BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION Complainant, v. PUGET SOUND ENERGY Respondent.	)	DOCKETS UE-240004 and UG-240005, UE-230810 (*consolidated*) PETITION FOR RECONSIDERATION OF THE ALLIANCE OF WESTERN ENERGY CONSUMERS & THE ENERGY PROJECT
In the Matter of the Petition of PUGET SOUND ENERGY, Petitioner, For an Accounting Order Authorizing deferred accounting treatment of purchased power agreement expenses pursuant to RCW 80.28.410.	)	

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I. INTRODUCTION

1 Pursuant to WAC 480-07-850, the Alliance of Western Energy Consumers ("AWEC") and The Energy Project ("TEP") respectfully request that the Washington Utilities and Transportation Commission ("Commission") reconsider paragraph 64 of Order 09/07 in this proceeding, entered on January 15, 2025 ("Order 09/07"). AWEC and TEP request reconsideration of paragraph 64 of Order 09/07 because the Commission's rationale in reaching its decision on forecasting PSE's plant in service is based in an error of law. Specifically, the Commission erred in its characterization of AWEC's position and in concluding that AWEC's recommendation to limit capital investments included in rates to those in service as of the rate-effective date is unlawful. While AWEC and TEP believe that the record supports adoption of AWEC's proposal in this case, AWEC and TEP's request is that the Commission correct its error of law that unnecessarily restricts the Commission's discretion. Correction of this error will ensure that Order 09/07 is properly grounded in the plain text of RCW 80.28.425 and does not wrongfully guide Commission decisions in future proceedings.

II. ARGUMENT

2 AWEC and TEP respectfully request that the Commission reconsider its rationale for rejecting AWEC's recommendation in paragraph 64 of Order 09/07 because it is based on a legal error.

3 Paragraph 64 of Order 09/07 reads as follows:

> Upon review of the evidence, testimony, and the law, we agree with PSE. Under state law and policy, Washington embarks on an era of transition to clean energy as well as regulatory reform in rate making. The multi-year rate plan [MYRP] is one of many tools the Legislature has provided to assist that transition, including allowing recovery in rates for up to four years beyond the rate effective period. It is not for the Commission to buck state law and policy and attempt to turn back the clock. AWEC's recourse is to make its case to the Legislature. In the meantime, we

> will implement the multi-year rate plan statute with the public interest in mind. Accordingly, we conclude that it is in the public interest to leave intact and accept a two-year MYRP for PSE.

The Commission's rationale in this paragraph relies upon an incorrect interpretation of its authority to approve plant in service under Washington law.

a. The Commission retains statutory authority to approve MYRPs that include only plant in service by the rate effective date.

4 The Commission errs in concluding that AWEC's recommendation to only approve plant in service as of the rate effective date for each rate year is not consistent with Washington law. The two laws in question are RCW 80.28.425 and RCW 80.04.250. The second sentence of RCW 80.28.425(3)(b) specifically provides that:

> For the initial rate year, the commission shall, *at a minimum*, ascertain and determine the fair value for rate-making purposes of the property of any gas or electrical company that is used and useful for service in this state *as of the rate effective date*.[1]

5 In testimony and briefing, AWEC recommended that, for the initial rate year, the Commission allow PSE to include in rate base property that meets this minimum statutory standard and no more.[2] Witness Mullins explained:

> I recommend that only capital demonstrated to be used and useful on or before the rate effective date of the respective rate years be considered in revenue requirement. This is consistent with the used and useful standard. It is also the baseline method described in the multi-year rate plan statute, which states "[f]or the initial rate year, the commission shall, at a minimum, ascertain and determine the fair value for rate-making purposes of the property of any gas or electrical company that is used and useful for service in this state as of the rate effective date."[3]

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1 Emphasis added.

2 Mullins, Exh. BGM-1CT, at 10:1-11. As witness Mullins explains, RCW 80.28.425 allows the Commission to reject a multiyear rate plan, and approve only a single year of rates. Indeed, that was the proposal of Commission Staff in Avista's 2024 general rate case. *See e.g. Wash. Utils. and Transportation Commn. v. PacifiCorp v. Avista*, Dkts. UE-240006/UG-240007, Final Order 08 at ¶ 353 (Dec. 20, 2024). AWEC does not oppose PSE's request for a MYRP with a second rate year, it only asks to adjust the date when the Commission allows capital into rate base.

3 Mullins, Exh. BGM-1CT at 12:5-12, *citing* RCW § 80.28.425(3)(b).

Similarly, RCW 80.04.250(2), which sets the authority of the Commission to value the property of the public service companies, provides:

> The commission has power upon complaint or upon its own motion to ascertain and determine the fair value for rate making purposes of the property of any public service company used and useful for service in this state *by or during the rate effective period* and shall exercise such power whenever it deems such valuation or determination necessary or proper under any of the provisions of this title.[4]

6 It is relevant that when the Legislature discusses the timing of property valuation, it does not require the Commission to include property placed in service after the rate effective date. It authorizes the Commission to include in rate base property in service "by or during the rate effective period."[5] The use of the term "or" instead of "and" indicates that the Legislature contemplated the Commission approving only plant in service "by" the rate effective date, and not "during" the rate effective period. If the Legislature intended to require the Commission to include plant in service after the rate effective date, it would have said so by using the term "and." It did not. Put simply, RCW 80.04.250(2) authorizes the Commission's to approve AWEC's proposal to allow only plant in service by the effective date.

7 RCW 80.04.250(3) goes on to authorize MYRPs:

> The commission may provide changes to rates under this section for up to forty-eight months after the rate effective date using any standard, formula, method, or theory of valuation reasonably calculated to arrive at fair, just, reasonable, and sufficient rates. The commission must establish an appropriate process to identify, review, and approve public service company property that becomes used and useful for service in this state after the rate effective date.

Witness Mullins explained that his proposal is consistent with this section of the Revised Code of Washington as well:

> Q. IS IT MANDATORY FOR THE COMMISSION TO INCLUDE CAPITAL ADDITIONS AFTER THE RATE EFFECTIVE DATE?

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4 Emphasis added.

5 RCW 80.04.250(2). Similarly, the first sentence of RCW 80.28.425(3)(b) says "by or during the rate effective year."

> A. No. My understanding is that under RCW § 80.04.250, the Commission has flexibility to consider rate period capital additions, but that doing so is not mandatory. The operative clause on this matter is permissive, stating that the "valuation may include consideration of any property of the public service company acquired or constructed by or during the rate effective period."[6] The only obligatory clause regarding test period capital is in RCW § 80.04.250(3), which requires the Commission to adopt a standard process for reviewing test period capital additions—a requirement the Commission complied with RCW § 80.28.425(3)(b) through its Used and Useful Policy Statement—although that process only applies if the Commission in fact decides to include rate period capital additions in revenue requirement in the first place.[7]

8 In sum, AWEC's recommendation does not ask the Commission to "to buck state law and policy and attempt to turn back the clock"; it only asks that the Commission approve what the Legislature has plainly authorized – that PSE include capital in rates consistent with the minimum statutory requirement in the second sentence of RCW 80.28.425(3)(b). That is, to only approve plant in service as of the rate-effective date. While AWEC and TEP do not dispute that the Commission has the discretion to exceed this statutory minimum (and, thus, do not challenge the Commission's ultimate decision on this issue), it is an error to conclude that meeting the minimum requirement is neither consistent with Washington law or *de facto* inconsistent with the public interest. The Commission should reconsider paragraph 64 because it includes an incorrect conclusion of law which unnecessarily restricts the Commission's discretion.

b. The Commission retains statutory authority to use portfolio, project-by-project, and hybrid review processes for capital additions.

9 AWEC's proposal to use a hybrid process, with project-by-project reviews for capital projects above $1 million,[8] is also consistent with Washington law. RCW 80.28.435 provides the Commission considerable discretion. For example, RCW 80.28.435(3)(d) allows

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6 RCW § 80.04.250(2).
7 Mullins, Exh. BGM-1CT at 12:13-13:3.
8 AWEC's Posthearing Brief at ¶ 4; Mullins, Exh. BGM-1CT at 14:8-15:13.

"the commission may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at fair, just, reasonable, and sufficient rates," and subsection (10) provides that the "provisions of this section may not be construed to limit the existing rate-making authority of the commission."

10 The Commission retains considerable discretion to use project-by-project, portfolio, and hybrid review processes. For example, Settlements in the most recent Cascade Natural Gas and PacifiCorp general rate cases use a hybrid between the project-by-project and portfolio approach. In the Cascade Natural Gas case, all projects above $3 million and two specific projects are excluded from the portfolio and reviewed on a project-by-project basis.[9] In the PacifiCorp case, two specific projects and all new wind resources are excluded from the portfolio and are reviewed on a project-by-project basis.[10] These hybrid approaches use a very similar framework to AWEC's proposal in this case, however the specific project selection criteria and dollar thresholds vary. As demonstrated by these cases, nothing inhibits the Commission from authorizing a hybrid review process like the one proposed by AWEC.

III. CONCLUSION AND RELIEF REQUESTED

11 AWEC and TEP recognize that the Commission retains the discretion to approve PSE's proposed method for capital additions over other parties' objections; however, it should do so based on an accurate discussion of Washington law. RCW 80.28.425(3)(b) includes a minimum standard for including capital additions, and the record cited herein shows that AWEC's proposal was carefully crafted to satisfy that minimum standard. For the reasons stated above, Commission should reconsider paragraph 64 in Order 09/07 and modify it to correct its

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9 *Wash. Utils. and Transportation Commn. v. Cascade Natural Gas Corp.,* Dkt. 240008, Settlement, ¶ 14 (Dec. 11, 2024).

10 *Wash. Utils. and Transportation Commn. v. PacifiCorp*, Dkts. UE-230172-210852, Final Order 08, Settlement, ¶ 29 (March 19, 2024).

incorrect legal interpretation related to the inclusion of plant in service in a Multi-Year Rate Plan, including recognition that the Commission retains discretion to approve or reject AWEC's proposal. The Commission should modify the discussion even if it does not intend to accept AWEC's proposal upon reconsideration. Otherwise, an error of law concerning this important aspect of ratemaking policy will unnecessarily stain Commission precedent.

Dated this 27th day of January 2025.

Respectfully submitted,

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