BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND ENERGY, Respondent.	DOCKET UE-240004 and UG-240004 *(Consolidated)*

POST-HEARING BRIEF OF THE ENERGY PROJECT

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I. Introduction and Summary

A. With inflation and existing financial burdens already weighing on them, low-income customers cannot afford yet another significant rate increase.

1 Low-income household budgets are on the razor's edge. Inflation has spiked the cost of necessities, which comprise a disproportionately high percentage of their expenses.[1] Given these households' minimal savings and financial inflexibility, rising costs have left them in a state of acute economic precarity that is exacerbated by increasingly frequent utility rate increases. The Energy Project (TEP) requests that the Utilities and Transportation Commission (UTC or Commission) prioritize the financial needs of low-income customers when reviewing Puget Sound Energy's (PSE's) requests in this case.

2 Public comments highlight the measures low-income customers take when bills add up, like cutting spending on groceries and medicines to avoid energy arrearages.[2] Take, for example, Barbra Sperling, who says:

> I am 72 years old, retired, live alone and am on a very limited income. I already only heat my home to 60 degrees. I use a small electric heater when needed, or a heating pad. Or I just go to bed early to keep warm. Nothing is turned on unless I am using it. These proposed increases are impossibly high for someone in my situation. And, I can assure you, I am not the only one in this situation.[3]

3 Sperling is certainly not the only one. TEP Witness Roger Colton presents national data showing that low-income customers often rely on unsafe and unhealthy coping measures in response to high bills, demonstrating that public comments like Barbra Sperling's are representative (and not

[1] Colton, Exh. RDC-1T at 6-10.

[2] Public Comment, Exh. BR-1, Attachment 1 at 5-7.

[3] Public Comment, Exh. BR-1, Attachment 1 at 24.

merely anecdotal).[4] Severe energy burdens abound across PSE's service territory, and have only been made more pressing by inflation's impact on low-income households. The Commission should reject PSE's proposal to increase its basic charges, which would further minimize the efforts of cost-conscious customers like Barbra Sperling from containing their bills.

4 The Commission is obligated to balance the interests of investors and ratepayers in setting reasonable rates. That balancing occurs in setting a return on equity, rate design issues involving the fixed monthly customer charge, and providing financial incentives for shareholders. As the Commission considers PSE's various proposals to increase shareholders' cash flow and income, it must remember that low-income and vulnerable customers, not PSE, are financially struggling and in need of assistance.

B. The Commission should not award PSE's shareholders unreasonable financial incentives merely because PSE has come around to supporting the state's climate goals.

5 This case presents the Commission an opportunity to respond to PSE's contention that shareholders need numerous financial incentives to comply with our state's energy policies. The Commission should reject that argument. A prudently run utility is perfectly able to invest in the state's clean energy future without, for example, the Commission allowing construction work in progress (CWIP).[5] Because regulated utilities cannot ignore their obligations under the Climate Commitment Act or the Clean Energy Transformation Act, the Commission can effectuate the state's energy policies without providing PSE's shareholders excessive financial incentives.

[4] Colton, Exh. RDC-1T at 71-74 *citing* National Energy Assistance Directors Association, National Energy Assistance Survey (2018).

[5] Stokes, Exh. SNS-1T at 63-67.

6 Accordingly, TEP recommends that the Commission reject PSE's proposal to modify its gas plant depreciation schedule.[6] PSE's proposed schedule would result in a significant increase in depreciation spending during this rate period. Put simply, PSE's proposal is too fast, too soon. If the Commission decides to adjust PSE's depreciation schedule, it should do so much more gradually than PSE proposes.

7 Next, because PSE has not demonstrated that its demand response (DR) resource acquisition or performance will increase if provided incentives, the UTC should reject PSE's two proposed incentives.[7] The Commission is also not required to provide PSE a rate of return for power purchase agreements (PPAs). Low-income customers cannot make a profit on money they have not invested, and the same should be true for PSE. It is unreasonable for the Commission to provide shareholders this rate of return.

8 The UTC should also reject PSE's DR performance incentive mechanism (PIM) because the target is not based on an appropriate dataset and the design is flawed. A PIM's target should be a stretch goal and, in the case of demand response, include considerations of equity. It should not, as PSE proposes, be based merely on signed contracts. A properly designed PIM includes financial penalties for failures and only rewards shareholders when the utility substantially exceeds the target. It is unreasonable, as PSE proposes, to reward shareholders for exceeding a target by only five percent and include no penalties for failures.

[6] Stokes, Exh. SNS-1T at 51-55.

[7] Stokes, Exh. SNS-1T at 55-63.

C. The Commission should adopt TEP's proposals, which represent reasonable and incremental steps towards a more equitable distribution of energy benefits and burdens.

9 The public interest benefits from the transparency and accountability provided when PSE reports arrearage and disconnection for nonpayment metrics that separately identify impacts on known low-income households, Highly Impacted Communities, and Vulnerable Populations. In fact, much of the analysis in TEP witness Roger Colton's testimony could not have been prepared without these equity data. TEP thanks PSE witness Hutson for his commitment, at hearing, to continue reporting these data. The Commission should order the Company to follow through on that commitment because PSE's written testimony rejects those same metrics. Despite PSE's statements to the contrary, in part II below TEP demonstrates that PSE is not otherwise obligated to continue reporting these equity data during the rate plan.

10 TEP requests that the Commission order PSE to equitably provide its Low-Income Electrification Pilot to gas-only customers because all of PSE's customers deserve access to the electrification programs they pay for, regardless of which utility will gain the electric load. Further, the passage of Initiative 2066 does not prevent the Commission from approving the Pilot. Nothing in Initiative 2066's legislative text restricts the Pilot; to the contrary, the initiative specifically contemplates the continuation of low-income electrification programs by requiring their inclusion in Integrated System Plans (ISPs). In any case, the Commission should not retroactively apply Initiative 2066 to this proceeding; doing so would be inconsistent with Commission precedent from PSE's last general rate case and Washington law.

11 Further, the Commission should order PSE to modify its disconnection policies. Once a customer is past due, PSE and its vendor, Total Solutions Inc., assign the customer a credit score based on several criteria, including credit history, prior disconnection for non-payment, and

account creation date. PSE's disconnection policies funnel customers with a history of energy insecurity and disconnection into high credit codes, and then only subject those with high credit codes to dunning and disconnection. PSE's use of credit history, disconnection history, and account age in creating the credit score violates the Commission's equity lens by disproportionately burdening marginalized and vulnerable customers and subjecting them to a vicious cycle of poverty and disconnection. TEP strongly recommends requiring PSE to reform these policies by eliminating these historical criteria, which TEP witnesses Shaylee Stokes identities as disproportionately impacting low-income customers and Named Communities. Further, the Commission should also order PSE to use paper copies for targeted outreach and dunning notices concerning past-due bills because it is easy to miss an e-mail.

12 Finally, this brief concludes by addressing three areas where PSE has offered to meet TEP part of the way. First, TEP thanks PSE for agreeing to hire an independent facilitator for the Low-Income Advisory Committee (LIAC). However, participants are more likely to share their expertise if they feel like their voices are being heard, so the Commission should also order PSE to engage with the LIAC at the "collaboration" level of the International Association for Public Participation Spectrum. Second, TEP thanks PSE for agreeing to track customer language preferences and develop a language access plan. However, the Commission should set a date certain for PSE to complete this work so it does not languish. Third, TEP thanks PSE for agreeing to host a workshop before making its time-varying rates tariff filing. TEP continues to believe that interested parties, including Commission Staff, would benefit from receiving the report and PSE's proposed design at least two weeks before the workshop so that they come to the workshop informed and prepared to engage in substantive discussions.

II. The Commission must order PSE to follow through on its commitment to report arrearage and disconnection equity data.

13 PSE currently reports arrearage and disconnection equity data as part of its performance metrics.[8] The Company's written testimony stated that PSE would no longer report these metrics and rejected similar metrics proposals from TEP and Staff.[9] At hearing, however, witness Hutson committed to continue arrearage and disconnection equity data reporting.[10] TEP thanks PSE for this commitment and requests that the Commission implement it by requiring PSE to report the following two metrics:

> (1) Total residential arrearages and average age of arrears by month, measured by location and for known low-income households, Highly Impacted Communities, and Vulnerable Populations; and
>
> (2) Number and percentage of residential disconnect notices, disconnections for nonpayment, and reconnection by month and zip code for known low-income households, Highly Impacted Communities, and Vulnerable Populations.

A. Arrearage equity data will not be reported absent a Commission order.

14 PSE currently reports residential arrearages by month, measured by location and for known low-income households, Highly Impacted Communities, and Vulnerable Populations.[11] PSE's written testimony proposed to stop reporting these data as performance metrics.[12] At hearing, witness Hutson committed to continue reporting these arrearage data.[13]

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[8] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dkt. UE-220066/UG-220067, Multi-Year Rate Plan Metrics Compliance Filing, Attachment A (March 29, 2024), Metrics 106-113 ("Metrics Compliance Filing").

[9] Steuerwalt, Exh. MS-4T at 41:4-12; Wallace, Exh. CLW-10T at 20:3-13.

[10] Hutson, TR. 211:11-24, 212:23-213:3.

[11] Metrics Compliance Filing, Metrics 106-107.

[12] Wallace, Exh. CLW-10T at 20:11-13; Steuerwalt, Exh. MS-4T at 41:4-12.

[13] Hutson, TR. 211:11-23.

15 The Commission should order PSE to follow through on that commitment because arrearage equity data are not reported elsewhere. At hearing, Witness Hutson stated that the Policy Statement contains this metric.[14] TEP is not aware of a provision of the Policy Statement that includes arrearage data disaggregated for known low-income households, Highly Impacted Communities, and Vulnerable Populations. Nonetheless, TEP appreciates PSE's commitment at hearing to continue reporting these data.

16 In response to a TEP data request, PSE stated that it reports the arrearage equity data in two locations: (1) the COVID Docket and (2) its MYRP performance metrics.[15] The COVID Docket does not, in fact, include the relevant arrearage data for Named Communities.[16] Additionally, in testimony, PSE recommended no longer reporting these data in its MYRP filings.[17] Consequently, Named Community arrearage data will only be reported if PSE follows through on its commitment at hearing.

17 In sum, PSE presently reports residential arrearages by month, measured by location and for known low-income households, Highly Impacted Communities, and Vulnerable Populations. Despite what PSE stated at hearing and in its response to TEP's data request, the Highly Impacted Community and Vulnerable Population data will not be reported anywhere—not in Policy Statement reporting, COVID Docket reporting, or PSE's original MYRP reporting proposal—absent a Commission order. The Commission should order PSE to follow through on witness

[14] Hutson, TR. 211:7-10.

[15] Hutson, Exh. TAH-18X at 4.

[16] Dkt. U-200281, PSE COVID-19 Monthly Report for October 2024, Attachment A (Oct. 12, 2024); Dkt. U-200281, COVID-19 Monthly Report for July-September 2024, Attachment A (Oct. 31, 2024) (reporting quarterly data).

[17] Wallace, Exh. CLW-10T at 20:11-13; Steuerwalt, Exh. MS-4T at 41:4-12.

Hutson's commitment to report residential arrearages by month, measured by location and for known low-income households, Highly Impacted Communities, and Vulnerable Populations.

B. Disconnection equity data will not be reported absent a Commission order.

18 PSE currently reports residential disconnection notices, disconnections, and reconnections for known low-income households, Highly Impacted Communities, and Vulnerable Populations.[18] In written testimony, PSE proposed to stop reporting these performance metrics.[19] At hearing, witness Hutson committed to continue reporting these data.[20]

19 Witness Hutson additionally stated that he believed that these data were included in PSE's Biennial Clean Energy Implementation Plan (CEIP) update as a Customer Benefit Indicator (CBI).[21] The CBIs, however, only include these disconnection equity data *because* PSE currently reports them as part of its MYRP filing. The CBI filing specifically states that "PSE is providing details from the following file in the GRC docket 220066-220067-PSE-2022- Annual-MYRP-Rpt-Attach-A-(03- 31-2023).xlsx, advancing equity by zip code. These are part of the settlement agreement under dockets UE-220066/UG-220067 and 210918 (Consolidated)."[22] The filing clearly states that if PSE is no longer required to provide the demographic disconnection data in this or another proceeding, it will instead report the quarterly disconnection data provided in the

[18] Metrics Compliance Filing, Metrics 108-113.

[19] Wallace, CLW-10T at 20:7-10; Steuerwalt, Exh. MS-4T at 41:4-12.

[20] Hutson, TR. 212:23-213:3.

[21] Hutson, TR. 212:2-22.

[22] Dkt. UE-210795, 2023 Biennial Clean Energy Implementation Plan Update, Appendix H at H.25 (Nov. 20, 2023).

COVID Docket.[23] Unlike the existing performance metric, the COVID Docket filings do not report disconnection figures specific to low-income households and Named Communities.[24]

20 The CBIs are inadequate replacements for PSE's existing disconnection equity data for two additional reasons. First, the CBI filing also states that PSE will only report the COVID Docket data in the CBI filing through 2025; this obligation will expire before the end of the rate plan.[25] Second, it is unclear what CBIs PSE will be required to report in the future as the Commission weighs shifting from CEIPs to Integrated Systems Plans. While the Commission resolves those uncertainties, it must maintain public access to disconnection equity data.

21 Consequently, absent direction from the Commission in this case, PSE will no longer report residential disconnection notices, disconnections, and reconnections for known low-income households, Highly Impacted Communities, and Vulnerable Populations. Witness Hutson's reference to the CBIs is circular: without a Commission order to report these data, the CBIs will no longer include them, nor will they report any disconnection equity data at all past 2025. TEP thanks PSE for its commitment to continue reporting the disconnection equity data at hearing and requests the Commission order PSE to follow through on that commitment.

[23] *Id*., Appendix H at H.5.

[24] Dkt. U-200281, PSE COVID-19 Monthly Report for October 2024, Attachment A (Oct. 12, 2024); Dkt. U-200281, COVID-19 Monthly Report for July-September 2024, Attachment A (Oct. 31, 2024) (reporting quarterly data).

[25] Dkt. UE-210795, 2023 Biennial Clean Energy Implementation Plan Update, Appendix H at H.5 (Nov. 20, 2023) ("If residential disconnections are not required to be reported quarterly to the Commission in any other docket (e.g., U-200281 or U-210800) or rule, PSE must report residential disconnections as reported pursuant to Commission Order 04 (Appendix A Third Revised Term Sheet, Section J, Part 2.a), in Docket U-200281, on a quarterly basis through the end of this CEIP implementation period (December 31, 2025)").

III. The Commission should require PSE to expand eligibility for the Low-Income Electrification Pilot to all gas customers, not just dual-fuel customers.

22 PSE proposes that all gas customers pay for the Low-Income Electrification Pilot through the DCARB141 Decarbonization Rate Adjustment.[26] At the evidentiary hearing, Witness Mannetti confirmed that under PSE's proposal, gas-only customers would pay for a Pilot in which they could not participate.[27] The Commission should not permit this unfair outcome. Home electrification is an equity issue, and all of PSE's customers deserve access to electrification programs, regardless of which utility provides their electric service.[28]

23 Witness Mannetti's rebuttal testimony contends that PSE's electric-only customers should not shoulder the cost of electrification programs that benefit customers of consumer-owned electric utilities serving PSE's gas-only territory.[29] The Company should address that concern through revenue-sharing mechanisms that ensure fair treatment of PSE's electric-only and gas-only customers. At the evidentiary hearing, PSE Witness John Taylor confirmed that many revenue-sharing options are available.[30] Yet PSE has not explored any of these methods. In response to TEP's Data Requests 64-67, the Company confirmed that it has not conducted outreach to any of the consumer-owned utilities serving customers in PSE's gas-only territory.[31]

24 Staff's proposed ISP Rules support TEP's position that PSE should make all income-qualified gas customers eligible to participate in the Low-Income Electrification Pilot. Under the

[26] Stokes, Exh. SNS-1T at 21:1-4.

[27] Mannetti, TR 151:17-152:11.

[28] Stokes, Exh. SNS-1T at 23:3-8.

[29] Mannetti, Exh. JM-9T at 10:17-20.

[30] Taylor, TR 243:1-244:10.

[31] Mannetti, Exh. JM-11X.

proposed rules, when PSE proposes electrification programs, the Company "has the burden of clearly demonstrating that it treated the electrification of gas customers that are within the large combination utility's combined electric and gas service territory and the customers in its gas only service territory impartially."[32] In future ISPs, electrification proposals targeting PSE's dual-fuel territory must be rejected unless (i) PSE provides evidence that the costs and benefits of electrification in dual-fuel territory "are materially different" than the costs and benefits of electrification in gas-only territory or (ii) PSE proposes geographically targeted electrification "of the same magnitude" in gas-only and dual-fuel territory.[33] Neither exception applies to PSE's proposal here. PSE has provided no evidence that the costs and benefits of the Low-Income Electrification Pilot are "materially different" in the Company's gas-only and dual-fuel territories. Nor has PSE proposed electrification programs "of the same magnitude" in each territory. As noted above, in this case PSE has not proposed any electrification of low-income households in its gas-only territory.

A. Initiative 2066 does not modify the Commission's authority approve PSE's proposed low-income electrification programs.

25 Nothing in Initiative 2066 prohibits the Commission or utilities from offering low-income electrification programs. In fact, the legislative text of Initiative 2066 specifically retains Section 3(4)(i) of HB 1589, which requires ISPs to include low-income electrification programs.[34] It is

[32] Dkt. U-240281, Proposed Integrated System Plan Rules, WAC 480-95-050(3) (Sept. 20, 2024).

[33] *Id.*

[34] Because Initiative 2066 eliminates section 3(4)(h) of HB 1589, it renumbers the low-income electrification provisions as 3(4)(h).

unreasonable to conclude that the voters who enacted the initiative intended to prohibit low-income electrification programs in a rate plan while at the same time requiring them in an ISP.[35]

26 Section 4(12) of Initiative 2066, which prohibits the Commission from approving a "rate plan that requires or incentivizes a gas company or large combination utility to terminate natural gas service to customers," does not preclude PSE's proposed electrification programs. PSE's proposed Low-Income Electrification Pilot does not require or incentivize PSE to terminate natural gas service to customers. First, the Pilot does not require PSE to terminate natural gas service to program participants. After getting a heat pump from the program, many customers continue to receive natural gas service for use in other gas appliances that remain in the home. Second, the Pilot does not provide PSE financial incentives for terminating natural gas service to participants. In fact, PSE's proposal does not provide shareholders any financial incentives associated with the electrification programs, let alone incentives that would cause PSE to terminate natural gas service to program participants. Thus, PSE's proposed Low-Income Electrification Pilot is permissible under Section 4(12).

27 While Initiative 2066 does modify the minimum standards for low-income electrification programs in Sections 3(4)(i)(ii)-(v) of HB 1589, those modifications only alter the minimum components of a low-income electrification program included in an ISP.[36] Sections 3(4)(i)(ii)-(v) are inapplicable here because they only applies after a utility has submitted an ISP, and even then they only sets minimum standards. Even if Initiative 2066 remains in effect when PSE eventually files its ISP, the Commission may approve a future ISP with a low-income electrification program

[35] *See American Legion Post # 149 v. Washington State Dept. of Health*, 164 Wash.2d 570, 585 (Wash. 2008) ("In construing the meaning of an initiative, the language of the enactment is to be read as the average informed lay voter would read it.").

[36] As noted above, the initiative renumbers these sections to 3(4)(h)(ii)-(v).

that includes more benefits than listed in Sections 3(4)(i)(ii)-(v) because those sections only establish the minimum components of such a program.

28 If the text of the initiative were not enough, the official voter pamphlet makes clear that the voters did not intend to restrict PSE's proposed electrification programs.[37] There is no mention of low-income electrification programs in the Attorney General's Explanatory Statement, the argument for, or the argument against the initiative.[38]

29 In sum, nothing in Initiative 2066 prohibits the Commission or utilities from offering low-income electrification programs.

B. Regardless, the retroactive application of Initiative 2066 to this rate plan is impermissible under Commission precedent and Washington law.

30 Even if the Commission finds that Initiative 2066 precludes PSE from offering low-income electrification programs, the initiative does not apply to this proceeding because it does not take effect until December 5, 2024. Under Washington's general rule against retroactivity, a statute only applies prospectively unless it: explicitly provides for retroactivity; clarifies ambiguities in existing legislation; or relates to practice and procedure and does not affect substantive or vested rights.[39] None of these exceptions are relevant to Initiative 2066, whose official voter pamphlet clarifies that Initiative 2066 applies "prospectively, not retroactively."[40]

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[37] The Washington Supreme Court has held that in the case of any textual ambiguity, the official voters' pamphlet provides insight into an initiative's meaning. *American Legion Post # 149 v. Washington State Dept. of Health*, 164 Wash.2d 570, 586 (Wash. 2008).

[38] *See* Washington Secretary of State, General Election Voter Pamphlet, at 9-11 (Nov. 5, 2024), https://www.sos.wa.gov/sites/default/files/2024-09/Voters%20Pamphlet%202024%20-%20Edition%2006%20-%20King%20-%20Seattle_0.pdf.

[39] *Kellogg v. National Railroad Passenger Corp.*, 199 Wash.2d 205, 220 (Wash. 2022).

[40] Washington Secretary of State, General Election Voter Pamphlet, at 9.

31 In addition, this Commission should adhere to its precedent of refusing to give retroactive effect to statutes concerning multi-year rate plans. In PSE's most recent general rate case, the Commission refused to apply SB 5295's expanded public interest standard retroactively.[41] The Commission again declined to retroactively apply the revised statute in the subsequent proceeding concerning PSE's Tacoma liquified natural gas facility.[42] The same outcome is warranted here.

32 Given the Washington Supreme Court's rule against retroactivity, the Commission may only apply the initiative to future rate plans. To determine when a newly-enacted statute can be applied, courts look to the act or event the statute intended to regulate. If the regulated act, or "triggering event," occurred before the statute's effective date, the statute is not applicable.[43] Courts and agencies make this determination by examining the statute's text and the subject matter it regulates.[44] They do not consider these factors in isolation. Under Supreme Court precedent, an initiative's amendments "must be read" in relation to the overall statutory scheme.[45]

33 For example, in *Sound Action v. Washington State Department of Wildlife*, the Pollution Control Hearings Board addressed whether an administrative agency should review a permit application under the legal standard in effect when the application was submitted or the standard in effect when the agency reached its final decision on the application; in the intervening period, the Legislature had amended the statutory scheme governing permit applications. The Board

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[41] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dkt. UE-220066/UG-220067, Final Order 24/10, at ¶ 426 (Dec. 22, 2023).

[42] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dkt. UG-230393, Final Order 07, at ¶¶ 93, 110-11 (Apr. 24, 2024).

[43] *Service Emps. Int'l Union Local 925 v. Dept. of Early Learning*, 194 Wash.2d 546, 555 (Wash. 2019) (applying the "triggering event" analysis to initiative).

[44] *Service Emps. Int'l Union Local 925 v. Dept. of Early Learning*, 194 Wash.2d 546, 555.

[45] *American Legion Post # 149*, 164 Wash.2d at 585.

reasoned that under the statutory scheme, the agency's duty to assess the project for compliance with legislative objectives "only arises during that assessment of a complete . . . application."[46] Thus, submission of a complete application, not the agency's final decision, was the "triggering event." Because the legislative changes were made after the application was filed, the agency correctly evaluated the application under the original standard.[47]

34 Here, Initiative 2066's text and purpose confirm that the triggering event for the initiative's rate case provisions occurred when PSE filed its multi-year rate plan on February 15, 2024. As noted above, Sections 4(12) and 4(13) of the initiative amend the Commission's authority to approve certain multi-year rate plans. Under that statutory scheme, once PSE to files a general rate case, the Commission has eleven months to determine whether the plan advances the public interest, including "environmental health and greenhouse gas emissions reductions, health and safety concerns, economic development, and equity."[48] Just as in *Sound Action*, the statutory scheme contemplates administrative review of PSE's filing for compliance with specific legislative criteria. And just as in *Sound Action*, the Commission's duty to complete that review arose when PSE made its original filing in February 2024. This means that the relevant triggering event occurred nearly ten months before the initiative's effective date of December 5 (and indeed also before the passing of HB 1589 itself). Thus, application of Initiative 2066 to this proceeding would unlawfully violate the rule against retroactivity.

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[46] *Sound Action v. Wash. State Dept. of Fish and Wildlife*, Wash. Pol. Control Hearing Bd., No. 20-022, Findings of Fact, Conclusions of Law, and Order, ¶ 24. (June 9, 2021).

[47] *Id*., ¶¶ 20-26. The Superior Court and the Court of Appeals subsequently upheld the Board's decision. *See Sound Action v. Washington State Pollution Control Hearings Board*, 2023 WL 3317949, at *1 (Wash. Ct. App. 2023) (unpublished).

[48] RCW 80.28.425.

IV. PSE's Disconnection Policies are inequitable and its arguments to the contrary are unpersuasive.

35 In opening testimony, witness Stokes analyzed PSE's Disconnection Policies and concluded that they inequitably penalize customers for a history of energy insecurity.[49] Briefly, PSE uses a third-party credit coding system to assign behavioral scores of 1 through 4 to past-due customers based on a variety of criteria, including prior obligation history, credit history, and collection history.[50] About a quarter of PSE customers receive a 3 or 4 score, which makes them eligible for disconnection.

36 The Disconnection Policies' reliance on historical energy insecurity criteria is inequitable. PSE assigns a higher percentage of known low-income customers and customers in Highly Impacted Communities a credit code that makes them eligible for disconnection.[51] Witness Colton demonstrated that 42 percent of PSE disconnections hit residents in Highly Impacted Communities, even though only 25 percent of PSE customers reside in Highly Impacted Communities.[52] Witness Colton also showed that the difference in disconnections for non-payment between low- and high-Vulnerable Population zip codes is not driven by the degree of non-payment.[53] These data indicate that PSE's Disconnection Policies, not customers' existing arrearages, drive disconnection inequities.

37 The inequities that these data reveal accord with the well-studied fact that rates of disconnection are disproportionately high among households with low incomes, in mobile homes,

[49] Stokes, Exh. SNS-1T at 23:14-33:21.

[50] Stokes, Exh. SNS-1T at 24:7-25:16.

[51] Stokes, Exh. SNS-1T at 25:13-16.

[52] Colton, Exh. RDC-1T at 47:5-10.

[53] Colton, Exh. RDC-1T at 47:13-21.

with children, without college degrees, and in communities of color.[54] PSE disproportionately threatens these communities by penalizing customers' history of energy insecurity. PSE also considers account creation date, which disproportionately harms renters, who witness Colton demonstrated are far likelier than homeowners to be low- or middle-income.[55] To rectify these inequitable criteria, witness Stokes proposed that PSE remove any criteria unrelated to a customer's present amount of arrearages and time in arrearages.[56]

38 In rebuttal testimony, witness Wallace primarily offers two responses. Both are erroneous. First, witness Wallace argues that PSE's Disconnection Policies are necessary because PSE must work with customers as early as possible to resolve arrearage issues. For example, witness Wallace stated that PSE "strongly believes" customers who score poorly "need to enter the dunning process, so they receive targeted past-due outreach that is tailored to each customer's situation."[57]

39 This argument is unconvincing for two reasons. First, witness Wallace wrongly equates early outreach with disconnection eligibility. TEP strongly supports PSE conducting early and targeted outreach to customers struggling with arrearages. PSE does *not*, however, need to threaten customers with disconnection in order to communicate the need for action and the options available to resolve an arrearage. Second, PSE's response makes no effort to address the equity implications of the Disconnection Policies. Witness Wallace states that the existing policies "include an equity lens across the treatment of customers," but she does not otherwise use the Commission's equity principles to defend PSE's practices. In effect, witness Stokes' core equity

[54] Stokes, Exh. SNS-1T at 26:1-30:6.

[55] Stokes, Exh. SNS-1T at 30:7-31:9; Colton, Exh. RDC-1T at 66, Table 15.

[56] Stokes, Exh. SNS-1T at 32:11-16.

[57] Wallace, Exh. CLW-10T at 15:4-6.

argument goes unrebutted, as witness Wallace's response merely defends early outreach, a policy to which no party objects.

40 Witness Wallace's second argument is similarly unavailing. Wallace contends that TEP's proposal to remove all disconnection eligibility criteria except current arrearage amount and length would cause thousands of customers to "enter the dunning process[,] whereas with PSE's existing methodology they would not."[58] This argument rests on a key mistaken assumption that PSE would treat all customers the way that it treats customers with the worst credit scores today. Not so—PSE can simply treat all customers the way it treats customers with the best credit scores today.

41 PSE cannot justify its Disconnection Policies, nor has it offered a compelling rebuttal to TEP's proposal. The Commission should order PSE to amend its Disconnection Policies to remove all criteria except current arrearage amount and length. TEP thanks PSE for agreeing to conduct an equity review of its disconnection practices. TEP does not object to PSE using third-party experts for the review, as long the experts and scope of review are determined in collaboration with the LIAC. This review should not, however, prevent the Commission from ordering PSE to amend its Disconnection Policies.

42 The Commission should also order PSE to use paper or hard copies for targeted outreach and dunning notices, in addition to any e-mail communication. Witness Wallace states that PSE may only use email in targeted outreach if a customer indicates a general preference for e-mail communication.[59] While PSE should certainly send customers communication in their preferred medium, targeted outreach and disconnection notices are too crucial to leave to the risk of

[58] Wallace, Exh. CLW-10T at 15:14-16.

[59] Wallace, Exh. CLW-10T at 17:8-12.

customers missing an email. The Commission should order PSE to send targeted outreach in hard copy, in addition to any email communications.

V. TEP is hopeful that the addition of a professional facilitator and direction for PSE to engage with the LIAC at the "collaboration" level of the IAP2 Spectrum will improve the productivity and culture of LIAC meetings.

43 Witness Stokes highlights that a neutral facilitator will make LIAC meetings more productive. She cites positive outcomes in the Equity Advisory Group (EAG), where the facilitator guides discussion topics and elicits meaningful feedback from participants. All parties, including PSE, benefit from this collaborative environment.[60] Witness Wallace states that PSE "would welcome" TEP's proposal, an indication that the Company understands these benefits.[61]

44 PSE proposes to recover the costs of the LIAC facilitator through the Schedule 129 tariff.[62] TEP does not oppose PSE's request and takes no position on the method of cost recovery at this time.

45 Though hiring an independent facilitator is a necessary first step, PSE must do more to incorporate the LIAC's perspective on issues affecting low-income ratepayers. As part of the settlement in PSE's 2022 general rate case, the Commission ordered PSE to engage with the EAG on at least the "collaboration" level of the International Association for Public Participation (IAP2) Spectrum.[63] There is no reason for PSE to apply a different standard to the LIAC. As Witness Stokes notes, LIAC participants are more likely to share their expertise if they feel like their voices

[60] *See* Stokes, Exh. SNS-1T at 13:4-12.

[61] Wallace, Exh. CLW-10T at 5:13-14.

[62] Wallace, Exh. CLW-10T at 5:13-19.

[63] *See* Stokes, Exh. SNS-1T at 13:20-14:2.

are being valued in the development and tracking of policies and processes impacting their communities, as opposed to being presented with decisions that were already made.[64]

46 In rebuttal testimony, Witness Wallace asserts that PSE already collaborates with the LIAC.[65] However, Wallace does not address TEP's specific recommendation to engage with the LIAC at the "collaboration" level of the IAP2 Spectrum, even though PSE elsewhere emphasizes the need for a "robust stakeholder engagement plan," particularly with underrepresented communities, based on the IAP2 Spectrum.[66] TEP strongly believes the IAP2 framework can benefit the LIAC in adopting a more collaborative culture that will ultimately increase productive, positive impacts for the low-income customers it seeks to support.

VI. PSE laudably agreed to track customer language preferences and develop a language access plan, and the Commission should require PSE to file the plan by a date certain.

47 In response testimony, TEP recommended that PSE (1) collect and track customers' language preferences and (2) distribute a draft language access plan by June 1, 2025, accept feedback on the draft, and file a final language access plan by October 1, 2025.[67] In rebuttal testimony, PSE stated that it intended to collect and store language preferences, develop a language access plan, and use the information it secures to improve language services, including Spanish dunning notices.[68] TEP thanks PSE for committing to those steps, which will improve service for customers who speak a language other than English.

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[64] Stokes, Exh. SNS-1T at 16:2-5.

[65] Wallace, Exh. CLW-10T at 3:8-4:3.

[66] Hutson, Exh. TAH-1T at 28:13-14.

[67] Stokes, Exh. SNS-1T at 34-39.

[68] Wallace, Exh. CLW-10T at 9:19-12:14.

48 Witness Wallace states that PSE does not believe it can meet the June 1, 2025 timeline suggested by TEP.[69] PSE's testimony mischaracterizes TEP's proposal because it fails to note that TEP only proposes that PSE distribute a draft language access plan by June 1; the final plan would not be due until October 1, 2025. PSE's Response to Bench Request 002 indicates that the Company can complete its Language Access Plan by December 31, 2025.

49 TEP recommends that the Commission set dates certain for PSE to complete the following five steps. TEP does not oppose the Commission modifying these dates to provide PSE two more months, until December 31, 2025, to complete its Language Access Plan.

a. By June 1, 2025, evaluate language barriers to accessing low-income programs in a draft language access plan;

b. By June 1, 2025, provide the LIAC and the EAG a draft language access plan for its low-income programs and request feedback on the plan;

c. By ~~October 1~~December 31, 2025, incorporate feedback it receives, discuss any feedback received on the draft not incorporated into the final, state the reason PSE did not incorporate the feedback into the final, and make a subsequent filing (pursuant to WAC 480-07-885) with a final language access plan for its low-income program;

d. Report on its progress toward accomplishing the language access plan in its annual energy assistance report to the Commission; and

e. Maintain and revise the language access plan as needed, with approval and feedback from the LIAC and the EAG.

VII. Before filing its time-varying rates tariff, PSE should incorporate feedback from interested persons.

50 Witness Jhaveri testifies that PSE expects to file "the final [time-varying rate (TVR)] program and rate designs, tariff sheets and rates . . . concurrently with the Company's submission of the final [evaluation, measurement, and verification (EM&V)] report in a separate

[69] Wallace, Exh. CLW-10T at 12:3-7.

filing to the Commission in early 2026."[70] TEP raised concerns that PSE's proposal does not provide non-Company parties time to review the evaluation and use the report's contents to provide recommendations in advance of PSE's proposal to the Commission.[71]

51 In cross-answering testimony, PSE agrees to "share the final EM&V report with interested parties as part of collaborative efforts to inform a final proposal for TVR" and "reach out to interested parties to establish a collaborative workshop to review the EM&V findings and begin discussion of their implications for a full-scale residential TVR."[72]

52 TEP thanks PSE for agreeing to share the report with interested parties and host a workshop before making its filing. TEP continues to believe that interested parties would benefit from receiving the report and PSE's proposed design at least two weeks before the workshop, so that parties arrive at the workshop informed and prepared to engage in substantive discussions.

VIII. PSE's excessive paperwork burdens parties and frustrates the Commission's efforts to promote procedural justice.

53 PSE's presentation of its evidentiary case in this proceeding was unduly complicated, impeding the ability of stakeholders such as TEP to review and respond. The Company's excessive paperwork departs from any reasonable expectation that a rate proceeding will incorporate elements of procedural justice for resource-constrained participants.

54 Put simply, providing testimony and exhibits from over 40 different witnesses is unprecedented and unnecessary. For example, the Company divided its discussion and recommendations regarding performance metrics between ten different witnesses. Witness

[70] Jhaveri, Exh. BDJ-1T at 14.

[71] Stokes, Exh. SNS-1T at 68-69.

[72] Jhaveri, Exh. BDJ-4T at 22.

Colton concluded that in "the 45+ years I have participated in utility regulatory proceedings . . . I have not once seen a utility that sought to support its requested rate relief by overburdening reviewing parties in the manner which PSE has done in this proceeding."[73]

55 PSE's evidentiary presentation imposed unreasonable burdens on the financial, technical and human resources of the parties to this case and Commission itself. In response, the Commission's final order in this proceeding should encourage PSE to streamline its evidentiary presentation in future cases. Otherwise, parties will need additional time and funding to meaningfully participate in PSE's cases.

IX. Conclusion.

56 TEP respectfully requests that the Commission grant the relief described in this brief and its testimony.

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[73] Colton, Exh. RDC-1T at 75.

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