

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY

Respondent.

Docket UE-220066 and
Docket UG-220067 (*Consolidated*)

In the Matter of

PUGET SOUND ENERGY

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

Docket UE-210795

PUBLIC COUNSEL UNIT
RESPONSE TO PSE PETITION
FOR ADMINISTRATIVE REVIEW
OF ORDER DENYING MOTION
FOR CONSOLIDATION

I. INTRODUCTION

- I.* Pursuant to Washington Administrative Code (WAC) 480-07-810, the Public Counsel Unit of the Washington State Attorney General’s Office (Public Counsel) hereby responds to Puget Sound Energy’s (PSE or the Company) Petition for Administrative Review of the Washington Utilities and Transportation Commission’s (Commission) Order denying PSE’s Motion for Consolidation of its Clean Energy Implementation Plan (CEIP) proceeding, Docket UE-210795, with its consolidated general rate case (GRC), Dockets UE-220066 and

PUBLIC COUNSEL’S RESPONSE TO
PETITION FOR ADMINISTRATIVE
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DOCKET UE-210795;

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UG-220067.¹

2. The Commission has the discretion to consolidate two or more proceedings in which facts or principles of law are related.² The Commission denied PSE’s request for consolidation. In its Order, the Commission correctly found that consolidation would be inappropriate because, although the proceedings involve similar facts and evidence to a degree, the CEIP contains complex issues of first impression, and consolidation would unnecessarily constrain the review of PSE’s first CEIP.³ The Commission also correctly found that the two proceedings do not present the same legal issues and require different standards of review⁴ and that a contemporaneous decision on the CEIP and GRC is not necessary.⁵ Finally, the Commission expressed its concern that the CEIP could not be effectively adjudicated in the remaining months of the GRC’s statutory suspension period and that the proceeding should not be rushed for the sake of judicial economy without regard for the effect on the deliberative process.⁶
3. The Commission’s order denying PSE’s request for consolidation was proper. PSE’s arguments in support of an interlocutory review of the Commission’s order are without merit, and Public Counsel requests that the Commission deny PSE’s petition for review of Order 10.

¹ Pet. for Administrative Review of an Interlocutory Order Denying Mot. for Consolidation, *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-220066 & UG-220067 (*consol.*); *In re: Puget Sound Energy Clean Energy Implementation Plan Pursuant to WAC 480-100-640*, Docket UE-210795 (filed Apr. 28, 2022) (hereinafter “PSE Petition”).

² WAC 480-07-320.

³ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Docket UE-220066 & UG-220067 (*consol.*); *In re: Puget Sound Energy Clean Energy Implementation Plan, Pursuant to WAC 480-100-640*, Docket UE-210795, Order 01 / Order 10, ¶ 19 (Apr. 18, 2022) (hereinafter “Order 10”).

⁴ Order 10, ¶ 21.

⁵ Order 10, ¶ 24.

⁶ Order 10, ¶ 27.

II. THE COMMISSION SHOULD DENY PSE'S PETITION FOR REVIEW

A. PSE's Petition Does Not Establish Sufficient Basis for Administrative Review

4. Under WAC 480-07-810, the Commission has the discretion to review an interlocutory order if it finds that, 1) the order terminates a party's participation in the proceeding, and the party's inability to participate thereafter could cause it substantial and irreparable harm; 2) review is necessary to prevent substantial prejudice to a party that would not be remediable in the Commission's final order; or 3) review could save the Commission and the parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review. PSE bases its petition on the second and third element of the WAC but fails to establish either that it will be substantially prejudiced if the Commission does not review Order 10 or that such a review would save the Commission and parties effort or expense.
5. PSE's arguments that it will be substantially prejudiced are nothing more than a repetition and expansion of the Company's argument in its original Motion to Consolidate that the lack of certainty surrounding a CEIP approval timeline exposes PSE to risk in securing resources to meet its planned clean energy targets by the end of the CEIP period.⁷ PSE argues that it may be reluctant to forge ahead to acquire renewable resources at its proposed ambitious scale because of the number of new elements introduced by the Clean Energy Transition Act (CETA) in the CEIP process and the fact that the Commission did not take action on PSE's

⁷ Mot. to Consolidate Proceedings and Mot. for Exemption from WAC 480-100-645(2) ¶ 20, *Wash. Utils. & Transp. Comm'n. v. Puget Sound Energy*, Docket UE-220066 and UG-220067 (*consol.*); *In re: Puget Sound Energy Clean Energy Implementation Plan Pursuant to WAC 480-100-640*, Docket UE-210795 (filed Mar. 30, 2022).

integrated resource plan.⁸ First, nothing in CETA or established regulatory policy dictates that the Commission must shield utilities from all risk when they are required to meet statutory mandates or their obligations to provide safe and reliable service. Second, PSE's threat that it may be reluctant to forge ahead to acquire renewable resources at its proposed ambitious scale⁹ puts the proverbial cart before the horse since parties have disagreed with PSE's accelerated procurement target.¹⁰ The fact that the pace of resource acquisition is squarely at issue in this proceeding and that, as PSE itself argues,¹¹ CETA introduced a number of new elements in the procurement process supports a comprehensive review of the issue that is not constrained by the timelines of the GRC. PSE's threat that it will slow down its acquisition of renewable and non-emitting resources rings hollow when the Company suggests that it may simply acquire resources at a pace in line with the resource need it identified in its Request for Proposal (RFP).¹²

6. PSE makes similarly unfounded arguments regarding its distributed energy resource (DER) plans. PSE states that failing to consolidate the CEIP and GRC will negatively impact DER plans and related customer products based on the results of the DER RFP in Docket UE-210878.¹³ PSE's argument, however, appears based on the assumption that the Commission will simply approve its DER plans and that refusing to consolidate the CEIP and GRC merely

⁸ PSE Petition, ¶ 6.

⁹ *Id.*

¹⁰ See Comments on Behalf of the Alliance of Western Energy Consumers at 2, *In re: Puget Sound Energy Clean Energy Implementation Plan Pursuant to WAC 480-100-640* (filed Mar. 2, 2022).

¹¹ PSE Petition, ¶ 6.

¹² *Id.*

¹³ *Id.* ¶ 9.

slows its process down. Parties including Public Counsel, however, have raised significant concerns regarding the company's DER plans that the Company does not appear to acknowledge. If the Commission agrees with parties that PSE's DER plans do not meet the statutory requirements of CETA, PSE's DER selection plans in the CEIP will require modifications, potentially affecting the ongoing DER selection process as well.

7. PSE appears to make a similar assumption that the Commission will merely approve its customer benefit indicators (CBIs) if the CEIP and GRC are consolidated. PSE seems to ignore the fact that several parties have raised significant concerns with PSE's selection and application of CBIs that could result in the need for significant modifications of or rejection of the CEIP. Both of these outcomes would have the same if not greater impacts on the timing of the use of CBIs in PSE's procurement selection processes. Consolidating the CEIP into the GRC would not necessarily change this outcome unless PSE is hoping that constraining the CEIP process to the GRC's timeline will result in less scrutiny.
8. PSE also claims that administrative review and reversal of Order 10 will save the Commission and parties substantial effort and expense, but does not raise any arguments that are substantially different from what PSE raised in its original motion. The Commission's decision considered the overlapping facts between the two proceedings, but found that it would be inappropriate to consolidate the two proceedings at this time because of the complex, novel issues raised in the CEIP.¹⁴ The Commission ultimately determined that it would be difficult to

¹⁴ Order 10, ¶ 19.

effectively adjudicate the CEIP in the remaining months of the GRC’s statutory period and stated that the “proceeding should not be rushed to completion for the sake of ‘judicial economy’ without regard for the effect on the deliberative process.”¹⁵ Nothing in PSE’s petition suggests that the Commission erred in its weighing of judicial economy against the need for a fair and comprehensive deliberative process.

B. PSE’s Claim that the Commission Erred in its Decision is Without Merit.

9. Under WAC 480-07-810(3)(a), a party seeking administrative review of an interlocutory order must provide an explanation of why the order is erroneous or otherwise should be changed. In Order 10, the Commission properly exercised its discretion under WAC 480-07-320 to deny PSE’s motion for consolidation of the CEIP and GRC proceedings.

10. PSE argues that the Commission erred because it can order consolidation of proceedings in which the facts or principles of law are related but denied PSE’s motion because the CEIP and GRC present different legal issues and standards of review. PSE’s argument utterly fails to acknowledge that the Commission has the discretion to grant or deny motions for consolidation and is not statutorily mandated to do so. PSE did not offer any argument to suggest that the Commission’s order was arbitrary or capricious. The Company merely disagreed with the Commission’s particular exercise of its discretion.

¹⁵ Order 10, ¶ 27.

11. PSE similarly argues that the Commission erred because it should consolidate the two proceedings to align the timing of the Company’s multi-year rate plan with its CEIP, citing RCW 80.28.425 in support of its argument. The statute states,

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. (Emphasis added.)

Nothing in the statute requires the Commission to consolidate the two proceedings in order to align the timing of the two proceedings. The statutory language is permissive and allows for flexibility in the timing with the phrase, “to the extent practical.”

12. PSE also objects to the Commission’s dicta regarding the filing of a reply brief and future approval of investments, but neither of these objections indicate that the Commission erred in the exercise of its discretion to consolidate proceedings.

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III. CONCLUSION

13. PSE's Petition for Administrative Review of Order Denying Motion for Consolidation does not establish a sufficient basis for administrative review of the Commission's Order 10 denying the Company's Motion for Consolidation of the CEIP and GRC proceedings. PSE has also failed to prove that the Commission erred in its ruling or that the Order should otherwise be changed. For these reasons, Public Counsel urges the Commission to deny PSE's petition.

Dated this 12th day of May, 2022.

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