

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKETS UE-220066 and
UG-220067 (*consolidated*)

COMMISSION STAFF'S RESPONSE
TO PSE'S PETITION FOR
ADMINISTRATIVE REVIEW

1 Pursuant to WAC 480-07-810(3)(b), Staff of the Washington Utilities and
Transportation Commission (Staff) files this response to Puget Sound Energy's ("PSE" or
"Company") Petition for Administrative Review (Petition). Staff recommends that the
Petition be denied.

I. PROCEDURAL HISTORY

2 PSE submitted its Final CEIP on December 17, 2021, in Docket UG-210795. On
January 31, 2022, PSE filed a general rate case in Dockets UE-220066 and UG-220067. The
current procedural schedule in the GRC sets response testimony for July 19, 2022, rebuttal
and cross answering testimony for August 23, 2022, and the evidentiary hearing beginning
October 3, 2022. A prehearing conference was set in the CEIP docket for May 9, 2021.

3 On March 30, 2022, PSE filed a motion to consolidate its CEIP with its GRC
(Motion).¹ On April 18, the Commission entered Order 10 denying the motion to
consolidate.² On April 28, PSE petitioned for administrative review of Order 10.

¹ PSE also filed a motion for exemption from WAC 480-100-645(2) but that is not at issue in PSE's petition for interlocutory review.

² Order 10, Dockets UE-220066 and UG-220067 (01 in Docket UG-210795).

II. ARUGMENT

4 The standard for administrative review of an interlocutory order is set forth at WAC
480-07-810 and provides that the Commission’s review under this rule is discretionary. In
its Petition PSE has not provided sufficient reason for the Commission to exercise its
discretion and review Order 10. PSE devotes most of the Petition to restating the arguments
it made in its original motion. And the few new arguments PSE does present for overturning
Order 10 are unpersuasive. Importantly, these few arguments do not demonstrate any legal
error in the Administrative Law Judge’s decision, and the Commission should exercise its
discretion to decline review.

5 The Petition, like the initial motion to consolidate, attempts to create a false sense of
urgency by raising the specter of being compelled to delay acquisition of renewable
resources if the GRC and CEIP dockets are not consolidated. These claims, however, reflect
PSE’s desire to reduce risk rather than a requirement for the CEIP to be consolidated.

6 Finally, the petition does little to address the concerns that led Judge Howard to deny
PSE’s motion, namely the concern that the issues in the CEIP will not be able to receive
adequate time and attention if the dockets are consolidated. The Commission should either
decline review of Order 10, or review and uphold the decision.

A. The Commission should decline to review Order 10 because review is entirely discretionary, and PSE does not refute the solid reasoning in Judge Howard’s decision.

1. Review of Order 10 is discretionary.

7 PSE argues that it satisfies the legal standard for administrative review of an interlocutory order.³ Under WAC 480-07-810(2), the Commission may review these orders if it finds that:

- (a) The order terminates a party's participation in the proceeding, and the party's inability to participate thereafter could cause it substantial and irreparable harm;
- (b) Immediate review is necessary to prevent substantial prejudice to a party that would not be remediable in the commission's final order; or
- (c) Immediate review could save the commission and the parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review.

8 PSE argues that (b) and (c) are applicable to this case,⁴ stating that “[i]f one of these criteria exists, then the Commission should review the interlocutory order.”⁵ First, Staff does not believe that PSE satisfies the standard for interlocutory review because it is not substantially prejudiced by Order 10, and immediate review would not save the Commission or Parties substantial effort or expense. Because the PSE’s arguments are largely restatements of the arguments PSE presented in favor of consolidation in its initial motion, we will simply address those arguments once in subsection B., below. Second, nothing in the rule supports PSE’s assertion. The rule only states that the Commission “*may* accept review” of such orders if it finds the circumstances described above. The rule does not state that review *should* be granted, or even that review will typically be granted, if the listed

³ Petition at 2, ¶ 3.

⁴ *Id.* 2, ¶ 4; 8 ¶ 18.

⁵ *Id.* at 2 ¶ 3.

conditions are satisfied. The decision to review Order 10 is completely discretionary; the Commission would be within its authority to decline to review Order 10 even if it found that one of the three conditions listed in WAC 480-07-810(2) existed. As detailed below, PSE provides insufficient reason to overturn Order 10, and the Commission should decline to review it.

2. The Commission should not review Order 10 because the errors PSE alleges do not provide adequate rationale for review.

9 The Company claims four errors in Order 10 are in need of review. First, PSE argues that it was error to deny its motion given that Judge Howard found the dockets involved similar facts. Under WAC 480-07-320, the Commission may consolidate cases “in which the facts or principles of law are related.” PSE states that “it is not necessary that the legal issues be the same. It is enough if the facts or principles of law are related, as they are in this case.”⁶ This statement does support PSE’s argument, however, because it ignores that, under WAC 480-07-320, consolidation is a discretionary decision. The Commission is not required to consolidate dockets even if it finds those dockets involve the same facts. The Commission properly exercised its discretion under WAC 480-07-320 and there is therefore no error.

10 Second, as it did in its initial motion, the Company cites RCW 80.28.425(9), arguing that consolidation would achieve the alignment referenced in that subsection. RCW 80.28.425(9) states that “[t]he commission shall align, to the extent practical, the timing of approval of a multiyear rate plan of an electrical company submitted pursuant to this section with the clean energy implementation plan of the electrical company filed pursuant to RCW 19.405.060.” PSE rightly does *not* claim that consolidation of CEIPs and GRCs is required

⁶ *Id.* at 11, ¶ 23.

under RCW 80.28.425(9). However, because PSE does not make this claim, what exactly the Company is alleging as error in paragraph 24 of the Petition is left unclear.

11 Third, PSE argues that Judge Howard’s discussion of cost recovery and reference to the used and useful policy statement “does not make sense.”⁷ PSE appears to believe that, in order to justify the denial of PSE’s motion, Judge Howard was required to “explain or illustrate the mechanisms necessary to effectuate ‘approval of future investments.’”⁸ First, an order denying consolidation is not the time or place to provide detailed guidance on cost recovery mechanisms in multiyear rate plans, especially when that task is being carried out in a separate docket.⁹ Second, Judge Howard’s argument makes perfect sense. In the Company’s original motion, PSE argues that approval of the CEIP is “necessarily connected” to the cost recovery of investments in the GRC.¹⁰ That is the argument Judge Howard is responding to when Order 10 mentions the used and useful policy statement. The relevant paragraph starts by stating: “To the extent that PSE seeks Commission approval of investments in later rate years, as set forth in its MYRP, consolidation does not provide any benefits.”¹¹ In other words, *if* PSE’s goal was immediate approval (i.e., a prudency determination) of investments that are planned beyond the first rate year, consolidating the CEIP docket would not achieve that goal. The used and useful policy statement provides a general framework in which rates are provisionally approved subject to a later prudency determination, and approval of the CEIP is not a prudency determination.

⁷ *Id.* at 13, ¶ 27.

⁸ *Id.* at 13, ¶ 27.

⁹ *See* Docket U-210590.

¹⁰ Order 10 at 6 ¶ 22.

¹¹ *Id.* at 7, ¶ 25.

12 Finally, PSE argues that “[t]he presiding officer also erroneously denied PSE’s Motion because PSE did not file a reply brief.”¹² An objective reading of Order 10 refutes this argument. Judge Howard’s decision was clearly based on the merits, not on the fact that PSE did not file a reply. The one sentence in Order 10 that mentions a reply brief is dictum. None of the alleged errors justify review, but if the Commission does decide to review, it should uphold Order 10.

B. If the Commission does decide to review Order 10, it should uphold Judge Howard’s decision.

13 Most of the arguments presented in the Petition are the same arguments that Judge Howard considered and rejected in Order 10. The arguments at pages 2 to 11 of the Petition are largely a restatement of the arguments in PSE’s motion. Just as it did in the initial motion, PSE attempts to create a false sense of urgency by claiming that it would need to delay acquisition of clean energy resources if the Commission does not grant its petition. The through-line of PSE’s petition is that if the Commission denies its motion, the Company might delay acquisition of clean energy resources. PSE dramatically claims that “the entire CEIP process is at risk for failure”¹³ if its motion to consolidate is not granted. Staff disagrees for the reasons it outlined in the response to the initial motion, summarized below.

14 As Staff pointed out in response to the original motion, nothing in chapter 19.405 RCW, RCW 80.28.425, or commission rule compels PSE to delay acquisition of the renewable resources until the CEIP decision is final. There is no statute or rule that requires an electric utility to pause investment or acquisition activities while a CEIP decision is pending. In the absence of an approved CEIP, IOUs are expected to continue making

¹² Petition at 12, ¶ 25.

¹³ *Id.* at 3, ¶ 4.

prudent investment decisions, and the Commission judges those decisions based on the information that was available to the utility at the time the decision was made. As for the risk of disallowance, PSE will have the Commission's decision on its multiyear rate plan proposal from the GRC order by the end of the year, and the Company is aware of CETA's basic statutory requirement that it achieve greenhouse gas neutrality by 2030. It is the responsibility of the Company to decide whether it would be prudent, under those circumstances, to delay acquisition of renewable resources until it receives a decision in the CEIP docket. In short, if such a delay does happen, it would be the result of PSE's own decision making, not the necessary outcome of the Commission denying PSE's petition. Judge Howard agreed with this position when Staff included it in response to the initial motion, stating "A contemporaneous decision on the CEIP, in the same final order, may be helpful to these decisions but it is not necessary."¹⁴

15 Additionally, while the procedural schedule for the CEIP docket has not been officially decided, the presiding Administrative Law Judge sent an email to parties in that docket indicating that it was considering an evidentiary hearing date of January 31, 2023.¹⁵ Based on this proposal, a decision in the CEIP docket is likely to be issued sometime in March 2023. While this is only two to three months after the statutory deadline for the general rate case, it provides crucial time for the parties and the Commission to evaluate the CEIP issues separately and on their own merits. The Commission should be skeptical of PSE's claim that this modest schedule difference would spell disaster for the CEIP process.

16 Lastly, the Petition fails to address the significant countervailing concerns that led Judge Howard to deny consolidation in Order 10. Namely, that the CEIP presents complex

¹⁴ Order 10 at 7, ¶ 24.

¹⁵ Attachment A: Email from Judge Howard regarding PSE CEIP Prehearing Conference.

and important issues of first impression, and consolidation with the GRC would not allow sufficient time for proper deliberation. Judge Howard rightly concluded that “[a]ny limited benefit from consolidating and deciding the GRC and CEIP in one final order are outweighed by the practical implications of consolidating these two novel, complex proceedings.”¹⁶ PSE merely states that the Commission has consolidated complex proceedings in the past, a fact that the presiding officer was surely aware of.

III. CONCLUSION

17 The Commission should deny PSE’s Petition and decline to review Order 10 because PSE has not demonstrated its Petition meets the standard for interlocutory review. Even if the Commission could find that PSE has made a colorable argument for review, the Commission should exercise its discretion to decline review. PSE has not provided sufficient reason to review Order 10. The Company’s Petition is mostly a restatement of the arguments PSE made in its original motion. Judge Howard’s consideration and rejection of these arguments was well reasoned, and the arguments need not be revisited.

18 If the Commission does decide to review Order 10, the order should be upheld. The restated arguments in PSE’s Petition are no more convincing than they were in the original motion, and PSE has not introduced any further arguments that would support changing the Administrative Law Judge’s decision. Moreover, PSE had not demonstrated that there was any legal error in Order 10. In Order 10, Judge Howard appropriately recognized that the first review of PSE’s CEIP requires sufficient time for due consideration, and that the Commission should not unnecessarily rush that determination by consolidating it with a GRC that presents its own substantial list of issues.

¹⁶ Order 10 at 8, ¶ 28.
STAFF’S RESPONSE TO PSE’S
PETITION FOR REVIEW - 8

DATED this 9th day of May, 2022.

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ATTACHMENT A

From: Howard, Michael (UTC) <michael.howard@utc.wa.gov>
Sent: Thursday, May 5, 2022 10:29 AM
To: agoodin@earthjustice.org; Gafken, Lisa (ATG); jon.piliaris@pse.com; Suetake, Nina (ATG); Callaghan, Nash (UTC); blc@dvclaw.com; Paisner, Ann (ATG); mtackhooper@earthjustice.org; Lauren McCloy; mariel@frontandcentered.org; amy@nwenergy.org; max@renewablenw.org; katie@renewablenw.org
Cc: Dahl, Corey J (ATG); dsteele@perkinscoie.com; jog@dvclaw.com; Mak, Chanda (ATG); Johnson, Thomas (ATG); Tam, Aaron (ATG)
Subject: prehearing conference for PSE's Clean Energy Implementation Plan, Docket UE-210795

Good morning,

We have a prehearing conference set for this Monday, May 9th, in the docket for Puget Sound Energy's Clean Energy Implementation Plan (CEIP). I am reaching out to provide the parties and intervenors with points to consider before we meet.

At this point the Commission has denied consolidation of the general rate case and CEIP dockets, recognizing that the CEIP involves novel issues that cannot be effectively addressed in time restrictions of the general rate case (See Order 10/01 in Docket UE-220066/UG-220067 and UE-210795). PSE has filed for review of that order, and that request is still pending. But for the prehearing conference on Monday, we will be proceeding under the Commission orders as they currently stand.

In terms of the procedural schedule, it may be helpful to the Commission to have the company file supplemental testimony updating resource costs and incorporating the results of its RFPs. It may also be helpful if the company updates the data for metrics related to its customer benefit indicators (as referenced at page 234 of the CEIP).

I anticipate that the schedule would then provide for response testimony and a public comment hearing. When it comes to the company's rebuttal testimony, it may be helpful to the Commission for the Company to include a cross-walk reflecting the application of the Commission's decisions in the general rate case (the final order in the GRC should be issued by the end of the year 2022). Rebuttal/cross-answering testimony would therefore be due around January 3, 2022. We are then looking at holding the evidentiary hearing for the CEIP docket on January 31, 2022 and February 1, 2023. While this hearing date may be later than some would prefer, I would again remind everyone that we are proceeding under Order 10/01 as it currently stands.

I appreciate your keeping these points in mind as we all prepare for Monday's prehearing conference. Thank you,

Michael Howard

Administrative Law Judge

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