

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.

Respondent.

DOCKETS UE-220066,
UG-220067 and UG-210981
(*consolidated*)

STAFF’S RESPONSE TO PUGET
SOUND ENERGY’S PETITION TO
AMEND FINAL ORDER

In the Matter of the Petition of Puget Sound
Energy For an Order Authorizing Deferred
Accounting Treatment for Puget Sound
Energy’s Share of Costs Associated with the
Tacoma LNG Facility

I. INTRODUCTION

1 As part of the settlement adopted by the Commission with conditions in its final order disposing of the 2022 general rate case filed by Puget Sound Energy (PSE), the company agreed to “continue its existing credit and collection processes until the conclusion of the proceeding currently being conducted in Docket U-210800.”¹ PSE now asks the Commission to wipe that settlement term away because of what it calls changed circumstances or the unintended or unconsidered effects of the adoption of the term.

2 The Commission should deny the petition. Nothing, not changed circumstances, not unintended or unconsidered consequences, and certainly not the public interest, justifies allowing PSE to eliminate a term it agreed to in settlement in order to begin collections processes that

¹ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-220066, UG-220067 & UG-210918, Settlement Stipulation & Agreement on Revenue Requirement & All Other Issues Except Tacoma LNG and PSE’s Green Direct Program (Aug. 26, 2022) (hereinafter “Settlement”).

would almost definitionally target low-income customers that may still be suffering economic dislocation from the SARS-CoV-2 (COVID-19) pandemic.

II. BACKGROUND

3 In late February 2020, Governor Inslee declared a state of emergency in all counties of Washington due to confirmed community spread of COVID-19.² Twenty-three days later, the Governor exercised power granted pursuant to that declaration to “prohibit all people in Washington State from leaving their homes or participating in social, spiritual and recreational gatherings of any kind regardless of the number of participants, and all non-essential businesses in Washington State from conducting business.”³

4 The Governor used his emergency powers to address the pandemic in other ways. Relevant here, he prohibited utility companies⁴ from disconnecting customers for non-payment, refusing to reconnect customers disconnected for non-payment who requested as much, and charging late fees or reconnection fees.⁵

5 The Commission built upon the Governor’s actions, convening a workgroup of interested persons to ensure “that customers experiencing economic hardship as a result of the COVID-19 pandemic maintain access to essential services after [Governor Inslee’s] Proclamation 20-23 expir[ed] and the moratorium on disconnections and late fees is no longer in effect.”⁶ That workgroup ultimately produced agreement that the utilities would “refrain from sending active” residential and small business “customer accounts to collection agencies, credit bureaus, or

² Proclamation by Governor Jay Inslee, No. 20-05 – COVID-19, at 2 (Feb. 29, 2020).

³ Proclamation by Governor Jay Inslee, No. 20-25 – Stay Home, Stay Healthy, at 2-5 (Mar. 23, 2020).

⁴ These utilities companies included electrical, natural gas, and water companies regulated by the Commission. Proclamation by Governor Jay Inslee, No. 20-23.2 – Ratepayer Assistance & Preservation of Essential Servs., at 4 (Apr. 17, 2020).

⁵ Proclamation by Governor Jay Inslee, No. 20-23.2, at 4.

⁶ *In re Response to the COVID-19 Pandemic*, Docket U-200281, Order 01, 1 ¶ 3 (Oct. 20, 2020).

reporting agencies until” six months after the disconnection moratorium ended.⁷ The Commission adopted that agreement.⁸ For PSE, the disconnection moratorium and the restrictions on its collections practices immediately led to the growth in customer arrearages.⁹

6 In January 2022, PSE filed the instant general rate case. Months later, in August 2022, PSE and other parties filed with the Commission three settlements that, in combination, resolved all of the issues raised in PSE’s filings. One of the terms of those settlements required PSE to continue with its then-existing (and current, given the settlement’s adoption) collection practices until the Commission concluded its work in Docket U-210800,¹⁰ wherein the Commission is considering wide-ranging changes to utility disconnection, credit and collection practices. The Commission entered Order 24 in these dockets to adopt that settlement without any conditions relevant to the collections term.¹¹

7 The proceedings in Docket U-210800 have proceeded slowly and have not yet concluded. Nothing else could have been expected given the parties’ sharply different positions on some of the key issues. The utilities, for example, have pressed the Commission to allow them to continue disconnections and related dunning processes.¹² Customer advocates have urged the Commission to forbid disconnections for non-payment.¹³

⁷ *In re Response to the COVID-19 Pandemic*, Docket U-200281, Order 01, Appx. A at 4 (Sept. 17, 2020).

⁸ *In re Response to the COVID-19 Pandemic*, Docket U-200281, Order 01, 5 ¶ 21.

⁹ *E.g.*, *In re Response to the COVID-19 Pandemic*, Docket U-200281, Comments of PSE, 4 (Apr. 30, 2021).

¹⁰ *In re Response to the COVID-19 Pandemic*, Docket U-200281, Order 01

¹¹ Settlement at 24 ¶ 40; *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-220066, UG-220067 & UG-210918, Order 24, 79 ¶ 265 (Dec. 22, 2022).

¹² *See e.g.*, *In re Rulemaking to Consider Potential Long-Term Changes & Improvements to Customer Notice, Credit, and Collection Rules, Including Permanent Elimination of Late Fees, Disconnection & Reconnection Fees, and Deposits*, Docket U-210800, Comments of Avista Corp., 3 (Aug. 18, 2022).

¹³ *See e.g.*, *In re Rulemaking to Consider Potential Long-Term Changes & Improvements to Customer Notice, Credit, and Collection Rules, Including Permanent Elimination of Late Fees, Disconnection & Reconnection Fees, and Deposits*, Docket U-210800, Initial Comments of Public Counsel, 6-7 (Apr. 29, 2022).

8 PSE now petitions the Commission to amend its final order to add a condition that would eliminate the term restricting it to its current credit and collection practices until the conclusion of Docket U-210800,¹⁴ which still moves forward.¹⁵

III. ARGUMENT

9 The Commission should deny PSE’s petition because the company fails to show meritorious grounds for amending Order 24. Nothing has materially changed with regard to the timeline in Docket U-210800, the term at issue is functioning exactly as PSE, the parties and the Commission should have expected it to, and the public interest weighs against allowing the company to restart collections.

10 The Commission may, in response to a petition, “alter, amend, or rescind any order” that it has entered.¹⁶ Any petition filed to seek amendment or rescission must include “substantial evidence or an offer of proof” showing “[c]hanged conditions since the [C]ommission entered the order; . . . [h]arm to the petitioner resulting from the order that the [C]ommission did not contemplate or intend; . . . [a]n effect of the order that the [C]ommission or the petitioner did not contemplate or intend;” or . . . “[a]ny good and sufficient cause that the [C]ommission did not consider or determine in the order.”¹⁷

11 PSE first contends that circumstances have changed with regard to the rulemaking in Docket U-210800 since the Commission entered Order 24, basing that allegation on the fact that the Commission has postponed several workshops in that docket.¹⁸ Staff disagrees that there has

¹⁴ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-220066, UG-220067 & UG-210918, Puget Sound Energy’s Petition to Amend Final Order (Aug. 10, 2023) (hereinafter “Petition”).

¹⁵ *E.g., In re Rulemaking to Consider Potential Long-Term Changes & Improvements to Customer Notice, Credit, and Collection Rules, Including Permanent Elimination of Late Fees, Disconnection & Reconnection Fees, and Deposits*, Docket U-210800, Notice of Opportunity to Provide Comments & Workshop Agenda (Aug. 28, 2023).

¹⁶ WAC 480-07-875(1).

¹⁷ WAC 480-07-870(1), .875(1).

¹⁸ Petition at 9 ¶ 14.

been any material change. As PSE notes,¹⁹ rulemakings do not have a statutory end date in the way that a general rate case does.²⁰ As a consequence, years-long rulemakings are not unheard of at the Commission.²¹ And nothing suggested at the time that the Commission entered Order 24 that Docket U-210800 would involve a short rulemaking given the difficult subject matter and stark difference on policy between interested persons.²² Accordingly, when the Commission entered Order 24, the time at which it would enter an adoption order in Docket U-210800 remained distant and unknowable. It remains so today. Nothing has changed.

12 PSE next contends that its increasing arrearages constitute a harm to PSE or an effect of Order 24 that the Commission could not have contemplated or intended.²³ Staff makes two observations here. First, as PSE admits, its arrearages began growing in 2020 when the Governor's office and the Commission first imposed restrictions on utilities' practices due to the COVID-19 pandemic, grew through the pendency of its general rate case, and have continued to grow since.²⁴ The relationship between the restrictions PSE currently operates under and the growth of PSE's arrearages was thus evident at the time PSE entered the settlement, and the relationship remained apparent at the time the Commission adopted it. Second, this is not a case where a settlement's terms have had an unforeseen or unforeseeable effect. The settlement term

¹⁹ Petition at 9 ¶ 14.

²⁰ Compare RCW 34.05.310-.395 with RCW 80.04.130.

²¹ E.g., *In re Amending/Adopting/Repealing WAC 480-07, Docket A-130355, General Order R-593 (Sept. 19, 2018) (concluding the docket opened to update the Commission's procedural rules); In re Amending/Adopting/Repealing WAC 480-07, Docket A-130355, General Order R-588 (Feb. 28, 2017) (adopting some rules); In re Amending/Adopting/Repealing WAC 480-07, Docket A-130355, Notice of Opportunity to File Written Comments (Mar. 22, 2013) (opening the rulemaking docket).*

²² Compare *in re Rulemaking to Consider Potential Long-Term Changes & Improvements to Customer Notice, Credit, and Collection Rules, Including Permanent Elimination of Late Fees, Disconnection & Reconnection Fees, and Deposits*, Docket U-210800, Comments of Avista Corp., 3 (Aug. 18, 2022) with *in re Rulemaking to Consider Potential Long-Term Changes & Improvements to Customer Notice, Credit, and Collection Rules, Including Permanent Elimination of Late Fees, Disconnection & Reconnection Fees, and Deposits*, Docket U-210800, Initial Comments of Public Counsel, 6-7 (Apr. 29, 2022).

²³ Petition at 10 ¶ 15.

²⁴ E.g., *In re Response to the COVID-19 Pandemic*, Docket U-200281, Comments of PSE, 1, 3 (June 21, 2023); *In re Response to the COVID-19 Pandemic*, Docket U-200281, Comments of PSE, 4 (Apr. 30, 2021).

was quite literally intended to prevent PSE from engaging in certain collections practices, and those prohibitions are directly and obviously correlated to reductions in PSE’s ability to collect arrearages. Given those two realities, PSE cannot credibly claim that neither it nor the Commission considered or intended that restricting its ability to collect arrearages would lead to an increase in those arrearages.

13 Finally, PSE argues that other “good and sufficient cause” exists to justify amendment of Order 24.²⁵ Staff is not so sure, for three reasons, each of which is an independent reason to deny PSE’s petition, regardless of how the Commission disposes of PSE’s changed circumstances and unintended consequences arguments.

14 Initially, the Legislature has explicitly stated that equity considerations factor into the Commission’s determination of what the public interest requires,²⁶ and the Commission has incorporated that determination into its regulatory framework.²⁷ The data indicates that the credit and collection processes that PSE seeks to restart disproportionately affect communities of color.²⁸ PSE offers no modifications to its dunning process that would deal with these inequities and, accordingly, Staff views restarting those processes as impermissibly injurious to the public interest.²⁹

15 Further, the Legislature has signaled to the Commission that public policy favors the protection of low-income ratepayers.³⁰ The dunning process that PSE seeks permission to restart

²⁵ Petition at 10 ¶ 16.

²⁶ RCW 80.28.425(1).

²⁷ *Wash. Utils. & Transp. Comm’n v. Cascade Nat. Gas Co.*, Docket UG-210755, Order 09, 16-19 ¶¶ 52-58 (Aug. 23, 2022).

²⁸ *In re Rulemaking to Consider Potential Long-Term Changes & Improvements to Customer Notice, Credit, and Collection Rules, Including Permanent Elimination of Late Fees, Disconnection & Reconnection Fees, and Deposits*, Docket U-210800, Presentation of David Konisky, Slide 11 (June 22, 2023).

²⁹ See RCW 80.01.040(3) (requiring the Commission to regulate in the public interest).

³⁰ E.g., RCW 19.405.120; RCW 80.28.068, .425(2).

is quite literally aimed at those customers,³¹ and Staff is at a loss to see how PSE could take steps to limit the collections that would resume upon a grant of PSE’s petition given that targeting. Again, Staff thus sees PSE’s request as impermissibly injurious to the public interest.³²

16 Finally, Order 24 is not the product of a litigation; it is, instead, an order that adopts a settlement. PSE’s petition requests nullification of a term in that settlement. The problematic precedent this sets seems obvious to Staff – PSE asks the Commission to create a body of law that allows a party dissatisfied with what it gives up in settlement to seek the Commission’s help in unwinding that term rather than negotiating some kind of modified agreement with its counterparties. What party will ever trust another to settle matters at the Commission level if that body of law exists?³³ PSE’s petition is a roadmap to permanent litigation of all cases at the administrative level that runs squarely contrary to the Commission’s “support” of “parties’ informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest.”³⁴

IV. CONCLUSION

17 When PSE provided testimony in support of that and other low-income provisions in the settlement, it stated that those terms were “important to PSE” because “PSE took seriously the

³¹ Petition Appx. B at 3 (“However, as an outcome of PSE’s 2022 General Rate Case (GRC) Settlement, PSE has been required to hold dunning to the first phase, which excludes customers with a balance lower than \$1,000 dollars and all known and estimated low-income customers, until the conclusion of Docket U-210800.”).

³² RCW 80.01.040(3) (requiring the Commission to regulate in the public interest).

³³ True, the Commission would need to give those parties an opportunity to accept or reject the condition. WAC 480-07-750(2)(b). But that is simply an opportunity for legal chaos. If *any* party rejects the condition, the settlement is deemed reject and the case returns to the litigation track. WAC 480-07-750(2)(b)(ii), (c). The Commission should consider what something like that would mean here. PSE has operated under the tariffs produced by the settlement for eight months. If, for example, a customer advocate rejects the condition, those tariffs are rendered, at the very least, inoperative, if not *void ab initio*. PSE would need to calculate refunds for those eight months and would need to revert to its previously existing tariff sheets until new tariff sheets become effective. Staff here notes that the revenue deficiencies that PSE claimed prompted this rate filing would be massively aggravated by PSE’s charging those old rates to pay for the property in rate base at the time those old tariff sheets became effective as well as all the property placed into service in the roughly 20 months since it filed this rate case.

³⁴ WAC 480-07-700.

need to protect its customers who are least able to afford its services as part of its initial filing in this case. The [settlement] only strengthens PSE’s commitment to serve and assist customers in need, particularly in the face of the proposed rate increases in this case.”³⁵ Nothing has fundamentally changed such that the Commission should allow it to walk away from its commitment to its current credit and collection practices, and PSE presents nothing constituting an unintended or unconsidered consequence or effect of the order. The Commission should deny PSE’s petition.

DATED this 29th day of August 2023.

Respectfully submitted,

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³⁵ Piliaris, Free & Jacobs, Exh. JAP-SEF-JJJ-1JT at 29: 11-15.