

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKETS UE-240004 and UG-240005
(Consolidated)

**JOINT ENVIRONMENTAL
ADVOCATES' MOTION FOR
CLARIFICATION AND PETITION FOR
RECONSIDERATION**

INTRODUCTION

1. The Joint Environmental Advocates (“JEA”) hereby respectfully move for clarification of two issues and reconsideration of one issue in this Commission’s January 15, 2025, Final Order. Specifically:

a. The JEA move for clarification on the Commission’s rejection of JEA’s proposed lower ROE on investments in gas system expansion as “inconsistent with the Company’s obligation to serve new and existing customers.” (Final Order, ¶ 105)

b. JEA move for clarification of the Commission’s mischaracterization of JEA’s depreciation proposal as “more aggressive” than PSE’s proposal. (Final Order, ¶ 337)

c. The JEA petition for reconsideration of the Commission’s rejection of PSE’s proposed targeted electrification pilot and the JEA’s more ambitious general electrification proposal and associated performance incentive mechanism “in light of”

Initiative 2066, as well as its finding that these proposals “may be inconsistent” with Initiative 2066. ((Final Order, ¶¶ 349-51; ¶¶ 537, 540, 590, 593, 595).

BACKGROUND

2. While there were many issues in this general rate case, the JEA focused the bulk of its attention on the urgent need to transition PSE’s gas system away from burning fossil methane.¹ The north star for this clean energy transition is the state’s greenhouse gas target: as the JEA demonstrated, the pace and scale of PSE’s actions to electrify its gas customers is nowhere near what is needed to achieve these targets.² The JEA made a number of proposals to better align PSE’s gas system spending with state climate goals, primarily by supporting the electrification of gas system customers in ways that were consistent with governing law.

3. Three of these proposals are relevant to this motion. First, the JEA proposed that PSE receive a modestly reduced return on equity (“ROE”) as a performance incentive for investments that grow its gas system via capacity expansion or new customers.³ As the JEA explained, such a change would “incentivize PSE to consider whether funds would be better deployed to projects with a higher ROE, like electrification.”⁴ PSE has many tools available to steer customers towards clean electricity and away from gas to avoid such investments: the modestly reduced ROE would incentivize the company to deploy them more assertively.

¹ JEA Post-Hearing Brief at ¶¶ 1-2.

² *Id.* at ¶¶ 5-7.

³ Cebulko, Exh. BTC-1T at 93:10-94:2; JEA Post-Hearing Brief at ¶ 55.

⁴ JEA Post-Hearing Brief at ¶ 55.

4. Second, the JEA recommended that the Commission modify PSE’s proposal to accelerate the depreciation of gas assets. PSE proposed to shorten the service lives of its gas assets by ten years, which was a significant driver of rate increases, adding \$77 million to its revenue requirement in year one.⁵ The JEA recommended “a somewhat less aggressive approach” that started with a five-year reduction rather than ten in order to better align depreciation with actual investments in electrification.⁶

5. Third, the JEA urged a substantially increased level of ambition for PSE’s efforts at electrification. As the JEA explained, PSE’s Phase II pilot targeted electrification proposal would only reach one-tenth of one percent of its gas customer base, even though the testimony strongly supported substantially increased effort.⁷ The JEA accompanied that proposal with a suite of financial and other tools to enable it to be implemented fairly, explaining how the program could pay for itself in reduced Climate Commitment Act (“CCA”) compliance costs alone.⁸ For example, the JEA recommended a “performance incentive mechanism” to reward PSE for meeting electrification targets.⁹

6. While the Commission agreed with some of the JEA’s recommendations in this matter, it did not adopt any of these three proposals. As to the JEA’s proposal for reduced ROE for gas system investments, the Commission found that it was “inconsistent with the Company’s

⁵ JEA Post-Hearing Brief at ¶ 36.

⁶ *Id.* at ¶ 37.

⁷ Cebulko, Exh. BTC-1T at 42:5.

⁸ JEA Post-Hearing Brief at ¶ 39.

⁹ Cebulko, Exh. BTC-1T at 51:11-18.

obligation to serve new and existing customers.”¹⁰ And the Commission rejected both PSE’s proposal for accelerated depreciation and the JEA’s more modest one, but mistakenly characterized JEA’s proposal as “more aggressive” than PSE’s.¹¹

7. Finally, the Commission rejected both PSE’s modest Phase II targeted electrification pilot and the JEA’s more ambitious proposal to electrify 182,000 gas customers by 2030 “in light of I-2066 and its restrictions on approving incentives in a multi-year rate plan for terminating gas service or establishing incentives for fuel switching.”¹² The Final Order confirmed that it was not disapproving of “efforts relating to voluntary electrification,” and supported additional discussion in a future GRC. The Order further includes two Findings of Fact applicable to these issues, finding that “JEA’s proposed electrification PIM may not be consistent with Initiative 2066”¹³ and that Initiative 2066 “raises concerns relating to requiring PSE to engage in a general electrification as proposed by JEA.”¹⁴ These findings were repeated as Conclusions of Law, along with another conclusion that “the ultimate effects of Initiative 2066 on the Commission’s authority in multi-year rate plans is not settled.”¹⁵

LEGAL STANDARD

8. Pursuant to WAC 480-07-835(1), any party may seek clarification of a final order. “An appropriate motion for clarification requests that the Commission modify the final order or

¹⁰ Final Order at ¶ 105.

¹¹ Final Order at ¶ 337.

¹² Final Order at ¶ 349-50.

¹³ Final Order at ¶ 537 (Finding of Fact 58).

¹⁴ Final Order at ¶ 540 (Finding of Fact 61).

¹⁵ Final Order at ¶ 590, 593, 595 (Conclusions of Law 40, 43, 45).

take other action to clarify the meaning of the final order, make technical changes, or correct errors.”¹⁶

9. Pursuant to WAC 480-07-850 and RCW 34.05.470, any party may file a petition for reconsideration of this Commission. “The purpose of a petition for reconsideration is to request that the commission change the outcome with respect to one or more determinations in a final order.”¹⁷

ARGUMENT

A. The Commission Should Clarify its Denial of the JEA’s Reduced ROE for Gas System Investments.

10. Paragraph 105 states that the Commission rejects the JEA’s proposal to reduce ROE on growth-related investments of the gas system because it is “inconsistent with the Company’s obligation to serve new and existing customers.” While the JEA are not moving for reconsideration of this conclusion, they move for clarification to elucidate the Commission’s rationale for rejecting this proposal and to ensure this conclusion is consistent with the rest of the Final Order. Without such clarification, this conclusion may be read in ways that are inconsistent with the rest of the Order, and may cause confusion in future proceedings.

11. Specifically, the JEA request that the Commission clarify Paragraph 105 to confirm that adjusting the ROE for growth-related investments in the gas system does not prevent PSE from complying with its obligation to serve. While the Commission may decline to reduce PSE’s ROE on this record, perhaps based on concerns that PSE has not yet demonstrated

¹⁶ *WUTC v. PacifiCorp*, Dockets UE-230172 and UE-210852 (May 16, 2024).

¹⁷ WAC 480-07-850(1)(a).

that it can meet system needs by means other than investments in gas system growth, it should clarify that it may be appropriate to reduce ROE for gas system growth in the future, for example, when these alternatives have been adequately demonstrated. Voluntary electrification programs and non-pipe alternatives can both reduce the need for investments to grow the gas system, and they are both consistent with meeting PSE's obligation to serve. Indeed, the Commission's Order approves of PSE pursuing both of these approaches. As PSE gains experience with voluntary electrification and non-pipe alternatives, it may be able to avoid the need for gas system expansions and investments, and reduce emissions in line with state policy, while continuing to satisfy its obligation to serve customers who demand gas service. In such a circumstance, the Commission may wish to revisit PSE's ROE for gas system expansions pursuant to its performance-based ratemaking authority set forth in RCW 80.28.425, as well as its general authority to align rates with state policy.

12. While the JEA maintain that new investments in gas system expansion are inconsistent with state policy, they recognize that PSE is expected to gain more experience with voluntary electrification and non-pipe alternatives through future processes such as development of its Integrated System Plan. The Commission may conclude that, for now, PSE does not have sufficiently viable alternatives to investments in gas system expansions to justify a lower ROE for those investments. However, as PSE's understanding of non-pipe alternatives and voluntary electrification programs matures, PSE will be better positioned to avoid gas system expansion using such alternatives, without implicating its obligation to serve customers where they demand gas service. Accordingly, the Commission should clarify that its rationale for rejecting the JEA's ROE proposal is limited to the facts of this proceeding. This will avoid unnecessarily and

inappropriately discouraging future proposals for incentive and penalty mechanisms aimed at aligning ROE with investments that best advance state policy, consistent with the legislative direction in RCW 80.28.425(7).

13. The requested clarification also would make that paragraph consistent with other parts of the Order. Specifically, the Order directs PSE to consider non-pipe alternatives before making gas system investments, and approves of voluntary electrification programs. As discussed above, both of these approaches can meet gas system needs in ways that are simultaneously consistent with PSE's obligation to serve and that avoid investments in gas system expansion. Thus, it cannot be correct that adjusting PSE's ROE to discourage gas system expansions and encourage these permissible alternatives is "inconsistent with the Company's obligation to serve new and existing customers," as stated in Paragraph 105. The Commission should clarify Paragraph 105 to reflect the fact that both non-pipe alternatives and voluntary electrification programs are consistent with PSE's obligation to serve, and that the Commission can consider these alternatives to investments in gas system expansion when approving performance-based incentive mechanisms that may affect the Company's ROE.

B. The Commission Should Clarify that the JEA's Depreciation Proposal was not "More Aggressive" than PSE's.

14. The JEA seek a modest clarification to Paragraph 337 to eliminate the mischaracterization of JEA's depreciation proposal as "more aggressive" than PSE's. As noted above, JEA's depreciation proposal was explicitly "less aggressive" than PSE's.¹⁸ Whereas PSE proposed to shorten the service life of gas assets by ten years at a cost of nearly \$77 million to

¹⁸ JEA Post-Hearing Brief at ¶ 37.

ratepayers, JEA's alternative proposal was to shorten them by five years, resulting in "\$43.8 million less in depreciation expense compared to [PSE's proposed] 10-year service life reduction."¹⁹ The JEA are concerned that mischaracterizing JEA's proposal as more aggressive than PSE's could cause confusion among its members or the public.

15. The Commission could resolve this error by either: a) replacing "more aggressive" with "less aggressive;"; b) replacing "more aggressive" with "alternative"; or c) removing the words "more aggressive" from Paragraph 337.

C. The Commission Should Reconsider its Denial of JEA's Electrification Proposal.

16. Pursuant to WAC 480-07-850, the JEA respectfully petition for reconsideration of the Commission's denial of PSE's Phase II electrification pilot and JEA's general electrification proposal.²⁰ The decision to deny both these proposals were based on concerns about consistency with Initiative 2066, but the Commission did not reach a definitive conclusion, concluding only that these proposals "may be" inconsistent with the Initiative.²¹ Reconsideration to "change the outcome" of this portion of the Final Order is warranted for four reasons.²²

17. First, neither PSE's Phase II pilot nor JEA's general, voluntary electrification proposal is "inconsistent" with Initiative 2066. Initiative 2066 amends RCW 80.28.435 to prohibit the Commission from adopting a multi-year rate plan that: a) "requires or incentivizes" a combination utility "to terminate natural gas service to customers," or b) that "authorizes" a

¹⁹ Gerke, Exh. WAG-1T at 7:3-15.

²⁰ Final Order at ¶ 349.

²¹ Final Order at ¶ 595.

²² WAC 480-07-850.

utility to “require a customer to involuntarily switch fuel use” either by “restricting access” to gas or by “implementing planning requirements that would make access to natural gas service cost-prohibitive.”²³ Initiative 2066 prohibits incentivizing *a utility* to terminate gas service to customers, but it does not prohibit *customers* from choosing to do so of their own accord. Moreover, Initiative 2066 does not prohibit a utility from offering incentives to customers to purchase electric appliances.

18. Neither PSE’s nor JEA’s electrification proposals violate Initiative 2066’s limitations. As the evidence revealed, all of the electrification proposals involve providing rebates to customers to incentivize them to replace their gas equipment with electric appliances. Neither the PSE Phase II pilot nor the JEA’s proposal requires customers to terminate their gas utility service to qualify for appliance rebates. While customers may ultimately decide to terminate their own gas service because they no longer want to pay for two energy utility bills, Initiative 2066 does not prohibit them from choosing to terminate service. Similarly, neither PSE nor JEA’s proposals would “restrict access” to gas nor impose any requirement that would make access to gas “cost-prohibitive.” Instead, they would offer incentives for customers to voluntarily switch fuel use, which Initiative 2066 does not prohibit.

19. Moreover, Initiative 2066 is framed narrowly to prohibit certain actions that would result in the “termination” of gas service to customers. But electrification does not necessarily or even typically result in the “termination” of gas service to a customer. Instead, customers typically benefit from converting inefficient gas-fired furnaces to efficient electric

²³ Initiative 2066; Final Order at ¶ 323.

heat pumps (which may utilize gas as backup heat), while gas service remains for other uses. The Commission has authority to approve a multiyear rate plan that requires PSE to take action to reduce gas consumption. This authority is untouched by Initiative 2066. In short, there is nothing “inconsistent” about either PSE’s proposal or the JEA’s proposal and the requirements of the initiative, and the Commission should reconsider its Final Order to the extent it finds otherwise.

20. Second, the Final Order is internally inconsistent. While finding that PSE and JEA’s electrification proposals may be inconsistent with Initiative 2066, the Order confirms that no such concern attends to PSE’s “ongoing electrification efforts.”²⁴ As a threshold matter, it does not appear that there *are* any “ongoing” electrification efforts. As one PSE witness explained, its electrification opportunities will be “discontinued at the end of 2024” if the Phase II pilot is not approved.²⁵ “[A]ll elements” of the Phase I targeted electrification pilot were to be completed by Dec. 31, 2024.²⁶ In short, the Commission may believe that denial of the electrification proposals may leave some electrification work untouched when that does not appear to be the case.

21. In any event, there is no rational basis for finding that “ongoing” efforts would be unaffected by Initiative 2066 but future efforts would be inconsistent with it. Both PSE’s and JEA’s proposals seek to continue and expand upon PSE’s past electrification programs and are similar in kind. Specifically, the PSE’s Phase II proposal would continue its successful Phase I

²⁴ Final Order at ¶ 349.

²⁵ Manetti, Exh. JM-9T at 7:15-8:2.

²⁶ Manetti, Exh. JM-1T at 8:4-6; Cebulko, Exh. BTC-1T at 65:1.

electrification pilot.²⁷ And the JEA’s proposal sought to increase the level of ambition on these efforts, in order to align them with state policy objectives. The Final Order does not explain why “ongoing” electrification efforts do not run afoul of Initiative 2066 but the expanded proposals do, and the JEA cannot discern why this would be so. Such an internal inconsistency could be grounds for judicial review of the Commission’s order.²⁸

22. Third, while the JEA appreciate that the status of Initiative 2066 is unsettled due to pending legal challenges, this Commission cannot sidestep resolving a contested issue, like its applicability to crucial electrification programs, in this proceeding. It surely cannot do so by delegating the issue to an advisory group that is not equipped to resolve contested legal questions.²⁹ The law requires the Commission to rule on the evidence before it. For example, RCW 80.04.120 states that after a hearing, “the commission *shall* make and render findings concerning the subject matter and fact inquired into and enter its order based thereon.”³⁰ It cannot wait until a future proceeding to make a determination on legal issues presented by the

²⁷ Manetti, Exh. JM-9T at 7:12 (Phase 2 pilot “will allow PSE to maintain its existing programs contracts/relationships”); Cebulko, Exh. BTC-1T at 64:21-23 (describing significant customer interest in electrification).

²⁸ RCW 34.05.570(3)(i) (authorizing judicial review for agency findings that are “arbitrary or capricious”); *cf. Firearms Regulatory Accountability Coalition, Inc. v. Garland*, 112 F.4th 507, 520 (8th Cir. 2024) (under “arbitrary and capricious” administrative review, courts cannot “uphold agency action that is internally inconsistent”).

²⁹ Final Order at ¶ 349.

³⁰ RCW 80.04.120 (emphasis added); *see also* RCW 80.01.040 (Commission “shall” regulate in the public interest); RCW 80.28.020 (Commission “shall determine” just and reasonable rates). Washington courts have directed that Commission findings “shall be direct, certain, and sufficiently clear that no misunderstanding as to their meaning will arise.” *State ex rel. Bohon v. Department of Public Service*, 6 Wash.2d 676, 686 (1940).

parties. Indeed, the definition of a “final order” from this Commission is one that “resolves the substantive disputed issues.”³¹ The application of Initiative 2066 was precisely such a “substantive disputed issue” and received careful attention in many of the post-hearing briefs. Both JEA and PSE explained how Initiative 2066 was no barrier to adopting any of their proposals.³² The Commission’s conclusions that these electrification proposals “may be inconsistent” with the Initiative without reaching a definitive determination violates its duty to resolve the question. For the reasons discussed above, the Commission should decide the issue and find that the electrification proposals are consistent with Initiative 2066. Failure to do so would provide a basis for judicial review under the Administrative Procedure Act, which authorizes a court to grant relief from a Commission order if it “has not decided all issues requiring resolution...”³³

23. Finally, even if this Commission could lawfully decline to resolve the question, the uncertainty created by legal challenges to Initiative 2066 is not a reasonable justification to reject the electrification proposals in this case. As the evidence demonstrated, every year of delay in implementing the transition away from gas towards clean electricity will make it more difficult and expensive to do so down the road.³⁴ Inaction by this Commission will result in harm to ratepayers. For instance, Witness Cebulko recommended starting with an annual goal of 7,500

³¹ WAC 480-07-820.

³² PSE Post-Hearing Brief at ¶¶ 162-64; JEA Post-Hearing Brief at ¶¶ 8-13.

³³ RCW 34.05.570(i); *Suquamish Tribe v. Central Puget Sound Growth Management Hearings Bd.*, 156 Wn. App. 743, 783 (2010) (remanding hearings board decision that failed to decide contested issue).

³⁴ Cebulko, Exh. BTC-1T at 49:9-15; Table 5.

customers in 2025 and working up to 55,000 customers in 2030.³⁵ Waiting another two years to begin this ambitious effort means starting even more aggressively and ramping up even faster.³⁶ Even PSE’s witness highlighted the importance of continuing to implement electrification programs “if PSE is going to expand electrification efforts in the future...”³⁷ Accordingly, waiting another two years until the next general case—indeed, ramping *down* on electrification efforts that have been underway the last few years—could present insurmountable barriers to scaling back up to meet the state’s 2030 climate targets. As PSE’s Phase I electrification pilot showed, voluntary, incentive-based programs can be hugely successful—a win-win for both customers and the utility—but they take time. A choice to kick the can down the road is inconsistent with the evidence before the Commission that such delay is intolerable and inconsistent with the state’s obligations.

24. The JEA do not bring this motion lightly. The Final Order addresses a proverbial mountain of testimony and other evidence from a multitude of parties on dozens of contested issues. The JEA understand the steep challenge of such a proceeding and appreciates the careful consideration the Commission gave to JEA’s testimony. Nonetheless, the urgency of the situation means that waiting another two years before addressing these critical issues and beginning the important work of ramping up the energy transition is not a reasoned and lawful outcome. Further delay will either threaten PSE and its customers with dramatically increased

³⁵ *Id.* at 50:4-14.

³⁶ *Id.* (explaining that it “may be challenging” to ramp up from 1,000 to 20,000 customers in a single year).

³⁷ Manetti, Exh. JM-9T at 8:8-11.

costs, or it will risk the state falling short of its ambitious climate targets—neither of which is tolerable. For these reasons, the JEA ask that the Commission reconsider its denial of the electrification proposals.

CONCLUSION

25. For the foregoing reasons, JEA’s motion for clarification and reconsideration should be granted.

Dated this 27th day of January, 2025.

Respectfully submitted,

/s/ Jan Hasselman

Jan Hasselman (WA Bar No. 29107)

Earthjustice

810 Third Avenue, Suite 610

Seattle, WA 98104

Phone: (206) 343-7340

jhasselman@earthjustice.org

Jim Dennison

Sierra Club

1650 38th Street, Suite 103W

Boulder, CO 80301

Phone: (435) 232-5784

jim.dennison@sierraclub.org

Attorneys for Joint Environmental Advocates