

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	DOCKET UE-220216
PUGET SOUND ENERGY	ORDER 04
For Penalty Mitigation Associated with Service Quality Index No. 11 – Electric Safety Response Time Annual Performance for Period Ending December 31, 2021	DENYING MITIGATION

BACKGROUND

- 1 **PETITION AND PROCEDURAL HISTORY.** On March 29, 2022, Puget Sound Energy (PSE or Company) filed with the Washington Utilities and Transportation Commission (Commission) a Petition for Penalty Mitigation (Petition). The Petition requested that the Commission enter an order waiving the \$613,636 penalty associated with PSE’s Service Quality Index No. 11-Electric Safety Response Time. The penalty resulted from PSE’s failure to meet the 55-minute average benchmark for the arrival of an electric first responder following a customer service call.
- 2 On June 22, 2022, the Commission entered Order 02, Prehearing Conference Order; Notice of Hearing (Order 02) that, among other things, established a procedural schedule in this matter including dates for submitting witness lists and cross-examination estimates by March 15, 2023, and scheduling an evidentiary hearing for March 22, 2023.
- 3 On March 13, 2023, the Commission entered Order 03, Granting Motion (Order 03). The Commission granted a joint motion filed by Commission staff (Staff) on behalf of the parties, thereby cancelling the evidentiary hearing, eliminating the requirement for witness lists and cross-examination exhibits, and admitting all prefiled testimony and exhibits. The deadlines for post-hearing briefs remained unchanged, and the Commission indicated that it would proceed with deciding this case based on a paper record.
- 4 On June 21, 2023, the Commission issued a Notice of Substitution of Presiding Officer. The Commission indicated that this matter, which was previously assigned to administrative law judge Andrew J. O’Connell, was now assigned to administrative law judges Michael Howard and James Brown II.

5 On July 31, 2023, the Commission issued a Notice Extending Deadline for Entry of
Initial Order, extending the deadline for entry of the initial order in this docket by 60
days.

6 On October 11, 2023, the Commission again issued a Notice Extending Deadline for
Entry of Initial Order, extending the deadline to October 26, 2023.

7 **PREFILED TESTIMONY. *Direct Testimony of Puget Sound Energy, Patrick R. Murphy.*** The Company offered testimony from Patrick R. Murphy, Director of Electric Operations for PSE. Murphy’s testimony discusses PSE’s Service Quality Index (SQI or the Program) No. 11-Electric Safety Response Time (“SQI-11”), PSE’s performance during the 2021 SQI program year, and what led to PSE missing the SQI-11 annual performance benchmark for the first time since its inception in 2003.¹

8 Murphy testified that the SQI was first implemented as a condition of the merger of the Washington Natural Gas Company and Puget Sound Power & Light Company (“Merger”) in 1997.² Murphy adds that the Program’s purpose was to “provide a specific mechanism to assure customers that they will not experience deterioration in quality of service” and to “protect customers of PSE from poorly-targeted cost cutting” as a result of that Merger.³ According to Murphy, PSE’s SQI Program has evolved over the years, and it currently includes electric and natural gas Customer Service Guarantees, two electric Restoration Service Guarantees, and a set of nine Service Quality Indices that require PSE to meet benchmarks in customer satisfaction, customer services, and operations services.⁴

9 Murphy states that the performance benchmark at issue in this proceeding, SQI-11, measures the average number of minutes from PSE receiving a customer call to the arrival of an electric first responder.⁵ Murphy recounts that the Commission approved

¹ *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 - Prefiled Testimony of Patrick R. Murphy (Murphy, Exh. PRM-1T) at p. 2.

² Murphy, Exh. PRM-1T at 2:12-17.

³ *Id.* at 2:12-17 to 3:1-2. See Appendix A to the Fourteenth Supplemental Order Accepting Stipulation; Approving Merger at p. 11 in Dockets UE-951270 and UE-960195 (Feb. 5, 1997), See also Exh. PRM-3.

⁴ *Id.* at 3:3-6.

⁵ *Id.* at 3:7-9.

SQI-11 in its Twelfth Supplemental Order in a general rate case.⁶ The mechanics of the of SQI-11 were approved in Order 01 of Docket UE-031946.⁷

- 10 Murphy avers that, later, PSE and the other executing parties to the Settlement Stipulation from UE-011570 and UG-011571 agreed to amend SQI-11, and the Commission approved the amendment. The amendment was necessary in order to reconcile differences reporting and tracking requirements between the numbers and percentages of customers that were affected by major events.⁸ In 2010, the Commission approved further changes related to the first condition of days that are subject to suspension of SQI-11 from the predefined term of “Major Event” day to the generic definition of the “5% or more of electric customers are experiencing an electric outage.”⁹
- 11 Murphy then discussed the method for how PSE measures its SQI-11 performance, which has a required goal of 55 minutes response time to customer calls for electric safety incidents. Murphy then testified to the circumstances under which these requirements may be suspended, which are: 1) that five percent or more of electric customers are experiencing an electric outage and subsequent days when the service to those customers is being restored (i.e., “Major Event Day”); and 2) days that the Company determines to be “Localized Emergency Event Day” as defined by the dispatch and utilization of all available electric first responders in the affected Local Area to respond to service outages.¹⁰
- 12 Murphy noted that, in 2021, there were 55 days where the SQI-11 standards were suspended due to exceptional circumstances. Murphy described the means by which the penalty is to be calculated when PSE’s response time exceeds the 55-minute standard and states that any penalties imposed are credited to the customers.¹¹ The potential penalties for 2021 totaled \$613,636. Murphy then proceeded to describe the PSE workforce of high

⁶ See Dockets UE-011570 and UG-011571 (consolidated), Twelfth Supplemental Order; Rejecting Tariff Filing; Approving and Adopting Settlement Stipulation Subject to Modifications, Clarifications, and Conditions; Authorizing and Requiring Compliance Filing, and Notice of Intent to Supplement Service of the Commission’s Twelfth Supplemental Order.

⁷ See Docket UE-031946 Order 01 - Order Granting Application; Approving Agreement Regarding SQI-11 Amendment with Modifications.

⁸ *Id.* at 4:1-8. See Exh. PRM-5.

⁹ *Id.* at 4:8-12.

¹⁰ Murphy, Exh. PRM-1T at 5:7-17.

¹¹ *Id.* at 6:15-16.

voltage electric line worker trained to respond to emergency incidents and events.¹² SQI-11 measures PSE's average response time to customer call regarding emergency and safety incidents, except for those that occur on a Major Event Day or a Localized Emergency Event Day, when SQI-11 is suspended.¹³

- 13 Murphy goes on to describe PSE's electric first responder response time and process. There are two components for response time, dispatch time and on-site time. The time to dispatch an emergency is based on the required time to identify and secure a qualified electrical employee. On-site times are a measure of the drive time needed to get a qualified resource to the location of the electric emergency. Murphy added that the average response time was 65 minutes in 2021. Murphy claimed that, prior to 2021, PSE response time was at or under 55 minutes from 2003 through 2020.¹⁴
- 14 Murphy testified concerning the adverse weather conditions that PSE faced in 2021.¹⁵ Specifically, he testified that the 55 days excluded from the PSE SQI-11 was 16 suspension days higher, a forty percent increase, than the annual average of 39 suspension days for the period of 2016 through 2020.¹⁶ In addition, to the adverse weather conditions, Murphy asserts that PSE suffered from the effects from the COVID-19 pandemic, and the impact on its employees and the ability to respond to customer calls.¹⁷ According to Murphy, this environment has contributed to PSE's inability to attract and retain employees.¹⁸
- 15 Another factor that Murphy claims affected PSE's ability to retain its staff was inflation. Inflation in Washington state outpaced wages due to increase in population making financially challenging for PSE's electric first responders that reside in areas like King County.¹⁹ Murphy asserts that PSE's King County electric first responders often move out of the county which has caused high-level vacancies and, ultimately, increase in

¹² *Id.* at 7:6-13.

¹³ *Id.* at 8:2-5.

¹⁴ *Id.* at 9:7-9. See Table 2 SQI-11 Annual Performance.

¹⁵ *Id.* at 10:7-22.

¹⁶ *Id.* at 12:17-19 to 13:1-2. See Table 3 SQI-11 Suspension Days - Significant Outage Events.

¹⁷ *Id.* at 14:3-12.

¹⁸ *Id.* at 14:14-16.

¹⁹ *Id.* at 15-16. PSE's King County first responders are required to live in their service area as is the case with the PSE service responders in the other counties.

emergency response times.²⁰ Additionally, Murphy discussed other difficulties that arose during 2021. These difficulties include other systems projects that electric first responders perform that are not part of the SQI-11 requirements but may contribute to and affect the lag of response time due to overall workload and fatigue.²¹ Murphy also testified that the total number outages rose to 19,400, an increase of 40%, and there were additional days of high-volume activity days which barely missed the exclusion criteria. Murphy alleges that all of those factors contributed to the fatigue of the first response workers, affecting response times.²²

16 Murphy further detailed the effect of the COVID-19 as PSE ability to implement electric service reliability investments due to the government-imposed safety restrictions causing logistical delays and impacting customer safety and workforce limitations. These restrictions affected PSE's ability to deliver planned and unplanned work from 2020 through 2021 and 2022.²³ Murphy argues that PSE's level of preparedness and response to the unusual circumstances was reasonable, and that PSE has taken steps improve in these areas.²⁴

17 Murphy then describes the attrition due retirements and relocations which reduced their electric first responders staff in 2021 and adds that PSE took steps to return their electric first responders numbers to the former level of 77 by the end of 2021.²⁵ However, due to the circumstances described above, Murphy contends electric first responders logged 1100 hours of overtime resulting in the overwork and fatigue, and the aforementioned response issues.²⁶

18 Murphy asserts that PSE's responsiveness was reasonable given the circumstances in 2021.²⁷ Murphy then cites to the standards set for when mitigation of penalties is

²⁰ *Id.* at 16:3-13.

²¹ *Id.* at 17-18.

²² *Id.* at 19-20.

²³ *Id.* at 20-22. See Figure 3: Electric First Responder Total Workload and Figure 4: Outage Response Over Time in support of Murphy's Testimony.

²⁴ *Id.* at 22:7-12.

²⁵ *Id.* at 23-24. PSE's goal was to raise electric first responder staffing numbers to 89.

²⁶ *Id.* at 24:7-13.

²⁷ *Id.* at 24:20-21.

appropriate and argues that PSE has met these Commission-approved standards.²⁸

According to Murphy, mitigation is appropriate because this marks the first time that PSE has not met the SQI-11 standards since their inception in 2003. He then cites to Figure 5: Dispatch Time and Onsite Time for unplanned outages as evidence of PSE meeting the SQI-11 standards, 2014 through 2020.²⁹ Murphy contends that despite the fatigue the first responders experienced in 2021, PSE electric first responders performed exceptionally in relation to the SQI-11 standards.³⁰

19 Murphy adds that there were other unavoidable obstacles such as traffic volume and patterns that affected travel times to projects and that 2021 electric first responders experienced a spike of 257 travel events. The average had been 150 for such events 2015-2020.³¹ Murphy emphasizes that the impact of these traffic events to response time and dispatch time caused PSE to miss its SQI-11 targets in these areas.³² To address the challenges of 2021, Murphy alleges that PSE completed implementation of an integrated work management system, which delivers the benefits of integrated work planning and resource allocation. Second, PSE aims to implement an automated call out tool to streamline the callout process and decrease the dispatch time to secure an electrical first responder and reduce dispatch times.³³

20 Next, from the beginning of 2021 through August 2021, Murphy claims that PSE adjusted its wage scale and has hired 26 new electric first response employees. Additionally, PSE has been evaluating grid automation impacts on outage safety. Murphy claims that grid automation's ability to detect and isolate the fault will decrease the need for SQI-11 standards.³⁴ Murphy asserts that PSE was preparing to integrate advanced metering infrastructure (AMI), which will help improve outage detection, prediction, and assessment. Murphy contends that these improvements may impact PSE's emergency response practices because outage start times will be initiated from the meter rather than

²⁸ *Id.* at 25:26-27. See Exh. PRM-3 at 64:10-15 and Exh. PRM-4.

²⁹ *Id.* at 27: Figure 5: Dispatch Time and Onsite Time for unplanned outages.

³⁰ *Id.* at 27:2-11.

³¹ *Id.* at 28:18-21 to 29:1-4.

³² *Id.* at 29:5-11.

³³ *Id.* at 29: 14-19 to 30:1-9.

³⁴ *Id.* at 30:16-23 to 31:1-3.

by customer phone calls.³⁵ Murphy concludes that for the reasons previously stated the \$613,636 penalty should be waived.³⁶

- 21 ***Response Testimony of Public Counsel, Corey J. Dahl.*** Corey Dahl is a Regulatory Analyst for the Public Counsel Unit of the Washington State Office of the Attorney General (Public Counsel).³⁷ Dahl testified that SQI-11 requires the Company to respond to electric service emergencies within an annual average of 55 minutes. However, according to Dahl, in 2021, the Company achieved an average emergency response time of 65 minutes and now faces a maximum \$613,636 penalty for failure to meet the service benchmark by 10 minutes.³⁸
- 22 Dahl's position is that the Commission should deny PSE's petition. Dahl states that when Puget Sound Power & Light merged with Washington Natural Gas Company in 1997 to form PSE, parties to the Commission proceeding supported a service quality program.³⁹ Parties were concerned that cost control pressures resulting from alleged merger-related efficiencies would impact service quality and safety. Dahl states that Public Counsel proposed, and Commission Staff supported, an SQI incentive program to insure against service quality and safety deterioration. The failure in meeting the SQI-11 standards would result in financial penalties to PSE.⁴⁰
- 23 Dahl testifies that the current SQI-11 standards were not a part of the 1997 rate case proceeding but were established in 2003. Dahl explains how Major Event Days and Localized Emergency Event Days were defined and these definitions were approved by the Commission.⁴¹ Based on the SQI-11 standard, Dahl states that PSE is obligated to maintain an average annual response time equal to or less than 55 minutes to electric service emergencies, but system-wide and localized emergencies that would divert

³⁵ *Id.* at 31:4-11.

³⁶ *Id.* at 32:1-6.

³⁷ Prefiled Response Testimony of Corey J. Dahl (Dahl, Exh. CJD-1T), filed December 2, 2022, at 1-2.

³⁸ Dahl, Exh. CJD-1T at 3:10-13.

³⁹ *Id.* at 4. See also *In re the Application of Puget Sound Power & Light Co. and Wash. Nat. Gas Co. for an Order Authorizing the Merger of Wash. Energy Co. and Wash. Nat. Gas Co. into Puget Sound Power & Light Co.*, Dockets UE-951270 and UE-960195, Fourteenth Supplemental Order Accepting Stipulation; Approving Merger, at 8 (Feb. 5, 1997).

⁴⁰ *Id.* at 4:14-15.

⁴¹ *Id.* at 5.

availability of responders are exempted from the SQI- 11 requirements, and response times for those events are excluded from the calculation of the average response time.⁴²

- 24 Dahl goes on to testify about the method for calculating the average response time to electric emergencies and the method for calculating the penalties as well.⁴³ He explains that when the Commission assesses penalties to PSE for missing the SQI-11 benchmark, shareholder dollars are directed to benefit customers.⁴⁴ Dahl describes what the Commission considers when determining whether to waive or mitigate penalties for failure to meet SQI-11. “The standard for mitigation (Mitigation Standard) is that the “penalty is due to unusual or exceptional circumstances for which PSE’s level of preparedness and response was reasonable” and mitigation must be requested in good faith.”
- 25 According to Dahl, after a proceeding, the Commission will issue an order issuing penalties or resolving the petition through mitigation.⁴⁵ Dahl testifies that no partial mitigation of the penalty is allowed and that PSE has the burden of proving that it meets the mitigation standard.⁴⁶ Dahl then details PSE’s reasoning for making the request for mitigation which includes, among other things, the following challenges: exceptional weather events, challenges from COVID-19, hiring and retention challenges, and first electric responder workload strains. Other reasoning includes heavy traffic in the Puget sound region. Dahl notes that PSE witness Murphy contends that PSE responded reasonably to the above challenges.⁴⁷
- 26 However, Dahl does not believe that PSE has met its burden to justify the Commission’s approval of their Petition.⁴⁸ Dahl then goes on to talk about PSE’s description of the of the unusual and exceptional weather events that resulted in high levels of customer outages. Dahl contends that the exceptional weather events are not sufficient grounds for penalty mitigation. Specifically, Dahl points out that the calculation of SQI 11 accounts for the impacts of severe and exceptional weather, such that PSE’s average emergency

⁴² *Id.* at 5 to 6:1-3.

⁴³ *Id.* at 6-7.

⁴⁴ *Id.* at 7:15-19.

⁴⁵ *Id.* at 8:13-19.

⁴⁶ *Id.* at 9:1-3.

⁴⁷ *Id.* at 9:5-19.

⁴⁸ *Id.* at 10:1-7.

response time would not be inflated by weather events truly outside the Company's control.⁴⁹ Dahl stresses that PSE's issues 2021 were adaptive and staff management related and that the extreme weather events are not a reasonable justification.⁵⁰

27 Further, Dahl argues that, based on global climate trends between 2011-2021, PSE should have anticipated severe weather events and a rise in power outages as a result. PSE's failure to adequately staff given these trends was unreasonable.⁵¹ Dahl adds that, previously in 2020, PSE did a much better job managing the COVID-19 pandemic and that response times were lower at 51 minutes, meeting SQI-11 requirements, when there were less tools to fight against the pandemic's effects.⁵² Dahl asserts that by 2021 PSE had adequate time and circumstances were different to better manage their first responder work force.⁵³ To emphasize his point, Dahl cites to a CenturyLink case where the Commission did not grant penalty mitigation and denied CenturyLink's petition for review under a similar set of facts to this case.⁵⁴ Based on this precedent, Dahl states that PSE's argument for penalty mitigation also should be denied.⁵⁵

28 Dahl does not think that PSE's difficulties regarding pay and employee retention are a reasonable justification for penalty mitigation. He asserts that these difficulties are completely within PSE's control. Dahl contended that PSE has control over the increase of wages to attract qualified first responders and thus control over the workload for individual employees.⁵⁶ Dahl also states that PSE that although PSE did adjust its wage scale by December 2021, the Company could have taken action sooner, given that rising cost of living and attrition had been occurring earlier than 2021.⁵⁷

29 In response to PSE's argument that workload strain also provides a basis for penalty mitigation, Dahl argues that it does not as increases workload has been occurring since 2014, and that the Company failed to recognize this trend. This failure to recognize this

⁴⁹ *Id.* at 11:6-10.

⁵⁰ *Id.* at 12:3-5.

⁵¹ *Id.* at 12:8-18.

⁵² *Id.* at 13:9-17 to 14:1-4.

⁵³ *Id.* at 14:5-8.

⁵⁴ *Id.* at 14:11-16 to 15:1-9.

⁵⁵ *Id.* at 15:1-9.

⁵⁶ *Id.* at 16.

⁵⁷ *Id.* at 16:3-9.

trend was illogical and irresponsible.⁵⁸ Dahl claims that PSE could have taken steps to maintain employees responsible for emergency work and planned work, the two areas of increased workload. Dahl noted that the measures the Company is now taking should have been taken sooner.⁵⁹

30 Dahl discusses the additional circumstances that PSE raised that affected its ability to respond to emergency events, such as increased traffic and significant accidents.⁶⁰ Dahl notes that the response times steadily increased until they exceeded the SQI-11's 55-minute threshold in July 2021, and that any measures to improve response time taken after that point were too late or ineffective in implementation.⁶¹ Dahl also claims that since 2013, PSE was already hovering just below the 55 minute mark, and was only below 50 minutes three times since 2003, when SQI-11 was implemented. Dahl argues that, given this and the aforementioned trends, PSE should have been more proactive to ensure more cushion for reducing emergency response times.⁶²

31 Dahl states that the Company's actions taken in 2021, including increasing first responder positions to 89 were reasonable but were not sufficient by that time and should have been taken sooner.⁶³ Dahl then points to the Avista service quality program, which has an electric emergency response time benchmark for its Service Quality Measures of 80 minutes. In 2021, Avista's response went from 44.3 to 46 minutes, in 2019 and 2020, to 53 minutes, meeting its benchmark by a wide margin, despite facing the same conditions as PSE.⁶⁴

32 Dahl refers to the documents and exhibits, as well as 11 non-exclusive factors established in Docket A-120061 the Enforcement Policy of the Washington Utilities and Transportation Commission (Enforcement Policy) Public Counsel reviewed in reaching

⁵⁸ *Id.* at 19:1-4.

⁵⁹ *Id.* at 19-21. Figure 1. Number of PSE Electric First Responders Employed from January 2014 through November 202268.

⁶⁰ *Id.* at 21:6-9 to 22.

⁶¹ *Id.* at 23:6-9; p. 24 Table 1. Cumulative Average Response Times by Month, 2017–21.

⁶² *Id.* at 25:12-21 to 26, lines 1-4, lines. The trends being increased cost of living, attrition, and traffic challenges.

⁶³ *Id.* at 26:7-13.

⁶⁴ *Id.* at 27. Dahl acknowledged that Avista's service territory is different, so the benchmarks were different and independent of PSE.

its recommendation to deny the petition.⁶⁵ Dahl argues that PSE has been in violation of Commission Orders and thus in violation of the Commission Enforcement Policy. Dahl then details the 11 factors the Commission considers when determining an enforcement action or penalty.⁶⁶ Dahl then discusses the application of each of these factors to PSE's actions in relation to the SQI-11's standards.⁶⁷

33 In his assessment of PSE's conduct in relation to the factors Dahl concluded: 1) the harm was serious requiring a strong penalty;⁶⁸ 2) the violations were not intentional but proactive measures could have been taken; 3) PSE did self-report as required, but the Commission may wish to consider that the company did not report the increase in average response times;⁶⁹ 4) the Company was cooperative and responsive, which may reflect favorably on PSE;⁷⁰ 5) PSE did not completely correct the violations or remedy the impacts, it did not take prompt, proactive corrective action, and, consequently, the maximum penalty is suggested;⁷¹ 6) the number violations may not weigh heavily in this case as the formula for calculating the penalty is pre-determined;⁷² 7) all customers were affected by emergency response times, and this points to a strong penalty being imposed;⁷³ 8) evidence points to SQI-11 violations being recurring, likely to impact certain communities, current high response time puts compliance at risk, and the impact of PSE's corrective actions are unknown, causing the likelihood of Commission enforcement action, puts compliance at risk;⁷⁴ 9) PSE has missed the SQI target 10 times since SQI's inception, PSE an SQI-11 for the first time in 2021, and for all of the violations the Commission has routinely assessed penalties as enforcement actions;⁷⁵ 10) PSE has no compliance program in place, does not meet Commission expectations in that regard, the margin by which PSE missed SQI-11 was unacceptable, and the Commission should

⁶⁵ *Id.* at 28:5-13. See also *In re Enf't Pol'y of the Wash. Utils. & Transp. Comm'n*, Docket A-120061, Enforcement Policy of WUTC, ¶ 15 (Jan. 7, 2013).

⁶⁶ *Id.* at 29:4-15.

⁶⁷ Dahl, Exh. CJD-1T at 29:39:1-6.

⁶⁸ Dahl, Exh. CJD-1T at 29:19-20 to 30, 1-8.

⁶⁹ *Id.* at 30:19-20 to 31, 1-8.

⁷⁰ *Id.* at 31:10-15.

⁷¹ Dahl, Exh. CJD-1T at 31: 17-18 to 33, 1-15.

⁷² *Id.* at 33:17-19 to 34:1-3.

⁷³ *Id.* at 34:5-9.

⁷⁴ *Id.* at 34:12-19 to 36.

⁷⁵ *Id.* at 36:5-12.

impose the full \$613,636 penalty;⁷⁶ 11) PSE is the largest investment-owned utility, the penalty is small in comparison to PSE's revenues, so the \$613,636 penalty is not disproportionate to the Company's size, and PSE agreed to the penalty methodology.⁷⁷

34 Dahl's take was that PSE maintained its average emergency response time, but left little room for unexpected circumstances. Dahl argues that waiving the penalty would disincentivize PSE from continuing to re-evaluate its emergency response program and drive it below the benchmark. For that reason, maintaining the penalty is essential in improving PSE's emergency response efforts.⁷⁸ Consequently, Dahl recommends imposing the maximum penalty of \$613,636, and that Factors 1, 8, 9, and 10 were particularly impactful in Dahl reaching that conclusion.⁷⁹ Dahl adds that no part of the penalty should be suspended.⁸⁰

35 ***Testimony of Commission Staff, Andrew Roberts.*** Andrew Roberts is a Regulatory Analyst with the Consumer Protection Section of the Consumer Protection and Communications Division with the Commission.⁸¹ Roberts recommends denying PSE's mitigation request and maintaining the \$613,636 penalty.⁸² Roberts lists the exhibits that were prepared in support of his testimony.⁸³

36 Roberts describes the consequences for PSE not meeting SQI-11 and the formula for calculating the penalty PSE must pay as a result.⁸⁴ Roberts adds that PSE can request mitigation of the penalty based on unusual or exceptional circumstances, as long as the Company's preparedness and response was reasonable.⁸⁵ The penalty is calculated at \$613,636 based on an average first responder response time of 65 minutes.⁸⁶ Roberts

⁷⁶ *Id.* at 37:12-21 to 38, 1-11.

⁷⁷ *Id.* at 38:13-17 to 39, 1-6.

⁷⁸ *Id.* at 39:1-19.

⁷⁹ *Id.* at 40:3-19, to 41, 1-3.

⁸⁰ *Id.* at 41:15-16.

⁸¹ Prefiled Testimony of Andrew Roberts, filed December 2, 2022 (Roberts, Exh. AR-1T) at p. 1.

⁸² Roberts, Exh. AR-1T at 2: 16-17.

⁸³ *Id.* at 2: 20-23 to 3: 1-3.

⁸⁴ *Id.* at 4:16-20 to 5:1-2.

⁸⁵ *Id.* at 5:6-8. See also SQI Appx. at 17.

⁸⁶ *Id.* at 5:16-17.

notes that filed for penalty mitigation based on circumstances it believes are unusual such as unusual weather, COVID-19, hiring and retention, and electric first responder workload for which it claims its preparedness and response were reasonable.⁸⁷ To be more specific, Roberts recites PSE's argument that the significant events reduced the number of available responders and increased their fatigue. Roberts also takes note that 55 days out of 365 were excluded from the SQI-11 calculation due to these circumstances, and he adds that the SQI Benchmark accounts for significant weather events.⁸⁸

37 Roberts gives three reasons why the weather events in 2021 should not be considered for mitigation: 1) the settling parties agreed and the Commission approved the mechanism to alleviate the impact of major weather events and smaller regional weather events as well as localized emergency event days; 2) the five year average between 2016 and 2020, prior to 2021, was already at 53.4 minutes, leaving little room for error; 3) and the Seattle Times article PSE cites points out that the weather in 2021 "unfolded the way climate scientists have been predicting for 8 decades," and that PSE's near miss of the benchmark demonstrates the Company's lack of preparedness.⁸⁹

38 Roberts notes that PSE indicated that COVID-19 affected its ability to respond and that the Company's staff billed 1,655.5 hours to the COVID-19 work order. PSE uses the COVID-19 work order to track employee hours lost due to the virus' impacts.⁹⁰

39 Roberts believes that the time billed to the COVID-19 work order should not be considered for mitigation. Roberts states, that based on the data PSE's first responder staff did not experience an extended or prolonged instances illness from the COVID-19 pandemic. In short, Roberts claims that PSE's first responders did not miss an unusual or exceptional number of work shifts.⁹¹ Moreover, Roberts asserts that inflation should not be considered as a mitigating factor either. The reasons for this are: 1) PSE did not provide any data indicating that PSE experienced turnover at a higher rate or that inflation in King County was any higher than prior years; 2) the SQI-11 metric is not solely a King County based metric, but considers the average over the entire service territory as the measure of performance; 3) and that the average response time outside of

⁸⁷ *Id.* at 6:2-4.

⁸⁸ *Id.* at 6:7-11 and 15-19, See also, Exh. Roberts, AR-6.

⁸⁹ *Id.* at 7:10-15 to 8:1-11. See also, Dockets UE-011570, UG-011571& UE-031946.

⁹⁰ Roberts, Exh. AR-1T at 8:14-18.

⁹¹ Roberts, Exh. AR-1T at 9:1-9.

King County was at 60 minutes, and so removing King County from the metric still resulted in PSE missing the benchmark.⁹²

- 40 Although PSE highlights a 7 percent increase in customer requested projects between 2020 and 2021, Roberts notes that these projects are not included in the SQI-11 calculation. However, Roberts argues that PSE does not provide a direct link between this increase in customer requested projects and first responder response time. Additionally, Roberts asserts that PSE does demonstrate correlation between the number of total outages and monthly SQI-11 results. However, Roberts contends that just because the total number of outages and the monthly SQI-11 results are correlated does not mean there is a causal link between the two.⁹³
- 41 To address challenges in hiring and retention, Roberts observes that PSE aims to increase the number of first responders from 77 to 89. PSE also eventually increased compensation for its first responders and reorganized its shifts for first responders to better respond to the workload. According to Roberts, PSE also has contemplated creating additional job classifications in order to address the challenging work PSE first responders faced. Roberts concludes that given 1100 hours of overtime in 2021, and benchmark being missed by 10 minutes, further analysis is needed.⁹⁴
- 42 Roberts does not believe that PSE was adequately prepared for the events as evidenced by: 1) the Company nearly missing the benchmark 3 out of 5 years prior to 2021, but not having a separate compliance program to ensure meeting the SQI-11 benchmarks; and 2) not increasing its first responder staff despite the benchmark near misses. Consequently, Roberts concludes that customers experienced a deterioration in quality of service in 2021 as measured by SQI-11.⁹⁵
- 43 While events such as COVID-19 and the weather were beyond the Company's control, Roberts contends that these events were not unusual or excessive. Roberts determines

⁹² *Id.* at 9: 12-22 to 10:1-8.

⁹³ *Id.* at 10:11-21 to 11:1-3.

⁹⁴ *Id.* at 11:6-18.

⁹⁵ *Id.* at 12:2-15. See also *In re Enforcement Policy of the Wash. Utils. & Transp. Comm'n*, Docket A-120061, Enforcement Policy of the Wash. Utils. & Transp. Comm'n, 5 ¶ 8 (Jan. 7, 2013).

that PSE missed opportunities to make course corrections that would have eased the workload and made achieving the 55-minute benchmark.⁹⁶

44 ***Rebuttal Testimony of PSE witness Murphy.*** Murphy contends that Staff and Public Counsel interprets the standard for mitigation too narrowly and underestimates the cumulative impacts of all the unusual and exceptional circumstances that occurred during 2021, causing PSE to miss the SQI-11 standards. Murphy argues that the SQI-11 standard is one of reasonableness, while Roberts frames the standard in terms of being adequate.⁹⁷

45 Murphy asserts that the fact that PSE's inadequate response was evidence that the weather events were extreme and unusual, and the Company's response was reasonable, in those circumstances. Staff and Public Counsel fails to consider the cumulative effects that these unusual circumstances had on the electric first responders, but instead viewed the individual impact of each circumstance. These circumstances resulted in fatigue of the electric first responders and deteriorating SQI-11 performance.⁹⁸ To that point, Murphy argues that although the 55 Major Event Days in 2021 do not affect SQI-11 performance results, the weather events were still big contributors to resource fatigue in 2021.⁹⁹

46 Murphy goes on to catalogue the increased workload due to planned projects and electric outages that first responders had to respond to in a list of exhibits from his direct testimony.¹⁰⁰ Murphy disagrees with Staff's argument that the COVID-19 work order should not be considered for mitigation. According to Murphy, the COVID-19 work order only quantifies hours lost from regular scheduled shifts of electric first response employees. It does not quantify missed opportunities where an employee would respond to an emergency callout while not on their regular shift. However, the work order's data was important because it shows the real impacts from COVID-19 exposure and sickness.¹⁰¹ Murphy adds that PSE experienced significant impacts on resource depletion

⁹⁶ *Id.* at 12:19-21, to 13:1-11.

⁹⁷ Prefiled Rebuttal Testimony of Patrick R. Murphy (Murphy, Exh. PRM-14T), February 17, 2023, at p. 2: 4-15 to 3: 2-10. The listed circumstances are weather, unusual and unexpected levels of attrition, workload, travel conditions.

⁹⁸ Murphy, Exh. PRM-14T at 3:11-18. See also Exh. PRM-15 and Figure 4 of Exh. PRM-1T.

⁹⁹ *Id.* at 4:8-19. The 55 excluded days represented a 41% increase over the preceding 5-year average, 2016-2020.

¹⁰⁰ *Id.* at 4:17-20 to 5:1-4.

¹⁰¹ *Id.* at 5:9-18.

from COVID-19, ranging positive test results to symptoms to high-risk exposure. Further, Murphy alleges that PSE was affected by Washington’s labor shortage in 2020-2021 as well.¹⁰²

47 Murphy disagrees with Staff’s claim that PSE overstated the impact of COVID-19 and points out Washington was under emergency orders and state of emergency until October 2022. Murphy disputes Staff’s use of PSE’s 2020 SQI-11 data performance with its 2021 performance to show that the Company should have met the 2021 benchmarks.¹⁰³ Murphy contends that the impacts were actually worse in 2021 than 2020.¹⁰⁴ Murphy argued that the average response times from 2011 to 2021 was 53 minutes. Murphy adds that the difference between the minimum and maximum response times was three minutes from 2017 through 2020, but the delta exploded to 14 minutes in 2021. Murphy claims that it’s not reasonable to demand that PSE fully predict the 2021 staffing needs based on vastly different historic trends, and that staffing has been consistently and responsibly balanced.¹⁰⁵ Timing of the wage increases in 2021 was driven by an upward trend in attrition, elevating the risk, to which PSE promptly responded.¹⁰⁶

48 Murphy posits that the high cost of living and demanding workload are factors that continue to challenge employee retention, but the pandemic uniquely and significantly impacted electric first responder attrition in 2021.¹⁰⁷ Murphy observes that high level attrition was an underlying driver for King County staffing turnover as demonstrated fluctuations in staffing levels from early 2021 through June 2021 to August 2021.¹⁰⁸

49 Murphy agrees with Public Counsel that “it is critical to ensure that named communities are not disproportionately saddled with the public safety and reliability issues associated with slow emergency response times.” However, he disagrees with Public Counsel’s implication that these communities experienced disproportionately longer average

¹⁰² *Id.* at 6:1-9. See also Figure 1: Washington Labor Data.

¹⁰³ *Id.* at 7:3-15.

¹⁰⁴ *Id.* at 7:11-15 to 8, 1-2. See also Section II. B of Exh. PRM-1T.

¹⁰⁵ *Id.* at 9:6-21.

¹⁰⁶ *Id.* at 9:19-21 to 10:1-2.

¹⁰⁷ *Id.* at 10:7-13. Attrition included early retirements and out-of-state relocations. See also Table 1: Attrition in Electric First Responder Positions.

¹⁰⁸ *Id.* at 11:1-8.

emergency response times in 2021. Murphy maintains that PSE's performance related to impacted and vulnerable populations was much better than other areas.¹⁰⁹

50 Murphy goes on to address Public Counsel's comparison of PSE's 55-minute benchmark with Avista's 80-minute benchmark. Murphy avers that Avista's benchmark was established in 2015 while PSE's is 20 years old, with the target having remained unchanged since it was established. Murphy adds that much has changed over the past two decades that the SQI-11 should be evaluated in a future proceeding, despite that PSE met its benchmark in 2022. The SQI-11 needs to be discussed from a safety perspective and in the context of grid modernization.¹¹⁰

51 Murphy states that PSE has continued to improve its performance despite meeting its benchmarks in 2022. PSE has instituted wage increases driven by market analysis, staffing increases, shift modifications, process workshops, and investments in new technology to include a work management platform and an automated callout tool.¹¹¹

POST-HEARING BRIEFS.

Initial Brief of Puget Sound Energy.

52 In its brief, PSE requests that the Commission waive the \$613,636 penalty. PSE reiterates that it was unable to meet the 55-minute benchmark due to a combination of unusual, exceptional, and uncontrollable factors.¹¹² PSE alleges that it experienced a significantly increased workload due to unplanned outages and planned projects. This resulted in PSE's Electric First Response team working overtime responding to unprecedented extreme weather events.¹¹³ PSE argues that its level of preparedness and response to lessen the effects on their response time were reasonable. PSE asserts that Staff's argument that PSE was not ultimately able to recruit all necessary personnel invokes a higher standard of review that is not supported. PSE contends that the standard for penalty mitigation is whether PSE's actions were reasonable. PSE adds that the Commission has never required PSE to show its actions were successful, sufficient, or

¹⁰⁹ *Id.* at 11:13-20 to 12:1-14. See Exh. CJD-9.

¹¹⁰ *Id.* at 12:17-20 to 13:1-10.

¹¹¹ *Id.* at 13:13-19 to 14:1-2.

¹¹² Puget Sound Energy's Initial Brief (PSE's Initial Brief), filed May 24, 2023, at 1. PSE admitted that its response time was 65 minutes, 10 minutes above the SQI-11 benchmark.

¹¹³ PSE's Initial Brief, at 1.

adequate to meet an SQI benchmark in order to obtain full penalty relief.¹¹⁴ PSE believes that reasonable actions taken, during instances of unusual or exceptional circumstances, may still result in performance failures, which is why penalty mitigation was instituted.¹¹⁵ PSE claims that Staff ignores the cumulative impact of the unusual events that impacted SQI-11 response time in 2021.¹¹⁶

53 PSE argues that the mitigation standard is one of reasonableness and that Staff attempted impose a standard of adequate, instead.¹¹⁷ The Company argues that “there are times when a reasonable response to an electric safety incident, based on sound judgment and available resources, will not provide for immediate or adequate relief.”¹¹⁸ PSE adds that in those circumstances waiver of penalties has been granted. The Commission has even directed PSE file for mitigation when failing to meet performance standards, as long as PSE could show that it’s preparedness level and responses were reasonable. PSE argues that the Commission has recognized that there are times when reasonable actions will still result in missed benchmarks.¹¹⁹ PSE refers back to the Merger Stipulation and claims that it mentions multiple unusual or exceptional circumstances which could lead to failure to meet a benchmark despite preparedness and response levels.¹²⁰ PSE contends that COVID-19 is one such event.¹²¹

54 PSE argues that the 11 factors that Staff has referred to in evaluating the Company’s actions are actually factors related to enforcement and are not applicable to PSE’s petition. PSE maintains that the 11 factors only apply when the Commission finds that “company has violated an applicable statute, rule, order, or tariff[.]”¹²² PSE claims that the Commission’s Enforcement Policy in this proceeding is an inappropriate attempt to

¹¹⁴ *Id.* at 2.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 2.

¹¹⁷ *Id.* at 5.

¹¹⁸ *Id.* at 5-6.

¹¹⁹ *Id.* at 6; *See, Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Inc.*, Dockets UE-072300 and UG-072301, Order 24 at ¶ 2 (April 29, 2014).

¹²⁰ *Id.* at 6.

¹²¹ *Id.*

¹²² *Id.* at 7; *See also In re Enf’t Pol’y of the Wash. Utils. & Transp. Comm’n*, Docket A-120061, Enforcement Policy of the Wash. Utils. & Transp. Comm’n. at ¶ 15 (Jan. 7, 2013).

raise the standard for mitigation and increase PSE's burden above what was agreed to by the settling parties in the Merger Stipulation.

- 55 Additionally, PSE contends that Public Counsel has not cited to prior SQI proceeding where the Commission has applied or inquired into any Enforcement Policy factors.¹²³ The Company argues that Commission should mitigate the penalty because of all the unusual circumstances it experienced in 2021, and that PSE's response of increasing its Electric First Responder personnel to meet demand and response requirements, was entirely reasonable.¹²⁴
- 56 PSE again addresses many of the factors which it argues contributed to missing the SQI target. PSE argues that the Company experienced 16 more days of severe outage events in 2021, which was a 41% increase over the preceding five-year average.¹²⁵ PSE disagrees with Public Counsel's arguments that Significant Outage Events cannot be considered "unusual or exceptional circumstances" and that workforce fatigue from the events is not a direct impact of Significant Outage Events, and are not outside the Company's control. PSE disagrees that this is a staff management issue.¹²⁶ PSE contends that mitigation is not limited to circumstances when an event "directly" causes the Company to miss a benchmark. PSE further contends that it is not necessary for one exceptional event to be the direct cause of PSE's failure to meet a benchmark because the SQIs are a performance measure that depend on myriad smaller actions and decisions.¹²⁷
- 57 PSE states that it experienced a 19% increase in outages as well as an increase in the total number of planned customer-facing scheduled work projects that PSE's electric first responders by seven percent.¹²⁸ There were also system projects that affected the fatigue and overall workload.¹²⁹ According to PSE, this fatigue resulted in longer dispatch time and increased travel time.¹³⁰ PSE argues that increased travel time was not foreseeable

¹²³ *Id.* at 7-8.

¹²⁴ *Id.* at 8-9.

¹²⁵ *Id.* at 9-10.

¹²⁶ *Id.* at 10-11.

¹²⁷ *Id.* at 11.

¹²⁸ *Id.* at 12-13.

¹²⁹ *Id.* at 13.

¹³⁰ *Id.* at 14.

going into 2021, based on the shutdowns from the pandemic.¹³¹ PSE further argues that it was more than just workload constraints and extreme travel events that affected PSE's SQI-11 performance.¹³²

58 PSE asserts that its staff spent an increased amount of time away from work due to illness from COVID-19. PSE believes that Staff's claims are dismissive of the impact of COVID-19 on the Company's First Responders. These included sick days in addition to missed shifts that were not tracked under the COVID-19 work order, the impact of these things, PSE argues, were beyond its control.¹³³ PSE disagrees with Public Counsel's argument that the Company could have easily met the benchmarks 2021 because the effects of COVID-19 were worse in 2020 than 2021. The Company argues that the effects were actually worse in 2021 than 2020.¹³⁴

59 Early retirements, relocations, and inflation affected PSE's ability to hire, train, and to retain First Responders, which lead to increased attrition. This and an increased workload impacted SQI-11 compliance, according to the Company.¹³⁵ PSE asserts that Public Counsel appears to agree with the Company that "[t]he primary driver for hiring and retention challenges are higher cost of living and demanding workload."¹³⁶ PSE maintains that these are the exact drivers that it has experienced and described in its testimony and exhibits. PSE argues that Staff's conclusion that the Company should have just paid its employees more was an oversimplification, unrealistic and inaccurate.¹³⁷

60 PSE adds that it has taken significant steps and actions to increase its staff from 77 to 89. PSE contends that Staff acknowledges that the Company's actions were reasonable but were not enough to reduce the response time in 2021. PSE adds that this admission is in line with the exact point the Company has been making. PSE also states that neither Staff nor Public Counsel provide any evidence supporting how the Company knew or should

¹³¹ *Id.* at 15.

¹³² *Id.* at 15.

¹³³ *Id.* at 15-16.

¹³⁴ *Id.* at 16. PSE cites to the Omicron Variant having a great impact in 2021.

¹³⁵ *Id.* at 17.

¹³⁶ *Id.* at 17 citing Dahl, Exh. CJD-1T at 16:10-11.

¹³⁷ *Id.* at 18.

have known about its staffing issues before it did, and asserts that its efforts were effective.¹³⁸

61 PSE then refers to a prior mitigation petition where a Company contractor’s business cessation was cause for the Commission waive the penalty as the Commission concluded that business cessation was beyond PSE’s control.¹³⁹ Delay in PSE finding a replacement factored into the Commission’s decision. PSE claims that delay in finding recruits and replacements for its First Responders was also justified based on the facts and circumstances in this matter.¹⁴⁰ PSE maintains that it has a history of taking its SQI benchmarks seriously, that it took reasonable and appropriate steps, and that its efforts in this case were consistent with their efforts in the aforementioned cases.¹⁴¹

Opening Brief of Public Counsel.

62 Public Counsel argues that PSE failed to demonstrate that the “penalty is due to unusual or exceptional circumstances for which PSE’s level of preparedness and response was reasonable,” as required, and that the Company should incur a \$613,636 penalty for exceeding benchmark average response time.¹⁴² Public Counsel adds that PSE did not take adequate steps to achieve its benchmark, so the penalty should not be waived or suspended.¹⁴³

63 Public Counsel recounts PSE’s list of major weather events that it alleged prevented its timely response to emergency incidents, and argues that these events did not have a direct effect on average response because they were excluded from the SQI-11 requirements as

¹³⁸ *Id.* at 19.

¹³⁹ *Id.* at 20. *Wash. Utilis. & Transp. Comm’n. v. Puget Sound Energy, Inc.*, Dockets UE-072300 and UG-072301 (consolidated), Order 21 at ¶ 12 (April 8, 2013). These concerned SQI-6 and SQI-8.

¹⁴⁰ *Id.* at 20-21. Allegedly the Commission said that it can relieve PSE of all or some of the penalty.

¹⁴¹ *Id.* at 21-22. Allegedly the Commission said that it can relieve PSE of all or some of the penalty. *See, 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 at ¶ 8 (Jan. 10, 2002); *See also Wash. Utilis. & Transp. Comm’n. v. Puget Sound Energy*, Dockets UE-072300 and UG-072301 (consolidated), Order 24 at ¶ 9 (April 29, 2014).

¹⁴² Opening Brief of Public Counsel (Opening Brief), filed May 24, 2023, at 1.

¹⁴³ Opening Brief at 1.

Major Events. Public Counsel disagrees with PSE that the number of significant events reduced the availability of electric first responders and increased their fatigue. Public Counsel argues that PSE does not provide evidence of a direct link between the SQI-11 performance during the 2021 reporting period and the employee fatigue.¹⁴⁴

64 Public Counsel recalls PSE's arguments about the impact of traffic on the Company's SQI-11 performance. Public Counsel contends that PSE provides no support for these claims. Public Counsel also contends that PSE also fails to disaggregate the impacts of traffic from the other factors that PSE claims impacted their response time. Public Counsel also takes issue with the concept of compounding fatigue from combined events as well. While PSE notes the serious number of significant accidents on Washington roads in 2021, Public Counsel asserts that PSE does not provide average congestion levels that are more illustrative of the average traffic conditions electric first responders faced in 2021.¹⁴⁵

65 Public Counsel states that in 2020 when COVID-19 was declared a global pandemic, PSE managed to meet SQI-11, despite the challenges the Company's electric first responders faced. Public Counsel avers that with more scientific knowledge about COVID-19 and time to adapt its resources, PSE should have better adjusted to the pandemic. Public Counsel also notes the inconsistency between PSE's direct testimony and its rebuttal testimony where in direct testimony PSE states that it faced staffing challenges from market wage conditions. However, in PSE's rebuttal testimony, Public Counsel observes that the Company claims that its staffing challenges resulted from statewide COVID-19-related labor shortages, without specifically tying that circumstance to its utility workers or PSE's service territory.¹⁴⁶ Public Counsel then cites to the precedent of the Commission rejecting mitigation of the \$226,000 penalty against CenturyLink Companies (CenturyLink) for not providing notice of residential rate changes. CenturyLink argued that personnel shortages was the cause for not providing notice to its customers of the rate, but the Commission concluded that COVID-19 related personnel shortages did not relieve the Companies of their obligation to comply with regulations. Public Counsel argues that the Commission should apply the same rationale and deny PSE's Petition for Mitigation.¹⁴⁷

¹⁴⁴ *Id.* at 5-6.

¹⁴⁵ *Id.* at 7-8.

¹⁴⁶ *Id.* at 9-10.

¹⁴⁷ *Id.* at 10-11.

- 66 In response to PSE’s argument that hiring and retention of employees are mitigating factors, Public Counsel contends that the Company did not demonstrate a direct link between inflation levels and employee turnover in King County. Public Counsel also contends that the pattern of increasing cost of living and its impacts on personnel were not unusual or exceptional circumstances. These are factors that are within PSE’s control to address and that the Commission should disregard this factor.¹⁴⁸
- 67 Public Counsel argues that the increase in planned work is not an unusual or exceptional event. Also, Public alleges that workload and outages (emergency work) had been each been increasing at a similar rate from 2014 through 2021. Public Counsel concludes that PSE should have recognized these trends earlier and managed its first responder staff accordingly.¹⁴⁹
- 68 Public Counsel maintains that PSE had ample indication that it was in danger of missing the benchmark for years and the Company failed to proactively manage employee workload to prevent fatigue due to weather and traffic conditions for which it should have been prepared to respond. Public Counsel concludes that PSE’s level of preparedness and response to its SQ1-11 obligations were unreasonable, and the Commission should deny PSE’s Petition for Mitigation.¹⁵⁰
- 69 Public Counsel notes that PSE reached the 55-minute threshold in July and that at that point the Company should have known that it could possibly miss the SQI-11 benchmark. Any subsequent measures proved to be too late or ineffective. According to Public Counsel, PSE should have proactively managed its SQI-11 performance, given the upward trend in increased planned work and outages.¹⁵¹
- 70 Public Counsel believes waiving the penalty would disincentivize PSE from continuing to re-evaluate its emergency response program and drive it below the benchmark. Consequently, Public Counsel recommends imposing the maximum penalty of \$613,636, and that Factors 1, 8, 9, and 10 were particularly impactful in Public Counsel reaching that conclusion. Public Counsel adds that no part of the penalty should be suspended.¹⁵²

¹⁴⁸ *Id.* at 11-13.

¹⁴⁹ *Id.* See also Murphy, Exh. PRM-1T at 17:15-18 and Murphy, Exh. PRM-1T at 19, Figure 2.

¹⁵⁰ *Id.* at 15.

¹⁵¹ *Id.* at 15-16.

¹⁵² *Id.* at 28-29.

Post-Hearing Brief of Commission Staff.

- 71 Staff argues that after years of edging close to the brink of failure, the Company exceeded the benchmark for SQI No. 11. The matters PSE cites in support of its claim for penalty mitigation are not unusual or extraordinary events. Further, Staff argues that PSE’s longstanding failure to address the increasing workloads of its electric first responders means that the company cannot claim to have reasonably prepared for the events of 2021.¹⁵³
- 72 According to Staff, in order to obtain mitigation, PSE must show that the failure to meet the benchmark, and thus the imposition of a penalty, “is due to unusual or exceptional circumstances for which PSE’s level of preparedness and response was reasonable.” Staff asserts that it’s a two- prong test PSE must meet to receive penalty mitigation: (1) faced unusual or exceptional circumstances in 2021, and (2) reasonably prepared for those events. Staff contends that PSE did not meet the test.¹⁵⁴
- 73 Staff recalls the list of unusual or extraordinary circumstances PSE claims warrant mitigation, and states that the Commission should decline to find any of these circumstances compelling for purposes of PSE’s petition.¹⁵⁵ Staff argues that major event days due to weather were already excluded from the SQI-11 formula for calculating response time. Because those days are already excluded PSE should not be allowed to claim mitigation related to them as this would allow the Company to gain a double credit for any weather-related difficulties.¹⁵⁶ “That double credit undercuts the purposes of the SQI program, the maintenance of acceptable service quality, and the Commission should reject PSE’s attempt to inject it into the SQI program’s jurisprudence.”¹⁵⁷ Staff also contends that the weather “unfolded the way climate scientists have been predicting for decades. 2021’s weather was not aberrant: it was instead the kind of weather year for which PSE should have long planned.”¹⁵⁸

¹⁵³ Post Hearing Brief of Commission Staff (Staff Post Hearing Brief), filed May 24, 2023, at 1.

¹⁵⁴ Staff Post Hearing Brief, filed May 24, 2023, at 4.

¹⁵⁵ *Id.* at 4.

¹⁵⁶ *Id.* at 4-5; See also Roberts, Exh. AR-1T at 7:10-11.

¹⁵⁷ *Id.* at 5.

¹⁵⁸ *Id.* at 5; See also, Murphy, Exh. PRM-6 at 1; Roberts, Exh. AR-1T at 8:4-11 and Dahl, Exh. CJD-1T at 12:8-18.

- 74 First, Staff argues that the types of challenges that PSE cites, related to COVID-19, are not qualitatively unusual or exceptional. Staff also argues that the effects of the virus are those of almost every illness – missed work time for PSE’s workforce, self-care or care for ill family members.¹⁵⁹ Additionally, Staff asserts the number of employee lost was less than three days per employee in 2021, and that the Company does not explain how that number of days per employee amounts to an exceptional event.¹⁶⁰ Staff contends that PSE is making a similar argument as in the CenturyLink matter regarding the virus effects on personnel and that the Commission should also reject the Company’s argument for the same reasons. Staff asserts that the Company’s inflation argument is not relevant. Staff argues that outside of King County where inflation was allegedly a huge impact, the Company’s response time still averaged 60 minutes, above the 55-minute threshold. Staff also asserts that it does not see where PSE experienced an unusual amount of first responder turnover in 2021 because there was a similar amount of turnover in prior years.¹⁶¹ Staff takes issue with the argument that PSE’s response times increased due to a higher workload and argues that higher or increased workload should not be considered extraordinary or unusual as the number of planned outages has been increasing for years. In addition, the number of planned outages themselves shouldn’t be factored as nearly 30% of them occurred on major event days and were removed from the SQ-11 calculation.¹⁶² Staff also contends that in 2021 traffic volumes returned to normal and that this circumstance is not an unusual or exceptional circumstance. Additionally, Staff disagrees that a number of PSE’s extreme travel events, which allegedly affected its SQI-11, occurred during Fall 2021 extreme weather events, meaning that these should have already been excluded from the calculation. In either case, Staff avers that even excluding all extreme travel time incidents, PSE would still fail to meet its SQI-11 benchmark.¹⁶³
- 75 Staff points out that the Commission implemented the SQI program to prevent PSE’s management from seeking money saving efficiencies at the expense of acceptable levels of service. This includes the expectation that PSE would staff itself efficiently as well,

¹⁵⁹ *Id.* at 5; See also, Murphy, Exh. PRM-1T at 14:5-8, 14:20-15:2.

¹⁶⁰ *Id.* at 6.

¹⁶¹ *Id.* at 7.

¹⁶² *Id.* at 7-8.

¹⁶³ *Id.* at 8-9.

but not to the level where customers would suffer from degraded service quality.¹⁶⁴ Staff observes that more people have moved to PSE's service territory, but it has not updated its management or staffing to avoid service quality deterioration. Staff contends that PSE did not take steps to retain or expand its first responders nor did it engage in adaptive management to maximize the productivity of the first responders it had on staff. Staff also observes a trend of increased response times which PSE did not respond to with failure meeting the SQI-11 benchmarks being the inevitable result.¹⁶⁵

76 Staff applauds the fact that PSE has taken remedial action to ensure that it meets its benchmarks, but those efforts do not make right the failures of 2021 and should not be the basis for penalty mitigation. Those benefits are geared to providing benefits for future years in the form of adequate service and absence of penalties. Staff concludes that PSE did not reasonably prepare for the events of 2021 and consequently, the Commission should deny PSE's petition for penalty mitigation.¹⁶⁶

Reply Brief of Puget Sound Energy

77 The Company argues, contrary to the arguments of opposing parties, that PSE missing the SQI-11 benchmark was far from certain. PSE states that it had met its benchmarks the prior 18 years and that the compounding effect of the unusual circumstances caused a runaway effect of its response times.¹⁶⁷ PSE adds that the outlook in 2021 was optimistic and details the reasons for this optimism. PSE also argues that the extreme weather events are actually more unpredictable than predictable.¹⁶⁸ PSE repeats its argument that its many actions, it could not overcome the cumulative impacts of the unprecedented circumstances in the last half of 2021.¹⁶⁹

78 PSE reiterates several arguments from its past briefs and testimony, but adds the point that this was the first instance of noncompliance by PSE and that the Company's

¹⁶⁴ *Id.* at 9; See also, Merger Order at 30; Dahl, Exh. CJD-1T at 4:9-1 and See Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Dockets UE-170033 & UG-170034, Order 08, 79 ¶ 231 (Dec. 5, 2017).

¹⁶⁵ *Id.* at 10.

¹⁶⁶ *Id.* at 11.

¹⁶⁷ PSE Reply Brief at 1.

¹⁶⁸ *Id.* at 1.

¹⁶⁹ *Id.* at 2.

performance had been improving over the past several years.¹⁷⁰ PSE refers back to Public Counsel Brief that notes that the Company did not reach to the 55-minute threshold until July 2021 and that is when it should have known that it was in jeopardy of missing the SQI-11 benchmark.¹⁷¹ PSE contends that the large spike to a 65-minute response time shows that PSE had no reason to expect multiple unusual circumstances, as up until July 2021 performance projected another successful year.¹⁷² Even if PSE had been able to predict the unusual circumstances, they would still be “unusual” and warrant mitigation, under the applicable standard parties established.¹⁷³

79 PSE raises that point that COVID-19, contrary to Staff’s assertions, “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.”¹⁷⁴ PSE argues against Public Counsel’s claim that the Company’s testimony was contradictory regarding the shortage of labor and the Company’s success in recruitment. PSE maintains that despite the labor shortage and thanks to early action, PSE increased wages and was successful in hiring and on-boarding a staggering 26 new Electric First Responders. PSE claims that its response was beyond reasonable.¹⁷⁵

80 PSE takes issue with Staff’s and Public Counsel’s comparison of CenturyLink’s COVID-19 arguments and PSE’s SQI-11 petition. PSE believes that CenturyLink’s case has an entirely different context and is not relevant here. CenturyLink’s obligation was not a general regulatory one but one specific to its alternative form of regulation (AFOR). PSE asserts that COVID-19 impacts were exceptional and any “learning” from 2020 was, for the most part, irrelevant given the changing circumstances in 2021.¹⁷⁶

81 PSE alleges that the workload was not a steady upward trend, but was more volatile. Planned work has actually been decreasing in 2018 and 2020.¹⁷⁷ The significant increase

¹⁷⁰ *Id.* at 3; See also, Opening Br. of Public Counsel at ¶ 14 and Murphy, Exh. PRM-1T at 9, Table 2.

¹⁷¹ *Id.* at 4; See also Opening Br. of Public Counsel at ¶ 27.

¹⁷² *Id.* at 5.

¹⁷³ *Id.* at 6.

¹⁷⁴ *Id.* at 8.

¹⁷⁵ *Id.* at 8.

¹⁷⁶ *Id.* at 9.

¹⁷⁷ *Id.* at 10; See also Murphy, PRM-1T at 18, Figure 1.

of planned work in 2021 made the circumstances even more exceptional. PSE also claims that unplanned outages were also volatile with significant dips and spikes, and that the number outage jobs was extraordinary.¹⁷⁸ The total number of outage jobs numbering 19400, which was above the range of 14900 and 17800 in previous years, is unusual and exceptional.¹⁷⁹ PSE argues that simply removing 30% as major event days does not account for the workforce fatigue which affected response times.¹⁸⁰

82 With regards to adverse weather events, PSE asserts that it “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.” PSE declares that electric first responders do not have the luxury to remove events from their workload and that the SQI-11 calculation ignores the impact that excluded work has on overall performance.¹⁸¹ PSE claims that before it reached the benchmark in July 2021, it had already taken measures “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.”¹⁸² Because PSE’s historic response times had been relatively stable over 16 years, PSE contends that there was no indication going into 2021 that PSE would miss the benchmark. PSE also claims that Staff’s reference to there being a minute and half buffer between PSE’s average response time and the SQI-11 threshold distorts the program’s measurement.¹⁸³ Further, PSE argues that the SQI-11 “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.”¹⁸⁴

¹⁷⁸ PSE Reply Brief at 10.

¹⁷⁹ PSE Reply Brief at 11.

¹⁸⁰ PSE Reply Brief at 11; See also Figure 2 All Electric Outages.

¹⁸¹ PSE Reply Brief at 12-13; See also Figures 2, 3 and 4, beginning on page 19 of Exh. PRM-1T.

¹⁸² PSE Reply Brief at 14; See also Opening Br. of Public Counsel at ¶ 40 and Murphy, Exh. PRM-17.

¹⁸³ PSE Reply Brief at 14.

¹⁸⁴ PSE Reply Brief at 15.

83 PSE contends that Public Counsel’s citations show that full and partial mitigation have been supported by parties and granted by the Commission, previously.¹⁸⁵ PSE asserts that it has received partial mitigation as well as full penalty mitigation in the past. PSE takes issue with Public Counsel’s claim that it is now suddenly “unclear” how the Commission may resolve PSE’s Petition, and argues that this claim “is unconvincing and should be disregarded entirely.”¹⁸⁶

Reply Brief of Public Counsel

84 Public Counsel reiterates a number of arguments made in its May 16, 2023, Opening Brief. Public Counsel maintains that it is unclear from the Merger Stipulation whether parties or the Commission contemplated partial mitigation of penalties.¹⁸⁷ Public Counsel asserts that PSE mischaracterizes Corey Dahl’s testimony by implying that Public Counsel misunderstands the legal standard rather than PSE’s failure to manage its workload and workforce to meet its service quality obligations. Public Counsel clarifies the context of Dahl’s testimony by arguing that it did not object to PSE’s actions, but that those actions should have been taken prior to 2021, making those actions unreasonable.¹⁸⁸ Public Counsel further clarifies that Dahl was testifying to the point that PSE’s failure to meet its benchmark was a staff management issue, not that extreme weather events were a staff management issue. Public Counsel adds that the frequency of severe weather events was a widely known phenomenon that PSE should have reasonably anticipated and managed it staff accordingly.¹⁸⁹

85 Public Counsel argues that the comparison to the mitigation petition involving SQI-6 and SQI-8 standards is inapplicable as that involved a private contractor discontinuing its business, which is outside of the PSE’s control. However, in this matter, PSE’s ability to manage its workforce and employee fatigue is within the Company’s control. Public Counsel contends that this fact is particularly evident given PSE was able to hire additional workforce after it increased wages and benefits for its electric first responders.¹⁹⁰

¹⁸⁵ *Id.*

¹⁸⁶ PSE Reply Brief at 15-16.

¹⁸⁷ Public Counsel Reply Brief at 2.

¹⁸⁸ *Id.*, at 4.

¹⁸⁹ *Id.* at 5.

¹⁹⁰ *Id.* at 5-6.

Reply Brief of Commission Staff

- 86 Staff again argues that PSE cannot show that it faced unusual or extraordinary events and that it reasonably prepared for and responded to those events. Consequently, the Commission should deny PSE's petition and require the company to pay the full \$613,636 penalty.¹⁹¹
- 87 In addition, Staff takes issue with Public Counsel and PSE's arguments about the applicable law in this matter. Specifically, Staff contends that the Commission has interpreted the term of mitigation as a lessening in severity or intensity, and that the Commission has already entered orders that partially mitigate SQI penalties.¹⁹² Staff then clarified its reasoning for applying the eleven factors of the Commission's Enforcement Policy. According to Staff, it did so to determine whether PSE reasonably prepared for events like those occurring in 2021, and only in the context of looking to whether or not PSE had a compliance program.¹⁹³
- 88 Additionally, Staff addresses PSE's argument that Staff applied a test of adequacy rather a test of reasonableness for PSE's preparation. Staff presented Mr. Roberts' testimony which answered the question of whether PSE reasonably prepared for the events that it argued justified mitigation. Staff witness Roberts responded with "no" regarding the question reasonableness and then provided further analysis in that vein.¹⁹⁴ Staff argues that PSE is attempting to circumvent the law by trying to incorporate events that are excluded from the SQI-11 calculation so that they are included as reasons for allowing mitigation. Those excluded events being major event days or planned work, including the indirect effects of those excluded events. The Company cannot rely on these same events to justify its non-compliance and to do so would affect the balance and meaning of the SQI-11 calculation.¹⁹⁵
- 89 Staff disagrees with PSE's cumulative effects argument. Staff argues that extraordinary events should extend to cumulative impacts analysis, or else PSE has broadened the standards for mitigation beyond what the Commission adopted when setting up the SQI program. However, Staff does not believe that the events were unusual or extraordinary,

¹⁹¹ Commission Staff (Staff) Reply Brief (Reply Brief), filed June 14, 2023, at 1.

¹⁹² Staff Reply Brief, at 2-3.

¹⁹³ *Id.* at 3.

¹⁹⁴ *Id.* at 4; See Roberts, Exh. AR-1T at 12:1 and Roberts, Exh. AR-1T at 12:2.

¹⁹⁵ *Id.* at 4-5.

and that neither their impacts in isolation nor their cumulative impacts warrant mitigation.¹⁹⁶ Staff adds that PSE's SQI-11 performance had been deteriorating for years but did nothing to address this despite the warning signs.¹⁹⁷

90 Staff then addresses the three orders PSE alleges support its position on mitigation. Regarding the first order, which is from dockets UE-072300 and UG-072301, Staff alleges that the Commission denied the request to temporarily suspend the SQI Nos. 6 and 8 standards when PSE the contractor dissolved its business.¹⁹⁸ The order stated that PSE could obtain mitigation if it could make the requisite showing.¹⁹⁹ The second order in the same case dealt with an actual request for mitigation. According to Staff, the Commission took note of PSE's substantial to minimize the impact of implementation of the new customer information system (CIS), when the company missed its benchmark, and granted mitigation.²⁰⁰

91 Staff argues that neither Order 21 nor Order 24 help the Company's argument. Order 21 did not order any mitigation, and it certainly did not discuss whether PSE had reasonably prepared, and therefore does not apply here. Order 24 did order mitigation, but Staff asserts that it is distinguishable from this case because of the Company's efforts to mitigate, while PSE did nothing to address its deteriorating SQI-11 performance.²⁰¹ As for the third order, it involved the western energy crisis and PSE's failure to meet its benchmarks during that event. Staff states that that crisis was an extraordinary event. The Commission apparently approved the measures PSE took, which included time-of-use rates and other measures "designed to reduce or shift demand for energy."²⁰²

92 Given the scope of the western energy crisis, Staff submits that preparedness was not a factor but reasonableness definitely was a factor. In this instance, Staff alleges that it is more focused on the lack of preparation for the events rather than PSE's response to the

¹⁹⁶ *Id.* at 5.

¹⁹⁷ *Id.* at 5-6.

¹⁹⁸ *Id.* at 6.

¹⁹⁹ *Id.* at 6; See also *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Dockets UE-072300 & UG-072301, Order 21, 1 ¶ 1 (Apr. 8, 2013) (hereinafter "Order 21").

²⁰⁰ *Id.* at 6-7; See also *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Dockets UE-072300 & UG-072301, Order 24, 1 ¶ 1 (Apr. 29, 2014) (hereinafter "Order 24").

²⁰¹ *Id.* at 7.

²⁰² *Id.* at 8; *In re Petition of PSE*, Docket UE-011603, Order Granting in Part and Denying in Part the Petition for Mitigation, at 1 ¶ 2 (Jan. 10, 2002) (hereinafter "2001 Mitigation Order").

events. Staff argues that the 2001 Mitigation Order does not apply here and that the Commission should distinguish it from this case.²⁰³ Staff contends that the Commission deny PSE's mitigation petition.

DISCUSSION AND DECISION

93 We deny PSE's Petition and the Company's request to mitigate the \$613,636 penalty assessed for failing to meet the 55-minute average benchmark set forth in SQI-11. PSE fails to establish that it experienced unusual or extraordinary events in 2021 justifying mitigation and that it prepared reasonably for those same events.

94 The SQI program requires PSE to measure its performance in specified areas against established benchmarks.²⁰⁴ Where PSE fails to meet an SQI benchmark, it must pay a penalty calculated pursuant to a Commission-adopted formula.²⁰⁵ PSE may petition for mitigation of the penalty "if it believes, in good faith, that it meets" the SQI program's "mitigation standard,"²⁰⁶ which requires the company to show unusual or exceptional events for which it had reasonably prepared.²⁰⁷

95 As relevant here, SQI-11 measures the average time between when a customer calls PSE and when one of PSE's electric first responders arrives.²⁰⁸ To meet the SQI-11 benchmark, PSE's first responders must arrive, on average, no more than 55 minutes after a customer calls the company.²⁰⁹

²⁰³ *Id.* at 9.

²⁰⁴ *See generally Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Dockets UE-011570 & UG-011571, Settlement Agreement, Exh. J at 2-3 (June 6, 2002); Merger Order at Appx. B at 11-14; Roberts, Exh. AR-1T at 3:8-10

²⁰⁵ *Puget Sound Energy*, Dockets UE-011570 & UG-011571, Settlement Agreement, Exh. J at 3; *see generally id.* at Exh. J., Appx. 2, at 4-16; Merger Order at Appx. B at 12-13; Dahl, Exh. CJD-1T at 4:14-15.

²⁰⁶ *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-011570 & UG-011571, Settlement Agreement, Exh. J at Appx. 2 at 3; Merger Order Appx. B at 13.

²⁰⁷ *Puget Sound Energy*, Dockets UE-011570 & UG-011571, Settlement Agreement, Exh. J, Appx. 2 at 3; Merger Order at Appx. B at 13; Roberts, Exh. AR-1T at 5:6-8.

²⁰⁸ *WUTC v. Puget Sound Energy*, Dockets UE-072300 & UG-072301, Order 17, at 5-6 ¶ 10 (Nov. 10, 2010); Roberts, Exh. AR-1T at 3:16-20.

²⁰⁹ Murphy, Exh. PRM-1T at 5:1-3; *see* Roberts, Exh. AR-1T at 3:17-20, 4:15-5:2.

96 The most significant adverse weather events and outages are excluded from the SQI-11 calculation. “Performance measurement” for SQI-11 “is suspended on days that are excluded for [System Average Interruption Duration Index] and [System Average Interruption Frequency Index] performance measurement.”²¹⁰ The Commission has recognized that “[t]his means” that PSE may exclude from calculating its average response time for SQI-11 “days determined to have ‘[m]ajor events,’ where more than [five percent] of all of PSE’s customers are out of electric service (and associated carry forward days).”²¹¹

97 There is no dispute in this proceeding as to whether PSE has filed this Petition in good faith. We therefore turn to (1) whether the events of 2021 were unusual or unexpected events that justify mitigation and (2) whether PSE reasonably prepared for those events.

A. PSE has not established that the events of 2021 were unusual or unexpected events that justify mitigation

98 As an overall matter, we agree with Staff and Public Counsel that the events of 2021 were not unusual or unexpected events. Although this year included ongoing effects of the COVID-19 pandemic and significant adverse weather events, a close examination of the evidence weighs against mitigating the penalty in light of any of the events cited by the Company.

99 We first address the issue of significant weather events and severe outages. PSE argues that it experienced 16 more days of severe outage events in 2021 which was 41% increase over the preceding five-year average and that these events contributed to employee fatigue.²¹² However, these events were properly excluded from the SQI-11 calculation,²¹³ and the SQI-11 calculation for 2021 excludes 55 days’ worth of response times.²¹⁴ It would clearly be inappropriate to grant mitigation based on the excluded weather event and outage events themselves.

²¹⁰ *In re Application of Puget Sound Energy, Inc.*, Docket UE-031946, Order 01, 3 ¶ 9, 14 ¶¶ 48-50, & App. J (May 11, 2004).

²¹¹ *In re Application of Puget Sound Energy, Inc.*, Docket UE-031946, Order 01, at 3 ¶ 9.

²¹² PSE’s Initial Brief, at 9-11.

²¹³ *Compare* Murphy, Exh. PRM-1T at 12:4-7 *with* Roberts, Exh. AR-1T at 6:6-20

²¹⁴ Murphy, Exh. PRM-1T at 12:17-19.

- 100 The parties also disagree whether the weather of 2021 was unexpected or whether it reflected the anticipated effects of climate change. Ultimately, it is not necessary for the Commission to decide this broad, complex issue, on which we are presented with only a limited amount of evidence. The most significant weather events cited in the Company's Petition and supporting testimony are actually excluded from the calculation. It is not necessary for the Commission to decide whether excluded weather events and outages were reasonably foreseeable.
- 101 PSE's request for mitigation on the basis of the *indirect* effects of severe outages and its theory of employee fatigue raises more difficult questions. PSE argues that "[e]ven though Significant Outage Events were excluded in SQI-11 performance calculation, the extraordinary magnitude of these Significant Outage Events strained resilience and exacerbated fatigue of PSE's Electric First Response team, especially when combined with the increased workloads and impacts of the COVID-19 pandemic discussed below."²¹⁵ For several reasons, however, we give the Company's argument little weight.
- 102 First, the responsibility for meeting the SQI-11 benchmark lies with the Company and its management decisions, not with the electric first responders themselves. There is little question that PSE's electric first responders were subject to increasing demands on their time and resources, working an average of 1100 hours of overtime in 2021.²¹⁶ Clearly, the electric first responders went to great lengths to respond to customer needs. Our decision today does not in any way criticize the work ethic of these employees. However, it is the Company's responsibility to manage its employees and resources to meet the SQI-11 benchmark.
- 103 We also find that mitigating the penalty on the basis of the indirect effects of excluded weather events and outages would undermine the express terms of the Merger Stipulation regarding the SQI's mitigation standard. It would invite the Commission to rely on weather events and outages that are expressly excluded by the Merger Stipulation, based on an argument, inference, or supposition that these same events contributed to employee fatigue.
- 104 Finally, the Company's argument begs the question. The Company requests that the Commission infer that its failure to meet the SQI-11 threshold reflects employee fatigue, due to causes outside the Company's control. The Company even acknowledges that it

²¹⁵ PSE Brief at 10.

²¹⁶ Murphy, Exh. PRM-1T at 24, lines 7-13.

has not quantified fatigue using an objective or specific metric, and the Company cites to its deteriorating SQI-11 response times as, itself, evidence of employee fatigue.²¹⁷ But this argument presumes that this employee fatigue is not merely the result of understaffing or other management decisions that indicate an unreasonable lack of preparation, as argued by Public Counsel.²¹⁸ We must base our decision on the evidence of the record, rather than arguments and inferences about how those events may have contributed to employee fatigue. It would therefore be highly problematic to grant mitigation based on the Company's circular argument regarding employee fatigue.

105 We similarly reject the Company's argument that increasing workloads for electric first responders constituted an unusual or exceptional circumstance justifying mitigation.²¹⁹ The Company argues that unplanned outages, including excluded events, and planned work for customers contributed to electric first responder workloads and employee fatigue.²²⁰ This argument carries many of the same infirmities as the Company's arguments regarding excluded outage events and their effects on employee fatigue; the Company invites the Commission to assume, in a circular fashion, that its failure to meet the SQI-11 threshold is the result of fatigue rather than evidence of understaffing or an unreasonable lack of planning.

106 Furthermore, 5,735 of the 19,400 unplanned outages, nearly 30 percent of the total, were excluded from the SQI-11 calculation because they occurred on major event days.²²¹ With those calls removed, we agree that 2021 looks like an average year in terms of unplanned outages.²²²

107 PSE also argues that there was a significant increase in travel time in 2021 and that it was not realistic for the Company to foresee increasing traffic levels.²²³ However, 2021 saw a return to pre-pandemic traffic volumes.²²⁴ We also agree with Staff that a number of PSE's extreme travel events, which allegedly affected its SQI-11, occurred during Fall

²¹⁷ PSE Brief at 13.

²¹⁸ See PSE Brief at 11 (citing Dahl, Exh. CJD-1T at 12:3).

²¹⁹ See PSE Brief at 12.

²²⁰ *Id.*

²²¹ Murphy, Exh. PRM-1T at 19:12-20:1.

²²² See Murphy, Exh. PRM-14T at 19, Figure 2.

²²³ *E.g.*, PSE Brief at 14-15.

²²⁴ Murphy, Exh. PRM-1T at 28:5-8; see Dahl, Exh. CJD-1T at 21:6-23:3.

2021 extreme weather events, meaning that these should have already been excluded from the calculation.²²⁵ Even excluding all extreme travel time incidents, PSE would still fail to meet its SQI-11 benchmark.²²⁶

108 Next, we turn to the issue of the COVID-19 pandemic, which continued throughout 2021. Although PSE recorded some lost employee time due to COVID-19, the number averaged out to less than three days per employee for 2021.²²⁷ We agree with Staff that three sick days per employee does not amount to an unusual or unexpected event.²²⁸

109 Although PSE witness Murphy argues that the COVID-19 work order does not quantify missed opportunities where an employee would respond to an emergency callout while not on their regular shift,²²⁹ we are not presented with evidence as to what these impacts would be. The burden remains with the Company to establish mitigation, and it would be inappropriate for us to grant mitigation based on supposition, rather than the evidence of record.

110 It is also unpersuasive, as a general matter, to point to the COVID-19 pandemic as an unusual or unexpected circumstance warranting mitigation. The Commission has held that “that personnel shortages due to the COVID-19 pandemic did not relieve the Companies of their” regulatory obligations.²³⁰ This would appear to be true particularly for 2021, several months after the pandemic began.

111 PSE also argues that the Company faced significant problems retaining electric first responders, citing the effects of COVID-19 and inflation, particularly inflation in King County.²³¹ This is not persuasive. As Staff observes, PSE lost the same number of first responders in 2016 (seven), and nearly the same number in 2014 (five), 2017 (five), and

²²⁵ Staff Post Hearing Brief at 8-9 (citing Murphy, Exh. PRM-1T at 292-4).

²²⁶ *Id.* at 8-9 (citing Murphy, Exh. PRM1-T at 29:6-8 (explaining that the extreme travel time events impacted response by six minutes, on average).

²²⁷ Roberts, Exh. AR-1T at 9:1-4.

²²⁸ Staff Post Hearing Brief at 6.

²²⁹ Murphy, Exh. PRM-14T at . 5, lines 9-18.

²³⁰ *In re Penalty Assessment Against the CenturyLink Companies*, Docket UT-220397, Order 02, at 3 ¶ 19 (Nov. 17, 2022).

²³¹ PSE Brief at 16.

2020 (six).²³² The evidence does not establish that the Company faced unusual or unexpected levels of turnover in its electric first responders in 2021.

112 Even though King County saw more rapid increases in cost of living measures, we agree with Staff witness Roberts that this should not be a basis for granting mitigation. Roberts explains, for instance, that the SQI-11 metric is not solely a King County based metric, but considers the average over the entire service territory, and PSE would still miss the SQI-11 benchmark even if King County is removed from the analysis.²³³

113 For all of these reasons, PSE has not established that it failed to meet the SQI-11 threshold due to unusual or unexpected circumstances.

B. PSE failed to reasonably prepare for and respond to the events of 2021, insofar as those events affected its SQI-11 performance.

114 We next find that PSE did not take reasonable steps to meet the SQI-11 response time threshold in 2021. Even if the events of 2021 were unusual or exceptional, which they were not, PSE did not reasonably prepare for and respond to those circumstances in order to meet the SQI-11 threshold.

115 It is first appropriate to clarify the legal standard. The Merger Stipulation requires the Company to demonstrate that it missed the SQI-11 threshold due to unusual or exceptional events for which it had reasonably prepared.²³⁴ As the Company correctly observes, it is not required to demonstrate that its preparations were adequate, successful, or sufficient, but merely that they were reasonable.²³⁵ We agree and construe this standard as asking whether the Company's actions were reasonable based on the information available at the time.

116 In determining whether PSE's actions were reasonable, we first consider the Company's average SQI-11 response times over the last several years. Dahl testifies that since 2013, PSE was already hovering just below the 55 minute mark, and was only below 50 minutes three times since 2003, when SQI-11 was implemented. Dahl argues that, given

²³² Murphy, Exh. PRM-1T at 10 Table 1.

²³³ Roberts, Exh. AR-1T at 9:12-22 to 10:1-8.

²³⁴ *Puget Sound Energy*, Dockets UE-011570 & UG-011571, Settlement Agreement, Exh. J, Appx. 2 at 3; Merger Order at Appx. B at 13; Roberts, Exh. AR-1T at 5:6-8.

²³⁵ PSE Brief at 18.

this and the aforementioned trends, PSE should have been more proactive to ensure more cushion for reducing emergency response times.²³⁶ We agree. Dahl credibly explains that PSE has been “very close to the benchmark for many years, which leaves little room for unexpected events.”²³⁷

- 117 We similarly agree with Staff witness Roberts’ testimony that PSE was not adequately prepared for 2021 as shown by: 1) the Company nearly missing the benchmark 3 out of 5 years prior to 2021, but not having a separate compliance program to ensure meeting the SQI-11 benchmarks; and 2) not increasing its first responder staff despite the benchmark near misses.²³⁸
- 118 We recognize that nearly missing the SQI-11 benchmark does not justify imposing penalties and that the Company should act reasonably to control its costs. The Company is not, under the terms of the Merger Stipulation, required to maintain an additional “cushion” in its response times. Yet at the same time, the Company declined to take any significant action to shore up its electric first responder teams for several years, despite steadily increasing workloads, increasing traffic, increasing cost of living, and increasing population in the Company’s service territory. Public Counsel witness Dahl observes, for example, that electric first responder workload has been increasing steadily since 2014, with a 33 percent increase in planned work between 2013 and 2021 and a 30 percent increase in outages between 2014 and 2021.²³⁹ Because the Company failed to respond to these trends in a timely and reasonable manner, it failed to miss the SQI-11 threshold in 2021. While the Company now seeks to pin this violation on employee fatigue, the evidence indicates that any employee fatigue, long overtime hours, and lowered response times were the result of management inaction over the preceding years.
- 119 Given this evidence, we find that the Company failed to reasonably prepare for the events of 2021. The increased workload in 2021 was not an unusual or unexpected event, but was instead part of a longstanding trend. It is therefore notable, and concerning, that the Company did not take steps to adapt to these changes until well into 2021. The Company

²³⁶ Dahl, Exh. CJD-1T at 25:12-21 to 26:1-4, lines. The trends being increased cost of living, attrition, and traffic challenges.

²³⁷ *Id.* at 25:1-2.

²³⁸ Roberts, Exh. AR-1T at 12, lines 2-15. *See also* Dahl, Exh. CJD-1T at 20:3-11; Murphy, PRM-1T at 23:6-8.

²³⁹ Dahl Response Testimony at 18:10-19:4.

did not expand its first responder ranks,²⁴⁰ take steps to retain electric first responders,²⁴¹ or engage in adaptive management.²⁴²

120 The Company only began to take action in December 2021, after it failed to meet the SQI-11 benchmark for some months.²⁴³ By this point, the Company had already exceeded the SQI-11 benchmark for the months of July through December of that same year.²⁴⁴ These actions were too late to prevent the Company from incurring the violation at issue in this proceeding.

121 We therefore agree with Staff and Public Counsel that the Company should have reasonably taken steps sooner to support its electric first responder teams. As Dahl testifies, PSE could increase wages to attract qualified first responders.²⁴⁵ Although PSE adjusted its wage scale by December 2021, the Company could have taken action sooner, given that rising cost of living and attrition had been occurring earlier than 2021.²⁴⁶

122 We agree with Staff, as well, that any steps the Company has taken since 2021 to improve its SQI-11 performance should not be a basis for mitigation.²⁴⁷ Such a finding would depart from the plain language of the mitigation standard set forth in the Merger Stipulation.

C. PSE should not receive partial mitigation of its SQI-11 penalty.

123 Also, we note that in their filings Public Counsel and PSE have touched on the applicability of partial mitigation of the \$613, 636 penalty.²⁴⁸ PSE agreed to the SQI in the Merger Stipulation and the Commission approved the Merger Stipulation as the

²⁴⁰ Roberts, Exh. AR-1T at 12:2-3; Dahl, Exh. CJD-1T at 20:3-11; Murphy, PRM-1T at 23:6-8.

²⁴¹ See Dahl, Exh. CJD-1T at 14:5-8.

²⁴² See Dahl, Exh. CJD-1T at 19:7-20:11.

²⁴³ Dahl, Exh. CJD-1T at 16, lines 3-9.

²⁴⁴ Dahl, Exh. CJD-1T at 24:1-2 (Table 1: Cumulative Average Response Times by Month, 2017–21).

²⁴⁵ Dahl, Exh. CJD-1T at 16.

²⁴⁶ Dahl, Exh. CJD-1T at 16, lines 3-9.

²⁴⁷ Staff Brief at 10-11.

²⁴⁸ Opening Brief at 18 and 25; PSE Reply Brief at 16-17.

Commission had jurisdiction over the subject matter and the Company.²⁴⁹ In this proceeding, the parties acknowledge that the Commission, operating in its regulatory authority, has imposed full and partially mitigated penalties for failure to meet SQI standards, although the parties disagree as to whether the Commission may partially mitigate the penalty for an SQI-11 violation.²⁵⁰ The Commission clearly stated in its order approving the Merger Stipulation that one of the goals of the service quality program was to protect customers of PSE from poorly-targeted cost cutting. Another goal was to explore ways to improve the reliability of electric transmission and distribution facilities for customers, in light of the challenging conditions, namely weather conditions, at the time.²⁵¹

124 Given the framework and intent established in the Commission's order approving the Merger Stipulation and in the interest of the customers, we determine that the full penalty should be imposed upon PSE for missing the SQI-11 benchmark. Although in the past we have granted the Company partial mitigation and even full mitigation where warranted when PSE has missed benchmarks for other segments of the SQI program, we cannot do so in this instance given the facts. As stated previously, one of the goals of the SQI program was to ensure that PSE customers were protected from poorly targeted cost cutting resulting from the Merger. While merger-related cost cutting may not have been an underlying cause in this instance, the record does indicate that the Company did not take reasonable action regarding costs and expenditures to ensure that it was adequately staffed to address electric first responder attrition²⁵² and increase in workload resulting from the challenging conditions, until it was too late.²⁵³

125 In addition, because PSE did not take reasonable measures, based on the circumstances, the Commission's goal of improving reliability for PSE customers, despite adverse conditions, was thwarted. SQI standards were put in place after a challenging, stormy winter.²⁵⁴ It was hoped that the SQI would provide a baseline of preparedness to ensure

²⁴⁹ See generally *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Dockets UE-011570 & UG-011571, Settlement Agreement, Exh. J at 2-3 (June 6, 2002); Merger Order at Appx. B at 11-14; Roberts, Exh. AR-1T at 3:8-10

²⁵⁰ Opening Brief at 18 and 25; PSE Reply Brief at 16-17.

²⁵¹ See Dockets UE-951270 and UE-960195, Fourteenth Supplemental Order Accepting Stipulation; Approving Merger, at 27-28.

²⁵² Dahl, Exh. CJD-1T at 16.

²⁵³ *Id.* at 16: 3-9.

²⁵⁴ See Dockets UE-951270 and UE-960195, Fourteenth Supplemental Order Accepting Stipulation; Approving Merger, at 27-28.

reliability despite adverse conditions. PSE not only missed its response time benchmark but missed it by a full ten minutes, on average.²⁵⁵ Unfortunately, this failure affected reliability for PSE customers. Reliability is vital to utility customers especially under the conditions PSE customers experienced in 2021. Therefore, for the reasons stated herein, we will not award partial mitigation of the \$613,636 penalty, but order that PSE pay the full amount of the penalty. Because we find mitigation inappropriate based on the facts, we therefore do not reach the legal issue of whether the Commission would be permitted to order partial mitigation in this case. We will continue to evaluate and review requests for penalty mitigation on a case by case basis, and will grant full or partial penalty mitigation when it is warranted according to the facts and the applicable legal standards.

FINDINGS AND CONCLUSIONS

- 126 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate electric companies and public service companies to the fullest extent allowed by federal and state law, and the Commission has jurisdiction over the parties and subject matter of this proceeding.
- 127 (2) PSE is a public service company and electric company subject to Commission regulation.
- 128 (3) On March 29, 2022, PSE filed a Petition requesting mitigation of the \$613,636 penalty assessed for violating the SQI-11 benchmark in 2021.
- 129 (4) Pursuant to the Merger Stipulation, PSE may petition for mitigation of an SQI-11 penalty if it believes, in good faith, that its violations were due to unusual or unexpected events for which its level of preparation and response was reasonable.
- 130 (5) The SQI-11 calculation for 2021 excludes 55 days' worth of response times.
- 131 (6) It would be contrary to the terms of the Merger Stipulation to grant mitigation due to the direct effects of excluded weather events and outages.
- 132 (7) To the extent that PSE requests mitigation based on the indirect effects of excluded weather events and outages, this argument would undermine the express

²⁵⁵ Roberts, Exh. AR-1T at 5, lines 16-17; PSE's Initial Brief, at 1. As was stated elsewhere, the response time benchmark was 55 minutes. PSE admitted that its response time was 65 minutes, 10 minutes above the SQI-11 benchmark.

terms of the Merger Stipulation based on the inference that excluded events contributed to unmeasured employee fatigue and lowered response times on other days.

- 133 (8) To the extent that PSE requests mitigation based on the indirect effects of excluded weather events and outages, this argument invites circular reasoning, by assuming that longer response times are the result of conditions outside the Company's control rather than merely the result of a lack of reasonable preparation or inaction by Company management.
- 134 (9) 5,735 of the 19,400 unplanned outages, nearly 30 percent of the total, were excluded from the SQI-11 calculation because they occurred on major event days.
- 135 (10) Even excluding extreme travel events, PSE would still have failed to meet the SQI-11 benchmark in 2021.
- 136 (11) Losing, on average, less than three days per employee due to COVID-19 in 2021 does not amount to an unusual or unexpected event warranting mitigation.
- 137 (12) Personnel shortages during the COVID-19 pandemic do not relieve public service companies of their regulatory obligations.
- 138 (13) PSE did not face unusual or unexpected levels of turnover among electric first responders in 2021, compared to earlier years.
- 139 (14) PSE has failed to demonstrate that violating the SQI-11 threshold in 2021 was due to unusual or unexpected events.
- 140 (15) PSE has been close to violating the SQI-11 threshold in three out of five of the years prior to 2021, leaving little room for error or unexpected circumstances.
- 141 (16) PSE's electric first responder workloads have been increasing steadily since 2014.
- 142 (17) The cost of living in PSE's service territory has increased steadily over a period of years.
- 143 (18) PSE did not act reasonably by waiting until December 2021 to increase electric first responder pay, or to take other steps to recruit, retain, or more efficiently deploy these employees.

- 144 (19) The Commission should impose, and not mitigate, the full \$613,636 penalty assessed for violating the SQI-11 benchmark in 2021.
- 145 (20) The Commission should not suspend any portion of the \$613,636 penalty assessed for violating the SQI-11 benchmark in 2021.

ORDER

THE COMMISSION ORDERS:

- 146 (1) Puget Sound Energy's Petition requesting mitigation or waiver of the \$613,636 penalty is DENIED.
- 147 (2) The penalty is due and payable within 14 days of the effective date of this Order.

DATED at Olympia, Washington, and effective October 26, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Michael Howard
MICHAEL S. HOWARD
Director, Administrative Law Division

/s/ James Brown II
JAMES BROWN II
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order and you would like the Order to become final before the time limits expire, you may send a letter to the Commission waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this initial order to file a petition for administrative review (Petition). Section (2)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(2)(c) states that any party may file a response to a Petition within 10 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable with due diligence at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

WAC 480-07-825(1) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5).