

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,  Complainant,  v.  PUGET SOUND ENERGY,  Respondent.	DOCKETS UE-220066 and UG- 220067 ( <i>Consolidated</i> )  ORDER 16
In the Matter of the Petition of  PUGET SOUND ENERGY  For an Order Authorizing Deferred Accounting Treatment for Puget Sound Energy’s Share of Costs Associated with the Tacoma LNG Facility	DOCKET UG-210918  ORDER 02  APPROVING PROPOSED BUDGETS AND FUND GRANTS IN PART; REJECTING IN PART

**BACKGROUND**

- 1 On January 31, 2022, Puget Sound Energy (PSE or Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective Tariff WN U-60, Tariff G, Electric Service, and its currently effective Tariff WN U-2, Natural Gas. The Commission initiated an adjudication in consolidated Dockets UE-220066 and UG-220067.
- 2 On February 28, 2022, the Commission convened a virtual prehearing conference before administrative law judge Michael S. Howard.

- 3 On March 3, 2022, the Commission entered Order 03, Prehearing Conference Order and Notice of Hearing, noticing a hearing for October 3-4, 2022 (Order 03). The Commission granted petitions to intervene filed by The Energy Project (TEP) and other intervenors. Pursuant to the Interim Agreement filed in Docket U-210595,<sup>1</sup> the Commission required the parties to file any requests for case certification and notices of intent to seek funding on or before March 14, 2022. The Commission indicated that proposed budgets would be due 30 days later, on April 13, 2022.
- 4 On March 24, 2022, the Commission issued Order 08, Granting Requests for Case Certification (Order 08). The Commission granted case certification to each of the six parties who requested it. This included The Energy Project (TEP), the Alliance of Western Energy Consumers (AWEC), the NW Energy Coalition (NWEC), the Puyallup Tribe of Indians (Puyallup Tribe), Front and Centered, and the Coalition of Eastside Neighbors for Sensible Energy (CENSE).
- 5 On April 12, 2022, the Commission issued a Notice Extending Deadline for Proposed Budgets. The Commission required any proposed budgets to be filed by April 25, 2022.
- 6 By April 25, 2022, each of the six case-certified parties filed Proposed Budgets and Requests for Fund Grants. The details of the parties' request are discussed in detail below.
- 7 On April 29, 2022, PSE filed a Motion for Leave to Respond to CENSE's Proposed Budget. The Commission granted this motion on May 2, 2022, issuing Order 11, Granting Leave to Respond.
- 8 On May 2, 2022, AWEC filed a Motion for Leave to Respond to CENSE's Proposed Budget. The Commission granted this motion on May 3, 2022, issuing Order 12, Granting Leave to Respond.
- 9 On May 10, 2022, CENSE filed a Motion for Leave to Reply to PSE's and AWEC's Responses. The Commission granted this motion on May 11, 2022, issuing Order 13, Granting Leave to Reply.

## DISCUSSION

- 10 Pursuant to RCW 80.28.430, utilities must enter into funding agreements with organizations that represent broad customer interests. The Commission is directed to determine the amount of financial assistance, if any, that may be provided to any

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<sup>1</sup> Washington Interim Participatory Funding Agreement, Docket U-210595 (February 28, 2022) (Interim Agreement).

organization; the way the financial assistance is distributed; the way the financial assistance is recovered in a utility's rates; and other matters necessary to administer the agreement.<sup>2</sup>

- 11 On November 19, 2021, the Commission issued a Policy Statement on Participatory Funding for Regulatory Proceedings (Policy Statement).<sup>3</sup> The Commission provided “high-level guidance regarding the amount of financial assistance that may be provided to organizations, the manner in which it is distributed to participants and recovered in the rates of gas or electrical companies, and other matters necessary to administer agreements.”<sup>4</sup> The Commission indicated that the Policy Statement was as an evolving document, saying “as we implement the first round of funding arrangements, we look forward to what we expect will be many lessons learned. These lessons will inform future iterations of Washington’s participatory funding program, including the possibility of a rulemaking to codify best practices into Commission rules.”<sup>5</sup>
- 12 On February 24, 2022, the Commission issued Order 01, Approving Agreement with Modifications (Order 01).<sup>6</sup> The Commission approved the Interim Agreement filed by the parties on February 14, 2022, subject to certain modifications, and adopted the Interim Agreement as Appendix A to the Order. Among other points, the Commission clarified that it is not bound by the timeframes set forth in the Interim Agreement.<sup>7</sup>
- 13 In relevant part, Interim Agreement requires that Proposed Budgets include a statement of the work to be performed, a description of the general areas to be investigated, an identification of the specific sub-fund at issue, and a budget showing any estimated attorney fees or consultant fees.<sup>8</sup> If the Commission receives one or more Proposed Budgets, it will “determine the amount, if any, of Fund Grants that will be made available . . .”<sup>9</sup> The Commission may make this determination based on the following factors: “(a) the breadth and complexity of the issues; (b) the significance of any policy issues; (c) the procedural schedule; (d) the dollar magnitude of the issues at stake; (e) the participation

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<sup>2</sup> RCW 80.28.430(2).

<sup>3</sup> *In the Matter of the Commission’s Examination of Participatory Funding Provisions for Regulatory Proceedings*, Docket U-210595 (November 19, 2021).

<sup>4</sup> *Id.* ¶ 3.

<sup>5</sup> *Id.* ¶ 17.

<sup>6</sup> *In the Matter of the Petition of Puget Sound Energy, et al.*, Docket U-210595 Order 01 (February 24, 2022).

<sup>7</sup> *Id.*

<sup>8</sup> Interim Agreement § 6.5.

<sup>9</sup> *Id.*

of other parties that adequately represent the interests of customers; (f) the amount of funds being provided by the applicant intervenor, if any; (g) the qualifications of the party and experience before the Commission; (h) the level of available funds in the Fund account or accounts involved; (i) other Eligible Proceedings for Funds in which stakeholders may seek additional Fund Grants from the same Sub-Fund; or (j) any other factors the Commission deems relevant.”<sup>10</sup> The Commission may reject, in whole or in part, a request for Fund Grant based on these factors.<sup>11</sup> The Commission may place reasonable conditions on Fund Grants, and it may amend Fund Grants on a prospective basis.<sup>12</sup>

- 14 In this case, each of the six case-certified parties filed Proposed Budgets. The parties’ requests exceed the total \$200,000 amount available in PSE’s Customer Representation Sub-Fund and approach the total \$100,000 amount available in PSE’s Prioritized Organizations Sub-Fund. We address each Proposed Budget in turn, considering them in light of the content requirements set forth in Section 6.3 and the various factors set forth in Section 6.5 of the Interim Agreement.
- 15 **TEP.** On April 21, 2022, TEP filed a Proposed Budget. TEP requested a Fund Grant pursuant to the Interim Agreement to partially offset the costs of its participation. TEP noted that it may investigate all matters that have an impact on low-income customers. It requested a total award of \$50,000 from PSE’s Customer Representation Sub-Fund. This was based on estimated consultant/expert witness fees of \$25,000 and attorney fees of \$25,000. In response to questions posed in Order 08, TEP explained how its interests and advocacy differed from NWECS.
- 16 After considering the various factors set forth in Section 6.5 of the Interim Agreement, we approve TEP’s Proposed Budget and \$50,000 Fund Grant. We observe that TEP is contributing from its own funds in order to participate, and TEP’s Fund Grant only seeks to partially offset these costs. TEP is an “incumbent” organization with a history of appearing before the Commission,<sup>13</sup> and it seeks to investigate a number of issues in PSE’s general rate case.
- 17 As directed by Order 08, TEP explained how its interests and advocacy differ from NWECS. TEP credibly establishes that it addresses a broader range of low-income issues than NWECS, and the two parties are not merely cumulative of each other.

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Policy Statement ¶ 18.

18 The Commission should grant TEP's request for a \$50,000 Fund Grant given the funds contributed by the organization itself, the breadth and complexity of the issues being investigated, the organization's qualifications, its history before the Commission, and the organization's unique expertise in low-income issues.

19 **AWEC.** On April 22, 2022, AWEC filed a Proposed Budget. AWEC also requested a Fund Grant of \$50,000 from the Customer Representation Sub-Fund to partially offset the costs of its participation. AWEC intends to investigate all aspects of PSE's filing. AWEC estimated a total of \$112,100 for attorney fees, \$7,020 for paralegal fees, and \$80,620 for expert witness fees. AWEC estimated \$100 in travel expenses and \$160 for printing and postage. While these amounts totaled \$200,000, AWEC only requested a Fund Grant of \$50,000.

20 We approve AWEC's Proposed Budget and its request for a \$50,000 Fund Grant. We again refer to many of the same factors set forth in Section 6.5 of the Interim Agreement. AWEC plans to contribute \$150,000 of the \$200,000 estimated costs for its participation in this proceeding. AWEC is an "incumbent" organization, with a history of appearing before the Commission,<sup>14</sup> and it intends to investigate all aspects of the Company's filing. Finally, no other party focuses on the interests of industrial customers. AWEC's presentation is not merely cumulative of other parties.

21 The Commission should approve AWEC's request for a \$50,000 Fund Grant given the breadth and complexity of the issues being investigated, the funds contributed by the organization, the organization's history before the Commission, and its expertise in representing industrial customers.

22 **NWEC.** On April 25, 2022, NWEC filed a Proposed Budget. NWEC requested a Fund Grant of \$50,000 from the Customer Representation Sub-Fund to partially offset the costs of its participation. NWEC noted it plans to sponsor testimony related to several aspects of PSE's general rate case, including the Company's compliance with climate and clean energy policies. NWEC estimated \$30,000 for expert witness/consultant fees and \$20,000 for in-house staff time. NWEC did not request any fees for outside counsel. NWEC also explained how its advocacy and interests differed from those of TEP.

23 We grant NWEC's Proposed Budget and its request for a \$50,000 Fund Grant. Much like TEP and AWEC, NWEC only requests a portion of its costs for participating in this proceeding. NWEC has a history of appearing before the Commission, and it intends to

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<sup>14</sup> Policy Statement ¶ 18.

investigate a number of complex issues in this proceeding, such as PSE's compliance with climate and clean energy laws, PSE's ownership interest in the Colstrip coal-fired power plant, and proposed performance metrics.

- 24 As directed by Order 08, NWEAC explains how its interests and advocacy diverge from those of TEP. NWEAC persuasively explains that it has focused on different issues than TEP in past proceedings and that it plans to offer expert testimony on different topics than TEP in the present case. Given all of these factors, it is appropriate to grant NWEAC's request.
- 25 **Puyallup Tribe.** On April 25, 2022, the Puyallup Tribe filed a Proposed Budget, requesting \$75,000 from PSE's Prioritized Organizations Sub-Fund to partially offset the costs of its participation. The Puyallup Tribe intended to limit its investigation to the prudency of PSE's Tacoma Liquefied Natural Gas (LNG) facility and related matters.
- 26 The Puyallup Tribe estimated \$72,700 for outside counsel attorney fees and \$52,125 for expert witness fees. This totaled \$124,825, and the Puyallup Tribe only requested that the Commission grant \$75,000 of this amount. The Puyallup Tribe did not request any fees for its in-house attorney time.
- 27 After considering the factors set forth in Section 6.5 of the Interim Agreement, we find that the Puyallup Tribe's request should be granted in part and denied in part. The Commission should provide a total Fund Grant to the Tribe of \$45,000.
- 28 Certain considerations weigh in favor of approving the full amount requested Puyallup Tribe's Proposed Budget. The Puyallup Tribe represents a "highly impacted community."<sup>15</sup> Organizations representing such communities must be prioritized for intervenor funding.<sup>16</sup> Approving the Puyallup Tribe's request for intervenor funding would be consistent with the legislature's intent to encourage participation from historically under-represented communities.
- 29 We also recognize that the Puyallup Tribe is not requesting the compensation for the time of its in-house attorneys, and it is only requesting a portion of the estimated \$124,825 costs of its outside counsel and expert witnesses. The fact that the Puyallup Tribe is contributing its own resources to the proceeding also weighs in favor of the Puyallup Tribe's request.
- 30 However, other factors weigh in favor of reducing the Puyallup Tribe's Proposed Budget. The Puyallup Tribe's participation in this proceeding is relatively limited. In Order 03,

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<sup>15</sup> Order 03 ¶ 22.

<sup>16</sup> RCW 80.28.430(4).

the Commission limited the Puyallup Tribe's participation to the prudence of the costs associated with the Tacoma LNG plant, the portion of Tacoma LNG plant costs that should be borne by ratepayers, and low-income programs.<sup>17</sup> The Tribe is not concerned with the same breadth of issues as some other parties.

- 31 It is also apparent that other parties may address the prudence of the Tacoma LNG plant costs. In August 2015, Commission staff (Staff), the Public Counsel Unit of the Attorney General's Office (Public Counsel), and Northwest Industrial Gas Users (a predecessor to AWEC), joined to request an adjudication regarding PSE's investment in the Tacoma LNG plant and ultimately joined a settlement resolving all of the disputed issues in that proceeding.<sup>18</sup> The Puyallup Tribe may bring a new perspective, as a voice for historically under-represented communities, but it is not the only party likely to address the prudence of the Tacoma LNG plant.
- 32 Finally, the Commission considers the level of available funds and other proceedings where intervenors may seek fund grants from the same sub-fund.<sup>19</sup> If the Commission approved the full amount of the Puyallup Tribe's request, this would leave only a limited amount of funding available for other prioritized organizations, in other proceedings this year.
- 33 Taking all of these factors into consideration, we find it appropriate to award a total Fund Grade to the Tribe of \$45,000. We appreciate the Puyallup Tribe's clear presentation of its Proposed Budget, but certain factors support a reduction in the amount awarded.
- 34 **Front and Centered.** On April 25, 2022, Front and Centered filed a Proposed Budget, requesting a Fund Grant of \$15,000 from the Prioritized Organization Sub-Fund to partially offset the costs of its participation. Front and Centered estimates \$10,000 for expert consultant/witness fees and \$5,000 for in-house staff time. It did not request any fees for outside counsel. Front and Centered intends to investigate various issues in this proceeding, including "the customer and community impacts of PSE's proposed rate change, investments, assistance programs, and performance measurements with particular attention to the interests of highly-impacted communities and vulnerable populations, including frontline and low income communities of color."

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<sup>17</sup> Order 03 ¶ 24.

<sup>18</sup> See generally *In the Matter of the Petition of Puget Sound Energy, Inc.*, Docket UG-151663 Order 10 (November 1, 2016) (approving settlement agreement providing PSE approval to allocate costs and to proceed with its planned Tacoma LNG facility).

<sup>19</sup> Interim Agreement § 6.5(h), (i).

35 Front and Centered notes that it is actively involved in other proceedings and that it will submit additional fund requests and budgets where appropriate to reflect the true costs of the coalition's participation in each proceeding. As Front and Centered explains, its Proposed Budget does not cover the entire cost of the coalition's participation and it plans to submit additional fund requests in the future.

36 We grant Front and Centered's Proposed Budget and its request for a \$15,000 Fund Grant. The various factors set forth in Section 6.5 of the Interim Agreement lead us to grant the coalition's request in full. First, we observe that much like TEP, AWEC, NWEC, and the Puyallup Tribe, Front and Centered only requests a portion of its costs. The coalition does not request any fees for outside counsel, and its Proposed Budget does not represent the full costs of the coalition's participation. While it is not necessary for an organization to limit its request in such a manner, this indicates that the organization plans to contribute its own funds towards participating.<sup>20</sup> This is a relevant factor for the Commission to consider.

37 Second, the Commission has not placed any conditions or limitations on Front and Centered's participation, and the organization intends to investigate a number of issues in this proceeding.

38 Third, we recognized in Order 07 that Front and Centered represents vulnerable populations and highly impacted communities.<sup>21</sup> Organizations representing such communities must be prioritized for intervenor funding.<sup>22</sup> Given all of the Section 6.5 factors in the Interim Agreement, we find it appropriate to award Front and Centered the full amount of its \$15,000 Proposed Budget.

39 We note that Front and Centered anticipates submitting additional fund requests in the future. If Front and Centered demonstrates good cause for filing an additional funding request in this proceeding—due to unforeseen changes in the scope or complexity of the issues, changes in the schedule, or other good cause—we will consider its request consistent with Section 6.7 of the Interim Agreement.

40 **CENSE.** On April 25, 2022, CENSE filed a Proposed Budget. CENSE requested a Fund Grant from the Customer Representation Sub-Fund totaling \$81,000. This was based on an estimated \$66,000 in attorney fees, \$3,000 for support staff, and \$12,000 in expert

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<sup>20</sup> See Interim Agreement § 6.5(f) (“the amount of funds being provided by the applicant intervenor, if any”).

<sup>21</sup> *WUTC v. Puget Sound Energy*, Dockets UE-220066 & UG-220067, Order 07 ¶ 6 (March 22, 2022).

<sup>22</sup> RCW 80.28.430(4).



witness fees. CENSE plans to investigate the prudence of the Energize Eastside transmission project. CENSE describes several issues it will investigate with regards to this project, including PSE's peak load forecasts, non-wire alternatives, and whether reports submitted in support of the project are current and accurate, among other issues.

41 After considering all of the Section 6.5 Factors, we find that CENSE's Proposed Budget should be granted in part, and denied in part. We find it appropriate to award CENSE \$15,000.

42 As an initial matter, CENSE's participation in this proceeding is limited. In Order 03, we stated that: "(1) CENSE's participation in this proceeding is limited to the prudence of PSE's Energize Eastside project investments; (2) CENSE will participate in discovery and cross-examination only with respect to the Energize Eastside project; and (3) CENSE will—to the extent reasonably possible—coordinate the presentation of its case with Public Counsel." While the Energize Eastside project is a significant investment and a potentially complex issue, it is only one issue among many in PSE's first multi-year rate plan.

43 We also note that other parties will review the prudence of the Energize Eastside project. At the prehearing conference, Public Counsel noted that it will review this project.<sup>23</sup> CENSE itself suggested that Staff may review the project.<sup>24</sup> And more recently, AWEC has stated that it intends to review the Energize Eastside project.<sup>25</sup> When statutory parties and an "incumbent" organization intend to review the same project, this raises concerns that CENSE's presentation may be cumulative of other parties efforts, and it weighs in favor of reducing CENSE's Proposed Budget request.

44 We also observe that CENSE's Proposed Budget appears to request the full amount of the organization's estimated costs. This distinguishes CENSE's request from many of the other case-certified parties, and it is a relevant factor for the Commission to consider under the Interim Agreement.<sup>26</sup>

45 CENSE does not maintain that it represents vulnerable populations or highly impacted communities. It requests an award from the Customer Representation Sub-Fund. By

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<sup>23</sup> Gafken, TR 35:2-4.

<sup>24</sup> Araburu, TR 36:8-12.

<sup>25</sup> AWEC Response ¶ 25.

<sup>26</sup> See Interim Agreement § 6.5(f) ("the amount of funds being provided by the applicant intervenor, if any").

statute, however, the Commission is required to prioritize other organizations for participatory funding.<sup>27</sup>

46 Finally, we consider the fact that CENSE requests \$81,000 from the total \$200,000 available in PSE's Customer Representation Sub-Fund. When considering proposed budgets, the Commission must therefore determine the highest and best use of these funds, and whether the needs of intervenors justify the burdens imposed on ratepayers to fund the party's participation in Commission proceedings. The Commission "will determine the amount, if any, of Fund Grants that will be made available" for the proceeding and how those funds will be allocated among the case-certified parties.<sup>28</sup> If the Commission were to approve CENSE's request in full, this would require reducing other parties' well-supported Proposed Budgets to stay within established funding caps. It could also deplete the remaining funds available in the Customer Representation Sub-Fund in a single proceeding. This could then prevent prioritized organizations from accessing any funds from the Customer Representation Sub-Fund if the Prioritized Organizations Sub-Fund is depleted. These considerations weigh in favor of reducing CENSE's request.

47 Based on all of these factors, we find that CENSE should be awarded \$15,000.

48 CENSE has also raised various concerns with the Interim Agreement, such as the fact that interim funding is only available to prioritized organizations.<sup>29</sup> CENSE also argues that the 20 percent discount on expert witness fees, as indicated by a form attached to the Interim Agreement, creates an unnecessary burden.

49 In response, AWEC argues that CENSE's concerns with interim funding are untimely and should be rejected. AWEC recommends, however, that the Commission clarify that the 20 percent discount is in error and is a result of relying on forms used by the Oregon Public Utility Commission.

50 We agree with AWEC that CENSE's objections to the Interim Agreement are generally untimely and should not be considered at this point in time. The Commission has recognized that the Interim Agreement filed in Docket U-210595 represents merely the first year of a new program for participatory funding, and the Commission may adjust the program after gaining administrative experience.

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<sup>27</sup> RCW 80.28.430 (4).

<sup>28</sup> Interim Agreement § 6.5.

<sup>29</sup> See Interim Agreement § 7.2.

51 We also agree with AWEC's recommendation regarding the 20 percent discount for expert witness fees. Pursuant to the Interim Agreement Section 7.3(b), it is the organization's burden to establish the reasonableness of any requests for reimbursement.<sup>30</sup> Exhibit B to the Interim Agreement currently refers to a 20 percent discount on expert witness fees. Such a discount may help to demonstrate the reasonableness of any expert witness fees. But we agree with AWEC that the 20 percent discount identified in Exhibit B is not a requirement under either the Policy Statement or the Interim Agreement.

52 Finally, we remind all parties that neither case-certification nor approval of a Proposed Budget for a Fund Grant is a guarantee of reimbursement. We may determine that a party's request for reimbursement should be denied in part or in whole. The amount of funding in each Consumer Access Fund is limited, and it may be required for more than one Eligible Proceeding. These funds are also sourced from ratepayers, many of whom are faced with their own economic challenges. Thus, we expect all requests for reimbursement to contain great detail, including receipts, invoices, and any other documentation of costs for which recovery is requested. All requests must also include references to eligibility for expenses and any relevant portions of the Interim Agreement. To incentivize appropriate use and equitable distribution of Fund Grants, we will also carefully evaluate how recovered costs should be allocated to customers. For example, we will consider whether each case-certified party's recovered costs should be allocated towards a specific customer class, a select group of classes, or across the entirety of customers.

## ORDER

53 **THE COMMISSION ORDERS:**

- 54 (1) The Energy Project's Proposed Budget and Fund Grant is APPROVED in the amount of \$50,000.
- 55 (2) The Alliance of Western Energy Consumers' Proposed Budget and Fund Grant is APPROVED in the amount of \$50,000.
- 56 (3) The NW Energy Coalition's Proposed Budget and Fund Grant is APPROVED in the amount of \$50,000.

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<sup>30</sup> See Interim Agreement § 7.1(b).

- 57 (4) The Puyallup Tribe of Indians' Proposed Budget and Fund Grant is APPROVED  
IN PART AND REJECTED IN PART, in the amount of \$45,000.
- 58 (5) Front and Centered's Proposed Budget and Fund Grant is APPROVED in the  
amount of \$15,000.
- 59 (6) The Coalition of Eastside Neighbors for Sensible Energy's Proposed Budget and  
Fund Grant is APPROVED IN PART AND REJECTED IN PART, in the amount  
of \$15,000.

DATED at Lacey, Washington, and effective May 26, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

*/s/ Michael S. Howard*  
MICHAEL HOWARD  
Administrative Law Judge

**NOTICE TO PARTIES: This is an Interlocutory Order of the Commission.  
Administrative review may be available through a petition for review, filed within  
10 days of the service of this Order pursuant to WAC 480-07-810.**