



Davison Van Cleve PC

Attorneys at Law

OR • AZ • NV • WA

UE-210795

Received
Records Management
Nov 4, 2024

November 4, 2024

Via Electronic Filing

Jeff Killip
Executive Director and Secretary
Washington Utilities & Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

Re: Docket U-210795 – Puget Sound Energy’s Petition to Amend Orders 08 and 12 and Adjust PSE’s Clean Energy Implementation Plan Annual Interim Targets for 2024 and 2025

Dear Executive Director Killip:

The Alliance of Western Energy Consumers (“AWEC”) files these comments pursuant to WAC 480-07-370(4)(b). AWEC supports Puget Sound Energy’s (“PSE”) Petition for an Order Amending Order 08 and 12 and corresponding request to adjust PSE’s Clean Energy Implementation Plan Annual Interim Targets for 2024 and 2025 (“Petition”). PSE’s Petition provides substantial evidence that conditions have changed since the Washington Utilities and Transportation Commission (“Commission”) issued Orders 08 and 12 in this proceeding, and thus adjustment to PSE’s Clean Energy Implementation Plan (“CEIP”) Annual Interim Targets (“interim targets”) for 2024 and 2025 are warranted. Failing to adjust PSE’s interim targets effectively ensures that PSE will procure significant short-term clean energy resources in order to meet its existing interim targets for 2024 and 2025 at a substantial cost to PSE’s customers. PSE currently estimates these clean energy purchases to cost more than \$200 million.¹ There is no dispute that these short-term purchases, assuming resources are available, would not contribute to PSE’s long-term compliance with the Clean Energy Transformation Act (“CETA”).

In addition to the Legislature’s intent to transform Washington’s energy supply to reduce emissions,² the Legislature was clear that CETA was enacted with the intent to provide safeguards against “unreasonable costs” to customers.³ The Commission has previously

¹ PSE Petition at ¶ 1.

² See PSE Petition at ¶ 5.

³ RCW 19.405.010(2), which provides in relevant part, “[i]n implementing this chapter, the state must prioritize the maximization of family-wage job creation, seek to ensure that all customers are benefitting from the transition to a clean energy economy, and provide safeguards to ensure that the achievement of

recognized this intention and affirmed its obligation to ensure that customers not bear unreasonable costs.⁴ The question before the Commission at this time is whether \$200 million in short-term CETA-compliant resources to meet interim targets in 2024 and 2025 constitute reasonable costs. The answer is no. For context, this is significantly more than PSE is expected to spend on CETA-attributable costs in 2024 and 2025 *combined* for resources it has determined are lowest cost, considering risk.⁵ They provide no long-term benefits to customers and will do nothing to contribute to the Company's 2030 compliance or reliability obligations. By definition, these short-term resources are not lowest cost resources, considering risk, to achieve CETA's 2030 greenhouse gas neutral compliance obligations because they will not exist in PSE's portfolio in 2030. They are thus *per se* unreasonable.

The Commission should act now – before PSE incurs unreasonable costs for short-term resources – in order to appropriately balance the interests of PSE's customers and shareholders. Generally speaking, AWEC supports utilities taking on the risk of their business decisions and discourages the Commission from insulating utility shareholders from risk through overly prescriptive guidance. But as a practical matter in this case, PSE's customers bear a much greater risk than its shareholders if PSE spends \$200 million on short-term CETA-compliant resources. If the Commission rejects PSE's Petition, PSE will be faced with a choice to either spend an unreasonable amount – estimated to be greater than \$200 million – on short-term CETA-compliant resources or fall short of its interim targets for 2024 and 2025 thereby facing potential consequences including administrative penalties. Given this choice, AWEC finds it far more likely that PSE will spend whatever it deems necessary to comply with a Commission order and take the risk of a potential prudence disallowance if the Commission determines costs to be unreasonable, as opposed to incur administrative penalties that are unrecoverable in rates.⁶

From a customer perspective, litigating a prudence disallowance is a challenging and resource intensive process, and is unlikely to result in a full disallowance of PSE's costs for short-term resources. This is particularly true if the Commission effectively determines in this proceeding that it is more reasonable for PSE to invest in these short-term resources than it is for PSE to reduce its interim targets. This is a no-win situation for customers. The Commission should recognize the realities of competing incentives and decline to prioritize a utility meeting previously approved interim targets over unreasonable cost impacts to customers.

Despite these challenges, AWEC expects that it would advance a prudence challenge to PSE's request to recover the costs of any short-term resources procured for CETA compliance, particularly given the fact that, as AWEC previously demonstrated in this docket, PSE had no need to propose the interim targets it now seeks to lower in the first place. In testimony on PSE's CEIP, AWEC demonstrated that PSE could have proposed a lower interim target and still been on

this policy does not impair the reliability of the electricity system *or impose unreasonable costs on utility customers.*" (emphasis added).

⁴ PSE Petition at ¶¶ 24-25.

⁵ PSE's Response to AWEC DR 3. Actual amounts attributable to CETA for 2024 and 2025 are confidential.

⁶ PSE Petition at ¶ 2 (PSE states that "[i]n the absence of Commission action on this Petition, PSE will move forward with making additional short-term clean energy purchases, as available, in accordance with previous guidance from the Commission and will defer those costs as outlined in the Accounting Petition.")

a path to achieve CETA's 80% clean requirement in 2030, which would have saved customers \$500 million in resource portfolio costs relative to PSE's proposal.⁷ PSE nevertheless proposed a higher target solely to be responsive to stakeholder feedback that it should "move further, faster."⁸ Given that PSE's current situation is at least partially of its own making, AWEC believes that the Company should not be able to recover the costs of short-term CETA resources acquired to meet its own artificially elevated interim targets regardless of whether the Commission approves or denies PSE's currently pending petition to lower these targets.

The Commission nevertheless has a sound evidentiary basis to support approving PSE's Petition. The circumstances raised by PSE's Petition illustrate the reality of setting interim targets on a planned basis under specific assumptions, such as a median hydro year. While some variation between planning/forecast and actuals is generally expected and accounted for in utility regulation, the circumstances that have given rise to PSE's anticipated shortfall in meeting 2024 and 2025 interim targets go well beyond what was anticipated when PSE's interim targets were last at issue with the Commission. Lower than normal hydro conditions, the Company's unanticipated load growth and the challenges of acquiring non-emitting resources in a timely manner were not known at the time the Commission issued Orders 08 and 12, but these new realities have a direct bearing on PSE's ability to achieve its interim targets with lowest cost, considering risk resources.⁹ PSE has demonstrated, with substantial evidence, that changed circumstances necessitate the lowering of its interim targets for 2024 and 2025. There is no statutory requirement that the path to 2030's greenhouse gas neutral standard must be linear, and in fact as PSE's circumstances demonstrate, is not realistic. Importantly, even if PSE's interim targets are adjusted for 2024 and 2025, as noted above the Company's current interim targets are higher than necessary to ensure the Company stays on track to meet its 2030 CETA requirement. Thus, reducing these targets does not mean that PSE is not still making reasonable progress towards CETA compliance.¹⁰

If, however, the Commission agrees with Staff that PSE's petition should be denied, then AWEC recommends that the Commission provide additional guidance on how it views the binding nature of the interim targets. AWEC's primary concern is that PSE will interpret a rejection of its petition as a stated preference by the Commission that PSE incur material incremental costs pursuing short-term resources over the Company failing to meet its interim targets. The Commission has previously determined that it "remains PSE's burden to show that it continues to act reasonably in the face of changing, uncertain conditions, demonstrating lowest reasonable cost of compliance, and PSE must continue to demonstrate the prudence of its actions."¹¹ AWEC agrees with this, but if it is generally understood that PSE's interim targets are effectively binding such that failing to meet them subjects the Company to a significant risk of penalties, then this does not put PSE in a position to act prudently because it will be caught in a

⁷ Exh. LDK-1T at 6:1-14.

⁸ *Id.* at 7:1-5.

⁹ PSE Petition at ¶ 5.

¹⁰ *Id.* at ¶¶ 12-16.

¹¹ Order 08 ¶ 50 (June 6, 2023).

dynamic where the interests of customers and the interests of shareholders are diametrically opposed, and PSE will be forced to choose between the two.

The Commission should not value the optics of PSE achieving an approved interim target with imprudent, expensive resources that do not contribute to long-term CETA compliance over what are sure to be substantial rate impacts to customers. AWEC again urges the Commission to approve PSE's Petition.

Dated this 4th day of November 2024.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Sommer J. Moser

Sommer J. Moser, OSB # 105260

107 SE Washington St., Suite 430

Portland, Oregon 97214

(503) 241-7242 (phone)

sjm@dvclaw.com

Of Attorneys for the

Alliance of Western Energy Consumers