

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UE-220066
DOCKET UG-220067

In the Matter of

PUGET SOUND ENERGY

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

DOCKET UE-210795

PETITION FOR ADMINISTRATIVE
REVIEW OF AN INTERLOCUTORY
ORDER DENYING MOTION FOR
CONSOLIDATION

I. INTRODUCTION

1 Pursuant to Washington Administrative Code (“WAC”) 480-07-810, Puget Sound Energy (“PSE”) petitions the Washington Utilities and Transportation Commission (“Commission”) to review the presiding officer’s initial order¹ (“Order 10”) denying PSE’s Motion for Consolidation of its Clean Energy Implementation Plan (“CEIP”) in Docket UE-210795 with its general rate case in Dockets UE-220066/UG-220067. PSE notes that this Petition is for review of an interlocutory order, and by filing this Petition, PSE in no way seeks to delay or interrupt consideration of its CEIP in Docket UE-210795.

2 Under WAC 480-07-320, parties may request consolidation of two or more proceedings, and the Commission has discretion to approve such consolidation when the facts or principles of

¹ Dockets UE-220066/UG-220067 (*consolidated*), Order 10, Denying Motion for Consolidation, Denying Motion for Exemption from WAC 480-100-645(2) (April 18, 2022).

law are related. PSE's Motion should be presented to the Commission and granted because 1) administrative review is necessary to prevent substantial prejudice to PSE that would not be remediable by post-hearing review, and 2) review could save the Commission and parties substantial effort or expense. The Commission should also review and reverse the interlocutory Order 10 because the legislature instructed the Commission to align a company's multiyear rate plan with its CEIP, which consolidation would accomplish.

II. REVIEW OF INITIAL ORDER 10

A. PSE Satisfies the Legal Standard for Administrative Review

3 Under WAC 480-07-810(2) the Commission has discretion to review an interlocutory order if: 1) the ruling terminates a party's participation in the proceeding and the party's inability to participate could cause substantial and irreparable harm; 2) review is necessary to prevent substantial prejudice to a party that would not be remediable by post-hearing review; or 3) review could save the Commission and parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review. If one of these criteria exists, then the Commission should review the interlocutory order. Here, review is warranted under two of the three criteria.

1. PSE will be substantially prejudiced if the Commission fails to review and reverse Order 10

4 First, review of Order 10 is necessary to prevent substantial prejudice to PSE that would not be remediable by post-hearing review. Since the statutory deadline in PSE's general rate case is December 31, 2022, a post-hearing review will not likely happen until well into 2023, more than a year after PSE filed its CEIP and too late to address the urgency now surrounding the resource acquisition process. Such a delay will expose PSE to undue risk in securing resources to meet its planned clean energy targets by the end of the CEIP period, and this will substantially prejudice PSE's ability to comply with its obligations under the Clean Energy Transformation

Act (“CETA”). As stated in PSE’s Motion, the entire CEIP process is at risk for failure. PSE filed its draft CEIP and the Commission opened Docket UE-210795 more than three months before PSE filed its general rate case and multiyear rate plan, and the presiding officer acknowledged that a decision on the CEIP is not likely to occur for “months following the final order in the GRC.”² An extended adjudicative proceeding, where a CEIP resolution early in 2023 is a hope, not a reality, prejudices PSE and exposes the Company to significant risk in the following several areas:

a. All-Source procurement

5 If PSE’s CEIP is not approved by the end of 2022, there is a high likelihood that such a delay will negatively impact PSE’s ability to procure renewable resources in PSE’s All-Source Request for Proposals (“RFP”), Docket UE-210220. Simply put, until the Commission issues an order to “approve, reject, or approve with conditions an investor-owned utility’s clean energy implementation plan and interim targets,” PSE will have no clarity on the interim targets.³ CETA clearly gives the Commission discretion to determine the appropriateness of the interim targets. Under these circumstances it is unreasonable to imply that a utility should make acquisition decisions in the absence of Commission direction on the targets to be met.

6 In its first CEIP, PSE proposed an ambitious interim target of 63 percent by the end of 2025 at an estimated average rate increase of two percent per year.⁴ In comments submitted to the Commission in Docket UE-210795, some stakeholders argue PSE’s target should be higher, and some argue it should be lower. In the absence of a decision on PSE’s CEIP, or at least some assurance from the Commission that its targets are reasonable and appropriate, PSE will be reluctant to forge ahead to acquire renewable and non-emitting resources at an ambitious scale and pace, especially given: (1) the number of new elements introduced by CETA in the CEIP

² Order 10 at ¶ 25.

³ RCW 19.405.060 (1)(c)

⁴ Jacobs, Exh. JJJ-1T at 6:8-10.

process and (2) the Commission never acknowledged or took action on PSE’s 2021 integrated resource plan (“IRP”), creating uncertainty around the analysis underpinning PSE’s CEIP. Instead, PSE anticipates it may acquire renewable resources in the interim at a more conservative pace, in line with the CETA renewable resource need identified in PSE’s All-Source RFP.

7 The administrative rules for CETA clean energy standard compliance are new. In fact, not all of the implementing rules are yet final, and these rules introduce concepts and requirements that diverge from business-as-usual resource planning for utilities. In PSE’s case, these new elements have resulted in a higher clean energy target and a more diverse set of resource selections (see discussion of distributed energy resources below) than what would have been selected in the no-CETA IRP resource selection. While the Company would prefer to move faster in acquiring renewable resources and pursue the more diverse set of resources determined to provide higher levels of customer benefits, PSE first needs some assurance from the Commission that the pace, scale, and estimated cost of achieving its proposed targets is reasonable.

8 Another risk associated with a protracted adjudicative proceeding is that PSE’s implementation window only grows shorter and shorter. CETA envisions a four-year implementation period for utilities. As it is, in seeking a decision by the end of 2022, PSE is facing an already-shortened, three-year implementation period for this CEIP. If the adjudication of its CEIP extends well into 2023 without any decision on key elements of its proposed plan, PSE will have only two or two and a half years left in the implementation period. In the absence of approval of some key elements of its plan, such as its targets, PSE will be forced to acquire resources in early 2023 at a more conservative pace. However, consider if in 2023 the Commission approves PSE’s interim target of 63 percent, or approves an even higher target? PSE would face an impractical task of attempting to acquire more renewable resources in a very short period of time, putting the Company at risk of not meeting the very targets it proposed.

b. Distributed Energy Resource procurement and related tariff filings

9 A delay in PSE’s CEIP will also negatively impact PSE’s ability to implement its distributed energy resources (“DER”) plans and customer products based on the results of the DER RFP in Docket UE-210878. As with the All-Source RFP discussed above, PSE will be reluctant to aggressively pursue meeting its proposed DER target in the absence of a decision from the Commission. While PSE believes pursuing DERs is an important part of its clean energy plans, with more opportunities to create customer benefits than utility-scale resources, PSE has no assurances at this time that the Commission agrees with PSE’s vision for DERs as outlined in its 2021 IRP and in this plan. The 2021 IRP was the first resource plan in which PSE proposed acquiring DERs in the short, medium, and long-term to meet its CETA needs. The Commission never formally acknowledged or even discussed PSE’s Final IRP, as it has done with prior IRPs, leaving the Company with little feedback about whether its preferred portfolio, which includes a significant amount of DERs over the next two decades, is reasonable. Furthermore, CETA does not directly require the Company to pursue DER projects or products as part of meeting its interim or specific targets, so PSE does not have any statutory direction or guidance to rely on.

10 In addition to exposing PSE to undue risks related to procurement of DER resources, a delayed decision on the CEIP may also postpone planned tariff filings for new DER customer products. While PSE would continue to develop new tariffs to implement DER products during the CEIP adjudication, the Company likely would not file final tariffs if the Commission is still adjudicating key elements of the CEIP. Thus, a delay of the CEIP would impact when new DER customer offerings may start. Further, lack of a Commission issued decision on the CEIP by early 2023 creates substantial risk that PSE does not have sufficient time to develop the new products and projects needed to meet its proposed DER sub-target.

11 Denying PSE’s Motion also exposes PSE to risk related to DER implementation. Implementing DERs successfully requires enablement investments. These investments are

included in both PSE's general rate case and in the CEIP, an area of overlap that would benefit from a consolidated adjudicative proceeding. With a prolonged adjudication of the CEIP, PSE may need to pause or slow development of those projects until PSE is assured that these projects are well aligned with the final Commission-approved plan. This will further impact the timeline for implementing DER products that rely on those enabling technologies for implementation and operation.

12 As it stands, the Commission has reviewed and approved both PSE's All-Source RFP and its DER RFP. With no Commission acknowledgment of PSE's IRP and no direction on its CEIP, PSE must rely solely on the Commission's RFP approvals as it proceeds with its acquisition processes. For the All-Source RFP, PSE's CETA renewable resource need is 1,669 GWh by the end of 2025, consistent with the 2021 IRP. This is more conservative than PSE's CEIP proposed renewable resource target of 1,886 GWh. In the absence of a timely Commission decision on PSE's CEIP approving its proposed renewable resource target, PSE anticipates it will acquire resources according to the CETA renewable resource need stated in its approved All-Source RFP because this is the only signal PSE has from the Commission so far in terms of the reasonableness of PSE's anticipated scale and pace of acquisition of renewable resources under CETA. The CEIP proposes an accelerated pace, but until the Commission acts on PSE's CEIP, the Company faces undue risk that the Commission may not agree that its proposed, accelerated pace, and the associated cost of doing so, is reasonable.

13 In the case of PSE's DER RFP, PSE's stated DER resource need is consistent with the resource additions identified in its 2021 IRP Electric preferred portfolio and the CEIP proposed demand response target (24 MW) and DER subtarget (80 MW solar and 25 MW battery storage). The Commission did not object to the reasonableness of these incremental DER additions when it considered, and ultimately approved, PSE's DER RFP. As such, PSE anticipates it could begin acquiring resources according to its stated DER resource need until the Commission acts on its CEIP or directs otherwise. Still, as stated previously, PSE is reluctant to aggressively pursue

these resources, which are generally higher cost, in the absence of further direction from the Commission that its DER approach is reasonable.

14 Furthermore, PSE will consider bidders' CETA equity plans as part of its qualitative scoring rubric for evaluating bids in both the All-Source and DER RFPs. In the absence of a timely decision on PSE's CEIP, PSE anticipates it will apply the evaluation criteria and scoring methodology as outlined in each RFP, including the use of PSE's proposed customer benefits indicators as part of a bidders' CETA equity plan, because that is consistent with the Commission's approval of the RFPs and what was proposed in the CEIP. However, as discussed further below, PSE remains concerned that a protracted adjudication of the CEIP, without some initial approval of the validity and application of PSE's customer benefit indicators in the near term, creates substantial risk that procurement decisions made in late 2022 or early 2023 could be inconsistent with the direction the Commission ultimately sets in the CEIP regarding customer benefit indicators.

15 Consolidation is the most efficient and expeditious process for the Commission to review and directly address PSE's targets outlined in its CEIP. Otherwise, the only voice the Commission has spoken with so far and the only message PSE has heard, is approval of the need established in the All-Source and DER RFPs, as well as the evaluation criteria and scoring therein, which include the use of customer benefit indicators proposed in the CEIP. Accordingly, until the Commission acts on PSE's CEIP, PSE must proceed under the assumption that the Commission's RFP approvals are sufficient as a basis for establishing the need and evaluation criteria within a prudence determination.

c. Customer Benefit Indicators

16 Without clear and timely direction from the Commission regarding 1) the validity of PSE's proposed customer benefit indicators ("CBI") and 2) the method for applying them, PSE is unfairly burdened with the risks in acquiring resources under its proposed CBIs. The presiding officer minimizes the value of Commission direction in this respect, claiming that the Final CEIP

is merely one of many pieces of evidence when evaluating the prudence of CEIP-related investments. When it comes to resource acquisition decisions for CEIP-related investments, having a decision on the CEIP is much more important. Any resource decisions PSE makes will be made using PSE's proposed CBIs. PSE must apply its proposed CBIs using the method outlined in each RFP for evaluating and scoring projects. PSE cannot merely set aside its CBIs in the absence of a CEIP decision, but rather must use them until the Commission provides different CBIs to use, or a different methodology for using them, through a decision on the CEIP. It would be unfair and unduly prejudicial for the Commission to remain silent on PSE's CBIs now, and then a year or more from now decide that PSE's proposed CBIs were not the right ones, and thus the resource acquisition decisions PSE made using those CBIs (with the best information it had at the time) were unreasonable.

17 While approval of PSE's CEIP, including CBIs, is not a prudence determination, approval of a CEIP provides assurance that the scope, scale and pace of PSE's specific and interim targets are reasonable and that the Company should begin implementation of its plan. Approval of a CEIP ideally would establish the overall integration of equity and customer benefit indicators in CEIP planning and decision-making and allow PSE to then prudently acquire those CETA-eligible resources using its proposed CBIs as part of the evaluation process. While an approved CEIP offers no guarantees that resources acquired under the CEIP will be deemed prudent when PSE later seeks cost recovery of those investments, the absence of approval of PSE's CEIP, particularly before the end of the timeframe for evaluating the current decisions in RFP processes, creates undue ambiguity, risk and uncertainty for PSE as it conducts the resource acquisition and product design necessary to comply with CETA.

2. Review Could Save the Commission and Parties Substantial Effort Or Expense

18 PSE meets the second standard for administrative review of Order 10 because review and reversal now could save the Commission and parties substantial effort and expense. In

determining whether to exercise its discretion to consolidate, 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.⁵ PSE provided substantial evidence of factual and legal overlap between the proceedings and explained how consolidation would provide less, not more, procedural process.⁶

19 As stated in PSE’s Motion, all the parties of record in PSE’s CEIP are active parties in its general rate proceeding. The discovery rules established in PSE’s general rate case are already organized in a way that parties may easily engage in, or disregard, CEIP issues. Further, the similar procedural status of both cases means that the CEIP can join the general rate case with a separate but parallel procedural schedule that is congruent with, not cumulative to, the existing rate case schedule. On the other hand, holding a separate CEIP adjudication unnecessarily duplicates and lengthens a process that is ripe for resolution. The same witnesses, including consulting experts, will be called to testify about the same subjects on multiple occasions in multiple proceedings. This is contrary to the public interest and a waste of the Commission’s and the party’s resources.

20 The Commission frequently consolidates proceedings in this context, even proceedings with complex or novel issues.⁷ In fact, addressing several complex, innovative issues at once is nothing new for the Commission or any of the parties in these dockets.⁸ The Commission once considered five dockets in two separate adjudications. While all dockets were not officially consolidated as one, the Commission aligned PSE’s 2013 Expedited Rate Filing (“ERF”) with its full decoupling mechanism, hearing both interrelated hearings on the same day.⁹ In the final

⁵ See, e.g., *Qwest Corp. v. Level 3 Comm.*, Docket UT-063038, Order 09, ¶ 13 (February 15, 2008).

⁶ See PSE’s Motion at ¶¶ 17-19.

⁷ See, e.g., *WUTC v. Olympic Pipeline Co.*, Docket TO-011472, 20th Supp. Order (Sept. 27, 2002).

⁸ See, e.g., *In re the Petition of Puget Sound Energy, Inc.*, Dockets UE-130583, UE-130617, and UE-131099 (Consolidated), Order 01/Order 05/Order 01, at ¶ 17 (Aug. 8, 2013), which consolidated PSE’s application authorizing the sale of rights and assets related to two separate generating facilities with PSE’s Power Cost Only Rate Case and a request to recover major maintenance costs at PSE’s Mint Farm combustion turbine.

⁹ Dockets UE-121697 and UG-121705 (consolidated), UE-130137 and UG-130138 (consolidated) Order 07, ¶ 10 (June 25, 2013).

order of those proceedings, the Commission recognized that the proceeding raised a host of complex issues, stating, “We recognize this is somewhat of an experiment in new and innovative ratemaking mechanisms, and we have been careful to provide the parties adequate opportunities to inform our decisions through the development of a record and briefing of the issues.”¹⁰

21 In objecting to the combined procedural schedule in that case, Public Counsel made many of the same arguments then that makes here, claiming that the ERF and decoupling proposals represent significant new policy and procedural proposals that warrant more careful review than the schedule permits.¹¹ In overruling Public Counsel’s objection then, the Commission considered the broader context and history in which the policy issues had developed. “The context includes multiple proceedings over many years and significant attention during recent periods.” The same is true here. The CETA, CEIP, related RFPs, and the multiyear rate plan have all developed over several years through legislative discussions, rulemaking, and public participation efforts, with the same parties considering the same policy issues. All those parties are already at the table in the general rate case. Creating a separate adjudicated proceeding for the CEIP means wasting the parties’ current engagement and momentum, favoring instead a new, additional, and longer process to everyone’s detriment and at significant risk to PSE.

22 Additionally, focusing on the few, complex policy issues raised in the CEIP inappropriately ignores many other simple actions and decisions that could be resolved now in a consolidated rate case. The administrative rules clearly envision the CEIP and CETA implementation as an iterative, evolving process. The urgent question that PSE raises for consideration in consolidation with the general rate case is not whether the CEIP is a perfect execution of the rules, but whether the interim targets and the consideration of customer benefit indicators informing those targets are appropriate and reasonable to serve as the basis for

¹⁰ Dockets UE-121697 and UG-121705 (consolidated), UE-130137 and UG-130138 (consolidated) Order 07 at ¶ 189 (June 25, 2013).

¹¹ See Dockets UE-121697 and UG-121705 (*consolidated*), Public Counsel Objection to Order 02 Schedule at ¶ 3 (April 1, 2013).

implementation actions over the CEIP’s four-year implementation period. PSE fully expects its CEIP process, analysis, and customer benefit indicators to evolve and improve over time, significantly benefiting from consultation with its customers, stakeholders and with timely input from the Commission. It is an ongoing effort that will span many CEIP cycles. However, these longer-term policy issues should not hold up a timely decision on the 2022 CEIP, and the critical issues for consideration should not be “held hostage” to a duplicative adjudication.

B. Errors in Order 10 Call for Commission Review

23 The Commission may consolidate proceedings in which the facts *or* principles of law are related.¹² In Order 10, the presiding officer acknowledged significant overlaps in facts and evidence, parties, and judicial economy, yet then denied consolidation for reasons that are not relevant for consideration.¹³ The presiding officer states that the two proceedings present related facts and principles of law,¹⁴ but they do not present the same legal issues and the standards of review are different.¹⁵ However, it is not necessary that the legal issues be the same. It is enough if the facts or principles of law are related, as they are in this case. Further, there is nothing in WAC 480-07-320 that suggests that the Commission should only consolidate proceedings with the same standard of review. The Commission is more than capable of addressing multiple standards of review in one proceeding, just as it has managed complex proceedings with mixed federal and state jurisdictional issues,¹⁶ dual concerns of economic regulation and pipeline safety,¹⁷ and other complicated and important policy issues.¹⁸

24 But even more importantly, the presiding officer points out that the legislature has directed the Commission to align the CEIP with the PSE’s general rate case. In Order 10, the

¹² WAC 480-07-320 (emphasis added).

¹³ See Order 10 at ¶ 20.

¹⁴ *Id.*

¹⁵ *Id.* at ¶ 21.

¹⁶ *WUTC v. Olympic Pipeline Co.*, Docket TO-011472, 20th Supp. Order (Sept. 27, 2002).

¹⁷ *Id.*

¹⁸ See *WUTC v. PSE*, Docket UE111048 and UG-111049 (consolidated), Order 08 (May 7, 2012), considering PSE’s proposed Conservation Savings Adjustment and service quality issues in the context of its general rate case.

presiding officer acknowledges that the legislature directed the Commission to align the timing of PSE's multiyear rate plan with its CEIP:

The commission shall align, to the extent practical, the timing of approval of a multiyear rate plan of an electrical company submitted pursuant to this section with the clean energy implementation plan of the electrical company filed pursuant to RCW 19.405.060.¹⁹

PSE's Motion establishes the process for the Commission to do exactly what the legislature has instructed it to do. PSE's Motion even points out how alignment through consolidation is not only practical, but preferable for all involved.

25 The presiding officer also erroneously denied PSE's Motion because PSE did not file a reply brief. While the Commission's rules provide a party the right to respond to PSE's Motion, they do not allow PSE to file a reply brief. The presiding officer expressed difficulty in seeing how the CEIP's complex, novel issues could be effectively adjudicated in the remaining eight months of the general rate proceeding. Yet instead of issuing a bench request or otherwise providing PSE an opportunity to answer that question, it simply denied PSE's Motion.

PSE has not sought leave to file a reply brief that might assuage these concerns and convince the Commission these hurdles are manageable.

We therefore find that PSE's Motion should be denied.

26 It is inappropriate at best, and likely clear error, to deny PSE's motion because it did not do something it had no express right to do. Even so, PSE did provide examples of how it would efficiently and effectively streamline the issues in the CEIP so that they could be addressed in the ample time remaining in the general rate case.²⁰

¹⁹ Order 10 at ¶ 23, citing RCW 80.28.425(9).

²⁰ See e.g., 1) PSE's offer to work with parties to develop a separate but parallel procedural schedule that would allow parties to easily participate in or disregard CEIP issues, 2) PSE's offer to file supplement testimony distilling the various issues raised to date in the CEIP proceeding, and 3) utilizing discovery to efficiently identify CEIP issues.

27 Finally, in Order 10 the presiding officer refers to the Commission’s Used and Useful Policy Statement for support for rejecting PSE’s Motion, stating vaguely that the Policy Statement allows for the provisional recovery of investments in rates subject to later review and possible refund.²¹ PSE does not understand the presiding officer’s assessment because the presiding officer did not explain or illustrate the mechanisms necessary to effectuate “approval of future investments.” Frankly, the comment does not make sense, and the uncertainty that the presiding officer points out surrounding cost recovery of CEIP investments supports consolidation. Consider, for example, that the Commission approves recovery of DER investment costs in this general rate case but later decides that such costs are not necessary to comply with the CEIP? Or conversely, the Commission denies recovery of DER costs in this proceeding but then subsequently orders PSE to incur those same costs in the CEIP. Allowing or disallowing CEIP-related costs in one proceeding while potentially contradicting that ruling in a separate, subsequent proceeding exposes all parties to an excessive amount of risk and uncertainty. It makes much more sense for the Commission to decide both the incurrence and recovery of specific CEIP-related costs at the same time in a general rate proceeding.

III. CONCLUSION

28 For the reasons set forth above, the Commission should accept administrative review of Order 10 and reverse it to grant PSE’s Motion for Consolidation of its general rate case with its CEIP because 1) administrative review is necessary to prevent substantial prejudice to PSE that would not be remediable by post-hearing review, and 2) review could save the Commission and parties substantial effort or expense.

Respectfully submitted this 28th day of April, 2022

²¹ Order 10 at ¶ 25, citing *In re Commission Inquiry into the Valuation of Public Service Company Property that Becomes Used and Useful After Rate Effective Date*, Docket U-190531, Policy Statement on Property that Becomes Used and Useful After Rate Effective Date ¶ 20 (Jan. 31, 2020).

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