

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

PUGET SOUND ENERGY

Clean Energy Implementation Plan
Pursuant to WAC 480-100-640

Docket UE-210795

PUBLIC COUNSEL UNIT
RESPONSE TO PSE PETITION
FOR EXEMPTION

I. INTRODUCTION

1. Pursuant to Washington Administrative Code (WAC) 480-07-110, the Public Counsel Unit of the Washington State Attorney General's Office (Public Counsel) hereby responds to Puget Sound Energy's (PSE or the Company) petition for exemption from WAC 480-100-650(4)(a)(i), (ii), and (iv), which require PSE to provide retail sales and generation data from qualifying facilities data in an hourly format in its annual clean energy progress report for the Clean Energy Transformation Act (CETA).
2. PSE argues that, despite sufficient notice of these rules and the installation of a multimillion-dollar Advanced Metering Infrastructure (AMI) system that began seven years ago, it cannot provide the hourly data required by the Washington Utilities and Transportation Commission's (Commission) rules. Although PSE repeatedly states that it cannot provide the required granular data, PSE provides no explanation why it is unprepared to meet this obligation at this time. PSE's petition does not establish a sufficient basis to grant its request for exemption, and it is therefore not in the public interest to do so. Public Counsel respectfully requests the Commission to deny PSE's petition and find the Company in violation of the Commission's

rules.

II. THE COMMISSION SHOULD DENY PSE'S PETITION FOR EXEMPTION

A. PSE's Petition Does Not Establish Sufficient Basis for Exemption

3. Under WAC 480-07-110(1) the Commission “may grant an exemption from, or modify the application of, any of its rules in individual circumstances if the exemption or modification is consistent with the public interest, the purposes underlying regulation, and applicable statutes.”¹ In determining whether a petition for exemption is in the public interest, the Commission may consider “whether the rule imposes an undue hardship on the requesting person of a degree or a kind different from hardships imposed on other similarly situated persons” and “whether the effect of applying the rule to the requesting person would be contrary to the underlying purposes of the rule and the public interest.”² Additionally, the petitioner seeking an exemption must “provide a full explanation of the reason for requesting the exemption.”³ The Company's petition fails to satisfy these factors.

1. PSE does not provide a full explanation of the reason for requesting the exemption.

4. PSE states that it is not in the public interest to require PSE to comply with a rule when the data cannot be provided in the format due to technical limitations.⁴ PSE, however, does not provide a full explanation for why it cannot provide the hourly data required by WAC 480-100-

¹ WAC 480-07-110(1).

² WAC 480-07-110(2)(c).

³ WAC 480-07-110(2)(a).

⁴ PSE Petition for Exemption ¶ 4 (filed June 26, 2023).

650(4)(a)(i), (ii), and (iv). PSE was given notice of the draft version of these requirements as early as March 23, 2022.⁵ PSE and other utilities expressed concerns over the availability of hourly data at the time of the rulemaking,⁶ but Commission Staff (Staff) disagreed with the utilities' assertion that the rules were burdensome. Staff declined to modify the draft rules regarding data reporting requirements, stating,

Between the second draft rules and the proposed rules, Staff has greatly streamlined the data requirements. Staff believes the data will help the Commission and stakeholders better understand IOUs' market interactions - an essential ingredient to smooth and efficient implementation of CETA over the next decade as market structures change.⁷

The Commission adopted the rules as proposed by Staff on June 29, 2022.

5. Staff's treatment of this issue and the Commission's adoption of the rule as proposed should have given PSE sufficient notice that the Company would need to finalize the systems required to comply with the rules. PSE, however, states that though it is on track to complete full deployment of its AMI system this year, it will take approximately six more months to set up the systems for recording and reporting hourly data for retail sales.⁸ PSE's inability to comply with WAC 480-100-650(4)(a)(i) is therefore not a "technological limitation" but rather a failure to manage its AMI installation project to meet the requirements of the Commission's rules. PSE failed to explain why it could not come into compliance with this rule over the year since it was

⁵ Notice of Opportunity to File Written Comments on Draft Rules, *In re Am. Rules in Chapter 480-100 WAC Relating to Markets Purchases and Double Counting Issues Addressed Under CETA*, Docket UE-210183 (Mar. 23, 2022); see Draft Rules OTS-2653.3 at 17, Docket UE-210183 (issued Mar. 23, 2022).

⁶ Joint Util. Comments at 6–7, Docket UE-210183 (filed April 22, 2022).

⁷ Summ. of Comments at 12, Docket UE-210183 (filed May 5, 2022).

⁸ PSE Petition for Exemption ¶ 4.

adopted or why the Company requires an additional six months beyond full deployment of its AMI system to set up data recording and reporting. PSE should have simultaneously set up the required systems while deploying the metering infrastructure, particularly given that the Company knew it would be required to report hourly data. PSE does not explain why it did not take this approach to comply with the Commission's rules.

6. Similarly, PSE argues that it cannot provide hourly generation data from qualifying facilities⁹ because the meters the Company installed are only capable of delivering power and cannot provide this type of data.¹⁰ PSE provides no additional detail regarding what actions, if any, the Company took to comply with the rule or if the Company explored any options to install systems to capture hourly data.

7. PSE failed to provide a full explanation of the reason for requesting the exemption as required by WAC 480-07-110(2)(a). As written, the petition suggests the Company did not attempt or plan to comply with the rules and expected a paltry showing to be sufficient to allow the Company to sidestep rules developed over a year ago and adopted over the Company's objections at that time. The Commission should deny PSE's petition for failing to provide sufficient reason to support its request.

2. Granting PSE's petition is not in the public interest

8. Under WAC 480-07-110, the Commission uses the public interest standard to determine whether to grant an exemption from a Commission rule. The Commission may consider whether

⁹ See WAC 480-100-650(4)(a)(iv).

¹⁰ PSE Petition for Exemption ¶ 5.

the rule imposes an undue hardship on the requesting person of a degree or a kind different from hardships imposed on other similarly situated persons and whether the effect of applying the rule to the requesting person would be contrary to the underlying purposes of the rule and the public interest.¹¹ In this instance, the rule does not impose an undue hardship on PSE that is different from the burden it places on other utilities with AMI systems. All electric investor owned utilities regulated by the Commission were active in the rulemaking that established these rules, and all must meet these same requirements. As discussed above, PSE provided no information to suggest that it was impossible for the Company to meet these requirements or that it would be unduly burdensome to do so.

9. Applying the rule to PSE would not be contrary to the underlying purpose of the rule, which seeks to identify and consider the source and characteristics of the electricity a utility claims to meet the obligations under CETA, including electricity that is produced, purchased, sold and exchanged.¹² As discussed above, Staff rejected PSE and other utilities' arguments regarding the collection and reporting of this data in developing this rule because it believed the data would help the Commission and interested parties better understand the utilities' market interactions.¹³

10. Granting this request would actively harm the public interest because it would set a low bar for utilities seeking to avoid Commission requirements. PSE failed to provide an adequate explanation for its failure to comply with the rules or any indication that meeting the rule would

¹¹ WAC 480-07-110(2)(c).

¹² See WAC 480-100-650(4).

¹³ Summ. of Comments at 12, Docket UE-210183.

have been unduly burdensome and against the public interest. Granting this request as written would equate to allowing the utilities to simply state, without adequate reason or sufficient explanation, that it cannot meet the requirements of a Commission rule and therefore should be allowed to ignore the rule. The Commission should deny PSE's request.

B. The Commission Should Review PSE's Petition in Light of the Promises the Company Has Made Regarding Its AMI System

11. PSE's request for exemption from WAC 480-100-650(4)(a)(i) is at odds with the Company's promised AMI benefits. Many of the benefits PSE has purported will come from its AMI system rely on granular usage data. PSE filed an AMI benefits report in its last rate case, which states, "AMI's granular data and two-way communication capabilities unleash a multitude of possibilities for customers to become 'empowered' through their participation in Time Varying Rates, behavior-based, and load flexibility programs."¹⁴ PSE projects benefits of its load flexibility and behavior based programs that rely on this data from 2023 to the end of the meter useful life, 2037.¹⁵ In its petition, PSE states that deployment is on track to complete by the end of 2023, but that the systems necessary to capture granular data will take an additional six months to implement.¹⁶ The timeline reported in this docket is at odds with the benefit projections in its AMI benefits report if PSE cannot launch the programs until at least halfway through 2024.

¹⁴ Direct Testimony of Sanem I. Sergici, Exh. SIS-3 at 16, *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-220066 & UG-220067 (*consol.*) (Jan. 1, 2022).

¹⁵ *Id.* at 26.

¹⁶ PSE Petition for Exemption ¶ 4.

12. The Commission ordered PSE to continue deferral of its return on equity on AMI, and that the Company will not receive a final prudency determination until AMI installation is complete and it files an AMI benefits progress report.¹⁷ At a minimum, PSE should include this delayed timeline in the benefits calculation within that report. PSE should not also be allowed to simply ignore the Commission’s rules regarding the collection and reporting of hourly data, for which customers have paid significantly, without consequences.

C. PSE Is Differently Situated than PacifiCorp.

13. One other Washington investor-owned utility, PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp), requested a similar exemption on June 9, 2023,¹⁸ which the Commission approved.¹⁹ PSE’s system, however, is differently situated from PacifiCorp. PacifiCorp argued that the requirement would impose an undue hardship on the company, as close to 100 percent of its Washington customer base has automatic meter reading (AMR) systems and the company has no plans to install AMI on its system. Unlike AMI, AMR systems lack the ability to store and transmit hourly energy volumes, and therefore PacifiCorp was technologically unable to provide the required data.²⁰ Neither Staff nor the company were aware of any other financially viable or reasonably accurate solution to obtain hourly data from Washington customers absent AMI.²¹

¹⁷ *Wash Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-220066 & UG-220067 (*consol.*) Final Order: 24/10, ¶ 65 (Dec. 22, 2022).

¹⁸ See PacifiCorp’s Revised Petition for Exemption from WAC 480-100-650(4)(a)(i), *In re PacifiCorp Clean Energy Implementation Plan*, Docket UE-210829 (filed Jun. 9, 2023).

¹⁹ *In re PacifiCorp Clean Energy Implementation Plan*, Docket UE-210829, Order 01: Granting Exemption from Rule (Jun. 29, 2023).

²⁰ *Id.* ¶ 3.

²¹ *Id.*

Accordingly, the Commission granted the exemption.


14. PSE is on track to complete its AMI deployment this year, but the systems necessary to gather hourly data will take an additional six months to implement.²² PacifiCorp's technological limitations were outside of its control absent a request to initiate a full roll-out of AMI on the company's service territory. That is not the case with PSE. PSE is technologically able to gather hourly data, but it did not implement the required programs in a timely manner, despite knowing the rule requirements, as noted above. The Commission should hold PSE accountable for its noncompliance.

III. CONCLUSION

15. For the reasons set forth above, Public Counsel respectfully requests the Commission to deny PSE's petition for exemption and find the Company in violation of WAC 480-100-650(4)(a)(i), (ii), and (iv).

Dated this 17th day of July, 2023.

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²² PSE Petition for Exemption ¶ 4.