

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

PUGET SOUND ENERGY

Gas Climate Commitment Act Tariff WN
U-2 Revision.

DOCKET UG-230470

JOINT PETITION TO COMPEL
COMPLIANCE WITH ORDER 01
AND HEAR THE PETITION AT
THE AUGUST 29, 2024 OPEN
MEETING

1 The Energy Project (TEP), Commission Staff, and NW Energy Coalition (NVEC) petition the Washington Utilities and Transportation Commission (WUTC or Commission) to find that Puget Sound Energy (PSE or Company) violated Order 01 in Docket 230470 by enrolling, then intending to disenroll on August 31, 2024, over 50,000 customers from its bill discount rate program (BDR) and Climate Commitment Act (CCA) low-income credit. Order 01 requires PSE to reach a target of 70,000 participants in its BDR program and CCA low-income credit by January 1, 2024. Order 01 does not permit PSE to exclude customers from the definition of low income because they did not reply to an outreach campaign. There is no language in any Commission Order or the CCA to support such disenrollment.

I. Relief Requested

- 2 Accordingly, we request that the Commission issue an order compelling PSE to:
- a. Discontinue any efforts to disenroll customers from its BDR or Low-Income CCA flags.
 - b. Begin targeted outreach efforts to enrolled customers who have not yet submitted an energy assistance application to PSE. Outreach efforts should, at a minimum, include (i) U.S. Postal Service mail to all customers; and (ii) targeted telephone calls to a subset of the most vulnerable 20% of customers. PSE should first contact all customers who were past-due at any time in the last 24 months. Factors for determining vulnerability beyond the initial 24-month past-due threshold should include: past-due amount owed and age of debt, prior obligation, and disconnection status. PSE should collaborate with the LIAC to determine what, if any, additional outreach efforts are appropriate for reaching these customers.

- c. PSE should continue to provide the benefits of its CCA low-income credit to all customers identified above for a minimum of two years from the initial date of enrollment.
- d. If the Commission believes the Executive Director’s June 24, 2024 compliance acknowledgement letter conflicts with the above requested relief, vacate the Executive Director’s letter.

3 PSE indicated that it plans to disenroll these customers on August 31, 2024, and this issue is traditionally considered at Open Meetings, thus we request that the Commission place Docket UG-230470 and this petition on the agenda for the August 29, 2024 Open Meeting.

II. Statement of Facts

4 In 2021, the Washington State Legislature passed the CCA, codified as RCW 70A.65, to reduce greenhouse gas (GHG) emissions. Also referred to as “Cap and Invest,” the law establishes a declining cap on GHG emissions from covered entities and is intended to reduce emissions in the state by 95 percent by 2050.

5 On June 9, 2023, PSE filed with the Commission revisions to its natural gas tariff proposing a new tariff schedule (Schedule 111) that would allow the Company to recover allowance costs and pass back to customers auction proceeds mandated under the CCA.¹

6 The Commission received written comments on PSE’s proposed tariff from the NWEC, Climate Solutions, TEP, Washington Conservation Action, the Alliance of Western Energy Consumers, and the Public Counsel Unit of the Washington Attorney General’s Office (Public Counsel).

7 In Comments submitted on July 3, 2023, TEP explained that the CCA requires gas utilities to use the revenues generated by the auction of no-cost allowances to “eliminat[e] any additional cost burden to low-income customers from the implementation” of the CCA.² TEP’s Comments

¹ Docket UG-230470, Puget Sound Energy Redacted Revised Tariff WN U-2 (June 9, 2023).

² Docket UG-230470, Comments of The Energy Project on Puget Sound Energy’s Proposed Tariff Revision, at 1 (quoting RCW § 70A.65.130(2)(a)) (TEP Comments).

explained that PSE’s proposal would result in the majority of eligible low-income gas customers within its service territory not receiving bill credits, which will severely exacerbate the affordability crisis caused by increased rates in recent years and runs counter to the state’s goal of ensuring a just and equitable clean energy transformation. TEP recommended that the Commission order PSE to work with its Low-Income Advisory Committee to automatically identify eligible low-income customers and provide those customers bill credits to offset all CCA-related costs. TEP explained that automatically identifying eligible low-income customers is feasible and responded to PSE’s concern about using imperfect data to enroll customers.

8 The Commission heard arguments and moved to approve the tariff with conditions at its recessed open meeting on July 21, 2023.

9 Pursuant to the decision at its Open Meeting, on August 3, 2023, the Commission issued Order 01 which established that:

PSE must work with its Low-Income Advisory Group between August and October 2023 to either identify additional KLI customers, or to automatically enroll low-income customers in a bill discount or bill assistance program, to reach a target of at least 70,000 participants by January 1, 2024. We agree with the commenters that PSE’s proposal is insufficient, and therefore require the Company to find ways to increase its enrollment of eligible customers to ensure it complies with the CCA’s requirement to eliminate any additional cost burden associated with statutory implementation to low-income customers.³

10 PSE took several actions to reach its target. Relevant to this petition, PSE used income data from a third party, Experian, to identify the lowest income customers not already receiving the CCA low-income credit.⁴ PSE identified approximately 55,000 customers using the Experian data and now provides them the CCA low-income credit. In early 2024—and after January 1, 2024—PSE

³ Order 01 Allowing Climate Commitment Act Tariff Revisions to Become Effective Subject to Conditions, ¶ 20 (Aug. 3, 2023) (citations omitted).

⁴ Docket UG-230470, Compliance Filing of Puget Sound Energy, ¶ 14 (April 25, 2024) (PSE Compliance Filing).

also enrolled these 55,000 customers into the sixth tier of the bill discount rate (BDR), receiving a 5% discount, for a limited period.⁵ These customers were not enrolled in the BDR tier that matched their estimated income, and PSE plans to disenroll those customers who have not submitted an energy assistance application on August 31, 2024.⁶

11 Customers who apply for PSE's BDR are enrolled for a 13-month term.⁷

12 On April 25, 2024, PSE submitted a compliance filing.

13 In spring 2024, TEP reached out to PSE with questions about the status of the auto-enrolled group. This resulted in a meeting between PSE, Commission Staff, TEP, and NVEC on May 17, 2024, to discuss the status of these 55,000 customers.⁸ At that meeting, PSE informed us that only 2,000 of the 55,000 had applied for the BDR and become enrolled for a full 13-month term.⁹ TEP requested that PSE extend the enrollment period and that PSE conduct additional rounds of outreach to encourage those customers to complete an energy assistance application by self-declaring their income.¹⁰ PSE expressed verbal support for this request at the May 17 meeting.¹¹ That meeting left Commission Staff, TEP, and NVEC with the understanding that PSE would work with the LIAC to determine an appropriate resolution of the status of these customers.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Docket UG-230470, The Energy Project's Response to Compliance Filing of Puget Sound Energy, at 1 (June 21, 2024) (TEP Response to PSE Compliance Filing).

⁹ *Id.*

¹⁰ *Id.* at 1-2.

¹¹ *Id.*

14 Cognizant of the discussion that occurred at the May 17, 2024, meeting, on June 20, 2024, Commission Staff filed a letter responding to PSE's April 25, 2024, compliance filing.¹² On June 21, 2024, TEP filed a letter responding to the compliance filing, noting that it was unaware of PSE's April 25, 2024, compliance filing until it was served with Staff's letter the day prior.¹³

15 On June 24, 2024, the Commission's Executive Director issued a letter confirming Staff's finding.¹⁴ The Executive Director's letter did not discuss or mention TEP's assessment of PSE's compliance.

16 At the July 9, 2024, LIAC meeting, PSE informed the LIAC that it decided to disenroll these approximately 50,000 customers from both the BDR and the CCA bill credit at some point in August 2024.

17 The LIAC has never approved of PSE's plan to disenroll these customers.

18 On July 31, 2024, Commission Staff e-mailed PSE on behalf of itself, TEP, and NWECA, asking PSE to perform additional outreach, explaining that disenrollment of over 50,000 customers violates Order 01, RCW 70A.65.130, and the Commission's order. Staff requested a response from PSE by August 7, 2024.

19 Yesterday, on August 19, PSE responded by sending a letter from its Counsel declining to take our requested action. Prior to sending this letter, PSE did not communicate to us or the LIAC what its outreach to these customers comprised, or on what date it planned to disenroll these customers. The letter states that PSE conducted two rounds of outreach to these customers via

¹² Docket UG-230470, Commission Staff Response to Compliance Filing of Puget Sound Energy (June 20, 2024).

¹³ See TEP Response to PSE Compliance Filing.

¹⁴ Docket UG-230470, Executive Director Jeff Killip Letter Regarding Proposed tariff Revisions by Puget Sound Energy (June 24, 2024).

email and postal service mail. The letter does not describe how PSE selected which customers received postal service mail, and which received e-mail, but shows that most customers only received e-mails.

20 Removing over 50,000 customers from the BDR and CCA low-income credit would result in PSE having the lowest percentage of estimated low-income customers enrolled in energy assistance among investor-owned natural gas utilities in Washington state.

III. Legal Standard

21 The Washington Administrative Code authorizes parties to “seek relief from a commission order” by filing a “petition” in the applicable docket.¹⁵ A petition must provide the facts constituting the basis of the petition and requested relief, including relevant dates, in addition to citing to the statutes and/or Commission rules that provide the Commission with jurisdiction and authority to grant the requested relief.¹⁶ The Commission must “liberally construe” the petition “with a view to effect justice among the parties.”¹⁷

22 The Commission may consider a petition at an open meeting.¹⁸ Where the Commission considers the petition at an open meeting, any party may file a response no later than three business days before the open meeting.

IV. Argument

23 PSE’s planned actions violate Order 01. RCW § 80.04.380, which requires every public service company, including PSE, to comply with all Commission orders that remain in force. The

¹⁵ WAC 480-07-370(3)(a).

¹⁶ WAC 480-07-370(3)(b).

¹⁷ WAC 480-07-395(4).

¹⁸ WAC 480-07-370(4).

Commission takes seriously the failure to comply with its orders.¹⁹ For example, the Commission ordered Avista Utilities to pay a \$50,000 penalty for failing to comply with an order requiring a decoupling evaluation by a certain date. The Commission further provided Avista the opportunity to file its decoupling evaluation and set a new deadline, reiterating its guidance to the company.²⁰ In this case, Order 01 remains in force and governs PSE's planned actions.

24 Order 01 required PSE to identify 70,000 low-income customers and provide them with CCA credits by January 1, 2024, "to ensure [PSE] complies with the CCA's requirement to eliminate any additional cost burden associated with statutory implementation to low-income customers." The Parties understand Order 01 as providing direction to PSE to protect a substantial number of low-income customers from CCA charges by enrolling them in the BDR program *in an ongoing fashion*. The Commission did not authorize PSE to disenroll any low-income customers. Nor did the Commission state that low-income customers identified using Experian data would only remain eligible if they applied for bill assistance. PSE must continue enrollment for the over 50,000 low-income customers identified using Experian data to comply with Order 01. PSE's planned disenrollment would clearly violate the Commission's dictates.

25 PSE's planned actions also violate the CCA. The CCA requires gas utilities to use the revenues generated by the auction of no-cost allowances to "eliminat[e] any additional cost burden to low-income customers from the implementation" of the CCA. RCW § 70A.65.130(2)(a). The CCA does not define "low-income," but it is generally accepted among interested parties that the definition should be identical to that in the Clean Energy Transformation Act (CETA): "household incomes as defined by the department or commission, provided that the definition

¹⁹ *In re Avista Corp. d/b/a Avista Utilities*, Dkt. UG-060518, Order 05, at 24 (April 11, 2008).

²⁰ *Id.* at 24-32.

may not exceed the higher of eighty percent of area median household income or two hundred percent of the federal poverty level, adjusted for household size.” RCW § 19.405.020(24).

Interested parties have presented this viewpoint to the Commission in its pending CCA rulemaking in Docket U-230161. Moreover, a customer’s low-income status is defined by their income, not by whether they timely respond to email or mail. There was no “successfully completed the enrollment process” prong in the Order 01 or any language in the statute to support that requirement. In meetings preceding the Commission’s issuance of Order 01, PSE indicated that approximately 250,000 gas customers within its service territory would qualify as “low-income” under this definition.²¹ Disenrolling over 50,000 customers would result in only approximately 10 percent of eligible low-income customers receiving CCA credits, an outcome the CCA and Order 01 directed PSE to avoid. Such an outcome would violate the CCA, in addition to Order 01.

26 Disenrolling over 50,000 estimated low-income customers because they have yet to submit a formal application for bill assistance is not justified. In comments preceding Order 01, PSE took issue with relying on Experian data to identify low-income customers, arguing that such data was not reliable.²² TEP argued to the contrary, arguing that relying on such data was necessary to comply with the CCA’s mandate. By explicitly directing PSE to utilize auto-enrollment to reach the 70,000 low-income customer target, the Commission clearly decided that any reliability concerns were outweighed by the urgent need to protect low-income customers from the costs of CCA implementation.

²¹ Order 01, ¶¶ 2, 13; TEP Comments, at 2.

²² Puget Sound Energy Comments Regarding New Gas Service Tariff Schedule (July 19, 2024).

27 Moreover, when identifying low-income customers using Experian data, PSE prioritized the
lowest-income people in the Washington. It is unlikely that a significant number of these lowest-
income customers now no longer qualify under the accepted definition of “low-income.”

28 Removing over 50,000 customers from the BDR and CCA low-income credit would result in
PSE having the lowest percentage of estimated low-income customers enrolled in energy
assistance programs, and protected from CCA costs, among investor-owned natural gas utilities
in Washington state. This action would move PSE backward while its peers move forward.

29 These are customers who are supposed to be held harmless from CCA implementation. Order 01
is one of the primary levers by which the Commission provided rate relief to a significant
number of PSE low-income gas customers.

30 While PSE has discussed its plans with LIAC, the LIAC has never approved of PSE’s plans. Nor
did PSE collaborate with the LIAC to develop its plans.

31 Disenrollment of such a large swath of low-income customers would be particularly
inappropriate given PSE’s insufficient efforts to contact potential low-income customers
regarding their eligibility for energy assistance. In the seven months since PSE identified these
over 50,000 lowest-income customers, PSE has sent just two e-mails to the vast majority of these
customers.²³ This is woefully insufficient. Low-income gas customers are generally more
difficult to reach with anti-poverty programming. They are more likely to live in non-subsidized
single-family homes, are less likely to know about or be connected to existing resource networks
and assistance programs compared to the larger population of low-income customers.

²³ According to PSE’s August 19, 2024 letter, approximately 11,000 of the 53,000 customers were sent notices via postal service; the rest were sent e-mails.

32 Additionally, because PSE enrolled these customers in the BDR tier that provides the least discount (5 percent)—instead of the tier that corresponded with their estimated income—many customers likely did not notice they were enrolled. Similarly, TEP suspects that many low-income customers do not know they are receiving CCA credits, since these credits do not show up as a reduction in rates, but rather, as a lack of an increase.

33 When we met with PSE to discuss these issues in May 2024, just 2,000 of the 55,000 customers identified using Experian data had applied for bill assistance. Pulling the rug out from under these lowest-income customers without providing material outreach would violate both the explicit requirements, and the spirit, of the CCA and Order 01. PSE must provide additional communication that includes, at a minimum, U.S. Postal Service mail to all customers and targeted telephone calls, in addition to e-mails.

34 In its letter yesterday (August 19), PSE argued that its tariff allows it to disenroll these customers. We disagree. However, even if the Commission decides PSE’s tariff permits such an action, PSE’s tariff cannot alter Order 01 or the statute. To the extent that PSE believes that Schedule 111 needs to be modified, that simply requires a PSE to file a tariff that conforms to the law. PSE’s remedy cannot be a unilateral decision to stop complying with the order and statute. The Commission in Order 01 expressly directs PSE to reach a target, knowing that the data PSE would rely on are not perfect. Until PSE collaborates with the LIAC to develop a substitute method to identify known low-income customers, automatic enrollment is the only permitted alternative.

35 The Commission must take swift action here, as PSE plans to disenroll these low-income customers on August 31, 2024—just before energy usage is greatly increased due to winter heating needs.

36 All the proceedings concerning the identification of low-income customers for CCA credits have occurred via the Commission's Open meeting process. Thus, it is appropriate for the Commission to hear this petition at its next Open Meeting.²⁴

V. Conclusion

37 The Commission should reaffirm that Order 01 requires PSE to continue to provide CCA credits to the low-income customers identified with Experian data for a minimum of two years from the initial date of enrollment. The Commission must also order PSE to begin substantive, targeted outreach efforts to those customers who have not yet applied for energy assistance. The Commission should hear this petition at its next Open Meeting.

²⁴ WAC 480-07-370(3)-(4).

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