

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

**REPLY BRIEF OF
PUGET SOUND ENERGY**

June 14, 2023

PUGET SOUND ENERGY

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I. INTRODUCTION

1. Puget Sound Energy (“PSE” or “Company”) has established that waiver of the \$613,636 penalty associated with missing the SQI-11 benchmark in 2021 is warranted, and opposing parties have not demonstrated otherwise. Instead, Staff and Public Counsel distort historic trends, downplay the exceptional and unusual cumulative impacts of multiple unprecedented events in 2021, and impose a higher standard on PSE that is not supported by the Mitigation Stipulation¹ or Commission precedent.
2. Despite opposing parties’ claims, missing the SQI-11 benchmark was far from certain going into 2021. PSE had met its benchmark each year in the previous eighteen years since the inception of SQI-11 in 2004, and 2020 was the Company’s best SQI-11 performance in seven years. Going into 2021, SQI-11 performance was strong, and it was not until halfway through 2021 that SQI-11 response times approached the 55-minute benchmark. The compounding effect of the unusual circumstances led to a steep, non-linear degradation (“runaway effect”) of SQI-11 response times in the final third of the year.
3. Despite this long history of compliance—which provides the most pertinent data points—Staff and Public Counsel argue that obvious trends pointed to increasing SQI-11 response times and inevitable missing of the benchmark. In fact, the opposite is true. Going into 2021 the labor market was improving, planned and unplanned workloads were down, and the Federal Reserve anticipated that inflation would be transitory. There was optimism among health officials, politicians, and business leaders that Washington had seen the worst of the pandemic. Vaccines were forthcoming and workplaces were formulating back-to-office plans. Further, contrary to opposing parties’ claims regarding 2021’s extreme weather, climate change makes extreme weather events more unpredictable—not the other way around. Even regional climate experts found the events of 2021 to be extraordinary.

¹ *In the Matter of the Proposal by Puget Sound Power & Light Co.*, Dockets UE-951270 & UG-960195, 14th Supplemental Order, Appx. A (Feb. 5, 1997) (“Merger Stipulation”); *see also* Murphy, Exh. PRM-3 at 53-69.

4. To argue that Electric First Responder staffing shortages, COVID-19, record workload, inflation, and extreme weather events were not “unusual or exceptional” circumstances contradicts the ample evidence and data submitted with PSE’s petition. Also, opposing parties entirely ignore the cumulative impact of the exceptional circumstances on resource depletion, fatigue, and increasing SQI-11 dispatch and response time throughout the latter half of 2021. PSE’s Electric First Responders put in extraordinary overtime hours through all the challenges. But despite PSE’s many actions, including implementation of pandemic safe work practices and processes, investments in key technologies, market-driven pay increases, and hiring of new Electric First Responders to reduce burden, PSE could not overcome the cumulative impacts of the unprecedented circumstances in the last half of 2021.
5. Staff and Public Counsel impose a standard that would require PSE to “adequately” prepare for circumstances that even the experts could not predict. This is not what the Merger Stipulation requires nor what the Commission has demanded in past requests for mitigation. The Commission has granted full waiver in similar circumstances involving intervening multiple challenges mid-year that were “unusual or exceptional.” And the Commission has granted relief where PSE’s reasonable response took time to produce results. In doing so, the Commission has always adhered to the standard in the Mitigation Merger, which requires mitigation if failure to meet the benchmark was “due to unusual or exceptional circumstances for which PSE’s level of preparedness and response was reasonable.”² This is the standard that Staff, Public Counsel, and PSE agreed to decades ago.
6. For the reasons set forth below and in PSE’s Initial Brief, PSE respectfully requests the Commission waive the \$613,636 penalty associated with PSE’s SQI-11 Electric Safety Response Time in 2021.

² Merger Stipulation at 13:10-12; Murphy, Exh. PRM-3 at 64:10-12.

II. ARGUMENT

A. Staff and Public Counsel Overstate the Predictability of the Missed Performance Benchmark, while Drastically Downplaying the Impact of Multiple Unusual Circumstances on PSE’s Electric First Responders.

1. PSE Reasonably Expected to Meet the SQI-11 Benchmark in 2021.

7. Staff and Public Counsel generally argue that there were signs that PSE would miss the SQI-11 benchmark in 2021, so the Company should have preemptively tried to cure the inevitable violation. But there was equally—if not more—compelling indications that PSE would meet the benchmark. PSE has never failed to meet this benchmark in the 19 years since its inception. As Public Counsel acknowledged, 2021 was “the first instance of noncompliance with SQI-11[.]”³ And as shown in Table 2 below,⁴ PSE’s SQI-11 performance was improving over the last several years, with the previous year being PSE’s best performance in almost a decade. As Public Counsel notes, “PSE’s 2020 average annual response time of 51 minutes was the lowest average achieved since 2012.”⁵

SQI-11 Annual Performance⁶

SQI Year	SQI-11
2012	51
2013	53
2014	53
2015	54
2016	55
2017	55
2018	52
2019	54
2020	51
2021	65

³ Opening Br. of Public Counsel at ¶ 47.

⁴ Murphy, Exh. PRM-1T at 9, Table 2.

⁵ Opening Br. of Public Counsel at ¶ 14.

⁶ See Murphy, Exh. PRM-1T at 9, Table 2.

8. Further, Staff’s and Public Counsel’s own evidence contradicts their narratives that PSE’s SQI-11 performance was poor and failure inevitable.⁷ Table 1 from Exh. CJD-1T, copied below, shows that the more granular monthly data from 2021 was initially encouraging and suggested that PSE would meet the SQI-11 benchmark, as it did easily in 2020. Public Counsel notes that PSE never even reached the 55-minute threshold until July 2021, and it was only “[a]t that point, the Company should have known that it was in jeopardy of missing the SQI-11 benchmark.”⁸ In other words, it was not until halfway through 2021 that PSE could have reasonably anticipated it may miss the benchmark.

Cumulative Average Response Times by Month, 2017–21⁹

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2017	51	55	53	53	54	54	54	54	55	55	55	55
2018	53	51	50	50	50	50	51	51	51	51	51	52
2019	52	54	53	52	52	52	52	53	53	54	54	54
2020	51	51	51	49	48	48	49	49	50	50	50	51
2021	52	53	51	51	52	52	55	56	57	59	62	65

9. Staff selectively picks only four years: 2015, 2016, 2017 and 2019 as evidence that PSE should have started planning earlier due to average response times that came close to the benchmark.¹⁰ Public Counsel similarly cherry-picks a subset of years.¹¹ But looking at the data in greater depth, the trend demonstrated a relatively stable SQI-11 average response time

⁷ Post-Hr’g Br. of Comm’n Staff at ¶ 1; *see also* Opening Br. of Public Counsel at ¶ 5.

⁸ Opening Br. of Public Counsel at ¶ 27.

⁹ Dahl, Exh. CJD-1T at 24, Table 1.

¹⁰ Post-Hr’g Br. of Comm’n Staff at ¶ 33.

¹¹ Opening Br. of Public Counsel at ¶ 26.

since 2004, which has typically been between 50-55 minutes. Indeed, the standard deviation in the years 2004 to 2020 is only six minutes (49 minutes to 55 minutes). Public Counsel’s and Staff’s argument that PSE has been “edging closer” to the benchmark disregards sixteen years of data showing relatively steady SQI-11 response times.¹² PSE does not contest Staff’s claim that the jump to 65 minutes in 2021 “was not a small one”¹³—indeed, such a large spike had never happened before. That is why PSE had no reason, based on objective data, to expect that multiple unusual circumstances in 2021 would unfold, resulting in an SQI-11 average response time of 65 minutes. Up until July of 2021, PSE’s performance projected another successful year.

2. As 2021 Progressed, Unusual and Exceptional Events Led to Increased SQI-11 Response Times.

10. Staff and Public Counsel want to rely on hindsight, but the events of 2021 that led to PSE missing its SQI-11 benchmark were “unusual or exceptional.”¹⁴ It bears emphasizing that the penalty mitigation standard is whether missing the SQI benchmark was “due to unusual or exceptional circumstances for which PSE’s level of preparedness and response was reasonable.”¹⁵ “Unusual” means “uncommon” or “rare.”¹⁶ And “exceptional” means “deviating from the norm.”¹⁷

11. Staff and Public Counsel fixate on the alleged predictability of PSE missing the SQI-11 benchmark by pointing to historic trends that do not establish with any reasonable certainty the events of 2021. But predictability is not the standard. Even if PSE had been able to predict with certainty every unusual circumstance that occurred in 2021, the events themselves would

¹² Post-Hr’g Br. of Comm’n Staff at ¶ 7; Murphy, Exh. PRM-1T at 9, Table 2.

¹³ Post-Hr’g Br. of Comm’n Staff at ¶ 8.

¹⁴ Merger Stipulation at 13:10-12; Murphy, Exh. PRM-3 at 64:10-12.

¹⁵ *Id.*

¹⁶ Unusual, Merriam-Webster, <https://www.merriam-webster.com/dictionary/unusual> (last accessed June 14, 2023).

¹⁷ Exceptional, Merriam-Webster, <https://www.merriam-webster.com/dictionary/exceptional> (last accessed June 14, 2023).

still be unusual. And PSE's reasonable response to such unusual circumstances would still warrant mitigation under the applicable standard established by all parties.

- a. The COVID-19 pandemic appeared to be winding down in 2020, but in fact challenges only evolved or worsened in 2021.

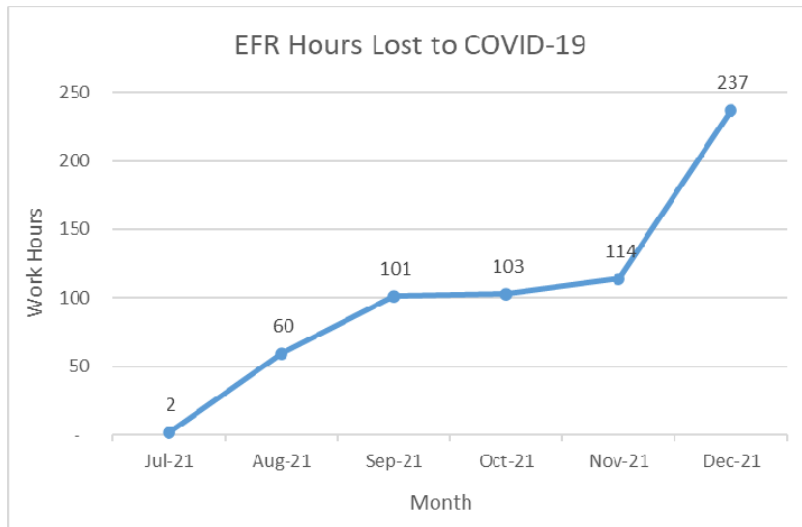
12. Contrary to opposing parties' arguments, challenges from the COVID-19 pandemic were still evolving and impacting PSE's Emergency First Responders throughout 2021, despite initial optimism. In early 2021, it appeared COVID-19 was headed in the right direction, with a vaccine on the way and back-to-work plans in the making. However, in August 2021 there was an upswing in COVID-19 cases and revised mask recommendations for indoor venues.¹⁸ In response to new restrictions and the rise in COVID-19 cases, many back-to-work plans were postponed.¹⁹

13. Meanwhile, vaccines were not readily adopted, and "[i]n August 2021, following an upswing in COVID-19 related cases and revised mask recommendation for indoor venues, Gov. Jay Inslee mandated that all state employees be fully vaccinated by October 18, 2021, as a condition of employment."²⁰ COVID-19 cases increased at PSE, too. By late 2021, Omicron was causing daily case numbers to skyrocket among PSE's Electric First Responders. As evident in Exh. PRM-8, hours lost to COVID-19 escalated from two in July 2021 to 237 in December 2021. See below for a graph of this drastic increase.

¹⁸ See Murphy, Exh. PRM-12 at 4.

¹⁹ See, e.g., *id.* (WSDOT postponed plans to phase employees back in mid-August); see also Dahl, Exh. CJD-7 (describing on again-off again plans to return to the office).

²⁰ *Id.*



Ultimately, impacts from the pandemic would extend well into 2022.²¹ Thus, Public Counsel’s suggestion that “more scientific knowledge” and the availability of vaccines²² simplified COVID-19 management in 2021 ignores reality and evidence to the contrary.²³ Public Counsel then admits that managing the COVID-19 difficulties in 2021 was “fundamentally different than in 2020.”²⁴ Different, not easier. As Mr. Murphy explained, it was these differences—the ever-changing policies and multiple surges—that compounded the COVID-19 impacts in 2021, adding more layers of emotional and mental strain to the Electric First Responders.

14. Staff also argues that the Commission should decline to consider impacts from COVID-19 because (i) the pandemic should be treated just like “almost every illness” that requires workforce to miss work and (ii) PSE Electric First Responders missed only an average of three days, which is not unusual or exceptional.²⁵ However, this statistic only highlights time associated with normal work shifts, and it ignores the impacts of COVID-19-

²¹ See Murphy, Exh. PRM-9 at 8 (Wash. St. Econ. Revenue Forecast Council Exec. Summary describing increased concerns about the pandemic “amid the ongoing Omicron surge”).

²² See Opening Br. of Public Counsel at ¶ 14.

²³ Public Counsel argues that PSE met the SQI-11 benchmark in 2020 as the pandemic was breaking, and therefore cannot claim that COVID-19 impacted PSE’s ability to meet the benchmark in 2021. See *id.* But as explained, the pandemic was not breaking, and difficulties in 2021 were ongoing and evolving.

²⁴ *Id.*

²⁵ Post-Hr’g Br. of Comm’n Staff at ¶ 19.

impacted employees being unable to respond to non-core hour emergency response, thus spreading the high level of emergency incidents to an even smaller number of employees. Even today, COVID-19 is not treated as “almost every illness,” and the additional sick days are significant, especially given the hardships Electric First Responders were already dealing with, such as record-breaking severe weather, hiring challenges, and increased workload.

15. Public Counsel claims that PSE’s testimony is contradictory because the Company attributes the Electric First Responder labor shortage in part to COVID-19, but also points to success PSE had in recruitment when it increased wages and reduced workload.²⁶ There is no contradiction, though. As explained by Mr. Murphy in his rebuttal testimony, overall labor shortages in Washington began in July 2020 and grew slowly.²⁷ Then in early 2021, PSE became aware of the increased risk for higher levels of attrition in its own ranks and began efforts to ramp up hiring of new Electric First Responders. COVID-19 was one unusual circumstance among several that increased as 2021 progressed. These combined to create extreme fatigue among PSE’s Electric First Responders and resulted in unexpected attrition in the second half of 2021 and PSE’s missed performance benchmark.²⁸ Despite the labor shortage, which was still ongoing, and thanks to early action, PSE increased wages and was successful in hiring and on-boarding a staggering 26 new Electric First Responders. This response is beyond “reasonable,” it is extraordinary.

16. Finally, Staff’s and Public Counsel’s attempt to liken CenturyLink’s COVID-19 arguments to this SQI Petition is misplaced.²⁹ That case arose in an entirely different context that is not relevant here. Staff’s partial quotation cuts off the pertinent point: “that personnel shortages due to the COVID-19 pandemic did not relieve the Companies’ of their obligation to

²⁶ Opening Br. of Public Counsel at ¶ 15.

²⁵ See Murphy, Exh. PRM-14T at 6:6-9 and Figure 1.

²⁸ See Murphy, Exh. PRM-14T at 11:6-8; see also Murphy, Exh. PRM-16; Dahl, Exh. CJD-6 at 4.

²⁹ See Post-Hr’g Br. of Comm’n Staff at ¶ 20; Opening Br. of Public Counsel at ¶ 16.

comply with Order 04.³⁰ CenturyLink’s “obligation” was not some general regulatory obligation that is also applicable to PSE, it is a requirement specific to that company’s alternative form of regulation (AFOR).³¹ It is not relevant to energy companies in general, to PSE specifically, nor to this petition for mitigation, which is governed by the standard of mitigation set forth in the Merger Stipulation. Accordingly, (and contrary to Staff’s claim)³² PSE is not at all in a similar situation as CenturyLink, and the companies should not be treated similarly here. Under this proceeding’s applicable standard, if PSE can show that the impacts of COVID-19 were “unusual or exceptional” (which it has) PSE need only show that it was “reasonably prepared” (which it also has).

17. In sum, COVID-19 impacts were exceptional and any “learning” from 2020 was, for the most part, irrelevant given the changing circumstances in 2021. That PSE was able to meet the benchmark in 2020, notwithstanding COVID-19, does not change the exceptional nature of the pandemic through the end of 2021.

b. Workload was low in 2020, but it reached historic highs in 2021.

18. In a similar vein, Public Counsel and Staff suggest that PSE should have been planning for a foreseeable “steady, upward trend [in planned work from 2014 to 2021[.]”³³ Contrary to their arguments, however, workload over the last five years was anything but “steady”, and the data shows the more volatile reality. As one can see from the figure below, in both 2018 and 2020 the amount of planned work requiring Electric First Responder attention actually decreased year over year.³⁴

³⁰ *In re Matter of a Penalty Assess. Against Qwest Corp., et al.*, Docket UT-220397, Order 02 at ¶ 10 (Nov. 17, 2022)(emphasis added).

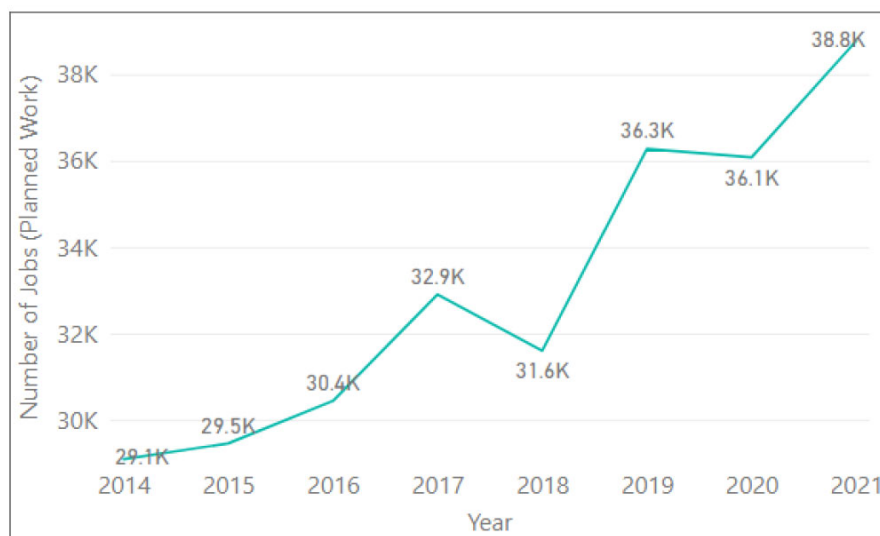
³¹ *Qwest Corp.*, Docket UT-220397, Order 02 at ¶¶ 1, 10.; *see also In re the Matter of the Petition of CenturyLink Companies, et al., To be Regulated Under an Alternative Form of Regulation Pursuant to RCW 80.36.135*, Docket UT-130477, Order 04 at ¶¶ 1-3 (Jan. 9, 2014).

³² *See Post-Hr’g Br. of Comm’n Staff* at ¶ 20.

³³ *Opening Br. of Public Counsel* at ¶ 24.

³⁴ *Murphy, PRM-1T* at 18, Figure 1.

Figure 1: Planned Work Performed



19. The recent decline in planned work in 2020 made the significant increase in 2021 even more exceptional. Planned work reached a historic high in 2021, with the total number of customer-facing scheduled work projects increasing by seven percent from 2020 to 2021, and 23 percent from 2018 (pre-pandemic) to 2021.³⁵ This is, by definition, exceptional. And Staff’s claim that planned work is excluded from the SQI-11 calculation does not address the fact that this unprecedented increase in workload was borne by the same Electric First Responders responding to unplanned outages and other emergency events.³⁶

20. Unplanned outage data also demonstrate the unusual nature of 2021, as shown in the figure below.³⁷ Total unplanned outages exceeded 19,400, a 19 percent increase over 2020. Additionally, like planned work, the unplanned work data does not show a steady, upward trend; instead, unplanned work was even more volatile than planned work, with significant dips and spikes.³⁸ Further, the overall number of outage jobs was extraordinary. In prior years,

³⁵ Murphy, Exh. PRM-1T at 17:7-18:11.

³⁶ Post-Hr’g Br. of Comm’n Staff at ¶ 25.

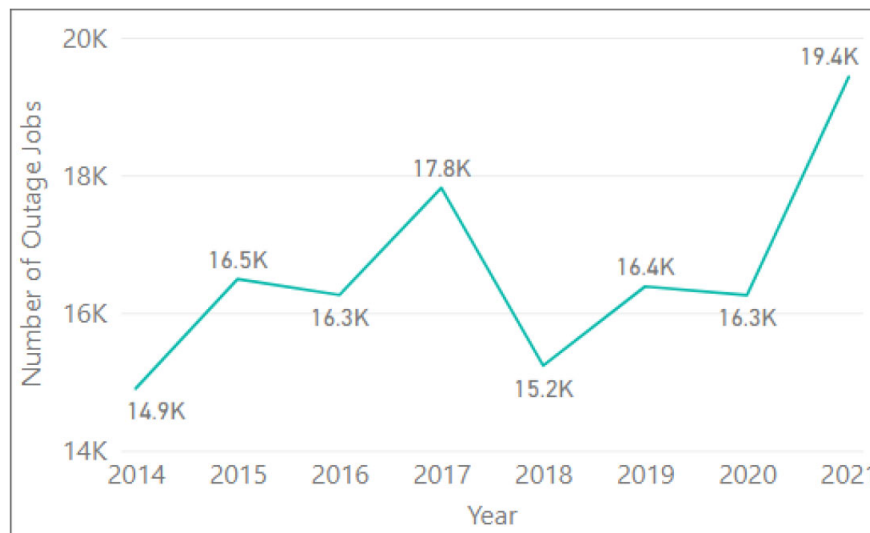
³⁷ Murphy, Exh. PRM-1T at 19, Figure 2.

³⁸ *Id.* at 19:2-8.

total outage jobs ranged from 14,900 to a maximum of 17,800, never exceeding 18,000. Therefore, a total of 19,400 is indeed “unusual or exceptional.”

21. Staff argues that unplanned outages look normal after removing major event days, which accounted for 30 percent of unplanned outages in 2021.³⁹ But Staffs fails to acknowledge that Figure 2 includes major event days for all of the years, so it would be an inaccurate year-over-year comparison to just remove 30 percent from 2021. Further, as explained, major event days were a contributor to workforce fatigue and Figure 2 accounts for this by including major event days for all years.

Figure 2: All Electric Outages



c. Climate change makes extreme weather understandable, not predictable or normal.

22. Finally, other than generally citing climate change, Public Counsel and Staff provide no evidence supporting their claim that PSE should have predicted the record-breaking weather Puget Sound experienced in 2021.⁴⁰ Even if 2021 epitomized predictions of some climate scientists, that does not make the severe weather events predictable or ordinary. To the

³⁹ Post-Hr’g Br. of Comm’n Staff at ¶ 26.

⁴⁰ *Id.* at ¶ 16 (the 2021 weather events were the type “climate scientists have been predicting for decades”); *see also* Opening Br. of Public Counsel at ¶¶ 9-10 (“PSE should have reasonably expected extreme weather events at higher frequency”).

contrary, climate change has made weather more unpredictable and extraordinary, including the magnitude, frequency, and location of extreme weather events. More to the point, neither Staff nor Public Counsel can explain how climate change makes severe weather events reasonably predictable or ordinary for determining whether PSE 's response to such weather was reasonable or not. They simply cite climate change as a reason for the weather extremes, but this does nothing to refute PSE's testimony that such weather was unusual or exceptional, and PSE's preparation and response to it was reasonable.

23. Joe Boomgard-Zagrodnik, a former Washington State University meteorologist, acknowledged climate change trends but still noted that the 2021 events were unprecedented—*i.e.*, unusual and exceptional. For example, the heat wave in late June “was an event beyond the scope of anything we'd ever experienced before and it rewrote the narrative of what is even possible in the Pacific Northwest.” He said: “It was incredible.”⁴¹ Three meteorologists further concurred that the “rainy fall with bomb cyclones, one atmospheric river after the next, and the wettest meteorological fall in Seattle's recorded history” were all also “incredible.”⁴² PSE cannot be held culpable for failing to predict and adequately prepare for this magnitude of severity when it was shocking even to climate scientists in the region.
24. Staff argues that allowing PSE to request mitigation due to major weather events “allows the Company double credit for any weather-related difficulties” because PSE is allowed to exclude those days from its SQI performance calculation.⁴³ But people are not data points. PSE's Electric First Responders are doing all the work – whether it is included or excluded from the benchmark calculation, and excluded work demonstratively influences the amount of time to perform the included work. Electric First Responders do not have the luxury to simply “remove” major weather events from their workload, and Staff's repeated

⁴¹ Murphy, Exh. PRM-6 at 4.

⁴² *Id.*

⁴³ Post-Hr'g Br. of Comm'n Staff at ¶ 15.

claim that an event should not count as unusual or exceptional if it does not count in the SQI-11 calculation ignores the very real impact “excluded” work has on overall performance.

3. The Cumulative Impacts of These Unusual Events Made 2021 All the More Exceptional.

25. In addition to mischaracterizing these exceptional events as “predictable,” Staff and Public Counsel ignore or downplay the cumulative impacts of multiple unusual circumstances on PSE’s Electric First Responders. While each circumstance—weather, unexpected attrition, impacts related to COVID-19, increased workload—was unusual individually, the impacts were cumulative and all fell to one group, the Electric First Responders. There is no requirement that PSE “disaggregate” the impacts of these circumstances, and disaggregation would in fact be inappropriate and contrary to testimony and data showing that the cumulative impacts rendered these coinciding circumstances not just unusual, but truly unheard of and exceptional.

26. Public Counsel takes issue with the specificity of data used to draw inferences regarding increased response times.⁴⁴ But PSE has adequately explained its challenges in the context of broader data and evidence, as explained above. And although industry benchmarks do not exist to quantify workforce fatigue with an objective and specific metric, PSE has articulated how these factors had a compounding effect on fatigue. The accumulation of electric first response workload and the corresponding performance degradation associated with fatigue are shown in Figures 2, 3 and 4, beginning on page 19 of Exh. PRM-1T.

⁴⁴ Opening Br. of Public Counsel at ¶ 8 (no evidence of direct link between employee fatigue and higher response time) and ¶ 19 (PSE did not provide data indicating amount of employee turnover or inflation in King County was higher than in prior years, or that inflation would lead to employee turnover); *see also, id.* at ¶ 15 (evidence only shows trends for jobs generally and not for utility employees in PSE’s service territory).

B. As Soon as PSE Anticipated that it May Miss the Benchmark, it Took Reasonable Actions, which Began to Decrease SQI-11 Response Times.

27. Given these unusual circumstances, PSE’s response was reasonable and timely. PSE started 2021 with the best SQI-11 response times since 2012, and the Company maintained compliant SQI-11 numbers through the first half of the year, only exceeding the benchmark for the first time in August. Public Counsel acknowledges that PSE only approached the 55-minute threshold in July 2021, and claims “[a]t that point, the Company should have known that it was in jeopardy of missing the SQI-11 benchmark.”⁴⁵
28. Even before PSE contemplated that it could miss the 55-minute benchmark, it took reasonable actions to bring its SQI-11 response times down, including hiring additional first responders; implementing a new integrated work management system and investing in a new automated callout tool for first response dispatch; and providing market-driven wage increases.⁴⁶ By August 2022, PSE had hired 26 new first responders and it met the SQI-11 benchmark in 2022.⁴⁷
29. Staff and Public Counsel argue that PSE should have acted before mid-2021 because historic SQI-11 response times were so close to the 55-minutes benchmark “that there was no room for truly unexpected circumstances.”⁴⁸ As noted above, this is simply not accurate. The historic response times were relatively stable over the last sixteen years, PSE had never missed the benchmark, it met the benchmark in 2020 by a wide margin, and there was no indication going into 2021 that PSE would miss the benchmark. It was at least halfway through 2021 before there was any indication that the benchmark was in jeopardy. Further, Staff’s claim that “on a typical call, the company had just over a minute-and-a-half buffer standing between its response and failing to meet the SQI-11 benchmark” distorts the program measurement, which is an average of tens of thousands of calls.⁴⁹

⁴⁵ Opening Br. of Public Counsel at ¶ 27.

⁴⁶ *See id.* at ¶ 40. *See also* Murphy, Exh. PRM-17.

⁴⁷ *See id.* at ¶ 40. *See also* Murphy, Exh. PRM-1T at 30:10-16.

⁴⁸ *Id.* at ¶ 51.

⁴⁹ Post-Hr’g Br. of Comm’n Staff at ¶ 33.

30. Staff's and Public Counsel's claims that PSE did nothing to adapt to trends that increasingly overburdened Emergency First Responders is also incorrect and ignores the exceptional nature of events in 2021.⁵⁰ Even in early 2021, PSE began taking proactive steps, including starting recurring meetings with PSE's labor management committee and performing a detailed market analysis with peer Northwest utilities for the Electric First Responder job classification. But many of the events of 2021 that caused PSE to miss the SQI-11 benchmark were exceptional and, like COVID-19, were not a normal part of historic trends. Staff's and Public Counsel's claims that PSE should have predicted severe weather, COVID-19 variants, increased labor attrition, inflation, and unplanned outages as part of the Company's "business as usual" projections is unrealistic and unreasonable.
31. More to the point, opposing parties' argument that PSE did not implement corrective actions until late 2021⁵¹ imposes a higher obligation on PSE than what is supported by the Merger Stipulation. Staff and Public Counsel would require PSE to plan for the truly unexpected. But again, that is precisely the purpose of mitigation. The SQI Program is designed to impose an automatic penalty for missing an SQI benchmark but allows the Company to seek mitigation from penalties for truly unexpected circumstances if the Company's response was reasonable. The standard intentionally allows for flexibility to account for changing conditions, reasonable judgment and a timely response. It does not require PSE to maintain a buffer for unexpected circumstances; it requires PSE to take reasonable actions when faced with unexpected circumstances—which PSE did.
32. Finally, opposing parties continue to improperly focus on whether PSE's actions could have "prevented" the missed benchmark.⁵² But again, that is not the standard. Mitigation is warranted because implementing change takes time and, although PSE acted immediately, results are not immediate. PSE began 2021 in a strong position to easily meet the benchmark,

⁵⁰ Opening Br. of Public Counsel at ¶ 5; Post-Hr'g Br. of Comm'n Staff at ¶ 32.

⁵¹ Opening Br. of Public Counsel at ¶ 42.

⁵² *See, e.g., id.* at ¶ 36.

and because of hiring efforts, PSE was on track later in the year to improving and even meeting the SQI-11 benchmark. It missed the benchmark only when Electric First Responders were faced with additional significant challenges due to the cumulative impact of extreme weather, impacts from COVID-19, and workforce fatigue in the third quarter of 2021.⁵³

C. Public Counsel’s Attempt to Heighten the Mitigation Standard by Introducing the Commission’s Enforcement Factors is Improper and Should be Rejected.

33. Staff and Public Counsel agree that the applicable standard is whether there were unusual or extraordinary events for which PSE was reasonably prepared.⁵⁴ And yet, Public Counsel continues to inappropriately campaign for consideration of the eleven factors from the Commission’s Policy Statement.⁵⁵ Public Counsel’s attempt should be dismissed entirely because the Policy Statement is inapplicable here and because Public Counsel’s argument is based on fiction.

34. Public Counsel seeks analysis under the Policy Statement by claiming, without support, that uncertainty exists regarding “how the Commission would resolve [mitigation] petitions”⁵⁶ and whether “parties contemplated partial mitigation of penalties.”⁵⁷ There is no uncertainty. Public Counsel’s own evidence shows that both partial and full mitigation have been supported by parties and granted by the Commission several times over the last 25 years.⁵⁸ In a data request, Public Counsel requested a table showing all instances where PSE failed to meet an SQI, the penalty amount, and any mitigation.⁵⁹ PSE’s response listed 10 instances, five in which PSE sought mitigation of penalties.⁶⁰ Of those five, two were partially mitigated, two were fully mitigated, and one is the current petition.⁶¹ Thus, there is no doubt

⁵³ See *id.* at Table 1.

⁵⁴ Post-Hr’g Br. of Comm’n Staff at ¶¶ 4, 11-12; Opening Br. of Public Counsel at ¶ 1.

⁵⁵ *In re the Matter of the Enforcement Policy of the Wash. Utils. & Transp. Comm’n*, Docket A-120061, Enforcement Policy of the Wash. Utils. & Transp. Comm’n. at ¶ 15 (Jan. 7, 2013).

⁵⁶ Opening Br. of Public Counsel at ¶ 32.

⁵⁷ *Id.* at ¶ 32.

⁵⁸ See Dahl, Exh. CJD-10.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

that either partial or complete mitigation can be sought and has been granted. Full waiver is not uncommon, and the Commission recognizes that the parties intended to excuse missed achievements when, like here, unusual events occurred during a reporting year.⁶²


35. Public Counsel has participated in every mitigation petition since the SQI Program was established 25 years ago. Over the last 25 years, parties have sought, and the Commission has granted, both partial and full penalty waivers pursuant to the standard established in the Merger Stipulation. Public Counsel's claim that it is now suddenly "unclear" how the Commission may resolve PSE's Petition is unconvincing and should be disregarded entirely.

III. CONCLUSION

36. For the reasons set forth above, PSE requests that the Commission issue an order granting a waiver of the \$613,636 penalty associated with PSE's missed benchmark for SQI-11 in 2021.

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⁶² See, e.g., *In the Matter of the Petition of Puget Sound Energy, Inc. for Mitigation of Penalties Incurred for Failing to Achieve Benchmark for its Service Quality Index*, Docket UE-011603, Order Granting in Part and Denying in Part the Petition for Mitigation (Jan. 10, 2002); see also, *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Dockets UE-072300 and UG-072301, Order 21 (April 8, 2013); *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Dockets UE-072300 and UG-072301, Order 24 (April 29, 2014).