

Agenda Date: November 7, 2024  
Item Number: A1

**Docket:** UE-210795  
**Company:** Puget Sound Energy

**Staff:** Quinn Weber, Regulatory Analyst  
Joel Nightingale, Regulatory Analyst  
Jennifer Snyder, Section Manager

### **Recommendation**

Issue an Order in Docket UE-210795 denying Puget Sound Energy's Petition filed on September 27, 2024, requesting to lower its interim targets.

### **Background**

On December 17, 2021, Puget Sound Energy (PSE or Company) filed with the Washington Utilities and Transportation Commission (Commission) its first Clean Energy Implementation Plan (CEIP). After an adjudicative process, the 2021 CEIP was approved with conditions by the Commission in Order 08.

On November 1, 2023, PSE filed its Biennial CEIP Update which included a proposed reduction in its annual interim targets for 2024 and 2025. In the November filing, the Company described many factors impacting its decision to request reduced targets, including increased load growth, below average hydro generation performance, regional competition for clean resources, and delayed commercial operation dates. During a recessed open meeting on March 22, 2024, the Commission approved this Biennial CEIP Update with conditions.<sup>1</sup>

On September 27, 2024, PSE filed its Petition with the Commission requesting to lower its interim targets, set in the CEIP and upheld in the Biennial CEIP Update, for compliance years 2024 and 2025 to 48 percent based on similar factors as the initial target reduction request. The Company claims that if the Commission does not approve these lower targets PSE will need to purchase a projected \$200 million dollars in short-term clean energy resources to meet its current

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<sup>1</sup> Order 12 pg. 8 (1) (a-c), "Interim Targets:

- a. PSE will maintain the Interim Targets approved by the Commission in Order 08 of Docket UE-210795 for the remainder of this compliance period (i.e., 2022 – 43 percent of retail load served by renewable and nonemitting electric generation; 2023 – 53 percent; 2024 – 59 percent; 2025 – 63 percent).
- b. PSE will maintain the methodology of an annual series of interim targets for the current CEIP compliance period (i.e., one interim target for each of the four years of the compliance period).
- c. If PSE would need to purchase unreasonably costly energy to meet the 2025 Interim Targets, the Commission will consider this in determining whether the Company has complied with the Interim Targets for the first compliance period."

targets. PSE included in the cover letter of its Petition a request that the Commission decide on this issue during the November 7, 2024, regularly scheduled Open Meeting.

### **Discussion**

Commission staff (Staff) acknowledge the challenges that PSE describes in its Petition and the work that PSE is doing to comply with CETA goals and their interim targets. Staff appreciate that there are factors outside of the Company's control that will inevitably impact clean energy generation in any given year. However, Staff continues to hold the same positions described in our March Open Meeting memo, considering the nearly identical circumstances described in its Petition.<sup>2</sup>

PSE is petitioning for a rehearing of its CEIP targets based on the conditions under WAC 480-07-870(1) (a) and (c)<sup>3</sup>. Staff are not convinced the issues presented in this filing meet the requirements of the rules.

#### *Changed conditions since the commission entered the order - WAC 480-07-870(1)(a)*

In its Biennial CEIP Update, PSE informed the Commission and Staff that variable generating resources such as hydro had underperformed relative to expectations, that its retail electric load was increasing faster than expected, and new resources would be coming online later than expected.<sup>4</sup> While Staff acknowledges that these factors may impact the Company's ability to meet its interim targets, Staff does not believe conditions have substantively changed from what was known earlier this year. As we described in Staff's memo at that time, target achievement is best addressed at the end of the compliance period when a full record of retrospective data will be available for consideration. This translates to the risk remaining with PSE, not the Commission, to determine implementation of its resource plan and resulting achievement.

#### *An effect of the order that the commission or the petitioner did not contemplate or intend – WAC 480-07-870(1)(c)*

Staff does not agree that WAC 480-07-870(1)(c) applies in this case either. The Commission in Order 12 contemplated the factors PSE describes in its Petition, including the PSE's assertion that it would need to purchase costly energy to meet its targets. The evidence for this is in Order

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<sup>2</sup> Open Meeting Memo, March 22, 2024, Docket UE-210795: "Retroactively changing the target for 2022 to match actual achievement for past years defeats the purpose of setting a target. The factors PSE cites as motivating the change in interim targets are more appropriately addressed at the end of the compliance period. If PSE ultimately does not meet its interim targets, the Commission has discretion in its assessment of – or relief from – penalties."

<sup>3</sup> PSE Petition pg. 15 paragraph 34.

<sup>4</sup> BCEIP Update pg. 2.10.

12 itself which explicitly acknowledges this possibility in Condition 1(c).<sup>5</sup> Staff does not believe that PSE has demonstrated any effect the Commission did not consider when it entered Order 12 that would justify its reconsideration.

#### *Procedural equity*

In addition to the concerns above, Staff highlights the procedural equity concerns that approving this petition would entail.

PSE's 2021 CEIP, which initially set the Company's interim targets, went through an extensive public process and an adjudicative process that benefited greatly from the time and attention of many interveners, their expert consultants, a wide variety of perspectives, and public input over an 18-month period. By requesting that the Commission dispense with these targets at a regular open meeting just six weeks after filing the petition, PSE is asking the Commission to invalidate a significant result of the public process without similarly substantial public procedure.

While the Company contends that it did discuss its Petition with interested parties prior to filing, this is not akin to the years-long in-depth analysis that went into the initial target-setting process. The significant decrease in interim targets was not discussed during public advisory group meetings until October 15 Equity Advisory Group, a meeting that took place after the petition to lower targets had been filed.

#### *Interested Persons*

Staff discussed this petition with interested parties including Northwest Energy Coalition (NVEC), Association of Western Energy Consumers (AWEC), and Renewable Northwest (RNW). Staff heard concerns from NVEC and RNW about both the targets being reduced, and all parties were concerned with the implications of PSE's proposed short-term clean energy purchases.

#### *Unreasonably costly, moving targets, and the potential risk of approving this petition*

The point in time at which interim targets are developed, changed, and compliance determined matters. Staff recommend that the Commission avoid deciding whether these purchases for short-term CETA-compliant resources are reasonable or prudent in a singular petition. Without full context, Staff cannot recommend that the Commission declare that costs are reasonable. If this off-cycle petition to change interim targets is approved, there is a risk that petitioning to modify targets becomes standard practice as a method of compliance.

Staff believe that the Biennial CEIP Update is the right filing in which to re-evaluate targets if necessary. However, at the time of PSE's 2023 Biennial CEIP Update, given the specifics of the case, Staff did not believe that a change in targets was appropriate. As described above, Staff

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<sup>5</sup> "If PSE would need to purchase unreasonably costly energy to meet the 2025 Interim Targets, the Commission will consider this in determining whether the Company has complied with the Interim Targets for the first compliance period."

does not see a substantive difference between PSE’s argument now and the argument the Company made in the Biennial CEIP Update proceeding. In that proceeding, the Commission added a relevant condition in approving the Biennial CEIP Update which provided additional guidance: “If PSE would need to purchase unreasonably costly energy to meet the 2025 Interim Targets, the Commission will consider this in determining whether the Company has complied with the Interim Targets for the first compliance period.”<sup>6</sup>

In its Petition, the Company states that the Commission did not do enough to define what is an unreasonable amount to spend on compliance. Staff believe that it is the Company’s, not the Commission’s, place to make resource acquisition decisions and comply with the laws, rules, policies, and orders. It is up to the Company to ensure it makes prudent decisions and undertakes sufficient efforts to study the question of need, the appropriateness of the expenditures, and viability of alternatives. The Commission has been clear that, while it retains the discretion to issue penalties for failure for a utility to meet interim targets during an implementation period, it will use its judgement to determine if a utility attempted to meet the interim targets in good faith.<sup>7</sup> Staff trusts that the Commission will consider all appropriate factors when determining compliance and that continuously adjusting interim targets throughout the compliance period to ensure the Company can meet them is unnecessary and a poor use of resources.

Ultimately, the Company should be able to balance what costs it thinks are unreasonable and provide evidence for that determination *during the compliance review*. PSE may argue in front of the Commission that it made a good faith attempt to reach its interim targets and mitigating factors may have caused any potential shortfalls. Staff believe this Open Meeting is not the appropriate venue for arguing for approval of new CEIP targets based on rules and procedural equity. Commission Staff believe that this existing Commission guidance is sufficient.<sup>8</sup>

The Commission already made a decision on the Company’s request to lower its interim targets with substantively the same information that PSE presents again in its Petition. No new arguments have been presented to the Commission in this Petition, and accepting the petition as argued may set a precedent inconsistent with current procedures and would undermine the purpose of having targets where interested parties may give considered input. Further, Staff believe that the Commission should make a compliance determination after the period in which PSE’s performance towards these targets can be fully evaluated by both the Commission and the parties who helped set those targets.

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<sup>6</sup> Order 12 footnote.

<sup>7</sup> “[w]hen the Commission approves the interim targets by order, the Commission retains the discretion to issue penalties for failure to comply with the Commission’s order, specifically if a utility fails to meet its interim target for any implementation period. UE-191023 General Order-601, Page 34, Paragraph 91. The Commission further explained in General Order R-601 that they do not expect to use “rote adherence” when determining compliance. Footnote 34.

<sup>8</sup> Order 12, Condition 1(c) and UE-191023 General Order-601, Page 34, Paragraph 91.

**Conclusion**

Staff recommend the Commission issue an Order in Docket UE-210795 denying Puget Sound Energy's Petition filed on September 27, 2024, requesting to lower its interim targets.