

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

PUGET SOUND ENERGY

For Penalty Mitigation Associated with
Service Quality Index No. 11-Electric
Safety Response Time Annual
Performance for Period Ending December
31, 2021.

DOCKET UE-220216

OPENING BRIEF OF PUBLIC COUNSEL

May 24, 2023

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I. INTRODUCTION

1. On March 29, 2022, Puget Sound Energy (PSE) filed a Petition for Penalty Mitigation (Petition) for failure to meet the 2021 performance benchmark for Service Quality Index Number 11-Electric Safety Response Time (SQI-11).¹ Under the existing penalty mechanism, PSE should incur a \$613,636 penalty for exceeding benchmark average response time of 55 minutes by 10 minutes.² PSE requested the Commission to waive the penalty entirely.³ PSE, however, failed to demonstrate that the “penalty is due to unusual or exceptional circumstances for which PSE’s level of preparedness and response was reasonable,” as required.⁴ PSE did not take adequate or reasonable steps to achieve the 55-minute benchmark emergency response time in 2021. The Public Counsel Unit of the Washington State Office of the Attorney General (Public Counsel) opposes PSE’s petition. Public Counsel recommends the Commission deny PSE’s request and enforce the full \$613,636 penalty with no amount waived or suspended.

II. BACKGROUND

2. PSE’s Service Quality Index Program (SQI Program) was originally implemented by the Commission order approving the merger of Washington National Gas Company and Puget Sound Power & Light Company.⁵ The program was developed as part of a multi-party settlement stipulation (Merger Stipulation) to resolve the merger and was intended to “protect customers of

¹ Petition for Penalty Mitigation (filed in this Docket on March 29, 2022) (hereinafter ‘Petition’).

² *Id.* ¶ 1.

³ *Id.* ¶ 49.

⁴ *Id.* ¶¶ 12–13.

⁵ See Patrick R. Murphy, Exh. PRM-3 at 32.

PSE from poorly-targeted cost cutting”⁶ as a result of the merger and “provide a specific mechanism to assure customers that they will not experience a deterioration in quality of service.”⁷ Failure to meet SQI benchmarks result in financial penalties to PSE.⁸ SQI-11 was added to the SQI Program through PSE’s 2001 General Rate Case to measure the average number of minutes from customer call to arrival of electric first responder.⁹ SQI-11 was subsequently amended, and the current mechanics of SQI-11 were established in 2004.¹⁰ PSE’s SQI-11 performance benchmark is an annual average response time of 55 minutes to ensure the Company addresses electric system emergencies as quickly as possible. In its Petition for Mitigation, PSE states that the Company’s 2021 SQI-11 annual performance was an overall average of 65 minutes.¹¹ Exceeding the benchmark by 10 minutes should result in a penalty of \$613,636.¹²

III. ISSUES PRESENTED AND LEGAL STANDARDS

3. PSE readily admits to exceeding the SQI-11 Electric Safety Response Time benchmark of 55 minutes by 10 minutes.¹³ The threshold issue in this proceeding is therefore whether PSE’s circumstances meet the standard for mitigation of the penalty. Under the Commission order approving the PSE merger, the standard to be applied to a mitigation petition is “that the penalty

⁶ *Id.*

⁷ *Id.* at 30.

⁸ *See id.*

⁹ Petition, ¶ 8.

¹⁰ *Id.* ¶ 9; *see also* Petition, ¶ 10 (for additional details about the mechanics of SQI-11).

¹¹ Petition, ¶ 1.

¹² *Id.*

¹³ *Id.*

is due to unusual or exceptional circumstances for which PSE's level of preparedness and response was reasonable."¹⁴

4. While the Merger Stipulation and subsequent updates to the SQI Program allow PSE to file a petition for mitigation of penalties, the parties acknowledged that the Commission would assess penalties and resolve mitigation petitions in a separate procedure.¹⁵ The level of penalties for SQI-11 is calculated according to the number of minutes PSE exceeds the electric safety response time benchmark.¹⁶ It is unclear however, whether parties to the Merger Stipulation contemplated partial mitigation of penalties or how the Commission would resolve mitigation petitions. Subsequent to the Merger Stipulation the Commission issued a policy statement to articulate the Commission's policies relating to its authority to enforce orders, statutes, rules, and tariffs (Policy Statement).¹⁷ Under the Enforcement Policy of the Washington Utilities and Transportation Commission (Policy Statement) the Commission considers the following 11 factors to determine whether an enforcement action is appropriate, and if so, what level of penalty to impose.¹⁸

- (1) How serious or harmful the violation is to the public;
- (2) Whether the violation is intentional;
- (3) Whether the company self-reported the violation;
- (4) Whether the company was cooperative and responsive;
- (5) Whether the company promptly corrected the violations and remedied the impacts;
- (6) The number of violations;
- (7) The number of customers affected;
- (8) The likelihood of recurrence;
- (9) The company's past performance regarding compliance, violations, and penalties;

¹⁴ Murphy, Exh. PRM-3 at 13; Exh. PRM-4 at 21.

¹⁵ Murphy, Exh. PRM-3 at 13; Exh. PRM-4 at 21.

¹⁶ Murphy, Exh. PRM-4 at 18.

¹⁷ *In re Enf't Pol'y of the Wash. Utils. & Transp. Comm'n*, Docket A-120061, Enforcement Policy (Jan. 7, 2013) (hereinafter 'Policy Statement').

¹⁸ Policy Statement, ¶ 15.

- (10) The company’s existing compliance program; and
- (11) The size of the company.

IV. THE COMMISSION SHOULD DENY PSE’S MITIGATION PETITION

5. PSE argues that it was unable to meet the SQI-11 Electric Safety Response Time benchmark of 55 minutes due to unusual and exceptional weather events,¹⁹ continuing challenges from the COVID-19 pandemic,²⁰ hiring and retention challenges,²¹ and ongoing first responder workload strains.²² PSE also cites heavy traffic in the Puget Sound area as an additional factor for slow emergency response times.²³ PSE argues that the Company responded reasonably to these challenges and that meeting the benchmark was outside the Company’s control.²⁴ PSE, however, cites to numerous circumstances that were predictable and avoidable. The evidence is clear that the Company should have been making continuous improvements to their emergency response program in the years prior to 2021 to address significantly increased workloads and outages. The Company’s high annual average response times prior to 2021 left little room for the Company to absorb truly uncontrollable events that could impact response times and should have alerted the Company to the need for improvements. PSE failed to meet its burden of proving that it was unable to meet the benchmark “due to unusual or exceptional circumstances for which

¹⁹ Direct Testimony of Patrick R. Murphy, Exh. PRM-1T at 10:1–13:11.

²⁰ *Id.* at 14:1–15:2.

²¹ *Id.* at 15:3–17:3.

²² *Id.* at 17:4–20:8.

²³ *Id.* at 28:1–29:11.

²⁴ *Id.* at 22:5–24:21.

PSE's level of preparedness and response was reasonable,"²⁵ and the Commission should deny its Petition for Mitigation.

A. Known Weather and Traffic Trends are Not Mitigating Factors.

1. Weather events

6. PSE states that severe weather events in 2021 prevented timely response to electric emergency incidents,²⁶ and identifies five weather events to support its assertion.
7. PSE highlights "significant" wind and rainstorm in January; heavy snow in February; June's record-breaking heat wave; the wettest fall on record; and atmospheric rivers from November through December.²⁷ These events, however, do not have a direct effect on the average response time because Major Events such as these are excluded from the SQ1-11 performance calculation, which PSE acknowledges.²⁸
8. PSE instead argues that the scope and number of the significant outage events reduced the availability of responders and increased the fatigue of the workforce, which impacted response times.²⁹ As Staff indicated, however, PSE does not provide evidence of a direct link between the SQI-11 performance during the 2021 reporting period and the employee fatigue.³⁰ PSE also does not differentiate between the fatigue caused by weather-related workload and other factors that impacted the workload of the emergency responders. While PSE's arguments

²⁵ See Murphy, Exh. PRM-3 at 13; Exh. PRM-4 at 21.

²⁶ Murphy, Exh. PRM-1T at 10:4-5.

²⁷ *Id.* at 10:10-15.

²⁸ *Id.* at 12:4-7.

²⁹ *Id.* at 12:12-16.

³⁰ Testimony of Andrew Roberts, Exh. AR-1T at 7:3-6.

focus on employee fatigue, PSE does not address the Company's responsibility to manage employee workload and fatigue.

9. Furthermore, PSE should have reasonably expected extreme weather events at higher frequency. PSE relies upon a Seattle Times article to identify the extreme weather events of 2021,³¹ yet that same article states,

Western Washington's weather has been full of extremes this past year, and much of it unfolded the way climate scientists have been predicting for decades. For three local meteorologists asked to weigh in on the year's most significant weather, the record-setting year was not unexpected.

"I don't think it takes a rocket scientist to see where this is going," said Justin Shaw, who writes the Seattle Weather Blog.

Joe Boomgard-Zagrodnik, a former Washington State University meteorologist who now works in the private sector, said the year epitomized the predictions of climate scientists.³²

10. Research also corroborates that weather-related electric power outages are on the rise and have been for many years.³³ In a September 2022 report, Climate Central indicates that weather events caused approximately 83 percent of major outages between 2000 and 2021.³⁴ Additionally, the annual number of weather-induced power outages increased by 78 percent between 2011 and 2021 compared to the previous decade.³⁵ In other words, extreme weather is no longer unusual or exceptional. As the realities of global climate change set in, all utilities should be continually planning for an increased frequency and intensity of severe weather events in order to maintain resilient and reliable infrastructure and operations. Having a workforce

³¹ Murphy, Exh. PRM-1T at 10:8–15.

³² Murphy, Exh. PRM-6 at 2.

³³ Response Testimony of Corey J. Dahl, Exh. CJD-1T at 12:10–11.

³⁴ *Id.* at 12:11–13.

³⁵ *Id.* at 12:13–15.

ready to respond to weather- and climate-related challenges is essential. Failure to appropriately maintain and manage a staff to deal with this documented reality is unreasonable. The Commission should disregard PSE’s attempt to blame extreme weather events for its failure to adaptively manage its workforce to meet the performance benchmark.

2. Traffic impacts

11. PSE opines that traffic conditions in 2021, which were out of the Company’s control, justify mitigation of the penalty for exceeding the response time benchmark. The Company states that average travel time of 46 minutes in 2021 was 15 percent, or six minutes, higher than the average travel time from 2014 to 2020. PSE also claims that without extreme traffic the average travel time would have been six minutes faster and dispatch time would have been reduced by five minutes, thus bringing the Company below the 55-minute benchmark.³⁶ PSE however, provides no support for these claims. PSE also fails to disaggregate the impacts of traffic from the other factors that PSE claims impacted their response time. As PSE notes in its testimony, “the compounding fatigue experienced by the electric first responder workforce was a factor contributing to how quickly an available resource could be identified and dispatched,”³⁷ meaning by PSE’s own rationale, the increased dispatch time cannot be attributed solely to traffic events.
12. Furthermore, while traffic events are outside the Company’s control, heavy traffic is not new in the Puget Sound region. Traffic congestion has been a growing problem in the Seattle area. Analysis shows that Seattle drivers wasted an average of 37 hours in traffic in 2013 and 66

³⁶ Murphy, Exh. PRM-1T at 29:6–11.

³⁷ *Id.* at 27:2–4.

hours in 2015.³⁸ In 2019, Seattle drivers lost 74 hours to congestion.³⁹ Traffic congestion is not new to the region, has been a growing problem, and PSE should have incorporated the impacts of increased traffic congestion into emergency response planning. Additionally, PSE claims, without support, that “traffic volumes have increased back to pre-COVID-19 pandemic levels.”⁴⁰ PSE discusses the number of major traffic accidents and traffic congestion on Washington roads,⁴¹ but provides no analysis of local traffic volumes or average traffic volumes. The Seattle Times reports that traffic congestion in the Seattle area has indeed increased from 2020 to 2021, but remained 60 percent below 2019 congestion levels.⁴² Although PSE’s analysis demonstrates that there were significant numbers of serious accidents on Washington roads in 2021, it does not point to average congestion levels relative to PSE’s service territory, which are more illustrative of the average traffic conditions PSE’s first responders faced in 2021.

B. Staffing Impacts of COVID-19 Do Not Relieve PSE of Its Service Quality Obligations.

13. PSE asserts that the COVID-19 pandemic affected PSE’s ability to respond to customer calls because of workforce illnesses, COVID-19 exposures, and the implementation of new COVID-19 prevention policies and field safety procedures and protocols.⁴³ PSE identifies

³⁸ Dah, Exh. CJD-1T at 22:5–7.

³⁹ *Id.* at 7; *see also* Dahl, Exh. CJD-7 (David Kroman, *Seattle-area traffic increasing, but still below pre-pandemic levels*, Dec. 6, 2021, The Seattle Times, <https://www.seattletimes.com/seattle-news/transportation/seattle-area-traffic-increasing-but-still-below-pre-pandemic-levels/>).

⁴⁰ Murphy, Exh. PRM-1T at 28:6–8.

⁴¹ *Id.* at 28:9–29:4.

⁴² Dahl, Exh. CJD-7.

⁴³ Murphy, Exh. PRM-1T at 14:5–8.

workforce fatigue and other staffing level issues due to the pandemic as a factor in missing the SQI-11 benchmark.⁴⁴

14. When COVID-19 was declared a global pandemic in early 2020, workforces throughout the country were forced to adapt to an ever-changing environment. Despite the necessity for immediate change, very high levels of uncertainty, and a relatively small set of tools to fight COVID, PSE met the SQI-11 benchmark in 2020.⁴⁵ In fact, PSE's 2020 average annual response time of 51 minutes was the lowest average achieved since 2012.⁴⁶ Through all of that uncertainty, PSE achieved this service quality benchmark when electric reliability was a critical tool in fighting the pandemic.⁴⁷ PSE does not mention the 2020 performance achievement when discussing the difficulties caused by COVID-19. Managing the threat of COVID-19 in 2021 was also fundamentally different than in 2020.⁴⁸ Not only was there more scientific knowledge gained about the spread, prevention, and treatment of COVID by that point in time, but vaccines also became widely available by April 2021.⁴⁹ The Company also should have had time to adjust staffing, compensation, benefits, and other critical factors affected by COVID-19 between 2020 and 2021. If PSE was not adaptively managing their first responder workforce to better adjust to COVID-19, then it should have been doing so.

⁴⁴ *Id.* at 14:8–12.

⁴⁵ *Id.* at 9:10 (Table 2).

⁴⁶ *Id.*

⁴⁷ Am. Proclamation of Governor Jay Inslee, No. 20-23.2, *Ratepayer Assistance & Preservation of Essential Services* (Wash. Apr. 17, 2020), <https://www.governor.wa.gov/sites/default/files/proclamations/20-23.2%20-%20COVID-19%20Ratepayer%20Assistance.pdf>.

⁴⁸ Dahl, Exh. CJD-1T at 14:1–2.

⁴⁹ *Id.* at 14:2–4.

15. In rebuttal testimony, PSE also states that labor shortages due to COVID-19 in 2021 impacted the Company⁵⁰ and provides a figure from a Seattle Times article to support this assertion.⁵¹ PSE’s evidence, however, only displays trends for the rates of job openings and hirings across all of Washington’s labor market and is not specific to utility employees or PSE’s service territory.⁵² PSE’s rebuttal testimony also contradicts its earlier direct testimony, which states,

PSE completed market-driven wage increases for electric first responders in late December 2021. With the staffing increases made in late 2021 and 2022, notwithstanding ongoing attrition, PSE has continued to hire new electrical first responders with a high level of success. Since the beginning of 2021 to August 1, 2022, PSE has successfully hired and on-boarded a staggering 26 new Electric First Response employees. PSE continues to see stronger attraction pools into these positions following the wage adjustments.⁵³

Elsewhere in PSE’s direct testimony, PSE also states, “This growing challenge to attract electric first responders into King County is caused not only by the increasing cost of living, but also the demanding workload.”⁵⁴ This suggests that the labor issues PSE experienced were more related to wages, high workload, and the desire for employees to find employment elsewhere rather than labor shortages due to the pandemic.

16. The Commission previously considered the impacts of the pandemic on a utility’s ability to meet their service obligations when it issued a \$226,600 penalty against CenturyLink Companies on June 1, 2022, for failing to provide notice of residential rate changes.⁵⁵ The

⁵⁰ Murphy, Exh. PRM-14T at 6:5–9.

⁵¹ *Id.* at 6, Figure 1.

⁵² *See id.*

⁵³ Murphy, Exh. PRM-1T at 30:10–16.

⁵⁴ *Id.* at 16:4–6.

⁵⁵ *In re Penalty Assessment against CenturyLink Companies*, Docket UT-220397 (filed June 1, 2022).

CenturyLink Companies requested mitigation of the penalty, arguing that drastic staffing reductions caused by the COVID-19 pandemic justify or mitigate its non-compliance.⁵⁶ The Commission issued an Order denying mitigation and enforcing the full \$226,600 penalty.⁵⁷ CenturyLink subsequently petitioned for Commission review.⁵⁸ On November 17, 2022, the Commission denied CenturyLink’s Petition for Review, rejecting the Company’s arguments for mitigation and affirming the \$226,000 penalty.⁵⁹

17. In its order rejecting the CenturyLink Companies’ Petition for Review, the Commission stated, “personnel shortages due to COVID-19 pandemic did not relieve the Companies of their obligation to comply” with the order enforcing their Alternative Form of Regulation.⁶⁰ Similarly, in this proceeding, COVID-19 staffing shortages or difficulties should not relieve PSE of its obligation to comply with the Commission orders establishing the SQI program and maintain an adequate emergency response time. The Commission should apply the same rationale in this proceeding and deny PSE’s Petition for Mitigation.

C. Hiring and Retention of Employees Are within PSE’s Control and Are Not Mitigating Factors.

18. PSE states that the company experienced difficulties hiring and retaining qualified personnel in 2021, citing inflation and the increasing cost of living as factors in its inability to

⁵⁶ See CenturyLink Appl. for Mitigation, ¶ 5, *In re Penalty Assessment against CenturyLink Companies*, Docket UT-220397 (filed June 8, 2022).

⁵⁷ *In re Penalty Assessment against CenturyLink Companies*, Docket UT-220397, Order 01: Denying Mitigation (Sept. 30, 2022).

⁵⁸ CenturyLink Pet. for Comm’n Review of Delegate Decision, *In re Penalty Assessment against CenturyLink*, Docket-UT-220397 (filed Oct. 10, 2022).

⁵⁹ *In re Penalty Assessment against CenturyLink Companies*, Docket UT-220397, Order 02: Denying Petition for Review (Nov. 17, 2022).

⁶⁰ *Id.* ¶ 10.

meet its performance obligations.⁶¹ PSE also identifies the demanding workload as an impediment to retaining qualified personnel.⁶² PSE particularly highlights King County as an example of the challenges faced by the company, where the emergency response time averaged 73 minutes in 2021. PSE requires electric first responders to reside locally to maintain fast emergency response but asserts that it is difficult to retain first responders in King County due to the increasing cost of living across the state and higher-than-average inflation, particularly in Seattle-area.⁶³

19. PSE, however, did not provide any data indicating that the amount of employee turnover in King County was higher than in prior years.⁶⁴ PSE also failed to demonstrate that inflation in King County was higher than the rest of its service territory and did not offer any evidence of a direct link between inflation levels and employee turnover in King County.⁶⁵ PSE states, “As position vacancies open in counties outside of King County, it is common for the existing electric first responders in King County to relocate to outside of King County, where the cost of living is lower.” PSE, however, did not provide evidence to support this assertion and did not disaggregate the impact of the rising cost of living from the impact of high workload demands in King County. PSE also did not separate the impact of inflation from the impact of the background increase in the cost of living.

20. To the extent there is a direct linkage between inflation, cost of living, and employee turnover, hiring and retention strategies are within the Company’s control to address. PSE

⁶¹ Murphy, Exh. PRM-1T at 15:5–16:13.

⁶² *Id.* at 16:4–6.

⁶³ *Id.* at 15:7–16.

⁶⁴ Testimony of Andrew Roberts, Exh. AR-1T at 9:17–19.

⁶⁵ *Id.* at 9:19–10:21.

appears to disregard the fact that the Company can increase wages and other benefits for King County electric first responders to attract and retain sufficient personnel and ensure they are compensated adequately to meet rising cost of living demands. By attracting and retaining additional first responders, PSE can better control the workload for individual employees. Public Counsel further addresses employee workload in the next section.

21. Neither PSE's level of preparedness for hiring and retention problems nor its response were reasonable. PSE indicated that attrition among their emergency responders was higher than the historical annual average in recent years, and recognized high attrition risk factors in early 2021.⁶⁶ Additionally, the cost of living in PSE's service territory has been notably increasing for many years, particularly in the Seattle-area. The Company should have recognized these trends and taken action earlier. PSE, however, did not increase wages for electric emergency first responders until late December 2021.⁶⁷

22. While PSE's hiring and retention challenges are important issues that must be addressed, they are directly within PSE's control and should have been managed in order to meet its service quality obligations in 2021. The pattern of increasing cost of living and its impacts on personnel were not unusual or exceptional circumstances. The Commission should disregard PSE's attempt to characterize inflation on the cost of living as a factor that meets the standard for mitigation.

D. PSE Failed to Manage Electric First Responder Workload Strain Adequately.

23. PSE's overarching theme is that overall workload and fatigue led to the Company missing the SQI-11 response time benchmark. PSE also states that demanding workloads are a

⁶⁶ Dahl, Exh. CJD-3.

⁶⁷ Murphy, Exh. PRM-1T at 30:10-11.

reason electric first responders are opting to relocate outside of King County when other internal opportunities arise.⁶⁸ Responding to electric emergencies and completing planned work projects require a similar set of skills, and electric first responders are the only PSE staff that are qualified to perform the required work.⁶⁹ PSE highlights the significant increase in planned work performed in 2021 as a contributing factor to the overall workload and associated fatigue.⁷⁰

24. While the data clearly shows the large number of jobs for planned work in 2021,⁷¹ the increase in planned work is not an unusual or exceptional event. PSE fails to acknowledge the steady, upward trend in planned work from 2014 to 2021, which is evident in Figure 1 of PSE’s direct testimony.⁷² PSE’s planned work increased approximately 33 percent over those years.⁷³ As seen in Figure 2 of PSE’s direct testimony,⁷⁴ during the same time period electric outages also increased approximately 30 percent, with variation in the intervening years.⁷⁵ Both planned and emergency work has increased at a similar rate between 2014 and 2021. Increasing workload demands for PSE’s electric first responders is neither a new issue nor one that only emerged in 2021 and is not “unusual or exceptional.” PSE should have recognized these trends earlier and managed its first responder staff accordingly.

⁶⁸ *Id.* at 16:4–6.

⁶⁹ Dahl, Exh. CJD-4 (PSE Response to Staff Data Request No. 2).

⁷⁰ *See* Murphy, Exh. PRM-1T at 17:15-18.

⁷¹ *Id.* at 18, Figure 1.

⁷² *Id.*

⁷³ Dahl, Exh. CJD-1T at 18:11–12.

⁷⁴ *Id.* at 18:14–16.

⁷⁵ Murphy, Exh. PRM-1T at 19, Figure 2.

E. PSE’s Level of Preparedness and Response Were Not Reasonable.

25. Under the SQI Program the standard to be applied to a mitigation petition is “that the penalty is due to unusual or exceptional circumstances for which PSE’s level of preparedness and response was reasonable.”⁷⁶ PSE’s level of preparedness and response to its SQI-11 obligations were unreasonable and the Commission should deny PSE’s Petition for Mitigation. PSE had ample indication that it was in danger of missing the benchmark for years and the Company failed to proactively manage employee workload to prevent fatigue due to weather and traffic conditions for which it should have been prepared to respond.

1. PSE’s response times should have prompted a proactive response.

26. PSE argues that its SQI-11 performance since 2013 has been strongly met and well below the 55-minute target.⁷⁷ In reality, however, PSE's response time has averaged 53 minutes or higher in all but two years in the last decade,⁷⁸ and, over the five-year period from 2016 to 2021, PSE averaged 53.4 minutes.⁷⁹ As noted by both Staff and Public Counsel, PSE has been close to the benchmark for many years, which leaves very little room for error.⁸⁰

27. Throughout 2021 PSE maintained cumulative average response times greater than 50 minutes, eventually reaching the 55-minute threshold in July.⁸¹ At that point, the Company should have known that it was in jeopardy of missing the SQI-11 benchmark. Any attempts to

⁷⁶ Murphy, Exh. PRM-3 at 13; Exh. PRM-4 at 21.

⁷⁷ Murphy, Exh. PRM-14T at 9:11–12.

⁷⁸ Murphy Exh. PRM-1T at 9:10 (Table 2). During that timeframe, 2020 was the lowest average response time, but the impacts of the pandemic render that year an aberration.

⁷⁹ Roberts, Exh. AR-1T at 8:2–4.

⁸⁰ See Dahl, Exh. CJD-1T at 24:1–2 (Table 1); see also Roberts, Exh. AR-1T at 8:2–4.

⁸¹ Dahl, Exh. CJD-1T at 23:6–7.

improve response time during 2021, such as increasing first responder wages in December, proved to be too late or ineffective as the cumulative average ballooned after July.

Table 1. Cumulative Average Response Times by Month for 2021

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2021	52	53	51	51	52	52	55	56	57	59	62	65

PSE’s should have managed SQI-11 performance proactively to reduce response times as much as possible and provide more room to cushion employee workload and fatigue. Proactive management of SQI-11 performance was particularly necessary in light of the clear upward trends in both planned and outage workloads that PSE highlights in its own testimony.⁸²

2. PSE failed to proactively plan for clear and predictable trends.

28. As discussed previously, the dominant theme in PSE’s testimony is that overall workload and fatigue resulted in the Company missing the SQI-11 response time benchmark. PSE cites weather-related outages, increased customer-requested planned workloads, increased traffic congestion and cost of living, and upward trending attrition rates as factors that contributed to its failure to meet the 55-minute benchmark. Most of the issues impacting workload and employee fatigue, however, could have been predicted or better managed.

29. Weather-related outages have been on the rise nationwide,⁸³ which PSE should have recognized. PSE has known their emergency response and customer-requested project workloads have been increasing since 2014.⁸⁴ Steps could have been taken to better manage and allocate

⁸² See Murphy, Exh. PRM-1T at 21, Figure 3.

⁸³ See Dahl, Exh. CJD-1T at 12:6–18.

⁸⁴ See Murphy, Exh. PRM-1T at 17:19–21:2.

qualified employees to complete these jobs well before 2021. Cost of living in Washington, and specifically in King County, has been on the rise for many years, and attrition could have been counteracted with more attractive compensation and benefits packages several years prior to 2021.⁸⁵ Increasing traffic congestion has been a well-known problem in the Seattle area for many years,⁸⁶ and PSE could have developed strategies to dispatch first responders more strategically. The Company did not take proactive steps to adaptively manage their first responder workforce, workload, or response strategies. Ultimately, PSE could have taken steps to improve emergency response time well before 2021 and unpredictable factors could have been absorbed, allowing PSE to meet the 55-minute benchmark.

30. PSE has not met its burden of proving that the penalty is due to unusual or exceptional circumstances for which PSE's level of preparedness and response was reasonable. The Commission should deny PSE's Petition for Mitigation and issue the full \$613,636 penalty with no amount waived or suspended.

V. PENALTIES

A. PSE's Penalty for Failure to Meet the SQI-11 Performance Benchmark is \$613,636.

31. Failing to meet SQI 11 results in financial penalties that will be returned to PSE's electric customers.⁸⁷ Penalties are calculated based on a point system outlined in the Company's 2001 General Rate Case and subsequent updates to the SQI program.⁸⁸ For SQI 11, PSE will pay a

⁸⁵ See Dahl, Exh. CJD-1T at 15:10–16:16.

⁸⁶ See *id.* at 21:4–23:3.

⁸⁷ See Dahl, Exh. CJD-1T at 7:7–13.

⁸⁸ Murphy, Exh. PRM-4 at 6.

\$337,500 penalty per point⁸⁹ with the total penalty not to exceed \$1.5 million. The total penalty for failure to comply with SQI-11 is calculated as follows:

$$\text{Penalty} = \frac{\text{Average Response Time} - \text{Benchmark}}{\text{Benchmark}} \times 10 \times \text{Penalty Per Point}$$

PSE exceeded the 2021 SQI-11 benchmark of 55 minutes by 10 minutes, resulting in a penalty of \$613,636. As discussed, above, PSE has not met its burden of proof, and the Commission should deny PSE's Petition for Mitigation and impose the \$613,636 penalty.

B. Under the Commission's Penalty Rubric, the Commission Should Impose the Maximum Statutory Penalty upon PSE for Its Failure to Meet SQI-11.

32. The Merger Stipulation and subsequent updates to the SQI Program allow PSE to file a petition for mitigation of penalties, and the Commission will assess penalties and resolve mitigation petitions in a separate procedure.⁹⁰ The level of penalties for SQI-11 is calculated using the methodology, above.⁹¹ However, it is unclear from the Merger Stipulation if parties contemplated partial mitigation of penalties or how the Commission would resolve mitigation petitions. Subsequent to the Merger Stipulation the Commission issued a policy statement to articulate the Commission's policies relating to its authority to enforce orders, statutes, rules, and tariffs (Policy Statement).⁹² Public Counsel applies the penalty rubric established in the Commission's Policy Statement to PSE's failure to meet its service quality obligations for completeness of analysis.

⁸⁹ *Id.*

⁹⁰ Murphy, Exh. PRM-3 at 13; Exh. PRM-4 at 21.

⁹¹ Murphy, Exh. PRM-4 at 18.

⁹² *See* Policy Statement.

33. The Commission has identified 11, non-exclusive, factors it will consider when determining if an enforcement action is appropriate, and if so, what level of penalty to impose.⁹³

Those factors are:

- (1) How serious or harmful the violation is to the public;
- (2) Whether the violation is intentional;
- (3) Whether the company self-reported the violation;
- (4) Whether the company was cooperative and responsive;
- (5) Whether the company promptly corrected the violations and remedied the impacts;
- (6) The number of violations;
- (7) The number of customers affected;
- (8) The likelihood of recurrence;
- (9) The company's past performance regarding compliance, violations, and penalties;
- (10) The company's existing compliance program; and
- (11) The size of the company.

Applying the 11 enforcement factors to this case demonstrates that PSE should be penalized the full amount of \$613,636.

1. Factor 1: How serious or harmful were the Company's violations to the public?

34. The first factor considers how serious or harmful the violation is to the public. The Company's failure to meet SQI-11 exposed the public to potential harm. SQI-11 exists to ensure that qualified electrical professionals respond swiftly to a situation in which electrified power lines or other equipment poses a threat to the public. Failure to meet the established benchmark results in emergencies remaining unresolved longer than they should be. In this instance, PSE did not narrowly miss the benchmark; rather, the Company missed the benchmark by 10 minutes.

35. The Policy Statement states, "The more serious or harmful a violation, the more appropriate penalties or other sanctions may be."⁹⁴ The public safety principles underpinning the

⁹³ Police Statement, ¶ 15.

⁹⁴ Policy Statement, ¶ 15, subpart 1.

creation of SQI-11 and the magnitude by which PSE missed the benchmark support a strong penalty.

2. Factor 2: Were PSE’s violations intentional?

36. The second factor addresses whether the violations are intentional. “A company that willingly and intentionally violates a Commission requirement may be dealt with more severely than a company that unknowingly committed a violation.”⁹⁵ PSE did not intentionally violate SQI-11, but the evidence reveals a troubling pattern of behavior. As indicated previously, the Company could have taken steps to reduce average emergency response times and continuously reported average response times very close to the 55-minute benchmark. PSE demonstrates a pattern of failing to improve response times and adaptively managing emergency response efforts, both of which could have prevented this violation. Certainly, some factors presented in PSE testimony were outside the Company’s control, but more proactive measures described above could have prepared PSE to better handle these conditions.

3. Factor 3: Did PSE self-report the violations?

37. The third factor considers whether PSE self-reported the violations. In this case, PSE is required to make annual SQI compliance filings, and the Company’s failure to meet the SQI-11 benchmark was evident through that process. However, there is no evidence that PSE approached Commission Staff in the waning months of 2021 to report that compliance with SQI-11 was unlikely. The Commission “may consider being more lenient with a company that self-reports” violations.⁹⁶ Considering this factor and PSE’s annual compliance, self-reporting

⁹⁵ Policy Statement, ¶ 15, subpart 2.

⁹⁶ Policy Statement, ¶ 15, subpart 3.

may not weigh heavily in the Commission’s decision. However, the Commission may wish to consider that the Company did not report increasingly high averages in the last quarter of 2021 as a courtesy to the Commission and Commission Staff.

4. Factor 4: Was the Company cooperative and responsive?

38. The fourth factor evaluates whether the company was cooperative and responsive. PSE provided timely responses to data requests in the adjudicated portion of the proceeding. Additionally, PSE provided responses to Public Counsel’s informal data requests prior to the adjudicated status of this Docket. The Policy Statement simply states, “The Commission may consider the company’s cooperation and responsiveness during an investigation when it considers enforcement action ...”⁹⁷ Accordingly, this factor may not weigh heavily in the Commission’s decision.

5. Factor 5: Did the Company promptly correct the violations or remedy the impacts?

39. The fifth factor looks at whether PSE promptly corrected the violations or remedied the impact. In this instance, PSE should have been doing more prior to 2021 to better and more quickly respond to electric emergency incidents. Proactive steps to manage workload and electric first responder wages could have prevented PSE’s violation of SQI 11.

40. The Company has taken some steps in 2022 to address the issues that caused excessive emergency response times. PSE indicates the following steps have been taken:

- New Integrated Work Management System: PSE fully implemented a new work management system that provides “greater accuracy in capturing the exact time when the

⁹⁷ Policy Statement, ¶ 15, subpart 4.

electrical first responder arrived on site.” This could reduce inaccuracies in recording response time.⁹⁸

- New Callout Tool for Dispatch: PSE will complete implementation of a new tool to potentially improve first responder dispatch by fourth quarter 2022.⁹⁹
- Market-Driven Wages: PSE implemented market-driven wages at the end of 2021. As of August 2, 2022, PSE has hired 26 new first responders.¹⁰⁰
- Grid Automation Impacts: The Company is assessing the impact of automated reclosers and distribution equipment in automatically resolving electrical safety issues before a first responder arrives.¹⁰¹
- Advanced Metering Infrastructure: PSE believes the implementation of “smart meters” could improve response time to events, such as outages.¹⁰²

41. While it is encouraging to see that PSE has taken multiple actions since failing to meet SQI-11 in 2021, many of these actions were taken too late to correct the violation in question and do not yet demonstrate definite benefits. Hiring additional first responders is a positive step and demonstrates promise in being able to respond to emergency incidents more quickly. In addition to the two software system rollouts, hiring new responders is something that PSE could have explored prior to exceeding the 55-minute benchmark based on trends that were evident prior to 2021. Finally, grid automation and advanced metering infrastructure may provide some benefits,

⁹⁸ Murphy, Exh. PRM-1T at 29:14–30:2.

⁹⁹ *Id.* at 30:3–9.

¹⁰⁰ *Id.* at 30:10–16.

¹⁰¹ *Id.* at 30:17–31:3.

¹⁰² *Id.* at 31:4–11.

but it is unclear how either of these steps would improve emergency response time.

42. The Policy Statement states that the “Commission may be more lenient when a company promptly corrects a violation ...”¹⁰³ PSE did not implement corrective actions until late 2021, and, as evidenced by the cumulative average response times through 2021 in Table 1, above, PSE’s actions did not reduce the average response time through the second half of the year. PSE’s new callout tool was not completed until fourth quarter 2022. PSE highlights grid automation and AMI, but neither of these capital investments were taken to correct the problem with emergency response time in 2021. Additionally, the impacts of grid automation and AMI on this response times are uncertain, and PSE acknowledges these technologies will create challenges as well as opportunities relative to this metric.¹⁰⁴ Taken together, PSE did not take prompt corrective action. In considering this factor, the Commission should not extend leniency, but rather weigh this factor heavily toward imposing the maximum penalty.

6. Factor: How many violations were committed?

43. The sixth factor considers how many violations were committed. According to the Policy Statement, an enforcement action is more likely the larger the number of violations committed.¹⁰⁵ In this instance, PSE committed one violation of a Commission order, and the enforcement action for the violation is pre-determined. The penalty amount is calculated through an agreed-upon methodology. Given the circumstances surrounding SQI violations, this factor may not weigh heavily into the Commission’s decision.

¹⁰³ Policy Statement, ¶ 15, subpart 5.

¹⁰⁴ See Murphy, Exh. PRM-1T at 31:10–11.

¹⁰⁵ Policy Statement, ¶ 15, subpart 6.

7. Factor 7: How many customers did PSE’s violations impact?

44. Emergency response is a critical component of PSE’s provision of safe and reliable electrical service to *all* customers. Lengthy response times affect any customer who reports an emergency incident, and, for certain events, can affect a significant number of customers residing around the reporting customer. According to the Policy Statement, “The more customers affected by a violation, the more likely the Commission will take enforcement action.”¹⁰⁶ Given that emergency response times affect all customers, this factor weighs in favor of a strong penalty.

8. Factor 8: What is the likelihood of recurrence?

45. The eighth factor considers the likelihood of recurrence. Based on the evidence, recurrence seems likely. As previously noted, PSE is continuously maintaining average response times close to the 55-minute benchmark. As a result of this practice, similar circumstances in future years could likely result in non-compliance. The steps the Company has taken in 2022 may improve emergency response times, but the full effect of those actions may not yet be realized. The Policy Statement states, “If the company has not changed its practices, or if the violations are repeat violations made known to the company in the course of an earlier inspection or investigation, the Commission will be more likely to take an enforcement action.”¹⁰⁷ Until the impacts of PSE’s corrective actions are known, it is not clear that PSE’s response times will improve consistently year over year. Furthermore, the Company’s continued pattern of maintaining average response times proximate to 55 minutes puts compliance at risk as long as this practice continues.

¹⁰⁶ Policy Statement, ¶ 15, subpart 7.

¹⁰⁷ Policy Statement, ¶ 15, subpart 8.

9. Factor 9: What is PSE’s past performance regarding compliance, violations, and penalties?

46. The ninth factor considers the PSE’s past performance regarding compliance, violations, and penalties. Since the SQI program’s inception, PSE has missed an SQI benchmark 10 times including this proceeding.¹⁰⁸ PSE has been ordered to pay penalties totaling \$3.3 million for seven of the violations.¹⁰⁹ The Commission partially mitigated the penalty for only three of the violations.¹¹⁰ Of the 10 SQI violations, PSE repeatedly failed to meet targets for SQI-3 (System Average Interruption Duration Index), SQI-5 (Call Center Service Performance), and SQI-6 (Customer Service Satisfaction).¹¹¹ Specific to this proceeding, PSE has not missed the SQI-11 target until 2021. It is clear that PSE has a history of missing SQI targets and the Commission has routinely issued penalties as enforcement actions.

47. The Policy Statement states, “The Commission will deal more harshly with companies that have a history of non-compliance, repeated violations of the same or other regulations, and previous penalties.”¹¹² As stated above, this is the first instance of noncompliance with SQI-11, though PSE has a history of SQI violations and previous penalties. Unlike other factors considered in the Policy Statement, the statement says the Commission *will* deal more harshly with Companies with repeat violations and previous penalties, rather than indicating that the Commission *may* offer more lenient or harsh penalties. For this reason, the Commission should issue the full \$613,636 penalty.

¹⁰⁸ Dahl, Exh. CJD-10 (PSE Response to Public Counsel Data Request No. 8).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Policy Statement, ¶ 15, subpart 9.

10. Factor 10: Does the Company have an existing compliance program?

48. The tenth factor evaluates the company’s existing compliance plan. PSE states that they do “not have a separate, additional service quality compliance program for the electric first responder response time other than” SQI-11.¹¹³ PSE presents no evidence of a compliance program outside of the SQI mechanism itself. The Policy Statement indicates that:

In order to facilitate compliance, the Commission expects companies to have a compliance program in place. A compliance program should include personnel whose state job responsibilities include understanding and implementing Commission statutory and regulatory requirements. The program should designate personnel responsible for interacting with the Commission on enforcement matters and should also include systems and programs to detect and correct violations and to report those violations to company management.¹¹⁴

Clearly, PSE has not met the Commission’s expectations.

49. In determining an appropriate enforcement action, the “Commission is more likely to take enforcement action if the company does not have an active and adequate compliance program in place ...”¹¹⁵ PSE does not have an apparent compliance program that meets the Commission’s expectations. The Commission should also consider the margin by which PSE missed SQI-11 in 2021 and apparent lack of improvement to response time in the years leading up to 2021. In light of these considerations, the Commission should enforce the full \$613,636 penalty.

11. Factor 11: What is the size of the Company relative to the size of the penalty?

50. The eleventh factor considers the size of Company in taking enforcement actions. PSE is

¹¹³ Dahl, Exh. CJD-11 (PSE Response to Public Counsel Data Request No. 11).

¹¹⁴ Policy Statement, ¶ 8.

¹¹⁵ Policy Statement, ¶ 15, subpart 10.

Washington’s largest investor-owned utility. In 2021, PSE’s electric service revenues totaled \$2,764,186,180.¹¹⁶ Including 2021 gas service revenues, PSE’s combined annual revenue was \$3,831,603,991.¹¹⁷ A \$613,636 penalty represents 0.022 percent of PSE’s 2021 electric service revenues and 0.016 percent of 2021 combined service revenues.¹¹⁸ The Policy Statement states, “The Commission will consider the size of the company in taking enforcement actions. It is not the Commission’s intention to take enforcement actions disproportionate to companies of similar size with similar penalties, or to take enforcement actions disproportionate to a company’s revenues.”¹¹⁹ Essentially, this penalty is small in comparison to PSE’s annual revenues. As such, this recommended penalty is not disproportionate to the Company’s size, and PSE agreed to the penalty calculation methodology.

C. Public Counsel’s Analysis Demonstrates that the Commission Should Impose the Maximum Penalty against PSE.

51. Penalties provide a strong incentive for utilities to maintain high quality and reliable service in the context of service quality. The issues presented in this proceeding underscore the importance of incentivizing swift emergency response times and continuous efforts to improve response time. Based on the evidence provided in this proceeding, PSE regularly maintained an average emergency response time so close to the 55-minute benchmark that there was no room for truly unexpected circumstances. Further to the point, the extenuating circumstances the Company attempts to argue as justification for waiving the penalty were either foreseeable or determined to be irrelevant by the Commission. Waiving the penalty would remove the incentive

¹¹⁶ Dahl, Exh. CJD-1T at 38:13–14.

¹¹⁷ *Id.* at 38:14–15.

¹¹⁸ *Id.* at 38:15–16.

¹¹⁹ Policy Statement, ¶ 15, subpart 11.

for PSE to continue to re-evaluate their emergency response program and drive the average response time comfortably below the benchmark. Penalties are an essential part of the SQI Program and issuing the penalty in this case is critical to maintaining the strength and purpose of the program, in addition to improving PSE's emergency response efforts.

52. Based on the analysis using the Commission's penalty rubric, Public Counsel recommends that the Commission impose the maximum \$613,636 penalty with no amount suspended. While all of the factors weigh in favor of imposing the maximum penalty, certain factors are particularly impactful. Specifically, the following factors strongly support Public Counsel's maximum penalty recommendation:

- Factor 1: Failure to maintain swift emergency response times to electric emergencies presents harm to the general public, and particularly to named communities. Penalties incentivize the critical public safety function of PSE's electric first responders.
- Factor 8: Recurrence of SQI-11 violations seems likely given the Company's failure to make critical improvements to the emergency response program until late 2021. Furthermore, high average response times year after year put the Company at regular risk of exceeding the benchmark.
- Factor 9: PSE's past violations of SQI benchmarks provides evidence for a strong penalty. The Policy Statement's clear direction that repeated violations *will* result in strong enforcement actions is noteworthy.
- Factor 10: PSE does not have an active and adequate compliance program for SQI-11. As a result, the Company fails to meet the expectations set out in the Policy Statement regarding compliance programs.

VI. CONCLUSION

53. For the reasons stated above, Public Counsel recommends that the Commission deny PSE's Petition for Mitigation and impose the maximum penalty of \$613,636 for its failure to meet SQI-1.

DATED this 24th day of May, 2023.

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/s/ 

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