BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of: The Energy Project, Commission Staff, and NW Energy Coalition Petitioner, To Compel Puget Sound Energy's Compliance with Order 01	DOCKET UG-230470

BRIEF OF PUBLIC COUNSEL

I. INTRODUCTION

1. The Washington Utilities and Transportation Commission (Commission) should find that Puget Sound Energy's (PSE or Company) proposed disenrollment of low-income customers below the 70,000 customer target violates Order 01. The Climate Commitment Act (CCA) requires PSE, the Commission, and The Energy Project (TEP), NW Energy Coalition (NWEC), and Staff (collectively, the Parties) to eliminate the burden of the CCA on low-income customers. Under governing principles of statutory construction, the CCA's directive to "eliminate" the burden on low-income customers is not limited to those customers who applied through PSE's various tariff schedules for assistance; it is a statutory obligation to prevent the CCA from adding burdens based on how much money a customer earns, not how responsive they are to unsolicited demands for attestation. While reaching all low-income customers may not be possible to achieve overnight, Order 01 was a reasonable step in that direction. The Commission should affirm that PSE needs to meet a minimum of 70,000 customers and that PSE should expect and plan to expand that number to reach all low-income customers.

II. FACTS

2. In 2021, when the Legislature passed the CCA, it included a specific legislative directive for natural gas utilities, "Beginning in 2023, 65 percent of the no cost allowances must be consigned to auction for the benefit of customers, including at a minimum, *eliminating any additional cost burden to low-income customers from the implementation of this chapter."*[1] The Commission recognized this statutory directive in Order 01 in this matter, writing of PSE's initial CCA tariff, "We agree with the commenters that PSE's proposal is insufficient, and therefore

[1] RCW 70A.65.130(2)(a) (emphasis added).

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require the Company to find ways to increase its enrollment of eligible customers to ensure it complies with the CCA's requirement *to eliminate any additional cost burden associated with statutory implementation to low-income customers*."[2]

In order to meet PSE's statutory obligation, in its Order 01, the Commission directed PSE to "either identify additional KLI [known low-income] customers or automatically enroll low-income customers in a bill discount or bill assistance program, to reach a target of at least 70,000 participants by January 1, 2024."

3. PSE chose to auto-enroll, using third party data to "add customers to the CCA cap and invest income-eligible flag, beginning with customers estimated with the lowest-income."[3] While PSE acknowledged that Order 01 was directed as a CCA credit, PSE also "enrolled these customers into the sixth tier of [Bill Discount Rate][4] (receiving a five percent discount) for a temporary period of six months" and then invited them to attest their income level.[5] Despite receiving no response to contradict the third party information, PSE announced it was ending the auto-enrollment of more than 50,000[6] of these customers because those customers had not self-attested their income level.[7] PSE does not dispute that this actual will bring the total number of customers receiving the CCA credit far below the 70,000 minimum target in Order 01. Nor does PSE provide any evidence that the third party data was so unreliable that a non-response to an unsolicited request for information proves that these 50,000 customers are not low-income.

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[2] *In re The Energy Project, Commission Staff, and NW Energy Coalition to Compel PSE*, Docket UG-230470, Order 01, ¶ 20 (hereinafter, Order 01).
[3] PSE Response to Joint Petition ¶ 3 (filed Aug. 26, 2024) (hereinafter PSE Comments).
[4] PSE's Bill Discount Rate program is known as BDR.
[5] PSE Comments, ¶ 3.
[6] Joint Petition to Compel, at 9 fn.23 (filed Aug. 20, 2024). The Petition references "over 50,000" as the number, but explained that the number was approximately 53,000.
[7] PSE Comments, ¶ 11.

III. STANDARD OF REVIEW

4. The Commission engages in the same principles of statutory interpretation as courts, "looking first to the plain meaning of the words of statute, considering them in the context of the entire statute so as to harmonized and give meaning to every term."[8] The purpose of statutory instruction is to effectuate the legislature's intent.[9] If a statute is plain, free from ambiguity, and devoid of uncertainty, "there is no room for construction because the meaning will be discovered from the meaning of the wording of the statute."[10] Neither the court nor the Commission cannot add language to a clear statute.[11] In interpreting a statutory directive, the Commission's "view of a better policy outcome that follows from one interpretation or another" does not govern.[12] In the Commission's own words, when language is clear and unambiguous, "our inquiry ends."[13] While agencies like the Commission receive deference in interpreting regulations, a state statute controls.[14]

IV. ARGUMENT

5. Although the Commission asked the parties to discuss PSE's compliance with Order 01, the language of that Order explicitly refers to the CCA's statutory obligation to eliminate the additional cost burden "associated with statutory implementation." Accordingly, any analysis starts with interpretation of the CCA's directive. With that context, the Commission's order does not permit PSE to disenroll low-income customers below the minimum of 70,000 customers. The

[8] *In re Puget Sound Energy Declaratory Order of RCW 19.285.040(2)(h)*, Docket U-111663, Order 01, ¶ 22 (Dec. 1, 2011).
[9] *Pub. Util Dist. No. 2 of Pacific Count v. Comcast of Wash IV, Inc.*, 8 Wn. App. 2d 418, 449-450 (2019).
[10] *People's Org. for Wash. Energy Res v. Util. & Trans. Comm'n*, 101 Wn.2d 425, 429-30 (1984).
[11] *State v. Sims*, 193 Wn.2d 86, 95 (2019) ("Although imposing interest would comport with the statute's coercive purpose, such action would require adding language to the statutes, which this court cannot do.")
[12] *In re Petition of Puget Sound Energy*, Docket U-111663, Order 01, ¶ 22.
[13] *Id*.
[14] *Parkland Light & Water Co. v. Tacoma-Pierce County Bd. of Health*, 151 Wn.2d 428, 434 (2004).

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Commission should find that PSE's planned disenrollment of 50,000 customers violated Order 01 unless and until the Commission modifies its order.

A. The Climate Commitment Act Unambiguously Requires Utilities to Eliminate Cost Burdens on Low-Income Customers

6. Order 01 explicitly references the provisions in the CCA requiring a utility to eliminate additional cost burdens for low-income customers. The Commission explained the purpose of its directive was to push PSE "find ways to increase its enrollment of eligible customers to ensure it complies with the CCA's requirement."[15] Accordingly, the first step of analysis is to determine what the CCA requires.

7. Using mandatory and absolute language, the CCA requires gas utilities like PSE to, at a minimum, "eliminat[e] any additional cost burden to low-income customers from the implementation of this chapter."[16] While the legislature did not provide an explicit definition of low-income customers, meaning that what is "low" might be subject to some ambiguity, the word "income" is clear. Whether a customer is low-income must be defined in reference to how much income the customer earns. This is in fact, how low-income is defined in the Clean Energy Transition Act (CETA), an act that had already been enacted when the Legislature passed the CCA.[17] PSE acknowledged the applicability of an income-based definition by incorporating the CETA definition into its CCA Schedule 111.[18] The term "low-income" does not include a requirement that a customer must respond to an inquiry from the utility before qualifying for relief from a CCA related cost.

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[15] Order 01, ¶ 20.
[16] RCW 70A.65.130(2)(a) (emphasis added). Similarly for electric utilities, the CCA directs mitigation of "any rate impacts" for low income customers as a "first priority", denoting an intent to reduce the burden to zero. RCW 70A.65.120(4).
[17] RCW 19.405.020(24).
[18] PSE Tariff WN U-2, Schedule 111, ¶ 5 (filed June 9, 2023) (hereinafter Schedule 111).

8. The fact that it may be difficult to identify and track who is eligible to have the CCA burden eliminated does not alter the statutory directive. The legislature was patently aware that more information about low-income customers and communities was necessary; it established an environmental justice council with duties to, among other things, evaluate funding for vulnerable populations and low-income individuals.[19] Despite its ignorance of the exact parameters of the term, the Legislature did not modify the term "low-income" with the words "known" or "identified." Nor did the Legislature provide for requiring low-income customers to apply before being relieved of a CCA burden. The plain meaning of the statutory directive is that utilities like PSE must hold low-income customers harmless from CCA related costs whether they formally apply for assistance or not.

B. Order 01 Required PSE to Meet and Maintain a Minimum of 70,000 Customers Protected from CCA Burdens

9. In this context, the Commission's Order 01 can only be interpreted as directive to meet and maintain a minimum of 70,000 protected customers. The plain language of the Order gave PSE two alternatives—it could either identify additional "known low-income customers" or it could auto-enroll "low-income" customers. The fact that the same sentence used both "KLI" and "low-income customers" suggests an intentional distinction between the two options. If PSE chose to develop better, more precise information about its customers, it was free find "known" customers to achieve the target. But while PSE refines its list of "known" customers to reach the target it had another option, which was to auto-enroll "low-income customers." Here the absence of the qualifier "known" in this clause is dispositive. The Commission knew that auto-enrollment would use third party information that, while very good, was not perfect. Nonetheless, the

[19] RCW 70A.65.040(2)(e).

Commission removed the "known" limitation in that PSE is trying now to reassert from the auto-enrollment option.

10. Under either option, the target was a *minimum* of 70,000 consumers in order to comply with the CCA statutory requirement. The Commission's use of the "at least" to qualify the target number clarifies that the target number was not intended to be either a temporary target or a sufficient one. Significantly, as acknowledged by the Commission in Order 01, PSE believes that third party data shows that approximately 250,000 gas customers in its service territory would qualify as low-income customers under the statute.[20] While reaching 70,000 might have been endorsed as a waypoint on the way to statutory compliance, the Commission's language of requiring a minimum of 70,000 by January 2024 is consistent with the legislative directive to "eliminate" CCA burden for all low-income consumers. Though it may take time for PSE find all low-income customers, nothing in the Commission's order contemplates retrograde motion because of administrative hurdles. More pertinent, nothing in the statute permits PSE to impose CCA costs on customers it has credible evidence to believe are low-income.

C. PSE's Tariffs Do Not Excuse Compliance With the Statute or Order 01

11. To justify its decision, in part, PSE referred to its CCA, Schedule 111, and BDR, Schedule 23BDR, program tariffs. This argument fails for three reasons. First, the definition of low-income in the CCA tariff is consistent with defining low-income by reference to income rather than application status. Second, under plain language of Schedule 111 and Schedule 23BDR, auto-enrolled customers should be eligible for CCA relief even if they did not respond

[20] Order 01, ¶ 13.

to an inquiry for information. Third, as a matter of law, PSE cannot rewrite the statute to include "known" or "identified" to modify "low-income customers."

12. Initially, PSE's tariff borrows the definition of "low-income" from CETA, which defines low-income as no higher than 80 percent of the area median household income or 200 percent of the federal poverty level.[21] In other words, a consumer's income defines whether they are are "low-income." After income, PSE adds two alternative prongs for designating a low-income customer as "identified." First, a customer can have completed enrollment in the BDR program or have taken service in that program in the last 24 months so long as they were not disenrolled from program for failure to provide verification.[22] It is important to note that the phrase "completed enrollment" does not contain a requirement for income attestation; the consumer just needs to have "completed enrollment." Second, a customer can have received bill assistance under Schedule 129, the Low-Income Program. PSE's tariff states that the CCA credit is available to "Identified Low-Income Customers."[23]

13. Under the plain language of Schedule 111, the 50,000 auto-enrolled individuals would meet the definition of "Identified Low-Income Customers." This is because, in order to comply with the court order, PSE "auto-enrolled" consumers in the BDR program. By waiving the initial declaration requirement and enrolling them, each consumer has "completed" enrollment and has "taken service" in the BDR program for at least six months while auto-enrolled. Under the clear terms of Schedule 111, that makes these customers, "identified" and eligible for a CCA flag that prevents CCA costs being added to their bills.

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[21] RCW 19.405.020(24).
[22] PSE Comments, ¶12 fn.16.
[23] Schedule 111 ¶ 5. Greenhouse Gas Emission Cap and Invest Adjustment, Special Terms and Conditions. (effective November 1, 2023; Issued September 15, 2023; Advice No.: 2023-40).

14. PSE cannot claim that auto-enrolled individuals are being "disenrolled" for failure to provide verification. Initially, during the open public meeting, in response to questioning from Commissioner Rendahl, PSE conceded that a customer's failure to renew their auto-enrollment may not be the same as a customer being disenrolled for "failure to provide verification." But even under the terms of Schedule 23BDR, which contains the disenrollment provisions, customers have not been disenrolled.[24] They were neither selected during a random audit, nor were they requested to "re-declare" eligibility. They were enrolled without a declaration in the first place. In that context, a non-response to an unsolicited written or email communication is hardly evidence that the customer is not low-income. For those customers who knowingly applied to the BDR program and were aware that further attestation may be necessary, a non-response may be significant. Actual notice and a knowing refusal to respond is necessary to infer anything about customers who are ignorant of the stakes of a non-response. Additional outreach efforts are underway,[25] however, the effectiveness of these outreach strategies remain unknown. Moreover, and this is fatal to PSE's position, Schedule 23BDR does not make disenrollment mandatory, but discretionary.[26] Where PSE is maintaining the minimum required by Order 01, it can, and must, exercise its discretion to sustain these 50,000 individuals until it has actual evidence that they do not meet the income definition.

15. Finally, under established law, neither PSE nor the Commission can add language to a clear statute. There is modification of "low-income customers" in the statute such as "known" or "identified." While it is arguable that the level of "low" could be clarified, nothing in the

[24] PSE Schedule 23BDR, effective August 25, 2023 (Issued June 30, 2023; Advice No. 2023-27) (hereinafter PSE Schedule 23BDR).
[25] PSE, TEP, NWEC, Commission Staff Joint Outreach Plan Complying with Order 02 (filed Sept. 13, 2024).
[26] PSE Schedule 23BDR.

statutory language permits an application or certification as a threshold qualification for relief. Even courts cannot add language to statutes.[27] While adding an application requirement might be a possible sensible addition, the Commission defers to the plain language of the statute, and must do so here.[28]

V. CONCLUSION

16. The Public Counsel Unit of the Washington State Office of the Attorney General asks the Commission to determine that PSE's planned disenrollment of 50,000 customers would violate Order 01 and the CCA itself, and order PSE to continue either auto-enrolling using the best information it has available, or working to further refine its information about these customers until it can reach the 70,000 target set for it by the Commission.

DATED this 14th day of October 2024.

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[27] *Parkland Light & Water Co. v. Tacoma-Pierce County Bd. of Health*, 151 Wn.2d 428, 434 (2004).
[28] *In re Puget Sound Energy*, Docket U-111663, Order 01, ¶ 22.