

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKETS UE-220066, UG 220067  
(consolidated)

In the matter of

PUGET SOUND ENERGY

Clean Energy Implementation Plan Pursuant  
to  
WAC 480-100-640

DOCKET UG-210795

COMMISSION STAFF'S RESPONSE  
TO MOTION TO CONSOLIDATE  
PROCEEDINGS AND MOTION FOR  
EXEMPTION FROM WAC 480-100-  
645(2)

**I. INTRODUCTION**

1           On January 31, 2022, Puget Sound Energy (“PSE” or “Company”) filed a general rate case (GRC) in Dockets UE-220066 and UG-220067. On December 17, 2021, PSE filed its Final Clean Energy Implementation Plan (CEIP) in Docket UE-210795. On March 30, 2022, PSE filed both a motion to consolidate the two proceedings and a companion motion for exemption from the CEIP rule providing that a utility’s CEIP plan must be set for consideration at an open meeting. The Commission should not consolidate the CEIP with the GRC because the issues in the two proceedings are not sufficiently related and consolidation would unnecessarily complicate both proceedings. Maintaining separate proceedings will render consideration of PSE’s motion for exemption moot.

**II. RELIEF REQUESTED**

2           Staff respectfully requests that the Commission not consolidate Dockets UE-220066 and UG-220067 with Docket UE-210795. If, however, the Commission does grant PSE’s

3 motions, Staff requests that the Commission (1) set a prehearing conference or other process  
that would allow persons interested in the CEIP adjudication the opportunity to intervene;  
(2) amend the procedural schedule to include a settlement conference specific to the CEIP;  
and (3) set separate deadlines in the procedural schedule that would allow the CEIP to be  
decided after the GRC if parties are unable to reach a settlement on the CEIP before the  
evidentiary hearing in the GRC.<sup>1</sup>

### III. STATEMENT OF FACTS

3 PSE submitted its Final CEIP on December 17, 2021, in Docket UG-210795. The  
CEIP has not been set for an open meeting to date. On January 31, 2022, PSE filed a general  
rate case in Dockets UE-220066 and UG-220067. The current procedural schedule in the  
GRC sets response testimony for July 19, 2022, rebuttal and cross answering testimony for  
August 23, 2022, and the evidentiary hearing beginning October 3, 2022. On March 30,  
2022, PSE filed a motion to consolidate its CEIP with its GRC and a motion for exemption  
from WAC 480-100-645(2).

### IV. STATEMENT OF ISSUES

4 Should the Commission consolidate the PSE CEIP with the PSE GRC?

### V. LEGAL STANDARD

5 The Commission, in its discretion, may consolidate two or more proceedings in  
which the facts or principles of law are related.<sup>2</sup> “In determining whether to exercise such  
discretion, 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.”<sup>3</sup>

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<sup>1</sup> If the dockets are consolidated and set on the same procedural schedule, then Staff would ask that at least an additional day be added to the evidentiary hearing.

<sup>2</sup> WAC 480-07-320.

<sup>3</sup> *E.g., Qwest Corp. v. Level 3 Comm.*, Docket UT-063038, Order 09, p.4, ¶ 13 (Feb. 15, 2008).

## VI. ARGUMENT

6           Under the Commission’s consolidation standard, PSE’s motion should be denied. First, the facts and law in the two proceedings are not related to any great extent. A majority of the facts at issue in PSE’s GRC (a rate setting proceeding for both electric and natural gas service) are completely unrelated to the facts necessary to properly evaluate the CEIP, where the primary issue is whether the Company’s plans and proposed targets demonstrate sufficient progress toward meeting CETA’s 2030 and 2045 standards. The legal issues in the two proceedings do not provide a basis for consolidation either, because the legal standards in the GRC and CEIP proceeding are different, and the parties will not be asking the Commission for decisions on the same legal issue in both filings.

7           Second, consolidation would not create judicial economy; instead, it would merely add to the number of complex issues that the Commission must decide within the GRC’s statutory timeframe. Whether consolidation would unduly delay the resolution of the CEIP is unknown because there is no requirement in statute or rule for a particular schedule, and therefore the Commission has the authority to set a schedule CEIP that is longer or shorter than the GRC’s current schedule.

8           Third, the rationale that PSE provides in favor of consolidation—that consolidation is necessary for the Company to move forward with acquiring CETA related resources—has no foundation.

9           Lastly, because the Commission should deny the motion to consolidate, Staff believes that the motion for exemption from the open meeting requirement should also be denied. However, if the Commission does grant the motions for consolidation and exemption from the CEIP’s open meeting requirement, it should still allow an opportunity for interested parties to intervene in the CEIP.

**A. The Facts and Law in the CEIP and GRC are not related to any great extent.**

10 Consolidation should be denied because the issues of fact and principles of law in the two proceedings are not significantly related. PSE's GRC is a rate proceeding in which the Commission will determine fair, just, and reasonable rates for PSE's retail electric and natural gas services. The CEIP proceeding does not set rates or determine prudence; it is a planning process through which the Commission will set interim targets used to ensure that electric IOUs are on track to meet CETA's 2030 and 2045 clean energy standards.

11 First, a majority of facts at issue in these proceedings are not related at all. The GRC involves facts related to issues such as cost of capital, restating adjustments, pro forma plant additions, power costs, plant depreciation, cost of service, rate spread, and rate design, that the Commission is well familiar with. In contrast, the CEIP is a new proceeding in which the Commission evaluates the proposed plan and interim targets for meeting the standards under RCW 19.405.040(1) and RCW 19.405.050(1).<sup>4</sup> None of the GRC factual issues mentioned above would be relevant in a CEIP proceeding, and the CEIP involves facts related to issues such as CBIs, incremental cost calculation, and designation of vulnerable populations, that would not be at issue in a GRC.<sup>5</sup>

12 The facts that do appear to overlap between these two dockets are not material to both. For example, there are planned electric-side investments included in the Company's MYRP and in the CEIP that are essentially the same. These facts are important in the GRC because they drive revenue requirement, but they do not drive the decision the Commission must make in the CEIP. In the CEIP, under RCW 19.405.060(1)(c), the Commission must "approve, reject, or approve with conditions an investor-owned utility's clean energy implementation plan and interim targets." In other words, what the Commission reviews in a

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<sup>4</sup> See RCW 19.405.060(1).

<sup>5</sup> See Declaration of Jennifer Snyder at 3, which is attached to this response.

CEIP docket is the plan and proposed targets, as submitted by the utility. In its CEIP, PSE asks for approval of RFPs and not for approval of electric investments.<sup>6</sup> This means that the parties to the CEIP do not need to review these investments in the CEIP proceeding, nor does the Commission's decision on the CEIP require a review of these electric investments. Accordingly, the fact that both proceedings include information pertaining to electric investments is not significant and does not support consolidation.

13           Second, Staff and stakeholders raised many legal issues of first impression in their comments to PSE's final draft CEIP. These issues are distinct from the legal issues in the GRC, which include the new legal ratemaking standard under the MYRP statute, RCW 80.28.425. Contested issues in the CEIP docket could ultimately include:

- 1) Whether the Commission should "recommend or require" interim targets more stringent than those proposed by PSE, in which case the Commission would need to make a finding that the adjusted targets or timelines "can be achieved in a manner consistent with" RCW 19.405.060(1)(c)(i)-(iv).
- 2) Whether the projected incremental cost is correctly calculated, including whether PSE correctly formulated the alternative lowest reasonable cost and reasonably available portfolio (or "baseline portfolio") within that calculation.
- 3) Whether the (first ever) proposed customer benefit indicators (CBIs) included in the CEIP are appropriate under commission rule.
- 4) Whether the proposed portfolio of specific actions is appropriate given the equity requirements in RCW 19.405.040(8).

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<sup>6</sup> See Declaration of Jennifer Snyder at 2 ¶ 9. Note that Staff has raised questions about the sufficiency of listing that the Company will conduct RFPs as a specific action.

14           None of these issues would otherwise be decided in the GRC, and the Commission should consider whether it is possible to give these issues the time and attention they deserve if they must be litigated as part of and at the same time as the (already substantial) number of issues presented in the GRC.

**B.     Consolidation would not promote judicial economy, but it would unnecessarily limit the Commission’s available time for considering one of the first CEIPs ever filed.**

15           The CEIP filing at issue is PSE’s first CEIP. It is one of the first filings of its kind and presents many issues of first impression. The GRC includes PSE’s proposal for a MYRP, its first rate case filing under the new MYRP law, codified at RCW 80.28.425. Consolidating the GRC with the CEIP would not create judicial economy; instead it would complicate both cases and potentially rush consideration of the CEIP.

16           Judicial economy is defined as “[e]fficiency in the operation of the courts and the judicial system; especially, the efficient management of litigation so as to minimize duplication of effort and to avoid wasting the judiciary’s time and resources.”<sup>7</sup> Efficiency is not merely a question of how quickly litigation can be concluded without regard for the quality of the end product. The question before the Commission is not whether the CEIP would be decided faster if consolidated with the GRC. Instead, the question that the Commission should consider is this: Would consolidation allow the CEIP to be decided sooner *without* any significant detriment to the quality of the fact finding and deliberative process? The answer to the latter question is no, and therefore the Commission should deny the motion to consolidate.

17           As noted in the section above, the CEIP and the GRC involve a substantially different set of facts and principles of law, and therefore there is little, if any, duplication of

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<sup>7</sup> BRYAN A. GARNER, BLACK’S LAW DICTIONARY, Ninth edition, p. 923 (2010).

effort that consolidation would minimize. Consolidation would therefore unnecessarily limit the Commission’s available time for considering the CEIP, without providing any benefit. Chapter 19.405 RCW does not set any deadline by which the Commission must issue an order approving, rejecting, or approving with conditions the CEIPs filed by electric IOUs under RCW 19.405.060.<sup>8</sup> Staff acknowledges that it is important not to unreasonably delay issuing a decision in a CEIP.<sup>9</sup> However, given that there is no statutory deadline to decide the CEIP, it is within the Commission’s discretion to weigh desires for a decision on a specific timeline against other factors.

18           As PSE rightly points out in its motion, in the adoption order for the CEIP rules the Commission recognized that “in the beginning the CEIP will involve a new and significant process and document, one that the utilities have never prepared, and that stakeholders, and this Commission have never reviewed.”<sup>10</sup> The multiyear rate plan proposals and the other requirements under RCW 80.28.425 are also new and are being implemented for the first time. Staff believes it would be better to gain experience with these two new proceedings separately before deciding how they work in conjunction with one another.

19           Combining these two proceedings is much more likely to lead to confusion and inefficiency than judicial economy. For example: if these dockets are consolidated, what will be considered part of the “plan” approved by the Commission, and what will not be? Is the Company’s Final CEIP filed on December 17, 2021, the “plan” that the Commission will be evaluating for approval or rejection in a consolidated proceeding? Or will any new information related to planned investments be considered, in essence, an amendment to the

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<sup>8</sup> See RCW 19.405.060(1)(c).

<sup>9</sup> The most obvious issue in a long delay of the CEIP is that a new CEIP must be filed every four years under WAC 480-100-640(1) and that interim targets need to be established relatively soon.

<sup>10</sup> PSE motion at 3, ¶ 4, citing *In the Matter of Adopting Rules Relating to Clean Energy Implementation Plans and Compliance with the Clean Energy Transformation Act*, Dockets UE-191023 & UE-190698 (Consolidated), General Order 601 ¶ 25 (General Order 601) (Dec. 28, 2020).

Final CEIP filed in December? If new information related to planned investments is added to the record over the course of the GRC and *is* going to be considered and incorporated into the CEIP (possibly altering its analysis and conclusions), then how will future parties distinguish what was approved as part of the CEIP and what was approved as part of the GRC? In PSE's CEIP, it lists conducting an all-source RFP and DER-specific RFP as part of its portfolio of specific actions. If the results of those RFPs are added to a consolidated GRC/CEIP record, will the Commission consider that information as it determines whether or not to approve the CEIP? The Company's motion does not address this issue. The Commission and parties may find themselves spending precious time and effort resolving these types of questions unless the dockets remain separate.

**C. Consolidation would not give PSE the assurances it cites as the impetus for its motion.**

20 In PSE's motion, it states that any delay in the decision on PSE's CEIP "beyond [the end of this year] jeopardizes PSE's ability to secure the renewable resources necessary to meet the specific and interim target outlined in its plan."<sup>11</sup> PSE's assertion is not true. Nothing constrains PSE's ability to make prudent investment decisions while a decision in the CEIP proceeding is pending. Further, the CEIP proceeding will not result in approval of investments or cost recovery; whereas the Commission's decision in the MYRP will provide a structure for that. The CEIP decision is not a prudency determination or preapproval of any investments or expenses outlined within the CEIP and does not provide the Company with any kind of cost recovery guarantee.<sup>12</sup> To the extent that an approved CEIP does provide some kind of assurance or reduces the risk of a future adverse prudency

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<sup>11</sup> PSE Motion at 2, ¶ 1.

<sup>12</sup> Obviously, approval of a CEIP and the specific actions outlined within it would be *relevant evidence* that the commission could consider during a subsequent prudency review of a given investment; however, it would not be outcome determinative.

determination, a comparable level of assurance would be provided by the Commission's decision on PSE's multiyear rate plan proposal.

21           The Commission will issue a decision in the GRC by the end of this year regardless of whether these dockets are consolidated or not. An approved multiyear rate plan, like an approved CEIP, is not a prudency determination or a guarantee of cost recovery. By statute, rates set under a multi-year rate plan will be subject to review, performance measures, and refund.<sup>13</sup> With that being said, it is unclear why PSE believes that an approved MYRP would give the Company any less assurance that it can move forward with these investments than the assurances supposedly provided by an approved CEIP. While PSE may argue that having both a CEIP and MYRP approved would provide it with greater assurances than approval of just one, the Commission should consider whether this marginal benefit to the Company outweighs the concerns outlined in the rest of this response.

**D.     In the event the Commission grants PSE's motion for consolidation, PSE's motion for exemption from the open meeting requirement of WAC 480-100-645(2) should be granted only if the Commission provides an opportunity for interested persons to intervene in the CEIP docket.**

22           If the Commission denies PSE's motion to consolidate, which Staff strongly recommends, there is no need to consider PSE's motion for exemption from WAC 480-100-645(2). In the event, however, that the Commission consolidates the CEIP with the GRC, it is important to ensure that the protections under the CEIP rules for interested persons are preserved.

23           The CEIP rules provide that the utility's filed CEIP will be set for an open meeting. WAC 480-100-645. The rule further provides, at WAC 480-100-645(2), that "any person who has a substantial interest in the subject matter of the filing" may request that the

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<sup>13</sup> See RCW 80.28.425 (3), (4), (7).

Commission initiate an adjudication of the CEIP. WAC 480-100-645(2). If the Commission decides to consolidate these dockets and grant an exemption to the open meeting requirement, Staff requests that the Commission still give an opportunity to any person with substantial interest in the CEIP to intervene. Although it may be the case that all interested persons are already parties to the GRC, an opportunity to intervene should still be provided in case there are interested persons that may have intended to request adjudication at the open meeting required under Commission rule. Note that nothing in the CEIP rules indicates that an interested person must submit written comments or otherwise participate in the CEIP process prior to the open meeting as a prerequisite of intervention.

## VII. CONCLUSION

24 For the reasons discussed above, the Commission should deny the motion to consolidate PSE's CEIP with its GRC. The facts at issue and principles of law in the two proceedings are not sufficiently related. Consolidation would unnecessarily prescribe the Commission's timeline to decide the CEIP and is more likely to create judicial inefficiency rather than judicial economy. Consolidation is not required for PSE to move forward with acquiring renewable resources, and in any event an approved CEIP would not give the Company the assurance it cites as its reason for consolidation. Staff opposes the motion to consolidate, but if PSE's motion is granted the Commission should ensure a process is in place that gives any interested party an opportunity to intervene.

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DATED this 6th day of April 2022.

Respectfully submitted,

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