

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

<p>WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,</p> <p>Complainant,</p> <p>v.</p> <p>PUGET SOUND ENERGY,</p> <p>Respondent.</p>	<p>DOCKETS UE-220066 and UG- 220067 (<i>Consolidated</i>)</p> <p>ORDER 10</p>
<p>In the Matter of</p> <p>PUGET SOUND ENERGY</p> <p>Clean Energy Implementation Plan Pursuant to WAC 480-100-640</p>	<p>DOCKET UE-210795</p> <p>ORDER 01</p> <p>DENYING MOTION FOR CONSOLIDATION; DENYING MOTION FOR EXEMPTION FROM WAC 480-100-645(2)</p>

**BACKGROUND**

1 On December 17, 2021, Puget Sound Energy (PSE or Company) filed with the Washington Utilities and Transportation Commission (Commission) its Final Clean Energy Implementation Plan (CEIP) in Docket UE-210795.<sup>1</sup> The Commission has not yet initiated an adjudication or set this matter for an open meeting.

<sup>1</sup> See generally WAC 480-100-640 (setting forth the requirements for CEIPs filed with the Commission).

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- 2 On January 31, 2022, PSE filed revisions to its currently effective Tariff WN U-60, Tariff G, Electric Service, and its currently effective Tariff WN U-2, Natural Gas. The Company characterizes this filing as a general rate case (GRC). The Commission commenced an adjudication in this proceeding in consolidated Dockets UE-220066 and UG-220067.
- 3 On March 30, 2022, PSE filed a Motion to Consolidate Proceedings and Motion for Exemption from WAC 480-100-645(2) (Motion). PSE submits that the Commission should consolidate its GRC with Docket U-210795. PSE argues that there are related issues of fact and law between the two proceedings. PSE notes that at least eight Company witnesses address the CEIP in the GRC and that the Final CEIP is offered as an exhibit in the GRC. PSE notes that it has planned its first multiyear rate plan (MYRP)<sup>2</sup> to coincide with the Company's first four-year CEIP. Both the proposed MYRP and the CEIP conclude on the same day, December 31, 2025. PSE argues that approval of the CEIP is "necessarily connected" to the cost recovery of investments in the GRC.
- 4 PSE also argues that consolidation would support judicial economy. PSE notes that consolidation would allow for more "efficient" resolution of the CEIP and that the Company is willing to take steps to "simplify and streamline consideration of the CEIP." PSE would support a separate but parallel procedural schedule in the consolidated proceeding to address the CEIP, and the Company is prepared to submit additional testimony in support of its CEIP.
- 5 PSE argues that the Commission should grant an exemption from WAC 480-100-645(2). Because Front and Centered has requested that the Commission initiate an adjudication of the CEIP, PSE submits that it would be contrary to the public interest to consider the CEIP at an open meeting. PSE therefore seeks to waive the requirement in the rule to address its CEIP at an open meeting.
- 6 On April 6, 2022, Commission staff (Staff) filed a Response to Motion to Consolidate Proceedings and Motion for Exemption from WAC 480-100-645(2) (Staff's Response), including the Declaration of Jennifer Snyder. Staff argues that the Commission should not consolidate the Company's GRC and CEIP and that maintaining separate adjudicatory proceedings renders the Company's requested exemption moot. Staff

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<sup>2</sup> See generally RCW 80.28.425 (requiring utilities to propose MYRPs in general rate case filings as of January 1, 2022).

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submits that the facts and law in the two proceedings are not related to any great extent. The CEIP involves various issues, such as interim targets, customer benefit indicators (CBIs), incremental cost calculation, and designation of vulnerable populations, which are not at issue in the GRC. Staff notes that the Commission is not tasked with approving specific investments in the CEIP.

- 7 Staff also argues that consolidation would not support judicial economy. Instead, Staff asserts that consolidation would add to the number of complex issues that the parties and the Commission must address within the statutory suspension period and could undermine the deliberative process. Staff submits that the Commission should gain experience adjudicating MYRPs and CEIPs separately before consolidating these proceedings. Staff also raises a concern that consolidation will lead to confusion later related to what the Commission specifically approved as part of the GRC and what the Commission approved as part of the CEIP.
- 8 Staff disagrees that consolidation is necessary for the Company to move forward with acquiring Clean Energy Transformation Act (CETA)<sup>3</sup> compliant resources. Staff argues that the CEIP proceeding will not result in approval of specific investments or cost recovery and that the Commission's decision on the CEIP is not a prudency determination. To the extent there is any marginal benefit to the Company from having both the GRC and CEIP approved at the same time, Staff suggests that this is outweighed by the other considerations noted in its Response.
- 9 If the Commission denies PSE's Motion, Staff notes that there is no need to grant an exemption from WAC 480-100-645(2). If the Commission decides to consolidate these matters, however, Staff recommends the Commission allow any person with a substantial interest to intervene in the CEIP proceeding.
- 10 On April 6, 2022, the same day that Staff filed its Response, the Public Counsel Unit of the Attorney General's Office (Public Counsel) filed a Response to Motion to Consolidate Proceedings and Motion for Exemption from WAC 480-100-645(2) (Public Counsel's Response). Like Staff, Public Counsel argues that the Commission should deny PSE's Motion. Public Counsel explains that the GRC and CEIP proceedings are "fundamentally different", and that PSE has expressed its desire for approval of projected

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<sup>3</sup> See generally RCW chapter 19.405.

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costs in the CEIP in an “attempt to conflate” the two proceedings. Public Counsel acknowledges that the CEIP may provide useful evidence when approving expenditures in the GRC, but this does not justify consolidation. Public Counsel suggests this would be comparable to consolidating an Integrated Resource Plan docket with the GRC.

- 11 Public Counsel also argues that PSE downplays the complexity of both proceedings, including the various difficulties in reviewing a CEIP for the first time. Public Counsel notes that PSE has not offered to extend the effective date of its tariffs and that consolidation would therefore limit the Commission’s ability to review the CEIP to the remaining months of the suspension period.
- 12 Finally, Public Counsel notes that it is unnecessary to grant PSE an exemption from WAC 480-100-645(2). Under the rule, the Commission is required to initiate an adjudication upon request from any person with a substantial interest. Because Front and Centered has requested an adjudication of the CEIP, Public Counsel submits that the Commission cannot set the CEIP for consideration at an open meeting.
- 13 On April 6, 2022, NW Energy Coalition (NVEC) and Front and Centered filed a Response to PSE’s Motion. NVEC and Front and Centered recommend the Commission consolidate PSE’s GRC and CEIP, stating they do not oppose PSE’s Motion.
- 14 NVEC and Front and Centered argue that there are related issues of fact and law between the two proceedings: “simply put, the CEIP is meant to include PSE’s proposed actions for the next four years, and the rate case includes PSE’s proposal to pay for those actions.” Consolidation, they argue, would reduce the risk of inconsistent findings by the Commission or the order in one proceeding unintentionally constraining the Commission in the other proceeding. NVEC and Front and Centered also observe that the legislature directed the Commission to “align” its approval of MYRPs and CEIPs to the extent practical,<sup>4</sup> and that consolidation would prevent undue delay in reviewing the CEIP.
- 15 NVEC and Front and Centered recommend that, if the Commission consolidates the proceedings, the Commission require the parties to propose a procedural schedule that

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<sup>4</sup> See RCW 80.28.425(9) (“The commission shall align, to the extent practical, the timing of approval of a multiyear rate plan of an electrical company submitted pursuant to this section with the clean energy implementation plan of the electrical company filed pursuant to RCW 19.405.060.”).

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allows for incorporating the results of PSE's All-Source Request for Proposals (RFP) in Docket UE-210220, and PSE's Distributed Energy Resources/Demand Response RFP in Docket UE-210878, into this case.

- 16 NWEC and Front and Centered do not oppose the Commission waiving the requirement for an open meeting, but they request that the Commission schedule a public comment hearing on the CEIP between July 19 and August 23, concurrent with the public comment hearing for the general rate case.

### DISCUSSION

- 17 **Consolidation.** We first address PSE's request to consolidate its GRC with the CEIP.

- 18 The Commission has discretion to "consolidate two or more proceedings in which the facts or principles of law are related."<sup>5</sup> In determining whether to exercise such discretion, the Commission considers not just the extent to which the factual and legal issues are related but whether consolidation would promote judicial economy and would not unduly delay the resolution of one or all of the proceedings.<sup>6</sup>

- 19 We agree with Staff and Public Counsel that it is not appropriate to consolidate PSE's GRC with its CEIP. The two proceedings may, at least to a degree, involve similar facts and evidence. It may be appropriate to consolidate PSE's CEIP with a future GRC once processes for MYRPs and CEIPs are established. But at the present time, the parties and the Commission are grappling with complex, novel issues of first impression in this initial round of MYRPs and CEIPs. Consolidation would thus unnecessarily constrain the review of PSE's first CEIP.

- 20 In a broad sense, the two proceedings present related facts and principles of law. As PSE notes, the Company planned its first proposed MYRP to coincide with its first CEIP. Both plans would end on the same date, December 31, 2025. Both the Company's MYRP and its CEIP set forth a plan of significant investments to meet CETA's requirements. There is an understandable overlap between the two proceedings because they both reflect the Company's planning to comply with CETA. Company witnesses discuss the

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<sup>5</sup> WAC 480-07-320.

<sup>6</sup> *E.g., Qwest Corp. v. Level 3 Comm.*, Docket UT-063038, Order 09, ¶ 13 (February 15, 2008).

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four-year CEIP in their testimony in the GRC, and the Company submits the Final CEIP itself as an exhibit.<sup>7</sup>

- 21 However, as both Staff and Public Counsel observe, the two proceedings do not present the same legal issues, and the standards of review are different. In the GRC, the Commission is charged with determining fair, just, reasonable, and sufficient rates for PSE's service, and the Company bears the burden of proof for its proposed rates. This includes prudency determinations for specific investments addressed in PSE's initial filing. In the CEIP proceeding, the Commission is charged with reviewing the contents of PSE's Final CEIP, including CBIs and interim targets, to determine compliance with CETA requirements. The Company must demonstrate that the CEIP "demonstrates progress toward meeting the clean energy transformation standards at the lowest reasonable cost while mitigating risks to Highly Impacted Communities and Vulnerable Populations."<sup>8</sup> These legal issues and standards are not consistent.
- 22 PSE argues in its Motion that that approval of the CEIP is "necessarily connected" to the cost recovery of investments in the GRC.<sup>9</sup> It is difficult to fully consider this issue on an *ex ante* basis before the Commission has issued a final order on either the GRC or the CEIP.
- 23 Nevertheless, we are not persuaded that consolidating the two proceedings is necessary to allow for PSE's timely recovery of its investments. The legislature directed the Commission to "align, to the extent practical, the timing of approval of a multiyear rate plan of an electrical company submitted pursuant to this section with the clean energy implementation plan of the electrical company filed pursuant to RCW 19.405.060."<sup>10</sup> Through language that is permissive and not mandatory, the legislature recognized that other considerations may affect the handling of these proceedings.
- 24 Indeed, it would be hard to maintain that a decision on the CEIP is necessary to PSE's recovery of its costs. To the extent that PSE seeks prudency determinations on actual, known, and measurable costs described in its initial filing, the Commission may consider

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<sup>7</sup> See Jacobs, Exh. JJJ-1T; Jacobs, Exh. JJJ-3 (Final Clean Energy Implementation Plan).

<sup>8</sup> Public Counsel Response, ¶ 6.

<sup>9</sup> PSE's Motion ¶ 18.

<sup>10</sup> RCW 80.28.425(9).

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the Final CEIP as one of many pieces of evidence when evaluating the prudence of those investments. The Commission may also consider that the Company is required to work towards CETA compliance even while awaiting Commission approval of interim targets in the CEIP. A contemporaneous decision on the CEIP, in the same final order, may be helpful to these decisions but it is not necessary.

- 25 To the extent that PSE seeks Commission approval of investments in later rate years, as set forth in its MYRP, consolidation does not provide any benefits. The Commission’s Used and Useful Policy Statement allows for the provisional recovery of investments in rates subject to later review and possible refund.<sup>11</sup> The Company accordingly plans to seek approval of future investments in its MYRP in later proceedings, such as the Company’s annual power cost updates.<sup>12</sup> These costs are not known and measurable at the present time, and they will likely require later review by the Commission. It would be unnecessary to consolidate the GRC and the CEIP to allow for review of these later investments. It would be enough, instead, for the parties to support a procedural schedule that allows for a decision on the CEIP in the months following the final order in the GRC.
- 26 We therefore find that consolidation may be of limited benefit to prudence determinations requested in the Company’s initial filing. In addition, when we consider the practical implications of consolidating the two proceedings, we find that consolidation would be ill-advised at the present time.
- 27 We share Staff’s and Public Counsel’s concern that PSE seeks to shorten the timeline for considering the novel issues raised by the first round of CEIPs. The Commission has observed that “in the beginning the CEIP will involve a new and significant process and document, one that the utilities have never prepared, and that stakeholders, and this

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<sup>11</sup> *In re Commission Inquiry into the Valuation of Public Service Company Property that Becomes Used and Useful After Rate Effective Date*, Docket U-190531, Policy Statement on Property that Becomes Used and Useful After Rate Effective Date ¶ 20 (Jan. 31, 2020).

<sup>12</sup> See Jacobs, Exh. JJJ-1T at 28, n.12 (“Additional new resources will be required to implement PSE’s CEIP once approved, and the cost of those resources will depend on the outcome of PSE’s All-Source and Distributed Energy Resource RFPs. PSE seeks to recover those costs when known through its requested annual power cost update as described in the testimony of Janet Phelps, Exh. JKP-1T.”).

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Commission have never reviewed.”<sup>13</sup> Although it is impossible to predict the course of the CEIP proceeding, Public Counsel notes that some stakeholders have challenged many aspects of the CEIP and that some stakeholders have argued for rejecting the CEIP or for approving the CEIP with conditions that would require major modifications.<sup>14</sup> It is difficult to see how these complex, novel issues could be effectively adjudicated in the remaining months of the GRC’s statutory suspension period. Staff rightly observes that a proceeding should not be rushed to completion for the sake of “judicial economy” without regard for the effect on the deliberative process.<sup>15</sup> PSE has not sought leave to file a reply brief that might assuage these concerns and convince the Commission that these hurdles are manageable.

28 We therefore find that PSE’s Motion should be denied. Any limited benefit from consolidating and deciding the GRC and CEIP in one final order are outweighed by the practical implications of consolidating these two novel, complex proceedings.

29 We recognize that NWECA and Front and Centered have raised valid concerns, arguing that the Commission should avoid undue delay in consideration of the CEIP and that the Commission should allow for a public comment hearing on the CEIP. Although we deny PSE’s Motion, these are appropriate issues for the parties to consider in the CEIP adjudication.

30 **Requested Exemption.** We next address PSE’s request for an exemption from Commission rule.

31 WAC 480-100-645(2) sets forth the process for Commission review of CEIPs. The rule states in relevant part:

The utility’s CEIP and biennial CEIP update filing will be set for an open public meeting. On the commission’s own motion or at the request of any person who has a substantial interest in the subject matter of the filing, the commission will

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<sup>13</sup> *In the Matter of Adopting Rules Relating to Clean Energy Implementation Plans and Compliance with the Clean Energy Transformation Act*, Dockets UE-191023 & UE-190698 (Consolidated), General Order 601 ¶ 25 (General Order 601) (Dec. 28, 2020).

<sup>14</sup> Public Counsel’s Response ¶ 11.

<sup>15</sup> See Staff’s Response ¶ 16.



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initiate an adjudication, or if appropriate a brief adjudicative proceeding, to consider the filing.

- 32 Because Front and Centered has requested an adjudication of the Company's CEIP, the Commission is required by the plain language of the rule to initiate an adjudication. The Commission will be issuing a notice of prehearing conference in Docket UE-210795 shortly. An exemption from the rule is thus unnecessary.

**ORDER**

- 33 **THE COMMISSION ORDERS That Puget Sound Energy's Motion is DENIED.**

DATED at Lacey, Washington, and effective April 18, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

*/s/ Michael S. Howard*  
MICHAEL HOWARD  
Administrative Law Judge

**NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.**