

ATTACHMENT F

July 11, 2023 Reliability Certification

(LUC 20.20.255.E.4)

July 11, 2023

Reilly Pittman
Environmental Planning Manager
City of Bellevue
PO Box 90012
Bellevue, WA 98009

**Re: Reliability Certification (LUC 20.20.255.E.4)
Energize Eastside 230-kV Project, North Bellevue Segment
File No. 2020-112645-DB**

Dear Mr. Pittman,

Puget Sound Energy, Inc. (PSE) writes to update the August 2022 certification of project need and reliability as a courtesy or, to the extent it is still applicable, under LUC 20.20.255.E.4.

Project Background and Statement of Need

PSE's Description of Proposal for the CUP, submitted March 11, 2021, provided detailed narratives explaining Energize Eastside's compliance with the Electrical Utility Facilities decision criteria in LUC 20.20.255.E, including the following:

- The project's inclusion in PSE's Electrical Facilities Plan since 1993 (LUC 20.20.255.E.1);
- PSE's compliance with regulations by FERC, NERC, and WECC (the Federal Energy Regulatory Commission, North American Electric Reliability Corporation and Western Electricity Coordinating Council, respectively) (LUC 20.20.255.E.2);
- The extensive studies of operational need that have been conducted for over a decade, including PSE's annual NERC-mandated Transmission System Planning (TSP) assessments and independent third-party reviews conducted by the City, the EIS Partner Cities, and the City of Newcastle, which issued a study in June 2020 that confirmed project need, stating, "there is a summer transmission capacity deficiency in King County under N-1-1 contingencies even at today's peak load level" (LUC 20.20.255.E.3);
- PSE's reliability certification (LUC 20.20.255.E.4);
- Compliance with the alternative siting analysis requirements (LUC 20.20.255.E.5); and

- PSE's proposed mitigation and commitment to complying with all mitigation required by the City's code and permit conditions (LUC 20.20.255.E.6).

(See Description of Proposal at 24-32). The information provided in PSE's 2021 submittal remains applicable, and the information provided here further supports and confirms compliance with LUC 20.20.255.E.

On November 28, 2022, PSE provided the City with its 2022 Energize Eastside Needs Assessment Update. This study utilized the latest load forecast and system information and verified that without Energize Eastside 230 kV project, a transmission capacity deficiency is present today under certain contingency conditions for the summer season and would require the use of CAPs to manage overloads for certain contingencies. The study also verified that there is still a transmission capacity deficiency in the Eastside area in the winter for both base and sensitivity cases in the ten-year planning horizon. This present need requires use of Corrective Action Plans (CAPs) to manage overloads for certain contingencies, putting approximately 50,000 Eastside customers at risk of outages. This transmission capacity deficiency has existed for the last several years during summer peak season and is expected to increase as load grows.

Given that the south segment of the project will be energized by the end of 2023, but the north segment is still pending, PSE conducted two verification studies during their annual TPL system assessment in 2020 and 2022 to verify that the transmission deficiency still exists without the north segment present. In PSE's 2020 and 2022 TPL assessments, PSE modeled the system without the northern segment of Energize Eastside. Specifically, the Sammamish-Lakeside 115 kV lines remained in their current configuration and were not converted to 230 kV lines from Sammamish to Richards Creek substation. The 2020 TPL assessment showed that there is a transmission deficiency in the Eastside area in the summer of 2022 without the north segment of Energize Eastside 230 kV project energized. The 2022 TPL assessment also verified the need, showing a transmission deficiency in the near term.

Recent updates discussed below support these findings of need, as well as PSE's adherence to mandatory reliability and planning standards. PSE hereby certifies that the Energize Eastside project (including both south and north segments) improves reliability to the customers served and reliability of the system as a whole.

WUTC Background and Prudency Findings

On December 22, 2022, the Washington Utilities and Transportation Commission (WUTC) issued a Final Order that finalized PSE's electric and natural gas rates through 2024. A copy of the Final Order is provided as **Attachment A**, and the full docket is available online at <https://www.utc.wa.gov/casedocket/2022/220066/docsets>.

Relevant to the Energize Eastside project, the Coalition of Eastside Neighborhoods for Sensible Energy (CENSE) participated in the rate case and argued that the project is not a prudent investment.¹ The WUTC considered extensive evidence presented by PSE and CENSE.² As noted in the order, the WUTC's prudence evaluation typically considers the need for the resource and evaluation of alternatives,³ and the WUTC found that the Energize Eastside project met both prudence factors.⁴

Regarding need, the WUTC concluded, "The evidence establishes a need for expanding PSE's transmission on the Eastside, and this issue does not appear to be in genuine dispute according to any of the credible evidence."⁵ The WUTC considered the testimony of CENSE witness Richard Lauckhart but found it unpersuasive.⁶ The order credited the multiple needs assessment reports conducted over the years, including third-party expert reviews, and also cited the evidence of actual demand exceeding reliability thresholds as establishing need.⁷

Regarding alternatives, the WUTC similarly concluded that "PSE sufficiently considered alternatives to the Energize Eastside project," citing PSE's consideration of wire and non-wire alternatives and its determination that such alternatives were not viable or more expensive.⁸ The WUTC also rejected various other challenges and arguments, such as CENSE's criticisms of the project's permitting through local municipalities and allegations of safety and environmental concerns evaluated in the project's EIS documents.⁹ The WUTC's findings provide further support for the extensive evaluation of need and alternatives underlying this project, consistent with LUC 20.20.255(E)(3)–(5).

FERC Dismissal of CENSE Complaint

On April 24, 2023, FERC issued an Order dismissing a complaint filed by CENSE against PSE on January 17, 2023. A copy of the order is attached as **Attachment B**.

CENSE's complaint alleged that PSE's annual planning studies failed to comply with transmission planning requirements, particularly Reliability Standard TPL-001. FERC concluded that CENSE failed to demonstrate that PSE violated any applicable requirement, and it rejected

¹ Att. A at 54, ¶ 176.

² *Id.* at 55-59.

³ *Id.* at 61-62, ¶ 204.

⁴ *Id.* at 62-64. In making prudence determinations, the WUTC also typically considers two other factors: communication with and involvement of the utility's board of directors, and adequate documentation. The WUTC deferred a final determination on these two factors, but it also found that CENSE failed to present a valid objection or challenge to these factors in the instant proceeding. *Id.* at 64-65, ¶¶ 211-14.

⁵ *Id.* at 64, ¶ 209.

⁶ *Id.* at 55-59, 62-64.

⁷ *Id.* at 63-64, ¶¶ 206-09.

⁸ *Id.* at 55, ¶ 179; 64, ¶ 210.

⁹ *Id.* at 66-67, ¶¶ 217-18.

CENSE's claim that PSE was obligated to conduct a stakeholder process or to provide its annual TPL-001 study reports to interested parties.¹⁰ This dismissal marks the second time FERC has dismissed a complaint filed by CENSE.¹¹ FERC's orders support PSE's compliance with mandatory federal transmission reliability planning standards in performing its annual planning assessments and in demonstrating the ongoing need for this project, consistent with LUC 20.20.255(E)(2).

In conclusion, as PSE has maintained, and as third-party reviewers have separately confirmed, **the Energize Eastside project is needed today to meet current summer peak demand in King County to maintain reliable electric power to Bellevue. Furthermore, the current deficits experienced under today's conditions are significant.** The WUTC, the regulatory body with authority to evaluate the prudence of a utility's project investments, has confirmed that PSE has demonstrated need for the Energize Eastside project and that its consideration of alternatives was sufficient and reasonable. Should you have further questions, please feel free to contact Brad Strauch, Energize Eastside Infrastructure Program Manager at 425-456-2556 or bradley.strauch@pse.com.

Sincerely,



Jens Nedrud, PE
Director for Transmission
Puget Sound Energy, Inc.

¹⁰ Att. B at 9-12.

¹¹ In June 2015, FERC dismissed a complaint filed by CENSE and others alleging that PSE violated federal regulations in implementing the Energize Eastside project. *See id.* at 2-3.

ATTACHMENT A

WUTC UE-220066 et al – Final Order 24 10 – PSE dated December 22,
2022

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKETS UE-220066 and UG-220067
(consolidated)

FINAL ORDER 24

In the Matter of the Petition of

PUGET SOUND ENERGY

For an Order Authorizing Deferred
Accounting Treatment for Puget Sound
Energy's Share of Costs Associated with
the Tacoma LNG Facility

DOCKET UG-210918

FINAL ORDER 10

REJECTING TARIFF SHEETS;
APPROVING SETTLEMENTS, WITH
CONDITIONS; AUTHORIZING AND
REQUIRING COMPLIANCE FILING

Synopsis: The Commission approves and adopts three partial multiparty settlements, subject to limited conditions, that, considered together, resolve all the issues in this consolidated proceeding for Puget Sound Energy (PSE).

The Revenue Requirement Settlement provides for a two-year rate plan starting on January 1, 2023, approves a capital structure of 49 percent equity and 51 percent debt, sets cost of debt at 5.0 percent for the duration of the rate plan, maintains PSE's return on equity at 9.40 percent, provides for more timely recovery of power costs, provides for a pilot of time-varying rates (TVR), allows for provisional recovery of certain investments including Energize Eastside, creates a Demand Response (DR) Performance Incentive Mechanism (PIM), requires reporting on a number of metrics, and addresses a number of issues that are no longer disputed by the parties. The Settling Parties agree to, and the Commission approves with conditions in this Order, an increase to electric rates of \$223 million in rate year one and \$38 million in rate year two; and an increase to natural gas rates of \$70.6 million in rate year one and \$18.8 million in rate year two, for a total of \$350.4 million, companywide, for both years combined.

As a result of the Revenue Requirement Settlement, a typical residential electric customer using 800 kWhs per month will pay \$7.75 more per month in rate year one, for an average monthly bill of \$96.65, and will pay \$1.67 more per month in rate year two, for an average monthly bill of \$98.32. A typical residential natural gas customer using 64 therms per month

will pay \$4.87 more per month in rate year one, for an average monthly bill of \$80.56; and will pay \$1.34 more per month in rate year two, for an average monthly bill of \$81.90.

The Commission also approves and adopts the Green Direct Settlement, which provides a methodology for calculating the Energy Charge Credit. It is anticipated that this will provide current Green Direct customers with more predictable power costs.

Finally, the Commission approves and adopts the Tacoma Liquefied Natural Gas (LNG) Settlement, which authorizes PSE to seek a prudence determination and recovery of the costs related to the Tacoma LNG Facility concurrent with its 2022 Purchase Gas Adjustment filing. The Tacoma LNG Facility costs will be tracked in a separate tariff schedule. The Commission accepts this Settlement subject to the condition that PSE recovers the costs of 4 miles of distribution pipe on a provisional basis and defers associated revenues as described in this Order.

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BACKGROUND

- 1 **PROCEDURAL HISTORY.** On January 31, 2022, PSE filed revisions to its currently effective tariff, WN U-60, for electric service and its currently effective tariff, WN U-2, for natural gas service. The Company's proposed revised tariff sheets provide an effective date of March 2, 2022. This is the Company's first general rate case, and first multi-year rate plan, filed pursuant to the recently enacted RCW 80.28.425.
- 2 In its initial filing, PSE proposed a three-year rate plan for the years 2023, 2024, and 2025. In rate year one, PSE sought to increase electric rates by approximately \$310.5 million, or an average increase of approximately 13.59 percent across all customer classes. In rate year two, PSE sought to increase electric rates by approximately \$63 million, or an average increase of 2.47 percent across all customer classes. In rate year three, PSE sought to increase base electric rates by approximately \$31.8 million, or an average increase of 1.22 percent across all customer classes. The Company planned to update its projection of rate year power costs during this proceeding.
- 3 The Company proposed a similar, three-year rate plan for its base natural gas rates, with revised tariff sheets again providing an effective date of March 2, 2022. Specifically, in rate year one, PSE sought to increase natural gas rates by approximately \$143 million, or an average increase of 12.98 percent across all customer classes. In rate year two, the Company proposed to increase natural gas rates by \$28.5 million, or an average increase of 2.29 percent across all customer classes. In rate year three, PSE would increase base natural gas rates by \$23.3 million, or an average increase of 1.83 percent across all customer classes.
- 4 On February 10, 2022, the Commission entered Order 01, Complaint and Order Suspending Tariff Revisions; Order of Consolidation. The Commission initiated an adjudication and consolidated PSE's electric and natural gas rate case filings in Dockets UE-220066 and UG-220067.
- 5 On February 28, 2022, the Commission convened a virtual prehearing conference. The Commission granted unopposed petitions to intervene filed by the Alliance of Western Energy Consumers (AWEC), The Energy Project (TEP), Nucor Steel, NW Energy Coalition (NVEC), Walmart, Inc. (Walmart), King County, Federal Executive Agencies (FEA), Sierra Club, and Microsoft Corporation (Microsoft). The Commission considered the opposed petitions to intervene filed by the Puyallup Tribe of Indians (Puyallup Tribe) and Coalition of Eastside Neighborhoods for Sensible Energy (CENSE), and ultimately granted the Puyallup Tribe and CENSE intervenor status subject to conditions.
- 6 On March 3, 2022, the Commission entered Order 03, Prehearing Conference Order; Notice of Hearing (Order 03). Among other points, Order 03 set a procedural schedule for these

consolidated Dockets and resolved the parties' disputes as to the appropriate procedural schedule.

- 7 On March 1, 2022, Fred Meyer Stores Inc. and Qualify Food Centers, Divisions of The Kroger Co., (Kroger) filed a petition to intervene. Kroger amended its petition to intervene the following day. On March 16, 2022, the Commission entered Order 05, Granting Amended Petition to Intervene, finding no party objected to the petition and granting Kroger party status.
- 8 On March 11, 2022, The Energy Project (TEP) filed a Request for Case Certification and Notice of Intent to Request a Fund Grant. Later on March 14, 2022, AWEC, NWEC, CENSE, and the Puyallup Tribe filed a Request for Case Certification and Notice of Intent to Seek Fund Grant.¹
- 9 On March 15, 2022, Front and Centered (the Joint Environmental Advocates) filed a Petition to Intervene along with a Request for Case Certification and Notice of Intent to Seek Fund Grant.
- 10 On March 22, 2022, the Commission entered Order 07, Granting Late-Filed Petition to Intervene, noting that no party objected to the petition and granting Front and Centered party status.
- 11 On March 30, 2022, PSE filed a Motion to Consolidate Proceedings and Motion for Exemption from WAC 480-100-645(2). PSE argued that the Commission should consolidate its general rate case (GRC) with the Company's Clean Energy Implementation Plan (CEIP), pending in Docket U-210795. Both Staff and Public Counsel filed responses objecting to PSE's motion, but Front and Centered and NWEC filed a joint response arguing in favor of consolidation.
- 12 On April 18, 2022, the Commission entered Order 10/01, Denying Motion for Consolidation; Denying Motion for Exemption from WAC 480-100-645(2) (Order 10/01), and denying PSE's motion to consolidate the GRC and CEIP proceedings.
- 13 On April 27, 2022, Staff filed a Motion to Consolidate. Staff argued that the Commission should consolidate the Company's GRC with Docket UG-210918, a Petition for an Order Authorizing Deferred Accounting Treatment for PSE's Share of Costs Associated with the Tacoma LNG Facility (Petition) filed on November 24, 2021. On May 12, 2022, the Commission entered Order 14/01, Granting Motion to Consolidate. The Commission granted

¹ As discussed more fully in Order 08 and Order 16/02 in these consolidated dockets, the Commission granted requests for case certification and approved proposed budgets for intervenor funding consistent with RCW 80.28.430.

Staff's motion to consolidate the two proceedings, noting that the proceedings presented related factual and legal issues and that no party objected.

- 14 On April 28, 2022, PSE petitioned for review of Order 10/01.
- 15 On May 23, 2022, the Commission entered Order 15/03, Denying Motion to Strike; Granting Review and Upholding Interlocutory Order Denying Motion for Consolidation, upholding the order declining to consolidate the Company's GRC with its pending CEIP.
- 16 On June 27, 2022, PSE filed a Motion for Leave to File Revised Testimony and Exhibits (Motion). PSE submitted revised testimony and exhibits for its witnesses Birud D. Jhaveri and Susan E. Free, correcting certain calculations regarding the Energy Charge Credit for PSE's Green Direct program.
- 17 On July 8, 2022, the Commission entered Order 17/03, Granting Motion for Leave to File Revised Testimony, granting PSE leave to file revisions to Jhaveri's and Free's testimony and exhibits.
- 18 On July 11, 2022, PSE filed a letter informing the Commission of a partial multiparty settlement in principle. PSE explained that it reached a settlement in principle with Staff, King County, and Walmart regarding the Company's Green Direct program.
- 19 On July 12, 2022, the Commission issued a Notice Requiring Filing of Settlement Documents, requiring the parties to file any settlement and supporting testimony regarding the Green Direct program by August 5, 2022.
- 20 On July 12, 2022, AWEC filed a Motion to Amend Procedural Schedule. To allow more time for settlement discussions, AWEC requested a continuance of the deadlines for response testimony and rebuttal/cross-answering testimony. No party opposed this motion.
- 21 On July 13, 2022, the Commission entered Order 18/04, Granting AWEC's Motion to Modify Procedural Schedule in Part; Denying Motion in Part (Order 18/04). The Commission adopted AWEC's proposed modifications to the procedural schedule with the exception of the deadline for rebuttal/cross-answering testimony, which was due by August 30, 2022.
- 22 On July 15, 2022, PSE petitioned for review of Order 18/04.
- 23 On July 19, 2022, the Commission entered Order 19/05, Granting Petition for Interlocutory Review of Order 18/04 and Modifying Procedural Schedule, moving the deadline for rebuttal/cross-answering testimony to September 7, 2022, as PSE requested.
- 24 On July 26, 2022, CENSE filed Response Testimony.

- 25 On July 28, 2022, Staff, Public Counsel, FEA, Kroger, Walmart, TEP, Nucor Steel, AWEC, the Puyallup Tribe, and Microsoft filed Response Testimony. That same day, NWECA, Front and Centered, and Sierra Club (the Joint Environmental Advocates) jointly filed Response Testimony.
- 26 On August 5, 2022, PSE filed a Settlement Stipulation and Agreement related to the Green Direct program (Green Direct Settlement) and Joint Testimony.
- 27 On August 12, 2022, counsel for PSE emailed the presiding administrative law judge to inform the Commission that PSE had reached settlement in principle with other parties on additional issues in the case. PSE requested that the Commission suspend and modify the procedural schedule. PSE indicated that no party objected to its proposed modified schedule.
- 28 On August 17, 2022, the Commission issued a Notice Suspending Procedural Schedule and Notice of Virtual Status Conference.
- 29 On August 18, 2022, the Commission held a virtual status conference. The Commission raised concerns that PSE's proposed modified schedule did not provide the Commission sufficient time to prepare for a hearing.
- 30 On August 22, 2022, the Commission entered Order 20/06, Granting Motion to Modify Procedural Schedule in Part; Denying in Part. The Commission adopted PSE's proposed modified schedule with the exception of the deadline for response testimony in opposition to the settlements, which was due by September 9, 2022.
- 31 On August 26, 2022, PSE filed a Settlement Stipulation and Agreement on Revenue Requirement and All Other Issues Except Tacoma LNG and PSE's Green Direct Program (Revenue Requirement Settlement) and a Settlement Stipulation and Agreement on Tacoma LNG (Tacoma LNG Settlement). PSE, Staff, AWEC, TEP, Microsoft, Walmart, Nucor Steel, FEA, and the Joint Environmental Advocates filed supporting testimony and exhibits relating to the settlements the same day.
- 32 On September 1, 2022, PSE filed joint testimony from its witnesses Birud D. Jhaveri and John D. Taylor, describing the proposed settlements' bill impacts.²
- 33 On September 9, 2022, Public Counsel and the Puyallup Tribe filed response testimony in opposition to the Tacoma LNG Settlement. CENSE filed response testimony in opposition to the terms of the Revenue Requirement Settlement concerned with the prudence of the Energize Eastside project. That same day, TEP filed a letter indicating that it opposed the

² The Revenue Requirement Settlement required PSE to file testimony describing the bill impacts of the proposed settlement by September 2, 2022.

Tacoma LNG Settlement, but TEP would provide argument in its post-hearing brief rather than submit testimony on the issue.

- 34 On September 20, 2022, the Commission issued Bench Request No. 01. The Commission observed that Sierra Club submitted testimony from its attorney representative, Gloria D. Smith, and required Sierra Club to explain whether Smith's testimony was consistent with the requirements of Washington Rule of Professional Conduct 3.7.³
- 35 On September 21, 2022, and again on September 23, 2022, CENSE filed proposed cross-examination exhibits.
- 36 On September 26, 2022, Public Counsel and the Puyallup Tribe filed proposed cross-examination exhibits. That same day, Microsoft filed objections to CENSE's proposed cross-examination of its witness, Irene Plenefisch.
- 37 On September 28, 2022, PSE filed Hearing and Exhibit Objections. PSE objected to any cross-examination conducted by CENSE witness Richard Lauckhart, and objected to the admissibility of certain cross-exhibits filed by CENSE.
- 38 On September 28, 2022, the Commission held a virtual public comment hearing in the consolidated proceedings. The Commission received comment from over 100 interested persons.⁴
- 39 On September 29, 2022, Staff filed a Motion in Limine, objecting to CENSE's proposed cross-examination of its witness Joel Nightingale.
- 40 The Commission conducted a virtual settlement hearing on October 3, 2022. By stipulation of the parties, the Commission entered into the record all pre-filed testimony and exhibits, as well as all cross-examination exhibits, with the exception of proposed CENSE cross-exhibits marked JBN-9X and DRK-29X through DRK-35X. During the hearing, the Commission admitted cross-exhibit JBN-9X and rejected cross-exhibits DRK-29X through DRK-35X.
- 41 On October 11, 2022, the Commission issued Bench Request No. 2 to PSE, requesting a complete set of workpapers supporting the Revenue Requirement Settlement and showing the treatment of Tacoma LNG Facility and Tacoma LNG Project costs. PSE subsequently responded to Bench Request No. 2 on October 18, 2022.

³ Sierra Club responded to Bench Request No. 1 on September 27, 2022. Following a request by the presiding administrative law judge, Sierra Club filed a notice of withdrawal of representative for Gloria D. Smith on September 28, 2022.

⁴ Public Counsel Brief ¶ 100, n.225 (citing Public Comment Hr'g Tr. vol. 3 (filed Oct. 7, 2022)).

- 42 On October 17, 2022, Public Counsel filed with the Commission Exhibit BR-3, public comments submitted in the proceeding. Public Counsel provided a total of 1,921 written comments, with two comments in favor of the proposed rate increase, eight comments described as undecided, and 1,911 comments opposed to the proposed rate increase.⁵
- 43 On October 31, 2022, the Commission received post-hearing briefs from PSE, Staff, Public Counsel, and each of the intervenors except for Microsoft.
- 44 **PARTY REPRESENTATIVES.** Sheree Strom Carson, Pamela J. Anderson, Donna L. Barnett, David Steele, Ryan C. Thomas, and Byron C. Starkey, of Perkins Coie LLP, Seattle, Washington, represent PSE. Jeff Roberson, Nash Callaghan, Harry Fukano, Joe Dallas, and Daniel Teimouri, Assistant Attorneys General, Tumwater, Washington, represent Commission staff (Staff).⁶ Ann Paisner, Lisa W. Gafken, and Nina Suetake, Assistant Attorneys General, Seattle, Washington, represent the Public Counsel Unit of the Attorney General’s Office (Public Counsel). Brent Coleman and Summer Moser of Davison Van Cleve, P.C., Portland, Oregon, represent the Alliance of Western Energy Consumers (AWEC). Tyler Pepple and Corinne O. Milinovich of Davison Van Cleve, P.C., Portland, Oregon, represent Microsoft Corporation (Microsoft). Yochanan Zakai of Shute, Mihaly & Weinberger LLP and Simon J. ffitich, Attorney at Law, Bainbridge Island, Washington, represent The Energy Project. Damon Xenopoulos, Shaun C. Mohler, and Laura W. Baker, of Stone Mattheis Xenopoulos & Brew, PC, Washington, DC, represent Nucor Steel Seattle, Inc. (Nucor Steel). Jaimimi Parekh, Amanda Goodin, and Jan Hasselman, of Earthjustice, represent the NW Energy Coalition (NWECC), Front and Centered, and Sierra Club. Gloria D. Smith and Jim Dennison of the Sierra Club Environmental Law Program, also represent Sierra Club. Murial Thuraingham, Clean Energy Policy Lead, also represents Front and Centered. Norm Hansen represents the Coalition of Eastside Neighborhoods for Sensible Energy (CENSE). Rita Liotta, of the United States Navy, represents the Federal Executive Agencies (FEA). Vicki M. Baldwin, of Parsons, Behle and Latimer, represents Walmart Inc. (Walmart). Verna Bromley and Raul Martinez, of the King County Prosecuting Attorney’s Office, as well as Benjamin Mayer and Kari L. Vander Stoep, of K&L Gates LLP, represent King County. Lisa Anderson, Sam Stiltner, and Alec Wrolson, of the Law Office of the Puyallup Tribe, and Nicholas G. Thomas and Andrew S. Fuller, of Ogden Murphy Wallace, PLLC, represent the Puyallup Tribe of Indians.

⁵ Response to BR-3 (Summary of Public Comments).

⁶ In formal proceedings such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

- 45 **COMMISSION DETERMINATIONS.** As PSE notes in its post hearing brief, this may be the most complex general rate case in the Company’s history.⁷ The 15 parties to the case have grappled with dozens of complex issues with far-reaching implications. These include PSE’s planned investments in clean energy, its proposals for a multi-year rate plan (MYRP) as required by recent legislation, and the Company’s interest in addressing its financial health after implementing mitigation measures during the COVID-19 pandemic.
- 46 Our Order today approves three settlement agreements that resolve all the issues in this proceeding. We conclude that the three settlements, subject to certain conditions, reasonably balance the interests of PSE and its customers, while addressing several pressing issues regarding clean energy, power costs, and the inclusion of equity in capital planning. Considered together, these three settlements provide for a two-year MYRP for PSE that is lawful, supported by an appropriate record, and consistent with the expanded definition of the public interest.⁸
- 47 The overarching Revenue Requirement Settlement addresses numerous issues in the case and sets forth a two-year MYRP. We approve the Revenue Requirement’s provisions for performance-based regulation (PBR), which include a modified demand response (DR) performance incentive mechanism (PIM), the continuation of established metrics with associated targets, and new metrics without any defined targets. We find that these tools, together, provide a basis for assessing PSE’s performance. Overall, we approve the Revenue Requirement Settlement subject to the following conditions: (1) additional requirements for reporting the Settlement’s proposed metrics to the Commission, (2) modifying the distributional equity analysis to reflect a Commission-led process for all investor-owned utilities in the state, (3) requiring PSE to demonstrate all offsetting benefits under the Inflation Reduction Act (IRA) and Infrastructure Investment and Jobs Act of 2021 (IIJA) when seeking review of capital investments, (4) similarly requiring PSE to demonstrate all offsetting benefits under the IRA and IIJA when seeking recovery of power costs, and (5) authorizing the Company’s deferred accounting petition filed in Docket UG-210918 subject to certain modifications.
- 48 Public Counsel opposes certain terms, primarily the Revenue Requirement Settlement’s proposed capital structure and return on equity (ROE). We reject these challenges as unpersuasive. The Revenue Requirement Settlement provides for the lowest weighted average

⁷ See PSE Brief ¶ 19.

⁸ See RCW 80.28.425(1) (providing that the Commission may consider factors such as “environmental health and greenhouse gas emissions reductions, health and safety concerns, economic development, and equity, to the extent such factors affect the rates, services, and practices of a gas or electrical company regulated by the commission.”).

cost of capital for PSE in recent years. It reasonably maintains PSE's ROE at 9.40 percent in the face of increasing inflation.

- 49 We also observe that CENSE opposes the Revenue Requirement Settlement's terms related to the provisional recovery of the Energize Eastside investment. We find these challenges unpersuasive and contrary to the opinions of independent experts, who agree that there is a need for additional transmission capacity on the eastside of Lake Washington.
- 50 The Green Direct Settlement is narrower in scope and addresses PSE's Green Direct program, a voluntary renewable energy program for larger institutional customers. We agree that the Green Direct Settlement provides a reasonable method to calculate the Energy Charge Credit for current customers. This Settlement is not opposed by any party.
- 51 The Tacoma LNG Settlement is also narrow in scope, addressing the Company's recovery of its investment in the Tacoma LNG Facility located at the Port of Tacoma. This settlement, however, presents more difficult questions regarding prudence, equity, environmental health, specifically how the Commission should consider capital investments constructed before equity was recognized as an overriding public policy issue.
- 52 After carefully considering the challenges raised by Public Counsel and the Puyallup Tribe of Indians, we conclude that PSE acted prudently in developing and constructing the facility up through the Board of Director's decision to authorize construction on September 22, 2016. The parties may review and challenge subsequent construction and operation costs in a later proceeding. We also conclude that the prudence standard should remain focused on what the utility reasonably knew at the time it made its investment decisions. PSE's decisions should not be second-guessed based on facts or changes to the law that occurred after it initiated construction and after the facility was mechanically completed. We accept the Tacoma LNG Settlement subject to the condition that PSE include \$30 million reflecting the cost of 4 miles of distribution pipe in rates on a provisional basis and defer associated revenue for later review.

MEMORANDUM

I. STANDARD OF REVIEW

A. Regulating in the public interest and determining equitable, fair, just, reasonable, and sufficient rates

- 53 The Legislature has entrusted the Commission with broad discretion to determine rates for regulated industries. Pursuant to RCW 80.28.020, whenever the Commission finds after a hearing that the rates charged by a utility are "unjust, unreasonable, unjustly discriminatory or

unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order.”

54 As a general matter, the burden of proving that a proposed increase is just and reasonable is upon the public service company.⁹ The burden of proving that the presently effective rates are unreasonable rests upon any party challenging those rates.¹⁰

55 More recently, in 2019, the Legislature expanded the traditional definition of the public interest standard. As Washington state transitions to a clean energy economy, the public interest includes: “The equitable distribution of energy benefits and reduction of burdens to vulnerable populations and highly impacted communities; long-term and short-term public health, economic, and environmental benefits and the reduction of costs and risks; and energy security and resiliency.”¹¹ In achieving these policies, “there should not be an increase in environmental health impacts to highly impacted communities.”¹²

56 In 2021, the Legislature again expanded upon the public interest standard in the context of reviewing multiyear rate plans. RCW 80.28.425 provides that “[t]he commission’s consideration of a proposal for a multiyear rate plan is subject to the same standards applicable to other rate filings made under this title, including the public interest and fair, just, reasonable, and sufficient rates.” The statute continues, “In determining the public interest, the commission may consider such factors including, but not limited to, environmental health and greenhouse gas emissions reductions, health and safety concerns, economic development, and equity, to the extent such factors affect the rates, services, and practices of a gas or electrical company regulated by the commission.”¹³

57 Following the passage of RCW 80.28.425, the Commission indicated its commitment to considering equity while regulating in the public interest: “So that the Commission’s decisions do not continue to contribute to ongoing systemic harms, we must apply an equity lens in all public interest considerations going forward.”¹⁴ The Commission also indicated that regulated companies should be prepared to address equity considerations in future cases:

⁹ RCW 80.04.130(1).

¹⁰ *WUTC v. Pacific Power and Light Company*, Cause No. U-76-18 (December 29, 1976) (internal citations omitted).

¹¹ RCW 19.405.010(6).

¹² *Id.*

¹³ *Id.*

¹⁴ *WUTC v. Cascade Natural Gas Corporation*, Docket UG-210755 Order 10 ¶ 58 (August 23, 2022).

“Recognizing that no action is equity-neutral, regulated companies should inquire whether each proposed modification to their rates, practices, or operations corrects or perpetuates inequities.”¹⁵

58 This evolving statutory framework is an overarching issue in this proceeding. We consider equity, environmental health, and other public interest factors in greater detail below. To the extent that recent legislation has added requirements to the Commission’s consideration of MYRPs and PBR, these issues are also addressed below.

B. The Commission’s process for considering settlements

59 Pursuant to WAC 480-07-750(2), the Commission will approve a settlement “if it is lawful, supported by an appropriate record, and consistent with the public interest in light of all the information available to the commission.”

60 The Commission has emphasized that our purpose is “to determine whether the Settlement terms are lawful and in the public interest.”¹⁶ While the Commission “do[es] not consider the Settlement’s terms and conditions to be a ‘baseline’ subject to further litigation,”¹⁷ we may modify or reject a settlement that is not in the public interest.¹⁸

61 The Commission may therefore take one of the following actions after reviewing a settlement:

- (1) Approve the proposed settlement without condition,
- (2) Approve the proposed settlement subject to condition(s), or
- (3) Reject the proposed settlement.¹⁹

62 If the Commission approves a proposed settlement without condition, a settlement is adopted as the Commission’s resolution of the proceeding.²⁰ If the Commission approves a proposed settlement subject to any conditions, the Commission will provide the settling parties an

¹⁵ *Id.*

¹⁶ *WUTC v. Avista Corp.*, Dockets UE-080416 and UG-080417 (consolidated), Order 08, ¶ 20 (December 29, 2008).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ WAC 480-07-750(2).

²⁰ *See* WAC 480-07-750(2)(a).

opportunity to accept or reject the conditions.²¹ When the settling parties accept the Commission’s conditions, the Commission’s order approving the settlement becomes final by operation of law.²² However, when one or more of the settling parties rejects the Commission’s conditions, the Commission deems the settlement rejected and the procedural schedule reverts to the point in time where the Commission suspended the procedural schedule to consider the settlement.²³

II. REVENUE REQUIREMENT SETTLEMENT

C. Overview of the Revenue Requirement Settlement and Supporting Testimony

63 On August 26, 2022, the Settling Parties filed a multiparty settlement that resolves all issues in this proceeding except those related to the Tacoma LNG Facility and Green Direct. The Revenue Requirement Settlement proposes a two-year MYRP, rather than three years as initially proposed by PSE. Below, Table 1 provides a side-by-side comparison of the revenue requirement as requested and as settled.

Table 1: As filed and settlement revenue requirement comparison²⁴
(in millions of dollars)

		<i>Rate Year 1</i>	<i>Rate Year 2</i>	<i>Rate Year 3</i>	Total MYRP
PSE Electric Service	<i>As filed</i>	310.60	63.10	31.80	405.50
	<i>Settlement</i>	223.00	38.00	N/A	261.00
PSE Natural Gas Service	<i>As filed</i>	143.00	28.50	23.30	194.80
	<i>Settlement</i>	70.60	18.80	N/A	89.40
PSE total	<i>As filed</i>	453.60	91.60	55.10	600.30
	<i>Settlement</i>	293.60	56.80	N/A	350.40

64 Notably, the Settling Parties propose to remove certain investments from base rates and to recover them in separate tariff schedules, known as trackers. PSE agrees to file two new

²¹ WAC 480-07-750(2)(b). *Accord WUTC v. Avista Corp.*, Dockets UE-080416 and UG-080417 (consolidated), Order 08, ¶¶ 19-20 (December 29, 2008).

²² WAC 480-07-750(2)(b)(i).

²³ WAC 480-07-750(2)(b)(ii). *See also* WAC 480-07-750(c).

²⁴ *See* Exhibit SEF-3-1-31-22 and Exhibit SEF-8-1-31-22, Exhibit A to the Settlement Stipulation Agreement Revenue Requirement, page 5, line 1

trackers to recover all rate base, depreciation, and operations and maintenance (O&M) expenses related to investments under the Company's Clean Energy Implementation Plan (CEIP) and Transportation Electrification Plan.²⁵ Tacoma LNG Facility costs are also excluded from the Revenue Requirement Settlement and will be recovered through a "future rate tracker,"²⁶ which is discussed in the Tacoma LNG Settlement.²⁷

65 The Settling Parties agree to other adjustments and modifications to the Company's initial filing. At a high level, these terms include:

1. *Rate of return and capital structure:* The Revenue Requirement Settlement provides, "The authorized return on equity is set at 9.4 percent and the capital structure is set at 49 percent equity/51 percent debt with the cost of debt at 5.0 percent for the duration of the MYRP."²⁸
2. *COVID deferral:* PSE agrees to a partial write-off of its deferred COVID costs filed in Dockets UE-200780 and UG-200871, but PSE may seek to recover "Additional Funding for Customer Programs" provided by PSE in compliance with Order 01 in Docket U-200281 and bad-debt accrued in excess of levels embedded in existing rates.²⁹
3. *Provisional pro forma plant:* As noted above, PSE agrees to remove CEIP, Transportation Electrification Plan, and Tacoma LNG Facility costs from rate base and to recover these investments through trackers. PSE agrees to further reductions including:
 - a. Excluding PSE's Colstrip dry ash facilities from recovery;³⁰
 - b. Excluding PSE's renewable natural gas costs from recovery;³¹

²⁵ E.g., Revenue Requirement Settlement ¶¶ 23.f, k, l.

²⁶ The Settling Parties do not precisely define the term "future rate tracker." PSE witnesses use this term when describing the recovery of CEIP costs and other costs through rate trackers, *see* JAP-SEF-JJJ-1JT at 14:5-8, 17:4-8. But regardless, PSE witnesses make clear in supporting testimony that the Revenue Requirement Settlement's proposed tracker for CEIP costs allows for recovery of projected costs, subject to later review and possible refund. *Id.* at 15:4-6. We therefore interpret this term as describing the provisional recovery of investments subject to later review and possible refund.

²⁷ Joint Testimony Exh. JAP-SEF-JJJ-1JT at 17:4-7.

²⁸ Revenue Requirement Settlement ¶ 23.a.

²⁹ Revenue Requirement Settlement ¶ 23.n.

³⁰ Revenue Requirement Settlement ¶ 23.j.

³¹ Revenue Requirement Settlement ¶ 23.c.

- c. Reducing PSE’s natural gas revenue requirement by \$5 million in 2023 and \$1 million in 2024;³² and
 - d. Delaying \$70 million in electric and natural gas reliability spending from 2023 to 2024.³³
4. *Equity return on advanced metering infrastructure (AMI)*: The Settling Parties agree, among other points, that PSE may recover its AMI plant put into service through December 31, 2021, to the extent not already recovered, and that PSE may recover its debt component of return on AMI rate base over three years.³⁴ However, PSE will continue to defer recovery of its return on equity on AMI, and the Company will not receive a final prudency determination until AMI installation is complete and it files an AMI benefits progress report.³⁵ This is consistent with the Commission’s findings in the Company’s 2019 GRC.³⁶
 5. *Reductions to Electric Operations & Maintenance (O&M)*: The Settling Parties agree that PSE will reduce its as-filed electric O&M costs to reflect certain adjustments, including \$34.7 million in reductions to 2023 and 2024 electric O&M costs to reflect the recovery of Energy Charge Credit under the Green Direct Program in Schedule 141A.³⁷
 6. *General reduction to Gas O&M*: The Settling Parties agree to a 20 percent or \$15.5 million overall reduction to PSE’s proposed increases for 2023 and 2024 gas O&M.³⁸
 7. *Delayed service dates for Energize Eastside*: The Settling Parties agree that delayed service dates for Energize Eastside are assumed to be incorporated into the agreed-upon revenue requirement.³⁹
 8. *Corporate Capital Planning*: By the end of the MYRP, PSE will submit a compliance filing that describes how its Board of Directors and senior management plan for equitable outcomes. This will include a “transparent and

³² Revenue Requirement Settlement ¶ 23.g.

³³ Revenue Requirement Settlement ¶ 23.b.

³⁴ Revenue Requirement Settlement ¶ 23.e.

³⁵ *Id.*

³⁶ 2019 PSE GRC Order ¶¶ 155-56.

³⁷ Revenue Requirement Settlement ¶ 23.h (citing Revenue Requirement Settlement Exh. J).

³⁸ Revenue Requirement Settlement ¶ 23.i. (citing Revenue Requirement Settlement Exh. J).

³⁹ Revenue Requirement Settlement ¶ 23.m.

inclusive” methodology for applying an “equity lens” to the Corporate Capital Allocation framework.⁴⁰

9. *Investment decision optimization tool (iDOT)*: The Settling Parties agree that PSE will consult with its Equity Advisory Group and take other steps to include new benefits and costs in iDOT, which include societal impacts, non-energy benefits and burdens, and the Social Cost of Greenhouse Gases.⁴¹
10. *Power Costs*: PSE agrees to a power cost-only rate case stay-out during the pendency of the MYRP.⁴² The Settling Parties accept the prudence of all power supply resources included in the Company’s initial filing,⁴³ and set forth a detailed process for annual updates to power costs.⁴⁴
11. *Low-income issues*: By July 1, 2023, PSE will submit a compliance filing for approval of a Bill Discount Rate (BDR) and Arrearage Management Plan (AMP) developed in consultation with its Low-Income Advisory Committee.⁴⁵ PSE agrees to increase Home Energy Lifeline Program (HELP) funding consistent with RCW 80.28.425(2),⁴⁶ and agrees to make a good faith effort to increase weatherization measure incentive amounts in 2022.⁴⁷
12. *Time Varying Rates (TVR) Pilot*: The Settling Parties agree that PSE will carry out its proposed TVR pilot with certain modifications, among other aspects, by providing enabling technology to half of low income-participants and providing bill protection to half of low-income participants.⁴⁸ PSE agrees to propose a full opt-in TVR program for residential customers in its next GRC.⁴⁹
13. *Gas Line Extension Margin Allowances*: The Settling Parties agree that PSE will gradually reduce gas line extension margin allowances over the course of the

⁴⁰ Revenue Requirement Settlement ¶ 24.

⁴¹ Revenue Requirement Settlement ¶ 26.

⁴² Revenue Requirement Settlement ¶ 27.

⁴³ Revenue Requirement Settlement ¶ 31.

⁴⁴ Revenue Requirement Settlement ¶¶ 28-30.

⁴⁵ Revenue Requirement Settlement ¶ 37.

⁴⁶ Revenue Requirement Settlement ¶ 38.

⁴⁷ Revenue Requirement Settlement ¶ 39.

⁴⁸ Revenue Requirement Settlement ¶ 41.

⁴⁹ Revenue Requirement Settlement ¶ 42.

MYRP, and that by January 1, 2025, the gas line extension margin allowance will be reduced to zero.⁵⁰

14. *Distributional Equity Analysis*: PSE agrees to conduct a pilot distributional equity analysis, which will be applied to the Company's proposed acquisition of 80 MW of distributed energy resources, and the Company agrees to participate in a Staff-led process to refine the methods for distributional equity analysis.⁵¹
15. *Northwest Pipeline*: A one-year amortization of \$4.4 million from the Northwest Pipeline refund funds will reduce 2023 forecasted power costs.⁵²
16. *Streamlining of Reports*: The Settling Parties agree to PSE's proposed streamlining of reporting to the Commission.⁵³
17. *Performance Based Ratemaking*: As discussed below in sections II.E and II.F of this Order, the Settling Parties accept PSE's proposed Demand Response (DR) Performance Incentive Mechanism (PIM) with certain modifications. The Settling Parties agree that there will be no electric vehicle (EV) PIM.⁵⁴ PSE will, however, be required to report on a number of metrics addressing grid resiliency, environmental impacts, customer affordability, and equity, in addition to the metrics set forth in the Company's initial filing.⁵⁵ With the exception of the DR PIM, the Settlement proposes no targets for benchmarks in new metrics.⁵⁶
18. *Decarbonization Study*: PSE will file an updated decarbonization study within 12 months of the issuance of this order, and the results of this study will be incorporated into PSE's 2025 Natural Gas Integrated Resource Plan (IRP).⁵⁷

⁵⁰ Revenue Requirement Settlement ¶ 49.

⁵¹ Revenue Requirement Settlement ¶¶ 50-51.

⁵² Revenue Requirement Settlement ¶ 23.d.

⁵³ Revenue Requirement Settlement ¶ 56 (discussing Piliaris, Exh. JAP-1T at 62:14-79:8).

⁵⁴ Revenue Requirement Settlement ¶ 59.

⁵⁵ Revenue Requirement Settlement ¶¶ 60-64.

⁵⁶ Revenue Requirement Settlement ¶ 60.

⁵⁷ Revenue Requirement Settlement ¶ 66.

19. *Targeted Electrification Pilot*: PSE will conduct a Targeted Electrification Pilot, aimed at engaging 10,000 customers through rebates, incentives, electrification assessments, and education.⁵⁸

20. *Targeted Electrification Strategy*: PSE will use the information gained from its decarbonization study and Targeted Electrification Pilot to develop a Targeted Electrification Strategy, which will be included in the Company's next Natural Gas IRP or Progress Report.⁵⁹ The Company is required, among other points, to consider fuel-switching rebates and to phase out promotional advertising for connecting new customers to the gas system by January 1, 2023.⁶⁰

66 Each of the Settling Parties have provided testimony in support of this agreement. PSE witnesses Piliaris, Free, and Jacob describe the Revenue Requirement Settlement as a “fair, reasonable, and a delicately crafted resolution of significant number of issues in this very complex case.”⁶¹ They submit that “[t]he agreed-upon revenue requirement and provision for timely changes to rates for updates to PSE’s power costs helps to ensure that the Company has the financial health required to provide safe and adequate service.”⁶² They also note that the Settlement incorporates equity into the Company’s corporate planning processes, provides a greater level of support for low-income customers, and furthers the public interest in environmental health.⁶³

67 Staff witness Erdahl likewise supports the Revenue Requirement Settlement as a reasonable outcome for the Company’s revenue requirement and “a number of sizeable policy issues,” including cost of capital, equity, AMI, Colstrip, and CEIP costs, among other issues.⁶⁴

68 Considering the Revenue Requirement Settlement in light of RCW 80.28.425, TEP witness Cebulko observes that the Settlement will require PSE “to begin collecting a robust data set on the utility’s performance from year to year that measures if the Company is providing energy service that meets the Commission’s regulatory goals and outcomes.”⁶⁵ Cebulko also supports

⁵⁸ Revenue Requirement Settlement ¶ 67.

⁵⁹ Revenue Requirement Settlement ¶ 68.

⁶⁰ *Id.*

⁶¹ Joint Testimony, Exh. JAP-SEF-JJJ-1T at 5:8-9.

⁶² Joint Testimony, Exh. JAP-SEF-JJJ-1T at 4:1-3.

⁶³ Joint Testimony, Exh. JAP-SEF-JJJ-1T at 4:10-21.

⁶⁴ Erdahl, Exh. BAE-1T at 2:20-3:4.

⁶⁵ Cebulko, Exh. BTC-7T at 3:4-6.

the Settlement's proposed DR PIM,⁶⁶ TVR pilot,⁶⁷ low-income customer programs,⁶⁸ decarbonization and electrification studies,⁶⁹ and capital planning processes.⁷⁰

69 AWEC witness Mullins notes that the Revenue Requirement Settlement is supported by a "diverse group" of interested parties and that it addresses steps PSE will take to comply with CETA and the CCA.⁷¹ Mullins supports the Settlement as providing for fair, just, reasonable, and sufficient rates.⁷²

70 Nucor witness Higgins submits that the Revenue Requirement Settlement's allocation of class revenue reflects a reasonable compromise among the parties.⁷³ Higgins supports the removal of renewable natural gas costs from the Company's revenue requirement and the reasonable rate design for Schedules 87, 87T, 141R and 141N.⁷⁴

71 The Joint Environmental Advocates also testify in support of the Settlement. Smith explains that "[o]verall, the Settlement advances clean energy and the public interest by limiting PSE's expenditures in gas system expansion, providing for improved future analysis and planning related to gas system decarbonization, and limiting investments in unproven alternative pipeline fuels."⁷⁵ McCloy similarly testifies that the Settlement is consistent with the public interest and a "clean, affordable, and equitable energy system in Washington."⁷⁶ McCloy discusses the Settlement's treatment of CETA issues, PBR, Colstrip, DR, distribution system planning, EV supply equipment payment methods, low-income issues, and CCA issues, among other points.⁷⁷

72 Kronauer testifies that the Settlement addresses issues raised in Walmart's responsive testimony. These include the proposed 9.40 ROE; the recovery of 80 percent of Colstrip tracker costs through demand charges and 20 percent through energy charges; and the

⁶⁶ *E.g., id.* at 4:5-8.

⁶⁷ *Id.* at 7:5-8:6.

⁶⁸ *E.g., id.* at 8:16-9:12.

⁶⁹ *Id.* at 12:9-13:21.

⁷⁰ *Id.* at 14:1-7.

⁷¹ Mullins, Exh. BGM-11T at 12:11-15.

⁷² *Id.* at 12:22-13:1.

⁷³ Higgins, Exh. KCH-7T at 2:2-23.

⁷⁴ *Id.* at 2:22-3:1.

⁷⁵ Smith, Exh. GDS-1T at 4:17-20.

⁷⁶ McCloy, Exh. LCM-10T at 2:15-16.

⁷⁷ *E.g., id.* at 2:18-20.

inclusion of demand and energy components for Schedule 141-R and 141-N customers, proportional with each rate schedule's rate design.⁷⁸

- 73 Al-Jabir explains that FEA supports the Revenue Requirement Settlement because it provides for lower revenue requirement increases compared to the Company's initial filing.⁷⁹ Al-Jabir notes as well that the Settlement results in more cost-based rates for Schedule 49 customers; incorporates demand and energy charges into the design of the Colstrip rider and MYRP riders; and reasonably allocates the costs of the Targeted Electrification Pilot and Targeted Electrification Strategy.⁸⁰
- 74 The scope of opposition to the Revenue Requirement Settlement is relatively narrow and limited. Out of the four parties that did not join the Revenue Requirement Settlement, two parties take an essentially neutral position. King County neither joins nor opposes the Settlement.⁸¹ The Puyallup Tribe does not directly address the Revenue Requirement Settlement in its testimony, but instead focuses its opposition on the Tacoma LNG Settlement.⁸²
- 75 Two parties oppose specific terms within the Revenue Requirement Settlement. CENSE opposes the prudence of the Energize Eastside transmission project.⁸³ Public Counsel supports many of the Settlement's terms as consistent with the public interest,⁸⁴ and it takes no position on several other terms.⁸⁵ Public Counsel, however, opposes the terms related to capital structure and ROE.⁸⁶ Our discussion of the Revenue Requirement Settlement will focus on these limited areas of disagreement raised by CENSE and Public Counsel.

⁷⁸ Kronauer, Exh. AJK-17T at 2:2-9.

⁷⁹ Al-Jabir, Exh. AZA-7T at 2:12-16.

⁸⁰ *Id.* at 2:17-3:9.

⁸¹ Revenue Requirement Settlement ¶ 3.

⁸² *See generally* Sahu, Exh. RXS-30T (Response Testimony of Ranajit Sahu in Opposition to the Settlement Stipulation and Agreement on Tacoma LNG).

⁸³ *E.g.*, Revenue Requirement Settlement ¶ 4 (noting CENSE's opposition).

⁸⁴ Bauman, Exh. SB-9T at 6:6-19 (noting that Public Counsel accepts the Settlements terms regarding PBR, PCORCs, CETA costs, decarbonization and electrification studies, gas line extension margin allowances, distributional equity analysis, the TVR pilot, low-income issues, Colstrip cost recovery, AMI, rate spread, and rate design).

⁸⁵ *Id.* at 7:1-6 (noting that Public Counsel takes no position on the overall revenue requirement, Energize Eastside, depreciation, earnings test, and power costs).

⁸⁶ Bauman, Exh. SB-9T at 1:21; 2:1-2.

76 We begin by considering whether the Revenue Requirement Settlement complies with the provisions in recently enacted RCW 80.28.425. Although no party argues that the settlement fails to satisfy the statute’s requirements, we must consider whether the Settling Parties’ proposed terms meet the requirements for a MYRP and whether it is consistent with the Commission’s expectations for PBR.

D. The Revenue Requirement Settlement’s proposed two-year MYRP.

77 The Settling Parties have agreed to a two-year MYRP.⁸⁷ PSE witnesses explain that the two-year MYRP in combination with other terms in the Settlement will “help PSE to restore its financial health.”⁸⁸ While the Company initially requested a three-year rate plan, the Company cites economic uncertainty and regulatory changes as factors supporting a shorter term.⁸⁹

78 *Commission Determination.* We accept the Settlement’s proposed two-year MYRP. The Settling Parties’ agreement on this issue is lawful, supported by an appropriate record, and consistent with the public interest.

79 On May 3, 2021, Washington Governor Jay Inslee signed into law Senate Bill 5295, titled “an Act to transform the regulation of gas and electric utilities toward multi-year rate plans and performance-based rate making.”⁹⁰ Although the Commission already had authority to consider MYRPs and other performance-based ratemaking mechanisms,⁹¹ the newly codified RCW 80.28.425 provided the Commission specific direction and new tools to address the limitations of traditional cost-of-service ratemaking and help achieve state policy goals.

80 Beginning January 1, 2022, gas and electric investor-owned utilities must include a MYRP between two and four years in length as part of any general rate case filing.⁹² Following an adjudicative proceeding, the Commission may approve the utility’s MYRP, approve it with

⁸⁷ Revenue Requirement Settlement ¶ 20.

⁸⁸ Joint Testimony, Exh. JAP-SEF-JJJ-1JT at 8:12-14.

⁸⁹ *Id.* at 9:26-28.

⁹⁰ Laws of 2021, ch. 188.

⁹¹ RCW 19.405.010(5) (“[T]he legislature recognizes and finds that the utilities and transportation commission's statutory grant of authority for rate making includes consideration and implementation of performance and incentive-based regulation, multiyear rate plans, and other flexible regulatory mechanisms where appropriate to achieve fair, just, reasonable, and sufficient rates and its public interest objectives.”).

⁹² RCW 80.28.425(1).

conditions, or reject it.⁹³ The Commission may also approve an alternative proposal from another party.⁹⁴

81 When considering a proposed MYRP, the Commission considers whether the rate plan results in fair, just, reasonable, and sufficient rates, following the same standard that applies to other rate cases.⁹⁵ The Commission may also consider factors “including, but not limited to, environmental health and greenhouse gas emissions reductions, health and safety concerns, economic development, and equity, to the extent such factors affect the rates, services, and practices” of the utility.⁹⁶ The Commission “shall separately approve rates” for each year of the rate plan.⁹⁷

82 The Commission also has discretion in structuring the terms of the MYRP. We may establish “terms, conditions, and procedures” for any such rate plan.⁹⁸ The utility is bound by the terms of the approved MYRP for the first and second rate years, but the utility may choose to file and propose a new MYRP for the third and fourth years of the rate plan.⁹⁹

83 The statute also requires that “[t]he commission must, in approving a multiyear rate plan, determine a set of performance measures that will be used to assess a gas or electrical company operating under a multiyear rate plan.”¹⁰⁰

84 As required by RCW 80.28.425, PSE proposed an MYRP in its initial filing. PSE specifically proposed a three-year MYRP with performance measures.¹⁰¹ PSE also proposed an earnings sharing mechanism, as required by statute.¹⁰²

85 The evidence describes several likely benefits from the proposed MYRP. Company witness Piliaris testifies that a well-constructed MYRP allows for more timely recovery of costs, strengthens a utility’s incentives to contain costs during the stay-out period, reduces

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* See also RCW 80.28.425(10) (“The provisions of this section may not be construed to limit the existing rate-making authority of the commission.”).

⁹⁶ *Id.*

⁹⁷ RCW 80.28.425(3)(a).

⁹⁸ RCW 80.28.425(4).

⁹⁹ RCW 80.28.425(5).

¹⁰⁰ RCW 80.28.425(7).

¹⁰¹ *E.g.*, Piliaris, Exh. JAP-1T at 3:11-12.

¹⁰² See RCW 80.28.425(6) (requiring the implementation of an earnings sharing mechanism).

administrative costs, and allows more time and space to discuss other regulatory issues.¹⁰³ We find the Settlement’s proposed two-year MYRP to be reasonable and supported by the evidence. We agree that it is warranted to limit the MYRP to a two-year term because this is the Company’s first general rate case under the recently enacted RCW 80.28.425.¹⁰⁴

86 We find further support for our decision given PSE’s prior successes with MYRPs, which occurred under the previous statutory framework. In June 2013, the Commission entered Final Order 07, its Final Order in Dockets UE-130137, *et al.*¹⁰⁵ As relevant here, Final Order 07 approved a Rate Plan for the Company that allowed for modest increases in rates with a defined stay out period.¹⁰⁶ In 2016, the Commission extended this stay out period based on the parties’ joint petition.¹⁰⁷ In 2017, the Rate Plan concluded, and the Commission observed that it “mitigated the effects of regulatory lag and attrition during the Rate Plan effective period,” allowing the Company to earn slightly below its authorized rate of return.¹⁰⁸

87 Lastly, recently enacted legislation requires the deferral of earnings that are more than 0.5 percent higher than the ROR authorized by the Commission and reported annually through a company’s Commission Basis Report (CBR).¹⁰⁹ The Commission authorizes replacing the existing decoupling earnings test with the earnings test provided in RCW 80.28.425(6) and, further, clarifies that the decoupling deferral must include accruing ROR on the balance of the deferral.

88 We therefore accept the Settlement’s proposed two-year MYRP. As this MYRP comes to a close, however, we encourage PSE, and indeed all investor-owned electric companies, to consider ways they might avoid filing their next GRCs in close proximity to those of another investor-owned utility, thereby helping the Commission and others to manage their resources.

¹⁰³ Piliaris, Exh. JAP-1T at 3:14-4:3.

¹⁰⁴ *See* Public Counsel Brief ¶ 75 (noting that Public Counsel supports the “limited duration” of the MYRP and other modifications to the Company’s proposed PIMS and metrics).

¹⁰⁵ *Washington Utilities and Transportation Commission v. Puget Sound Energy*, Dockets UE-130137 and UG-130138 (consolidated), Final Order 07 (June 25, 2013).

¹⁰⁶ *Id.* ¶¶ 147-50.

¹⁰⁷ *Notice of Commission Action Amending Order 07*, Dockets UE-130137 *et al.*, (March 17, 2016).

¹⁰⁸ *WUTC v. Puget Sound Energy*, Dockets UE-170033 & UG-170334, Order 08 at ¶ 409 (Dec. 11, 2017).

¹⁰⁹ RCW 80.28.425(6).

E. The Revenue Requirement Settlement’s Proposed Performance-based Metrics and Incentives

89 The Settling Parties agree that PSE will annually report metrics discussed in PSE’s direct testimony and those provided in the Settlement.¹¹⁰ The Settlement also provides for one PIM. The Settling Parties accept PSE’s proposed DR PIM as part of the two-year rate plan subject to the following modifications:

- The initial reward threshold will activate at 105 percent of the DR target and will be a percent of DR program costs equal to PSE’s approved weighted average cost of capital (WACC).
- The second reward threshold will activate if PSE exceeds 115 percent of the DR target and will be 15 percent of DR program costs.
- The PIM is based on the DR target of 40 MW by 2024.¹¹¹
- The DR PIM incentive is capped at \$1 million over the course of the MYRP.
- The DR PIM discontinues at the end of Rate Year 2 unless the Commission orders otherwise.¹¹²

90 An overview of the Settlement’s proposed DR PIM is provided in Table 2 below:

¹¹⁰ Revenue Requirement Settlement ¶ 60. The Settlement refers to metrics proposed in Lowery, Exh. MNL-1T in addition to the Settlement.

¹¹¹ Revenue Requirement Settlement ¶ 58. The Settling Parties state that the 40 MW by 2024 will “be calculated in the same way that PSE calculates its peak load reduction for compliance with the DR target in PSE’s CEIP. This does not replace the requirement to adopt a DR target in the CEIP. The Settling Parties reserve the right to support a higher target in the CEIP docket.”

¹¹² Revenue Requirement Settlement ¶ 58.

Table 2: Settlement DR PIM

<i>Year</i>	<i>Target</i>	<i>Achievement Targets, as a percentage</i>	<i>Corresponding Incremental MW</i>	<i>Incentive, as a percentage of estimated costs</i>
		< 105 percent	< 5.25 MW	0 percent
2023	40 MW	105 percent – 115 percent	5.25 MW – 5.75 MW	7.156 percent ¹¹³
		>115 percent	< 5.75 MW	15 percent
		< 105 percent	< 42 MW	0 percent
2024	40 MW	105 percent – 115 percent	42 MW – 46 MW	7.156 percent
		>115 percent	< 46 MW	15 percent

• **Payment cap:**

- * No additional incentives for achievement above 150 percent of the annual target.
- * The total incentive shall not exceed \$1 million over the entire MYRP.
- * The DR PIM ends at the end of the MYPR Rate Year 2 unless the Commission orders otherwise.

91 The Settling Parties have not agreed to PSE’s proposed electric vehicle PIM, and it is not included in the Revenue Requirement Settlement.¹¹⁴

92 As stated above, the Settlement adopts the metrics proposed by PSE in direct testimony and new measures proposed in the Settlement.¹¹⁵ The Settlement provides no targets or

¹¹³ Settlement Stipulation at 23(a) provides the components for weighted average cost of capital resulting in a rate of return of 7.156 percent. The components are as follows: 51 percent debt with a cost of debt of 5.0 percent, and 49 percent equity with a return on equity of 9.4 percent.

¹¹⁴ Revenue Requirement Settlement ¶ 59.

¹¹⁵ See Revenue Requirement Settlement at 60 (incorporating metrics discussed in Lowry, Exh. MNL-1T). The Settlement includes 69 metrics, as follows: 14 metrics proposed by PSE in direct testimony, 49 metrics proposed by the Settling Parties using the regulatory goals identified in Docket U-210590, and 5 modifications or additions to existing metrics related to the Company’s Service Quality Index (SQI), implemented in the Commission’s 14th Supplemental Order approving the merger between Puget Sound Power & Light Company and Washington Natural Gas Company in 1997. See *Puget Sound Power & Light Company and Washington Natural Gas Company*, Dockets UE-951270 and UE-960195, 14th Supp. Order (Feb. 5, 1997).

benchmarks except for the DR PIM.¹¹⁶ The Settlement’s proposed measures are summarized by category in Table 3 below:

Table 3: Categories of metrics proposed by the Settlement

Categories	Number of Measures
Demand-side Management ¹¹⁷	5
Electric Vehicles ¹¹⁸	4
Emission ¹¹⁹	1
Advanced Metering Infrastructure Metrics ¹²⁰	3
Additional Equity Metrics ¹²¹	2
Resilient, reliable, and customer-focused distribution grid ¹²²	21
Environmental Improvements ¹²³	5
Customer Affordability ¹²⁴	9
Advancing Equity in Utility Operations ¹²⁵	<u>14</u>
New Measures	64
SQI modified Metrics ¹²⁶	<u>5</u>
Total Settlement Measures	69

¹¹⁶ Revenue Requirement Settlement at 60. The Revenue Requirement Settlement adopts the metrics in Lowry’s testimony but fails to include sufficient detail outlining and describing the Company’s initially proposed metrics. Instead, the Settlement refers only to other exhibits in the record. We expect that settling parties will provide more detailed descriptions of metrics and terms (including any associated benchmarks and targets) in future settlements. Any inaccuracy in our characterization of this portion of the Revenue Requirement Settlement is due to this lack of detail and the Settlement’s reliance on cross-references to other exhibits.

¹¹⁷ Lowry, Exh. MNL-4 at 5-9.

¹¹⁸ Lowry, Exh. MNL-4 at 9-12.

¹¹⁹ Lowry, Exh. MNL-1T at 44:1-17 and Lowry, Exh. MNL-4 at 12-13.

¹²⁰ Lowry, Exh. MNL-1T at 45:1-47:3 and Lowry, Exh. MNL-4 at 13-15.

¹²¹ Lowry, Exh. MNL-1T at 47:4-17 and Lowry, Exh. MNL-4 at 15-18.

¹²² Settlement Stipulation at 61. This is a Commission defined regulatory goal from U-210590 but the metrics themselves are proposed by the Settlement.

¹²³ Settlement Stipulation at 62. This is a Commission defined regulatory goal from U-210590 but the metrics themselves are proposed by the Settlement.

¹²⁴ Settlement Stipulation at 63. This is a Commission defined regulatory goal from U-210590 but the metrics themselves are proposed by the Settlement.

¹²⁵ Settlement Stipulation at 64. This is a Commission defined regulatory goal from U-210590 but the metrics themselves are proposed by the Settlement.

¹²⁶ Lowry, Exh. MNL-4 at 1-5. PSE’s SQI metrics include targets and penalties and are pre-existing service quality indices. Joint testimony, Exh. JAP-SEF-JJJ-1JT at 38:17-20.

- 93 The Settlement requires PSE to report on the above metrics annually, both in its compliance filing in these consolidated dockets and in conjunction with PSE’s annual review process.¹²⁷ PSE’s proposed annual filings on March 31 of each calendar year are described in more detail in the testimony of Company witnesses Free and Piliaris.¹²⁸
- 94 In its post-hearing Brief, PSE submits that the Settlement requires the Company to report on a “robust suite of performance measures that are consistent with the requirements of RCW 80.28.425(7).”¹²⁹ PSE argues that, while the statute requires the Commission to determine a set of performance measures that will be used “to assess” the utility’s performance, the statute does not require the performance measures to contain incentives or penalty mechanisms.¹³⁰ PSE concludes that the MYRP agreed to by the Settling Parties includes the “full panoply of performance metrics, incentives, and penalty mechanisms” and that no party opposes these performance metrics.¹³¹
- 95 Staff supports the Settlement and its proposed performance measures. Staff notes that the modifications to the Company’s proposed DR PIM create “customer safeguards” by capping the incentive payment and sunsetting the PIM at the end of the MYRP.¹³² Staff argues that the Settlement’s proposed metrics are an “evolutionary step forward” in the Commission’s regulation of PSE and that they will help establish whether the Company’s investments are “producing benefits for PSE’s customers and whether those benefits are being distributed equitably.”¹³³
- 96 Public Counsel also argues in support of the Settlement’s terms regarding performance-based regulation. Public Counsel argues that under RCW 80.28.425(7) the Commission may develop performance measures, incentives, and penalty mechanisms but is not required to do so.¹³⁴ Public Counsel concludes that the Settlement’s proposed performance metrics, coupled with the reporting obligations, meet the requirements of the statute and provide a basis to

¹²⁷ Revenue Requirement Settlement ¶ 60.

¹²⁸ See, e.g., Free, Exh. SEF-1Tr at 30:9-13; Piliaris, Exh. JAP-3 (Planned Filing Schedule During Multiyear Rate Plan).

¹²⁹ PSE Brief ¶ 79.

¹³⁰ *Id.*

¹³¹ *Id.* ¶ 82.

¹³² Staff Brief ¶ 63 (citing, *inter alia*, Cebulko, Exh. BTC-7T at 6:3-4; Erdahl, Exh. BAE-1T at 19:5-12).

¹³³ *Id.* ¶ 66 (citing Erdahl, Exh. BAE-1T at 19:17-19).

¹³⁴ Public Counsel Brief ¶ 73.

measure PSE’s performance.¹³⁵ Public Counsel supports the Settling Parties’ agreement to a single PIM, arguing that “[t]aking a conservative approach in this case is reasonable, especially since the Legislature directed the Commission to examine alternatives to traditional cost of service regulation.”¹³⁶

- 97 The Joint Environmental Advocates also support the Settlement’s terms related to performance-based regulation as consistent with the statute.¹³⁷ Although the Joint Environmental Advocates advocated for more robust performance-based regulation tools in response testimony, they support the Settlement as a “reasonable first effort” given that the Commission is still evaluating how it may implement these tools.¹³⁸
- 98 *Commission Determination.* We find that the Settlement’s proposed performance metrics should be approved, subject to the condition of additional measures to assist the Commission in assessing the Company’s performance under the MYRP. The Commission recognizes that the new proposed metrics will be informed by its ongoing proceeding to evaluate performance-based regulation in Docket U-210590, and that establishing appropriate metrics and measures for performance-based ratemaking is an iterative process. In Docket U-210590, a Performance Metric or Performance Measure is defined as measurable and quantifiable data used to track specific actions, outcomes, or results. It is often expressed in terms of standard power system measures or consumer impact measures.
- 99 The Settlement provides that these metrics will be reviewed and reported annually. The Settlement, however, does not state that these metrics should be used to assess the Company’s operations under the MYRP. Further, the Settlement’s agreed new performance metrics are not binding on the Commission, and we expressly determine that our approval of the Settlement should not impute precedential value to their continuation should the Commission determine that other or additional metrics or measures are more appropriate in the future for the same or other purposes.
- 100 We also approve the Settlement’s proposed DR PIM for use over the term of the MYRP. Although the Commission is developing a policy statement to provide more clarity on performance-based regulation, this work will not be completed before the suspension date in this case.¹³⁹ The Settling Parties’ proposal for a modified DR PIM and various metrics

¹³⁵ *Id.*

¹³⁶ *Id.* ¶ 75.

¹³⁷ Joint Environmental Advocates’ Brief at 11.

¹³⁸ *Id.* at 12-13.

¹³⁹ *See* Update on Performance-Based Regulation Proceeding, Docket U-210590 (Jan. 27, 2022).

represents one of the first attempts to establish a performance incentive mechanism under the new statutory framework.

- 101 It is notable that no party opposes the Settlement’s terms on this issue or argues that the Settlement fails to comply with the requirements of RCW 80.28.425(7). At hearing, the Settling Parties argue that the proposed DR PIM, the Company’s proposed metrics, and the Settlement’s proposed, additional metrics will provide essential information that will allow the Commission “to assess” the Company consistent with the requirements of RCW 80.28.425(7).¹⁴⁰
- 102 We are concerned, however, that the Settlement lacks detailed information identifying or suggesting how the Commission might use these metrics to evaluate the Company’s operations under the MYRP or the agreed calculations for all metrics. Due to the Settlement’s terms and Settling Parties’ relative lack of clarity as to how the agreed performance metrics should be used to evaluate PSE’s operations under the MYRP in compliance with RCW 80.28.425(7), the Commission finds it necessary to meet its statutory obligation by adopting a limited number of performance measures, described later in Section II.F of this Order, that it will use to evaluate PSE’s operations during the MYRP.
- 103 Our assessment of PSE’s performance under the MYRP will necessarily require the Settling Parties to, in a future proceeding, review the data with respect to the functioning of the modified DR PIM, the data with respect to the new metrics proposed in the Settlement, and the metrics adopted from the Company’s initial filing, and report these findings to the Commission. Much as Staff explains, the Settlement will create a “baseline” that will allow the Commission to craft a “wide spectrum of PIM and penalty mechanisms in future cases.”¹⁴¹ Washington’s efforts towards performance-based regulation are still in an early stage, and it will take data, the passage of time, experience, and input from interested parties to fully carry out the legislature’s intent in this area. We remind the parties that our approval of the Settlement should not impute precedential value to the continuation of any specific metrics, targets, or the DR PIM, should the Commission determine that other or additional metrics or measures are more appropriate in the future for the same or other purposes.
- 104 Accordingly, we determine that approval of the Settlement should be conditioned on certain modifications to the Settlement’s agreed performance metrics.

Condition: We condition our approval of the Settlement on the inclusion of additional requirements for reporting the performance metrics to the Commission. Within three

¹⁴⁰ See Piliaris, TR 325:16-326:3 (discussing whether the Settlement complies with RCW 80.28.425); Celbulko, TR 326:6-327:7 (same).

¹⁴¹ Staff Brief ¶ 66.

months of PSE's annual March 31 filing pursuant to the Revenue Requirement Settlement's MYRP, we require the non-Company parties to review reported performance metrics and provide feedback and recommendations for the Commission to consider. Subject to this condition, we determine that the Settling Parties' proposed metrics and proposal for performance-based ratemaking is reasonable, consistent with applicable law, in the public interest, and should be approved.

F. Performance Measures Pursuant to RCW 80.28.425(7)

- 105 As noted above in Section II.E, we find it reasonable and appropriate to require PSE to report on additional metrics than just those identified in the Settlement. These metrics are necessary for the Commission's future assessment of PSE's operations under the MYRP.
- 106 The Commission must, by law, "determine a set of performance measures that will be used to assess a gas or electrical company operating under a multiyear rate plan."¹⁴² This burden of law is placed on the Commission, not any company or party to a GRC. Such measures that the Commission might determine appropriate *may* be based on a company's filing, record testimony and evidence, or the proposals made by a company or other party throughout the proceeding.¹⁴³ The Commission's determination, therefore, need not be based upon a company's initial filing, the record testimony and evidence, or the proposals made by a company or party throughout the proceeding.
- 107 As recognized by the Settling Parties, the Commission has initiated a proceeding in Docket U-210590 to examine and establish performance metrics, performance incentives and penalties.¹⁴⁴ The Commission's efforts in that docket are proceeding in parallel with the efforts to establish performance measures in this and other general rate case proceedings. Because the Settlement was filed after the Commission issued a Notice of Opportunity to File Written Comment in Docket U-210590 on August 5, 2022, the Settlement proposes 49 performance metrics categorized using the Commission's established regulatory goals. However, not all of the proposed Settlement metrics necessarily reflect the Commission's regulatory goals and desired outcomes or design principles provided in Docket U-210590,

¹⁴² RCW 80.28.425(7) (emphasis added).

¹⁴³ RCW 80.28.425(7).

¹⁴⁴ Section (1) of Engrossed Substitute Senate Bill 5295, Chapter 188, Laws of 2021, directs the Commission initiate a proceeding to address performance based regulation, among other things: "To provide clarity and certainty to stakeholders on the details of performance-based regulation, the utilities and transportation commission is directed to conduct a proceeding to develop a policy statement addressing alternatives to traditional cost of service rate making, including performance measures or goals, targets, performance incentives, and penalty mechanisms."

which is the Commission's collaborative proceeding concerning performance-based ratemaking.

- 108 The Commission is required by law to determine a set of performance measures to assess a MYRP. Settlement proposes 64 new performance metrics in addition to existing metrics to be recorded and tracked, but the Settlement lacks detailed information related to how the Commission should use the metrics to evaluate PSE's MYRP. These metrics are not necessarily measures for evaluating PSE's operations under the MYRP.
- 109 We therefore determine that certain measures, independent and aside from the 69 metrics included in the Settlement, are necessary to meet the legal requirement for the Commission's future assessment of PSE's operations under the MYRP. We adopt the measures outlined in Table 4, below, related to operational efficiency, company earnings, affordability, and energy burden.

Table 4: MYRP Performance Measures and Outcomes

Topic	Measure/Calculation	Outcome ¹⁴⁵
Operational Efficiency	O&M Total Expense <i>divided by</i> Operating Revenue	Assesses how much expense was incurred for every dollar earned. Results at 1.00 or greater might reflect reduced efficiency in controlling O&M spending.
	Operating Revenue <i>divided by</i> AMA Total Rate Base and ¹⁴⁶ Operating Revenue <i>divided by</i> EOP Total Rate Base	Assesses efficient use of rate base to generate revenue. Results less than 1.00 or excessively low results might reflect reduced efficiency in utilizing rate base to generate revenue.
	Current Assets <i>divided by</i> Current Liabilities ¹⁴⁷	Assesses liquidity of current assets covering current liabilities. Results less than 1.00 might reflect issues or concerns with liquidity.
Earnings	Net Income <i>divided by</i> Operating Revenue	Assesses the amount of net profit gained through revenues earned. Results should be multiplied by 100, to calculate a percentage result, and compared to the authorized ROR.
	Retained Earnings <i>divided by</i> Total Equity	Assesses the amount of earnings retained by a company compared to its total equity. Excessively low or high deviations might indicate that the company is paying out more earnings than reinvesting or that the company is retaining more than it needs, respectively. This metric will require baseline information to understand the company's reinvesting and payout patterns.
Affordability ¹⁴⁸	Average Annual Bill Impacts (by Census Tract) Average Annual Bill Impacts (by Zip code)	Assesses the average annual residential bill impacts to better understand over time, and by location, affordability of rates for residential customers using the same average energy usage from year to year for better comparison. ¹⁴⁹
Energy Burden ¹⁵⁰	Average Annual Bill <i>divided by</i> Average Median Income (by Census Tract) Average Annual Bill <i>divided by</i> Average Median Income (by Zip code)	Assesses the average energy burden of residential customers over time and by location. Results greater than 6 percent indicate energy burden concerns. ¹⁵¹

- 110 The measures we require PSE to track and report, outlined above, will provide essential and critically important financial and customer equity data for the Commission’s evaluation of PSE’s performance during this MYRP. We also observe that the measures we require will likely continue to be consequential even beyond the term of the MYRP for assessing the Company’s performance during future MYRPs. Performance-based ratemaking is an iterative process and flexibility is critical. We encourage the parties to these consolidated proceedings to continue to participate in Docket U-210590 through collaboration with the Commission to further assess and define these metrics. In the future, the data these measures will collect during the MYRP will be instructive and inure greater understanding of PSE’s operations.
- 111 Likewise, we would find extraordinary benefit from all the historical data related to these measures. At this time, we will not require PSE to search, collect, compile, and provide to the Commission *all* historical data it might have related to these measures. For now, we find that only recent history is necessary for our ability to understand and evaluate PSE’s performance at the end of this MYRP. Thus, we require PSE to make a compliance filing within 45 days of this Order to provide the measures and calculations outlined in Table 4, above, for the years 2019-2022 (beginning January 1 and ending December 31 of each year) in order to establish a baseline for our understanding and evaluation. In addition, we require PSE to report the performance measures outlined in Table 4, above, for each year of the MYRP (beginning January 1 and ending December 31 of each year within 45 days of the end of the reporting period). We will utilize the information gathered through these measures to evaluate the MYRP only, for now, at its conclusion and consider such in our determinations of PSE’s next GRC and future MYRPs.

¹⁴⁵ Outcome descriptions are approximate. Baseline data is required prior to a full understanding of outcomes and results.

¹⁴⁶ Provide results for both calculations but include in reporting which the Commission authorized; the use of AMA or EOP.

¹⁴⁷ “Current” means all current assets that can be converted into cash within one year and all current liabilities with maturities within one year.

¹⁴⁸ These measures are similar to Settlement’s first Customer Affordability metric (at 63). These measures track both by census tract and by zip code. PSE should provide separate results for electric-only customers, gas-only customers, and combined electric and gas customers.

¹⁴⁹ Use 800 kWh and 64 therms for all required reporting in this Order.

¹⁵⁰ These measures are similar to Settlement’s second Customer Affordability metric (at 63). These measures track both by census tract and by zip code. PSE should provide separate results for electric-only customers, gas-only customers, and combined electric and gas customers.

¹⁵¹ See WAC 480-100-605 (defining “Energy assistance need” as “the amount of assistance necessary to achieve an energy burden equal to six percent for utility customers.”).

G. Capital Structure

- 112 We next turn to the Settling Parties' proposed cost of capital. A utility's cost of capital has three main components: capital structure, return on equity, and cost of debt. Taking all these factors into account, it is possible to describe the utility's WACC.
- 113 One of the contested issues in this case is the Revenue Requirement Settlement's proposed capital structure. The Revenue Requirement Settlement provides for a capital structure of 49 percent equity and 51 percent debt for the duration of its two-year MYRP.¹⁵² Public Counsel opposes the Revenue Requirement Settlement's proposed capital structure and advocates for a lower equity ratio of 48.5 percent.¹⁵³
- 114 In their joint testimony, PSE witnesses Jon A. Piliaris, Susan E. Free, and Joshua J. Jacobs explain that the Settlement's equity ratio of 49 percent will improve PSE's weighted cost of equity relative to its peers; enable PSE to finance its activities with less debt; partially replace lost cash flows resulting from the 2017 Tax Cuts and Jobs Act (TCJA), and improve PSE's credit metrics.¹⁵⁴ Compared to the Company's initial filing, the Revenue Requirement Settlement lowers the Company's WACC by 23 basis points in 2023 and 28 basis points in 2024.¹⁵⁵ This reduces the Company's revenue requirement by \$26.5 million in 2023 and \$34.3 million in 2024.¹⁵⁶
- 115 Cara G. Peterman provides additional testimony for PSE. Disagreeing with the response testimony from Public Counsel witness J. Randall Woolridge, Peterman explains that the Company has managed its equity ratio based upon the 48.5 percent equity ratio approved by the Commission in its last two GRCs, but this does not, by itself, justify maintaining the Company's equity ratio at 48.5 percent.¹⁵⁷ Peterman argues that changing conditions, such as the passage of CETA, Senate Bill 5295, and inflationary pressures, militate against relying on previously-approved equity ratios.¹⁵⁸
- 116 Peterman argues that PSE received downgrades in ratings outlooks from both S&P Global Ratings and Fitch Ratings, which improved only because of the prospect of a more credit-

¹⁵² Revenue Requirement Settlement ¶ 23.a.

¹⁵³ Bauman, Exh. SB-9T at 1:21; 2:1-2: 7-16. *Accord* Woolridge, Exh. JRW-13T at 12:20-21.

¹⁵⁴ Joint Testimony, Exh. JAP-SEF-JJJ-1JT at 49:14-20.

¹⁵⁵ *Id.* at 49:22-50:1.

¹⁵⁶ *Id.* at 50:2-4.

¹⁵⁷ Joint Testimony, Exh. CGP-AEB-TAS-1JT at 46:19-47:4.

¹⁵⁸ *Id.* at 47:8-12.

supportive regulatory paradigm.¹⁵⁹ Peterman also disputes Woolridge’s selection of proxy companies in support of its capital structure recommendation. Peterman observes that Woolridge selected parent companies of regulated utilities,¹⁶⁰ that Woolridge’s proxy companies do not appear to calculate their equity ratio on an average-of-monthly-averages (AMA) basis,¹⁶¹ and that Woolridge’s proxy companies are not consistent with his recommended equity ratio of 48.5 percent.¹⁶²

117 In response, Public Counsel witness Woolridge submits that the Settlement’s proposed equity ratio is higher than the average common equity ratio of companies in his proxy group.¹⁶³ Woolridge notes, “As of December 31, 2021, the average common equity ratios for the Electric, Bulkley, and Gas Proxy Groups were 41.7 percent, 39.4 percent, and 38.6 percent respectively.”¹⁶⁴

118 Woolridge explains that he agrees with the 48.5 percent equity ratio originally recommended by Staff witness David C. Parcell.¹⁶⁵ Citing Parcell’s earlier testimony, Woolridge observes that PSE had 46.9 percent common equity in its actual capital structure as of December 31, 2021, that the Company’s equity ratio has not increased in recent years, and that an equity ratio of 48.5 percent is consistent with the level authorized by the Commission in past decisions.¹⁶⁶

119 In its post-hearing brief, PSE argues that the Settlement’s proposed equity ratio of 49.0 percent will help PSE improve its credit metrics performance and that it will allow the Company to begin rebalancing how much debt and equity is invested in its business to meet changing conditions.¹⁶⁷ PSE observes that the Settlement will result in the lowest WACC that PSE’s customers have seen in recent memory, providing customers a significant cost savings.¹⁶⁸

¹⁵⁹ *Id.* 47:15-22.

¹⁶⁰ *Id.* at 49:1-10.

¹⁶¹ *Id.* at 49:17-20.

¹⁶² *Id.* at 50:6-14.

¹⁶³ Woolridge, Exh. JRW-13T at 4:11-15 (citing Woolridge, Exh. JRW-1T at 28–29).

¹⁶⁴ Woolridge, Exh. JRW-1T at 28:18-20 (citing Woolridge, JRW-5).

¹⁶⁵ Woolridge, Exh. JRW-13T at 12:20-23.

¹⁶⁶ *See id.* at 12:1-10 (citing Parcell, Exh DCP-1T at 27:14–19 and 28:1–2).

¹⁶⁷ PSE Brief ¶ 37.

¹⁶⁸ *Id.*

- 120 Staff also supports the Settlement's proposed equity ratio in its brief. Staff observes that the Settlement will help PSE retain access to capital on reasonable terms and that this will benefit customers in the long term.¹⁶⁹
- 121 In its brief, Public Counsel argues that PSE's equity ratio should be maintained at 48.5 percent.¹⁷⁰ Public Counsel notes that the average equity ratios in Woolridge's electric and gas proxy groups were well below the 49.0 percent as proposed in the Settlement.¹⁷¹ Public Counsel notes that PSE and its parent company have maintained stable equity ratios over the last five years and have maintained positive credit ratings.¹⁷²
- 122 *Commission Determination.* We accept the Revenue Requirement Settlement's proposed capital structure of 49 percent equity and 51 percent debt for the duration of the MYRP. We find Public Counsel's arguments for a lower equity ratio of 48.5 percent unpersuasive.
- 123 Establishing a capital structure for ratemaking purposes requires the Commission to strike an appropriate balance between debt and equity on the bases of economy and safety.¹⁷³ The economy of lower cost debt, on which the Company has a legal obligation to pay interest, must be balanced against the safety of higher cost common equity on which the Company has no legal obligation to pay a return at any particular time.¹⁷⁴
- 124 The Commission has used actual or hypothetical capital structures to strike the right balance and determine overall rate of return on a case-by-case basis.¹⁷⁵ In past cases, we have used a hypothetical capital structure, which may be prospective or imputed, primarily as a means to address financial hardship or tight capital markets.¹⁷⁶
- 125 In this case, we observe that the Revenue Requirement Settlement represents a compromise as compared to the Company's initial filing. PSE proposed a common equity ratio of 49.0 percent in 2023, 49.5 percent in 2024, and 50.0 percent in 2025.¹⁷⁷ By providing for a lower

¹⁶⁹ Staff Brief ¶ 34 (citing Shipman, Exh. TAS-1T at 2:1-3, 29:7-13).

¹⁷⁰ Public Counsel Brief ¶ 54.

¹⁷¹ *Id.* ¶ 53.

¹⁷² *Id.* ¶ 55.

¹⁷³ *WUTC v. Puget Sound Energy*, Dockets UG-040640, UE-040641 (consolidated) Order 06 ¶ 27 (February 18, 2005) (citation omitted). *See also* 2017 Avista GRC Order at 39, ¶ 109.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *WUTC v. Avista Corporation d/b/a Avista Utilities*, UE-170485 and UG-170486 (consolidated) Order 07 ¶ 110 (April 26, 2018).

¹⁷⁷ Peterman, CGP-1CT at 5:8-12 (Table 2).

common equity ratio of 49.0 percent over the two-year rate plan, the Settlement lowers the Company's WACC by 23 basis points in 2023 and 28 basis points in 2024, resulting in cost savings and the lowest WACC for customers in recent memory.¹⁷⁸

126 Although Public Counsel witness Woolridge argues that an equity ratio of 48.5 percent better represents the Company's historical capitalization, Peterman persuasively explains that the Company has managed its actual equity ratio at, or above, the equity ratios approved by the Commission in past cases.¹⁷⁹ Under these circumstances, the Company's historic capitalization does not represent a persuasive reason to adopt Public Counsel's proposal.

127 We are also persuaded by Peterman's testimony that recent statutory changes and downgraded credit ratings outlooks justify increasing the Company's equity ratio.¹⁸⁰ As Peterman explains, the Company did not receive a full credit downgrade, but it experienced downgrades in ratings outlooks from both S&P Global Ratings and Fitch Ratings from 2020 to 2021.¹⁸¹ Credit ratings may impact the utility's borrowing costs, which ultimately impacts its revenue requirement. It is reasonable to provide for a 50-basis point increase to the Company's common equity ratio given these considerations.

128 All of these considerations weigh in favor of accepting the capital structure as proposed by the Settling Parties.

H. Return on Equity

129 The other contested cost of capital issue in this proceeding concerns the agreed upon ROE. The Revenue Requirement Settlement assumes and incorporates a 9.40 percent ROE for both years of PSE's MYRP.¹⁸² Public Counsel argues that PSE's ROE should be set lower, at 8.80 percent.¹⁸³

130 In the Company's initial filing, Ann E. Bulkley testified that that a range between 9.75 and 10.50 percent ROE is reasonable to address PSE's need to attract capital on reasonable terms and its ability to provide safe and reliable service.¹⁸⁴ Bulkley based this finding on the

¹⁷⁸ *Id.* at 49:22-50:4. *Accord* PSE Brief ¶ 37.

¹⁷⁹ Joint Testimony of Peterman, Bulkley, and Shipman, Exh. CGP-AEB-TAS-1JT at 46:19-20.

¹⁸⁰ *See* Joint Testimony of Peterman, Bulkley, and Shipman, Exh. CGP-AEB-TAS-1JT at 47:8-20.

¹⁸¹ Joint Testimony of Peterman, Bulkley, and Shipman, Exh. CGP-AEB-TAS-1JT at 47:15-19.

¹⁸² Revenue Requirement Settlement ¶ 23.a.

¹⁸³ *E.g.*, Public Counsel Brief ¶ 65.

¹⁸⁴ Bulkley, Exh. AEB-1T at 15:1-4. Bulkley notes that the range of results for the proxy group companies, the relative risk of PSE's electric and natural gas operations in Washington as compared to

median-high results of her Discounted Cash Flow (DCF) model, forward-looking Capital Asset Pricing Model (CAPM) and Empirical CAPM (ECAPM) analyses, a Bond Yield plus Risk Premium analysis, and an Expected Earnings analysis.¹⁸⁵ Bulkley also argues that recent inflationary pressures are another key component that will increase the long-term interest rates.¹⁸⁶ PSE requested an ROE of 9.90 percent for each of the three years of the proposed MYRP, and Bulkley supported this as a reasonable request.¹⁸⁷

131 In response testimony, Staff, AWEC, Walmart, and Public Counsel witnesses argued in favor of a lower ROE for the Company.¹⁸⁸ Because Staff, AWEC, and Walmart later joined the Revenue Requirement Settlement and came to support its proposed ROE of 9.40 percent,¹⁸⁹ we focus only on Public Counsel's response testimony.

132 Specifically, Public Counsel witness Woolridge testifies in favor of an ROE of 8.80 percent.¹⁹⁰ Woolridge bases this recommendation primarily on the results of his DCF and CAPM analyses, which indicated a common equity cost range of 7.40 to 8.90 percent.¹⁹¹ Woolridge also argues that interest rates and capital costs have remained at historically low levels,¹⁹² and that PSE's risk profile is similar to other electric utility companies.¹⁹³

the proxy group, and current capital market conditions were considered to arrive at that conclusion. By the time testimony was written, economic projections indicated a strong economic recovery in 2022. *See* Bulkley, Exh. AEB-1T at 15:9-17:2. However, accommodative monetary policies to counter the effects of the COVID-19 pandemic in 2020 were gradually dialed down in 2021. *See* Joint Testimony, Exh. CGP-AEB-TAS-1JT at 13:14-18. A number of analysts expect utilities to underperform in the broader market as interest rates increase. *Id.* at 18:3-4.

See also Peterman, Exh. CGP-1CT at 40:15-21. Peterman argues that PSE's ROE should be increased to 9.90 percent: (1) to allow PSE to earn a fair and competitive rate of return in line with its peers; (2) to adequately compensate PSE for risks it is currently facing to fund critical operational programs for the benefit of customers, including investments to enable PSE to provide safe and reliable service to its customers and make CETA-required investments; (3) to begin to replace losses of cash flow due to legislative changes (such as the TCJA); and (4) to help improve and stabilize PSE's credit profile.

¹⁸⁵ Bulkley, Exh. AEB-1T at 7:10-14.

¹⁸⁶ The Company's inability to reflect increasing costs between rate cases will affect credit metrics.

¹⁸⁷ Bulkley, Exh. AEB-1T at 4:4-5.

¹⁸⁸ *See generally* Parcel, Exh. DCP-1T. *See also* Mullins, Exh. BGM-1T at 10:17-12:13. Kronauer, Exh. AJK-1T at 8:1-8, 16:15-22.

¹⁸⁹ *E.g.*, Erdahl, Exh. BAE-1T at 5:14-22 (supporting the Settlement's ROE of 9.40 as reasonable, consistent with the public interest, and consistent with Parcel's earlier response testimony).

¹⁹⁰ Woolridge, Exh. JRW-1T at 92:4-6.

¹⁹¹ *E.g.*, *id.* at 91:20-92:4.

¹⁹² *Id.* at 6:15-18.

¹⁹³ *Id.* at 7:8-11.

- 133 Woolridge also takes issue with Bulkley's earlier testimony. Woolridge argues that Bulkley overstates the results of her DCF analysis by relying exclusively on forecasts from Wall Street analysts and *Value Line* and by claiming that DCF results underestimate the cost of equity due to high utility stock valuations and low dividend yields.¹⁹⁴ He also argues that Bulkley errs by relying on an ECAPM version of the CAPM, which is premised on a relatively high market risk premium of 11.00 percent.¹⁹⁵ Woolridge raises concerns as well with Bulkley's use of the Risk Premium model, her Expected Earnings model, and her consideration of regulatory risk and PSE's capital expenditures.¹⁹⁶
- 134 PSE filed joint testimony from its cost of capital witnesses supporting the Revenue Requirement Settlement. With regard to the Settlement's proposed ROE, Bulkley explains that she updated the results of the ROE analysis from her initial testimony and that the results of her ROE estimation models were well above the Settlement's ROE of 9.40 percent.¹⁹⁷ Bulkley notes, for example, that her Constant Growth DCF model provided a median constant growth average of 9.35 percent and a mean constant growth average of 9.67 percent.¹⁹⁸ Her CAPM model provided long-term average betas between 10.07 and 10.25 percent, and her ECAPM model provided long-term average betas between 10.78 and 10.93 percent.¹⁹⁹
- 135 Bulkley disagrees with Woolridge's earlier criticisms of her ROE estimation models. Bulkley notes, for instance, that Woolridge criticized her reliance on analyst and *Value Line* growth forecasts to support her DCF model.²⁰⁰ Yet she observes that Woolridge also gave primary weight to analysts' projected EPS growth rates in his own DCF model and that the average growth rate in Bulkley's analysis was only six basis points higher than the median of projected EPS growth rates Woolridge considered.²⁰¹
- 136 Bulkley notes as well that interest rates have increased since the Company's initial filing, that interest rates are expected to continue to rise over the course of the MYRP, and that inflation

¹⁹⁴ *Id.* at 7:12-21.

¹⁹⁵ *Id.* at 8:1-5.

¹⁹⁶ *Id.* at 9:4-10:10.

¹⁹⁷ Joint Testimony, Exh. CGP-AEB-TAS-1JT at 5:14-16.

¹⁹⁸ *Id.* at 21:1 (Figure 6: Updated ROE Results).

¹⁹⁹ *Id.*

²⁰⁰ *Id.* at 25:6-8 (citing Woolridge, Exh. JRW-1T at 7, 44-45, 68, 70-71).

²⁰¹ *Id.* at 25:8-14.

has reached levels not seen in four decades.²⁰² They explain that these market conditions have a “direct and significant” effect on the ROE required by investors.²⁰³ Bulkley explains that recently authorized ROEs fail to reflect recent increases in interest rates and likely understate the investor-required return in the current market.²⁰⁴

- 137 Bulkley characterizes Woolridge’s ROE recommendation as unreasonably low and below the low-end range of authorized ROEs for any electric or natural gas distribution company since 2018.²⁰⁵ She explains that the range of authorized ROEs for vertically-integrated electric companies has been 8.75 to 10.60 percent, with an average of 9.66 percent.²⁰⁶ The range of authorized ROEs for gas distribution companies has been 9.10 to 10.25 percent, with an average of 9.63 percent.²⁰⁷ She concludes that Woolridge’s recommended ROE of 8.80 percent is lower than 99 percent of all authorized ROEs since 2018.²⁰⁸
- 138 Although Woolridge presents evidence of authorized ROEs from 2000 to 2021, Bulkley explains that Woolridge includes ROEs associated with electric distribution utilities.²⁰⁹ He does not limit his proxy group to vertically-integrated utilities, such as PSE.²¹⁰ Bulkley also critiques Woolridge for including ROEs authorized reflecting limited issue rider proceedings, alternative forms of regulation, and penalties imposed by regulatory commissions.²¹¹
- 139 In its testimony opposing the Revenue Requirement Settlement, Public Counsel maintains its earlier recommendation for an ROE of 8.80 percent.²¹² Rather than focus on Bulkley’s testimony supporting the Settlement, Woolridge focuses on the earlier response testimony from Staff witness David C. Parcell, who at the time recommended an ROE of 9.25 percent.²¹³ Woolridge explains that “[t]he errors and inconsistencies associated with Parcell’s 9.25

²⁰² *Id.* at 5:17-21. *See also id.* at 14:5-15 (noting, among other points, that “the 30-day average of the 30-year Treasury yield is currently nearly 120 basis points higher as of July 31, 2022, than when I filed my Direct Testimony . . .”).

²⁰³ *Id.* at 5:21-22.

²⁰⁴ *Id.* at 8:6-10.

²⁰⁵ *Id.* at 6:1-8.

²⁰⁶ *Id.* at 8:16-17.

²⁰⁷ *Id.* at 8:18-19.

²⁰⁸ *Id.* at 9:1-5.

²⁰⁹ *Id.* at 12:6-8.

²¹⁰ *Id.*

²¹¹ *Id.* at 12:9-17.

²¹² Woolridge, Exh. JRW-13T at 3:10-14.

²¹³ *Id.* at 2:1-6.

percent ROE recommendation also highlight how unreasonable the Settlement’s 9.40 percent ROE recommendation is.”²¹⁴

- 140 Woolridge argues that Staff witness Parcell relied on non-traditional approaches to estimating the cost of equity and distorted his DCF model results.²¹⁵ He argues that Parcell’s DCF and CAPM results actually support an ROE in the range of 8.50 percent.²¹⁶ Woolridge submits that Parcell’s Comparable Earnings approach is a “model of his own creation” and that his interpretation of the results is “totally subjective.”²¹⁷ Woolridge argues that Parcell’s Risk Premium approach is similarly “a model of his own making,” which is merely a gauge of state commission behavior.²¹⁸
- 141 Woolridge contends that PSE’s investment risk is on par with the three proxy groups,²¹⁹ and that capital costs and authorized ROE remain at historically low levels.²²⁰ Also, Public Counsel affirms that investors’ long-term expectation of inflation is about 2.5 percent.²²¹
- 142 Finally, Public Counsel asserts that while interest rates have increased in 2022, authorized ROEs never reflected the historically low rates associated with the COVID-19 pandemic.²²²
- 143 In its post-hearing brief, PSE observes, “Over the course of this proceeding, market conditions have only worsened: inflation persists while interest rates continue to climb, making investors require greater returns than anticipated at the outset of this case.”²²³ These market conditions support the Settlement’s proposed ROE of 9.4 percent, which the Company argues is a reduction from its initial filing but still adequate when viewed as part of this complex Settlement.²²⁴ PSE notes that the Commission approved an ROE of 9.5 percent for Avista in

²¹⁴ *Id.* at 23:7-9. *See also id.* at 5:18.

²¹⁵ *Id.* at 5:20-6:1. *See also id.* at 9:5-10:16 (arguing that Parcell improperly gave weight to the mid-point of the range of his DCF model and that he fails to group data to address the errors-in-variables problem).

²¹⁶ Woolridge, Exh. JRW-13T at 6:2-3.

²¹⁷ *Id.* at 16:5-7.

²¹⁸ *Id.* at 21:9-13.

²¹⁹ Woolridge, Exh. JRW-13T at 4:16-17. *See also* Woolridge, Exh. JRW-1T at 25:1.

²²⁰ Woolridge, Exh. JRW-13T at 5:2.

²²¹ Woolridge, Exh. JRW-13T at 5:12.

²²² Woolridge, Exh. JRW-13T at 5:9.

²²³ PSE Brief ¶ 41.

²²⁴ *Id.*

2021, and contends that inflationary pressures and interest rate increases have only worsened since that time.²²⁵

144 PSE argues that Public Counsel is the only party to oppose the Settlement’s proposed ROE and that Public Counsel’s recommendation for a mere 8.8 percent is contrary to the principle of gradualism.²²⁶

145 Staff argues that the Revenue Requirement Settlement leaves the Company’s authorized ROE in place.²²⁷ Staff submits that this is a reasonable compromise considering the “risk-lowering” effects of the MYRP and the “risk-raising” effects of inflation and tightening monetary policy.²²⁸ By comparison, Staff characterizes Public Counsel’s lower recommendation as “facially unreasonable” and tantamount to “shock therapy.”²²⁹

146 In its brief, Public Counsel argues that while authorized ROEs for utilities have declined since 2007, utility ROEs continue to be higher than the market-based cost of capital, and utility ROEs have not declined to the same extent as U.S. Treasury yields.²³⁰ Public Counsel notes Woolridge’s earlier objections to Parcell’s DCF and CAPM models, and it argues that Parcell’s ROE recommendation is only supported by his unorthodox and subjective Risk Premium and Comparable Earnings models.²³¹ Public Counsel maintains that Parcell’s DCF and CAPM models support a lower ROE of 8.5 percent, well below the amount proposed in the Settlement.²³²

147 *Commission Determination.* After considering all of the testimony and evidence concerning PSE’s cost of capital, we accept the Revenue Requirement Settlement’s proposed ROE of 9.40 percent. We find that the Settling Parties’ agreement on PSE’s ROE is lawful, supported by an appropriate record, and consistent with the public interest.²³³ We agree, in effect, with

²²⁵ *Id.* ¶ 45 (citing *WUTC v. Avista Corporation d/b/a Avista Utilities*, Dockets UE-200900, et al., Final Order 08/05 ¶ 73 (September 27, 2021)).

²²⁶ *Id.* ¶ 42.

²²⁷ Staff Brief ¶ 40.

²²⁸ *Id.*

²²⁹ *Id.* ¶ 41.

²³⁰ Public Counsel Brief ¶¶ 61-63.

²³¹ *Id.* ¶¶ 67-68.

²³² *Id.* ¶ 68.

²³³ See WAC 480-07-750(2) (providing the Commission’s standard for evaluating settlements).

the Settling Parties that PSE's ROE should be maintained at the same level as authorized in the Company's last general rate case.²³⁴

- 148 When evaluating a utility's ROE, the Commission follows the long-standing precedents set by the *Hope* and *Bluefield* decisions.²³⁵ In *Hope* and *Bluefield*, the United States Supreme Court recognized that rates for regulated monopoly utilities must incorporate a fair rate of return on equity that is comparable to returns investors would expect to receive on other investments of similar risk, sufficient to assure confidence in the utility's financial integrity, and adequate to attract capital at reasonable costs.²³⁶
- 149 The Commission's long-standing practice is first to identify within the range of *possible* returns shown by expert analyses a range of *reasonable* returns on equity considering all cost of capital testimony in the record. Then, the Commission weighs the analysts' more detailed results and considers other evidence relevant to the selection of a specific point value within the range. The Commission's final determination of an acceptable ROE recognizes fully the guiding principles of regulatory ratemaking that require us to reach an end result that yields fair, just, reasonable, and sufficient rates. Public Counsel has not established that the Revenue Requirement Settlement's proposed ROE of 9.40 percent is inconsistent with the public interest or otherwise should be rejected.
- 150 The Commission benefits significantly from the different perspectives of the witnesses in making their recommendations. However, we must carefully balance their results to establish the end points of a zone of *reasonable* returns within which we can select a specific ROE point value, considering both the modeling and other factors in evidence. The witnesses do not dispute that determining an appropriate ROE presents challenges. As discussed above, they rely on familiar analytic tools such as the DCF, CAPM, Risk Premium, and Comparable Earnings methods. As is customary, they use a variety of data sources to populate their models to arrive at and support their respective ROE recommendations. Accordingly, as we have noted in previous proceedings, the results of the analytic models the expert witnesses use to estimate ROE can vary due to judgments they make when selecting specific approaches and data inputs for each model.²³⁷

²³⁴ See 2019 PSE GRC Order ¶ 108 (approving an ROE of 9.40 percent).

²³⁵ See *Fed. Power Comm'n v. Hope Nat. Gas*, 320 U.S. 591 (1944); *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of W. Virginia*, 262 U.S. 679 (1923).

²³⁶ *Hope Nat. Gas*, 320 U.S. at 603.

²³⁷ E.g., *WUTC v. Puget Sound Energy*, Dockets UE-170033 and UG-170034 Order 08 ¶ 86 (December 5, 2017).

- 151 When considering changes to a regulated utility's authorized ROE, we endeavor to avoid material adjustments upward or downward in authorized levels to provide rate stability for customers and assurance to investors and others regarding the regulatory environment's support for the financial integrity of the utility. Based on the evidence produced by the various expert witnesses, we generally determine whether modest increases or decreases, if any, to currently authorized levels are appropriate given the evidence produced in the immediate proceeding.
- 152 Based on their individual analyses and modeling, the witnesses establish wide ranging ROE results. The parties' overall ROE recommendations span 110 basis points between the lowest recommendation of 8.8 percent and the highest recommendation of 9.9 percent.²³⁸ This reflects the end points of the range of *possible* returns in the record.
- 153 We then turn to an evaluation of the various analytical methods broadly employed by each expert witness to establish a narrower *range of reasonableness*, and ultimately determine an appropriate ROE.
- 154 We begin with a review of the expert witnesses' application of the DCF method, "the method to which the Commission generally has afforded material weight in determining a company's authorized ROE."²³⁹ PSE witness Bulkley describes a range of results for the constant growth DCF model. The mean low for Bulkley's proxy group ranges from 8.52 to 8.57 percent, and the mean high ranges from 10.07 to 10.15 percent.²⁴⁰ In Settlement supporting testimony, Bulkley updates this analysis and arrives at a mean low of 8.97 to 9.07 percent and a mean high of 10.44 to 10.55 percent.²⁴¹ Staff witness Parcell notes a range of DCF results from a mean low of 7.00 percent to a mean high of 8.8 percent.²⁴² Parcell focuses on the highest of the DCF results, recognizing that these results are lower than historic DCF results.²⁴³ Using a DCF model, Public Counsel witness Woolridge arrives at an equity cost rate of 8.80 percent

²³⁸ Compare Woolridge, Exh. JRW-13T at 3:10-14 (recommending 8.8 percent) with Bulkley, Exh. AEB-1T at 4:4-5 (supporting the Company's request for 9.9 percent).

²³⁹ *WUTC v. Avista Corporation d/b/a Avista Utilities*, Dockets UE-170485 and UG-170486 (consolidated) Order 07 ¶ 62 (April 26, 2018).

²⁴⁰ Bulkley, Exh. AEB-1T at 45:1 (Figure 8).

²⁴¹ Joint Testimony, Exh. CGP-AEB-TAS-1JT at 21:1 (Figure 6).

²⁴² Parcell, Exh. DCP-1T at 33:19-21.

²⁴³ *Id.* at 34:12-14.

for the electric proxy group and 8.75 percent for the gas proxy group.²⁴⁴ The expert testimony therefore describes a relatively wide, 355-basis point, range of DCF results.²⁴⁵

- 155 The CAPM method presents a slightly wider range of results. Bulkley's CAPM analysis produces a range of 9.56 percent to 11.72 percent.²⁴⁶ Bulkley's ECAPM analysis produces a range between 10.41 percent and 12.03 percent.²⁴⁷ In joint testimony supporting the Settlement, Bulkley updates the CAPM and ECAPM analyses to arrive at a range of results between 10.07 percent and 11.86 percent.²⁴⁸ Staff witness Parcell's CAPM model provides a mean and a median result of 8.7 percent.²⁴⁹ Public Counsel witness Woolridge arrives at a CAPM equity cost rate of 7.7 percent for the electric proxy group and 7.40 percent for the gas proxy group.²⁵⁰ The expert witnesses' CAPM results therefore vary by 463 basis points.²⁵¹
- 156 The two witnesses who provided Risk Premium analysis arrived at a narrower range of results. PSE witness Bulkley's Risk Premium analysis results in a range of recommended ROE's from 9.52 percent to 10.13 percent for electric utilities and 9.37 percent to 9.97 percent for gas utilities.²⁵² In testimony supporting the Settlement, Bulkley updates the Risk Premium analysis and arrives at a range between 9.90 and 10.10 percent for electric utilities and 9.86 to 10.13 percent for gas utilities.²⁵³ Staff witness Parcell arrives at a range between 9.45 to 9.95 percent.²⁵⁴ The Risk Premium method results therefore vary by 76 basis points.²⁵⁵
- 157 Applying the Expected Earnings or "Comparable Earnings" Method, Bulkley arrives at a mean of 11.19 percent and a median of 11.25 percent.²⁵⁶ Bulkley updates these figures in joint

²⁴⁴ Woolridge, Exh. JRW-1Tr at 50:17 (Table 7).

²⁴⁵ 355 basis points describes the difference between Bulkley's highest result (10.55) and Parcell's lowest result (7.00).

²⁴⁶ Bulkley, Exh. AEB-1T at 51:8-10.

²⁴⁷ *Id.*

²⁴⁸ Joint Testimony, Exh. CGP-AEB-TAS-1JT at 21:1 (Figure 6).

²⁴⁹ Parcell, Exh. DCP-1T at 41:12-14.

²⁵⁰ Woolridge, Exh. JRW-1T at 62:12-15 (Table 8).

²⁵¹ Four hundred and sixty-three basis points describes the difference between Bulkley's highest result (12.03) and Woolridge's lowest result (7.40).

²⁵² Bulkley, Exh. AEB-1T at 55:3-14.

²⁵³ Joint Testimony, Exh. CGP-AEB-TAS-1JT at 21:1 (Figure 6).

²⁵⁴ Parcell, Exh. DCP-1T at 4:4-5.

²⁵⁵ Seventy-six basis points describes the difference between Bulkley's highest and lowest risk premium results (10.13 and 9.37 respectively).

²⁵⁶ Bulkley, Exh. AEB-1T at 58:2-4.

testimony to a mean of 11.43 percent and a median of 11.55 percent.²⁵⁷ Applying his own Comparable Earnings model, Parcell concludes that that an appropriate ROE for proxy utilities is between 9.0 percent and 10.0 percent, with a midpoint of 9.50 percent.²⁵⁸ The Comparable Earnings method results therefore vary by 255 basis points.²⁵⁹ We generally do not place material weight on the Comparable Earnings method, which is considered unreliable in other jurisdictions.²⁶⁰ However, we have considered the results of the Comparable Earnings method when other cost of equity methods produce widely varying results.²⁶¹

158 Based on our review of these four specific methods, we are presented with a range of returns between 7.0 percent and 12.03 percent. The record indicates significant disagreement among the expert witnesses as they attempt to account for investors' expectations during this period of changing market conditions.

159 We agree, however, with Parcell's opinion that the "range of reasonableness" falls between 9.0 percent and 9.5 percent.²⁶² This range of reasonableness is consistent with the most persuasive evidence in this case, which includes Parcell's DCF and CE model results.²⁶³ We are persuaded by Parcell's decision to rely on the highest DCF results under the circumstances.²⁶⁴ Parcell has explained that his DCF results are lower than historic results and that his recommendation based on this model should be considered "conservative."²⁶⁵ The relatively lower DCF results are counterbalanced by Parcell's Risk Premium results, which support an ROE between 9.45 to 9.95 percent,²⁶⁶ and by his Comparable Earnings results,

²⁵⁷ Joint Testimony, Exh. CGP-AEB-TAS-1JT at 21:1 (Figure 6).

²⁵⁸ Parcell, Exh. DCP-1T at 47:15-16.

²⁵⁹ Two hundred and fifty-five basis points describes the difference between Bulkley's highest CE result (11.55) and Parcell's lowest result (9.0).

²⁶⁰ See *Assoc. of Businesses Advocating Tariff Equity v. Midcontinent Independent System Operator*, 169 F.E.R.C. ¶ 61,129, Opinion No. 569, ¶ 204 (2019) (finding that the CE method is "unable to effectively estimate the rate of return that investors require to invest in the market-priced common equity capital of a utility").

²⁶¹ See *WUTC v. Avista Corporation d/b/a Avista Utilities*, Dockets UE-170485 and UG-170486 (consolidated) Order 07 ¶ 65 (April 26, 2018) ("Although we generally do not apply material weight to the CE method, having stronger reliance on the DCF, CAPM and RP methods, we are inclined to include the CE method here given the anomalous CAPM results described previously.").

²⁶² See Parcell, Exh. DCP-1T at 54:9-11.

²⁶³ See *id.* at 5:2-5 ("I further conclude that a reasonable range of ROE for PSE is 9.0 percent to 9.5 percent, which is more directly supported by the respective range of the results for the DCF model and CE method.").

²⁶⁴ See *id.* at 34:12-14.

²⁶⁵ *Id.* at 34:12-15.

²⁶⁶ Parcell, Exh. DCP-1T at 4:4-5.

which support an ROE between 9.0 percent and 10.0 percent, with a midpoint of 9.50 percent.²⁶⁷ Parcell places relatively greater reliance on the Comparable Earnings results compared to the Risk Premium results.²⁶⁸ Given the widely-varying results from the witnesses' CAPM models, we agree that it is appropriate to consider and give weight to the results of both the Risk Premium and Comparable Earnings models in this case.

160 Although Bulkley's updated analysis suggests a higher cost of capital than Bulkley's direct testimony,²⁶⁹ PSE has agreed to support the Revenue Requirement Settlement and no longer advocates for the higher ROE presented in its initial filing. The Settling Parties have reasonably arrived at an ROE of 9.40 percent, reflecting the give and take of negotiations.

161 After considering all of the testimony in the record, including the results of the DCF, RP, and CE models, we conclude that PSE's ROE should be maintained at 9.4 percent. An ROE of 9.4 percent is consistent with the results of Parcell's DCF model. It is below the range supported by Parcell's Risk Premium model and the mid-point of Parcell's CE analysis. The Settling Parties' agreement on this issue is lawful, supported by an appropriate record, and consistent with the public interest.

162 We also consider the broader context of our decision. As the U.S. Supreme Court held in *Bluefield*, a utility is generally entitled to a rate of return "equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties . . ."²⁷⁰ Our decision is consistent with the ROE currently authorized for other investor-owned utilities in the United States. An ROE of 9.40 percent is consistent with the 2021 average and median authorized ROEs for electric utilities and actually falls below the 2021 average and median authorized ROEs for natural gas utilities.²⁷¹

163 Our decision is also consistent with currently authorized ROEs for investor-owned utilities in Washington. In 2020, the Commission authorized an ROE of 9.4 percent for Puget Sound

²⁶⁷ Parcell, Exh. DCP-1T at 47:15-16.

²⁶⁸ *See id.* at 5:2-5.

²⁶⁹ Joint Testimony, Exh. CGP-AEB-TAS-1JT at 20:2-4.

²⁷⁰ *Bluefield*, 262 U.S. at 692.

²⁷¹ *See* Parcell, Exh. DCP-1T at 11:14-12:4 (providing an average of 9.39 percent and a median of 9.39 percent for electric utility ROEs in 2021 and an average of 9.56 and a median of 9.60 for natural gas utilities in the same year). *See also* Erdahl, Exh. BAE-1T at 5:16-18 (observing that the Settling Parties proposed ROE is consistent with the median authorized ROE for other utilities).

Energy, Avista, and Northwest Natural Gas Company.²⁷² The Commission approved a settlement authorizing a slightly higher ROE for PacifiCorp at 9.50 percent.²⁷³ More recently in 2022, we approved a settlement authorizing an ROE of 9.40 percent for Cascade.²⁷⁴

- 164 The Settlement appears all the more reasonable given recent changes in the market. As Bulkley explains, interest rates have increased since the Company's initial filing, and are expected to continue to rise over the course of the MYRP, while inflation has reached levels not seen in four decades.²⁷⁵ Bulkley notes that these market conditions have a "direct and significant" effect on the ROE required by investors.²⁷⁶ We therefore agree with the PSE and Staff that the Settlement is reasonable in light of these changing market conditions. As Staff observes, the Settlement is a reasonable compromise considering the "risk-lowering" effects of the MYRP against the "risk-raising" effects of inflation and tightening monetary policy.²⁷⁷
- 165 We are not persuaded by Public Counsel's arguments in favor of a lower ROE of 8.8 percent. Although Woolridge argues that Staff witness Parcell relied on non-traditional approaches to estimating the cost of equity and distorted his DCF model results,²⁷⁸ we are persuaded by Parcell's testimony that his DCF results are lower than historic results and that his recommendation based on this model should be considered "conservative."²⁷⁹ Parcell's recommended "range of reasonableness" is also supported by his Risk Premium and Comparable Earnings models.

²⁷² See *WUTC v. Avista Corp.*, Dockets UE-190334, UG-190335, and UE-190222 (Consol.), Final Order 09 (Mar. 25, 2020) (approving a settlement that set Avista's ROE at 9.4 percent); *WUTC v. NW Nat. Gas Co.*, Docket UG-181053, Final Order 06 (October 21, 2019) (approving settlement that set NW Natural's ROE at 9.4 percent); *WUTC v. Puget Sound Energy*, Dockets UE-190529 and UG-190530, Final Order 08, ¶ 108 (July 8, 2020) (deciding on a ROE of 9.40 percent) (2019 PSE GRC Order).

²⁷³ *WUTC v. Pacificorp, d/b/a Pacific Power and Light Company*, Docket UE-191024 *inter alia* Order 09 ¶¶ 50-57 (December 14, 2020).

²⁷⁴ *WUTC v. Cascade Natural Gas Corporation*, Docket UG-210755 Final Order 09 ¶ 95 (August 23, 2022) ("This determination, in combination with the uncontested cost of debt of 4.59 percent and uncontested return on equity of 9.4 percent, results in an authorized rate of return of 6.85 percent . . .")

²⁷⁵ Joint Testimony, Exh. CGP-AEB-TAS-1JT at 5:17-21. See also *id.* at 14:5-15 (noting, among other points, that "the 30-day average of the 30-year Treasury yield is currently nearly 120 basis points higher as of July 31, 2022, than when I filed my Direct Testimony . . .").

²⁷⁶ *Id.* at 5:21-22.

²⁷⁷ Staff Brief ¶ 40.

²⁷⁸ Woolridge, Exh. JRW-13T at 5:20-6:1. See also *id.* at 9:5-10:16 (arguing that Parcell improperly gave weight to the mid-point of the range of his DCF model and that he fails to group data to address the errors-in-variables problem).

²⁷⁹ *Id.* at 34:12-15.

166 PSE's witness Bulkley also provides persuasive critiques of Woolridge's cost of capital analysis. Although Woolridge presents evidence of authorized ROEs from 2000 to 2021, Bulkley explains that Woolridge includes ROEs associated with electric distribution utilities.²⁸⁰ He does not limit his proxy group to vertically-integrated utilities, such as PSE.²⁸¹ Bulkley also critiques Woolridge for including ROEs authorized reflecting limited issue rider proceedings, alternative forms of regulation, and penalties imposed by regulatory commissions.²⁸² Bulkley's testimony on these issues was not refuted by any persuasive evidence or argument.

167 We are persuaded by Bulkley testimony in support of the Settlement, which characterizes Woolridge's ROE recommendation as unreasonably low and below the low-end range of authorized ROEs for any electric or natural gas distribution company since 2018.²⁸³ Bulkley concludes that Woolridge's recommended ROE is lower than 99 percent of all authorized ROEs since 2018.²⁸⁴ This testimony is not persuasively refuted by Public Counsel, and it weighs against any recommendation for a lower ROE of 8.8 percent. Ultimately, we agree with PSE and Staff that Public Counsel's recommendation for an 8.8 percent ROE is unreasonable.²⁸⁵

168 We therefore agree with the Settling Parties that the proposed ROE should be accepted as lawful, supported by an appropriate record, and consistent with the public interest.²⁸⁶ It is within the range of reasonableness established by the credible testimony and evidence. The Settlement is consistent with the authorized ROEs for other investor-owned utilities, and it is reasonable given changing market conditions. Although Public Counsel argues for a lower ROE, we have concerns with Woolridge's selection of companies for his proxy group and the reasonableness of his recommendation in light of authorized ROEs for other utilities.

I. The Infrastructure Investment and Jobs Act of 2021 and Inflation Reduction Act

169 We next consider the Revenue Requirement Settlement in light of two significant federal laws.

²⁸⁰ Joint Testimony, Exh. CGP-AEB-TAS-1JT at 12:6-8.

²⁸¹ *Id.*

²⁸² *Id.* at 12:9-17.

²⁸³ *Id.* at 6:1-8.

²⁸⁴ *Id.* at 9:1-5.

²⁸⁵ PSE Brief ¶ 42. Accord Staff Brief ¶ 41.

²⁸⁶ See WAC 480-07-750(2) (providing the Commission's standard for evaluating settlements).

170 On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act of 2021 (IIJA) PL 117–58, 135 Stat 429 , which seeks to upgrade the nation’s energy infrastructure for a clean, resilient, and secure energy future.²⁸⁷ The IIJA funds over 350 programs to be overseen through more than a dozen federal departments and agencies.²⁸⁸ On August 16, 2022, President Biden signed the Inflation Reduction Act (IRA) PL 117–169, 136 Stat 1818, into law. The IRA is a fiscal policy instrument enacted by the federal government to counterbalance the effects of inflation in specific areas of the economy. It also represents the United States’ single largest investment to date to modernize its energy system.²⁸⁹

171 The impacts of these laws on rates are not yet known, but it is apparent that both could greatly impact PSE’s utility operations during the MYRP agreed to by the Settling Parties. Many aspects of PSE’s operations, costs, funding, and financial health may be impacted by these new laws, including extending investment tax credits, creating new tax credits, accelerated depreciation of clean electricity facilities, and extending tax credits for investment in certain energy properties, among other aspects.²⁹⁰ The Biden administration announced additional

²⁸⁷ <https://www.energy.gov/ceser/articles/investing-secure-resilient-and-clean-energy-future>.

²⁸⁸ The White House, A Guidebook to the Bipartisan Infrastructure Law for State, Local, Tribal, and Territorial Governments, and Other Partners (May 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/05/BUILDING-A-BETTER-AMERICA-V2.pdf> [hereinafter IIJA Guidebook].

²⁸⁹ Jessie Ciulla, Gennelle Wilson, and Rachel Gold, *What Utility Regulators Needs to Know about the Inflation Reduction Act: How to Ensure the Biggest Boon to the Energy System in US History Supports Affordable, Reliable Electric Service*, Rocky Mountain Institute, 2022, <https://rmi.org/insight/what-utility-regulators-need-know-about-ira/>.

²⁹⁰ Among other things, the IRA:

- Modifies and extends through 2024 the tax credit for producing electricity from renewable resources. IRA at § 13101.
- Creates a new clean electricity investment tax credit for investment in qualifying zero-emissions electricity generation facilities or energy storage technology. IRA at § 13702.
- Allows a five-year recovery period for the depreciation of clean electricity facilities placed in service after 2024. IRA at § 13703.
- Extends through 2024 the tax credit for investment in certain energy properties (e.g., solar, fuel cells, waste energy recovery, combined heat and power, small wind property, microturbine property, and microgrid controllers). Increases credit rate for projects that pay prevailing wages and meet registered apprenticeship requirements. Allows a bonus credit amount for facilities that meet domestic content requirements for steel, iron, and manufactured projects and for facilities located in an energy community. IRA at § Sec. 13102.
- Modifies the energy tax credit to allocate 1.8 gigawatts for environmental justice solar and wind capacity credits in low-income communities and Indian lands in 2023 and 2024. Facilities receiving allocations must be placed in service within four years after the allocation date. IRA at § 13103.
- Creates a new tax credit for qualified commercial clean vehicles. IRA at § 13403.

funding to provide increased support for low- and moderate-income families, and complementary tax credits that families and building owners can use under the IRA to install energy-saving equipment and to make building upgrades.²⁹¹ More specifically, new resources have been allocated for the federal Low-Income Home Energy Assistance Program (LIHEAP), which has funds that will go to states, territories, and Tribes.²⁹²

172 Other regulatory commissions have taken action to engage in participative processes to allow interested parties to discuss their thoughts on implementation and to take advantage of the benefits that the laws provide.²⁹³ The impacts of tax credits and other financial provisions will result in changes that impact utility revenue requirements and, ultimately, changes in customers' bills. The IRA could bring significant reductions to energy costs for customers, up to \$500 in energy bills savings per year.²⁹⁴ At least one utility, the Florida Power & Light Company, is planning to phase in nearly \$360 million in additional federal tax savings for future planned solar projects starting in 2023 and through 2025. Other, more immediate,

²⁹¹ <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/21/fact-sheet-white-house-announces-additional-385-million-to-lower-home-energy-bills-for-american-families/>.

²⁹² <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/21/fact-sheet-white-house-announces-additional-385-million-to-lower-home-energy-bills-for-american-families/>.

<https://www.energy.gov/articles/biden-harris-administration-announces-state-and-tribe-allocations-home-energy-rebate>.

²⁹³ See, e.g., *In re Utility Infrastructure Improvements from the Federal Funding Available Under the Infrastructure Investment and Jobs Act of 2021: Alpena Power Co., et. al.*, Order, Docket U-21227, Mich. Pub. Serv. Comm'n (May 12, 2022), available at <https://mi-psc.force.com/sfc/servlet.shepherd/version/download/0688y000002tmfNAAQ>; *In re Infrastructure Investment and Jobs Act Investigation*, Order Requesting Comment Regarding the Infrastructure Investment and Jobs Act, Docket PU-22-143, N.D. Pub. Serv. Comm'n (Mar. 9, 2022), available at <https://www.psc.nd.gov/database/documents/22-0143/002-020.pdf>; *In re Consideration of the Federal Funding Available Under the Infrastructure Investment and Jobs Act*, Order Allowing Comments Regarding Federal Funding for Utility Service in North Carolina, Docket M-100, Sub 164, N.C. Utils. Comm'n (Feb. 1, 2022), available at <https://starw1.ncuc.gov/NCUC/ViewFile.aspx?Id=ee9659cf-dbd6-4ce6-b34f-e8073fcf744e>; *In re Investigation into the Implementation of the Federal Infrastructure Investment and Jobs Act*, Docket 22-755-AU-COI, Pub. Utils. Comm'n of Ohio (Aug. 10, 2022), available at <https://dis.puc.state.oh.us/ViewImage.aspx?CMID=A1001001A22H10B43213C01798>; *In re Petition to Open an Administrative Docket to Consider the Federal Infrastructure Investment and Jobs Act of 2021*, Directive Order Establishing Procedural Schedule for Written Comments and Reply Comments, Docket 2022-168-A, Pub. Serv. Comm'n of S.C. (Jun. 9, 2022), available at <https://dms.psc.sc.gov/Attachments/Matter/3f9d6c58-65f7-41c5-989c-7de70ef7cd2c>.

²⁹⁴ Jessie Ciulla, Gennelle Wilson, and Rachel Gold, *What Utility Regulators Needs to Know about the Inflation Reduction Act: How to Ensure the Biggest Boon to the Energy System in US History Supports Affordable, Reliable Electric Service*, Rocky Mountain Institute, 2022, <https://rmi.org/insight/what-utility-regulators-need-know-about-ira/>.

savings to customers will be provided in a one-time refund of \$25 million in the month of January 2023.²⁹⁵

- 173 The Revenue Requirement Settlement in this case was filed just 10 days after the IRA was signed into law. The Settlement does not refer to the IJJA and only refers to the IRA in passing,²⁹⁶ suggesting that the parties did not have an opportunity to consider the impacts of the IRA. Because these changes are significant, we make minor, prudent modifications to the Settlement where necessary to include the impacts of the IRA and IJJA in our retrospective review of provisional plant. As discussed below in section II.I, we expect PSE to participate in a collaborative with other investor-owned utilities regarding the potential benefits of the IRA and IJJA and to document its consideration of, and application for, benefits provided pursuant to the IRA and IJJA in future filings. In addition, for any other IRA and IJJA benefits not addressed in this Order, we expect PSE will file with the Commission an accounting petition requesting to defer other benefits or revenue, as appropriate.

J. Energize Eastside

- 174 The Energize Eastside project consists of a new 230 kV to 115 kV transformer that will be served by approximately 16 miles of new high-capacity transmission lines on the east side of Lake Washington, from Redmond to Renton (the Eastside).²⁹⁷ The project is split into two phases, the south phase and north phase. The south phase includes the development of the 230 kV to 115 kV Richards Creek substation in Bellevue and upgrading the Talbot Hill to Lakeside portion of the transmission line from 115 kV to 230 kV.²⁹⁸ The north phase includes upgrading the Sammamish to Lakeside portion of the transmission line from 115 kV to 230 kV.²⁹⁹
- 175 The Revenue Requirement Settlement would allow PSE to recover \$238 million in plant associated with its Energize Eastside project on a provisional basis, subject to later review and possible refund.³⁰⁰ The Settling Parties agree to the following:

²⁹⁵ *FPL proposes plan to refund customers nearly \$400 million in federal corporate tax savings*, News Releases, NEXtera Energy (Sep. 23, 2022), available at <https://www.investor.nexteraenergy.com/news-and-events/news-releases/2022/09-23-2022-133107538>.

²⁹⁶ Revenue Requirement Settlement ¶¶ 66.e, 67.d.iv.

²⁹⁷ Koch, Exh. DRK-1T at 43:9-15.

²⁹⁸ *Id.* at 46:7-9.

²⁹⁹ *Id.* at 46:9-11.

³⁰⁰ *See* Revenue Requirement Settlement ¶ 23.m (incorporating PSE's estimated costs in the initial filing as set forth in Koch, Exh. DRK-1T at 47:4-7).

The Settling Parties agree that delayed service dates for Energize Eastside are assumed to be incorporated into the agreed-upon revenue requirement above (*i.e.*, South Phase in service by October 2023 and North Phase in service by October 2024). The Settling Parties agree that estimated costs associated with Energize Eastside (as described in PSE's initial filing) may enter rates provisionally (on the updated timeline, outlined above), subject to refund. Settling Parties accept and will not challenge that PSE has met its threshold prudence requirement to demonstrate that the investment should be provisionally included in rates. Settling Parties may challenge the costs of the project in the review of investments after the plant is placed in service.³⁰¹

176 CENSE opposes the Settlement on this issue and argues that the Energize Eastside project is not a prudent investment.³⁰² We therefore consider the testimony in favor and in opposition to this project.

177 In the Company's initial filing, PSE witness Dan'l R. Koch contends that the Energize Eastside project is needed to address transmission capacity deficiencies on the Eastside during peak periods, and that it will improve reliability for the Eastside communities and allow sufficient capacity for growth and development.³⁰³ Koch argues that this project is necessary to meet North American Electrical Reliability Corporation (NERC) transmission planning standards, compliance with which is required to comply with the Clean Energy Transformation Act (CETA).³⁰⁴

178 NERC is the regulatory authority certified by the Federal Energy Regulatory Commission (FERC) to develop and enforce reliability standards. The NERC standards mandate that certain forecasts and studies must be completed to determine whether the system has sufficient capacity to meet expected loads now and in the future.³⁰⁵ Absent sufficient capacity to meet foreseeable demand, Koch explains that federal regulations require PSE to use corrective action plans (CAPs), such as intentional load shedding (*e.g.*, rolling blackouts), to meet demand.³⁰⁶ Koch states that in recent years, the need for the project has become even

³⁰¹ Revenue Requirement Settlement ¶ 23.m.

³⁰² *E.g.*, Revenue Requirement Settlement ¶ 4 (noting CENSE's opposition).

³⁰³ Koch, Exh. DRK-1T at 43:17-21.

³⁰⁴ Koch, Exh. DRK-1T at 48:3-14.

³⁰⁵ Koch, Exh. DRK-1T at 49:14-50:14.

³⁰⁶ Koch, Exh. DRK-1T at 45:1-8.

more urgent, and that PSE has exceeded transmission capacity on the Eastside in four of the last five summers.³⁰⁷

- 179 Koch explains that PSE considered alternatives to the Energize Eastside project. These included “non-wires” alternatives such as additional conservation, additional generation, demand response, and energy storage expansion, as well as “wires” alternatives, including expansion of transmission substations and transmission line upgrades.³⁰⁸ After considering all of these alternatives, PSE concluded that the Energize Eastside project, with its 230kV/115kV transformer and 230kV transmission lines, was the most effective solution that met all criteria and complied with federal requirements.³⁰⁹
- 180 In response testimony, CENSE witness Richard Lauckhart argues that the Energize Eastside project is not a prudent investment because PSE has failed to meet each of the four factors historically used in determining prudence.³¹⁰
- 181 Lauckhart submits that PSE has failed to meet its legal burden to prove that the project is necessary.³¹¹ Lauckhart points to the Lauckhart-Schiffman load flow study, provided by CENSE to the Commission in connection with PSE’s IRP Docket UE-160918, and argues that this study shows no transmission reliability problem on the Eastside.³¹²
- 182 Lauckhart argues that PSE avoided providing evidence through data requests in support of PSE’s analysis in this proceeding and that PSE “inappropriately relies on Critical Energy Infrastructure Information (CEII) arguments and confidentiality arguments to refuse to provide the solid verifiable facts demonstrating project need.”³¹³ Lauckhart points to the Commission’s Acknowledgment Letter from PSE’s 2016 IRP, in which the Commission identified a lack of narrative in the plan surrounding PSE’s choice not to provide modeling data to interested parties with CEII clearance from FERC.³¹⁴ He affirms that without that information for inspection, there can be no finding of prudence for Energize Eastside.³¹⁵

³⁰⁷ Koch, Exh. DRK-1T at 43:17-44:6.

³⁰⁸ Koch, Exh. DRK-1T at 56:2-11.

³⁰⁹ *Id.* at 61:3-12.

³¹⁰ Lauckhart, Exh. RL-1T at 17:1-20.

³¹¹ *Id.* at 6:16.

³¹² Lauckhart, Exh. RL-1T at 25:23-39.

³¹³ Lauckhart, Exh. RL-1T at 17:4-7.

³¹⁴ Dockets UE-160918 & UG-160919, Puget Sound Energy 2017 IRP, WUTC Acknowledgment Letter Attachment p.10.

³¹⁵ Lauckhart, Exh. RL-1T at 9:16-17.

- 183 Additionally, Lauckhart argues that PSE has made no legitimate effort to study appropriate alternatives.³¹⁶ He identifies four alternatives that CENSE asserts “are much better than building Energize Eastside.”³¹⁷ These include (1) using the existing Seattle City Light 230kV line located to the west of the proposed Energize Eastside transmission line; (2) looping the existing Bonneville Power Administration (BPA) 230kV line through the Lake Tradition switching station; (3) installing a small peaker power plant near the City of Bellevue; and (4) utilizing Demand Side Management (DSM) programs.³¹⁸
- 184 Lauckhart also argues that there has not been adequate communication between PSE management and PSE’s Board of Directors, based on PSE’s answers to data requests.³¹⁹ Lauckhart further submits that decisions made by the Company have not been properly documented, arguing that PSE has refused to provide necessary information to allow for proper investigation as to why the project is needed and why the conclusions of the Lauckhart-Schiffman load flow study are not correct.³²⁰ Finally, Lauckhart expresses safety concerns regarding Energize Eastside’s shared right-of-way with the Olympic Pipeline, pointing to the Olympic Pipeline explosion in Bellingham in 1999.³²¹
- 185 In testimony supporting the Revenue Requirement Settlement, Koch provides additional testimony regarding the studies performed by PSE and its examination of alternatives. Koch argues that its studies have identified the need for Energize Eastside since 2009.³²² Koch maintains that these studies were conducted in accordance with NERC Transmission Planning Standard (TPL) TPL-004-1, which requires utilities to evaluate its transmission system annually and to identify deficiencies where the system is unable to meet its performance requirements.³²³ PSE also contracted with Quanta to perform studies specifically for the transmission system serving the Eastside area to confirm the results of PSE’s annual TPLs.³²⁴ This collaboration resulted in the 2013 and 2015 Energize Eastside Needs Assessment studies,

³¹⁶ Lauckhart, Exh. RL-1T at 17:8-10.

³¹⁷ Lauckhart, Exh. RL-1T at 27:7-9.

³¹⁸ *Id.* at 27:12-28:15.

³¹⁹ *Id.* at 17:11-16.

³²⁰ Lauckhart, Exh. RL-1T at 17:17-20.

³²¹ Lauckhart, Exh. RL-1T at 20:2-15.

³²² Koch, Exh. DRK-26T at 7:7-10.

³²³ *Id.*

³²⁴ *Id.* at 7:10-12.

which PSE asserts has been reviewed by multiple third-party experts as part of the siting and permitting process with local municipalities.³²⁵

- 186 Koch also addresses the Lauckhart-Schiffman study, which CENSE uses as its primary evidence to support its arguments for the lack of need for Energize Eastside. Koch provides excerpts from the hearing examiners from Bellevue and Newcastle, who both found that the Lauckhart-Schiffman study was not credible.³²⁶ Koch notes that the City of Newcastle hired and conducted its own independent third-party assessment of need with MaxETA Energy as part of the land use permitting process.³²⁷ This assessment found that a need exists in the Energize Eastside area.³²⁸
- 187 Koch then addresses the four alternatives identified by Lauckhart, and argues that all these alternatives have been identified and studied as part of the above-mentioned studies.³²⁹ After weighing these alternatives, PSE concluded that Energize Eastside is the best solution.³³⁰
- 188 Koch explains that all associated state and federal permits have been issued for the project and that four of the five Conditional Use Permits (CUPs) have been issued by local jurisdictions. Only the CUP for the north half of the Bellevue segment remains to be issued.³³¹
- 189 In testimony opposing the Revenue Requirement Settlement, CENSE witnesses reiterate their objections to the Energize Eastside project. CENSE witness Norm Hansen argues, for example, that PSE could have requested a permit from the Energy Facility Site Evaluation Council (EFSEC) rather than “the long and arduous journey of time and substantial economic and labor expense” of seeking siting approval from the individual municipalities.³³² Hansen argues that PSE could have contained costs for the Energize Eastside project by seeking

³²⁵ Koch, Exh. DRK-26T at 7:17-8:7.

³²⁶ Koch, Exh. DRK-26T at 9:13-10:3.

³²⁷ *E.g.*, Koch, Exh. DRK-26T at 5:20-6:2.

³²⁸ Koch, Exh. DRK-26T at 5:20-6:5. *See also* Koch, Exh. DRK-12 (City of Newcastle by MaxETA Energy (June 2020)).

³²⁹ Koch, Exh. DRK-26T at 13:6-14.

³³⁰ Koch, Exh. DRK-26T at 11:24-12:9.

³³¹ Koch, Exh. DRK-26T at 14:11-17.

³³² Hansen, Exh. NH-1T at 5:1-14.

required permits through EFSEC,³³³ and that Staff should have conducted its own technical need load flow study to confirm the need for this project.³³⁴

190 Lauckhart argues that the Revenue Requirement Settlement departs from longstanding Commission practice by allowing an investment into rates before the Company has provided the final system design and before the Company establishes the prudence of the investment.³³⁵ Lauckhart argues that Staff has not identified errors with Lauckhart’s earlier testimony,³³⁶ and that Staff only has excerpts from PSE’s Transmission Planning Assessments.³³⁷ Lauckhart also takes issue with the Settling Parties’ proposal to include the Energize Eastside project in rates on a provisional basis, arguing that a refund would not make customers whole.³³⁸ He argues that the Settlement’s reference to a “threshold prudence requirement” is not defined and departs from longstanding Commission policy.³³⁹

191 In its post-hearing Brief, PSE characterizes the provisional recovery, on a slightly delayed basis, for the Energize Eastside project as a “key component” of the Revenue Requirement Settlement.³⁴⁰ PSE “requests a determination from the Commission that PSE’s analysis of the need for the project and consideration of alternatives was reasonable . . .” indicating that this is consistent with the Settlement.³⁴¹ PSE submits that the project will promote the public interest by improving reliability for customers and by making reasonable adjustments to service dates to reflect the current construction schedule.³⁴²

192 Staff argues that the Commission should reject CENSE’s arguments and allow PSE to recover Energize Eastside on a provisional basis.³⁴³ Staff observes that CETA allows for the recovery of investments on a provisional basis and that the Settlement’s treatment of Energize Eastside

³³³ *Id.* at 5:10-11.

³³⁴ *Id.* at 5:19-20.

³³⁵ Lauckhart, Exh. RL-35T at 6:1-5.

³³⁶ *Id.* at 7:7-8.

³³⁷ *Id.* at 7:14-15.

³³⁸ *See id.* at 9:3-15.

³³⁹ Lauckhart, Exh. RL-35T at 10:5-11.

³⁴⁰ PSE Brief ¶ 56.

³⁴¹ *Id.*

³⁴² *Id.* ¶ 71.

³⁴³ Staff Brief ¶ 57.

“are fully consistent with CETA’s changes to the law, the Commission’s policy statement, and with the public interest . . .”³⁴⁴

- 193 Staff disputes CENSE’s factual arguments as well. Staff observes that the legislature tasked the Commission with regulating electric companies to prevent events such as load shedding.³⁴⁵ Staff notes that PSE considered both “wires” and “non-wires” alternatives and that none of these options were more cost-effective.³⁴⁶
- 194 In its Brief, CENSE maintains that PSE has not established that the Energize Eastside project meets the four factors relied on by the Commission for prudency review.³⁴⁷ CENSE also argues that the “7 fatal flaws” identified in the Lauckhart-Schiffman study are “unrebutted” in this proceeding.³⁴⁸
- 195 *Commission Determination.* We accept the Settling Parties proposal for provisional recovery of the Energize Eastside on a slightly delayed basis. The Settling Parties present a proposal that is consistent with CETA and the Commission’s Used and Useful Policy Statement to implement the statutory changes in CETA. CENSE’s objections are contrary to the opinions of third-party experts, fail to account for contrary evidence, and fail to account for recent statutory changes.
- 196 Pursuant to CETA, specifically RCW 80.04.250, the Commission possesses the authority to determine the value of any utility property used and useful for service “by or during the rate effective period.”³⁴⁹ The Commission may approve changes to rates up to 48 months after the rate-effective date, while establishing a process to identify, review, and approve property that came into service after the rate effective date.³⁵⁰

³⁴⁴ *Id.* ¶ 58.

³⁴⁵ *Id.* ¶ 59.

³⁴⁶ *Id.* ¶ 60.

³⁴⁷ CENSE Brief ¶ 4.

³⁴⁸ *Id.* ¶¶ 4-5 (noting that the “fatal flaws” include (1) the shutting down of 6 natural gas fired generators in the PSE/Quanta load flow studies, (2) assuming the proposed I-5 Corridor Reinforcement Project would be completed, (3) not allowing nearby 230/115 kV transformers to serve Eastside load in modelling, (4) a false assumption regarding the transmission of 1,500 MW of power to flow to Canada, (5) using the wrong rating of transformers and transmission line segments in load flow studies, (6) assuming Eastside demand will grow over the next 10 years, and (7) not simulating reasonable alternatives to Energize Eastside).

³⁴⁹ RCW 80.04.250(2).

³⁵⁰ RCW 80.04.250(3).

- 197 Senate Bill 5295 further modifies the Commission’s authority to value utility property. Pursuant to RCW 80.28.425(3)(b), the Commission shall determine the fair value for rate-making purposes of the utility’s property that will be used and useful in each year of the MYRP.³⁵¹ For the first year of any MYRP, the Commission shall “at a minimum” determine the fair value of any property that is used and useful as of the rate effective date.³⁵² The Commission may also order refunds if property is not used and useful by the rate effective date as expected.³⁵³
- 198 In the Used and Useful Policy Statement, the Commission has established a process to identify, review, and approve property coming into service after the rate effective date, as required by CETA. The Used and Useful Policy Statement is concerned with “the process the Commission will use to value property (investment or plant) that is, or will become, used and useful by or during the rate effective period,” which may encompass a single year, a MYRP, or any single year within a MYRP.³⁵⁴
- 199 The Policy Statement affirms that the Commission intends to follow its longstanding practices by using a modified historical test-year, considering post-test year rate-adjustments using the known and measurable standard, employing the matching principle, and applying the used and useful standard.³⁵⁵ It also provides a process for the provisional recovery in rates of property, subject to refund.³⁵⁶ “Under this process, we make our final decision on rate recovery in a future period after sufficient information about the property in question has become available.”³⁵⁷
- 200 As an overall matter, we find that the Revenue Requirement Settlement’s terms regarding Energize Eastside are consistent with RCW 80.04.250, the MYRP statute RCW 80.28.425, and the Used and Useful Policy Statement. The Settlement merely provides that PSE may begin to recover the costs of this project on a provisional basis, subject to later review and possible refund, if warranted.³⁵⁸ This provision is consistent with recent statutory changes and the Commission’s guidance implementing these changes.

³⁵¹ *Id.* (citing RCW 80.04.250).

³⁵² *Id.*

³⁵³ RCW 80.28.425(3)(b).

³⁵⁴ Used and Useful Policy Statement ¶ 19.

³⁵⁵ Used and Useful Policy Statement ¶ 21.

³⁵⁶ Used and Useful Policy Statement ¶ 20.

³⁵⁷ *Id.*

³⁵⁸ Revenue Requirement Settlement ¶ 23.m.

- 201 We agree with the Settling Parties that PSE has brought forward sufficient evidence to establish that this investment may be included in rates. The Used and Useful Policy Statement explains that the “[t]he threshold for including provisional pro forma adjustments will be determined on a case-by-case basis according to the specifications of the rate-effective period investment.”³⁵⁹ Including rate-period effective investment in rates is an exercise of the Commission’s discretion, and it involves careful judgments depending on the facts of each case. The evidence in this case shows that the Settling Parties have reasonably evaluated and agreed to the recovery of this investment on a provisional basis.
- 202 The Settling Parties, for example, have paid attention to the timing of PSE’s recovery. Identifying when an investment will become used and useful is an important consideration, particularly in the context of an MYRP.³⁶⁰ In this case, the Settling Parties have provided for slightly delayed recovery of Energize Eastside in light of the current construction schedule.³⁶¹ This is consistent with our earlier guidance and helps establish the reasonableness of the proposed provisional recovery in this MYRP.
- 203 We turn next to the issue of the prudence of Energize Eastside. Although this issue is discussed at length by both PSE and CENSE, the Used and Useful Policy Statement indicates that this issue is not fully ripe for determination. In the Policy Statement, the Commission explained that “in most cases the Commission will not confirm or verify such property as known and measurable, used and useful, or otherwise conforming to the Commission’s ratemaking standards before the property is included in rates.”³⁶² Allowing provisional recovery does not amount to “pre-approval of the prudence of the investment.”³⁶³ In accordance with this guidance, the Commission will decline to fully confirm the prudence of Energize Eastside until a later proceeding, after this project is included in rates.
- 204 Given the extensive efforts of the parties, however, we find it appropriate to discuss the evidence of prudence that has been presented. As the Commission has observed, “Overall, the Commission’s prudence standard is a reasonableness standard.”³⁶⁴ The test “is what would a reasonable board of directors and company management have decided given what they knew

³⁵⁹ *Id.* ¶ 35.

³⁶⁰ *Id.* ¶ 36.

³⁶¹ *See* Revenue Requirement Settlement ¶ 23.m.

³⁶² Used and Useful Policy Statement ¶ 38.

³⁶³ *Id.* ¶ 44.

³⁶⁴ *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-110148 & UG-111049 Order 08 ¶ 408 (May 7, 2012) (internal citation and quotation omitted).

or reasonably should have known to be true at the time they made a decision.”³⁶⁵ Although there is no “single set of factors,” the Commission “typically focuses on four factors.”³⁶⁶

These are:

- 1) *The Need for the Resource*: The utility must first determine whether new resources are necessary. Once a need has been identified, the utility must determine how to fill that need in a cost-effective manner. When a utility is considering the purchase of a resource, it must evaluate that resource against the standards of what other purchases are available, and against the standard of what it would cost to build the resource itself.
- 2) *Evaluation of Alternatives*: The utility must analyze the resource alternatives using current information that adjusts for such factors as end effects, capital costs, dispatchability, transmission costs, and whatever other factors need specific analysis at the time of a purchase decision. The acquisition process should be appropriate.
- 3) *Communication With and Involvement of the Company’s Board of Directors*: The utility should inform its board of directors about the purchase decision and its costs. The utility should also involve the board in the decision process.
- 4) *Adequate Documentation*: The utility must keep adequate contemporaneous records that will allow the Commission to evaluate the Company’s decision-making process. The Commission should be able to follow the utility’s decision process; understand the elements that the utility used; and determine the manner in which the utility valued these elements.³⁶⁷

205 In this proceeding, PSE “requests a determination from the Commission that PSE’s analysis of the need for the project and consideration of alternatives was reasonable . . .” and PSE submits that this is consistent with the Settlement.³⁶⁸ CENSE, however, argues that PSE has failed to establish the prudence of Energize Eastside according to each of the four factors.³⁶⁹

206 Regarding the first factor, we agree that PSE has demonstrated a need for Energize Eastside. As PSE witness Koch explains, in five of the past six summers, the demand has exceeded the

³⁶⁵ *Id.*

³⁶⁶ *Id.* ¶ 409.

³⁶⁷ *Id.*

³⁶⁸ PSE Brief ¶ 56.

³⁶⁹ CENSE Brief ¶ 4.

reliability threshold for transmission capacity on the eastside.³⁷⁰ It is expected that demand will continue to increase.³⁷¹ Koch explained at the settlement hearing, as well, that in the summer of 2020 PSE was “one event away from needing to load shed,” *i.e.*, needing to intentionally shut off power to certain customers, due to the transmission deficiency on the Eastside.³⁷²

207 PSE’s testimony on this issue is supported by credible evidence of record, which includes the 2009 NERC reliability assessment, a needs assessment report conducted in 2013 and updated in 2015 in consultation with Quanta Technology,³⁷³ and reviews conducted by third-party experts.³⁷⁴ FERC has also found that PSE complied with applicable transmission planning requirements.³⁷⁵

208 CENSE’s arguments to the contrary are not persuasive. As Koch explains, the Lauckhart/Schiffman report fails to appropriately stress the system because it appears to have only studied one contingency, uses incorrect load growth for the Eastside area, does not perform a summer analysis, and erroneously interprets power flows to Canada.³⁷⁶ The City of Newcastle and the City of Bellevue have both rejected CENSE’s evidence as lacking in credibility.³⁷⁷ We also find CENSE’s arguments difficult to accept given the evidence of actual demand exceeding reliability thresholds.

209 CENSE continues to maintain that the “7 fatal flaws” identified in the Lauckhart-Schiffman study are “unrebutted” in this proceeding.³⁷⁸ However, a party does not convince the Commission by simply ignoring contrary evidence and asserting that its position is unrebutted. As we have detailed in the preceding paragraphs, FERC, the City of Newcastle,

³⁷⁰ Koch, Exh. DRK-26T at 9:1-4; Koch, Exh. DRK-1T at 44:1-6.

³⁷¹ Koch, Exh. DRK-1T at 44:7-45:11.

³⁷² Koch, TR 404:13-405:5.

³⁷³ Koch, Exh. DRK-1T at 48:16-49:12.

³⁷⁴ See Koch, Exh. DRK-10 (City of Bellevue Utility System Efficiencies (2015)); Koch, Exh. DRK-11 (Stantec Consulting Services, Inc. Review Memo (2015)); Koch, Exh. DRK-12 (City of Newcastle by MaxETA Energy (June 2020)).

³⁷⁵ Coalition of Eastside Neighborhoods for Sensible Energy, et. al. v. Puget Sound Energy et. al., Dkt. EL15-74-000, 153 FERC ¶ 61,076 at ¶ 61 (Oct. 21, 2015) (finding PSE complied with applicable transmission planning requirements).

³⁷⁶ Koch, Exh. DRK-26T at 9:11-10:17 (discussing concerns with the Lauckhart-Schiffman report).

³⁷⁷ Koch, Exh. DRK-28 at 4 (City of Newcastle Hearing Examiner) (noting that “[n]o credible evidence was presented refuting the operational need for the Project”); Koch, Exh. DRK-27 at 4 (City of Bellevue Hearing Examiner finding CENSE reports defective and not credible).

³⁷⁸ CENSE ¶¶ 4-5.

and the City of Bellevue rejected the Lauckhart-Schiffman study for lacking credibility. FERC specifically critiqued CENSE's "vague" allegations and found that PSE complied with applicable requirements.³⁷⁹ Koch also identifies specific concerns with the Lauckhart-Schiffman study, which, somewhat ironically, CENSE fails to rebut.³⁸⁰ CENSE instead focuses on certain distinctions and procedural arguments, which have little to do with the substance of the Lauckhart-Schiffman study, fail to rebut PSE's criticisms, and fail to demonstrate any prejudice to CENSE in this proceeding.³⁸¹ CENSE's position is a relative outlier, failing to account for contrary evidence and arguments, and contrary to the opinions of third-party experts. The evidence establishes a need for expanding PSE's transmission on the Eastside, and this issue does not appear to be in genuine dispute according to any of the credible evidence.

- 210 We also agree that PSE sufficiently considered alternatives to the Energize Eastside project. CENSE argues that PSE has not identified and studied four alternatives, referring to (1) Seattle City Light eastside lines, (2) Lake Tradition Transformer, (3) 50 MW peaker plant, and (4) demand side management.³⁸² Yet the Company evaluated each of these alternatives and found that they were either not viable or more expensive than the Energize Eastside project.³⁸³ Although CENSE broadly claims that "any of these four alternatives would have been lower cost,"³⁸⁴ CENSE again ignores the evidence that is contrary to its claims.
- 211 We defer any finding as to the third prudency factor, communication with the Board of Directors. PSE specifically requests a determination on the first and second prudency factors.³⁸⁵ We find it reasonable to defer any final determination as to the third factor until a later proceeding, when the Commission reviews the prudency of Energize Eastside costs recovered on a provisional basis.

³⁷⁹ Koch, Exh. DRK-26T at 10:1-8.

³⁸⁰ Compare Koch, Exh. DRK-26T at 10:9-17 (identifying concerns with the Lauckhart-Schiffman study) with Lauckhart, Exh. At 4:20-6:3 (failing to respond directly to the concerns noted by Koch).

³⁸¹ See *id.* (asserting that the Lauckhart-Schiffman study "refutes all of Mr. Koch's criticism", that municipal permitting decisions did not address the prudency of Energize Eastside, and that PSE convinced hearing examiners that CENSE should not be given load flow files).

³⁸² *E.g.*, CENSE Brief ¶ 9.

³⁸³ Koch, Exh. DRK-5r; Koch, Exh. DRK-6r; Koch, Exh. DRK-21.

³⁸⁴ CENSE Brief ¶ 9.

³⁸⁵ *E.g.*, Koch, Exh. DRK-1T at 46:17-20 ("PSE requests that the Commission determine that the Energize Eastside project is prudent—specifically that there is a need for the transmission capacity and the Energize Eastside project is a reasonable alternative to meet the need, when considering the alternatives."). *Accord* PSE Brief ¶ 56.

- 212 Nonetheless, we should make clear that we are not persuaded by any of CENSE’s arguments regarding the third prudency factor, i.e., the involvement of PSE’s Board of Directors in the decision-making process. In its Brief, PSE addresses this factor and argues that “[n]o party to this proceeding suggested that PSE failed to meet its burden of keeping contemporaneous documentation in the consideration and construction of Energize Eastside.”³⁸⁶ This is not an entirely accurate characterization given CENSE’s position. Lauckhart argues, briefly, that there has not been adequate communication with PSE’s Board of Directors, based on PSE’s answers to data requests.³⁸⁷ However, Lauckhart does not explain this assertion further or provide the data requests at issue.³⁸⁸ Lauckhart also suggests that a prudent owner, purchasing a controlling share in PSE in 2018, would have negotiated to eliminate Energize Eastside from the purchase price.³⁸⁹ This argument is unsupported by any persuasive detail and assumes that CENSE’s other arguments are accepted as true. We are not persuaded by any of these cursory challenges regarding the third prudency factor.
- 213 We also defer any determination on the fourth prudency factor, documentation of the project. It is appropriate for the parties and the Commission to review this issue in a later proceeding.
- 214 For the present time, however, we make clear that CENSE does not establish any valid objection based on PSE’s documentation of its decisions. Although Lauckhart suggests that PSE has refused to provide necessary information to allow for proper investigation as to why the project is needed and why the conclusions of the Lauckhart-Schiffman load flow study are not correct,³⁹⁰ CENSE did not file any motion to compel or establish any violation of the formal rules of discovery in this proceeding. At the settlement hearing, PSE witness Koch explained that CENSE requested CEII approval six months after the case began and that the Company held meetings and worked with CENSE to narrow the request.³⁹¹ CENSE has not undermined Koch’s testimony on this issue. Given the credible evidence of need for Energize Eastside, which is confirmed by third-party experts, we are not persuaded by procedural arguments or accusations regarding underlying load flow data.
- 215 While CENSE raises other challenges to Energize Eastside, we are not persuaded to reject or modify the Revenue Requirement Settlement on the basis of any of them. For example, CENSE takes issue with the Settlement’s use of the term “threshold prudency determination”

³⁸⁶ PSE Brief ¶ 70.

³⁸⁷ Lauckhart, Exh. RL-1T. at 17:11-16.

³⁸⁸ See Lauckhart, Exh. RL-10 (providing PSE’s responses to CENSE’s data requests that generally do not concern communications with the Board of Directors).

³⁸⁹ *Id.* at 18:23-19:3.

³⁹⁰ Lauckhart, Exh. RL-1T at 17:17-20.

³⁹¹ Koch, TR 405:9-406:1.

and suggests that it should be struck from the Settlement.³⁹² This is not persuasive. CENSE simply fails to account for recent statutory changes and the Commission’s guidance implementing those changes. Pursuant to RCW 80.04.250, the Commission may determine the value of any utility property used and useful for service “by or during the rate effective period” and may provide for subsequent rate changes based on rate-effective period investments.³⁹³ The Used and Useful Policy Statement provides guidance on the provisional recovery of rate-period effective investments.

- 216 Despite what CENSE suggests, the Revenue Requirement Settlement is consistent with these statutory changes and policy guidance. The Settling Parties “accept and will not challenge that PSE has met its threshold prudence requirement to demonstrate that the investment should be provisionally included in rates.”³⁹⁴ This term is consistent with the Used and Useful Policy Statement, which contemplates a “threshold” determination before an investment is included in rates on a provisional basis.³⁹⁵ The threshold determination involves an exercise of discretion in each case, but it is only logical that the parties and the Commission would make some initial evaluation of the need for and prudence of a new resource before stipulating to its inclusion in rates on a provisional basis.³⁹⁶ The Commission itself also has a duty to ensure that proposals for provisional recovery of investments are consistent with ratemaking principles and the public interest. If there was no “threshold” prudence evaluation, this would imply that prudence would be *irrelevant* in requests for provisional recovery or that the prudence evaluation would *end* with the approval of provisional recovery. Either outcome would be illogical, contrary to the Used and Useful Policy Statement, and contrary to the public interest.
- 217 CENSE also faults PSE for choosing to proceed with permitting through local municipalities, rather than the Energy Facility Site Evaluation Council (EFSEC). This is ultimately a Company management decision that we are not willing to second-guess.
- 218 CENSE also suggests that Energize Eastside raises safety and environmental concerns. This position is difficult to credit. Transmission lines are already running through this corridor, and

³⁹² CENSE Brief ¶¶ 11-14.

³⁹³ RCW 80.04.250(2). *See also* RCW 80.28.425(3)(b) (providing for recovery of rate-period effective investments in MYRPs).

³⁹⁴ Revenue Requirement Settlement ¶ 23.m.

³⁹⁵ Used and Useful Policy Statement ¶ 35 (“The threshold for including provisional pro forma adjustments will be determined on a case-by-case basis according to the specifications of the rate-effective period investment.”).

³⁹⁶ *Cf.* Public Counsel Brief ¶ 18 (observing in the context of the Tacoma LNG Facility, “If an investment is not prudent, it should not be included in rates, even on a provisional basis).

safety and environmental considerations were considered in the Environmental Impact Statement (EIS).³⁹⁷

- 219 We therefore find it appropriate to approve the Revenue Requirement Settlement's terms regarding the Energize Eastside project. PSE has established that there is a need for the project and that it appropriately evaluated alternatives. As with any provisional recovery, however, the Commission will review the prudence of costs and make a final prudence determination in a future proceeding.

K. Significant Uncontested Issues

i. Corporate Capital Planning

- 220 The Revenue Requirement Settlement requires PSE to incorporate equity considerations at several different points in its capital planning process. It sets forth several concrete steps for the Company to incorporate equity in its planning processes. Those steps were not included in the initial filing.
- 221 PSE witness Catherine A. Koch describes the Company's Delivery System Planning as an engineering function that evaluates operating needs according to five basic steps, which include the use of the Investment Decision Optimization Tool (iDOT).³⁹⁸ Koch also describes the Company's process for Corporate Spending Authorizations (CSAs).³⁹⁹ At the time of the initial filing, the Company was still evaluating how to weight benefits associated with equity, named populations,⁴⁰⁰ and carbon impacts.⁴⁰¹
- 222 PSE witness Joshua A. Kensok provides further background on capital allocation and business planning processes.⁴⁰² He explains that the Company's five-year business plan forms the basis for its MYRP.⁴⁰³ PSE witness Roque B. Bamba also describes the Project Lifecycle Model used for program management.⁴⁰⁴

³⁹⁷ PSE Brief ¶ 73 (citing Koch, Exh. DRK-17 at 18).

³⁹⁸ *E.g.*, Koch, Exh. CAK-1Tr2 at 11:15-12:2.

³⁹⁹ Koch, Exh. CAK-1Tr2 at 13:14-14:2.

⁴⁰⁰ *See* Jacobs, Exh. JJJ-3 at 67 (defining "highly impacted communities" and "vulnerable populations") (internal citations omitted).

⁴⁰¹ Koch, Exh. CAK-1Tr2 at 23:15-24:2.

⁴⁰² Kensok, Exh. JAK-1T at 5:15-15:14.

⁴⁰³ Kensok, Exh. JAK-1T at 6:6-7.

⁴⁰⁴ Bamba, Exh. RBB-1T at 5:1-2 (Figure 1).

223 The Revenue Requirement Settlement brings equity considerations into these capital planning processes. The Settlement provides that, by the end of the MYRP, PSE will submit a compliance filing demonstrating:

(a) a process or procedure for how PSE’s Board of Directors and senior management plan for equitable outcomes when making decisions on enterprise-wide capital portfolios, including a transparent and inclusive methodology for the use of the Enterprise Project Portfolio Management (EPPM) tool;⁴⁰⁵

(b) the consideration of equity and a distributional equity analysis in Corporate Spending Authorizations;⁴⁰⁶

(c) Distribution System Planning aimed at achieving an equitable distribution of benefits and burdens to named communities;⁴⁰⁷ and

(d) development of equity-related benefits and costs, including the social cost of greenhouse gas and societal impacts, for use in the optimization step of iDOT;⁴⁰⁸

224 *Commission Determination.* We accept the Revenue Requirement Settlement terms that incorporate equity considerations into PSE’s capital planning processes. These terms are not opposed by any party. Because this is one of the first general rate cases filed pursuant to RCW 80.28.425, we find it appropriate to discuss our consideration of equity in approving the Settlement.

225 RCW 80.28.425(1) provides that the Commission, in determining the public interest, may consider such factors, *inter alia*, as environmental health and equity. CETA also recognizes and finds that the public interest includes but is not limited to the “equitable distribution of energy benefits and reduction of burdens to vulnerable populations and highly impacted communities; long-term and short-term public health, economic, and environmental benefits and the reduction of costs and risks; and energy security and resiliency.”⁴⁰⁹

226 In our final order in Cascade Natural Gas Corporation’s 2021 GRC, the Commission adopted the principles of equity set forth in the statute and “commit[ed] to ensuring that systemic harm

⁴⁰⁵ Revenue Requirement Settlement ¶ 24.

⁴⁰⁶ Revenue Requirement Settlement ¶ 24.

⁴⁰⁷ Revenue Requirement Settlement ¶ 25.

⁴⁰⁸ Revenue Requirement Settlement ¶ 26.

⁴⁰⁹ RCW 19.405.010(6).

is reduced rather than perpetuated by our processes, practices, and procedures.”⁴¹⁰ In order to bring equity into the context of utility ratemaking, we found salient guidance in the four core tenets of energy justice. These are:

- Distributional justice, which refers to the distribution of benefits and burdens across populations. This objective aims to ensure that marginalized and vulnerable populations do not receive an inordinate share of the burdens or are denied access to benefits.
- Procedural justice, which focuses on inclusive decision-making processes and seeks to ensure that proceedings are fair, equitable, and inclusive for participants, recognizing that marginalized and vulnerable populations have been excluded from decision-making processes historically.
- Recognition justice, which requires an understanding of historic and ongoing inequalities and prescribes efforts that seek to reconcile these inequalities.
- Restorative justice, which is using regulatory government organizations or other interventions to disrupt and address distributional, recognition, or procedural injustices, and to correct them through laws, rules, policies, orders, and practices.⁴¹¹

227 We concluded in that order that “no action is equity-neutral” and that the Commission must apply an “equity lens”⁴¹² in all public interest considerations going forward.⁴¹³ Regulated companies must also take a proactive approach. We observed that “regulated companies should inquire whether each proposed modification to their rates, practices, or operations corrects or perpetuates inequities.”⁴¹⁴

⁴¹⁰ *WUTC v. Cascade Nat. Gas Corp.*, Docket UG-210755 Final Order 09 ¶ 55 (August 23, 2022) (2021 Cascade GRC Order).

⁴¹¹ 2021 Cascade GRC Order ¶ 56 (citing Jenkins, K., McCauley, D., Heffron, R., Stephan, H., & Rehner, R., Energy Justice: A Conceptual Review. *Energy Research & Social Science* 11, 174-82 (2016). See also McCauley, D., Heffron, R., Stephan, H. & Jenkins, K. Advancing Energy Justice: The Triumvirate of Tenets. *International Energy Law Review*, 32, 107-110 (2013); and Carley & Konisky, The Justice and Energy Implications of the Clean Energy Transition. *Nature Energy*, 5, 596-577 (2020)).

⁴¹² “Equity lens” is defined as providing consideration to those characteristics for which groups of people have been historically, and are currently, marginalized to evaluate the equitable impacts of an agency’s policy. See RCW 43.06D.010(4). See also RCW 49.60.030.

⁴¹³ *Id.* ¶ 58.

⁴¹⁴ *Id.*

- 228 Neither PSE, nor any other regulated company, should consider this Order to provide comprehensive guidance on this issue. We will continue to expand upon our discussion of equity in future proceedings. Moreover, we decline to provide specific programmatic guidance, as our discussion of equity in relation to the terms of this Settlement is only the beginning of a broader understanding and expectation of equity considerations in Washington’s energy regulation going forward. For now and the near future, we reiterate our expectation set out in the final order in Cascade Natural Gas Company’s most recent general rate case that PSE must integrate considerations of equity into every proposal through an energy justice lens.
- 229 In this case, we find that the Revenue Requirement Settlement takes appropriate first steps to incorporate equity into PSE’s corporate capital planning. As Staff witness Erdahl explains, the Settling Parties included several terms in the Settlement, including the terms regarding corporate capital planning, specifically “to ensure the MYRP both meets statutory requirements and makes significant progress toward equitable outcomes.”⁴¹⁵ Furthermore, the goal of the Settlement terms “is to give the Commission very specific first attempts that it can evaluate when providing guidance on equity in the future.”⁴¹⁶ By incorporating equity into PSE’s corporate capital planning, the Settling Parties respond to recent statutory changes and our recent guidance in the 2021 Cascade GRC Order.
- 230 We also consider Staff witness Deborah Reynolds’s earlier recommendation that the Commission focus on issues of distributional equity in this proceeding, because “more data about equity is needed to consider procedural and structural equity elements.”⁴¹⁷ The Revenue Requirement Settlement terms focused on equity in corporate capital allocation, contained in paragraphs 24 to 26 of the Settlement, tend to focus on an equitable distribution of benefits and burdens. We agree with Reynolds that it is appropriate to focus on distributional equity as the Commission gathers data to inform later decision-making.
- 231 We therefore accept the Revenue Requirement Settlement’s terms regarding corporate capital planning. We next discuss the extent to which the Settlement addresses equity through its proposed distributional equity analysis.

⁴¹⁵ Erdahl, Exh. BAE-1T at 6:8-12.

⁴¹⁶ *Id.* at 8:5-6.

⁴¹⁷ Reynolds, Exh. DJR-1T at 9:7-9.

ii. Distributional Equity Analysis

- 232 The Settling Parties further agree that PSE will develop and participate in a pilot Distributional Equity Analysis.⁴¹⁸ PSE will apply certain methods to its proposed 80 MW of distributed energy resources.⁴¹⁹ Within 15 months of the approval of the MYRP, which we interpret to be the effective date of this Order, PSE will submit a compliance filing to the Commission documenting its methods and results.⁴²⁰
- 233 The Settlement specifically proposes that the Distributional Equity Analysis will be led by Staff, while remaining open to participation from other parties.⁴²¹ Staff will select a third-party facilitator that PSE must hire in consultation with Staff.⁴²²
- 234 *Commission Determination.* There is a clear need for a process to develop methods and standards for distributional equity analysis. Additionally, we agree that of all the Settling Parties, Staff possesses an expertise and impartiality that makes its selection as the directing party in the proposed process appropriate. We disagree, however, that the process proposed by the Settling Parties is the most appropriate option and find that it is appropriate for the Commission to establish a Commission-led collaborative proceeding to address these issues.
- 235 The issue of equity, broadly, and the more specific need to consider distributional equity in planning processes affects all utility companies regulated by the Commission. Developing a plan for distributional equity requires input, collaboration, and buy-in from persons and parties not included or represented in PSE's general rate case. Lastly, the importance of this work demands a shared burden of responsibilities and a process that shares and allocates power inclusively. For the above reasons, the Commission finds it appropriate to require the modification of the Settling Parties' agreement for distributional equity analysis and determines that it will facilitate a broader Commission-led collaborative involving all regulated utilities and interested persons. At the settlement hearing, both PSE and Staff indicated that they either would not object to or would support a Commission-led process.⁴²³

⁴¹⁸ Revenue Requirement Settlement ¶ 50.

⁴¹⁹ *Id.*

⁴²⁰ *Id.*

⁴²¹ *Id.* ¶ 51.

⁴²² *Id.*

⁴²³ Piliaris, TR 347:17-24; Erdahl, TR 348:6-9.

236 Accordingly, we determine that approving the Settlement should be conditioned on certain modifications to the process outlined by the Settling Parties' agreement to develop methods and standards for distributional equity analysis.

Condition. We condition our approval of the Settlement on the modification of the portion regarding distributional equity analysis. Instead of the process the Settling Parties have agreed to (that Staff will direct this process and select a facilitator for PSE to hire), we determine that the Commission should establish a broad, Commission-led collaborative process to establish methods and standards for distributional equity analysis and that PSE should be required to participate, as should all Washington investor-owned utilities. Subject to this condition, we determine that the Settling Parties' agreement regarding distributional equity analysis is in the public interest and should be approved.

iii. Review of plant investment

237 The Revenue Requirement Settlement also addresses PSE's recent plant investments and its plans for future plant investments over the course of the MYRP. The Settling Parties agree to the prudence of plant investment through 2021, and they do not object to the provisional recovery of plant projected to go into service in 2022 through 2024 subject to later review and possible refund, as proposed by PSE witness Susan Free.⁴²⁴ Free specifically proposes an annual filing on March 31 of each year,⁴²⁵ which, as modified by the Settlement, would include a four-month review process.⁴²⁶

238 This Settlement term is not opposed by any party. Public Counsel does not offer any argument opposing this Settlement term.⁴²⁷

239 *Commission Determination.* We accept the Settlement's terms related to both traditional and provisional recovery of plant investment for the purpose of resolving the issues presented in this GRC.⁴²⁸

⁴²⁴ Revenue Requirement Settlement ¶ 23.p.

⁴²⁵ Free, Exh. SEF-1Tr 30:9-31:2. *See also* Piliaris, Exh. JAP-3 (Planned Filing Schedule During Multiyear Rate Plan).

⁴²⁶ Revenue Requirement Settlement ¶ 53.p.

⁴²⁷ *See, e.g.*, Bauman, Exh. SB-9T at 6:6-7:6 (identifying areas of the Revenue Requirement Settlement that Public Counsel supports, opposes, or takes a neutral position on).

⁴²⁸ We observe that the Settling Parties agree to the recovery of capital projects as proposed in the testimony of PSE witness Free. *See* Revenue Requirement Settlement ¶ 23.p. However, the Settlement is again unclear as to exactly which projects are proposed for provisional recovery, and we refer to the

- 240 We expressly limit our approval, however, to this GRC and emphasize that our decision should not be considered precedential for future proceedings. Some impacts from the IJA and IRA will affect capital investment and could provide immediate customer savings, as we highlighted previously.⁴²⁹
- 241 The Commission intends to initiate a collaborative proceeding to include all affected, or potentially affected, utilities as well as interested persons to discuss, address, and plan for benefits and opportunities resulting from the IRA and IJA that may impact the companies' costs. This is not a condition of our approval of the Settlement, but an indication of action tangential to this GRC that the Commission will take to appropriately address impacts to all regulated utilities, not only PSE. Following the conclusion of that proceeding, the Commission expects utilities to incorporate the benefits of the IRA and IJA into the retrospective review of any provisional investment.
- 242 As it concerns the Settling Parties' agreement for capital projects review during the MYRP, we take a particular interest in how the IRA and IJA may impact the retrospective review of provisional plant (capital projects). The precise impacts and extent of those impacts is currently unknown. However, it is apparent that there are opportunities for benefits to PSE and its ratepayers related to its capital project planning, and more urgently in capturing any changes that will result in immediate customer savings. We find it imperative that PSE pursue those opportunities the IRA and IJA might offer during the MYRP. For that purpose, we find it appropriate for PSE to record and share its efforts for identifying opportunities for rate mitigation, seeking benefits as well as what benefits it receives.
- 243 Accordingly, we determine that approval of the Settlement should be conditioned on certain modifications to the Settling Parties' agreement for the review of capital projects during the MYRP.

Condition. We condition our approval of the Settlement as per the following: We require that PSE demonstrate all offsetting benefits received or for which it has applied through the IRA and IJA for all retrospective review of provisional plant (capital projects). Further, we require PSE's reporting to include all funding, tax benefits, or any other benefit for which it has and has not applied and, if it has not, the reasons justifying its decision to not pursue the IRA and IJA funding options. Subject to these

supporting testimony of PSE witnesses for clarification. *See* Joint Testimony, Exh. JAP-SEF-JJJ-1JT at 6:26-30. Any inaccuracy in our description of the Settlement is again attributable to a relative lack of clarity in the underlying submissions.

⁴²⁹ *Supra* paragraphs 169-73.

conditions, we determine that the Settling Parties' agreement regarding capital projects review is in the public interest and should be approved.

iv. Power costs

- 244 The Revenue Requirement Settlement seeks to provide for more timely recovery of PSE's power costs. Although the Settlement's treatment of power costs is not directly opposed by any party, we consider Public Counsel's recommendation that the prudence of power costs should only be reviewed in the context of an adjudicative proceeding.
- 245 PSE witness Paul K. Wetherbee testifies that the Company's projected power costs for 2023 are \$902.4 million, which is 18.1 percent higher than the amount currently in rates, and he describes the various contracts and inputs driving this increase.⁴³⁰ Projected power costs for 2024 are \$913.4 million.⁴³¹ PSE also requests a prudence determination on new Power Purchase Agreements (PPAs), as well as new and continuing transmission contracts.⁴³²
- 246 Company witness Janet K. Phelps recommends that Power Cost Only Rate Cases (PCORCs) continue but also proposes a system of annual updates for power costs.⁴³³ Annual updates would result in changes to the variable portion of the baseline rate on January 1 of each year and annual changes to the deferral rate on October 1 of each year.⁴³⁴ This would be similar to the Company's current Purchased Gas Adjustment (PGA) mechanism.⁴³⁵
- 247 PSE also requests to earn a return on clean energy PPAs.⁴³⁶ PSE witness Kazi H. Hasan testifies that PPAs are "off-balance sheet financial obligations" and credit rating agencies view them as "debt-like obligations."⁴³⁷ Hasan suggests that PPAs will weaken the Company's financial strength if it does not earn a rate of return.⁴³⁸
- 248 The Revenue Requirement Settlement generally accepts the power cost increases in PSE's initial filing and presumes a \$125 million increase in power costs for 2023.⁴³⁹ The Settling

⁴³⁰ *E.g.*, Wetherbee, Exh. PKW-1CT at 9:10-10:15.

⁴³¹ Wetherbee, Exh. PKW-1CT at 10:20.

⁴³² *E.g.*, Wetherbee, Exh. PKW-1CT at 21:12-20.

⁴³³ Phelps, Exh. JKP-1T at 49:13-16.

⁴³⁴ Phelps, Exh. JKP-1T at 49:18-20.

⁴³⁵ Phelps, Exh. JKP-1T at 12:2-3.

⁴³⁶ Hasan, Exh. KKH-1CT at 16:13.

⁴³⁷ Hasan, Exh. KKH-1CT at 16:14-19.

⁴³⁸ *See id.*

⁴³⁹ Revenue Requirement Settlement ¶ 23.d.

Parties agree to the prudence of all power supply resources for which PSE sought a prudence determination.⁴⁴⁰

- 249 PSE agrees, however, to amortize refunds from the Northwest Pipeline settlement over the 12 months of 2023 as a credit against forecasted power costs.⁴⁴¹ An estimated \$4.4 million of the \$28.7 million Northwest Pipeline settlement is attributed to the Company’s electric customers and will be applied against forecasted 2023 power costs in this manner.⁴⁴²
- 250 PSE also agrees to a PCORC stay-out for the duration of the MYRP.⁴⁴³ PSE will submit a compliance filing at the conclusion of the case for 2023 power costs, and it will submit a second compliance filing within 90 days of the conclusion of the case for 2024 power costs.⁴⁴⁴
- 251 The Settling Parties also clarify the process for updating and reviewing power costs, compared to the initial filing. Power cost updates will include several inputs such as updated natural gas prices, hedges, and costs for Mid-C contracts.⁴⁴⁵ While PSE may include new contracts in power cost updates,⁴⁴⁶ the Settling Parties require PSE to submit workpapers detailing any new transmission contracts or new resources,⁴⁴⁷ and the Settling Parties reserve the right to challenge prudence in future proceedings.⁴⁴⁸ The Settling Parties specifically agree to review prudence in connection with the Company’s Power Cost Adjustment (PCA) filing in April each year.⁴⁴⁹
- 252 The Settling Parties also agree that any Distributed Energy Resources (DERs), battery resources, or demand response costs are “eligible” for potential earnings on PPAs pursuant to RCW 80.28.410.⁴⁵⁰

⁴⁴⁰ Revenue Requirement Settlement ¶ 31.

⁴⁴¹ Revenue Requirement Settlement ¶¶ 23.d, 55. *See also* Mullins, Exh. BGM-1T at 41:10-19 (observing that PSE will receive a refund of \$28.7 million from Northwest Pipeline reflecting deferred taxes).

⁴⁴² Revenue Requirement Settlement ¶ 55.

⁴⁴³ Revenue Requirement Settlement ¶ 27.

⁴⁴⁴ Revenue Requirement Settlement ¶ 28.

⁴⁴⁵ Revenue Requirement Settlement ¶ 28.

⁴⁴⁶ Revenue Requirement Settlement ¶ 28.

⁴⁴⁷ Revenue Requirement Settlement ¶ 29.

⁴⁴⁸ Revenue Requirement Settlement ¶ 28.

⁴⁴⁹ Revenue Requirement Settlement ¶ 30.

⁴⁵⁰ Revenue Requirement Settlement ¶ 32. *See also* RCW 80.28.410(2)(a) (providing that an electrical company may earn its authorized return on equity for any PPAs).

- 253 Public Counsel generally supports or takes a neutral position on the Settlement’s treatment of power costs. Shay Bauman explains that Public Counsel supports the PCORC stay-out provision.⁴⁵¹ Bauman notes that “Public Counsel does not oppose any of the other power cost terms of the [Revenue Requirement] Settlement, but we do have particular concerns regarding the prudency provision.”⁴⁵²
- 254 As Robert L. Earle testifies on behalf of Public Counsel, there are a long list of inputs to PSE’s power costs, and Earle therefore recommends that the prudency of the Company’s power costs be reviewed in a full adjudication, specifically the Company’s next general rate case.⁴⁵³ Earle suggests that it may be difficult for intervenors to quickly respond to and analyze power cost prudency in the context of a PCA filing.⁴⁵⁴
- 255 In its post-hearing Brief, PSE emphasizes that the power cost provisions of the Settlement are of “critical importance” and that the Company has repeatedly under-recovered its power costs in recent years.⁴⁵⁵
- 256 *Commission Determination.* We accept the Revenue Requirement Settlement’s terms regarding power costs. The Settling Parties agree to the prudency of the resources described in PSE’s initial filing.⁴⁵⁶ No party challenges this Settlement term. We find that the record adequately supports the Settling Parties’ agreement but emphasize that our approval of these terms is not precedential.
- 257 We also accept the Settling Parties’ modifications to PSE’s power cost filings. This includes the PCORC stay-out provision, the power cost compliance filings, and the Settling Parties’ proposed process for reviewing the prudency of new resources.⁴⁵⁷ PSE explains that it has under-recovered power costs in recent years and that these Settlement terms are, from the Company’s perspective, one of the most important aspects of the Settlement.⁴⁵⁸ The Company plans to continue adding new resources to its system over the next several years. This is driven by the Company’s need to meet the capacity needs identified in its IRP, to meet resource planning standards, to reduce its exposure to spot market prices, and to comply with

⁴⁵¹ Bauman, Exh. SB-9T at 24:7-10.

⁴⁵² Bauman, Exh. SB-9T at 24:13-15.

⁴⁵³ Earle, Exh. RLE-14CT at 21:18-22.

⁴⁵⁴ Earle, Exh. RLE-14CT at 21:18-22.

⁴⁵⁵ PSE Brief ¶ 48.

⁴⁵⁶ Revenue Requirement Settlement ¶ 31.

⁴⁵⁷ Revenue Requirement Settlement ¶¶ 27-28.

⁴⁵⁸ *E.g.*, Joint Testimony, Exh. JAP-SEF-JJJ-1JT at 13:5-10.

CETA.⁴⁵⁹ In light of the Settling Parties' agreement, it is reasonable to modify our review of PSE's power costs to provide more timely review and recovery for the Company.

258 The Settling Parties also agree that any DERs, battery resources, or demand response costs are "eligible" for potential earnings on PPAs pursuant to RCW 80.28.410.⁴⁶⁰ Although we emphasize that the Settlement is non-precedential, we find this agreement consistent with the statute and the public interest. To the extent that the DERs, battery resources, or demand response costs in question are "major projects in the electrical company's clean energy action plan pursuant to RCW [19.280.030\(1\)\(l\)](#), or selected in the electrical company's solicitation of bids for delivering electric capacity, energy, capacity and energy, or conservation,"⁴⁶¹ whether they are PPAs or not, these projects are eligible for earnings under the statute. Yet whether return is appropriate on a particular resource, or the precise level of potential earnings, is not set forth in the Settlement and must be determined in a future proceeding, as the statute provides discretion for the Commission in determining the appropriate return on a PPA.

259 We do not agree with Public Counsel's proposed modification to the Revenue Requirement Settlement's treatment of power costs, which would require the Commission to review the prudence of new resources in the Company's next general rate case.⁴⁶² As Staff explains, this proposal could add to the Commission's administrative burden by turning power costs filings into adjudications by default.⁴⁶³ It also appears to overlook the Settlement provision that allows interested persons to extend the review process by asking the Commission to defer a prudence finding for one year.⁴⁶⁴ Because the Settlement already provides a process for interested parties to request additional time, we find that this addresses the concerns raised by Public Counsel related to public participation and prudence review of new resources.

260 Finally, we discussed above relating to review of plant investment, the precise impacts of the IJA and IRA, and extent of those impacts is currently unknown. However, it is apparent that there are opportunities for benefits to PSE and its customers for the Company's resource planning, and more urgently in capturing any changes that will result in immediate customer savings. It is imperative that PSE pursue the opportunities the IRA and IJA offer during the MYRP. To that end, we find it appropriate for PSE to record and share its efforts for

⁴⁵⁹ Wetherbee, Exh. PKW-1CT at 16:4-10. *Accord* Joint Testimony, Exh. JAP-SEF-JJJ-1JT at 13:10-13.

⁴⁶⁰ Revenue Requirement Settlement ¶ 32. *See also* RCW 80.28.410(2)(a) (providing that an electrical company may earn its authorized return on equity for any PPAs).

⁴⁶¹ RCW 80.28.410(1).

⁴⁶² *E.g.*, Public Counsel Brief ¶ 96.

⁴⁶³ Staff Brief ¶ 49.

⁴⁶⁴ *Id.* *Accord* Joint Testimony, Exh. JAP-SEF-JJJ-1JT at 12:17-19

identifying opportunities for rate mitigation, both seeking benefits as well as the benefits it receives.

261 Further, as we discussed above in Section II.I, the Commission intends to initiate a collaborative proceeding to include all affected, or potentially affected, utilities as well as interested persons to discuss, address, and plan for benefits and opportunities resulting from the IRA and IJA that may impact the companies' costs.

262 We therefore accept the Settlement's treatment of power costs subject to the following condition.

Condition: We condition our approval of the Settlement on the following modifications of the Settlement's terms regarding power costs: We require that PSE demonstrate all offsetting benefits received or for which it has applied through the IRA and IJA when demonstrating the prudence of power costs. Further, we require PSE's reporting with respect to the recovery of its power costs to include all funding, tax benefits, or any other benefit for which it has and has not applied and, if it has not, the reasons justifying its decision to not pursue the IRA and IJA funding options. Subject to these conditions, we determine that the Settling Parties' agreement regarding capital projects review is in the public interest and should be approved.

v. Low-income issues

263 The Revenue Requirement Settlement requires PSE to further develop and enhance its programs for low-income customers. The Revenue Requirement Settlement requires PSE to consult with its Low-Income Advisory Committee (LIAC) to develop and design the Bill Discount Rate (BDR) and Arrearage Management Plan (AMP) the Company discusses in its initial testimony.⁴⁶⁵ Although the BDR program will begin on October 1, 2023, PSE will make a subsequent filing with the Commission on July 1, 2023, seeking approval of the BDR and AMP program design developed through the LIAC process.⁴⁶⁶ The Revenue Requirement Settlement sets forth several concrete steps for the Company to incorporate equity in its planning processes that were not present in the initial filing.

264 In a commitment to make a good faith effort to increase weatherization measure incentive amounts, PSE agrees to work with its Conservation Resources Advisory Group (CRAG) to survey actual installed measure costs and adjust rebate amounts per survey findings.⁴⁶⁷ PSE agrees to continue to fund low-income weatherization programs that the community action

⁴⁶⁵ Revenue Requirement Settlement ¶ 37.

⁴⁶⁶ *Id.*

⁴⁶⁷ Revenue Requirement Settlement ¶ 39.

agencies inform PSE they can feasibly achieve with an annual base funding level of no less than the amount in PSE's current Biennial Conservation Plan Low-Income Weatherization Programs through the next general rate case.⁴⁶⁸

265 The Revenue Requirement Settlement also states that PSE will increase HELP funding consistent with RCW 80.28.425(2), as amended.⁴⁶⁹ PSE will additionally continue its existing credit and collection processes until the conclusion of the proceeding currently being conducted in Docket U-210800.⁴⁷⁰

266 In supporting testimony for the settlement, Bradley T. Cebulko, witness for The Energy Project, supports the low-income provisions outlined above.⁴⁷¹

267 The Settlement's provisions for low-income customers are not opposed by any party. Although it did not join the Settlement, Public Counsel argues that "[e]ach of these terms provides critical assistance and protection to PSE's low-income customers and are in the public interest."⁴⁷²

268 *Commission Determination.* We accept the Settlement's terms regarding low-income customer programs. As the Commission determined in the 2021 Cascade GRC Order, advancing energy justice is integral to achieving equity in Washington's energy regulation. Among other things, energy justice focuses on ensuring that individuals have access to energy that is affordable, safe, sustainable, and affords them the ability to sustain a decent lifestyle. Here, the low-income provisions of the Settlement propose that the Company work with its LIAC to make significant changes to PSE's low-income programs that will increase access to, and enrollment in, those programs.

269 Specifically, the Settlement increases the LIAC's involvement in program design and implementation, demonstrates a deeper understanding of the flexibility necessary for certain budgeting structures, and enhances coordination of PSE's low-income related programs. Consistent with our decision on the retrospective review of provisional plant, we require that PSE provide evidence of its consideration of IRA and IJA funding opportunities related to supporting and promoting low-income programs, projects, and interests.

⁴⁶⁸ Revenue Requirement Settlement ¶ 39. *See also*, Docket U-210542, Order 01, Appendix A, Commitment 43.

⁴⁶⁹ Revenue Requirement Settlement ¶ 38.

⁴⁷⁰ Revenue Requirement Settlement ¶ 40.

⁴⁷¹ Cebulko, Exh. BTC-7T at 8:7-12:8.

⁴⁷² Public Counsel Brief ¶ 83.

270 As we discussed above in the context of corporate capital planning, neither PSE, nor any other regulated company, should consider this Order to provide comprehensive guidance on the issue of equity. We reiterate our expectation set out in the 2021 Cascade GRC Order that PSE and other regulated utilities must integrate considerations of equity into every proposal through an energy justice lens.

vi. Colstrip Tracker and Decommissioning and Remediation Costs

271 PSE proposes to place costs related to the coal-fired Colstrip Steam Electric Station (Colstrip) into a tracker, which would include both rate base and decommissioning and remediation (D&R) costs. The Revenue Requirement Settlement generally accepts PSE's proposed tracker. Although these Settlement terms are not opposed by any party, we discuss this issue given its significance to the public interest and the statutory prohibition on including costs related to coal-fired resources in rates after December 31, 2025.

272 In the Company's initial filing, witness Ronald J. Roberts provides background on PSE's ownership interest in Colstrip and PSE's obligations under contracts such as the Ownership and Operating Agreement.⁴⁷³ Roberts describes historical capital expenditures at the facility;⁴⁷⁴ planned capital expenditures for 2023, 2024, and 2025;⁴⁷⁵ and forecasted decommissioning and remediation (D&R) expenses.⁴⁷⁶ For example, Roberts explains the plans to install a "dry waste disposal system" at Units 3 and 4, which must be installed pursuant to a 2012 settlement agreement among the Colstrip owners and several environmental and public interest organizations.⁴⁷⁷

273 Susan E. Free describes PSE's proposal to recover Colstrip costs in a tracker, effective with the first year of the MRYP.⁴⁷⁸ The revenue requirement for the first year of the tracker, in 2023, is \$53.9 million.⁴⁷⁹ Free explains that use of a tracker will make it easier for PSE to take advantage of future chances to sell its ownership interest in Colstrip.⁴⁸⁰ In terms of procedure, Free proposes that PSE submit an annual filing for its Colstrip tracker on October 31 of each

⁴⁷³ See generally Roberts, Exh. RJR-1CT 70:8-108:7.

⁴⁷⁴ Roberts, Exh. RJR-1CT at 84:2-91:4.

⁴⁷⁵ Roberts, Exh. RJR-1CT at 91:6-100:2.

⁴⁷⁶ Roberts, Exh. RJR-1CT at 100:5-108:7.

⁴⁷⁷ Roberts, Exh. RJR-1CT at 94:5-100:2.

⁴⁷⁸ See generally Free, Exh. SEF-18.

⁴⁷⁹ Free, Exh. SEF-18 at 38:6-7. See also Free, Exh. SEF-19 line 36 (Revenue Requirement Summary).

⁴⁸⁰ Free, Exh. SEF-18 at 3:10-15.

year and that there would be a 60-day review period, before rates take effect on January 1 of the following year.⁴⁸¹

274 As instructed by the Commission in the Company's last general rate case, Free discusses how the Company plans to offset D&R costs with Production Tax Credits (PTCs), and estimates that \$127.8 million in PTCs are available for this purpose.⁴⁸² Free explains that the Company met with Staff in November 2021 while developing its proposed tracker for Colstrip costs, and Staff was generally agreeable to the Company's proposal.⁴⁸³

275 Free explains, furthermore, that the proposed Colstrip tracker is compliant with CETA because "all plant related and operating expenses will be removed from the tracker as of December 2025, with the exception of D&R related costs."⁴⁸⁴ The Company also proposes to discontinue the Annual Colstrip Report and to instead provide this information in its annual tracker tariff filing.⁴⁸⁵

276 Jon A. Piliaris explains how PSE proposes to allocate Colstrip D&R costs to Microsoft, which "wheels" electricity through PSE's transmission system and is served under a special contract.⁴⁸⁶ PSE proposes to allocate these costs based on Microsoft's share of total retail sales from 2002 to 2025.⁴⁸⁷ Because PSE has more than enough PTCs to offset remaining Colstrip net plant balances, PSE does not seek to allocate any further depreciation to Microsoft.⁴⁸⁸

277 The Revenue Requirement Settlement generally accepts the proposals set forth in PSE's initial filing. Specifically, the Settling Parties agree that PSE will move Colstrip rate base and expense into a separate tracker under Schedule 141-C, as proposed by PSE witness Free.⁴⁸⁹ The tracker will therefore include all Colstrip rate base and operational costs, with the exception of variable power costs and transmission-related costs.⁴⁹⁰ The Settling Parties also

⁴⁸¹ Free, Exh. SEF-18 at 43:18-44:2.

⁴⁸² Free, Exh. SEF-18 at 41:3-4.

⁴⁸³ Free, Exh. SEF-18 at 41:7-10.

⁴⁸⁴ Free, Exh. SEF-18 at 44:4-5.

⁴⁸⁵ Free, Exh. SEF-18 at 44:7-45:11.

⁴⁸⁶ See generally Piliaris, Exh. JAP-1T at 45:6-50:11.

⁴⁸⁷ Piliaris, Exh. JAP-1T at 46:20-22.

⁴⁸⁸ Piliaris, Exh. JAP-1T at 50:8-11.

⁴⁸⁹ Revenue Requirement Settlement ¶¶ 23.j, 43 (citing Free, Exh. SEF-18).

⁴⁹⁰ Free, Exh. SEF-18 at 2:4-3:3.

accept PSE's forecast of D&R costs.⁴⁹¹ Colstrip costs included in rates in 2023 and beyond are subject to later prudence review.⁴⁹²

278 The Settling Parties also agree that major maintenance costs will be amortized over a three-year period, regardless of the year incurred.⁴⁹³ Costs amortized after 2025 will not be included in rates.⁴⁹⁴

279 PSE agrees, however, to exclude capital investments associated with its Colstrip "dry ash" facilities from recovery in base rates or the tracker.⁴⁹⁵

280 The Settling Parties also agree to PSE's proposed allocation factor for purposes of the Microsoft buyout,⁴⁹⁶ and they accept Microsoft's proposal to pay its remaining obligations for D&R costs in a lump sum of approximately \$0.4 million following the conclusion of this case.⁴⁹⁷

281 *Commission Determination.* We find that the Settling Parties' treatment of Colstrip costs is supported by an appropriate record, consistent with the public interest, and consistent with applicable law.

282 First, we turn to the issue of removing coal-fired resources from rates. Pursuant to RCW 19.405.030(1)(a), "[o]n or before December 31, 2025, each electric utility must eliminate coal-fired resources from its allocation of electricity. This does not include costs associated with decommissioning and remediation of these facilities." As Company witness Free confirmed at the hearing, the Settlement removes these coal-fired resources from rates by 2025.⁴⁹⁸ Any major maintenance amortized after 2025 will not be recovered.⁴⁹⁹

283 We next discuss the issue of D&R costs. RCW 19.405.030(1)(b) provides that "[t]he commission shall allow in electric rates all decommissioning and remediation costs prudently incurred by an investor-owned utility for a coal-fired resource." In PSE's last general rate case, the Commission discussed this statutory requirement and gave notice that it would

⁴⁹¹ Revenue Requirement Settlement ¶ 44.

⁴⁹² Revenue Requirement Settlement ¶ 23.j.

⁴⁹³ Revenue Requirement Settlement ¶ 23.j.

⁴⁹⁴ Revenue Requirement Settlement ¶ 23.j.

⁴⁹⁵ Revenue Requirement Settlement ¶ 23.j.

⁴⁹⁶ Revenue Requirement Settlement ¶ 44.

⁴⁹⁷ Revenue Requirement Settlement ¶ 45. *See also* Plenefisch, Exh. IP-1Tr at 4:22-23

⁴⁹⁸ Free, TR 338:23-339:10.

⁴⁹⁹ *Id.*

address the recovery of D&R costs and Microsoft's share thereof in the Company's next general rate case, with the caveat that prudence review of those D&R costs would occur after they are incurred.⁵⁰⁰ The terms of the Revenue Requirement Settlement are consistent with these instructions. As Staff witness Erdahl explains, the Colstrip tracker provides for transparency and facilitates CETA compliance by allowing for a later review of the prudence of D&R costs.⁵⁰¹ Erdahl also explains that Microsoft's lump sum payment for its remaining obligation for D&R costs provides Microsoft certainty while protecting PSE's remaining ratepayers from having to pay more if the D&R costs exceed PSE's estimates.⁵⁰² We agree with Staff's testimony. The Settlement's treatment of Colstrip costs is consistent with the Commission's earlier order and CETA's requirements. We observe, as well, that Public Counsel supports the Settlement's treatment of Colstrip D&R costs, even though Public Counsel is not one of the Settling Parties.⁵⁰³

284 We also accept the Settling Parties' agreement to exclude capital investments associated with Colstrip "dry ash" facilities from recovery in base rates or the tracker.⁵⁰⁴ These "dry ash" facilities are also described as a "dry waste disposal system" by Company witness Roberts.⁵⁰⁵ In response testimony, Public Counsel witness Andrea C. Crane objected to PSE recovering the costs of the dry ash facility because this investment sought to extend Colstrip's operational life.⁵⁰⁶ Although PSE maintains this was a prudent investment, the Company has compromised on this issue in the interest of supporting the broader Settlement.⁵⁰⁷ We accept the Settling Parties' compromise on this issue and find it consistent with the public interest to exclude this investment from recovery.

⁵⁰⁰ *WUTC v. Puget Sound Energy*, Dockets UE-190529 UG-190530 (Consolidated), Final Order 08 ¶ 430 (July 8, 2020).

⁵⁰¹ Erdahl, Exh. BAE-1T at 9:22-10:10:2.

⁵⁰² *Id.* at 10:15-17.

⁵⁰³ Bauman, Exh. SB-9T at 15:6-18 ("[R]ecovering appropriate Colstrip maintenance costs over three years regardless of when costs are incurred will result in some costs extending beyond 2025, when CETA no longer allows those costs in rates.").

⁵⁰⁴ Revenue Requirement Settlement ¶ 23.j.

⁵⁰⁵ Free, TR 337:17-23.

⁵⁰⁶ *See* Crane, Exh. ACC-1CT at 29:6-8.

⁵⁰⁷ Joint Testimony, Exh. JAP-SEF-JJJ-1JT at 18:18-22.

vii. Gas Line Extension Margin Allowances

- 285 Line extension allowances are ratepayer-funded subsidies that reduce the cost of extending new gas service lines to customers' homes.⁵⁰⁸
- 286 The Settling Parties agree that PSE will significantly reduce its gas line extension allowance in the first year of the MYRP by using a two-year timeframe rather than a seven-year timeframe for the net present value (NPV) methodology. The line extension allowance will decrease further in 2024 before it is eliminated entirely in 2025. This reflects a compromise between the Company's initial filing, which did not propose any further reductions, and the response testimony filed by the Joint Environmental Advocates, who advocated eliminating line extension allowances.⁵⁰⁹
- 287 The Revenue Requirement Settlement therefore requires PSE to submit tariff revisions reflecting the following:
- a) effective by the time new building codes take effect in 2023, a gas line extension margin allowance, based on the NPV methodology using a two-year timeframe and updated inputs from this rate case;
 - b) by January 1, 2024, a gas line extension margin allowance based on the NPV methodology using a one-year timeframe and the same inputs used in 2023; and
 - c) by January 1, 2025, reducing the gas line extension margin allowance to zero.⁵¹⁰
- 288 *Commission Determination.* We accept the Settling Parties' agreement to gradually reduce PSE's gas line extension allowances as consistent with public policy. This proceeding provides an appropriate opportunity to revisit this issue.
- 289 The Commission recently considered the issue of line extension allowances at its October 29, 2021, open meeting.⁵¹¹ After considering various proposals, the Commission ordered the

⁵⁰⁸ Burgess, Exh. EAB-1T at 36:4-5.

⁵⁰⁹ See Burgess, Exh. EAB-1T at 46:17-47:9.

⁵¹⁰ Revenue Requirement Settlement ¶ 49.

⁵¹¹ See *In the Matter of Chair Danner's Motion to Consider Whether Natural Gas Utilities Should Continue to Use the Perpetual Net Present Value Methodology*, Docket UG-210729, Order 01 (October 29, 2021).

investor-owned gas companies to adopt a NPV methodology using a seven-year timeline.⁵¹² Noting the urgent issue of climate change, the Commission described its decision as an “interim measure” and planned to continue its dialog with regulated utilities and interested parties.⁵¹³ On November 17, 2021, PSE filed revised tariff sheets reducing its line extension allowance from \$4,328 to \$1,997, consistent with the Commission’s order.

290 Although PSE did not directly address the issue of line extension allowances in its initial filing, this issue was raised by the Joint Environmental Advocates in response testimony.⁵¹⁴ The Revenue Requirement Settlement reflects the Settling Parties’ subsequent agreement to gradually reduce PSE’s line extension allowance to zero, much as recommended by the Joint Environmental Advocates.⁵¹⁵ We accept the Settling Parties’ agreement as lawful, supported by an appropriate record, and consistent with the public interest.

viii. Time Varying Rates Pilot

291 Time Varying Rates (TVR) are designed to lower peak demand and lower system costs by providing pricing signals that encourage customers to reduce usage during periods of peak demand.⁵¹⁶ TVR rates are designed to be revenue neutral.⁵¹⁷ The Settling Parties agree that PSE will carry out the TVR pilot proposed in its initial filing, subject to certain modifications.

292 In PSE’s initial filing, consultant Ahmad Faruqui explains how PSE developed its Time Varying Rates (TVR) pilot in order to test revenue-neutral Time of Use (TOU) rates, peak-time rebates (PTRs), and TOU rates focused on customers with electric vehicles.⁵¹⁸ PSE will offer the TVR pilot to customers who are selected randomly,⁵¹⁹ and the customers may then opt-in.⁵²⁰ PSE plans to run the pilot for a two-year period,⁵²¹ and will evaluate the success of the pilot in light of certain metrics.⁵²² Faruqui explains that the Company is not planning to

⁵¹² *Id.* ¶ 24.

⁵¹³ *Id.* ¶ 27.

⁵¹⁴ *See, e.g.*, Burgess, EAB-1T at 7:6-12:21.

⁵¹⁵ Revenue Requirement Settlement ¶ 49.

⁵¹⁶ Faruqui, Exh. AF-1T at 2:11-14.

⁵¹⁷ Faruqui, Exh. AF-1T at 16:19.

⁵¹⁸ *See generally* Faruqui, Exh. AF-1T.

⁵¹⁹ Faruqui, Exh. AF-1T at 25:3-4.

⁵²⁰ Faruqui, Exh. AF-1T at 24:8.

⁵²¹ Faruqui, Exh. AF-1T at 27:18-28:4.

⁵²² *E.g.*, Faruqui, Exh. AF-1T at 30:11-22.

offer bill protection to participants,⁵²³ but low-income customers will be eligible for other low-income discounts and programs.⁵²⁴

293 PSE witnesses William T. Einstein and Birud D. Jhaveri provide further background on the Company's TVR pilot.⁵²⁵ Einstein explains that PSE will spend \$7.5 million on this pilot through 2025.⁵²⁶ He also notes that customers will be encouraged, but not required, to utilize enabling technologies.⁵²⁷

294 The Revenue Requirement Settlement provides that PSE will carry out its TVR pilot with certain modifications:

- including low-income customers up to 200 percent of the federal poverty level or 80 percent of the area median income;
- providing enabling equipment to half of the low-income participants at no cost to those participants;
- providing bill protection to half of the low-income participants;
- providing for review and comment on recruitment language by Consumer Protection Staff;
- including an exit survey for participants, asking if they understood their rates; and
- refreshing the TVR pilot rates to reflect the revenue increases as provided in the Settlement.⁵²⁸

295 The Settling Parties also agree that PSE will propose a full opt-in TVR program for residential customers in its next general rate case (as opposed to the two-year pilot program at issue in this case).⁵²⁹

296 *Commission Determination.* We accept the Revenue Requirement Settlement's terms, providing for a modified TVR pilot and requiring PSE to propose a full opt-in TVR program in its next general rate case. The Settlement provides greater protections and resources for

⁵²³ Faruqui, Exh. AF-1T at 27:5.

⁵²⁴ Faruqui, Exh. AF-1T at 27:14-15.

⁵²⁵ See generally Einstein, Exh. WTE-1CT at 13:10-24:4; Jhaveri, Exh. BDJ-1Tr 92:2-108:20.

⁵²⁶ Einstein, Exh. WTE-1CT at 21:18-19.

⁵²⁷ Einstein, Exh. WTE-1CT at 17:15-19.

⁵²⁸ Revenue Requirement Settlement ¶ 41.

⁵²⁹ Revenue Requirement Settlement ¶ 42.

low-income customers, randomly selecting half of low-income TVR participants to receive bill protection and, again, randomly selecting half of low-income participants to receive enabling technology.⁵³⁰

297 Consistent with the Company’s proposal, the Commission will evaluate the success of the TVR pilot in light of an “ex-post load impact” analysis and certain metrics, such as change in average peak period demand, change in average off-peak period demand, and change in average usage level, among others.⁵³¹ The Settlement provides for a customer exit survey,⁵³² and requires the Company to report on other relevant metrics, such as a count of participating customer complaints in each of PSE’s TVR pilots and load reduction during called events for customers enrolled in the TOU+PTR pilot, a program combining time of use rates and peak-time rebates.⁵³³ These metrics will inform the Commission’s evaluation of the TVR pilot and the Company’s future proposal for a full opt-in TVR program.

ix. Other, undisputed adjustments

298 PSE proposes 39 restating and pro forma adjustments to its electric revenue requirement and 34 restating and pro forma adjustments to its natural gas revenue requirement over the term of the MYRP that are uncontested by any party.. All of these adjustments are adequately supported by the record. Accordingly, we find that the remaining uncontested adjustments should be approved without condition.

III. GREEN DIRECT SETTLEMENT

299 On August 5, 2022, PSE filed the Green Direct Settlement and Joint Testimony. The Settlement was joined by PSE, Staff, Public Counsel, King County, and Walmart (Settling Parties). The following parties neither joined nor opposed the Green Direct Settlement: AWEC, TEP, NWECC, Front and Centered, Sierra Club, FEA, and Kroger.⁵³⁴

300 The Green Direct Settlement is a partial multiparty settlement as defined by WAC 480-07-730(3)(b).⁵³⁵ There are four key provisions:

⁵³⁰ Piliaris, TR 355:18-21.

⁵³¹ See Faruqui, Exh. AF-1T at 29:9-30:22.

⁵³² Revenue Requirement Settlement ¶ 41.e.

⁵³³ Revenue Requirement Settlement ¶ 61.p, q.

⁵³⁴ Green Direct Settlement ¶ 1.

⁵³⁵ The parties participated in formal settlement conferences regarding PSE’s Green Direct program on May 3, 2022, and again on June 13, 2022. No agreements were reached at that time, but the parties

- 1) The Resource Option Energy Charge for Green Direct customers shall remain unchanged from the rates approved by the Commission in Docket UE-200817;⁵³⁶
- 2) Effective January 1, 2023, the Energy Charge Credit shall be \$47.826 per MWh (reflecting the adjusted value of the Resource Option Energy Charge, *see infra*, paragraph 317, n.571) and shall increase by two percent each year thereafter;⁵³⁷
- 3) PSE may recover the Energy Charge Credit amounts paid to Green Direct customers through base rates, subject to a review of the accuracy of PSE's calculation of the amount to be recovered; and
- 4) The methodology established in the Company's 2020 Power Cost Only Rate Case (PCORC) for tracking costs and benefits associated with generation surplus or deficiency of Green Direct resources remains unchanged.

301 Among these four settlement terms, the primary issue is the proposed change to the Energy Charge Credit. Specifically, the Settling Parties propose to set the Energy Charge Credit as equal to the Resource Option Energy Charge for the 20-year blended resource option,⁵³⁸ adjusted to remove (a) costs that PSE incurs that are specific to administering the Green Direct program, and (b) the amortization of liquidated damages awarded to PSE due to delays in the commercial operation date of the Skookumchuck Wind Energy Project.⁵³⁹ Effective January 1, 2023, the Energy Charge Credit shall be \$47.826/MWh and shall increase by 2 percent each year thereafter.⁵⁴⁰

continued phone and email conversations. On July 11, 2022, PSE informed the Commission that the Company reached a settlement in principle with Staff, Public Counsel, King County, and Walmart (the Settling Parties).

⁵³⁶ In Docket UE-200817, the Commission took "no action" at its October 15, 2020, open meeting and allowed PSE's tariff filing for the Green Direct Program to take effect. This set rates per kWh for different resource options, including the \$0.04323 per kWh rate for the 20-year mixed resource option, which forms the basis for the Resource Option Energy Charge in this case.

⁵³⁷ Green Direct Settlement ¶ 17.

⁵³⁸ On October 15, 2020, the Commission took no action in Docket UE-200817, allowing PSE to file revisions to its Schedule 139 Resource Option Charge consistent with the Commission's final order in *Washington Utilities and Transportation Commission v. Puget Sound Energy*, Dockets UE-190529 et. al, (consolidated) Final Order 08 (July 8, 2020). The current value for the 2023 Resource Option Energy Charge for 20-year blended resource option is set forth in Confidential Attachment A, to the Green Direct Settlement.

⁵³⁹ Green Direct Settlement ¶ 17.B.

⁵⁴⁰ Green Direct Settlement ¶ 17.B.

- 302 The Settling Parties submit that this is a durable method for calculating the Energy Charge Credit, providing greater certainty for customers.⁵⁴¹
- 303 To support the Settlement, PSE witness Piliaris explains that “as much as some would like to believe there is a ‘right’ answer, the best that can realistically be accomplished is to determine a ‘reasonable’ resolution of this issue.”⁵⁴² Piliaris submits that the Green Direct Settlement promotes harmony among interested parties and supports the Company’s recovery of the Energy Charge Credit.⁵⁴³
- 304 Staff witness Chris McGuire agrees that there is no single, “correct” manner of calculating the Energy Charge Credit.⁵⁴⁴ The Settling Parties therefore propose using the cost of the two Green Direct PPAs themselves (reflected in the Resource Option Charge) because the avoided cost calculation should reflect a variable cost resource with similar non-energy attributes similar to the Green Direct PPAs.⁵⁴⁵ McGuire explains that the Green Direct Settlement excludes administrative costs and liquidated damages because these costs are not relevant to the avoided cost calculation and should not be borne by non-participants.⁵⁴⁶
- 305 McGuire testifies that the resulting Energy Charge Credit is a “reasonable split” between the two methods approved by the Commission in the past.⁵⁴⁷ McGuire explains further that “[t]he agreed-upon rate of \$47.8/MWh is \$2.0/MWh higher than the variable portion of the PCA rate (\$45.8/MWh) and \$1.6/MWh lower than the energy portion of the PCA rate (\$49.4/MWh).”⁵⁴⁸ This is important because the agreed-upon rate indicates that Green Direct customers would be contributing to fixed costs while being given some compensation for the benefits Green Direct resources bring to PSE’s system.⁵⁴⁹
- 306 McGuire submits that the Green Direct Settlement will provide customers with predictability and rate stability.⁵⁵⁰ McGuire also argues that the Green Direct Settlement complies with

⁵⁴¹ Joint Testimony, Exh. JT-1T at 8:6-8.

⁵⁴² Joint Testimony, Exh. JT-1T at 10:9-11 (citing Piliaris, Exh. JAP-1T at 61:17-18).

⁵⁴³ Joint Testimony, Exh. JT-1T at 11:1-6.

⁵⁴⁴ Joint Testimony, Exh. JT-1T at 17:4-5.

⁵⁴⁵ Joint Testimony, Exh. JT-1T at 17:16-19.

⁵⁴⁶ Joint Testimony, Exh. JT-1T at 18:10-16.

⁵⁴⁷ Joint Testimony, Exh. JT-1T at 19:11.

⁵⁴⁸ Joint Testimony, Exh. JT-1T at 19:12-14.

⁵⁴⁹ Joint Testimony, Exh. JT-1T at 19:4-7.

⁵⁵⁰ Joint Testimony, Exh. JT-1T at 19:17-18.

applicable statutes, which prohibit cross-subsidization between participating and non-participating customers.⁵⁵¹

- 307 Public Counsel also supports the proposed Energy Charge Credit as a “transparent and simple mechanism that is easily implemented.”⁵⁵² Public Counsel witness Robert L. Earle notes that the cost of the Green Direct PPAs provides a reasonable proxy for PSE’s avoided costs because the Green Direct PPAs’ contract prices reflected market prices at the time the contracts were signed and PSE would likely have entered into similar agreements to serve Green Direct customers’ load.⁵⁵³ Earle recommends this simple *ex ante* approach over a more complicated *ex post* approach, which could require complex calculations and result in “volatile” changes to the Energy Charge Credit.⁵⁵⁴
- 308 King County submits that the Green Direct Settlement provides a durable resolution that seeks to eliminate the need for Green Direct customers to intervene in future proceedings.⁵⁵⁵ With the predictable Energy Charge Credit, witness Rachel Brombaugh explains that King County will be able to budget accurately and avoid further litigation.⁵⁵⁶
- 309 Walmart witness Alex Kronauer similarly supports the Green Direct Settlement, noting that programs such as Green Direct are an important tool for achieving Walmart’s renewable energy goals.⁵⁵⁷
- 310 As this proceeding continued, the parties incorporated the Green Direct Settlement’s terms into the Revenue Requirement Settlement. All of the Settling Parties in the Green Direct Settlement joined the Revenue Requirement Settlement, with the exception of King County, which neither joined nor opposed the Revenue Requirement Settlement.⁵⁵⁸ The Revenue Requirement Settlement avers that “[n]o party opposes the Green Direct settlement.”⁵⁵⁹

⁵⁵¹ Joint Testimony, Exh. JT-1T at 20:6-11 (citing RCW 19.29A.090(5)).

⁵⁵² Joint Testimony, Exh. JT-1T at 20:17-19.

⁵⁵³ Joint Testimony, Exh. JT-1T at 24:4-9.

⁵⁵⁴ Joint Testimony, Exh. JT-1T at 24:11-14.

⁵⁵⁵ Joint Testimony, Exh. JT-1T at 25:19-26:2.

⁵⁵⁶ Joint Testimony, Exh. JT-1T at 26:6-8.

⁵⁵⁷ Joint Testimony, Exh. JT-1T at 27:2-4.

⁵⁵⁸ Revenue Requirement Settlement ¶ 3,

⁵⁵⁹ Revenue Requirement Settlement ¶ 14.

- 311 *Commission Determination.* We agree with the Settling Parties that the Green Direct Settlements presents a reasonable, and relatively easy-to-administer, method of calculating the Energy Charge Credit. We accept this Settlement without condition.
- 312 Pursuant to RCW 19.29A.090(1), utilities are required to provide electric customers a voluntary option to purchase qualified alternative energy resources. By statute, the costs and benefits associated with such voluntary programs may not be shifted to non-participating customers.⁵⁶⁰ In 2016, the Commission approved PSE’s Green Direct program tariff, which offers long-term contracts to certain large commercial and local government customers.⁵⁶¹ While there was some concern that these costs – and the integration cost of the output from those contracted resources to serve the load of the Green Direct customers – would be appropriately allocated to only participating customers, the Commission observed that PSE committed to tracking separately the costs and benefits of the Green Direct program in its Power Cost Adjustment mechanism.⁵⁶² At that time, the Commission did not approve any specific method of calculating the Energy Credit for Green Direct customers.
- 313 Over the following years, the Commission considered different concerns and proposals for calculating the Energy Charge Credit. In PSE’s 2019 GRC, the Commission emphasized that Green Direct customers should benefit exclusively from the sale of over-generation but should not be subsidized by non-participants.⁵⁶³ The Commission directed PSE “to work collaboratively with Staff and other stakeholders to ensure that the costs and benefits of the Green Direct program are tracked and maintained separately pursuant to statute.”⁵⁶⁴
- 314 Later in PSE’s 2020 PCORC, the Commission approved a settlement agreement modifying the Company’s Green Direct Program.⁵⁶⁵ After the parties raised concerns that the “peak credit method” for calculating the Energy Charge Credit resulted in PSE paying Green Direct customers an Energy Credit in excess of the Company’s actual avoided costs, the 2020 PCORC Settlement eliminated the use of the peak credit method and instead set the Green Direct Energy Credit at the Variable PCA Baseline Rate.⁵⁶⁶ The 2020 PCORC Settlement also

⁵⁶⁰ RCW 19.29A.090(5).

⁵⁶¹ See *In the Matter of the Tariff Revisions Filed by Puget Sound Energy*, Docket UE-160977 Order 01 (September 28, 2016).

⁵⁶² *Id.* ¶ 10.

⁵⁶³ *WUTC v. Puget Sound Energy*, Dockets UE-190529 and UG-190530 (consolidated) Order 08 ¶ 296 (July 8, 2020) (2019 PSE GRC Order).

⁵⁶⁴ *Id.*

⁵⁶⁵ See generally *WUTC v. Puget Sound Energy*, Docket UE-200980 Final Order 05 (June 1, 2021) (2020 PSE PCORC Order).

⁵⁶⁶ 2020 PSE PCORC Order, App. A ¶ 11.A.1.b (Settlement Stipulation and Agreement).

required the parties to work towards a “durable method” for calculating the Energy Charge Credit.⁵⁶⁷ The Commission observed that the tracking of Green Direct costs and benefits was a “complex issue” and that the 2020 PCORC Settlement “recognize[d] the need for further discussions.”⁵⁶⁸ The Commission therefore approved the use of the Variable PCA Baseline Rate as a “closer approximation” of PSE’s avoided costs but expected the Company to encourage Green Direct customers to participate in future discussions.⁵⁶⁹

315 We agree with the Settling Parties that the Green Direct Settlement in this proceeding presents several advantages.

316 PSE has followed through on the Commission’s expectations for including Green Direct customers in discussions related to the Energy Charge Credit. PSE witness Einstein explains that the Company conducted a series of meetings with Green Direct customers from July 28, 2021, to January 11, 2022.⁵⁷⁰ Although the parties were not able to reach agreement before the Company filed its initial case on January 31, 2022,⁵⁷¹ two Green Direct customers—King County and Walmart—intervened and later joined the Green Direct Settlement. The Green Direct Settlement reflects greater participation from affected customers, and it compares favorably to the 2020 PCORC Settlement in this respect.

317 We also observe that the Settling Parties’ proposal for calculating the Energy Charge Credit reflects a reasonable compromise. By setting the Energy Charge Credit as equal to the adjusted Resource Option Energy Charge, the Settling Parties arrive at a reasonable mid-point between earlier approved methodologies.⁵⁷² There is no single, correct method to measuring the Company’s avoided costs for this voluntary renewable energy program.⁵⁷³ The Settling Parties reasonably compensate Green Direct customers for the value provided to PSE’s system by Green Direct PPAs without leading to unlawful cross-subsidization. No party to this proceeding has opposed the Green Direct Settlement or offered any evidence to the contrary.

⁵⁶⁷ *Id.* ¶ 11.C.

⁵⁶⁸ 2020 PSE PCORC Order ¶ 18.

⁵⁶⁹ *Id.*

⁵⁷⁰ Einstein, Exh. WTE-1CT at 11:10-12:13.

⁵⁷¹ *Id.* at 12:17-18.

⁵⁷² *See* Joint Testimony, Exh. JT-1T at 19:12-14 (“The agreed-upon rate of \$47.8/MWh is \$2.0/MWh higher than the variable portion of the PCA rate (\$45.8/MWh) and \$1.6/MWh lower than the energy portion of the PCA rate (\$49.4/MWh).”). *See also* McGuire, TR 281:14-282:21 (clarifying the comparison to the rate approved in the 2020 PCORC).

⁵⁷³ *E.g.*, Joint Testimony, Exh. JT-1T at 10:9-11 (citing Piliaris, Exh. JAP-1T at 61:17-18).

318 Finally, we agree that the Green Direct Settlement provides a straightforward, *ex ante* method for calculating the Energy Charge Credit and providing a set escalation factor.⁵⁷⁴ We share the Settling Parties' expectation that this agreement will prove durable for the foreseeable future and provide Green Direct customers needed certainty in their rates. For these reasons, we accept the Green Direct Settlement without condition.

319 We recognize, however, that the Green Direct Settlement is specifically concerned with the Energy Charge Credit for current Green Direct customers.⁵⁷⁵ It is possible that customers who join the Green Direct program in the future could be subject to a different Energy Charge Credit.⁵⁷⁶ If that is the case, we would encourage the Company either to present new Green Direct customers with a durable method for calculating the Energy Charge Credit upfront or to encourage participation from all Green Direct customers, new and existing, in any discussions around changing this credit.

IV. TACOMA LNG SETTLEMENT

A. Overview of the Tacoma LNG Settlement

320 On August 26, 2022, PSE filed an Amended Settlement Stipulation and Agreement on Tacoma LNG (Tacoma LNG Settlement or, for purposes of this section, Settlement). This is a partial multiparty settlement,⁵⁷⁷ which would allow the Company to begin recovering the costs of the Tacoma Liquefied Natural Gas (LNG) Facility (Tacoma LNG Facility), largely on a provisional basis through a separate tariff schedule. This settlement is entered into by PSE, Staff, AWEC, Walmart, Kroger, and Nucor Steel (Settling Parties for purposes of this section). The Tacoma LNG Settlement is opposed by Public Counsel, the Puyallup Tribe, and The Energy Project. In this section, we provide a brief summary of the Commission's past orders concerning the same facility and the Tacoma LNG Settlement at issue in this proceeding.

321 On November 1, 2016, the Commission issued its Final Order in Docket UG-151663, approving and adopting a settlement stipulation that provided the terms and conditions under which PSE could pursue developing its Tacoma LNG Facility, including the joint ownership

⁵⁷⁴ *E.g.*, Joint Testimony, Exh. JT-1T at 24:11-14.

⁵⁷⁵ *See* Green Direct Settlement ¶ 17.

⁵⁷⁶ Piliaris, Earle, McGuire TR 279:9-22

⁵⁷⁷ As defined by [WAC 480-07-730\(3\)\(b\)](#).

Because the Settling Parties have also joined the Revenue Requirement Settlement, PSE has at times described the Tacoma LNG Settlement as a full multiparty settlement. Applicable WAC 480-07-730(3)(a).

shares and cost allocators for each component of the facility.⁵⁷⁸ The facility, located at the Port of Tacoma, is capable of (1) receiving nearly 21,000 Decatherms per day of natural gas from which it can produce approximately 250,000 gallons of LNG and (2) storing approximately 8 million gallons of LNG.⁵⁷⁹ The Tacoma LNG Facility (1) supplies fuel to Totem Ocean Trailer Express, Inc., (TOTE), a marine shipper, under a special contract, (2) provides fuel for sales to other marine vessels or other purchasers, and (3) may potentially serve as a peaking resource for PSE's core natural gas customers.⁵⁸⁰

- 322 The settlement in Docket UG-151663 authorized PSE to decide whether and how to move forward with the Tacoma LNG project,⁵⁸¹ and addressed the business model for the facility. Consistent with the terms of the settlement stipulation, PSE's parent corporation, Puget Energy, formed a wholly owned subsidiary named Puget LNG, a special purpose limited liability company formed solely for the purposes of owning, developing, and financing the Tacoma LNG Facility as a tenant-in-common with PSE. Puget LNG is not subject to the Commission's jurisdiction under Title 80 RCW, and Puget LNG's sales of LNG as marine fuel to TOTE and other sales of LNG as transportation fuel is not regulated by the Commission.⁵⁸² Only PSE's use of the facility as a potential peaking resource for retail natural gas customers is regulated by the Commission.
- 323 The settlement stipulation contained multiple ring-fencing provisions that protect PSE's ratepayers from the unregulated activities of Puget Energy and Puget LNG. Each entity is individually responsible for the performance of its own obligations. All risk, loss, and damage arising out of the ownership, construction, operation, or maintenance of any portion of the Tacoma LNG Facility is borne by each entity in proportion to its capital cost allocation as set forth in an attachment to the settlement stipulation.⁵⁸³
- 324 The settlement stipulation expressly reserved questions of prudence and cost recovery in rates for future review and determination by the Commission, and the parties to the settlement

⁵⁷⁸ *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 10 ¶ 14 (Nov. 1, 2016).

⁵⁷⁹ Docket UG-151663, Order 10 ¶ 23.

⁵⁸⁰ Docket UG-151663, Order 10 ¶ 23.

⁵⁸¹ Docket UG-151663, Order 10 ¶ 21.

⁵⁸² Docket UG-151663, Order 10 ¶ 46.

⁵⁸³ *Washington Utilities and Transportation Commission v. Puget Sound Energy*, Dockets UE-190529, UG-190530, UE-190274, UG-190275, UE-171226, UG-171226, UE-190991, and UG-190992, Order 08/05/03 ¶ 172 (July 8, 2020).

expressly reserved their rights to take any position they elect to take concerning those matters when brought before the Commission.⁵⁸⁴

- 325 In PSE's 2020 GRC, the Commission approved Staff's proposal to defer the costs associated with two upgrades to the Tacoma LNG project (four miles of new 16-inch pipe placed in service in October 2017 and upgrades to the Frederickson Gate Station placed into service in September 2017) until the facility was operational.⁵⁸⁵ The Commission also advised the Company that it must adhere to the capital cost allocators and all other terms of the settlement stipulation when it seeks recovery of these costs in a later proceeding, and, if the Company wishes to deviate from the terms of the settlement stipulation, that it must renegotiate the capital cost allocator terms with the other parties.⁵⁸⁶
- 326 In this proceeding, on August 12, 2022, PSE informed the Commission that the Company reached two settlements in principle in this proceeding: one that specifically addresses the Tacoma LNG Project and one that addresses the Company's revenue requirement.⁵⁸⁷ PSE subsequently filed the Tacoma LNG Settlement on August 26, 2022.
- 327 The Amended Settlement Stipulation and Agreement on Tacoma LNG (Tacoma LNG Settlement) is a partial multiparty settlement.⁵⁸⁸ The Settling Parties include PSE, Staff, AWEC, Walmart, Kroger, and Nucor Steel. The Tacoma LNG Settlement is opposed by Public Counsel, the Puyallup Tribe, and The Energy Project. Several parties, however, take no position on this settlement. Specifically, NWECA, Sierra Club, and Front and Centered (the Joint Environmental Advocates) take no position. Microsoft, Federal Executive Agencies, CENSE, and King County did not participate in the Tacoma LNG settlement discussions.
- 328 Fundamentally, the Tacoma LNG Settlement provides that PSE may begin to recover the regulated portion of costs for the Tacoma LNG Facility on a provisional basis, in a tracker,

⁵⁸⁴ Docket UG-151663, Order 10 ¶ 47.

⁵⁸⁵ Docket UE-190529 et. al, Order 10 ¶ 177.

⁵⁸⁶ Docket UE-190529 et. al, Order 10 ¶ 183.

⁵⁸⁷ In the instant proceeding, the parties participated in formal settlement conferences on June 13, 2022, June 14, 2022, August 10, 2022, and August 12, 2022, and continued settlement discussions over email.

⁵⁸⁸ As defined by [WAC 480-07-730\(3\)\(b\)](#). Because the Settling Parties have also joined the Revenue Requirement Settlement, PSE has at times described the Tacoma LNG Settlement as a full multiparty settlement. Applicable WAC 480-07-730(3)(a).

and that distribution costs may be recovered in base rates.⁵⁸⁹ This Settlement provides in relevant part that:

- 1) When PSE files its 2023 Purchased Gas Adjustment (PGA) filing, the Company will request recovery of the Tacoma LNG Facility costs through a separate tracker.⁵⁹⁰
- 2) The Settling Parties agree that PSE met its “threshold” prudence requirement and that Tacoma LNG Facility costs may be included in rates on a provisional basis.⁵⁹¹
- 3) Tacoma LNG distribution costs will be recovered in base rates.⁵⁹²

329 The Settling Parties have incorporated Tacoma LNG distribution costs into the Revenue Requirement Settlement. All other Tacoma LNG recovery will be requested when PSE files its 2023 PGA. The revenue increases set forth in the Revenue Requirement Settlement assume that the Commission will approve the Tacoma LNG Settlement.

B. Summary of the parties’ testimony in support of, and in opposition to, the Tacoma LNG Settlement

330 PSE witness Ronald J. Roberts explains that the Tacoma LNG Facility is a dual-use project located at the Port of Tacoma.⁵⁹³ This facility sells LNG as a fuel to non-regulated customers, such as TOTE, and it is also capable of vaporizing and injecting enough gas into the distribution system to serve the design peak day gas requirements of approximately 85,000

⁵⁸⁹ The Tacoma LNG Settlement provides that distribution costs are included in base rates, without providing for any allocation of distribution costs to non-regulated customers. *See* Tacoma LNG Settlement ¶ 18.A.4. Any lack of clarity in our description of the Settlement arises from the corresponding lack of clarity in the Settlement on this same issue.

⁵⁹⁰ Tacoma LNG Settlement ¶ 18.D.

⁵⁹¹ *Id.* ¶ 18.B.

⁵⁹² *Id.* ¶ 18.A.4.

⁵⁹³ Roberts, Exh. RJR-1CT at 10:4-5.

homes.⁵⁹⁴ PSE seeks a determination in this proceeding that the decision to develop and construct the Tacoma LNG Facility was prudent.⁵⁹⁵

331 Roberts provides testimony regarding the purpose, siting, design, safety, and other aspects of the Tacoma LNG Facility.⁵⁹⁶ Roberts explains, for instance, that PSE compared the LNG Facility to other alternatives in its natural gas 2013 Integrated Resource Plan (IRP), and the LNG Facility emerged as the least-cost option.⁵⁹⁷ PSE contends that the Tacoma LNG Facility remained the least-cost option over the following years, as the Company updated its analysis.⁵⁹⁸ Supporting exhibits include a 77-page narrative timeline of the Company's decision-making,⁵⁹⁹ and 1,872 pages of communications provided to the Company's Board of Directors.⁶⁰⁰ Roberts's testimony is discussed in greater detail below.

332 Roque B. Bamba provides testimony for the Company regarding the distribution upgrades related to the Tacoma LNG Project. Bamba discusses three specific projects: four miles of pipeline connecting the Tacoma LNG Facility to PSE's gas distribution system; the rebuilding of the Frederickson Gate Station; and one mile of high-pressure pipeline along Golden Given Road East.⁶⁰¹ With respect to the four miles of pipeline, Bamba explains that "the four miles of new piping and meter station are utilized to supply natural gas to the Tacoma LNG Facility for liquefaction and to transport vaporized natural gas from the Tacoma LNG Facility to the distribution system. These four miles of new piping and the meter station support *both* uses of the Tacoma LNG Facility, PSE's use for system peaking and Puget LNG's use of LNG as transportation fuel."⁶⁰² The final cost of these distribution upgrades was \$46.4 million excluding accruals related to allowance for funds used during construction (AFDUC),

⁵⁹⁴ Roberts, Exh. RJR-1CT at 10:9-13.

⁵⁹⁵ Roberts, Exh. RJR-1CT at 11:21-23.

For clarity, Roberts distinguishes between the "Tacoma LNG Facility" (or LNG Facility) itself and the broader term, "Tacoma LNG Project," which includes development, construction, and distribution improvements, among other costs. Roberts, Exh. RJR-1CT at 11:1-18.

⁵⁹⁶ See generally Roberts, Exh. RJR-1CT at 10:3-63:5.

⁵⁹⁷ See, e.g., Roberts, Exh. RJR-1CT at 63:9-64:3.

⁵⁹⁸ Roberts, Exh. RJR-1CT at 64:4-65:6.

⁵⁹⁹ See Roberts, Exh. RJR-3 (Timeline and Narrative of Development and Construction Activities for the Tacoma LNG Project).

⁶⁰⁰ See Roberts, Exh. RJR-5C (Cumulative Communications with the Board of Directors Regarding the Tacoma LNG Project).

⁶⁰¹ Bamba, Exh. RBB-1T at 21:13-19.

⁶⁰² Bamba, Exh. RBB-1T at 23:10-15 (emphasis added).

including \$30 million for the four miles of pipe and meter station, \$4.1 million for the Fredrickson Gate Station, and \$12.3 million for the one mile of high pressure piping.⁶⁰³

- 333 In response testimony, Robert L. Earle testifies for Public Counsel that, at two major decision points, a better-informed Board of Directors may have reasonably concluded that the need forecasting was problematic and should be re-examined.⁶⁰⁴ Even if the forecasting was accurate, Earle submits that the LNG Facility would not satisfy the projected need for more than four or five years and that the analysis failed to consider sufficient alternatives.⁶⁰⁵
- 334 First, Earle testifies that PSE failed to establish the necessity of an LNG liquefaction and storage facility. Specifically, Earle submits that PSE has repeatedly forecast “immediate” needs to justify the Tacoma LNG Project to serve peaking needs that never materialized, citing five incorrectly forecasted shortfalls.⁶⁰⁶ Earle argues that PSE’s gas resources far exceeded its actual peak load for nine winters (2012-2021).⁶⁰⁷ Earle further argues that the starting point for each forecast far exceeded recent actual peak loads.⁶⁰⁸ According to Earle, it appears that PSE did not inform its Board of Directors of these facts,⁶⁰⁹ that the Board has received no updates on the regulated portion of the LNG Project for nearly two years;⁶¹⁰ and that no information was provided to the Board about the curtailment to PSE’s gas customers, the level of immediate need, or forecasts versus actuals.⁶¹¹
- 335 Next, Earle testifies that the Tacoma LNG Project was a stopgap measure that was only intended to forestall the need for other peaking resources for four or five years, which means PSE could have implemented other temporary measures until a better solution could be found.⁶¹² Earle submits that PSE failed to consider that demand for gas could be curtailed during peak periods, that it could use fuel oil to generate electricity from dual-fuel combustion

⁶⁰³ Bamba, Exh. RBB-1T at 22:15-16. AFUDC is a regulatory method of accounting for the full cost of an asset under construction. The method compensates a utility for financing costs incurred during the construction of new facilities, which is a critical component of cost when considering that utilities are capital-intensive, the time it takes to complete large projects, and cash flow issues related to normal utility operations.

⁶⁰⁴ Earle, Exh. RLE-1CTr at 2:25-3:5.

⁶⁰⁵ *Id.*

⁶⁰⁶ Earle, Exh. RLE-1CTr at 16:5-7.

⁶⁰⁷ Earle, Exh. RLE-1CTr at 17:1-8.

⁶⁰⁸ Earle, Exh. RLE-1CTr at 18:15-18.

⁶⁰⁹ Earle, Exh. RLE-1CTr at 20:6-7.

⁶¹⁰ Earle, Exh. RLE-1CTr at 23:12-13.

⁶¹¹ Earle, Exh. RLE-1CTr at 23:13-17.

⁶¹² Earle, Exh. RLE-1CTr at 26:4-5.

turbines, or that it could install compressed natural gas storage at generating stations for use during peak periods.⁶¹³ Earle submits that PSE failed to present these alternatives to its Board of Directors.⁶¹⁴

- 336 Finally, Earle testifies that PSE failed to consider equity in its decisions on the Tacoma LNG Project. Although statutory requirements to incorporate environmental justice into utility planning processes were enacted in 2021, after the Company's decision to construct the facility, Earle contends that PSE has previously stated it considers anticipated or approved laws and regulations in its decision making and has long been aware of equity considerations.⁶¹⁵
- 337 Earle concludes that the Tacoma LNG Project fails in all four factors the Commission uses to evaluate prudence: need, evaluation of alternatives, communication with and involvement of board of directors, and adequate documentation.⁶¹⁶ Earle recommends, on behalf of Public Counsel, that the Commission disallow the recovery of \$239 million in total plant costs for the facility and \$46.6 million for the distribution upgrades plus any AFUDC.⁶¹⁷
- 338 In response testimony on behalf of the Puyallup Tribe, Dr. Ranajit Sahu testifies that the decision to build the Tacoma LNG Facility was not prudent and that PSE could have pursued other alternatives that did not present the same public health and safety risks.⁶¹⁸ Dr. Sahu testifies that the LNG Facility presents (1) disparate impacts related to siting a facility with a risk of catastrophic explosion near low-income communities and communities of color and (2) disparate impacts related to increased air pollution located near the facility, which includes the Tribe and other low-income and communities of color synonymous with "vulnerable populations" and "highly impacted communities" as those terms are defined in the Clean Energy Transformation Act (CETA).⁶¹⁹
- 339 Specifically, Dr. Sahu argues that PSE's decision to construct the facility was imprudent considering the negative externalities it presents.⁶²⁰ Dr. Sahu defines "externality" as an indirect cost to an uninvolved third party that emanates from another party's activities that

⁶¹³ Earle, Exh. RLE-1CTr at 27:2-7.

⁶¹⁴ Earle, Exh. RLE-1CTr at 30:3-5.

⁶¹⁵ Earle, Exh. RLE-1CTr at 31:11-18.

⁶¹⁶ Earle, Exh. RLE-1CTr at 35:2-5; Exh. RLE-14CT at 18:7-11.

⁶¹⁷ Earle, Exh. RLE-1CTr at 3:8-16.

⁶¹⁸ *E.g.*, Sahu, Exh. RXS-1T at 8:3-9.

⁶¹⁹ Sahu, Exh. RXS-1T at 8:8-15.

⁶²⁰ Sahu, Exh. RXS-1T at 15:18-20.

often involve natural resources or public health.⁶²¹ Dr. Sahu contends that the facility's location was obviously selected because it is advantageous to TOTE, but it disadvantages ratepayers for peak shaving gas because of the length the LNG must travel to reach the injection point into PSE's distribution system.⁶²² A "prudent option in the interest of ratepayers, even if such a facility was needed at all, would have been to site it closer to the injection point, minimizing an expensive new pipeline, and instead building the pipeline to bring LNG to TOTE, whose costs should have been borne by the non-regulated entity."⁶²³ Dr. Sahu contends that many of the costs PSE seeks to recover from ratepayers, such as pretreatment costs, after pretreatment costs, after liquefaction costs, and after storage costs, should be allocated to TOTE and its other non-regulated customers.⁶²⁴

- 340 Dr. Sahu submits that it is undisputed that the facility will emit pollution to the ambient air surrounding the facility – located on the peninsula between the Blair and Hylebos waterways in Tacoma, adjacent to the Puyallup Indian Reservation – including criteria air pollutants, toxic air pollutants, volatile organic compounds, and greenhouse gases.⁶²⁵ Dr. Sahu argues that the facility will emit a number of Toxic Air Pollutants and Hazardous Air Pollutants, noting that the population residing adjacent to the facility already experiences disproportionately higher environmental burdens.⁶²⁶ Dr. Sahu next describes the risk of explosions and other catastrophic events, citing explosions at similar facilities in other states and arguing that PSE's testimony is silent on this issue.⁶²⁷ Dr. Sahu's testimony regarding air quality issues and safety impacts is discussed in greater detail below.
- 341 Dr. Sahu also argues that the air permit for the LNG Facility limits the use of the facility's vaporizer, which is used to re-gasify LNG so it can be introduced to PSE's distribution network, to no more than 240 hours in a 12-month period.⁶²⁸ This means that the LNG Facility can only operate as a peak shaving facility 10 days per year at most.⁶²⁹
- 342 Dr. Sahu further argues that PSE provided no basis for sizing the tank based on six consecutive days of vaporization, despite data that shows there were just two consecutive high

⁶²¹ Sahu, Exh. RXS-1T at 15:18-20.

⁶²² Sahu, Exh. RXS-1T at 16:15-18.

⁶²³ Sahu, Exh. RXS-1T at 16:19-22.

⁶²⁴ Sahu, Exh. RXS-1T at 26:13-28:18.

⁶²⁵ Sahu, Exh. RXS-1T at 17:6-14.

⁶²⁶ Sahu, Exh. RXS-1T at 18:1-14; 19:8-21:9.

⁶²⁷ Sahu, Exh. RXS-1T at 21:13-22:19.

⁶²⁸ Sahu, Exh. RXS-1T at 10:1-5.

⁶²⁹ Sahu, Exh. RXS-1T at 10:1-5.

usage days in the years prior to PSE's decision to size the facility.⁶³⁰ Even if the demand for six consecutive days of peak shaving existed, Dr. Sahu contends, PSE's additional storage capacity and withdrawal needs could have been met by its Jackson Prairie storage facility or by diverting gas from its electric generating facilities.⁶³¹

343 Dr. Sahu also argues that PSE unnecessarily incurred several costs, including re-designing Tacoma LNG due to a change in the composition of its incoming feed gas, and the litigation costs that PSE is attempting to recoup.⁶³²

344 On August 26, 2022, PSE filed the Tacoma LNG Settlement along with testimony in support of the settlement. In their joint testimony, Company witnesses Piliaris, Free, and Jacobs briefly provide support for the Settlement's terms related to the Tacoma LNG Facility.⁶³³

345 PSE also provides more detailed testimony from Roberts, responding to arguments raised earlier by Public Counsel and the Tribe. Roberts testifies that PSE adhered to the Commission's prudence standard in developing and constructing the Tacoma LNG Facility.⁶³⁴ With regard to the need for the resource, Roberts argues that PSE established a need for new peak-day resources.⁶³⁵ The potential need for an LNG storage facility was first identified in the Company's 2009 Integrated Resource Plan (IRP) and the Company's 2011, 2013, and 2015 IRPs, which continued to show a need for peaking resources.⁶³⁶

346 Roberts defends the Company's reliance on its load forecasts and the assessment of need for this peak-shaving facility.⁶³⁷ While Public Counsel argues that actual peak day sales were below the Company's forecasts, Roberts explains that "this comparison appears to misunderstand the basic reason PSE engages in forecasting and system planning."⁶³⁸ Roberts argues that its design day standard is intended to assure that gas resources are available on a

⁶³⁰ Sahu, Exh. RXS-1T at 11:10-19.

⁶³¹ Sahu, Exh. RXS-1T at 12:5-13.

⁶³² Sahu, Exh. RXS-1T at 28:21-30:17.

⁶³³ See Joint Testimony, Exh. JAP-SEF-JJJ-1JT at 45:14-48:2.

⁶³⁴ Roberts, Exh. RJR-30T at 4:4-5.

⁶³⁵ Roberts, Exh. RJR-30T at 5:3-5.

⁶³⁶ Roberts, Exh. RJR-30T at 5:5-24.

⁶³⁷ Roberts, Exh. RJR-30T at 6:19-20.

⁶³⁸ Roberts, Exh. RJR-30T at 7:8-13.

13°F peak day.⁶³⁹ He submits that this design day standard was previously acknowledged by the Commission, citing a 2005 IRP acknowledgment letter.⁶⁴⁰

347 Roberts identifies other concerns with Public Counsel’s arguments. Roberts notes that if Public Counsel used weather-normalized actual maximum day sales, it would demonstrate that PSE’s design day forecast is not materially different from IRP forecasts, which demonstrate a need for the Tacoma LNG Facility.⁶⁴¹ Roberts also notes that design day forecasts are based on economic, demographic, and customer information, which may lead forecasts to vary from weather-normalized actual maximum day sales.⁶⁴²

348 Roberts also disagrees that the Tacoma LNG Facility is a mere “stop gap” measure.⁶⁴³ PSE intends to use the Tacoma LNG Facility even though additional resources will be necessary to meet peak day load.⁶⁴⁴ Roberts does not agree that the Company should have pursued other, temporary measures to meet gas load, and he maintains that the Tacoma LNG Facility was the least-cost resource available to PSE.⁶⁴⁵

349 While the Puyallup Tribe suggests that the Tacoma LNG Facility would only serve PSE’s needs for five years, Roberts argues that the Puyallup Tribe relies on an erroneous statement in the facility’s Supplemental Environmental Impact Statement (SEIS).⁶⁴⁶ Roberts submits that PSE did not contest the erroneous statement because the SEIS already resulted in a favorable outcome for the Company.⁶⁴⁷

350 Roberts maintains that PSE sufficiently evaluated other alternatives to the Tacoma LNG Facility. They note that the Company’s 2015 IRP recommended a resource plan that included an LNG facility.⁶⁴⁸ While the Company considered other options, such as expanding the

⁶³⁹ Roberts, Exh. RJR-30T at 6:5-8.

⁶⁴⁰ Roberts, Exh. RJR-30T at 8:1-2 (citing *Puget Sound Energy 2005 Least Cost Plan for Electricity and Natural Gas Operations*, Docket No. UE-050664, Acknowledgment Letter at 4-5 (Aug. 25, 2005)).

⁶⁴¹ Roberts, Exh. RJR-30T at 11:16-19. *See also id.* at 9:4-6.

⁶⁴² Roberts, Exh. RJR-30T at 10:4-8.

⁶⁴³ Roberts, Exh. RJR-30T at 13:11-12.

⁶⁴⁴ *See* Roberts, Exh. RJR-30T at 13:8-13.

⁶⁴⁵ Roberts, Exh. RJR-30T at 14:6-17.

⁶⁴⁶ Roberts, Exh. RJR-30T at 15:7-12.

⁶⁴⁷ *See* Roberts, Exh. RJR-30T at 15:15-16:5.

⁶⁴⁸ Roberts, Exh. RJR-30T at 17:15-17.

regional pipeline grid,⁶⁴⁹ Roberts explains that the Tacoma LNG Facility was chosen as a preferred resource in the 2015 IRP,⁶⁵⁰ in a presentation to the Board of Directors in August 2016,⁶⁵¹ and again in a February 2018 Portfolio Benefit Analysis, after construction began.⁶⁵²

- 351 While Public Counsel and the Puyallup Tribe argue that PSE could curtail gas generation to meet peak demand from gas customers, Roberts argues that this would result in a cross-subsidization of natural gas customers by electric customers.⁶⁵³ When the Commission approved the merger of Puget Sound Power and Light Company with Washington Natural Gas, it required transactions between PSE's power supply and gas supply portfolios to occur at arm's length, with no cost shifting between the electric and gas divisions.⁶⁵⁴ Roberts submits that electric customers pay for firm pipeline capacity to mitigate various risks and that it would not be prudent to reallocate this pipeline capacity.⁶⁵⁵
- 352 While the Puyallup Tribe suggests PSE could have used its Jackson Prairie Storage Facility to meet peak-shaving needs, Roberts explains that it only owns one-third of the Jackson Prairie Storage Facility and that this facility is already factored into PSE's peak day resource stack.⁶⁵⁶ Even if there was additional capacity at the Jackson Prairie Storage Facility, the Company claims it does not have firm pipeline capacity to move additional gas into its distribution system.⁶⁵⁷
- 353 Roberts raises similar objections to using the Gig Harbor Satellite LNG Facility. PSE argues that this facility provides gas supply "during peak weather events for a distribution system

⁶⁴⁹ Roberts, Exh. RJR-30T at 18:10-12.

⁶⁵⁰ Roberts, Exh. RJR-30T at 19:1-2.

⁶⁵¹ Roberts, Exh. RJR-30T at 20:16-20.

⁶⁵² Roberts, Exh. RJR-30T at 22:9-11.

⁶⁵³ Roberts, Exh. RJR-30T at 23:7-19.

⁶⁵⁴ Roberts, Exh. RJR-30T at 24:4-7 (citing *In the Matter of the Application of Puget Sound Power & Light Company and Washington Natural Gas Company for an Order Authorizing the Merger of Washington Energy Company and Washington Natural Gas Company with and into Puget Sound Power & Light Company, and Authorizing the Issuance of Securities, Assumption of Obligations, Adoption of Tariffs, and Authorizations in Connection Therewith*, Docket No. UE-960195, Fourteenth Supplemental Order Accepting Stipulation Approving Merger (Feb. 5, 1997)).

⁶⁵⁵ Roberts, Exh. RJR-30T at 25:3-12.

⁶⁵⁶ Roberts, Exh. RJR-30T at 29:3-14.

⁶⁵⁷ Roberts, Exh. RJR-30T at 29:19-22.

that is geographically isolated” from the rest of PSE’s distribution system,⁶⁵⁸ and that the facility is already factored into PSE’s peak day resource stack.⁶⁵⁹

354 Roberts testifies that the Tacoma LNG Facility is used and useful for Washington customers.⁶⁶⁰ While he acknowledges the facility’s vaporizer may only operate for 240 hours each year, under its permit with the Puget Sound Clean Air Agency, Robert submits that this limit does not compromise the ability to use the full 6.3 million gallons of LNG storage allocated to PSE.⁶⁶¹

355 Roberts also disputes the claim that the Tacoma LNG Facility causes significant adverse air pollution.⁶⁶² Roberts contends that the Pollution Control Hearings Board (PCHB) agreed with PSE’s conclusions that the Tacoma LNG Facility was “not a major source” of air pollution,⁶⁶³ and it found there was no evidence that the Tacoma LNG Facility would violate Ambient Air Quality Standards.⁶⁶⁴ Roberts observes that the PCHB found the testimony of the Puyallup Tribe on the issue of hazardous air pollutants to be “devoid of supporting evidence.”⁶⁶⁵ Roberts acknowledges that particulate matter (PM_{2.5}) concentrations exceeded a screening threshold, but contends that this merely required further analysis, and that the PCHB ultimately rejected the Puyallup Tribe’s arguments on this issue.⁶⁶⁶

356 Roberts also disagrees with any claims that PSE incurred “unnecessary” costs when developing and constructing the Tacoma LNG Facility. While the Puyallup Tribe suggests that PSE developed the facility for its non-regulated shipping customer, TOTE, Roberts

⁶⁵⁸ Roberts, Exh. RJR-30T at 30:10-13. *See also* Roberts, Exh. RJR-1CT at 32:13-14 (noting that the Tacoma LNG Facility will transfer LNG to the Gig Harbor LNG Facility through tanker trucks).

⁶⁵⁹ Roberts, Exh. RJR-30T at 30:17-18.

⁶⁶⁰ Roberts, Exh. RJR-30T at 36:15.

⁶⁶¹ Roberts, Exh. RJR-30T at 35:15-19.

⁶⁶² Roberts, Exh. RJR-30T at 37:17-18.

⁶⁶³ Roberts, Exh. RJR-30T at 39:1:7 (citing Roberts, Exh. RJR-32 at 59 (“In sum, the Board concludes that Appellants did not meet their burden of proving in Issue 4d that PSCAA erroneously concluded that TLNG is not a major source of one or more pollutants, VOCs”)).

⁶⁶⁴ Roberts, Exh. RJR-30T at 44:2-5. *Accord* RJR-32 at 62:11-63:5.

⁶⁶⁵ Roberts, Exh. RJR-30T at 46:11-15. *Accord* RJR-32 at 41, n.18 (“Appellants’ sole witness, Dr. Sahu, also makes passing assertions that TLNG is a significant source of hazardous air pollutants, but the Board rejects any argument on the issue of whether TLNG is a major source of hazardous air pollutants as it is devoid of supporting evidence.”). *See also* Roberts, RJR-30T at 65:5-66:9 (summarizing the Pollution Control Hearings Board’s findings rejecting Dr. Sahu’s testimony).

⁶⁶⁶ *See* Roberts, Exh. RJR-30T at 51:7-12.

argues that the Company achieved “economies of scale” by constructing a dual-use facility,⁶⁶⁷ and that these costs are incurred during the construction of any LNG facility.⁶⁶⁸

357 Roberts dismisses the Puyallup Tribe’s suggestion that the Tacoma LNG Facility could have been constructed in a more remote location. Roberts submits that the Tribe’s argument “ignores the fact that TOTE committed to take LNG for marine fuel, and this commitment was a necessary predicate for the development of the Tacoma LNG Facility due to the economies of scale . . .”⁶⁶⁹

358 Roberts explains that pretreatment is a necessary step prior to liquification,⁶⁷⁰ and that the costs of pretreating gas are not unique to marine fuel.⁶⁷¹ Roberts also disputes that PSE failed to anticipate changes in the composition of natural gas. Roberts explains that PSE has been taking gas from British Columbia since 1957 and that the recent increase in British thermal units (BTUs) was unprecedented.⁶⁷²

359 Finally, Roberts asserts that PSE’s litigation costs responded to the scale and scope of litigation initiated by the Puyallup Tribe and other parties.⁶⁷³

360 Testifying on behalf of Staff, Erdahl provides brief testimony contending that the Tacoma LNG Settlement is in the public interest because it preserves the parties’ rights to challenge the prudence of Tacoma LNG Facility costs in the future.⁶⁷⁴ Erdahl argues that it will be easier to review the project once all costs are known and measurable.⁶⁷⁵

⁶⁶⁷ Roberts, Exh. RJR-30T at 57:21-22.

⁶⁶⁸ Roberts, Exh. RJR-30T at 58:2-3.

⁶⁶⁹ Roberts, Exh. RJR-30T at 58:13-16. *See also* RJR-3 at 11 (“Moreover, the Port of Tacoma is in the heart of PSE’s gas distribution system and siting the LNG facility there would provide system benefits for PSE’s core gas customers.”).

⁶⁷⁰ Roberts, Exh. RJR-30T at 59:10-11.

⁶⁷¹ *See* Roberts, Exh. RJR-30T at 59:7-60:7.

⁶⁷² *See* Roberts, Exh. RJR-30T at 60:16-61:8.

⁶⁷³ Roberts, Exh. RJR-30T at 61:16-65:2.

⁶⁷⁴ Erdahl, Exh. BAE-1T at 20:7-9.

⁶⁷⁵ Erdahl, Exh. BAE-1T at 20:20-21:2.

- 361 AWEC supports the Tacoma LNG Settlement's terms.⁶⁷⁶ AWEC witness Mullins argues that PSE's decision to develop and construct the Tacoma LNG Facility was prudent,⁶⁷⁷ but does not explain how he reached this conclusion.
- 362 Nucor Steel witness Higgins supports the Tacoma LNG Settlement as properly allocating costs to core gas customers.⁶⁷⁸ Higgins explains that Nucor Steel is a gas transportation customer.⁶⁷⁹
- 363 Walmart witness Kronauer also provides brief testimony supporting the Tacoma LNG Settlement.⁶⁸⁰
- 364 In testimony opposing the Tacoma LNG Settlement, Dr. Sahu testifies on behalf of the Puyallup Tribe that Roberts makes broad, conclusory, and inaccurate statements, including PSE's claims that the Tacoma LNG Facility will not cause or contribute to human health impacts or inequitably affect surrounding communities, and that PSE did not incur unnecessary costs in developing, constructing, and defending its decision to construct the facility.⁶⁸¹ Dr. Sahu further argues that Roberts is not qualified to testify regarding air pollution or the health impacts it causes, and that PSE makes numerous incorrect statements that reflect its misunderstanding of the proceedings related to the Tacoma LNG Project before the Pollution Control Hearings Board (PCHB).⁶⁸² Dr. Sahu also describes the Commission's enumeration of equity considerations in the 2021 Cascade GRC Order, arguing that the Commission's recently expanded public interest analysis described in that order applies here.⁶⁸³
- 365 Dr. Sahu is critical of PSE's failure to consider equity in its decision to move forward with its development of the Tacoma LNG Project, noting that information about the existing environmental burdens in the area adjacent to the facility was readily available to the Company in 2016 when it made its decision to move forward.⁶⁸⁴ The Tribe goes on to provide detailed testimony and numerous supporting exhibits demonstrating that the communities

⁶⁷⁶ Mullins, Exh. BGM-11T at 9:6-10:12.

⁶⁷⁷ Mullins, Exh. BGM-11T at 11:14-18.

⁶⁷⁸ Higgins, Exh. KCH-7T at 3:3-5.

⁶⁷⁹ Higgins, Exh. KCH-7T at 2:8-9.

⁶⁸⁰ See Kronauer, Exh. AJK-1 at 2:9-12.

⁶⁸¹ Sahu, Exh. RXS 30T at 6:3-10.

⁶⁸² Sahu, Exh. RXS 30T at 6:21-9:6.

⁶⁸³ Sahu, Exh. RXS 30T at 11:9-13.

⁶⁸⁴ Sahu, Exh. RXS 30T at 14:11-15:8.

neighboring the LNG Facility are already overburdened.⁶⁸⁵ For example, the Tideflats area, where the Tacoma LNG Facility is located, “is ranked 10 out of 10 for Environmental Health Disparities and the ranks of the surrounding areas range between 5 and 10.”⁶⁸⁶

366 Dr. Sahu encourages the Commission to reject PSE’s “misleading” claim that the PCHB did not find that the facility presents disparate impacts to the Tribe, citing the order where PCHB declined to reach that issue on the basis that it lacked subject matter jurisdiction to consider environmental justice claims.⁶⁸⁷ Dr. Sahu also notes that the PCHB found that PSE’s Clean Air Act Permit was deficient as to the facility’s emissions of volatile organic compounds and sulfur dioxide, that those deficiencies are not yet cured, and that PSE has not prepared a Health Impact Analysis for the surrounding areas near the facility.⁶⁸⁸

367 Dr. Sahu also disputes PSE’s conclusion that safety concerns about the Tacoma LNG Facility have been put to rest because the Final Environmental Impact Statement specifically identified safety risks as an “impact” and the PCHB made no determination that the facility poses no risks to the public.⁶⁸⁹ Dr. Sahu argues that PSE conflates code compliance with safety and fails to address the Tribe’s concern of whether Tribal members and Tacoma residents are in danger if there is a catastrophic accident, citing incidents in 2014 and 2022 at code compliant facilities.⁶⁹⁰ Dr. Sahu also disputes the adequacy of PSE’s “design spill” analysis for assessing risks at the Tacoma LNG Facility because it does not account for all potential risks presented by methane liquefaction facilities.⁶⁹¹

368 Dr. Sahu also makes the following arguments:

- PSE’s plans to provide LNG to the rail industry poses additional negative externalities that will disproportionately impact the Tribe, including concentrated air pollution and derailment risks.⁶⁹²

⁶⁸⁵ Sahu, Exh. RXS 30T at 15:12-17:20.

⁶⁸⁶ Sahu, Exh. RXS 30T at 16:1-2.

⁶⁸⁷ Sahu, Exh. RXS 30T at 18:4-14.

⁶⁸⁸ Sahu, Exh. RXS 30T at 20:11-15.

⁶⁸⁹ Sahu, Exh. RXS 30T at 23:1-8.

⁶⁹⁰ Sahu, Exh. RXS 30T at 23:9-24:4.

⁶⁹¹ Sahu, Exh. RXS 30T at 25:5-20.

⁶⁹² Sahu, Exh. RXS 30T at 27:9-29:6.

- PSE agrees that the weather and gas delivery data show only peak demand periods of three to four consecutive days, demonstrating that the facility's capacity significantly exceeds the public's need.⁶⁹³
- PSE's assertion that the Tribe's testimony regarding the need for pretreatment at the facility is contrary to the evidence is incorrect because PSE conflates *some* required pretreatment with *all* pretreatments.⁶⁹⁴
- PSE's claim that there is no significant difference between the gas quality needed for TOTE's engines and the gas quality needed for PSE's retail customers is incorrect, as demonstrated by the need for additional design features specific to TOTE's needs.⁶⁹⁵
- The Commission should consider the significant savings to the unregulated side of the LNG Project associated with PSE not having to construct and operate a delivery system to meet TOTE's needs, and PSE should not be allowed to shift those costs to its ratepayers.⁶⁹⁶

369 Gary S. Saleba also provides testimony on behalf of the Tribe in opposition to the Tacoma LNG Settlement. Saleba testifies that PSE's peak demand forecast declined between 2013 and 2016, demonstrating PSE's acknowledgement that the demand for natural gas was declining as early as 2014/2015, which preceded its decision in 2016 to construct the plant.⁶⁹⁷ Saleba argues that the long-term trend in natural gas usage will continue to decrease with the push to reduce carbon emissions nationwide, as demonstrated by natural gas moratoriums enacted in numerous west coast jurisdictions.⁶⁹⁸

370 Saleba further argues that the plant location has a disproportionately adverse impact on the Tribe, which has not been adequately recognized or accounted for. A significant event has the potential to have major impacts on the Tribe's reservation activity and population given its proximity to the plant, and the emissions of pollutants will directly impact the airshed over the Tribe's reservation.⁶⁹⁹

⁶⁹³ Sahu, Exh. RXX 30T at 30:1-13.

⁶⁹⁴ Sahu, Exh. RXX 30T at 31:8-32:12.

⁶⁹⁵ Sahu, Exh. RXX 30T at 34:9-19.

⁶⁹⁶ Sahu, Exh. RXX 30T at 35:1-13.

⁶⁹⁷ Saleba, Exh. GSS-1T at 8:6-9.

⁶⁹⁸ Saleba, Exh. GSS-1T at 8:11-10:3.

⁶⁹⁹ Saleba, Exh. GSS-1T at 11:8-13.

- 371 Saleba agrees with Public Counsel that PSE has not adequately considered equity, which precludes a determination that the decision to build the facility on the border of the Tribe's reservation was prudent. Saleba contends that the Tribe is disproportionately impacted by the siting and operations of the facility, which PSE concedes it has not addressed.⁷⁰⁰ Saleba further argues that the facility did not undergo EFSEC or FERC siting reviews, thus circumventing another opportunity to consider equity.⁷⁰¹
- 372 Finally, Saleba argues that if PSE is authorized to recover the cost of plant, the percentage allocation of the Tacoma LNG plant to PSE's regulated business is too high. Because 43 percent of the LNG plant was allocated in the 2016 settlement to PSE's regulated business, the Tribe argues that 43 percent should be used for peaking under the principle of cost causation.⁷⁰² According to Saleba, PSE's Supplemental Environmental Impact Statement (SEIS) for the facility states that 1.1 to 2.2 percent of the LNG plant will be used for peaking purposes and for only 10 years out of the plant's projected useful life of 40 years.⁷⁰³ Using these statistics, Saleba concludes that only \$2 million of the total plant costs should be allocated to PSE's rate base.⁷⁰⁴ Saleba notes that PSE contests the conclusion in the SEIS that the plant will only provide LNG to ratepayers for 10 years but did nothing to address the alleged error.⁷⁰⁵
- 373 Public Counsel also provides testimony in opposition to the Tacoma LNG Settlement. Continuing to challenge the need for the facility, Earle observes that PSE's peak day forecast has declined from 2012 except for a jump in 2013, and it was clear that the forecasts had been declining at the two major decision points in 2016 and 2018.⁷⁰⁶ Earle maintains that, in fact, no need showed up at all.⁷⁰⁷ Earle asserts that PSE ignored the declining forecasts and failed predictions, instead dismissing Public Counsel's comparisons of the Company's model predictions to actual outcomes.⁷⁰⁸
- 374 Earle also advances the following arguments:

⁷⁰⁰ Saleba, Exh. GSS-1T at 12:11-15.

⁷⁰¹ Saleba, Exh. GSS-1T at 12:17-25.

⁷⁰² Saleba, Exh. GSS-1T at 13:16-19.

⁷⁰³ Saleba, Exh. GSS-1T at 13:21-24.

⁷⁰⁴ Saleba, Exh. GSS-1T at 14:3-5.

⁷⁰⁵ Saleba, Exh. GSS-1T at 14:7-13.

⁷⁰⁶ Earle, Exh. REL-14CT at 3:7-10.

⁷⁰⁷ Earle, Exh. RLE-14CT at 4:6-7.

⁷⁰⁸ Earle, Exh. REL-14CT at 5:16-22.

- PSE fails to address a central problem with its decisions to continue with the Tacoma LNG Project by dismissing the idea that other measures could have been put into place until a better solution was found or there was greater clarity regarding the need for the Project.⁷⁰⁹
- PSE did not respond to Public Counsel’s arguments that compressed natural gas was a viable alternative to the Tacoma LNG Project, and PSE argues unpersuasively that any arrangement between regulated natural gas operations and regulated electric operations would result in cross-subsidization.⁷¹⁰
- None of PSE’s top 50 gas system demand days are coincident with any of the top 50 gas-for-generation demand days.⁷¹¹
- PSE’s statement that the Company may have chosen to purchase power rather than run its generation because it would be more economical to purchase than generate power directly contradicts its statement that during a weather-related event or a transmission outage, electric prices would have been very high, and it would be more economical to generate power than purchase it.⁷¹²
- It would have been prudent for PSE to analyze the alternative of using sales between its gas business unit and its electric business unit when it was making its decisions to proceed with the Tacoma LNG Project.⁷¹³
- PSE’s 1,800-plus pages of documentation provided to its Board of Directors largely consists of documentation that missed the mark on the consideration of need, alternatives, and adequate information, and the table PSE presents in Exhibit RJR-1CT is misleading because it implies the Board received forecast need information at decision points even though it did not.⁷¹⁴

375 In its post-hearing Brief, PSE argues that the evidence establishes that the Tacoma LNG Facility is safe and will provide benefits to the communities surrounding the facility.⁷¹⁵ PSE

⁷⁰⁹ Earle, Exh. RLE-14CT at 8:6-13.

⁷¹⁰ Earle, Exh. RLE-14CT at 9:22-10:16; 11:16-12:15.

⁷¹¹ Earle, Exh. RLE-14CT at 13:17-19.

⁷¹² Earle, Exh. RLE-14CT at 14:1-8.

⁷¹³ Earle, Exh. RLE-14CT at 14:18-21.

⁷¹⁴ Earle, Exh. RLE-14CT at 17:11-18:1.

⁷¹⁵ PSE Brief ¶ 85.

submits that it worked closely with interested parties and made concessions in the project to address the Tribe's concerns.⁷¹⁶

- 376 PSE “respectfully requests that the Commission approve the Tacoma LNG Settlement and determine that PSE’s decision to build the regulated portion of the Tacoma LNG Facility was prudent.”⁷¹⁷ PSE submits that the Settlement’s reference to a “threshold prudence requirement” is consistent with the Used and Useful Policy Statement.⁷¹⁸ Noting that only Public Counsel and the Tribe submitted testimony in opposition to the Tacoma LNG Settlement, PSE argues that TEP did not provide any testimony supporting its opposition and that TEP’s position should accordingly be given little weight.⁷¹⁹
- 377 PSE submits that the Tacoma LNG Facility is already used and useful for customers, noting that it has been liquefying natural gas to fill the facility’s storage tank since February 2022.⁷²⁰ PSE emphasizes that the Commission’s longstanding standards for determining prudence consider the information available at the time the decision was made, in light of what PSE knew or reasonably should have known at the time.⁷²¹
- 378 PSE argues that the Company acted prudently in developing and constructing the facility, indicating that it has provided a “massive” case to defend the prudence of this investment.⁷²² PSE addresses several arguments raised by Public Counsel and the Tribe. PSE also argues that it made significant efforts to engage with interested parties, such as the Tribe, when developing and constructing the facility.⁷²³
- 379 PSE concludes that the Commission should approve the Tacoma LNG Settlement’s proposed tracker for LNG Facility costs.⁷²⁴ PSE also asks that the Commission approve its petition for deferred accounting of Tacoma LNG Facility costs, subject to modifying the deferral period

⁷¹⁶ *Id.*

⁷¹⁷ *Id.* ¶ 86.

⁷¹⁸ *Id.*

⁷¹⁹ *Id.* ¶ 87.

⁷²⁰ *Id.* ¶ 97.

⁷²¹ *Id.*

⁷²² *Id.* ¶ 133.

⁷²³ *Id.* ¶¶ 130-32.

⁷²⁴ *Id.* ¶¶ 134-35.

consistent with the Settlement's proposed tracker.⁷²⁵ In its brief, PSE also agrees to drop its request for carrying charges associated with the deferral.⁷²⁶

380 Staff argues that the Tacoma LNG Settlement simplifies ratemaking and eases the parties' review by shifting costs into a tracker for later review.⁷²⁷ Staff submits that the Settlement preserves the parties' abilities to challenge construction and operational costs that do not survive scrutiny.⁷²⁸

381 Public Counsel argues in its brief that AWEC, Walmart, Kroger, and Nucor Steel did not perform a prudence analysis of the Tacoma LNG Facility "but simply accept and do not oppose a determination of prudence for settlement purposes."⁷²⁹ Public Counsel avers that Staff had not completed its prudence review either.⁷³⁰ Public Counsel continues to oppose the facility on the grounds of prudence and on the basis that it perpetuates systemic inequities.⁷³¹

382 In its Brief, the Tribe argues as an overall matter that PSE's decision to locate the facility where the Tribe and the surrounding community will bear all associated burdens is contrary to the public interest and principles of equity.⁷³² The Tribe also challenges the prudence of building the facility.⁷³³

383 The Tribe observes that every individual who commented on the Tacoma LNG Facility at the Commission's public comment hearing opposed the facility.⁷³⁴ With respect to the positions of other parties, the Tribe observes that AWEC did not focus on equity when considering its position on the Tacoma LNG Settlement,⁷³⁵ and that Staff did not complete its prudence review of the facility.⁷³⁶

⁷²⁵ *Id.* ¶ 135.

⁷²⁶ *Id.*

⁷²⁷ Staff Brief ¶ 68.

⁷²⁸ *Id.* ¶ 69.

⁷²⁹ Public Counsel Brief ¶ 14.

⁷³⁰ *Id.* ¶ 16.

⁷³¹ *Id.* ¶ 15.

⁷³² Tribe's Brief at 2:4-7.

⁷³³ *Id.* at 2:8-10.

⁷³⁴ *Id.* at 2:24-3:8.

⁷³⁵ *Id.* at 3:3-6 (citing Mullins TR 432:5-7).

⁷³⁶ *Id.* at 3:7-12 (citing Roberson TR 477:5-11).

- 384 Because PSE chose not to cross-examine Public Counsel’s witness, Earle, or the Tribe’s witness, Dr. Sahu, the Tribe argues that the Commission should infer that PSE could identify no basis to challenge their testimony.⁷³⁷
- 385 The Tribe argues that “[w]ith or without a statute” PSE was required to consider the prudence and public interest implications of building the facility in this location.⁷³⁸ The Tribe also argues that PSE did not have any “vested right” to assume, in 2016, that the law would remain unchanged.⁷³⁹
- 386 The Tribe argues that it is undisputed that PSE did not consider the facility’s impacts on vulnerable populations and highly impacted communities.⁷⁴⁰ The Tribe submits that PSE was aware of equity issues since at least 2015, when the City of Tacoma issued its Final Environmental Impact Statement (FEIS).⁷⁴¹
- 387 The Tribe also maintains that the facility will contribute to air pollution in an already burdened area and that it will exacerbate inequities.⁷⁴² The Tribe maintains that PSE’s witness, Roberts, was not qualified to testify as to air quality issues.⁷⁴³
- 388 The Tribe reiterates that the facility presents a risk of catastrophic accident, arguing that it was not designed or permitted based on consideration of worst-case scenarios.⁷⁴⁴ The Tribe also submits that PSE intends to sell LNG that will be transported by rail, which would increase risks to the Tribe.⁷⁴⁵
- 389 The Tribe also argues that the Commission should require the completion of a Health Impact Analysis before approving the facility to assess the cumulative effects of air pollutants, before finding the facility to be prudent.⁷⁴⁶
- 390 Citing the testimony from Public Counsel and the Tribe, TEP argues that the Settling Parties have not demonstrated that the decision to build the Tacoma LNG Facility was prudent or

⁷³⁷ *Id.* at 4:22-5:2.

⁷³⁸ Tribe’s Brief at 11:6-8.

⁷³⁹ *Id.* at 11:9-11:26.

⁷⁴⁰ *Id.* at 12:9-21.

⁷⁴¹ *Id.* at 15:10-18.

⁷⁴² *See id.* at 13:3-15:4.

⁷⁴³ *Id.* at 15:5-9 (citing Roberts, TR 416:20-417:23; 416:18-19).

⁷⁴⁴ *E.g., id.* at 17:17-21.

⁷⁴⁵ *Id.* at 17:24-18:9.

⁷⁴⁶ *Id.* at 21:1-18.

consistent with the public interest.⁷⁴⁷ TEP argues that the Commission must consider the equity and environmental health impacts of locating the facility adjacent to the Tribe's reservation and that it is inappropriate for PSE to recover litigation costs resulting from locating its facility in such a location.⁷⁴⁸

391 *Commission Determination.* The Tacoma LNG Settlement is likely the most controversial and litigated issue in this case. This Settlement presents difficult questions about how the Commission should review and consider capital investments, built over a period of years, in light of public policy and statutory standards that changed after the decision to authorize construction. It also raises difficult questions about environmental justice, equity, and to what extent the Commission should consider issues of environmental health when approving recovery of a utility's capital investments.

392 We first address the prudence of the decision to build the Tacoma LNG Facility, before turning to the parties' arguments about equity and environmental health.

i. Prudence

393 As an initial matter, we observe that the Tacoma LNG Settlement is not precise regarding the prudence determination the Settling Parties request from the Commission. The Settlement provides that the Settling Parties "accept a determination that the decision to build the regulated portion of the Tacoma LNG Facility was prudent, thus PSE has met its threshold prudence requirement to demonstrate that the investment can be provisionally included in rates in a tracker."⁷⁴⁹ In the interest of precision, we construe the Settlement as requesting a determination that the decision of PSE's Board of Directors to build the Tacoma LNG Facility on September 22, 2016, was prudent.⁷⁵⁰ In its post-hearing Brief, PSE requests a determination that the "*decision to build* the regulated portion of the Tacoma LNG Facility was prudent."⁷⁵¹ Staff also suggests that the Settlement preserves the parties' ability to review certain *construction* costs in the future.⁷⁵² Taken together, we read the Settlement and the Settling Parties' post-hearing briefs as indicating an agreement that the Settling Parties are stipulating to the prudence of the Company's actions up through the initial decision to build

⁷⁴⁷ TEP Brief ¶¶ 44-46.

⁷⁴⁸ *Id.* ¶ 48.

⁷⁴⁹ Tacoma LNG Settlement ¶ 23.B.

⁷⁵⁰ *See* Roberts, Exh. RJR-1CT at 33:6-10.

⁷⁵¹ PSE Brief ¶ 86 (emphasis added).

⁷⁵² *See* Staff Brief ¶ 69 (arguing that the Settlement "preserve[s] all parties' ability to challenge *construction* or operations costs that do not survive scrutiny under the Commission's ratemaking standards.").

the LNG Facility on September 22, 2016, but that the Settlement allows the parties to review the prudence and reasonableness of costs incurred after that point. We accordingly focus our prudence review on the initial decision to build the facility.

394 Bearing this framework in mind, we agree that PSE has demonstrated a need for the Tacoma LNG Facility at least through the initial decision to build the facility on September 22, 2016. As PSE explains, the Commission has reviewed and accepted the approach PSE uses for its gas planning and IRP processes since at least 2005.⁷⁵³ IRP planning standards encourage a reliable, adequate gas service for core customers.⁷⁵⁴ PSE reasonably relied on its forecasts for gas demand, which showed a need for an LNG peak-shaving facility. Although Public Counsel and the Tribe challenge PSE's forecasting methods,⁷⁵⁵ we find these arguments unpersuasive. PSE observes that its forecasts for gas demand declined, and it reevaluated the need for an LNG facility in 2016 and 2018.⁷⁵⁶

395 We are not persuaded that actual maximum day sales, emphasized by Public Counsel, justify rejecting investments planned on the basis of PSE's forecasts.⁷⁵⁷ In explaining the Company's reliance on forecasts based on the "design day" standard, Roberts explains that PSE is obligated to serve all of its customers and that planning to accept one or two curtailments in a year would be contrary to the Company's obligation to serve.⁷⁵⁸ While Public Counsel argues that forecasts must be examined in light of actual sales,⁷⁵⁹ this argument does not fully appreciate the purposes behind planning for resource acquisitions based on a design day standard and customers' interests in reliable gas distribution. This undermines Public Counsel's characterization of PSE's forecasts as merely being "false alarms."⁷⁶⁰ The design day standard is intended to ensure a more robust natural gas system that will not run short of resources when they are needed most.

396 Furthermore, we observe that if Public Counsel compared weather-normalized actual maximum day sales volumes to PSE's forecasts, it would be apparent that weather-normalized

⁷⁵³ PSE Brief ¶ 88.

⁷⁵⁴ See generally WAC 480-90-238.

⁷⁵⁵ E.g., Tribe's Brief at 19:15-24 (citing Saleba, Exh. GSS-1T at 6-10).

⁷⁵⁶ PSE Brief ¶ 90 (citing Roberts, Exh. RJR-1CT at 60:1-15).

⁷⁵⁷ See Public Counsel Brief ¶¶ 26-27.

⁷⁵⁸ Roberts, Exh. RJR-30T at 7:8-13.

⁷⁵⁹ E.g., Earle, Exh. RLE-14CT at 5:15-22.

⁷⁶⁰ Public Counsel Brief ¶ 33.

actual maximum day sales have been both above and below PSE's forecasts.⁷⁶¹ This provides further evidence that PSE adjusted its forecasts to reflect changing conditions.

397 Public Counsel also argues that PSE's forecasts declined from 2013 onward.⁷⁶² We agree to some extent with Staff that this argument invites second-guessing of the Company's decision-making based on information obtained later or events that occurred after the fact, such as municipal bans on new gas connections.⁷⁶³ We are persuaded that the Company adequately adjusted its forecasts for gas demand but continued to project a need for an LNG facility through, at the very least, the Company's decision to initiate construction on September 22, 2016.

398 We also reject the argument that the Tacoma LNG Facility was a mere stop gap measure.⁷⁶⁴ Roberts adequately explains that PSE intended to use the facility as a long-term resource.⁷⁶⁵ Against this testimony, we are not persuaded by any claims that PSE either intends to use the facility for only a short period of time or that it needs to add additional resources fairly soon, rendering PSE's decision to build the facility imprudent.⁷⁶⁶ PSE has already presented extensive evidence that the Tacoma LNG Facility was evaluated and found to be a least-cost resource with portfolio benefits. And as PSE observes, "Public Counsel cannot credibly argue on one hand that there is no need for the Tacoma LNG Facility while on the other hand claim that it was not a sufficient resource to meet PSE's longer-term need."⁷⁶⁷

399 We are not persuaded, either, that recovery should be denied because the SEIS indicated that the facility only met PSE's needs for five years.⁷⁶⁸ Roberts testified that PSE chose not to dispute the erroneous statement in the SEIS and that, if PSE had challenged this statement, the SEIS would have been even more favorable to the Company.⁷⁶⁹ Ultimately, the Company provides a credible response, and we are not persuaded that the comment in the SEIS amounts to a damaging admission in any way.

⁷⁶¹ *E.g.*, Roberts, Exh. RJR-30T at 9:1-6 (Figure 1 and accompanying explanation).

⁷⁶² *E.g.*, Earle, Exh. RLE-14CT at 3:7-13 (Figure 1 and accompanying explanation).

⁷⁶³ *See* Staff Brief ¶ 71.

⁷⁶⁴ *E.g.*, Tribe's Brief at 20:13-17.

⁷⁶⁵ Roberts, Exh. RJR-30T at 13:3-12.

⁷⁶⁶ Earle, Exh. RLE-14CT at 8:6-8.

⁷⁶⁷ PSE Brief ¶ 93.

⁷⁶⁸ Sahu, Exh. RSX-1T, at 12:11-16.

⁷⁶⁹ Roberts, Exh. RJR-30T at 15:15-16:8.

400 We are not persuaded, either, that the facility’s storage tank is overbuilt.⁷⁷⁰ Roberts explains that PSE based its decision for sizing the Tacoma LNG Facility, in part, on its expectation of cold spells lasting two or three days occurring more than once each winter.⁷⁷¹ Roberts further explained at the hearing that a two-to-three-day cold spell would deplete the storage tank, and it could take up to 120 days to refill it.⁷⁷² While we observe that the most persuasive explanations for the size of the storage tank came later in the proceeding, this is not necessarily troubling. PSE has provided a large volume of evidence in support of the prudence of the Tacoma LNG Facility, and it is reasonable that the Company would have to adjust its testimony over the course of the proceeding given specific arguments raised by the parties. In addition, we have not been presented with, or granted, any motions to compel that would suggest that PSE failed to comply with discovery requests related to this issue.

401 Even if we agreed with the Tribe and Public Counsel that the tank is overbuilt, it is not evident that building a smaller storage tank would result in any significant savings for customers. Roberts explains that PSE examined downsizing the facility but found that this would not substantially reduce its costs.⁷⁷³ The Tribe does not provide any persuasive evidence to the contrary.

402 To the extent that the Tribe raises other challenges to PSE’s design of the facility, we find these arguments unpersuasive. Dr. Sahu argues, for instance, that the vaporizer would not be necessary if PSE had not liquefied LNG for storage.⁷⁷⁴ Yet Dr. Sahu’s argument overlooks the extensive discussion and justifications PSE has provided for *LNG storage* as opposed to other alternatives.⁷⁷⁵ Once PSE established that LNG storage was a least-cost alternative for peak-shaving, a vaporizer was a necessary expense to reinject gas into PSE’s distribution system.⁷⁷⁶

403 We are not persuaded, either, that PSE incurred unreasonable costs in redesigning the facility due to changing composition of imported natural gas.⁷⁷⁷ Roberts testified that high levels of ethane or propane in imported natural gas were a problem for core gas customers as well as

⁷⁷⁰ See, e.g., Tribe’s Brief at 20:1-8 (citing Sahu, Exh. RXS-1T at 10-13).

⁷⁷¹ Roberts, Exh. RJR-30T 16:14-19.

⁷⁷² Roberts, TR 428:13-25.

⁷⁷³ Roberts, Exh. RJR-3 at 20-21, see also Roberts, RJR-5C at 859.

⁷⁷⁴ Sahu, Exh. RSX-1T at 28:9-15 (“[T]here would be no need for a vaporizer to begin with but-for the fact that PSE decided to make LNG for other end users in the first place. Peak shaving needs gas not LNG.”).

⁷⁷⁵ E.g., Roberts, Exh. RJR-1CT at 13:8-11.

⁷⁷⁶ See *id.* at 16:18-19.

⁷⁷⁷ *Id.* at 28:25-29:4 (arguing that PSE had to redesign the facility at substantial cost); RXS-30T at 31:11-32:12.

non-regulated, Puget LNG customers.⁷⁷⁸ Roberts also testified that the redesign represented only a fraction of the facility's overall cost.⁷⁷⁹

404 With limited exception, we do not accept the Tribe's challenge to the allocation of the facility's costs. The Tribe argues that making ratepayers pay 43 percent when the benefit to them is 2.2 percent (at best) does not comport with cost causation principles or generally accepted regulatory precedents.⁷⁸⁰ After careful consideration of the evidence, we find no reason to revisit the earlier settlement agreement in Docket UG-151663 where we approved ring-fencing provisions, the creation of a non-regulated subsidiary Puget LNG, and the allocation of Facility costs between PSE's regulated business and Puget LNG's non-regulated business.⁷⁸¹ The settlement agreement in Docket UG-151663 was the result of extensive discovery, litigation, and negotiation between interested parties, including Public Counsel, with the assistance of independent consultants.⁷⁸² The evidence in this proceeding does not justify overturning that earlier agreement, which provided allocation factors for each category of plant equipment.

405 Furthermore, we observe that capacity itself provides a benefit for customers. PSE confirms that the Facility is fully commissioned and ready to serve customers.⁷⁸³ Although PSE has not yet used the Facility for peak-shaving,⁷⁸⁴ we recognize that *capacity* is, by itself, a used and useful resource for customers when it is supported by credible forecasts for customer demand. When we review the prudence of costs included in PSE's 2023 Tacoma LNG tariff filing, the Commission may also consider the extent to which the Facility was used as a peak-shaving resource. Additionally, we expect to suspend the filing to allow an adequate opportunity for those opposing the Tacoma LNG Settlement to review the filing. The Commission benefits from full participation and diverse perspectives.

406 We nevertheless find it necessary to place a condition on our acceptance of the Tacoma LNG Settlement regarding the allocation of certain costs to upgrade distribution facilities.⁷⁸⁵ The Settlement allows PSE to recover the costs for these distribution upgrades in base rates,

⁷⁷⁸ See Roberts, TR 421:9-422:2, 423:1-12, 423:13-23.

⁷⁷⁹ Roberts, Exh. RJR-30T at 61:9 (testifying that the redesign cost approximately \$5.4 million).

⁷⁸⁰ Tribe's Brief at 20:9-13 (citing Saleba, Exh. GSS-1T at 14).

⁷⁸¹ *In the Matter of the Petition of Puget Sound Energy, Inc.*, Docket UG-151663 Order 10 (November 1, 2016).

⁷⁸² *E.g., id.* ¶ 8.

⁷⁸³ Roberts, TR 427:1-8.

⁷⁸⁴ *Id.* at 427:10-17.

⁷⁸⁵ See Bamba, Exh. RBB-1T at 21:13-16 (describing distribution upgrades for the Tacoma LNG Facility).

without allocating any portion of these to non-regulated customers.⁷⁸⁶ These distribution upgrade costs are not included in the Tacoma LNG Settlement’s proposed tracker for the remaining Facility costs, and the Settling Parties do not explicitly reserve their right to later challenge the prudence of distribution upgrade costs. The most significant distribution costs reflect the four miles of pipeline connecting the Tacoma LNG Facility to PSE’s distribution system.⁷⁸⁷ This pipeline accounts for the majority of LNG distribution costs (\$30 million out of \$46.4 million without including AFUDC), and was placed into service in 2017.⁷⁸⁸

- 407 As discussed above, PSE’s witness Bamba confirms that the four miles of distribution pipe support both PSE’s use of the LNG facility for system peaking and Puget LNG’s use of LNG as a transportation fuel.⁷⁸⁹ PSE witness Piliaris also confirms that the distribution pipe serves both uses, but states that 100 percent of the costs of the distribution facilities would be placed into regulated rate base, and that PSE would “recover an appropriate share of their costs from Puget LNG through the distribution rates.”⁷⁹⁰ The settlement agreement in Docket UG-151663 reflects that the allocation of the project costs for liquefaction includes facilities used to bring natural gas to the facility.⁷⁹¹ Further, the settlement, and the Commission’s Order approving the settlement in Docket UG-151663, provided that the provisions governing the “treatment” of costs relating to the four miles of 16” distribution line are binding only on PSE, given that Staff, Public Counsel, and other parties did not agree to that provision.⁷⁹²
- 408 From the prior settlement and order, and the testimony and evidence in this record, it appears there was recognition and agreement that the full cost of the four miles of distribution line should *not* be borne solely by core customers. However, it is not clear from the record or the Settlement in this proceeding how PSE will recover the shared costs for the distribution plant from Puget LNG, how the costs will be allocated, or how the treatment of the capital costs in regulated rate base will be addressed by the recovery of costs from Puget LNG.
- 409 Given this information, we are concerned that the Tacoma LNG Settlement includes LNG distribution costs in base rates without any clear determination of what method would be used

⁷⁸⁶ Tacoma LNG Settlement ¶ 18.A.4.

⁷⁸⁷ See Bamba, Exh. RBB-1T at 22:16-18.

⁷⁸⁸ Bamba, Exh. RBB-1T at 22:5-6.

⁷⁸⁹ Bamba, Exh. RBB-1T at 23:10-15.

⁷⁹⁰ Piliaris, Exh. JAP-1T at 52:7-9.

⁷⁹¹ See *Id.*, ¶ 56(a): “The liquefaction allocator allocates capital costs associated with liquefaction, which include the costs of facilities used to receive natural gas, treat the gas, cool the gas below its boiling point and deliver the gas to onsite storage.”

⁷⁹² *In the Matter of the Petition of Puget Sound Energy, Inc.*, Docket UG-151663 Order 10 (November 1, 2016). ¶ 113.

to allocate “an appropriate share” of those costs to the non-regulated activities of Puget LNG. We agree with PSE that it is appropriate for a portion of these costs to be allocated to non-regulated business activities, such as the use of LNG by TOTE Maritime, LLC, but are unclear how and when that allocation will be made or reflected in core customers’ rates.⁷⁹³

410 Thus, we reject the Settling Parties’ proposal for recovering the costs for the four miles of distribution pipe in base rates without further consideration of the allocation of costs between core customers and Puget LNG, specifically a determination of the “appropriate share” of costs for which Puget LNG is responsible, how those costs will be recovered from Puget LNG, and how those costs will be reflected in regulated rate base. Thus, we reject the Settling Parties’ proposal for recovering the costs for the four miles of distribution pipe in base rates without further consideration of the allocation of costs between core customers and Puget LNG, specifically a determination of the “appropriate share” of costs for which Puget LNG is responsible, how those costs will be recovered from Puget LNG, and how those costs will be reflected in regulated rate base. While these costs should be included in rates on a provisional basis, the issues regarding the appropriate allocation and method of recovery should be addressed when the Company requests recovery of the Tacoma LNG Facility costs when submitting its 2023 PGA filing. We therefore accept the Tacoma LNG Settlement subject to the following condition:

CONDITION: In PSE’s compliance filings for rates under the MYRP authorized by this Order, PSE must include the \$30 million for the four miles of distribution pipe in rates on a provisional basis, subject to consideration of the appropriate allocation of costs to Puget LNG and the method of recovery of these costs when the Company requests recovery of the Tacoma LNG Facility costs when submitting its 2023 PGA filing. PSE must defer the revenues associated with the provisional recovery of the \$30 million for the four miles of distribution pipe for supporting proper allocation in the 2023 PGA filing.

411 Finally, we are not persuaded by the Tribe’s argument that the Tacoma LNG Facility is “not really for ratepayers at all.”⁷⁹⁴ While Roberts admitted at the hearing that PSE would not have built the Facility if it could not produce LNG meeting TOTE’s requirements,⁷⁹⁵ as Roberts explained, PSE achieved economies of scale by constructing a dual-use facility.⁷⁹⁶

⁷⁹³ *E.g.*, Sahu, Exh. RXS-1T at 23:18-24.

⁷⁹⁴ Tribe’s Brief at 7:3-6, 19:3-7.

⁷⁹⁵ Roberts, TR 425:16-426:6

⁷⁹⁶ Roberts, Exh. RJR-30T at 57:20-22.

412 We also agree that PSE has adequately considered alternatives to the Tacoma LNG Facility. For example, in its 2011 IRP, PSE evaluated five alternatives and an LNG storage facility was identified as one resource in a three-resource lowest reasonable cost plan for meeting gas demand in 2017 and beyond.⁷⁹⁷ In its 2013 and 2015 IRPs, PSE again identified an LNG facility as part of its least-cost resource solution compared to several other options.⁷⁹⁸ In 2016, PSE management presented the Board of Directors with an analysis showing a \$54 million net present value benefit to customers with the Tacoma LNG Facility compared to other resources over a 20-year period.⁷⁹⁹ In 2018, PSE management reevaluated the Tacoma LNG Facility and again recommended it to the Board of Directors as a least-cost resource, with a \$112.5 million benefit to the existing gas portfolio.⁸⁰⁰

413 While Public Counsel and the Tribe suggest alternatives to the Tacoma LNG Facility,⁸⁰¹ we find that these proposals are not fully supported by the evidence. Public Counsel witness Earle suggests that the Company should have considered compressed natural gas storage at generating facilities.⁸⁰² Roberts explains, however, that Public Counsel fails to consider the physical footprint that would be required to store the necessary volume of compressed natural gas.⁸⁰³ Public Counsel appears to overlook this response to its own proposed alternative.⁸⁰⁴

414 We have considered Public Counsel's argument that PSE should have considered curtailing gas for generation to meet gas peak-shaving needs. Public Counsel is correct, as a general matter, that PSE's electric and gas units may trade with each other when these trades are mutually beneficial.⁸⁰⁵ However, we are persuaded that PSE's electric and gas units are both *winter peaking* and that it is possible that times of peak gas demand may coincide with peak electricity demand.⁸⁰⁶ Furthermore, the Company separately allocates costs to its electric and

⁷⁹⁷ Roberts, Exh. RJR-1CT at 57:10-16; see also Roberts, Exh. RJR-3 at 3-4.

⁷⁹⁸ Roberts, Exh. RJR-1CT at 63:9-19; Roberts, Exh. RJR-3 at 25-26.

⁷⁹⁹ Roberts, Exh. RJR-30T at 20:8-21:6; see also Roberts, Exh. RJR-3 at 45-52.

⁸⁰⁰ Roberts, Exh. RJR-30T at 22:10-22:14; see also Roberts, Exh. RJR-3 at 63.

⁸⁰¹ See Public Counsel Brief ¶¶ 29-30 (arguing that PSE failed to consider curtailing gas for generation, using fuel oil to generate electricity, and installing compressed natural gas storage).

⁸⁰² Earle, Exh. RLE-14CT at 9:12-20.

⁸⁰³ Roberts, Exh. RJR-1CT at 13:18-14:8.

⁸⁰⁴ See Earle, Exh. RLE-14CT at 9:22 (asserting that Roberts did not respond to the proposed alternative of using compressed natural gas).

⁸⁰⁵ Public Counsel Brief ¶ 30. *Accord* Earle, Exh. RLE-14CT at 10:17-11:13.

⁸⁰⁶ See Earle, Exh. RLE-8 (PSE Response to Public Counsel Data Request No. 378(c) ("Both PSE's gas system and electric system provide service to highly temperature sensitive demand territory"); Earle, Exh. RLE-10 (PSE Response to Public Counsel Data Request No. 312(d) ("It was presumed that

gas customers.⁸⁰⁷ A significant number of PSE's customers only take electric or gas service, which raises concerns regarding cross-subsidization between the electric and gas customers.⁸⁰⁸ PSE has also raised credible concerns that there is a lack of firm pipeline capacity on the Northwest Pipeline System.⁸⁰⁹ Curtailing gas for generation could also create reliability concerns for PSE's electric customers.⁸¹⁰ Public Counsel has not presented evidence, testimony, or cross-examination that effectively rebuts PSE's testimony on this issue.

415 Public Counsel witness Earle observes that PSE answered a question posed by the Puget Sound Clean Air Agency indicating that curtailing gas for generation and using fuel oil for dual-fuel combustion turbines could meet initial customer demand in a scenario where the Tacoma LNG Facility was not available.⁸¹¹ However, this was merely a hypothetical scenario in which the Company did not have access to a needed resource. PSE also indicated that curtailing gas for generation would only meet "initial" customer demand and that the Company would "immediately" begin contracting for additional pipeline capacity.⁸¹² This does not demonstrate that curtailing gas for generation would be a reasonable, lowest-cost option for serving gas demand. Roberts testified that there is no additional firm pipeline capacity on the Northwest Pipeline System. We are persuaded that, under these circumstances, curtailing gas for generation and relying on non-firm (*i.e.*, interruptible) pipeline capacity would be likely more expensive and present a risk of curtailments.

416 We also reject Public Counsel's arguments that PSE could have used capacity at the Jackson Prairie Storage Facility or the Gig Harbor Satellite LNG Facility to meet its peaking needs. As

if a peak event occurs, both PSE gas system needs and gas generation needs may very likely be coincident, thus putting extreme pressure on the entire gas and electric grid"); and Earle, Exh. RLE-10 (PSE Response to Public Counsel Data Request No. 312(e) ("PSE analyzed the Tacoma LNG project for purposes of meeting its natural gas distribution peak system needs. If PSE's electric system load peaked in the summer, like many parts of the country, such gas supply/transportation sharing arrangements might be feasible. However, hoping to divert gas supplies from electric generation when it is most needed to meet peak electric needs in winter is not a reasonable plan."); Earle, Exh. RLE-14CT at 11:3-7 (indicating that there may be a "rare occurrence" where the Company's electric business unit planned to burn all its available gas for generation at a time of peaking gas demand).

⁸⁰⁷ Roberts, Exh. RJR-30T at 23:13-16.

⁸⁰⁸ *See id.* at 23:7-13.

⁸⁰⁹ Roberts, Exh. RJR-30T at 29:22-30:2.

⁸¹⁰ *Id.* at 25:20-23.

⁸¹¹ Earle, Exh. RLE-10 at 20-21.

⁸¹² *See id.*

PSE explains, these facilities are already factored into PSE's resource stack, and there is no firm pipeline capacity to move gas from these facilities during times of peak demand.⁸¹³

417 With regard to the third prudency factor, we agree that PSE's Board of Directors was sufficiently informed and involved at least through its decision to authorize construction of the facility on September 22, 2016. In May 2012, the Company's Board of Directors approved the continued investigation of the potential ownership of an LNG facility.⁸¹⁴ PSE management continued to inform the PSE Board of Directors regarding its evaluation of owning an LNG facility, and in September 2016, the Company's Board of Directors authorized construction of the Tacoma LNG Facility.⁸¹⁵

418 We also find that PSE provided adequate documentation of its decision-making as it developed and constructed the Tacoma LNG Facility. In Roberts's Exhibit RJR-3, PSE provided a thorough narrative timeline of the development and construction of the Tacoma LNG Facility, which describes dozens of reports and presentations provided to the Board of Directors. In Roberts's Exhibit RJR-5C, PSE provided its presentations to the Board of Directors regarding the Company's evaluation of an LNG facility and its later development and construction of the Tacoma LNG Facility.

419 Public Counsel and the Tribe argue that PSE failed to sufficiently inform its Board of Directors and failed to provide adequate documentation of its decision-making.⁸¹⁶ These arguments appear to be premised on earlier challenges to the Company's load forecasts and proposed alternatives such as curtailing gas for generation. Because we agree with PSE that it appropriately based planning decisions on its design day standard and that proposed alternatives, such as curtailing gas for generation, are problematic, we do not accept Public Counsel's or the Tribe's challenges to the third and fourth prudency factors.⁸¹⁷ PSE management provided the Board of Directors updated forecasts of gas demand over the course of the development and construction of the facility, keeping the Board of Directors sufficiently informed at least through September 22, 2016.⁸¹⁸ Because the Tacoma LNG

⁸¹³ PSE Brief ¶ 105 (citing Roberts, Exh. RJR-30T at 29:11-30:21).

⁸¹⁴ Roberts, Exh. RJR-1CT at 57:16-20; Roberts, Exh. RJR-3 at 4-8; Roberts, Exh. RJR-5C at 3-61; Roberts, Exh. RJR-30T at 31:5-6.

⁸¹⁵ Roberts, Exh. RJR-1CT at 58:1-60:8; Roberts, Exh. RJR-3 at 8-25, 29-43, 45-52; Roberts, Exh. RJR-30T at 31:6-12; Exh. RJR-5C at 62-1693.

⁸¹⁶ *E.g.*, Public Counsel Brief ¶¶ 34-38.

⁸¹⁷ *See* PSE Brief ¶¶ 108, 110.

⁸¹⁸ *E.g.*, Roberts, Exh. RJR-5C at 1794.

Settlement only indicates an agreement among the Settling Parties regarding the decision to build the facility, we do not proceed further.

420 Finally, we accept the Tacoma LNG Settlement’s terms regarding PSE’s litigation costs. Based on the evidence presented in this case, we agree that PSE incurred litigation costs responding to arguments from the Tribe and other parties related to a number of issues.⁸¹⁹ As we discuss in greater detail below, the PCHB found a number of Dr. Sahu’s claims to be vague, unsupported, or lacking in credibility.⁸²⁰ It is not credible for the Tribe to challenge PSE’s recovery of litigation costs in this proceeding when PSE has so far prevailed on the vast majority of issues raised by the Tribe in other forums.

ii. Equity and environmental health

421 There is significant disagreement in this case as to how the Commission should review the Tacoma LNG Facility in terms of equity and environmental health. We are committed to “apply[ing] an equity lens in all public interest considerations going forward.”⁸²¹ The Tacoma LNG Facility, however, presents difficult questions about how we might apply an equity lens while also applying long-standing principles of ratemaking. We recognize that long-standing principles of ratemaking have not required regulators to apply an equity lens in decision making. We also recognize that an equity lens is not additive, but rather foundational, to our review of all requests, proposals, and recommendations.

422 As we have observed, PSE’s Board of Directors authorized construction of the Tacoma LNG Facility on September 22, 2016, and the facility was mechanically completed before RCW 80.28.425 was enacted. PSE argues that it acted prudently based on the standards that existed at the time and that its decisions should not be second-guessed based on hindsight. We also recognize that the Puyallup Tribe has been challenging the Tacoma LNG Facility on the basis of equity and environmental health outcomes since before the RCW 80.28.425 was enacted.

423 Public Counsel and the Tribe argue, however, that PSE failed to consider the impacts to Vulnerable Populations and Highly Impacted Communities and that approving recovery of this project would contribute to systemic injustice.⁸²² The Tribe presents a number of arguments as to why the Commission should consider equity and environmental health issues even though the facility was constructed before changes in public policy occurred.

⁸¹⁹ Roberts, Exh. RJR-30T at 63:15-64:2.

⁸²⁰ See Roberts, Exh. RJR-32 ¶¶ 75, 77, 100.

⁸²¹ *WUTC v. Cascade Natural Gas Corporation*, Docket UG-210755 Order 09 ¶ 58 (August 23, 2022).

⁸²² *E.g.*, Tribe’s Brief at 12:15-26 (citing Sahu, Exh. RXS-16; Saleba, Exh. GSS-1T at 12).

424 We begin our discussion by noting the statutes at issue. CETA envisions the equitable distribution of both the benefits and burdens of the transition to clean energy. Pursuant to RCW 19.405.010(6), the legislature recognizes and finds that the public interest includes but is not limited to the “equitable distribution of energy benefits and reduction of burdens to vulnerable populations and highly impacted communities; long-term and short-term public health, economic, and environmental benefits and the reduction of costs and risks; and energy security and resiliency.” More recent legislation specifically allows the Commission to consider equity and environmental health. Pursuant to RCW 80.28.425(1), the Commission may consider factors such as environmental health, greenhouse gas reductions, and equity considerations into the Commission’s “consideration of a proposal for a multiyear rate plan.”

425 Because we are focused on PSE’s request for recovery of the Tacoma LNG Facility, we must consider the broader public interest standard from RCW 80.28.425 in a manner that is consistent with other applicable statutes and policies regarding the valuation of utility company property. Pursuant to RCW 80.04.250, the Commission has the authority to ascertain and determine the fair value for rate-making purposes of utility property. The Commission may provide for changes to rates “using any standard, formula, method, or theory of valuation reasonably calculated to arrive at fair, just, reasonable, and sufficient rates.”⁸²³ The Commission must also establish an appropriate process to identify, review, and approve rate-period effective investments.⁸²⁴ The Commission later established this process in the Used and Useful Policy Statement, which emphasizes that requests for rate-period effective investments must conform to long-standing rate-making principles.⁸²⁵ The Company must show, for instance, that the property will be used and useful, based on known and measurable events, and that costs were prudently incurred.⁸²⁶ In addition to a threshold prudence showing, the Company must also demonstrate prudence over the life of the investment.⁸²⁷ Because the question of prudence requires us to consider the Company’s actions both in light of what it knew at the time,⁸²⁸ as well as over the life of the investment, there is a natural tension in this proceeding between the absence of equity and environmental health considerations in ratemaking as it relates to the threshold prudence of PSE’s decision to construct the facility and the continuous demonstration of prudence over the life of the

⁸²³ RCW 80.04.250(3).

⁸²⁴ *Id.*

⁸²⁵ Used and Useful Policy Statement ¶ 20.

⁸²⁶ *Id.*

⁸²⁷ *Id.* ¶ 35, n.39.

⁸²⁸ *E.g., id.* ¶ 26 n.34 (“The Commission’s prudence analysis examines many factors, including whether the costs asserted are reasonable compared to other alternatives a company considered at the time the decision to build or acquire was made.”).

investment now that equity and environmental health considerations have been incorporated into ratemaking.

- 426 The Commission is committed and currently working to implement both performance-based regulation and equity considerations into its ratemaking framework. However, we find that it would be unreasonable and inappropriate to reject the Settlement’s threshold prudency determination to construct the facility in light of later statutes that did not exist at the time that expand the Commission’s authority to consider equity and environmental health.
- 427 We emphasize that the Commission serves primarily as an *economic* regulator. While RCW 80.28.425 expands the public interest standard to include issues such as equity and environmental health, we recognize that this law must be applied to prudency going forward but should not be applied retroactively. We further conclude that the law does not allow the Commission to retrospectively second-guess the determinations of other, more specialized environmental health agencies, such as the Pollution Control Hearings Board, which is responsible for reviewing agencies’ actions in siting and permitting the plant.
- 428 As Staff observes, recent statutory changes pose difficult questions regarding the Commission’s application of the public interest standard.⁸²⁹ Staff asks, “But where does that leave this facility, which was planned and mostly built under the old legal regime?”⁸³⁰ Staff concludes, and we agree for purposes of reviewing this non-precedential Settlement, that the applicable definition of the public interest was the one in effect at the time PSE decided to build the facility.”⁸³¹ We find it would be unjust and unreasonable to incorporate information available only through hindsight into the prudency determination related to construction that occurred in 2016.⁸³²
- 429 We are not persuaded by the Tribe’s arguments to the contrary. The Tribe argues, for example, that PSE did not have any vested right to assume, in 2016, that the law would remain unchanged.⁸³³ Yet as we have observed, RCW 80.28.425 provides for a list of factors

⁸²⁹ See Staff Brief ¶ 73.

⁸³⁰ Staff Brief ¶ 73.

⁸³¹ *Id.* ¶ 74.

⁸³² *Cf.* Tribe’s Brief at 8:9-10 (arguing that “PSE’s investment in Tacoma LNG should not be found prudent because it does not serve the public interest.”).

⁸³³ Tribe’s Brief at 11:9-22.

We agree though, that investor-owned utilities like PSE should have been and should be responsive to the needs of those they serve or those who are impacted by their operations. We recognize that this is not a requirement of law.

that the Commission may consider when reviewing MYRPs. It does not require the Commission to upend its longstanding principles of prudence review.

- 430 Thus, insofar as we apply the expanded public interest standard set forth in RCW 80.28.425(1) to our review of the Tacoma LNG Settlement, we consider it as one of three settlements setting forth a proposed MYRP for PSE. We consider the facility’s implications for equity and environmental health in the context of the other two partial, multiparty settlements resolving this general rate case.
- 431 When considered in this light, we find that the Tacoma LNG Settlement is consistent with the public interest as one of three partial multiparty settlements resolving this general rate case and providing for a two-year MYRP. The parties opposing the Tacoma LNG Settlement fail to establish that the Settlement should be rejected as contrary to the public interest.
- 432 Turning to the specific factual arguments, we observe that the parties disagree widely on whether the Tacoma LNG Facility provides environmental benefits or whether it presents a significant risk of harm. On the one hand, it must be admitted that the facility is located on an existing “brownfield” site, in an existing industrial area, zoned for industrial activities.⁸³⁴ PSE argues that—to the extent the Commission considers environmental health and greenhouse gas emissions reductions, health and safety concerns, economic development, and equity in reviewing the Tacoma LNG Settlement—the Commission should consider various benefits the facility provides to the Tribe and others living and working near the Port of Tacoma.⁸³⁵ PSE argues, for instance, that the facility was built on a brownfield site and that the Company performed a significant amount of cleanup and mitigation.⁸³⁶ PSE describes revegetation efforts and other measures that benefit juvenile salmon in the area.⁸³⁷ PSE witness Roberts also explains that environmental agencies have approved permits for the facility and found that it provides various benefits.⁸³⁸
- 433 On the other hand, the Tribe argues that “there can be no legitimate dispute” that the Tacoma LNG Facility will contribute to and exacerbate high levels of air pollution near the Facility.⁸³⁹ The Tribe’s witness, Dr. Sahu, testifies that the facility will emit a number of pollutants,

⁸³⁴ Sahu, Exh. RXS-36 at 8.

⁸³⁵ PSE Brief ¶ 115.

⁸³⁶ PSE Brief ¶¶ 116-17 (citing, *inter alia*, Roberts, Exh. RJR-30T at 42:1-7).

⁸³⁷ Roberts, Exh. RJR-30T at 42:4-20; Roberts, Exh. RJR-33 at 17:8-18:6, 33:11-13.

⁸³⁸ Roberts, TR at 434:1-16.

⁸³⁹ Tribe’s Brief at 13:15.

including carcinogens and persistent, bio-accumulative chemicals.⁸⁴⁰ Dr. Sahu contends that the facility will emit pollutants and pose a disparate impact on the Tribe even though PSE obtained a Clean Air Act permit to operate the facility.⁸⁴¹ Public Counsel also cites Dr. Sahu's testimony,⁸⁴² and argues that the facility will perpetuate systemic harm for the Tribe and the surrounding area.⁸⁴³

434 We have carefully considered all of the testimony and evidence on this issue. As a general matter, we agree that investor-owned utilities should generally be on notice that public policy envisions an equitable distribution of the benefits and burdens of the clean energy transition.⁸⁴⁴ In order to address systemic inequity, companies must carefully evaluate future investments to ensure that they do not further burden vulnerable populations and highly impacted communities that have already borne a disproportionate share of pollution and environmental health impacts. However, in this proceeding we are reviewing a non-precedential Settlement for a facility that was built before changes in law and public policy were made.

435 With this understanding in mind, we consider the parties' arguments regarding the health and environmental impacts of the facility as one of several considerations when considering PSE's proposed MYRP. We ultimately find that many of the Tribe's arguments deserve little weight.

436 We observe, for example, that the PCHB repeatedly found PSE's air quality witness, Dr. Libicki, more credible than the Tribe's witness, Dr. Sahu.⁸⁴⁵ The PCHB went so far as to characterize Dr. Sahu as providing "scant" evidence for certain claims and "no evidence" that the facility's NO₂ emissions violated NAAQS.⁸⁴⁶ To the extent the Tribe seeks to relitigate air quality issues in this proceeding, the PCHB's findings as to the credibility of Dr. Sahu's testimony undermine many of the Tribe's arguments regarding air quality impacts and its emphasis on Dr. Sahu's opinions.⁸⁴⁷

437 We place relatively little weight on the fact that PSE was required to install a CEMS at the facility. As PSE credibly explains, the PCHB did not adopt the Tribe's extensive proposed

⁸⁴⁰ Tribe's Brief at 13:15-14:2 (citing Sahu, Exh. RXS-1T at 16; Sahu, Exh. RXS-30T at 15-16, 19).

⁸⁴¹ *Id.* at 14:3-12. *See also id.* at 14:13-15:4 (citing Saleba, Exh. GSS-1T at 11-12 for a similar proposition).

⁸⁴² Public Counsel Brief ¶ 40.

⁸⁴³ *Id.* ¶¶ 41-43.

⁸⁴⁴ *See* RCW 19.405.010(6).

⁸⁴⁵ *See* Roberts, Exh. RJR-32 ¶¶ 75, 77, 100.

⁸⁴⁶ *Id.* ¶¶ 127-28, 133.

⁸⁴⁷ *See, e.g.,* Tribe's Brief at 5:7-19 (arguing that Dr. Sahu was well-qualified).

changes to the facility's permit.⁸⁴⁸ PSE has already installed the CEMS,⁸⁴⁹ which merely ensures that the facility does not violate air quality standards. Indeed, one witness testifying before the PCHB said that if a CEMS was installed, the facility would be the most heavily monitored minor source in the Puget Sound Clean Air Agency's jurisdiction.⁸⁵⁰

438 We have therefore considered the Tribe's arguments regarding air quality impacts and the PCHB's decisions and found them unpersuasive in several respects. The PCHB, as a specialized agency having jurisdiction over air quality issues, considered and rejected the majority of the Tribe's arguments. To the extent that the Tribe prevailed by requiring the installation of a CEMS, we are not persuaded that this warrants rejecting economic recovery of the cost to build the facility.

439 We also decline to require a Health Impact Assessment of the facility, as advocated by the Tribe.⁸⁵¹ The Commission primarily acts as an economic regulator. We do not have regulations or experience in administering Health Impact Assessments, and the legislature has not required any such assessment for this facility.⁸⁵² This request may be better directed to other agencies.⁸⁵³

440 We have also carefully considered the Tribe's arguments that the facility presents a risk of a catastrophic accident. The Tribe submits that even a code-compliant facility could cause a fire or explosion, citing a 2014 incident at Plymouth LNG in Kennewick, Washington, and a June 2022 incident at Freeport LNG in Texas.⁸⁵⁴ The Tribe also argues that an internal Commission memo, which comments that "the existing regulatory process has a few fundamental flaws regardless of one's position on the project" and that the FEIS did not consider a "worst case discharge of oil" that assumes all of the contents of the largest tank are lost.⁸⁵⁵ The Tribe argues that the facility therefore presents "unknown" and "unmitigated" risks to the public.⁸⁵⁶

⁸⁴⁸ Roberts, Exh. RJR-32 at 77:6-11.

⁸⁴⁹ Roberts, Exh. RJR-32 at 76:17-77:2.

⁸⁵⁰ *Id.* ¶ 88.

⁸⁵¹ Tribe's Brief at 21:1-18.

⁸⁵² *Cf.* Laws of 2007, ch. 517 § 3(3) (requiring a Health Impact Assessment conducted by the Puget Sound Clean Air Agency and the King County Department of Health for certain modifications to SR-520).

⁸⁵³ *See* WAC 173-460-090(3) (setting forth the Department of Ecology's Health Impact Assessment protocol).

⁸⁵⁴ Tribe's Brief at 16:3-20 (citing, *inter alia*, Sahu, Exh. RXS-1T at 22-23).

⁸⁵⁵ Sahu, Exh. RXS-36 at 7-8. *See also* Tribe's Brief at 16:21-17-6.

⁸⁵⁶ Tribe's Brief at 17:17-18.

- 441 We must consider these arguments against the credible evidence of record. Notably, the City of Tacoma’s FEIS appears to undermine many of the Tribe’s assertions. The City of Tacoma sought independent peer review of the Company’s design before approving it through the FEIS process.⁸⁵⁷ The FEIS also explains that the Tacoma LNG Facility is subject to regulation and review by a number of governmental agencies, including the Pipeline Hazardous Materials Safety Administration (PHMSA), the Commission, the United States Coast Guard, the United States Department of Transportation, and the City of Tacoma, through its adoption of the Washington State Fire Code.⁸⁵⁸ The FEIS observes that “[i]n the 70+ year operating history of United States LNG facilities, only two LNG safety-related incidents have occurred that resulted in adverse effects to the public or environment,” citing a fire in Cleveland, Ohio in 1944 and an ignition of enclosed vapors in Lusby, Maryland in 1979.⁸⁵⁹ The FEIS concludes that “[w]ith more than 110 functioning LNG facilities in the United States today, and an operational history beginning in the 1940s, the industry has a good safety record.”⁸⁶⁰ Although the Tribe has raised other, more recent incidents near Kennewick, Washington, and in Freeport, Texas, the FEIS presents credible evidence regarding the regulatory framework and safety measures taken with regard to the facility and to the LNG industry in general.
- 442 Although the Tribe suggests that the FEIS did not consider a “worst-case” spill scenario,⁸⁶¹ this argument invites second-guessing of PHMSA regulations. Federal regulations establish the “potential credible events (*i.e.*, ‘accident scenarios’) to be modeled for thermal and vapor events.”⁸⁶² We will not reject the Settlement based on spill scenarios that are considered outside the scope of PMHSA regulations.
- 443 We also observe that the Commission’s Pipeline Safety Division has already conducted its review of the facility and presented its recommendations to the Commission. In Docket PG-151949, the Commission granted PSE’s request for an exemption from 49 C.F.R. § 193.2167, as recommended by the Pipeline Safety Division, to construct a Buried Liquefied Natural Gas Transfer System.⁸⁶³ Staff observed that PSE included various mitigation measures in its

⁸⁵⁷ See Roberts, RJR-30T at 54:16-55:11; Roberts, Exh. RJR-35 (Braemar Technical Services Engineering & Naval Architecture Group, Engineering, Tacoma LNG Fire and Safety Review (July 2, 2018)).

⁸⁵⁸ Sahu, Exh. RXS-33 at 3-4.

⁸⁵⁹ *Id.* at 9.

⁸⁶⁰ *Id.*

⁸⁶¹ Tribe’s Brief at 17:17-18.

⁸⁶² Sahu, Exh. RXS-33 at 9.

⁸⁶³ Sahu, Exh. RXS-36 at 5-6.

design of the facility.⁸⁶⁴ The Commission then granted this exemption subject to a number of conditions, which included securing the opinion of an independent geotechnical consultant to ensure that the pipeline meets federal requirements for withstanding seismic events.⁸⁶⁵

Because the Commission's Pipeline Safety Division has been delegated authority to inspect pipelines and other facilities to ensure their compliance with PMHSA regulations, the review and recommendations from the Pipeline Safety Division weigh against any claims that the facility presents unknown or catastrophic risks.

444 Next, we place relatively little weight on the Tribe's citation to a comment from an internal Commission memo, which suggested that PSE did not consider a "worse case" spill scenario.⁸⁶⁶ The Tribe does not establish that the individual author of this memo was qualified to speak to the evaluation of LNG facility risks. This comment is outweighed by other credible evidence, such as the FEIS, which shows that the facility was evaluated by experts.

445 We place relatively little weight on claims that PSE may transport LNG by rail.⁸⁶⁷ In July 2020, PHMSA promulgated a rule that allowed for the bulk transportation of LNG by rail.⁸⁶⁸ This was a rulemaking by a specialized federal agency, and we decline to second-guess PHMSA regulations in this proceeding. This is particularly true because such activities would appear to fall outside of the Commission's jurisdiction. The Washington Supreme Court has held that the Commission should confine its consideration of the public interest to regulated business activities.⁸⁶⁹

446 Furthermore, the evidence does not establish that PSE has any defined plans to carry out LNG transportation by rail. The marketing team for Puget LNG suggested that LNG may be transported by rail, but the Company's Rule 30(b)(6) designee indicated that there were no concrete plans to carry this out and that there may not be a market for LNG rail transport.⁸⁷⁰ Because the Tribe does not present any further evidence indicating that the Company actually plans to carry out LNG rail transport, this argument carries relatively little weight.

⁸⁶⁴ Sahu, Exh. RXS-36 at 8-9.

⁸⁶⁵ *Id.*

⁸⁶⁶ *See* Sahu, Exh. RXS-36 at 7-8. *See also* Tribe's Brief at 16:21-17-6.

⁸⁶⁷ *See* Tribe's Brief at 17:24-18:9.

⁸⁶⁸ 85 Fed. Reg. at 44995. *But see* 86 Fed. Reg. at 61731 (proposing to amend the Hazardous Materials Regulations to suspend authorization of LNG transportation by rail).

⁸⁶⁹ *Cole v. WUTC*, 79 Wn.2d 302, 485 P.2d 71 (1971).

⁸⁷⁰ Sahu, Exh. RXS-38 (Excerpt (non-confidential) from J. Hogan 30(b)(6) testimony on behalf of PSE, 1/7/2021).

- 447 In making our determination in this Order, we do not rely on any reduction in greenhouse gas emissions from the non-regulated activities of Puget LNG.⁸⁷¹ As Public Counsel observes, the Washington Supreme Court held that the Commission does not have the authority to consider the effect of a regulated utility’s practices upon a nonregulated business.⁸⁷²
- 448 Thus, we find that the Tacoma LNG Settlement is consistent with the public interest when considered as one of three partial, multiparty settlements resolving this general rate case. The Commission should not reject the Settlement or disallow recovery of the facility on the basis of later changes to law or public policy.
- 449 We approve the Tacoma LNG Settlement subject to the condition that the costs of the four mile distribution line be included in rates provisionally, to allow for consideration when PSE files for LNG recovery of the appropriate allocation of costs of the distribution line to Puget LNG, as well as the method for PSE recovering the “appropriate share” of costs from Puget LNG, and how it will modify regulated rate base. We agree that PSE acted prudently in developing and constructing the Tacoma LNG Facility up through the initial decision to authorize construction of the facility on September 22, 2016. Consistent with the Tacoma LNG Settlement, the parties may review and challenge the prudence of later construction and operation costs in a future proceeding, including when PSE files for LNG recovery at the same time it files its 2023 PGA.
- 450 We therefore approve the Settlement’s proposed LNG tracker, and we grant PSE’s petition for deferred accounting filed in Docket UG-210918. Consistent with PSE’s position in its post-hearing brief, we modify PSE’s request for deferred accounting, extending the deferral period until recovery commences in the LNG tracker.⁸⁷³ In authorizing PSE’s deferred accounting agreement we accept PSE’s request to withdraw its request to defer carrying charges associated with the deferral.⁸⁷⁴

Condition: We authorize PSE’s petition for deferred accounting filed in Docket UG-210918, subject to the modifications of (1) extending the deferral period until recovery commences in the LNG tracker and (2) accepting PSE’s request to withdraw its request to defer carrying charges associated with the deferral.

⁸⁷¹ Cf. PSE Brief ¶ 118 (arguing that the Commission should consider the benefits of reduced emissions from TOTE Maritime, LLC’s ships using LNG fuel).

⁸⁷² Public Counsel Brief ¶ 44 (citing *Cole v. WUTC*, 79 Wn.2d 302, 305-306 (1971)).

⁸⁷³ PSE Brief ¶ 135.

⁸⁷⁴ *Id.*

FINDINGS OF FACT

- 451 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefor, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:
- 452 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate rates, regulations, practices, accounts, securities, transfers of property and affiliated interests of public service companies, including electric and natural gas companies.
- 453 (2) PSE is a “public service company,” an “electrical company,” and “gas company” as those terms are defined in RCW 80.04.010 and used in Title 80 RCW. PSE provides electric and natural gas utility service to customers in Washington.
- 454 (3) PSE’s currently effective rates were determined on the basis of the Commission’s Final Order in consolidated Dockets UE-190529, UG-190530, UE-190274, UG-190275, UE-171225, UG-171226, UE-190991, and UG-190992.
- 455 (4) The rates established by the 2020 PCORC in Docket UE-200980 updated PSE’s rates previously established in the Company’s 2019 GRC.
- 456 (5) On January 31, 2022, PSE filed this GRC with the Commission proposing revisions to its currently effective Tariffs WN U-60, Electric Service, and Tariff WN U-2, Natural Gas Service.
- 457 (6) In its initial filing, PSE proposed a three-year rate plan for the years 2023, 2024, and 2025. In rate year one, PSE sought to increase base electric rates by approximately \$310.5 million, or an average increase of approximately 13.59 percent across all customer classes. In rate year two, PSE sought to increase base electric rates by approximately \$63 million, or an average increase of 2.47 percent across all customer classes. In rate year three, PSE sought to increase base electric rates by approximately \$31.8 million, or an average increase of 1.22 percent across all customer classes.
- 458 (7) With respect to natural gas service, PSE sought to increase base rates by approximately \$143 million in rate year one, or an average increase of 12.98 percent across all customer classes. In rate year two, the Company proposed to increase base natural gas rates by \$28.5 million, or an average increase of 2.29 percent across all customer classes. In rate year three, PSE would increase base natural gas rates by \$23.3 million, or an average increase of 1.83 percent across all customer classes.

- 459 (8) The evidence demonstrates that a MYRP will provide for more timely recovery of costs and strengthen PSE's incentives to contain costs.
- 460 (9) The Revenue Requirement Settlement's provisions for a modified DR PIM, targets, and metrics are reasonable and supported by an appropriate record.
- 461 (10) The evidence supports the Revenue Requirement Settlement's proposed capital structure of 49 percent equity and 51 percent debt as reasonable and striking an appropriate balance between considerations of economy and safety.
- 462 (11) The evidence supports the Revenue Requirement Settlement's proposed ROE of 9.40 percent as reasonable, comparable to the rate of return investors expect for similar investments, sufficient to assure confidence in the utility's financial integrity, and adequate to attract capital at reasonable costs.
- 463 (12) Public Counsel's proposed ROE of 8.80 percent is unreasonably low, falling below 99 percent of all authorized ROEs since 2018.
- 464 (13) Although the Commission will not make a final determination with respect to the prudence of Energy Eastside until a later proceeding, the evidence shows that PSE has demonstrated a need for Energize Eastside and that it adequately evaluated alternatives.
- 465 (14) The Revenue Requirement Settlement reasonably and appropriately incorporates equity considerations into PSE's capital planning processes.
- 466 (15) The Revenue Requirement Settlement proposes reasonable modifications to PSE's filing requirements to allow for more timely recovery of power costs and to prevent under-recoveries.
- 467 (16) The evidence supports the Settling Parties' reasonable agreement to include Colstrip costs in a tracker mechanism.
- 468 (17) The evidence supports the Settling Parties' reasonable agreement regarding the allocation and payment of Microsoft's remaining obligations for Colstrip D&R costs.
- 469 (18) The evidence supports the Settling Parties' agreement to disallow recovery of Colstrip "dry ash" facilities.
- 470 (19) The evidence supports the Revenue Requirement Settlement's terms providing for the gradual reduction of PSE's gas line extension allowance to zero.

- 471 (20) The Settling Parties have proposed reasonable modifications to PSE's proposed TVR pilot, largely aimed at providing greater resources and protections for low-income customers.
- 472 (21) The Green Direct Settlement presents a reasonable means of calculating the Energy Charge Credit.
- 473 (22) The evidence shows that PSE acted prudently in developing and constructing the Tacoma LNG Facility up through the Board of Director's decision to authorize construction on September 22, 2016.
- 474 (23) The evidence supports conditioning our acceptance of the Tacoma LNG Settlement on including the costs of the four mile distribution line provisionally in rates, subject to a review of the appropriate allocation of costs between PSE core customers and Puget LNG.
- 475 (24) The Tacoma LNG Settlement is consistent with the public interest when considered as one of three partial multiparty settlements resolving all issues in this proceeding and providing for a two-year MYRP for PSE.
- 476 (25) PSE presents credible evidence that the PCHB rejected many of the Tribe's arguments as unsupported and that the Tacoma LNG Facility was designed and constructed in accordance with applicable safety regulations.
- 477 (26) PSE proposes 39 uncontested restating and pro forma adjustments to its electric revenue requirement and 34 uncontested restating and pro forma adjustments to its natural gas revenue requirement. These uncontested adjustments are supported by substantial competent evidence in the record of this proceeding.
- 478 (27) PSE's currently effective electric and natural gas rates do not provide sufficient revenue to recover the costs of its operations and provide a rate of return adequate to compensate investors at a level commensurate to what they might expect to earn on other investments bearing similar risks.

CONCLUSIONS OF LAW

- 479 Having discussed above all matters material to this decision, and having stated the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

- 480 (1) The Commission has jurisdiction over the subject matter of, and parties to, these proceedings.
- 481 (2) PSE is an electric company, a natural gas company, and a public service company subject to Commission jurisdiction.
- 482 (3) At any hearing involving a proposed change in a tariff schedule the effect of which would be to increase any rate, charge, rental, or toll theretofore charged, the burden of proof to show that such increase is just and reasonable will be upon the public service company. RCW 80.04.130(4). The Commission's determination of whether the Company has carried its burden is adjudged on the basis of the full evidentiary record.
- 483 (4) PSE's existing rates for electric service are neither fair, just, and reasonable, nor sufficient, and should be adjusted prospectively after the date of this Order.
- 484 (5) PSE's existing rates for natural gas service are neither fair, just, and reasonable, nor sufficient, and should be adjusted prospectively after the date of this Order.
- 485 (6) PSE proposed a MYRP as required by RCW 80.28.425.
- 486 (7) The Commission should authorize and require PSE to replace the existing decoupling earnings test with the earnings test provided in RCW 80.28.425(6), including accruing ROR on the balance of the decoupling deferral, and deferring any earnings greater than 0.5 percent above its authorized ROR, consistent with the Settlement and RCW 80.28.425(6).
- 487 (8) By providing for Performance Incentive Mechanisms (PIMs), targets, and incentives, the Revenue Requirement Settlement provides the Commission a set of performance measures that will be used to assess PSE's performance as required by RCW 80.28.425(7).
- 488 (9) In order to properly assess PSE's performance over the course of the MYRP, the Commission should adopt additional performance metrics as set forth in Table 4 of this Order, and the Commission should require PSE to report data on these metrics from 2019 onwards.
- 489 (10) The Revenue Requirement Settlement's proposed capital structure of 49 percent equity and 51 percent debt is lawful and consistent with past Commission precedent.
- 490 (11) The Revenue Requirement Settlement's proposed ROE of 9.40 percent is consistent with the longstanding principles set forth in *Hope* and *Bluefield*.

- 491 (12) The Revenue Requirement Settlement provisions for the provisional recovery of the Energize Eastside project are consistent with CETA, RCW 80.28.425, and the Used and Useful Policy Statement.
- 492 (13) The Revenue Requirement Settlement lawfully provides that PSE's investments in DERs, battery resources, and demand response costs are eligible for earnings on PPAs as provided by RCW 80.28.410.
- 493 (14) The Infrastructure Investment and Jobs Act and Inflation Reduction Act will likely have a significant effect on PSE's power costs, and the Company should document its consideration of the benefits of these federal laws in future proceedings.
- 494 (15) The Revenue Requirement Settlement properly removes coal-fired resources from rates by 2025 as required by RCW 19.405.030(1)(a).
- 495 (16) PSE should be allowed to recover prudently incurred Colstrip D&R costs.
- 496 (17) The Green Direct Settlement appropriately avoids unlawful cross-subsidization between participating and non-participating customers.
- 497 (18) The Tacoma LNG Settlement appropriately requests a prudence determination up through the initial decision to authorize construction of the facility on September 22, 2016.
- 498 (19) The Commission's longstanding prudence standard requires an assessment of what the utility knew at the time, and it should not be amended in this proceeding to incorporate facts or changes in the law that occurred only later, after the decisions at issue.
- 499 (20) In approving the Tacoma LNG Settlement, we do not place any consideration on potential reductions of greenhouse gas emissions in industries that are not regulated by the Commission.
- 500 (21) PSE should be required to defer the revenues resulting from its provisional recovery of the \$30 million for four miles of LNG distribution pipeline, subject to later review in the Company's 2023 PGA filing.
- 501 (22) The Commission should approve PSE's accounting petition filed in Docket UG-210918, subject to the modifications that the deferral period should be extended until recovery commences in the LNG tracker and that interest should not accrue for the deferred amounts. PSE accepts these modifications.

- 502 (23) PSE should be required to document its consideration of, and application for, loans and other benefits provided pursuant to the federal Infrastructure Investment and Jobs Act and Inflation Reduction Act in future proceedings seeking recovery of the Company's power costs.
- 503 (24) The Commission should accept each of the uncontested restating and pro forma adjustments and issues resolved on rebuttal.
- 504 (25) The Commission should authorize and require PSE to make a compliance filing in these consolidated dockets to recover in prospective rates its revenue deficiency of \$223 million for electric operations in year one and \$38 million for electric operations in year two. The Commission should similarly authorize and require PSE to make a compliance filing in these consolidated dockets to recover in prospective rates its revenue deficiency of \$70.6 million for rate year one and \$18.8 million for rate year two, for the Company's natural gas operations.
- 505 (26) The Commission should authorize the Commission Secretary to accept by letter, with copies to all parties to this proceeding, a filing that complies with the requirements of this Order.
- 506 (27) The Commission should retain jurisdiction over the subject matters and the parties to this proceeding to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS THAT:

- 507 (1) The Commission rejects the proposed tariff revisions Puget Sound Energy filed in these dockets on January 31, 2022.
- 508 (2) The Revenue Requirement Settlement filed by PSE on behalf of Staff, AWEC, FEA, Walmart, TEP, Kroger, NWECA, Sierra Club, Front and Centered, Microsoft, and Nucor Steel, and attached to this Order as Appendix A, is approved and adopted; that PSE demonstrate all offsetting benefits received or for which it has applied through the IRA and IJA when demonstrating the prudence of power costs; that PSE includes all funding, tax benefits, or any other benefits for which it has applied when seeking the recovery of power costs; that within 3 months of PSE's annual March 31 filing non-company parties review and provide recommendations to the Commission on PSE's reported metrics; that PSE report additional metrics as set forth in Table 4 of this

Order; and that PSE submits a compliance filing within 45 days of this Order providing historical data on the metrics set forth in Table 4 from 2019 to 2022.⁸⁷⁵

- 509 (3) The Green Direct Settlement filed by PSE on behalf of Staff, King County, Public Counsel, and Walmart, and attached to this Order as Appendix B, is approved and adopted without condition.⁸⁷⁶
- 510 (4) The Tacoma LNG Settlement filed by PSE on behalf of Staff, AWEC, Walmart, Kroger, and Nucor Steel, and attached to this Order as Appendix C, is approved and adopted subject to the condition that the costs of the four mile distribution line be included provisionally in rates, subject to a review of the appropriate allocation of costs between PSE core customers and Puget LNG. These costs should be included in a tracker for later review, and should not be included in base rates at this time.
- 511 (5) The Commission authorizes and requires Puget Sound Energy to make a compliance filing in this docket including all tariff sheets that are necessary and sufficient to effectuate the terms of this Final Order. The stated effective date included in the compliance filing tariff sheets must allow five business days after the date of filing for Commission Staff's review.
- 512 (6) Within three business days of the entry of this Order, all parties to the Revenue Requirement Settlement and the Tacoma LNG Settlement, respectively, must notify the Commission whether they accept or reject the conditions imposed by the Commission.
- 513 (7) The Commission authorizes the Commission Secretary to accept by letter, with copies to all parties to this proceeding, a filing that complies with the requirements of this Final Order.

⁸⁷⁵ Exhibits to the Revenue Requirement Settlement can be found with the originally filed settlement in this Docket.

⁸⁷⁶ The exhibit to the Green Direct Settlement can be found with the originally filed settlement in this Docket.

- 514 (8) The Commission retains jurisdiction over the subject matters and parties to this proceeding to effectuate the terms of this Order.

DATED at Lacey, Washington, and effective December 22, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

MILTON H. DOUMIT, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.

By this Order, the Commission has approved a settlement subject to condition. The Parties have three business days to accept or reject the Commission's conditions. If all parties to the settlement notify the Commission that they accept the conditions, the Order will become final by operation of law with respect to those issues without further action from the Commission.

If any party to the settlement rejects the Commission's condition or does not unequivocally and unconditionally accept the Condition, the Commission will notify the parties that it deems the settlement to be rejected, and the adjudication will return to its status at the time the Commission suspended the procedural schedule to consider the settlement. In either case, a Party may seek clarification or reconsideration of a Commission order approving a settlement agreement with conditions pursuant to WAC 480-07-835, 480-07-840, or 480-07-850.

APPENDIX A

REVENUE REQUIREMENT SETTLEMENT

APPENDIX B
GREEN DIRECT SETTLEMENT

APPENDIX C
TACOMA LNG SETTLEMENT

ATTACHMENT B

FERC Order Dismissing Complaint Issued April 24, 2023

183 FERC ¶ 61,057
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

Coalition of Eastside Neighborhoods for Sensible
Energy

Docket No. EL23-23-000

v.

Puget Sound Energy, Inc.

ORDER DISMISSING COMPLAINT

(Issued April 24, 2023)

1. On January 17, 2023, the Coalition of Eastside Neighborhoods for Sensible Energy (CENSE) filed a complaint (Complaint) against Puget Sound Energy, Inc. (Puget Sound). In this order, we dismiss the Complaint, as discussed below.

I. Background

2. Puget Sound conducts transmission planning pursuant to Attachment K of its Open Access Transmission Tariff (OATT), and prior to April 1, 2020, the ColumbiaGrid Planning and Expansion Functional Agreement (Planning Agreement).¹ Since April 1, 2020, Puget Sound has been a member of the NorthernGrid transmission planning region.²

3. Puget Sound is in the process of constructing a transmission project consisting of approximately 18 miles of electric transmission lines and associated substation upgrades between the Cities of Redmond and Renton in the State of Washington (Energize

¹ Puget Sound Answer & Motion to Dismiss at 1-2 (Puget Sound Answer) (citing *ColumbiaGrid*, Docket No. ER10-585-000 (Mar. 3, 2010) (delegated order)).

² See *PacifiCorp*, 170 FERC ¶ 61,298 (2020) (accepting Puget Sound's revisions to Attachment K of its OATT to create a new transmission planning region called NorthernGrid, which replaced the existing ColumbiaGrid and Northern Tier Transmission Group transmission planning regions).

Eastside Project or Project). Specifically, Puget Sound is upgrading an existing 115 kV transmission line to 230 kV to accommodate projected local load growth.³ CENSE is a non-profit corporation whose purpose is to represent the public interest in the processing and permitting of the Project.⁴

4. In June 2015, CENSE, along with other complainants, filed a complaint with the Commission in Docket No. EL15-74-000 against Puget Sound, Seattle City Light, Bonneville Power Administration (Bonneville), and ColumbiaGrid regarding the Energize Eastside Project.⁵ CENSE and the other complainants alleged, among other things, that Puget Sound and the other respondents violated Order Nos. 890⁶ and 1000⁷ in how they promoted and implemented the Energize Eastside Project.⁸ As relevant here, CENSE and the other complainants also argued that because the Project meets more than one regional need – the Project is intended to meet both Puget Sound’s local load needs and to provide additional transmission capacity to support 1,500 MW of power flow north to Canada in order to satisfy Bonneville’s obligation to deliver power to Canada under the terms of the Columbia River Treaty – it was subject to the requirements of Order No. 1000 and should have gone out to bid to third parties.⁹

5. Moreover, CENSE and the other complainants argued that, under Order No. 1000, ColumbiaGrid was required to initially determine whether there is a transmission need on

³ Puget Sound Answer at 2.

⁴ Lauckhart Aff., attach. C, at 1.

⁵ CENSE, Complaint, Docket No. EL15-74-000 (filed June 9, 2015).

⁶ *Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890, 118 FERC ¶ 61,119, *order on reh’g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁷ *Transmission Plan. & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g & clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

⁸ *Coal. of Eastside Neighborhoods for Sensible Energy v. Puget Sound Energy*, 153 FERC ¶ 61,076, at P 3 (2015) (*CENSE I*).

⁹ *Id.* P 4.

the regional system that would require a project such as the Energize Eastside Project.¹⁰ They further alleged that the regional planning process was not followed because Puget Sound alone determined that the Energize Eastside Project was necessary and conducted the associated load flow studies, and ColumbiaGrid did not determine any regional cost allocation.¹¹ Additionally, CENSE and the other complainants argued that the load flow studies Puget Sound conducted for the Energize Eastside Project were flawed because they should not have included the 1,500 MW of firm transmission to Canada.¹²

6. CENSE and the other complainants requested, among other things, that the Commission require ColumbiaGrid to perform transparent and industry-standard load flow studies to determine whether the Energize Eastside Project is needed and whether more efficient, less expensive and less environmentally destructive alternatives existed.¹³ They also asked that the Commission order Puget Sound to “cease and desist from any further activity with respect to [the Project], including seeking permits for it” once the complainants’ requested load flow studies showed that “there is no local load reliability issue that would justify [the Project] being built.”¹⁴

7. On October 21, 2015, the Commission dismissed the complaint in *CENSE I*. With respect to the allegations against Puget Sound, the Commission concluded that the complaint failed to meet the requirements of Rule 206 of the Commission’s Rules of Practice and Procedure because the complaint did not cite any specific provision of any Commission order or regulation, or any specific provision of the OATT or Planning Agreement, that Puget Sound allegedly violated.¹⁵ The Commission further concluded that the complainants did not meet their burden of proof under section 206 of the Federal Power Act (FPA) to demonstrate that the respondents’ actions with respect to the Energize Eastside Project violated any applicable requirement or are otherwise unjust, unreasonable, or unduly discriminatory, or preferential.¹⁶

¹⁰ *Id.* P 5.

¹¹ *Id.*

¹² *Id.* P 9.

¹³ *Id.* P 13.

¹⁴ *Id.* P 14.

¹⁵ *Id.* P 59 (citing 18 C.F.R. § 385.206(b)(1)-(2) (2015)).

¹⁶ *Id.* P 61.

8. Additionally, as relevant here, the Commission rejected the complainants' arguments regarding alleged flaws in the load flow studies that Puget Sound conducted for the Energize Eastside Project. The Commission concluded that the complainants did not demonstrate that the studies violated any applicable transmission planning requirements or were otherwise unjust, unreasonable, or unduly discriminatory, or preferential.¹⁷

II. Complaint

9. In the instant Complaint, CENSE states that since 2015 it has participated in city permit and Washington Utilities and Transportation Commission (Washington Commission) proceedings related to the Energize Eastside Project.¹⁸ CENSE states that it has argued in these proceedings that a properly conducted load flow study required by North American Electric Reliability Corporation (NERC) Reliability Standard TPL-001 (Transmission System Planning Performance Requirements) shows no need for the Energize Eastside Project.¹⁹ CENSE explains that its expert conducted a load flow study that found no need for the Project.²⁰

10. CENSE asserts that Puget Sound has stated in these other proceedings that its annual TPL-001 transmission planning studies have continued to show a need for the Energize Eastside Project. According to CENSE, however, Puget Sound has not conducted a stakeholder process, as required by Reliability Standard TPL-001.²¹ CENSE further argues that there is no way to examine whether Puget Sound's TPL-001 annual planning studies have examined the need for the Project because Puget Sound has refused to provide its annual TPL-001 reports.²² Moreover, CENSE asserts that NERC has never audited Puget Sound's compliance with TPL-001.²³ CENSE also suggests that

¹⁷ *Id.* P 68.

¹⁸ Complaint at 2.

¹⁹ *Id.*

²⁰ *Id.*; Lauckhart Aff., attach. B.

²¹ Complaint at 2.

²² *Id.* at 3.

²³ *Id.*

Puget Sound has incorrectly stated in other proceedings that the Commission previously found a need for the Project in *CENSE I*.²⁴

11. CENSE requests that the Commission issue an order making the following findings: (1) Puget Sound has an obligation to conduct TPL-001 transmission planning studies in an open and transparent manner with stakeholder involvement; (2) Puget Sound has an obligation to provide its TPL-001 study reports to interested parties; and (3) the Commission has never addressed the question of the need for the Project and any testimony to the contrary is incorrect.²⁵

III. Notice and Responsive Pleadings

12. Notice of the Complaint was published in the *Federal Register*, 88 Fed. Reg. 4170 (Jan. 24, 2023), with interventions and protests due on or before February 6, 2023.

13. On February 6, 2023, Puget Sound filed an answer to the Complaint and motion to dismiss. On February 13, 2023, CENSE filed a motion for leave to answer and answer to Puget Sound's answer (CENSE Answer).

A. Puget Sound's Answer and Motion to Dismiss

14. Puget Sound argues that the Commission should dismiss the Complaint because it is procedurally and substantively deficient.²⁶ On procedural grounds, Puget Sound argues that the Complaint fails to meet the Commission's requirements for structuring a complaint. Specifically, Puget Sound notes that a complaint must "[c]learly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements" and "[e]xplain how the action or inaction violates applicable statutory standards or regulatory requirements."²⁷ According to Puget Sound, CENSE has not met these requirements. Puget Sound maintains that CENSE only makes vague allegations that Puget Sound should have conducted a stakeholder process and provided stakeholders with reliability analyses under Reliability Standard TPL-001.²⁸ Puget Sound contends, however, that the Complaint does not cite any specific provision of a Commission order or regulation, any specific provision of TPL-001, or any other specific document that

²⁴ *Id.*

²⁵ Complaint at 2-3.

²⁶ Puget Sound Answer at 3.

²⁷ *Id.* at 4 (citing 18 C.F.R. § 385.206(b)(1)-(2) (2022)).

²⁸ *Id.* at 4-5.

Puget Sound has allegedly violated. Puget Sound notes that the Commission has previously dismissed complaints for failing to comply with these requirements when the complaint failed to identify a specific provision of the Reliability Standard at issue, and it should do the same here.²⁹

15. Puget Sound also seeks to dismiss the Complaint on substantive grounds. First, Puget Sound argues that its transmission planning process does not include load shedding events that are subject to the stakeholder process under Reliability Standard TPL-001-4.³⁰ Puget Sound notes that TPL-001-4 requires Transmission Planners and Planning Coordinators (Planners) to prepare an annual planning assessment, but Puget Sound maintains that there is no general requirement to hold a stakeholder process in these planning assessments.³¹ Puget Sound states that under TPL-001-4, Table 1 (Steady State & Stability Performance Planning Events), it may plan for non-consequential load loss³² and the interruption of Firm Demand to address bulk electric system performance issues without a stakeholder process.³³

16. According to Puget Sound, Footnote 12 to Reliability Standard TPL-001-4, Table 1 (Footnote 12) only requires a stakeholder process when the entity plans to shed its load in certain limited enumerated contingencies. Specifically, Puget Sound states that the stakeholder requirement under Footnote 12 applies where NERC has recognized that non-consequential load loss may be required to ensure bulk electric system performance requirements under single P1 or P2 contingencies or P3 multiple contingencies including a generator, as defined in Table 1.³⁴ Puget Sound explains that Footnote 12 includes parameters for the permissible use of either of these planned load shedding events to limit the amount of load that the entity may plan to shed, build in safeguards to ensure against

²⁹ *Id.* at 5 (citing *Cal. for Green Nuclear Power, Inc. v. N. Am. Elec. Reliability Corp.*, 174 FERC ¶ 61,203, at P 48 (2021); *George Berka v. Andrew M. Cuomo*, 175 FERC ¶ 61,212, at P 32 (2021) (*Berka v. Cuomo*); *Citizens Energy Task Force v. Mw. Reliability Org.*, 144 FERC ¶ 61,006, at P 38 (2013) (*Citizens Energy*)).

³⁰ *Id.* at 6.

³¹ *Id.* (citing Reliability Standard TPL-001-4, Requirement R2).

³² Non-consequential load loss includes the removal, by any means, of any planned firm load that is not directly served by the elements that are removed from service as a result of the contingency. *See Transmission Plan. Reliability Standards*, Order No. 786, 145 FERC ¶ 61,051, at P 5 n.9 (2013).

³³ Puget Sound Answer at 6.

³⁴ *Id.* at 6-7.

inconsistent and arbitrary determinations that allow for that load loss, and a detailed stakeholder process.³⁵

17. However, Puget Sound continues, Footnote 12 does not require a stakeholder process for an entity planning for multiple contingencies, as defined under P6 of Table 1, that include potential loss of load.³⁶ Puget Sound reasons that because its planning process identified the Energize Eastside Project as a solution to multiple P6 contingencies, it was not required to conduct a stakeholder process.³⁷

18. Next, Puget Sound argues that even though it was not required to provide CENSE with the reliability analyses for its TPL-001 study reports, it nevertheless provided CENSE with load flow databases from the Commission and the Western Electricity Coordinating Council (WECC) that comprised the base case of Puget Sound's transmission planning study.³⁸ Puget Sound notes that CENSE's own expert acknowledged in state-level permitting proceedings that he obtained the base case information underlying Puget Sound's transmission planning process. Puget Sound also stresses that it was in fact audited by NERC and WECC for compliance with Reliability Standard TPL-001 in 2019 and that Puget Sound is working with WECC to publish the audit results.³⁹

19. Finally, Puget Sound states that it is unaware of any instance where it has represented that the Commission has found a "need" for the Energize Eastside Project. Puget Sound stresses that CENSE has not provided any evidence or citation to where Puget Sound has stated or relied on such a finding.⁴⁰

B. CENSE's Answer

20. CENSE asserts that it filed the Complaint to alert the Commission of Puget Sound's improper behavior and to have the Commission clarify Puget Sound's obligations under Reliability Standard TPL-001 as well as the holding in *CENSE I*.

³⁵ *Id.* at 7 (citing Reliability Standard TPL-001-4).

³⁶ *Id.* (citing Reliability Standard TPL-001-4).

³⁷ *Id.*

³⁸ *Id.* at 8.

³⁹ *Id.*

⁴⁰ *Id.* at 9.

CENSE states that these matters are critical for Washington Commission and city permitting proceedings regarding the Energize Eastside Project.⁴¹

21. CENSE states that it disagrees with Puget Sound in several respects. First, CENSE maintains that the Complaint meets the requirements of Rule 206 by clearly identifying the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements. Namely, CENSE alleges that Puget Sound failed to comply with Reliability Standard TPL-001 and gave inaccurate testimony before the Washington Commission regarding the holding in *CENSE I*.⁴²

22. Second, CENSE disputes the contention that a stakeholder process was not required under Reliability Standard TPL-001.⁴³ CENSE asserts that Puget Sound included an assumption that there is a “firm obligation” for Puget Sound to build infrastructure to deliver 1,500 MW of power to Canada under extreme weather events with two elements of the grid out of service. CENSE cites “Fatal Flaw 4” from the expert report attached to its Complaint, contending that Puget Sound has relied on the false assumption that ratepayers are responsible for developing additional transmission capacity to support 1,500 MW of power flow to Canada under winter peak load conditions and two elements of the grid out on forced outage. CENSE contends that these conditions are not material because TPL-001 allows interruption of firm transmission service.⁴⁴

23. Third, CENSE asserts that not including the 1,500 MW would eliminate the need for the Energize Eastside Project and that Puget Sound should have conducted a stakeholder process to avoid bulk electric system issues.⁴⁵

24. Fourth, CENSE disputes Puget Sound’s assertion that NERC has audited Puget Sound’s compliance with Reliability Standard TPL-001. According to CENSE, a NERC representative informed CENSE’s expert in August 2022 that WECC audited Puget Sound’s compliance with TPL-001, but NERC did not participate in that audit.⁴⁶

⁴¹ CENSE Answer at 1.

⁴² *Id.* at 1-3.

⁴³ *Id.* at 2.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*; *id.*, attach. A (email exchange between NERC staff and CENSE’s expert).

Moreover, CENSE asserts that WECC has refused to share the results of its own audit and, if the audit exists, Puget Sound should provide it.⁴⁷

25. Fifth, CENSE maintains that Puget Sound has led the Washington Commission to believe that FERC found a need for the Energize Eastside Project in *CENSE I*. In support of this allegation, CENSE quotes the Washington Commission's statement that "FERC specifically critiqued CENSE's 'vague' allegations and found that [Puget Sound] complied with applicable requirements."⁴⁸

IV. Discussion

A. Procedural Matters

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2022), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We accept CENSE's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

27. As discussed below, we dismiss the Complaint for failure to meet the requirements of Rule 206 of the Commission's Rules of Practice and Procedure.⁴⁹

28. As a threshold matter, we note that we are treating the Complaint as if it was brought pursuant to sections 206 and 306 of the FPA⁵⁰ and Rule 206 of the Commission's Rules of Practice and Procedure, although CENSE does not itself specify the statutory provision under which it is filing the Complaint. Under FPA section 206, "the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon . . . the complainant."⁵¹ Under FPA section 306, a complaint "must set forth the alleged actions

⁴⁷ *Id.* at 3.

⁴⁸ *Id.* (quoting *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, WUTC Docket No. UG-210918, 2022 WL 18032937, at P 209 (Dec. 22, 2022)).

⁴⁹ 18 C.F.R. § 385.206.

⁵⁰ 16 U.S.C. §§ 824e, 825e.

⁵¹ 16 U.S.C. § 824e(b); see, e.g., *FirstEnergy Serv. Co. v. FERC*, 758 F.3d 346, 353 (D.C. Cir. 2014).

or inactions of the respondent . . . that contravenes the FPA.”⁵² Additionally, Rule 206 of the Commission’s Rules of Practice and Procedure requires complainants to “[c]learly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements [and] [e]xplain how the action or inaction violates the applicable statutory standards and regulatory requirements.”⁵³ Further, the Commission has repeatedly stated that “rather than bald allegations, [a complainant] must make an adequate proffer of evidence including pertinent information and analysis to support its claims.”⁵⁴ With regard to alleged violations of any Reliability Standards, the Commission has previously stated that a complainant must “at a minimum, set forth the specific provision of the Reliability Standard that is at issue and provide some explanation as to how the Respondent’s alleged action or inaction caused the violation.”⁵⁵

29. We find that the Complaint does not meet the necessary requirements of Rule 206 because the Complaint does not explain how Puget Sound’s actions or inaction violate applicable statutory or regulatory requirements. The Complaint alleges that Puget Sound has not conducted a stakeholder process under Reliability Standard TPL-001;⁵⁶ however, a complaint does not satisfy its burden under FPA sections 206 and 306 by broadly alleging potential reliability violations. Although the Complaint refers to Reliability Standard TPL-001, it does not point to any specific requirement or provision set forth in TPL-001 or explain why TPL-001 requires Puget Sound to conduct a stakeholder process under these circumstances.⁵⁷

30. Likewise, while the Complaint alleges that Puget Sound failed to provide copies of its TPL-001 report to interested parties, the Complaint does not identify a statutory or regulatory requirement for Puget Sound to provide copies of the report to interested parties. Additionally, the Complaint alleges that Puget Sound has never been audited by NERC for compliance with TPL-001, but again the Complaint does not identify a statutory or regulatory requirement that Puget Sound has allegedly violated. Given these

⁵² *Citizens Energy*, 144 FERC ¶ 61,006 at P 38.

⁵³ 18 C.F.R. § 385.206(b).

⁵⁴ *Ill. Muni. Elec. Agency v. Cent. Ill. Pub. Serv. Co.*, 76 FERC ¶ 61,084, at 61,482 (1996).

⁵⁵ *Citizens Energy*, 144 FERC ¶ 61,006 at P 39.

⁵⁶ Complaint at 2-3.

⁵⁷ *Citizens Energy*, 144 FERC ¶ 61,006 at P 39; *see also Berka v. Cuomo*, 175 FERC ¶ 61,212 at P 32; *Complaint of Michael Mabee Related to Reliability Standards*, 175 FERC ¶ 61,163, at P 14 (2021).

deficiencies, we find that CENSE has failed to submit a complaint that meets the requirements of Rule 206.⁵⁸

31. CENSE requests that the Commission clarify Puget Sound's obligations under Reliability Standard TPL-001⁵⁹ and, in particular, Puget Sound's obligation to engage with stakeholders in conducting planning studies under TPL-001.⁶⁰ For background, the purpose statement in Reliability Standard TPL-001-4, the currently effective transmission system planning standard, explains that it was developed to establish transmission system planning performance requirements that ensure that the bulk electric system operates reliably over a broad spectrum of system conditions and following a wide range of probable contingencies.⁶¹ Reliability Standard TPL-001-4, and its successor, TPL-001-5.1, includes provisions for Planners to study system performance under extreme events based on their experience.⁶² Reliability Standard TPL-001-4 requires Planners to conduct analyses using a model of their systems operating under a wide variety of potential conditions to see under what, if any, conditions the system will fail to meet reliability criteria. TPL-001-4 lays out the variety of these conditions, including system peak, off-peak, single contingency, multiple contingencies (both sequential and simultaneous), severe contingencies on adjacent systems, sensitivity analyses to underlying model assumptions, and extreme events.

32. Table 1 of Reliability Standard TPL-001-4 includes a list of examples of planning events for which specific studies may be required, generally, based on the entity's own evaluation that such an event could occur within its operating area.⁶³ Table 1 identifies the categories of contingency events that allow the use of non-consequential load loss.

⁵⁸ Dismissing the Complaint for failure to meet the requirements of Rule 206 is not just a procedural technicality. We cannot evaluate the merits of the Complaint if the alleged violations are not clearly identified and explained. We also cannot order the requested relief unless there is a statutory or regulatory basis for doing so.

⁵⁹ See CENSE Answer at 1.

⁶⁰ See Complaint at 3.

⁶¹ See Reliability Standard TPL-001-4, at § A.3 (Purpose Statement).

⁶² Reliability Standard TPL-001-5.1 was approved by the Commission to become effective on July 1, 2023. See *N. Am. Elec. Reliability Corp.*, Docket No. RD20-8-000 (June 10, 2020) (delegated order) (approving a NERC-proposed erratum to Reliability Standard TPL-001-5); *Transmission Plan. Reliability Standard TPL-001-5*, Order No. 867, 170 FERC ¶ 61,030 (2020) (approving Reliability Standard TPL-001-5).

⁶³ See Reliability Standard TPL-001-4, at Table 1.

Contingency events P1, P2, and P3 do not allow non-consequential load loss; nevertheless, if a Planner plans to use non-consequential load loss during these events, such interruption is subject to the limitations of Footnote 12. Footnote 12 then limits the Planner's use of non-consequential load loss to circumstances that meet the conditions shown in the Standard's Attachment 1 (Stakeholder Process). Attachment 1 requires that the use of Footnote 12 is reviewed through an open and transparent stakeholder process.

33. Reliability Standard TPL-001-4 only requires that a stakeholder process be held when a Planner uses Footnote 12 for non-consequential load loss to address bulk electric system performance requirements for P1, P2, and P3 contingency events.⁶⁴ However, Puget Sound's transmission planning process identified the Energize Eastside Project as a solution to multiple P6 contingencies.⁶⁵ Under P6 contingency events, there is no reference to Footnote 12 because non-consequential load loss is permitted, and therefore there is no requirement for a stakeholder process for P6 contingency events.⁶⁶ Thus, to the extent that CENSE's argument is that Puget Sound should have conducted a stakeholder process for a corrective action plan that includes non-consequential load shed for a P6 event, CENSE is incorrect – Reliability Standard TPL-001-4 does not require a stakeholder process in such situations.

34. As to whether Puget Sound is required to provide interested parties with copies of its Planning Assessment under Reliability Standard TPL-001-4, TPL-001-4 R8 requires Puget Sound to respond only to a functional entity that has a reliability related need and submits a written request for the information. Therefore, we find that, under the circumstances here, Puget Sound was not obligated to provide CENSE with a copy of its Planning Assessment under Reliability Standard TPL-001-4.

35. Finally, CENSE requests that the Commission state that it has never addressed the need for the Project. As the basis for this request, CENSE asserts that Puget Sound has represented in other forums that the Commission has found that there is a need for the Project. However, the only example CENSE points to is a statement by the Washington Commission, not Puget Sound, and the Washington Commission's statement does not

⁶⁴ *Id.* at Table 1 n.12; *see also* Order No. 786, 145 FERC ¶ 61,051 at P 29 (approving Footnote 12, noting that it provides a more specifically defined stakeholder process as well as parameters for the permissible use of planned non-consequential load loss to limit the amount of load that the entity may plan to shed).

⁶⁵ Puget Sound Answer at 7.

⁶⁶ *See* Reliability Standard TPL-001-4, at Table 1.

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reference the need for the Project.⁶⁷ Nonetheless, we note that the Commission in *CENSE I* did not make a determination on the need for the Project.

The Commission orders:

The Complaint is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

⁶⁷ CENSE Answer at 3 (quoting *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, WUTC Docket No. UG-210918, 2022 WL 18032937 at P 209).

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