

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

<p>In the Matter of</p> <p>Puget Sound Energy 2021 Clean Energy Implementation Plan</p> <hr/>	<p>Docket UE-210795</p>
<p>WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,</p> <p style="text-align:center">Complainant,</p> <p>v.</p> <p>PUGET SOUND ENERGY</p> <p style="text-align:center">Respondent.</p>	<p>Docket UE-220066 AND Docket UG-220067 <i>(Consolidated)</i></p> <p>PUBLIC COUNSEL UNIT RESPONSE TO MOTION TO CONSOLIDATE PROCEEDINGS AND MOTION FOR EXEMPTION FROM WAC 480-100-645(2)</p>

I. INTRODUCTION

I. In accordance with WAC 408-07-320 and 480-07-375(4), 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”) Motion to Consolidate (“PSE’s Motion”) PSE’s Clean Energy Implementation Plan (“CEIP”) proceeding, Docket UE-210795, with its general rate case (“GRC”), Dockets UE-220066 and UG-220067.¹ Public Counsel also responds to PSE’s motion for exemption from WAC 480-100-645(2).² Public Counsel requests that the Washington

¹ Motion to Consolidate Proceedings and Motion for Exemption from WAC 480-100-645(2), *In re Puget Sound Energy Clean Energy Implementation Plan Pursuant to WAC 480-100-640*, Docket UE-210795 (filed Mar. 30, 2022) [hereinafter “PSE CEIP”]; Motion to Consolidate Proceedings and Motion for Exemption from WAC 480-100-645(2), *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-220066 & UG-220067 (*consol.*) (filed Mar. 30, 2022) [hereinafter “PSE GRC”].

² PSE CEIP; PSE GRC.

Utilities and Transportation Commission (“Commission”) deny PSE’s motion because fundamentally different factual and legal issues are raised in the two proceedings. Consolidation would inappropriately blur the line between the CEIP planning process and GRC cost recovery, to the potential detriment of ratepayers. Consolidation will not increase judicial economy or reduce procedural complexities given the number of significant issues raised in the CEIP that are wholly separate from issues in the GRC. Finally, consolidation would inappropriately limit the Commission’s ability to review the CEIP to the GRC’s timeframe.

2. Public Counsel also requests that the Commission deny PSE’s motion for exemption from WAC 480-100-645(2) because the request for waiver is unnecessary.

II. BACKGROUND

3. The Commission opened Docket UE-210795 to consider PSE’s four-year CEIP, which must describe the utility’s plan for making progress towards meeting the standards of Clean Energy Transformation Act (CETA).³ The CEIP must establish interim targets and identify specific actions that the utility intends to undertake to meet the standards.⁴ The Commission, after a hearing, must approve, reject, or approve with conditions the CEIP and interim targets. PSE submitted its Final CEIP on December 17, 2021. WAC 480-100-645(2) requires the Commission to set a utility’s CEIP for an open public meeting or initiate an adjudication to consider the filing at the request of any person who has a substantial interest in the subject matter of the CEIP.⁵ In its comments filed on March 2, 2022, Front and Centered requested the

³ See RCW 19.405.060, *see also* WAC 408-100-640(1).

⁴ WAC 480-100-640.

⁵ WAC 480-100-645(2).

Commission to adjudicate PSE’s CEIP.⁶ Similarly, the NW Energy Coalition recommended the Commission either suspend the CEIP for adjudication or reject it.⁷ The Commission has yet to issue an order or notice to initiate the adjudication.

4. Dockets UE-220066 and UG-220067 are PSE’s consolidated 2022 electric and natural gas rate cases.⁸ PSE filed its Motion to Consolidate proceedings and motion for exemption from WAC 480-100-645(2) in the CEIP and GRC dockets on March 30, 2022.

5. Under WAC 480-07-320, the Commission has the discretion to consolidate “two or more proceedings in which the facts or principles of law are related.” In making its determination whether to consolidate dockets, the “Commission examines the extent to which the factual and legal issues are related and whether consolidation would promote judicial economy and would not unduly delay the resolution of one or all of the proceedings.”⁹

III. ARGUMENT

A. **The Legal Issues and Burden of Proof Associated with the CEIP and GRC are Drastically Different, and Consolidation Would Inappropriately Blur the Line Between the Two and Potentially Harm Ratepayers.**

6. PSE’s assertion that the Commission should consolidate the CEIP and GRC because the facts of principles of law between the two dockets are related fails to acknowledge that the two proceedings are fundamentally different. In rate cases, the utility has the burden of proving its requested revenue is just and reasonable and that ratepayers are not paying for unnecessary expenditures or for capital projects that are not yet used and useful. In the CEIP Docket, PSE has

⁶ PSE CEIP, Front and Centered Comments at 9 (filed Mar. 2, 2022).

⁷ PSE CEIP, NW Energy Coalition’s Comments at 3 and 9 (filed Mar. 2, 2022).

⁸ These dockets were consolidated in the PSE GRC, Ord. 01 ¶ 11 (Feb. 10, 2022).

⁹ *In re the Petition of Puget Sound Energy, Inc.*, Dockets UE-130583, UE-130617, & UE-131099 (consol.), Ord. 01/Ord. 05/Ord. 01 ¶ 14 (Aug. 8, 2013); see also *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-111048 & UG-111049 (consol.) & UG-110723, Ord. 04 ¶ 8 (Sept. 7, 2011).

the burden of proving that its plan to meet the CETA standards contains sufficient detail and supporting documentation.¹⁰ PSE also has the burden of proving that its planned actions demonstrate progress toward meeting the clean energy transformation standards at the lowest reasonable cost while mitigating risks to Highly Impacted Communities and Vulnerable Populations.¹¹ PSE clearly expressed its desire for approval of projected costs in its CEIP in an attempt to conflate the CEIP and GRC processes.¹² The CEIP process, however, is not intended as a vehicle for a utility to obtain pre-approval of expenditures. Consolidating the two proceedings inappropriately blurs the line between these two types of inquiries, which may harm ratepayers.

7. PSE argues that the two proceedings should be consolidated because the GRC includes costs for actions that are described in PSE's CEIP, and PSE included the CEIP in the supporting documentation for the GRC.¹³ Public Counsel acknowledges that the GRC includes the CEIP documentation, and the information contained in the CEIP may be useful to the review of costs in a GRC. Indeed, the GRC is the appropriate proceeding to consider and approve these expenditures. The usefulness of this information to the GRC's investigation into PSE's expenditures, however, does not justify consolidation of the two dockets. Doing so would be akin to consolidating the Integrated Resource Plan process with a GRC because the costs of generation resources are discussed in both proceedings.

8. In its motion, PSE points to only three topics in the CEIP that it found to overlap with issues in PSE's GRC: 1) whether the CEIP should address topics that are not directly related to

¹⁰ See WAC 480-100-640.

¹¹ See WAC 480-100-640(6).

¹² See for example PSE CEIP at 4, 26, and 28.

¹³ PSE Motion at 9.

resource planning, such as bill assistance, 2) whether PSE should recover the costs of renewable energy acquisition to achieve 63 percent target by the end of the CEIP period, and 3) what approval of the CEIP means for prudence of renewable investments.¹⁴ These are important issues that must be considered, but it is unclear from PSE's Motion why these issues alone justify consolidating the proceedings particularly given the number of other issues raised in the CEIP that only pertain to the CEIP and the adequacy of PSE's proposed plan.

9. The fact that PSE's CEIP and GRC share underlying information on costs alone is not sufficient to justify consolidation. The factual and legal issues and burden of proof associated with the CEIP and GRC require fundamentally different inquiries, and consolidation is not appropriate for these two proceedings.

B. Consolidating PSE's CEIP and GRC will not Expedite the CEIP and will Inappropriately Limit the Commission's Ability to Review the CEIP to the Existing GRC Timeline.

10. PSE argues that consolidating the CEIP and GRC would support judicial economy¹⁵ and suggests that the two proceedings can be decided within the existing procedural schedule of the GRC.¹⁶ PSE further argues that the consolidation will not unduly delay PSE's GRC and expedite administration of the CEIP.¹⁷ PSE's assertions downplay the complexity of both its CEIP and GRC, and seemingly ignores the significant burden PSE has in proving its CEIP meets the requirements of the CETA statute and Commission rules.

¹⁴ PSE Motion at 7.

¹⁵ PSE Motion at 10.

¹⁶ See PSE Motion at 10–11.

¹⁷ PSE Motion at 11.

11. In the CEIP Docket, PSE must describe its plan to meet the CETA standards with sufficient detail.¹⁸ The CEIP must include PSE’s interim clean energy targets and specific targets for energy efficiency, demand response, and renewable energy with significant information to support its plans.¹⁹ Relevant support includes program details, budgets, measurement and verification protocols, target calculations, and forecasted distribution of energy and non-energy costs and benefits for the proposed programs.²⁰ The CEIP must identify Highly Impacted Communities and Vulnerable Populations and include customer benefit indicators and associated weighing factors.²¹ The CEIP must also include detailed descriptions of specific actions that PSE will undertake to meet the CETA standards²² and a demonstration of the utility’s approach to identifying the lowest reasonable cost portfolio of these actions.²³ Finally, the CEIP must include projected incremental costs of the plan.²⁴ PSE’s CEIP consists of several hundreds of pages of explanations and narrative descriptions, along with approximately twenty appendices. Stakeholders in PSE’s CEIP Docket raised issues with almost every aspect of the plan and several parties recommended either rejecting the CEIP or approving the plan with significant conditions that would require major modifications to portions of the plan.

12. PSE’s Motion fails to acknowledge the issues raised by stakeholders, the complexity of PSE’s CEIP, and the difficulties inherent in reviewing a CEIP for the first time. PSE also fails to acknowledge the need for the Commission to address important threshold questions such as how

¹⁸ WAC 480-100-640(1).

¹⁹ WAC 480-100-640(2) and (3).

²⁰ WAC 480-100-640(3).

²¹ WAC 480-100-640(4).

²² WAC 480-100-640(5) and (6).

²³ WAC 480-100-640(6).

²⁴ WAC 480-100-640(7).

to ensure utilities are meeting its CETA obligations at the lowest reasonable cost and the appropriate selection and use of customer benefit indicators to ensure the equitable distribution of benefits from CETA. Despite the numerous issues raised about the CEIP, PSE's primary consideration appears to be constraining the CEIP review process to match its GRC timeline.²⁵ PSE offers to address the CEIP following a separate schedule from the GRC issues of the consolidated proceeding and provide additional testimony on the CEIP,²⁶ but PSE does not address the need to schedule sufficient time for discovery, testimony, and evidentiary hearings on CEIP issues within the schedule of a GRC that has been ongoing since January.

13. Although PSE argues that the CEIP will not unduly delay the GRC,²⁷ PSE cannot provide any assurance that consolidation will not significantly reduce the Commission's ability to properly assess PSE's CEIP. PSE has not offered to extend the consolidated schedule. Under a GRC, the suspension period is set by statute and the utility has discretion over the effective date of the tariff. This places a significant amount of control over the procedural schedule in the utility's hands. As PSE acknowledges, the CEIP has no statutory suspension period.²⁸ By consolidating the two proceedings, PSE seeks to inappropriately limit the Commission's ability to review the CEIP to its desired GRC timeframe. Three months of the 11-month statutory suspension period have already passed. The interests of judicial economy cannot be met by simply reducing the time available to review the CEIP.

²⁵ PSE Motion at 4.

²⁶ PSE Motion at 10.

²⁷ PSE Motion at 11.

²⁸ PSE Motion at 8.

C. The Waiver of the Requirement for an Open Meeting Under WAC 480-100-645(2) is Unnecessary.

14. Public Counsel requests that the Commission deny PSE’s motion for exemption from WAC 480-100-645(2) because the request for waiver is unnecessary. Under the rule, the Commission will initiate an adjudication at the request of any person who has a substantial interest in the subject matter of the filing.²⁹ The rule does not give the Commission the discretion to deny a request for adjudication and set the CEIP for an open meeting once a stakeholder has requested adjudication.³⁰ As cited by PSE, Front and Centered has requested the Commission to initiate an adjudication in the CEIP. Therefore, the proceeding can no longer be addressed at an open meeting and the request for waiver is unnecessary.

IV. CONCLUSION

15. PSE frames its motion using veiled threats that, if the Commission does not consolidate the proceedings and approve its CEIP within the existing GRC timeframe, it will “jeopardize PSE’s ability to secure the renewable resources necessary to meet the specific and interim targets outlined in its plan”³¹ and that the “entire CEIP process may fail before it begins.”³² PSE also complains that the uncertainty regarding the CEIP exposes PSE to undue risk in securing resources to meet its planned clean energy targets.³³ PSE appears to base its complaints on the assumption that its interim targets included in the CEIP are a foregone conclusion. This issue, however, is still in dispute and is subject to Commission approval in the CEIP Docket. PSE also appears to base its arguments on the false premise that it cannot engage in any actions towards

²⁹ WAC 480-100-645(2).

³⁰ *See id.*

³¹ PSE Motion at 2.

³² PSE Motion at 11.

³³ *Id.*

CETA compliance without approval of this CEIP. This narrative ignores the fact that PSE is required by statute to meet its overarching clean energy target of 100 percent carbon-free energy by 2045.³⁴ Approval or rejection of this CEIP do not absolve the Company of their responsibility to meet the statutory mandate.

16. PSE's Motion also appears based on the erroneous assumption that approval of the CEIP equates to a prudence determination for costs that are yet to be included in customer rates and that judicial economy is best served by consolidating the two proceedings to streamline PSE's ability to place all the proposed costs into rates. Approval of PSE's CEIP, however, does not pre-authorize costs or bind the Commission to any particular determination regarding the prudence of those costs.

17. Consolidation of PSE's CEIP and GRC is inappropriate given the fundamentally different factual and legal issues raised in the two proceedings. Consolidation will not increase judicial economy or reduce procedural complexities given the number of significant issues raised in the CEIP that are wholly separate from issues in the GRC. Consolidation would limit the Commission's ability to review the CEIP to the GRC's timeframe and inappropriately blur the line between the CEIP planning process and GRC cost recovery, which may harm ratepayers.

18. Consolidation of PSE's CEIP and GRC is inappropriate given the fundamentally different factual and legal issues raised in the two proceedings. Consolidation will not increase judicial economy or reduce procedural complexities given the number of significant issues raised in the CEIP that are wholly separate from issues in the GRC. Consolidation would limit the

³⁴ RCW 19.405-050(1).

Commission's ability to review the CEIP to the GRC's timeframe and inappropriately blur the line between the CEIP planning process and GRC cost recovery, which may harm ratepayers.

19. For the reasons stated, above, Public Counsel urges the Commission to deny PSE's Motion to Consolidate its CEIP and GRC Dockets. Public Counsel also requests the Commission to deny PSE's request for exemption from the open meeting requirement of WAC 480-100-645(2) as unnecessary.

Dated this 6th day of April, 2022.

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