

**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

**PUGET SOUND ENERGY'S  
BRIEF ON COMPLIANCE WITH ORDER 01**

October 14, 2024

## **TABLE OF AUTHORITIES**

### **STATUTES**

RCW 70A.065.130(2)(a) .....5, 6

Revised Code of Washington Chapter 70A.65 ..... passim

### **COMMISSION ORDERS**

Docket UG-230470, Order 01, Allowing Tariff Revisions to Become Effective  
Subject to Conditions (Aug. 3, 2023) ..... passim

Docket UG-230470, Order 02, Temporarily Extending Eligibility for Bill  
Discount Reduction Program (Aug. 30, 2024) ..... passim

## I. INTRODUCTION

1. Pursuant to Order 02 in this proceeding, Docket UG-230470, Puget Sound Energy (“PSE”) respectfully submits this brief to the Washington Utilities and Transportation Commission (“Commission”) regarding PSE’s compliance with Order 01. For the reasons set forth below, the Commission should find that requiring customers to self-attest to eligibility as a prerequisite for continuing to receive benefits in PSE’s Bill Discount Rate (“BDR”) energy assistance program and also receiving Climate Commitment Act (“CCA”) low-income credits does not violate Order 01.

## II. BACKGROUND

2. On June 9, 2023, PSE filed in this proceeding a proposed Tariff Revision to WN U-2, to implement Schedule 111, allowing PSE to recover costs associated with Climate Commitment Act (“CCA”)<sup>1</sup> allowances and pass back credits from allowance auction proceeds.
3. PSE’s revision was approved with conditions in Order 01 of this docket after considerable discussion at the Commission’s August 3, 2023, open meeting.<sup>2</sup> Under Order 01, the Commission 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, to reach a target of at least 70,000 participants by January 1, 2024.<sup>3</sup>
4. PSE auto-enrolled pre-qualified customers and cross-enrolled the CCA income eligible credit with its new BDR to pre-qualified customers. PSE ultimately used unverified, third-party income estimates to add customers to the CCA cap and invest income-eligible flag to get to the

---

<sup>1</sup> Chapter 70A.65 Revised Code of Washington.

<sup>2</sup> See Docket UG-230470, Order 02, Temporarily Extending Eligibility for Bill Discount Reduction Program, at ¶¶ 3-4 (Aug. 30, 2024) (“Order 02”).

<sup>3</sup> See Docket UG-230470, Order 01, Allowing Tariff Revisions to Become Effective Subject to Conditions, at ¶ 20 (Aug. 3, 2023) (“Order 01”).

70,000 customer target by January 1, 2024.<sup>4</sup> PSE repeatedly cautioned the Commission that unverified third-party income estimates only provide estimations of low-income status, aggregate demographic, and shared characteristics information.<sup>5</sup> PSE stated that while this information allows for broad understanding of customers and can be used to advance certain policies to increase assistance and affordability, as well as marketing and outreach of programs, products and services, such information does not provide the customer-level precision needed to confirm income levels or be used as the basis for low- and moderate-income status.<sup>6</sup> Because income was not verified by the customer or other sources of information, PSE enrolled these customers into the sixth tier of BDR (receiving a five percent discount) for a temporary period of six months.<sup>7</sup> PSE then conducted targeted outreach to these customers requesting that they self-attest income in order to continue and potentially increase bill discount benefits. PSE's efforts resulted in meeting the 70,000 target by January 1, 2024.<sup>8</sup>

5. On January 9, 2024, PSE met with the LIAC to confirm over 70,000 low-income customers were receiving the CCA credits, and on April 25, 2024, PSE submitted to the Commission a Compliance Filing explaining how it was able to achieve the 70,000-customer threshold. PSE's Compliance Filing detailed exactly how it used unverified third-party data to add customers to the CCA cap and invest income-eligible flag.<sup>9</sup> The Compliance Filing also explained that such pre-qualified customers would receive benefits for a maximum of six months unless they verified their low-income eligibility through self-attestation.<sup>10</sup>

---

<sup>4</sup> See Docket UG-230470, Compliance Filing of PSE at ¶ 14 (April 25, 2024) (“PSE’s Compliance Filing”).

<sup>5</sup> See, e.g., Docket UG-230470, PSE’s Objection and Response in Opposition to Joint Petition at ¶ 15 (Aug. 26, 2024) (“PSE’s Opposition to Joint Petition”).

<sup>6</sup> See *id.*

<sup>7</sup> See PSE’s Compliance Filing at ¶ 14.

<sup>8</sup> See PSE’s Opposition to Joint Petition at ¶ 4.

<sup>9</sup> See PSE’s Compliance Filing at ¶ 14.

<sup>10</sup> See *id.*

6. On September 18, 2023, December 12, 2023, and May 14, 2024, PSE met with its LIAC and updated the committee on PSE’s progress and the customers it had auto-enrolled through third-party data.<sup>11</sup> During the May 14, 2024, LIAC meeting, The Energy Project (“TEP”), NW Energy Coalition (“NVEC”), and Staff asked about extending the enrollment period for these customers beyond the original six months set for the enrollment period because approximately 50,000 customers who were prequalified and auto-enrolled had not yet enrolled.<sup>12</sup> The Company responded that it would investigate what options were available for these customers.<sup>13</sup>
7. On May 17, 2024, PSE met separately with TEP, NVEC, and Staff to discuss the pre-qualified customers who had not yet responded to PSE’s outreach and had not self-attested as to their low-income status.<sup>14</sup> During this May 17, 2024, meeting, TEP requested PSE to extend the enrollment period for them and for PSE to conduct even more outreach.<sup>15</sup> During the meeting, PSE stated that those present did not have authority to agree to such changes, and PSE would need to discuss it internally and get approval to extend. PSE management considered TEP’s request to extend enrollment for the pre-qualified customers, but it did not approve the extension. PSE communicated its decision to TEP and the other members at the next LIAC meeting.<sup>16</sup> The CCA income eligible credits and BDR benefits that the pre-qualified customers were receiving would automatically expire on August 31, 2024, unless those customers confirmed their low-income eligibility through simple self-attestation. At no time was PSE planning to disenroll any customer from low-income eligibility.
8. Meanwhile, on June 20, 2024, Staff submitted a Compliance Letter to the Commission stating that PSE compliance filing demonstrated target achievement and compliance with

---

<sup>11</sup> See Order 02 at ¶ 9.

<sup>12</sup> See *id.* at ¶ 10.

<sup>13</sup> See *id.*

<sup>14</sup> See Order 02 at ¶ 11.

<sup>15</sup> See *id.*

<sup>16</sup> See *id.* at ¶¶ 13, 15.

paragraph 20 of Order 01.<sup>17</sup> TEP also submitted a letter highlighting the expiration of benefits for these pre-qualified customers: “In evaluating PSE’s compliance, the Commission should consider how many of these customers will continue to receive the BDR this fall and winter.”<sup>18</sup> On June 24, 2024, the Commission issued an acknowledgment letter confirming that PSE’s compliance report complies with Order 01.<sup>19</sup> Despite the clear language in PSE’s compliance plan, the multiple discussions with Staff both during the LIAC meetings and separately where PSE said it did not have authority to extend the enrollment, and despite Staff’s failure to qualify its Compliance Letter in any way, Staff now claims that its Compliance Letter was issued based on its belief that PSE would be extending the enrollment period and conducting additional outreach to those customers who had not provided self-attestations during the enrollment period.<sup>20</sup>

9. On August 20, 2024, TEP submitted a Joint Petition signed by Staff and NWECA (collectively, “Joint Petitioners”) requesting that the Commission find that Order 01 requires PSE to continue to provide CCA credits to customers who had not confirmed eligibility for such CCA low-income credits during the six-month pre-qualified eligibility period.

10. This matter came before the Commission at its regularly scheduled open meeting on August 29, 2024, where the Commission heard comments from the Joint Petitioners, PSE, the Alliance of Western Energy Consumers (“AWEC”), and Public Counsel. Staff reiterated its position and impression that PSE would extend the program enrollment period for an additional six months.<sup>21</sup> When asked by Commissioner Doumit how much TEP wanted PSE to increase its enrollment rate, TEP responded that it did not know, and it did not have a number for what a

---

<sup>17</sup> See Compliance Letter from Staff (June 20, 2024) (Commission Staff has reviewed the Company’s filing and believes that the submitted compliance report satisfies Condition 4 of the Order.”).

<sup>18</sup> Letter from counsel for TEP, June 21, 2024.

<sup>19</sup> Compliance Acknowledgement Letter – PSE by WUTC Executive Director, June 24, 2024.

<sup>20</sup> Cook, [Open Meeting](#) 1:39:01-1:40:20 (Aug. 29, 2024)(“Open Meeting”).

<sup>21</sup> See Order 02 at ¶ 21.

successful enrollment looks like.<sup>22</sup> The representative for TEP stated that it merely wanted PSE to see if additional effort could be made to reach customers who may not know they are eligible for low income benefits.<sup>23</sup>

11. Public Counsel presented its self-described “extreme” position that RCW 70A.065.130(2)(a) requires the Company to continue to provide CCA credit to all estimated low-income customers, indefinitely.<sup>24</sup> Public Counsel suggested that the statute’s reference to “low-income customers” does not require any attestation or independent verification whatsoever.<sup>25</sup>

12. AWEC commented that the enrollment process is streamlined and low-income is well defined through the tariff.<sup>26</sup> AWEC believes that because of this, continuing the auto- enrollment program is inequitable, potentially preferential, and unduly discriminatory towards other customers.<sup>27</sup>

13. Following a thorough discussion, the Commission issued Order 02 requiring PSE to continue enrollment to those customers auto-enrolled in Schedule 23BDR under Tier 6 of BDR program and the Schedule 111 cap and invest tariff low-income credits, but who have not self-attested, through December 1, 2024. The Commission also ordered PSE to increase targeted outreach efforts to enrolled customers who have not yet submitted an energy assistance application to PSE. PSE subsequently worked with its LIAC regarding how to best conduct such outreach, and PSE and the parties agreed on an outreach methodology in compliance with Order 02.<sup>28</sup> Finally, in Order 02 the Commission requested that the parties brief whether PSE would violate Order 01 by declining to continue enrollment for those auto-enrolled customers who fail

---

<sup>22</sup> See Stokes, [Open Meeting](#) at 2:36:55-2:37:32.

<sup>23</sup> *Id.*

<sup>24</sup> See Robinson O’Neill, [Open Meeting](#) at 2:58:44-3:01:45.

<sup>25</sup> *See id.*

<sup>26</sup> *See* Order 02 at ¶ 26.

<sup>27</sup> *See id.*

<sup>28</sup> *See* Joint Outreach Plan Complying with Order 02 (Sept. 13, 2024).

to self-attest to their low-income eligibility by December 1, 2024. For the reasons set forth below, requiring self-attestation as a condition for continued CCA low-income credit eligibility does not violate Order 01.

## ARGUMENT

### **A. Requiring Self-Attestation as a Condition for Continued Enrollment After December 1, 2024, Does Not Violate Order 01**

14. As clarified at the Open Meeting in this proceeding, the Joint Petitioners carry the burden to show that PSE has not complied with Order 01.<sup>29</sup> The Joint Petitioners' entire argument hinges on an incorrect assumption, however, when they state that PSE is disenrolling low income customers.<sup>30</sup> PSE is not disenrolling any low-income customers, and the Joint Petitioners have not demonstrated that requiring self-attestation as a condition for continuing to receive low-income benefits would violate Order 01. The only provision of Order 01 that has been at issue in this continued proceeding is paragraph 20, which states,

PSE must work with its Low-Income Advisory Group between August and October 2023 to either identify additional KLI customers, or to automatically enroll low-income customers in a bill discount or bill assistance program, to reach a target of at least 70,000 participants by January 1, 2024.

15. No party disputes that PSE complied with Order 01 when it automatically prequalified customers for Schedule 111 CCA low-income credits and Schedule 23BDR gas BDR Tier 6 benefits based on third party data to reach the target of 70,000 by January 1, 2024. And, no party disputes that PSE is entitled to require self-attestation as a condition for enrollment in Schedule 111 CCA and the Schedule 23BDR.<sup>31</sup>

---

<sup>29</sup> See [Open Meeting](#) at 3:23:35-3:23:39 (Chair Danner: "Do you believe that the burden is on you?" Gafken: "Yes.").

<sup>30</sup> Joint Petition at ¶ 24.

<sup>31</sup> Public Counsel argues in favor of extending CCA credits to the pre-qualified customers perpetually (or as long as there are low income customers), without any income verification, ever. However, Public Counsel makes this argument pursuant to RCW 70A.065.130(2)(a), not Order 01. Further, the Commission acknowledges that Schedule 23BDR requires customers to declare eligibility to receive BDR benefits: "It should be noted that the BDR tariff requires customers to declare eligibility initially as well as on an annual basis going forward." Order 02 at ¶ 21.



16. TEP argues that a customer may not be de-enrolled from PSE’s BDR tariff unless after 1) failing to provide income verification after being randomly selection, or 2) failing to re-declare 13 months after declaring eligibility.<sup>32</sup> Therefore, TEP argues, PSE cannot de-enroll any customer who receives BDR credits through third party data because PSE has not randomly selected them for income verification and because they cannot re-declare 13 months later if they have never declared. This circular argument should be rejected because it would result in the absurd situation where customers who do nothing to declare their eligibility for low income assistance, who may not even be aware that they are receiving assistance, or who do not even qualify for assistance, nonetheless receive benefits indefinitely while other customers must re-declare annually. TEP’s argument ignores the first part of the first sentence of the BDR de-enrollment provision: “The customer must declare eligibility under this schedule upon enrollment...”.<sup>33</sup> As stated in its Response to the Joint Petition, PSE prequalified customers using third party data so they could receive benefits temporarily until they declared eligibility. The customers who have not declared eligibility have not enrolled in the BDR tariff, and PSE is not disenrolling them.

17. The only issue related to compliance with Order 01, therefore, is how long PSE should be required to extend its BDR tariff and CCA low income assistance to the auto-enrolled customers without any sort of verification of their eligibility to receive such assistance, even self-attestation. The Joint Petitioners suggest a minimum of two years from the initial date of enrollment.<sup>34</sup> This would create another absurd result because two years is one year longer than customers enrolled under the BDR tariff may receive benefits without re-declaring. So, customers who do nothing to declare eligibility may receive benefits longer than those who did declare eligibility when they enrolled. TEP apparently has backed off this position, however,

---

<sup>32</sup> Zakai, [Open Meeting](#) at 2:10:40-2:11:09.

<sup>33</sup> Schedule 23BDR. *See also*, PSE’s Opposition to Joint Petition at ¶ 7.

<sup>34</sup> Joint Petition at ¶ 2.c.

because when questioned at the open meeting by Commissioner Doumit, the representative from TEP explained that TEP merely wanted PSE to see what additional effort could be made to inform customers that they may be eligible for low income assistance.<sup>35</sup> After extending the enrollment period and working with the LIAC to reach agreed-upon outreach, and after performing such additional outreach, there can be no doubt that PSE has made this additional effort.

**B. Third party data is not sufficiently accurate to rely on for individual income verification**

18. It would be unreasonable for PSE to continue to provide benefits to customers based solely on the third party data used to pre-qualify customers because it is not sufficiently accurate. It does not come from the customer, it is not verified or even corroborated, and other parties admit that it is flawed.<sup>36</sup> As stated above, the third party data are estimates and are not intended or appropriate for income verification. The third party data only provide estimations of low-income status, aggregate demographic, and shared characteristics information. Therefore, unverified third-party data should not be used to assume or confirm specific customer status with respect to income, characteristics, or demographics. It is an appropriate first step to identify groups or communities to target for further outreach efforts, but it almost certainly includes customers who are not eligible to receive benefits. As such, PSE should not provide low income benefits to individual customers based solely on third-party data for any extended period of time.

**C. Prolonged Enrollment without self-attestation is inequitable, potentially preferential, and unduly discriminatory toward other customers.**

19. Requiring PSE to extend low income benefits to unverified and possibly ineligible customers without the low bar of self-attestation would not only violate Schedule 23BDR but would be inequitable and unfair to those participants who have followed the process to receive the benefits for which they qualify. Self-attestation is perhaps the lowest bar PSE could require

---

<sup>35</sup> Stokes, [Open Meeting](#) at 2:36:50-2:37:32.

<sup>36</sup> Robinson O'Neill, [Open Meeting](#) at 3:04-23-3:05:05.

for enrollment into Schedule 111 CCA tariff and Schedule 23BDR, the gas BDR tariff. Providing customers low-income benefits without even self-attestations means that customers who may not qualify for the BDR program, and thus cannot complete a self-attestation, may continue receiving benefits they do not qualify for. This places an undue burden on other customers while simultaneously providing an undue benefit to customers who have not performed the simple step necessary to receive ongoing benefits. As PSE has previously argued, providing benefits to a subset of estimated low-income customers who have failed to take any action to apply for BDR and self-declare their eligibility for low-income status would cost over \$8 million over two years, based on current data.<sup>37</sup> Such costs would necessarily and unfairly come at the expense of other customers.

20. Additionally, continuing to provide benefits to customers who have not completed a self-attestation is inequitable to other customers who are required to apply and prove their income for the same benefits. For customers who have not been auto-enrolled, receiving BDR benefits requires notifying PSE and attesting to their low income status. Once enrolled, those customers must be able to re-declare their eligibility every year. On the other hand, customers who were automatically prequalified to receive benefits have no obligation to verify income or even declare. While prequalification through third party data was a reasonable step to achieving a certain enrollment of low-income participants, continuing to require zero confirmation, attestation, or proof of income for a certain proportion of automatically-enrolled customers, while refusing to provide the same benefit of the doubt to customers who apply by the typical rules of the BDR program, leads to an inequitable and unfair position for those customers who have enrolled through self-attestation or other methods. It applies two different standards to two sets of customers but provides them with equal benefits without a rational basis.

---

<sup>37</sup> PSE's Opposition to Joint Petition at ¶ 14.

## CONCLUSION

21. For the reasons set forth above, PSE respectfully requests the Commission find that requiring customers to self-attest to eligibility as a prerequisite for continuing to receive benefits in PSE's BDR energy assistance program and also receiving CCA low-income credits does not violate Order 01.

**DATED:** October 14, 2024

Respectfully Submitted,

**PERKINS COIE LLP**



Donna Barnett, WSBA No. 36794

*Attorneys for Puget Sound Energy*