

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UE-220216

POST-HEARING BRIEF OF COMMISSION STAFF

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I. INTRODUCTION

1 In 2021, Puget Sound Energy (PSE), after years of edging close to the brink of failure, exceeded the benchmark for Service Quality Index (SQI) No. 11, which measures the company’s average response time to certain customer calls. PSE now petitions for waiver of the resulting penalty.

2 The Commission should deny PSE’s petition. PSE cannot obtain mitigation of the penalty without showing unusual or extraordinary events for which PSE reasonably prepared. PSE’s own evidence largely indicates that the matters it cites as unusual or extraordinary events were not that. And PSE’s longstanding failure to address the increasing workloads of its electric first responders means that the company cannot claim to have reasonably prepared for the events of 2021.

II. BACKGROUND

3 In 1997, the Commission approved a settlement that paved the way for the merger of Puget Sound Power & Light and Washington Natural Gas, creating PSE.¹ To ensure that the newly formed company did not pursue efficiency at the expense of customer service, the settlement created PSE’s SQI program to “provide a specific mechanism to assure customers that they w[ould] not experience a deterioration in quality of service.”²

4 The SQI program requires PSE to measure its performance in specified areas against established benchmarks.³ Where PSE fails to meet an SQI benchmark, it must pay a penalty

¹ *In re Proposal by Puget Sound Power & Light Co.*, Dockets UE-951270 & UG-960195, Fourteenth Supplemental Order, at 30 (Feb. 5, 1997 (internal quotation omitted) (hereinafter “Merger Order”)); *id.* at 33.

² Roberts, Exh. AR-1T at 8-14 (internal quotations omitted); Dahl, Exh. CJD-1T at 4:9-15.

³ *See generally Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Inc.*, Dockets UE-011570 & UG-011571, Settlement Agreement, Exh. J at 2-3 (June 6, 2002); Merger Order at Appx. B at 11-14; Roberts, Exh. AR-1T at 3:8-10.

calculated pursuant to a Commission-adopted formula.⁴ PSE may petition for mitigation of the penalty “if it believes, in good faith, that it meets” the SQI program’s “mitigation standard,”⁵ which requires the company to show unusual or exceptional events for which it had reasonably prepared.⁶

5 SQI-11, one component of the program, measures the average time between when a customer calls PSE and when one of PSE’s electric first responders arrives.⁷ To meet the SQI-11 benchmark, PSE’s first responders must arrive, on average, no more the than 55 minutes after a customer calls the company.⁸

6 Importantly, not all response times are included within the SQI-11 average. “Performance measurement” for SQI-11 “is suspended on days that are excluded for [System Average Interruption Duration Index] and [System Average Interruption Frequency Index] performance measurement.”⁹ As the Commission has recognized, “[t]his means” that PSE may exclude from calculating its average response time for SQI-11 “days determined to have ‘[m]ajor events,’ where more than [five percent] of all of PSE’s customers are out of electric service (and associated carry forward days).”¹⁰

7 PSE’s SQI-11 performance has worsened over time. In the 2000s, PSE averaged better than a 50-minute response time thrice, and averaged 51 or 52 minutes four other times.¹¹

⁴ *Puget Sound Energy*, Dockets UE-011570 & UG-011571, Settlement Agreement, Exh. J at 3; *see generally id.* at Exh. J., Appx. 2, at 4-16; Merger Order at Appx. B at 12-13; Dahl, Exh. CJD-1T at 4:14-15.

⁵ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Inc.*, Dockets UE-011570 & UG-011571, Settlement Agreement, Exh. J at Appx. 2 at 3; Merger Order Appx. B at 13.

⁶ *Puget Sound Energy*, Dockets UE-011570 & UG-011571, Settlement Agreement, Exh. J, Appx. 2 at 3; Merger Order at Appx. B at 13; Roberts, Exh. AR-1T at 5:6-8.

⁷ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-072300 & UG-072301, Order 17, at 5-6 ¶ 10 (Nov. 10, 2010); Roberts, Exh. AR-1T at 3:16-20.

⁸ Murphy, Exh. PRM-1T at 5:1-3; *see* Roberts, Exh. AR-1T at 3:17-20, 4:15-5:2.

⁹ *In re Application of Puget Sound Energy, Inc.*, Docket UE-031946, Order 01, 3 ¶ 9, 14 ¶¶ 48-50, & App. J (May 11, 2004).

¹⁰ *In re Application of Puget Sound Energy, Inc.*, Docket UE-031946, Order 01, at 3 ¶ 9.

¹¹ Murphy, Exh. PRM-1T at 9, Table 2.

Between 2011 and 2020, PSE’s average response time exceeded 50 minutes, and it came very near to exceeding the 55 minute benchmark four times, with average times of 54 or 55 minutes in 2015, 2016, 2017 and 2019.¹²

8 In 2021, PSE failed to average a 55 minute response time. And this failure was not a small one: PSE’s response for SQI-11-eligible calls averaged 65 minutes. That 10 minute benchmark exceedance produced a penalty of \$613,636.¹³

9 PSE now petitions the Commission for waiver of the penalty.¹⁴

III. DISCUSSION

10 The Commission should deny PSE’s petition for mitigation (waiver) of the SQI-11 penalty. While PSE claims that the “unusual or exceptional circumstances” for which it was reasonably prepared mitigate its culpability for the SQI violation, the circumstances its cites were neither quantitatively or qualitatively unusual nor exceptional, and its long history of edging closer to failure indicates that it did not reasonably prepare for the events of 2021 through adaptive management of its workforce.

A. The Mitigation Standard

11 As noted, when the Commission approved the SQI program, it gave that program teeth by approving the automatic imposition of penalties where PSE failed to meet program benchmarks.¹⁵ But, recognizing that there may be cases where PSE was not culpable for the failure, the governing documents authorized PSE to seek mitigation of the penalty.¹⁶ To obtain that mitigation, PSE must show that the failure to meet the benchmark, and thus the imposition

¹² *Id.*

¹³ Roberts, Exh. AR-1T at 5:15-21.

¹⁴ *See generally In re Petition of PSE*, Docket UE-220216, Petition for Penalty Mitigation (Mar. 29, 2022).

¹⁵ Merger Order at Appx. A at 12-13.

¹⁶ Merger Order at Appx. A at 13.

of a penalty, “is due to unusual or exceptional circumstances for which PSE’s level of preparedness and response was reasonable.”¹⁷

12 The Commission’s disposition of PSE’s petition thus turns on whether PSE: (1) faced unusual or exceptional circumstances in 2021, and (2) reasonably prepared for those events. The answer to each of those questions is “no.”

B. PSE Fails to Show the Type of Unusual or Extraordinary Circumstances that Warrant Mitigation

13 PSE claims that unusual or extraordinary circumstances warrant mitigation, citing: (1) weather impacts, (2) COVID-19 impacts, (3) difficulties in hiring and retaining employees due to inflation, (4) workload strains, and (5) traffic. The Commission should decline to find any of these circumstances compelling for purposes of PSE’s petition.

1. 2021’s weather events do not justify mitigation.

14 PSE first notes that Western Washington suffered from extreme weather in 2021, and it argues those weather phenomena constitute exceptional events that justify mitigation.¹⁸ The Commission should reject that argument for two reasons.

15 First, the kind of weather events PSE cites should not serve to mitigate an SQI-11 exceedance. As noted, the formula used to determine PSE’s average response time for purposes of SQI-11 excludes major events.¹⁹ The weather events that PSE cites in its petition were major event days.²⁰ The SQI-11 calculation for 2021, accordingly, excluded 55 days’ worth of response times associated with those events.²¹ Allowing PSE to exclude those days and then claim mitigation related to them allows the Company double credit for any weather-related

¹⁷ Merger Order at Appx. A at 13.

¹⁸ Murphy, Exh. PRM-1T at 10:2-13:10.

¹⁹ Roberts, Exh. AR-1T at 6:15-20.

²⁰ Murphy, Exh. PRM-1T at 12:4-7; see Roberts, Exh. AR-1T at 6:6-20.

²¹ Murphy, Exh. PRM-1T at 12:17-19.

difficulties.²² That double credit undercuts the purposes of the SQI program, the maintenance of acceptable service quality, and the Commission should reject PSE’s attempt to inject it into the SQI program’s jurisprudence.

16 Second, and regardless, the Commission should decline to find that PSE confronted exceptional weather during 2021. While PSE cites various weather events affecting the Puget Sound region during 2021,²³ its own evidence explains that 2021’s weather “unfolded the way climate scientists have been predicting for decades.”²⁴ 2021’s weather was thus not aberrant: it was instead the kind of weather year for which PSE should have long planned.²⁵

2. **The effects of COVID-19 do not warrant mitigation.**

17 PSE next claims that in 2021 it “encountered evolving challenges related to the ongoing COVID-19 pandemic that affected” its “employees” and its “ability to respond to customer calls.”²⁶ The Commission should decline to mitigate the penalty here based on the impacts of COVID-19, for two reasons.

18 First, the types of challenges that PSE cites are not qualitatively unusual or exceptional. Staff does not here attempt to minimize the hardships wrought by COVID – Staff lived through them just as PSE did. But, while COVID-19 was novel when it emerged in 2020, its impacts, the ones that PSE claims justify mitigation, are the effects of almost every illness – missed work time on the part of its workforce, whether to provide self-care or to provide care for ill family members.²⁷

²² Roberts, Exh. AR-1T at 7:10-11.

²³ See generally Murphy, Exh. PRM-1T at 11:19-12:2.

²⁴ Murphy, Exh. PRM-6 at 1.

²⁵ Roberts, Exh. AR-1T at 8:4-11; Dahl, Exh. CJD-1T at 12:8-18.

²⁶ Murphy, Exh. PRM-1T at 14:3-5.

²⁷ See Murphy, Exh. PRM-1T at 14:5-8, 14:20-15:2.

19 Second, the challenges that PSE cites are not quantitatively unusual or exceptional either. PSE tracked the number of hours employees lost to COVID-19.²⁸ The number averaged out to less than three days per employee for 2021.²⁹ PSE does not explain how three sick days, per employee, amounts to an unusual or exceptional event.³⁰ And the Commission should not find that it is.³¹

20 Indeed, the Commission has already determined that the impacts of the COVID-19 pandemic do not warrant the mitigation of penalties. In 2022, the CenturyLink Companies sought mitigation of a penalty assessed against them, claiming that personnel difficulties caused by the pandemic justified mitigation.³² The Commission rejected that argument after concluding, among other things, “that personnel shortages due to the COVID-19 pandemic did not relieve the Companies of their” regulatory obligations.³³ PSE’s argument here is fundamentally the same as the CenturyLink Companies’ and it should receive similar treatment: the denial of its petition.³⁴

3. **Inflationary impacts on hiring and retention do not justify mitigation.**

21 PSE next claims that inflation hindered its ability to hire and retain staff, justifying mitigation. Specifically, PSE claims that inflation in the Seattle-metro area created difficulties for the company in staffing local first responder positions.³⁵ That argument lacks merit for two reasons.

²⁸ Roberts, Exh. AR-1T at 8:17-18.

²⁹ Roberts, Exh. AR-1T at 9:1-4.

³⁰ Roberts, Exh. AR-1T at 9:4-5.

³¹ Roberts, Exh. AR-1T at 9:8-9.

³² *In re Penalty Assessment Against the CenturyLink Companies*, Docket UT-220397, Order 02, 2 ¶ 6 (Nov. 17, 2022).

³³ *Id.* at 3 ¶ 19; *see id.* at 5 ¶ 19.

³⁴ *Stericycle of Wash., Inc. v. Wash. Utils. & Transp. Comm’n*, 190 Wn. App. 74, 93, 359 P.3d 894 (2015) (“[a]gencies should not treat similar situations differently and should strive for equal treatment.”).

³⁵ Murphy, Exh. PRM-1T at 14:11-15:2.

22 First, PSE’s argument is irrelevant. PSE’s ability to seek mitigation is based on the idea that, absent some factors beyond its control that it reasonably prepared for, it would meet the SQI benchmarks.³⁶ Here, although PSE focuses its argument on the 73-minute average response time in King County, it admits, as it must, that its response times outside of King County averaged 60 minutes.³⁷ That admission renders mitigation unwarranted here – even if its problems in King County were eliminated from consideration, PSE would *still* fail to comply with the SQI-11 benchmark.³⁸

23 Second, PSE fails to show that the company experienced an unusual amount of first responder turnover in 2021.³⁹ Indeed, the data PSE provides on rebuttal shows that PSE lost the same number of first responders in 2016 (seven), and nearly the same number in 2014 (five), 2017 (five), and 2020 (six).⁴⁰

4. PSE’s electric first responders’ increasing workloads do not justify mitigation.

24 PSE also claims that high demand on first responders should justify mitigation, citing what it characterizes as high levels of both planned and unplanned outages.⁴¹

25 The number of planned outages should not justify mitigation. As PSE admits, the SQI-11 measurement does not include planned outages, meaning that they are not directly relevant here.⁴² Recognizing as much, PSE contends that the planned outages increased the strain on its first responders, and that this contributed indirectly to its inability to meet SQI-11.⁴³ But the

³⁶ Merger Order at Appx. A at 13.

³⁷ Murphy, Exh. PRM-1T at 16:14-18.

³⁸ Roberts, Exh. AR-1T at 10:4-8; *see* Murphy, Exh. PRM-1T at 16:14-18.

³⁹ Roberts, Exh. AR-1T at 9:18-19.

⁴⁰ Murphy, Exh. PRM-1T at 10 Table 1.

⁴¹ Murphy, Exh. PRM-1T at 18:5-21:10.

⁴² Murphy, Exh. PRM-1T at 17:15-18; Roberts, Exh. AR-1T at 10:12-14.

⁴³ Murphy, Exh. PRM-1T at 17:15-18.

number of planned outages has been trending up for years,⁴⁴ and the Commission should therefore not consider the increase in planned outages extraordinary or unusual.⁴⁵

26 Nor does the number of unplanned outages in 2021 justify mitigation. While PSE did experience a significant number of unplanned outages in 2021, it admits that fully 5,735 of the 19,400 unplanned outages, nearly 30 percent of the total, were excluded from the SQI-11 calculation because they occurred on major event days.⁴⁶ With those calls removed, 2021 looks like an average year in terms of unplanned outages,⁴⁷ not an unusual or exceptional one.

5. Other factors, such as traffic, do not warrant mitigation.

27 Finally, PSE indicates that traffic patterns contributed to its SQI-11 failure.⁴⁸ They do not.

28 Initially, PSE cites heavy traffic volumes as a reason for its failure to meet SQI-11. But, as PSE notes, 2021 saw “traffic volumes” returned “to pre-COVID-19 pandemic levels.”⁴⁹ A return to normal traffic volumes, by definition, cannot constitute an unusual or exceptional circumstance.

29 PSE also suggests that its operations were affected by “extreme travel time events”⁵⁰ and claims that “[h]ad these extreme travel events not occurred, PSE’s SQI-11 would have been six minutes lower.”⁵¹ But that argument is not compelling, for two reasons. First, PSE acknowledges that more than one-third of the extreme events occurred during Fall 2021’s extreme weather

⁴⁴ Dahl, Exh.-CJD-1T at 18:10-12; *see* Murphy, Exh. PRM-14T at 10, Table 1.

⁴⁵ Dahl, Exh. CJD-1T at 19:1-2.

⁴⁶ Murphy, Exh. PRM-1T at 19:12-20:1.

⁴⁷ *See* Murphy, Exh. PRM-14T at 19, Figure 2.

⁴⁸ Murphy, Exh. PRM-1T at 28:1-29:11.

⁴⁹ Murphy, Exh. PRM-1T at 28:5-8; *see* Dahl, Exh. CJD-1T at 21:6-23:3.

⁵⁰ Murphy, Exh. PRM-1T at 28:18-20.

⁵¹ Murphy, Exh. PRM-1T at 29:5-6.

events, meaning those should have already been excluded.⁵² PSE thus seeks triple credit for weather-related SQI impacts. Regardless, even if the Commission excluded all extreme travel time incidents, PSE would still fail to meet the SQI-11 benchmark.⁵³

C. PSE did not Reasonably Prepare for the Events of 2021

30 PSE also contends that it reasonably prepared for what occurred in 2021, and that the Commission should therefore mitigate the penalty assessed against it. PSE did not, and the Commission, accordingly, should not.

31 As noted, the Commission implemented the SQI program to prevent PSE’s management from seeking money-saving efficiencies at the expense of acceptable levels of service.⁵⁴ The continued existence of the SQI program reflects the Commission’s ongoing intent that PSE staff itself efficiently, but not so leanly that customers suffer from degraded service quality.⁵⁵

32 PSE’s operating environment has changed significantly over the last few years, but, despite those changes, PSE has done little or nothing to update its staffing or management practices to avoid service quality deterioration. Over the last decade, more people have moved to PSE’s service territory.⁵⁶ Over the last decade, more customers have required planned outages that, until recently, only PSE’s first responders could effect.⁵⁷ And over the last decade, increasingly frequent weather events have caused more and more outages every year across the

⁵² Murphy, Exh. PRM-1T at 292-4.

⁵³ See *Murphy*, Exh. PRM1-T at 29:6-8 (explaining that the extreme travel time events impacted response by six minutes, on average).

⁵⁴ Merger Order at 30; Dahl, Exh. CJD-1T at 4:9-15.

⁵⁵ See *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-170033 & UG-170034, Order 08, 79 ¶ 231 (Dec. 5, 2017).

⁵⁶ PSE presents data for 2021 population growth. Murphy, Exh. PRM-1T at 15:11-16. But population growth in the Seattle area is not a new phenomenon. Wikipedia: Seattle, available at <https://en.wikipedia.org/wiki/Seattle> (last visited Mar. 13, 2023) (Seattle’s “growth rate of 21.1% between 2010 and 2020 made it one of the country’s fastest-growing large cities”).

⁵⁷ Murphy, Exh. PRM-1T at 18, Figure 1.

industry.⁵⁸ Yet, despite all of that, PSE took no steps to adapt to those changes until well into 2021. It did not expand its first responder ranks.⁵⁹ It did not take steps to retain first responders.⁶⁰ And it did not engage in adaptive management to maximize the productivity of the first responders it had on staff.⁶¹

33 PSE's inaction in this regard constantly put the company on the brink of failing to meet the SQI-11 benchmark. In the last six years, PSE failed once (averaging 65 minutes in 2021),⁶² all but failed twice (averaging a 55-minute response time in 2016 and 2017),⁶³ and nearly failed two other times (averaging a 54-minute response time in 2015 and 2019).⁶⁴ Indeed, its average response time between 2016 and 2020 averaged 53.4 minutes,⁶⁵ meaning that on a typical call, the company had just over a minute-and-a-half buffer standing between its response and failing to meet the SQI-11 benchmark.

34 Given those trends and its lack of a response, PSE's inability to meet SQI-11 was almost inevitable.⁶⁶ The Commission should, accordingly, decline to find that PSE was reasonably prepared for the events of 2021 and deny its petition for mitigation.

D. The Steps PSE has Taken Since 2021 to Improve SQI-11 Performance Should not Mitigate the Penalty

35 Finally, PSE contends that it has "respon[ded] to the challenges of 2021" through several steps,⁶⁷ seemingly indicating that the Commission should mitigate the penalty because it has taken remedial action. The Commission should not grant its petition based on those grounds.

⁵⁸ Dahl, Exh. CJD-1T at 12:8-18; *see* Roberts, Exh. AR-1T at 8:4-9.

⁵⁹ Roberts, Exh. AR-1T at 12:2-3; Dahl, Exh. CJD-1T at 20:3-11; Murphy, PRM-1T at 23:6-8.

⁶⁰ *See* Dahl, Exh. CJD-1T at 14:5-8.

⁶¹ *See* Dahl, Exh. CJD-1T at 19:7-20:11.

⁶² Murphy, Exh. PRM-1T at 9, Table 2.

⁶³ Murphy, Exh. PRM-1T at 9, Table 2.

⁶⁴ Murphy, Exh. PRM-1T at 9, Table 2.

⁶⁵ Roberts, Exh. AR-1T at 8:2-4.

⁶⁶ *Cf.* Dahl, Exh. CJD-1T at 24:10-25:9.

⁶⁷ Murphy, Exh. PRM-1T at 29:12-31:11.

36 While Staff applauds PSE's efforts to ensure that its service meets the benchmarks, those steps do not make right the failures that defined PSE's service in 2021, and thus should not provide a basis for mitigating the penalty. PSE's steps are instead aimed at preventing recurrence of the SQI-11 failure in future years, and PSE's shareholders and customers will see the benefits of the steps in those years through adequate service and an absence of penalties.

IV. CONCLUSION

37 Despite concerning, long-term trends, PSE did nothing to alter its practices to address long-standing flirtation with SQI-11 failure. It did not reasonably prepare for the events of 2021, events that were not in-and-of-themselves unusual or exceptional. The Commission should deny its petition for mitigation.

Respectfully submitted, this 24th day of May, 2023.

/s/ Jeff Roberson, WSBA No. 45550
Senior Assistant Attorney General
Office of the Attorney General
Utilities and Transportation Division
P.O. Box 40128
Olympia, WA 98504-0128
(360) 522-0614
jeff.roberson@ag.wa.gov