

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 COMMISSION STAFF ON PUGET SOUND ENERGY'S
COMPLIANCE WITH ORDER 01**

October 14, 2024

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I. INTRODUCTION

1 Commission Staff maintains that Puget Sound Energy's proposal to allow enrollment to expire for more than 50,000 presumed low-income customers from its Bill Discount Rate (BDR) program without adequate outreach violates the Utilities and Transportation Commission's Order 01 in this docket. Staff is satisfied with the outreach approach that PSE, Staff, The Energy Project (TEP), and NW Energy Coalition (NWEC) agreed to after the August 29, 2024, Open Meeting,¹ and believes that those efforts will increase the number of customers who will self-attest to maintain their BDR program benefits.

2 Staff further maintains that PSE's proposal to remove the Climate Commitment Act (CCA) flag and credit from presumed low-income customers identified through Experian data if those customers do not self-attest violates Order 01. Staff believes that Order 01 requires low-income customers who have been identified as known low-income or through third-party Experian data retain their CCA flag and credit for a two-year period, consistent with PSE's CCA Tariff.

II. BACKGROUND

3 PSE filed a tariff revision in this docket which would allow the Company (1) to recover costs associated with CCA allowances and (2) to pass credits back from allowance auction proceeds to certain customers.² The Commission issued Order 01 approving PSE's tariff revision, subject to several conditions.³

¹ *Wash. Utils. & Transp. Comm'n. v. Puget Sound Energy*, Docket UG-230470, Joint Outreach Plan (Sept. 13, 2024).

² PSE Tariff WN U-2, Gas Schedule 111.

³ *Wash. Utils. & Transp. Comm'n. v. Puget Sound Energy*, Docket UG-230470, Order 01, Allowing Tariff Revisions to Become Effective Subject to Conditions (Aug. 3, 2023).

4 One condition required PSE to work with its Low-Income Advisory Committee (LIAC) to either identify additional known low-income customers or to automatically enroll low-income customers in a bill discount or bill assistance program.⁴ The Commission set an ambitious target of reaching 70,000 customers by January 1, 2024.⁵ The Commission reasoned that PSE’s original proposal was insufficient and that PSE should be required to “find ways to increase its enrollment of eligible customers to ensure that it complies with the CCA’s requirement to eliminate any additional cost burden associated with statutory implementation to low-income customers.”⁶

5 PSE confirmed at its January LIAC meeting that it had over 70,000 low-income customers receiving CCA credits, eliminating any additional cost burden associated with CCA implementation for those customers.⁷ This commendable achievement was accomplished through using third-party Experian data to add customers to the CCA income-eligible flag.⁸ These customers were also temporarily enrolled into the BDR program;⁹ however, PSE planned to remove these customers from both the BDR program and the CCA flag if they did not complete the enrollment process by providing a self-attestation of eligibility within six months.¹⁰

6 Staff and other LIAC members were not aware that over 50,000 of the 70,000 customers would lose both BDR program benefits and the CCA flag if they did not self-attest until the May 2024 LIAC meeting.¹¹ Staff requested that PSE extend enrollment of these

⁴ Order 01, ¶ 20.

⁵ *Id.*

⁶ *Id.* citing RCW 70A.65.130(2)(a).

⁷ *Wash. Utils. & Transp. Comm’n. v. Puget Sound Energy*, Docket UG-230470, Staff Memo at 2 (August 29, 2024); *Wash. Utils. & Transp. Comm’n. v. Puget Sound Energy*, Docket UG-230470, Order 02, ¶ 6 (August 30, 2024).

⁸ Order 02, ¶ 8.

⁹ *Id.*

¹⁰ Order 02, ¶ 9.

¹¹ Staff Memo at 2.

customers beyond the original six-month period, and PSE agreed to look into the options available.¹²

7 Days after the May 2024 LIAC meeting, Staff, The Energy Project (TEP), and NW Energy Coalition (NWECC) met with PSE to discuss concerns about PSE's intended action. TEP reiterated the request that PSE extend the enrollment period and further asked PSE to conduct additional outreach to encourage customers to self-attest.¹³ Staff understood PSE to express its verbal support for TEP's request.¹⁴

8 No June LIAC meeting was held. Staff acknowledged PSE's compliance filing, which described how it was able to meet the 70,000 customers threshold set in Order 01. Staff stated:

This compliance filing demonstrates PSE has achieved the target outlined in UG-230470, Order 01, Paragraph 20; PSE confirms as of Jan. 1, 2024, it had enrolled 70,641 customers as identified low-income or potential low-income. PSE has flagged all 70,641 accounts as eligible for the cap-and-invest credit under the Climate Commitment Act.¹⁵

Staff based its compliance letter on an understanding that customers would be afforded time beyond the initially planned six months to self-attest.¹⁶

9 PSE informed the LIAC members in July 2024, after Staff submitted its compliance acknowledgement letter, that it would not extend the enrollment period for the customers identified through third-party data.¹⁷ PSE confirmed that it would remove these customers from both the BDR program and the CCA flag.¹⁸

¹² Staff Memo at 2.

¹³ Staff Memo at 3.

¹⁴ Staff Memo at 3.

¹⁵ *Wash. Utils. & Transp. Comm'n. v. Puget Sound Energy*, Docket UG-230470, Staff Acknowledgement Letter at 1 (June 12, 2024).

¹⁶ Staff Memo at 4.

¹⁷ Staff Memo at 2 – 3.

¹⁸ Staff Memo at 3.

10 Staff, TEP, and NWECC filed a petition seeking compliance with Order 01 after attempting to work with PSE to resolve the dispute. The Commission declined to rule on the Joint Petition at its August 29, 2024, Open Meeting, but did find that it was appropriate to extend BDR enrollment and for PSE to continue efforts to reach out to the customers who have not self-attested eligibility.¹⁹ Additionally, the Commission asked for additional briefing regarding “whether PSE would violate Order 01 by declining to continue enrollment for those customers who failed to self-attest to eligibility.”²⁰

11 Staff, TEP, and NWECC came to agreement regarding outreach efforts with PSE, and PSE filed the agreed outreach process in this docket on September 13, 2024.²¹

III. ALLOWING THE MAJORITY OF CUSTOMERS AUTO-ENROLLED THROUGH THIRD-PARTY DATA TO LOSE THEIR CCA FLAG AND CREDIT WOULD VIOLATE ORDER 01

12 Order 01 required PSE to either identify additional known low-income customers or automatically enroll low-income customers in a bill discount or bill assistance program. Known low-income customers are defined as “those currently taking service under an applicable Bill Discount Rate schedule, those receiving bill assistance under Schedule 129 - Low Income Program, or those who have received bill assistance under Schedule 129 within the last 24 months.”²² Meeting the 70,000-customer threshold by only identifying known low-income customers would be difficult because the pool of known low-income customers is limited to those customers who PSE has already identified and enrolled in its assistance programs. In essence, PSE had to find a way to identify presumably low-income customers

¹⁹ Order 02, ¶¶ 28, 31.

²⁰ Order 02, ¶ 30.

²¹ Joint Outreach Plan.

²² Order 01, ¶ 5.

and to auto-enroll them in either a bill discount or bill assistance program to comply with Order 01.

13 PSE chose to use third-party data from Experian to identify presumed low-income customers. PSE has previously relied on Experian data when implementing emergency COVID assistance programs.²³ Experian data is generally understood to be reliable. Moreover, it is unlikely that those identified by third-party data would experience a significant change in circumstances to warrant removing the CCA flag and credit.²⁴

14 Although Order 01 set a deadline for PSE to meet the 70,000-customer threshold, the threshold cannot be a single point-in-time requirement due to the CCA. Under the CCA, utilities are required to consign a certain percentage of no-cost allowances to auction for the benefit of customers.²⁵ That benefit to customers must include “at minimum eliminating any additional cost burden to low-income customers from the implementation of this chapter.”²⁶ To comply with the CCA, the ambitious 70,000-customer threshold set by the Commission must be an ongoing goal to achieve eliminating the cost burden on low-income customers.

15 Notably, the 70,000-customer threshold is lower than the estimated 250,000 low-income customers in PSE’s service territory.²⁷ Rather, Order 01 required PSE to go beyond

²³ *In re Puget Sound Energy’s Supplemental Crisis Affected Customer Assistance Program (CACAP)*, Dockets UE-210792 and UG-210793, Staff Memo at 2 (Nov. 13, 2021) (“PSE proposes to automatically distribute \$34.587 million to help customers in arrears. Eligibility is dependent upon (1) household income below 200 percent of the federal poverty level and (2) existence of an arrear on a customer’s account. To determine eligibility, PSE will purchase Experian data to estimate household income. PSE will estimate household size based on the average size of households in the customers census block. The benefit will be automatically applied to a customer account. The maximum benefit will be \$2,500, consistent with the former rounds of CACAP. PSE will provide an opt-out option.”)

²⁴ *See*, Wash. Utils. & Transp. Comm’n August 29, 2024, Open Meeting recording at 03:19:12 (“Yeah, thank you. Chair, this is Andrew Roberts with Commission staff. I was not intending to speak today, but the conversation earlier did touch on the accuracy of the third-party data. I have not been involved with this particular situation, but the Commission has previously approved an auto enrollment using third party Experian data. And I did ask PSE in that case and it indicated that it was 98% confident that that data was accurate.”). Recording available at: <https://wutc.app.box.com/v/OpenMeetings/file/1638438626392>

²⁵ RCW 70A.65.130(2)(a).

²⁶ *Id.*

²⁷ *See* Order 01, ¶ 13.

its original proposal of targeting 10,000 customers to reach more low-income customers to comply with the CCA.²⁸ This recognizes that reaching the full statutory goal of eliminating the cost burden on low-income customers will happen over time and not all at once. At the same time, Order 01 requires PSE to take a significant step towards meeting that goal.

16 Further, allowing customers identified through Experian data to continue to receive the CCA flag and credit for two years after their identification, even if they do not respond to PSE's outreach, is necessary to meeting the statutory goal of eliminating the cost burden on low-income customers. Before Order 01, PSE's efforts to reach low-income customers and connect them with assistance had not resulted in sufficient saturation to comply with the CCA. However, PSE was able to achieve much better results using Experian data to identify presumed low-income customers.

17 Conversely, keeping customers connected to the BDR program in the absence of self-attestation is not necessary or statutorily required.²⁹ The BDR program is certainly an important tool that can be used to reduce the impact of CCA compliance on low-income customers, but it is not the only tool. As the Commission recognized in Order 01, PSE may enroll low-income customers to the BDR program or other bill assistance programs.³⁰

18 As a result, PSE would violate Order 01 if it declines to continue the CCA flag and credit for those customers identified through Experian data as low-income, even if those customers do not self-attest. These customers should continue to receive the CCA flag and

²⁸ Order 01, ¶ 20 with footnote 3. ("We agree with the commenters that PSE's proposal is insufficient, and therefore 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." "This target is inclusive of PSE's as-filed target of 10,000 customers for this period.")

²⁹ Allowing customers to be disenrolled from the BDR program raises other issues, which will be discussed in the next section.

³⁰ Order 01, ¶ 20; *See also*, Schedule 111, Definitions, Original Sheet No. 1111-B.

credit for two years after their identification. Disenrollment from the BDR program, if PSE chooses to take this optional step, should only occur if customers do not self-attest after PSE conducts appropriate outreach. The outreach agreed to by PSE, Staff, TEP, and NWECA is appropriate outreach. If customers are removed from the BDR program, PSE should continue to conduct outreach to enroll customers receiving the CCA credit into appropriate assistance programs.

IV. FURTHER DISCUSSION REGARDING PSE'S TARIFF LANGUAGE NEEDED

19 Schedule 111, Greenhouse Gas Emissions Cap and Invest Adjustment allows PSE to “implement a surcharge to recover the costs and to provide benefits through credits to certain Customers from the Company’s implementation of” the CCA.³¹ Schedule 111 defines Identified Low-Income Customer as follows:

- A Customer whose adjusted household income does not exceed the higher of 80 percent of area median household income or two hundred percent of the federal poverty level, adjusted for household size (consistent with RCW 19.405.020(25)); AND who also:
- 1) Has successfully completed the enrollment process to take service under an applicable Bill Discount Rate schedule, or has taken service under an applicable Bill Discount Rate schedule within the last 24 months, as long as the Customer has not been de-enrolled for failure to provide eligibility verification; OR
- 2) Is receiving bill assistance under Schedule 129 – Low Income Program or has received bill assistance under Schedule 129 within the last 24 months.³²

20 During the Open Meeting discussion, PSE represented that the customers at issue here have not been enrolled in the BDR program, but that they were prequalified by being identified through Experian data. The current tariff language does not allow this interpretation, and customers who are disenrolled (or otherwise removed) from the BDR

³¹ Schedule 111, Purpose, Original Sheet No. 1111.

³² Schedule 111, Definitions, Original Sheet No. 1111-B.

program for failure to self-attest are at risk for being barred from receiving the CCA flag and credit going forward. This outcome is concerning to Staff.

21 Because of this, and because a potentially large number of customers receiving the CCA flag and credits may be disenrolled (or otherwise removed) from the BDR program due to lack of self-attestation, Staff requests that the Commission direct PSE to work with its LIAC to evaluate and modify as needed the definition of “Identified Low-Income Customer.”

22 CCA compliance is new to all parties, and issues with the tariff language were not apparent until now – when parties understand the impact the language has on customers upon implementation. Potentially disqualifying a large group of people from receiving the CCA flag and credits when those people are also very likely to be low-income customers is contrary to the CCA’s directive to reduce and eliminate the cost burden on low-income customers. This would be an inequitable result. As we better understand how to implement the CCA, parties should be encouraged to make changes as needed.

V. COMPLIANCE ACKNOWLEDGMENT LETTER

23 Staff submitted a letter in this docket acknowledging that PSE had complied with Order 01 by enrolling over 70,000 customers in its BDR program and flagging those customers as eligible to receive the cap-and-invest credit under the CCA.³³ Based on Staff’s understanding of PSE’s proposal to both remove those customers who have not self-attested from the BDR program and to remove the CCA flag, Staff does not believe that PSE has complied with Order 01. Staff believes that compliance with Order 01 requires that PSE provide BDR participants identified through Experian data sufficient outreach before removing them from the program due to lack of self-attestation. Compliance with Order 01

³³ Staff Acknowledgement Letter.

further requires PSE to not remove the CCA flag from those customers identified through Experian data, even if they do not self-attest in response to PSE’s outreach. Staff believes that compliance with Order 01 requires that the CCA flag remain in place for 24 months.

VI. CONCLUSION

24 Staff requests that the Commission require PSE to confirm that it has performed the outreach agreed to by PSE, Commission Staff, TEP, and NWECA and that PSE report the outcome of that outreach, including whether and how many customers were removed from the BDR program due to no self-attestation. Staff notes that removing those customers from the BDR program is not mandatory, but that the Company may do so.

25 Staff requests that the Commission prohibit PSE from removing the CCA flag from any customer identified through Experian data for 24 months, even if those customers do not self-attest and are removed from the BDR program.

26 Staff requests that the Commission direct PSE to work with its LIAC to evaluate and modify, if necessary, its definition of “Identified Low-Income Customer.”

27 Finally, if the Commission finds that the 70,000-customer threshold is not a single point-in-time benchmark, Staff asks that the Commission vacate the Compliance Acknowledgement Letter, dated June 24, 2024. The Commission should require a new compliance filing from PSE regarding the 70,000-customer threshold that shows that it provided additional outreach, the outcome of that outreach, and confirms that it has not removed the CCA flag.

DATED this 14th day of October, 2024.

Respectfully submitted,

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