to change.”³⁶ As discussed in PSE’s initial filing, PSE determined that an EPC contracting methodology would be the preferred method for contracting portion of the Tacoma LNG Facility.³⁷ An EPC contract is a firm, fixed price contract with performance guarantees and liquidated damages. In exchange for control of all elements of the project (engineering, procurement, and construction), the EPC contractor retains cost and schedule risks during project delivery.³⁸ Thus, PSE controls the decision to move forward based on the firm, fixed price of the EPC contract; if it is within 10 percent of the cost projection in the August 2013 design study, then the project proceeds and the costs are relatively known. If, however, the firm, fixed price of the EPC contract is greater than 10 percent of the cost projection in the August 2013 design study, then PSE has the right, but not the obligation, to terminate the TOTE Special Contract

³⁵ Riding, Exh. No. ___ (CR-4C) at 23.

³⁶ Staff Brief at ¶ 28.

³⁷ Hogan, Exh. No. ___ (JPH-1T) at 11:9-11.

³⁸ Hogan, Exh. No. ___ (JPH-1T) at 11:12-15.

REDACTED

pursuant to section 2.3.1(c) of the TOTE Special Contract. In short, PSE has adequately limited PSE's cost exposure for the development of the Tacoma LNG Facility.

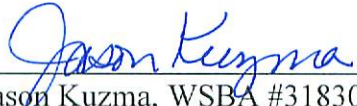

III. CONCLUSION

26. For the reasons set forth above, PSE respectfully requests that the Commission disregard those portions of the Staff Brief that address issues other than the threshold question that was the subject of briefing pursuant to Order 03. At this point in the proceeding, the Commission is deciding whether it *can* exercise jurisdiction over the TOTE Special Contract and not issues based upon contested facts or assertions unsupported by the record.

DATED this 2nd day of December, 2015.

Respectfully submitted

PERKINS COIE LLP

By  _____
Jason Kuzma, WSBA #31830 
Pamela Anderson, WSBA #37272
Attorneys for Puget Sound Energy, Inc.