

**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 PUBLIC COUNSEL

June 14, 2023

TABLE OF CONTENTS

I. INTRODUCTION 1

II. REPLY 1

 A. Legal Standard 1

 B. The Commission Should Ignore PSE Mischaracterization of Public Counsel’s
 Testimony 3

 C. PSE’s Failure to Manage Its Workload and Employee Fatigue Is Not
 Comparable to a Third Party Vendor Ceasing Operations 5

III. CONCLUSION 6

TABLE OF AUTHORITIES

UTC Decisions

In re Enf't Pol'y of the Wash. Utils. & Transp. Comm'n,
Docket A-120061, Enforcement Policy (Jan. 7, 2013) (hereinafter 'Policy Statement') 2

Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.,
Dockets UE-072300 and UG-072301 (*consol.*), Order 24 (Apr. 29, 2014). 2

Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.,
Dockets UE-072300 and UG-072301 (*consol.*), Order 21 (Apr. 8, 2013) 5

I. INTRODUCTION

1. The Public Counsel Unit of the Washington Attorney General’s Office (Public Counsel) continues to recommend that the Utilities and Transportation Commission (Commission) impose the full \$613,636 penalty for exceeding the 55-minute average response time benchmark for Service Quality Index Number 11-Electric Safety Response Time (SQI-11) by 10 minutes in 2021.¹
2. Public Counsel reiterates the arguments made in our May 16, 2023, Opening Brief by and through this reference. For brevity, the arguments are not repeated in this Reply Brief, unless necessary.

II. REPLY

A. Legal Standard

3. PSE’s Service Quality Index Program (SQI Program) was originally implemented by the Commission order approving the merger of Washington National Gas Company and Puget Sound Power & Light Company.² Under that order, the standard to be applied to a mitigation petition is “that the penalty is due to unusual or exceptional circumstances for which PSE’s level of preparedness and response was reasonable.”³ PSE argues that the Commission’s Enforcement Policy does not apply in this instance. PSE states, “The Merger Stipulation explicitly provides

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

² See Patrick R. Murphy, Exh. PRM-3 at 32.

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

the exclusive standard for mitigation, and it does not include consideration of the Commission’s enforcement policy factors.”⁴

4. Public Counsel agrees that the standard applied to a mitigation petition is whether “the penalty is due to unusual or exceptional circumstances for which PSE’s level of preparedness and response was reasonable.”⁵ However, as Public Counsel stated in its Opening Brief, it is unclear from the Merger Stipulation whether parties or the Commission contemplated partial mitigation of penalties.⁶ Public Counsel did not presume that the Commission’s discretion to assess penalties in this instance is constrained to a binary choice between imposing the full penalty or zero penalty, particularly given the Commission’s more recent articulation of its enforcement authority and standards in the 2013 Enforcement Policy Statement (Policy Statement).⁷ Since 2013, PSE has filed only one mitigation petition prior to this proceeding,⁸ in which the Commission determined that PSE met its burden to warrant mitigation of the full penalty.⁹ Public Counsel did not interpret that order to mean the Commission could not partially mitigate an SQI Program penalty.

5. Out of an abundance of caution and completeness of analysis, Public Counsel analyzed PSE’s failure to meet its performance benchmarks using both standards. As discussed in Public Counsel’s Opening Brief, PSE did not meet its burden of proving that the penalty is due to

⁴ PSE Initial Brief, ¶ 11.

⁵ Murphy, Exh. PRM-3 at 13; Exh. PRM-4 at 21.

⁶ Public Counsel Opening Brief, ¶ 32.

⁷ *In re Enft Pol’y of the Wash. Utils. & Transp. Comm’n*, Docket A-120061, Enforcement Policy (Jan. 7, 2013) (hereinafter ‘Policy Statement’).

⁸ See Corey J. Dahl, Exh. CJD-10.

⁹ See *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Inc.*, Dockets UE-072300 and UG-072301 (*consol.*), Order 24, ¶ 8 (Apr. 29, 2014).

unusual or exceptional circumstances¹⁰ nor did PSE meet its burden of proving that its level of preparedness and response was reasonable.¹¹ Additionally, Public Counsel’s analysis of PSE’s actions under the Commission’s 11-factor Enforcement Policy strongly supports the imposition of the maximum penalty with no amount waived or suspended.

6. Public Counsel, however, does not object to a binary approach to SQI penalties and fining PSE the maximum penalty with no opportunity for partial mitigation.

B. The Commission Should Ignore PSE Mischaracterization of Public Counsel’s Testimony

7. PSE’s level of preparedness and response were not reasonable given the clear trends in workload and weather, static workforce levels, and known issues responding to the pandemic. PSE mischaracterizes Corey Dahl’s testimony to suggest the issue at hand is Public Counsel’s misunderstanding of the legal standard rather than PSE’s failure to manage its workload and workforce to meet its service quality obligations. PSE partially quotes from Dahl’s testimony, stating

Meanwhile, Public Counsel witness Corey Dahl testifies that PSE’s market compensation analysis and efforts to recruit emergency first responders in 2021 were “reasonable given the conditions the Company faced” but nonetheless maintains that penalties are warranted because PSE’s actions “were not enough to reduce the average response time.” This is just another way of saying that the actions were not “adequate” or fully ameliorative — which is simply not the standard.¹²

¹⁰ Public Counsel Opening Brief, ¶¶ 6–24.

¹¹ *Id.*, ¶¶ 25–30

¹² PSE Initial Brief, ¶ 14 (internal citations omitted).

8. The quote was taken out of context from a description of the actions PSE took to meet the compliance target and was not an assertion of a different legal standard. Dahl stated,

Q. Does PSE describe any steps taken during and since 2021 to meet the SQI compliance target?

A. PSE Witness Murphy describes two actions the Company took in 2021: conducting a market compensation analysis and increasing the number of emergency first responder positions from 77 to 89. However, the Company was not able to fill all 89 positions in 2021. While these actions are reasonable given the conditions the Company faced, these actions were not enough to reduce average response time and, as explained above, would have been more appropriate in the years prior to address obvious and growing workforce and response time challenges.¹³

The full quote makes it clear that Public Counsel does not object to PSE's actions, but PSE should have engaged in market competition analysis and increasing the number of first responder positions prior to 2021. As Public Counsel stated in the Opening Brief, PSE's level of preparedness and response to its SQI-11 obligations were unreasonable. PSE had ample indication that it was in danger of missing the benchmark for years, and the Company did not proactively manage employee workload to prevent fatigue due to known trends in weather, traffic conditions, and increased planned work while also failing to address employee wages in the face of inflation and rising cost of living.

9. PSE also mischaracterizes Public Counsel's testimony to suggest Dahl described extreme weather events as a "staff management issue."¹⁴ The full quote, however, is as follows:

Q. Is PSE's inclusion of 2021's significant extreme weather events a reasonable justification for exceeding the SQI 11 response time benchmark?

¹³ Response Testimony of Corey J. Dahl, Exh. CJD-1T at 26:5–13 (internal citations omitted).

¹⁴ PSE Initial Brief, ¶ 26.

- A. No. Ultimately, this is an adaptive and staff management issue that PSE should have responded to during 2021 and in prior years. My testimony, below, will provide further detail on this issue.¹⁵

The full quote from Dahl’s testimony makes it clear that PSE’s failure to meet its response time benchmark was a staff management issue, not that extreme weather events themselves were a staff management issue. Dahl goes on to describe the increasing frequency of severe weather events due to climate change, a widely known and observable phenomenon the Company should have reasonably anticipated and appropriately managed staff to accommodate well before 2021.¹⁶

The Commission should ignore PSE’s attempt to discredit Public Counsel’s testimony by cherry-picking quotes out of context.

C. PSE’s Failure to Manage Its Workload and Employee Fatigue Is Not Comparable to a Third Party Vendor Ceasing Operations

10. PSE argues that waiving the penalty here would be consistent with the Commission’s prior orders. In support of this argument, PSE cites to its mitigation petition involving SQI-6 (Telephone Center Transactions Customer Satisfaction) and SQI-8 (Field Service Operations Transaction Center Satisfaction), which require PSE to conduct monthly customer surveys.¹⁷ The Commission in that proceeding waived the penalty because the entity named as the exclusive survey company discontinued its business, which is an act completely outside PSE’s control. In the petition at issue here, however, PSE’s ability to manage its workforce and employee fatigue

¹⁵ Dahl, Exh. CJD-1T at 12:1–5.

¹⁶ *Id.*, at 12:8–18.

¹⁷ See PSE Initial Brief, ¶ 46 (citing *Wash. Utils. & Transp. Comm’n. v. Puget Sound Energy, Inc.*, Dockets UE-072300 and UG-072301 (*consol.*), Order 21, ¶ 12 (Apr. 8, 2013)).

is clearly within the Company's control. This fact is particularly evident given PSE was able to hire additional workforce after it increased wages and benefits for its electric first responders.¹⁸ PSE's failure to prepare for increasingly extreme weather events¹⁹ and upward trend in planned workload²⁰ prior to 2021 is not comparable to a third party vendor ceasing operations.

III. CONCLUSION

11. For the reasons stated above and in Public Counsel's Opening Brief, Public Counsel recommends that the Commission deny PSE's Petition for Mitigation and impose the maximum penalty of \$613,636 for its failure to meet SQI-11.

DATED this 14th day of June, 2023.

ROBERT FERGUSON
Attorney General

/s/ 

NINA M. SUETAKE, WSBA No. 53574
Assistant Attorney General

Attorney for Public Counsel Unit

Washington Attorney General's Office
Public Counsel Unit
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
Nina.Suetake@ATG.WA.GOV

¹⁸ See Direct Testimony of Patrick R. Murphy, Exh. PRM-1T at 30:10–16.

¹⁹ See Public Counsel Opening Brief, ¶¶ 9–10.

²⁰ See Public Counsel Opening Brief, ¶¶ 23–24.