

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

<p>WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,</p> <p style="text-align: center;">Complainant,</p> <p>v.</p> <p>PUGET SOUND ENERGY,</p> <p style="text-align: center;">Respondent.</p>	<p>DOCKETS UE-240004 and UG-240005 (<i>consolidated</i>)</p>
<hr/> <p>In the Matter of the Petition of</p> <p>PUGET SOUND ENERGY,</p> <p style="text-align: center;">Petitioner,</p> <p>For an Accounting Order Authorizing deferred accounting treatment of purchased power agreement expenses pursuant to RCW 80.28.410.</p>	<p>DOCKET UE-230810</p>
<hr/> <p>WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>PUGET SOUND ENERGY,</p> <p style="text-align: center;">Respondent.</p>	<p>DOCKET UG-230968</p> <p>OPPOSITION TO MOTION TO CONSOLIDATE PROCEEDINGS</p>

INTRODUCTION

Environmental intervenors in the Climate Commitment Act (CCA) risk-sharing Docket UG-230968—Climate Solutions, NW Energy Coalition (NWEC), and Washington Conservation Action (WCA)—and environmental intervenors in Puget Sound Energy’s (PSE) rate case Dockets UE-240004/UG-240005—Front and Centered, NWEC, and Sierra Club—oppose

consolidation of the two aforementioned dockets. Consolidation will not promote the goals of the Commission in the risk-sharing docket, will prejudice the different groups of environmental advocates in both dockets, and will not improve judicial economy. Both groups of environmental advocates respectfully request that the Commission deny Staff's motion.

STATEMENT OF FACTS

In 2023, PSE filed a tariff petition to, among other things, pass through CCA compliance costs to customers.¹ The Commission approved the tariff subject to review and refund in a future proceeding and directed PSE “to work with interested parties through the CCA workshop series in Docket U-230161 and with its Low-Income Advisory Group to develop a risk sharing mechanism.”² In November 2023, PSE submitted to that docket what it dubbed a “compliance filing” that argued against risk sharing. The Commission agreed with Staff that this filing was not compliant because PSE was required to propose a mechanism in its subsequent tariff filing applicable to calendar year 2024. Later in November 2023, PSE filed a tariff petition in Docket UG-230968 to continue its pass-through treatment of CCA costs for calendar year 2024 and submitted the same “compliance filing” arguing against risk sharing. The Commission therefore suspended the tariff for adjudication, allowing the proposed rates to become effective “on an interim basis, subject to refund, pending the Commission’s final determination” on the risk-sharing matter.³

Climate Solutions, WCA, and NWECA (hereinafter “CCA environmental intervenors”) intervened in Docket UG-230968 to address the policy and equity concerns raised by PSE’s

¹ UG-230470.

² Order 01, Docket UG-230470.

³ Order 01, Docket UG-230968.

choice to pass through one hundred percent of CCA compliance costs onto customers. These organizations are contributing technical and policy expertise to assist the Commission in determining what PSE’s risk-sharing mechanism may look like and how it may function, in furtherance of the goals of the CCA. As of the date of this filing, the CCA tariff docket includes three intervening parties—CCA environmental intervenors, AWEC, and Public Counsel. PSE’s opening testimony includes testimony from four PSE employees or representatives. Environmental intervenors are conducting discovery and preparing expert testimony in accordance with the schedule adopted by this Commission.

In January 2024, PSE filed electric and gas general rate cases in Dockets UE-240004 and UG-240005 respectively. The electric and gas rate cases were consolidated. A mostly separate group of environmental and equity organizations, Front and Centered, Sierra Club, and NWEA (hereinafter “rate case environmental intervenors”) intervened in that case. As described in their motion to intervene, the rate case environmental intervenors intend to participate in multiple issues, focused on ensuring that momentum towards a sustainable and equitable gas transition continues to accelerate, and will elevate the voices of historically underrepresented and highly impacted communities. The consolidated rate case also includes three organizational intervenors, four corporate intervenors, and one federal executive intervenor, along with Public Counsel. PSE’s opening testimony includes the testimony of thirty-eight employees or representatives covering myriad issues.

The two separate groups of environmental advocates in the CCA tariff docket and the general rate case are represented pro bono by the nonprofit legal organization Earthjustice.

RELIEF REQUESTED

Both groups of environmental intervenors respectfully request that the Commission not consolidate Docket UG-230968 with Dockets UE-240004/UG-240005.

ARGUMENT

I. THE CONDITIONS SUPPORTING CONSOLIDATION ARE NOT MET.

As the Commission has explained, when considering whether to consolidate proceedings under WAC 480-07-320, “the Commission considers not just the extent to which the factual and legal issues are related but whether consolidation would promote judicial economy and would not unduly delay the resolution of one or all of the proceedings.”⁴ Consolidation of the specific and limited CCA docket with the broad and multi-issue general rate case is inappropriate because the factual and legal issues are distinct and because consolidation would not promote judicial economy. Moreover, consolidation would work against the Commission’s explicitly articulated reasons for adjudicating risk-sharing in the CCA docket, which is a complex matter of first impression.

Any docket that affects accounting and rates is arguably “related” to a broader rate case in some way;⁵ therefore the relevant question is whether it is sufficiently related to warrant consolidation.⁶ By way of example, in a prior proceeding PSE sought to consolidate its 2021 CEIP filing with its general rate case, arguing that renewable resource planning overlapped with

⁴ *In the Matter of the Application of Jammies Env’t, Inc., for Auth. to Operate As A Solid Waste Collection Co. in Washington Basin Disposal, Inc., Complainant*, No. 01, 2022 WL 2191453 (June 8, 2022).

⁵ See *In the Matter of FedPak Systems, Inc.*, 80 F.3d 207, 214 (7th Cir. 1996) (“[W]e believe that common sense cautions against an open-ended interpretation of the “related to” statutory language ‘in a universe where everything is related to everything else.’”)

⁶ *In the Matter of the Application of Jammies*, *supra* note 4 (considering “the extent to which the factual and legal issues are related”).

issues raised in the rate case.⁷ PSE pointed out that the rate case included CEIP-focused testimony and exhibits and that the CEIP could affect elements of rate design.⁸ The Commission denied consolidation, explaining that while “[i]n a broad sense, the two proceedings present related facts and principles of law,” the planning and policy issues raised by the CEIP were distinct and consolidation would not facilitate parties’ “grappling with complex, novel issues of first impression.”⁹

Much like the CEIP docket in that prior proceeding, the CCA docket is distinct in subject matter and in policy concerns from other matters in the present rate case. In its CCA tariff filing, PSE proposed a significant adjustment to overall rates that the Commission has indicated does not properly reflect the goals of the CCA,¹⁰ and accordingly the Commission has required PSE to propose a risk-sharing mechanism. The driving purpose of the CCA tariff docket is designing a risk-sharing mechanism to ensure that implementation achieves the Act’s goals. Much like the 2021 CEIP consolidation question, this CCA docket involves the proper interpretation and implementation of a state climate law and policy, as well as mechanism design, that is unrelated to rate case matters and that is a complex question of first impression. While some matters in the rate case and the CCA docket have potential overlap, the adoption of a risk-sharing mechanism for CCA costs does not assist parties in determining whether or how risk-sharing should be adopted for other types of trackers. Simply put, the risk-sharing mechanism at issue is unique to CCA cost-recovery. Nor does it facilitate resolution of the CCA tariff matter to consider it

⁷ PSE’s Motion to Consolidate, UE-210795 at ¶ 13.

⁸ *Id.* at ¶ 19.

⁹ Order 01, UE-210795 at ¶ 19.

¹⁰ Order 01, UG-230968 at ¶ 15.

alongside dozens of other matters pertaining to a rate case or even alongside other types of trackers that may or may not potentially contain risk-shifting or risk-sharing components.

When suspending the tariff in Docket UG-230968, the Commission stated that “[t]he issue of a risk sharing mechanism for CCA compliance costs is a complex one, and the Commission would benefit from a full record, including testimony and briefing from the parties.”¹¹ As the Commission determined in rejecting consolidation of the 2021 CEIP with the rate case, consolidation of the CCA with the rate case makes it more difficult to resolve a highly complex issue of first impression by diluting it among many other issues raised in a general rate case.

II. CONSOLIDATION PREJUDICES ENVIRONMENTAL ADVOCATES.

Consolidation poses serious procedural equity concerns to the different groups of environmental advocates in each of the dockets. WCA and Climate Solutions did not seek involvement in the myriad issues present in the general rate case. Conversely, Front and Centered and Sierra Club did not seek to participate in the CCA risk-sharing docket. If the dockets are consolidated, the various environmental advocates will need to engage with, research, and agree on (or at least determine they do not oppose) many separate and disparate issues. WCA, Climate Solutions, Front and Centered, and Sierra Club will be forced to expend staff time and resources beyond what they had planned when intervening in the separate dockets. Forcing these two groups of environmental organizations to reposition and increase resource needs nearly five months after the CCA tariff docket was suspended harms environmental advocates in both dockets.

¹¹ Order 01, UG-230968 at ¶ 14.

Consolidation also causes procedural inequity by diluting environmental intervenors' voices. In the CEIP consolidation petition, PSE pointed out by way of support for consolidation that parties were "largely the same."¹² Here, not only are the CCA environmental intervenors distinct from the rate case environmental intervenors, but as noted above, the rate case involves seven intervenors that are entirely distinct from the small number of intervenors in the CCA docket. In particular, the CCA environmental intervenors' perspectives on CCA issues will be diminished, both due to the increased number of issues and the large number of other intervenors participating in a consolidated docket. And issues upon which rate case environmental intervenors are focused may potentially become complicated or confused by the addition of a complex policy issue to an already-large rate case docket.

III. CONSOLIDATION WILL NOT IMPROVE ADMINISTRATIVE EFFICIENCY OR JUDICIAL ECONOMY.

Consolidation means that resolving the CCA risk sharing issue becomes even more complex by adding more parties and more issues into the mix. Intervenor organizations, corporations, and even federal agencies in the rate case might now take positions on the CCA matter if interwoven with other matters, though they did not pursue intervention in the CCA tariff docket. This added constellation of positions could result in making settlement less likely. Settlement requires negotiation and compromise, which becomes more difficult as more parties and more issues are added to proceedings. Consolidation is therefore unlikely to promote administrative efficiency or judicial economy.

¹² PSE's Motion to Consolidate, UE-210795 at ¶ 19.

CONCLUSION

For the reasons stated above, advocates request that the Commission deny consolidation.¹³

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Respectfully submitted,

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¹³ If the Commission elects to consolidate, some parties have asked that the Commission “limit the participation of parties that did not previously intervene in the rate case to issues concerning the CCA proceeding.” TEP Response to Motion to Consolidate, at 2. The environmental advocates request that if this restriction is imposed, that it be imposed symmetrically, so that parties that did not previously intervene in the CCA proceeding are limited to issues in the rate case.