

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UE-220066 and UG-220067
(consolidated)

**THE ENERGY PROJECT'S RESPONSE TO
PUGET SOUND ENERGY'S PETITION TO AMEND FINAL ORDER**

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I. Introduction and Summary

1 In 2021, the Legislature required investor-owned utilities to propose multiyear rate plans and expanded the scope of the Commission's public interest standard to include equity.¹ In 2022, PSE filed a general rate case including its first multiyear rate plan. After an arms-length negotiation, most parties settled the majority of the issues in the case and filed a settlement agreement on August 26, 2022. As part of the Settlement, PSE agreed to continue its current credit and collection practices, including protections from disconnection for most residential customers, until the Commission concluded Docket U-210800, a rulemaking considering disconnection policies on a statewide basis. The Commission issued Final Order 24, approving and adopting the settlement agreement with conditions not relevant to this filing, on December 22, 2022.²

2 Less than one year after agreeing to the settlement, on August 10, 2023, PSE filed a petition requesting to amend the final order to remove the credit and collection term obligating it

¹ RCW 80.28.425.

² Final Order 24 Rejecting Tariff Sheets; Approving Settlements, with Conditions; Authorizing and Requiring Compliance Filing (Dec. 22, 2022) (Final Order 24).

much less live up to the core tenants of energy justice adopted by the Commission. PSE did not inquire if its proposal will correct or perpetuate inequalities experienced by people of color—perhaps because the result of that inquiry would not favor the Petition.

5 Disconnections have severe consequences for vulnerable populations. Because of a disconnection, a Washingtonian with a chronic illness will lose refrigerated medicine and end up in the hospital. Because of a disconnection, a Washingtonian will default on her lease and become homeless. Because of a disconnection, a Washingtonian will lose her child to foster care.

6 The Commission must reject PSE’s Petition because it lacks an equity analysis, and therefore granting it is inconsistent with the public interest.

II. Legal Standard

7 A petition to amend a final order of the Commission must comply with the requirements for a petition for rehearing set out in WAC 480-07-870.⁶ Thus, a petition to amend *must* include substantial evidence in support of the following grounds for rehearing:

- (a) Changed conditions since the commission entered the order;
- (b) Harm to the petitioner resulting from the order that the commission did not consider or anticipate when it entered the order;
- (c) An effect of the order that the commission or the petitioner did not contemplate or intend; or
- (d) Any good and sufficient cause that the commission did not consider or determine in the order.⁷

⁶ WAC 480-07-875.

⁷ WAC 480-07-870.

The burden is on the party requesting an amendment to establish the grounds above with sufficient evidence.⁸ Further, the Commission may amend a final order only after providing interested parties with an opportunity to respond “consistent with due process.”⁹

8 In this case, the Commission approved PSE’s multiyear rate plan pursuant to the “expanded definition of the public interest” set forth in RCW 80.28.425(1), which includes consideration of equity.¹⁰ Because PSE is seeking to amend the conditions of its multiyear rate plan, the public interest standard applies in this proceeding.

III. The Commission should reject the Petition.

A. The Commission must deny the Petition because PSE has not alleged any changed circumstances, new harms, or effects of the Order that the Commission did not consider.

9 The Petition requests that the Commission amend Final Order 24 to eliminate PSE’s obligation to “continue its existing credit and collection processes until the conclusion of the proceeding currently being conducted in Docket U-210800.”¹¹ If granted, PSE’s request would allow PSE to disconnect vulnerable customers. It would also negate a provision that TEP and other parties bargained for—and to which PSE agreed—as a condition of settling PSE’s multiyear rate plan and significantly increasing rates.

⁸ *Id.*; see also Dkt. TV-180315, Order 03, Washington Utilities and Transportation Commission v. JFS Transport, Inc., at ¶ 12 (Aug. 26, 2019) (denying request where petitioner failed to provide evidence to justify the proposed modification).

⁹ WAC 480-07-875.

¹⁰ Final Order 24 at ¶ 46.

¹¹ Petition at ¶ 2.

proceeding, and it is not clear when Docket U-210800 . . . will conclude.”¹⁵ Those two facts have always been true, including at the time the Commission issued the Order. The Commission contemplated that the credit/collection provision would be linked to a rulemaking docket with no statutory deadline and an inherently open-ended timeline. That open-ended timeline is a continuing circumstance, not a changed one.

14 Further, it is unreasonable for PSE to assert that it could not foresee that the Credit and Collections rulemaking would remain under deliberation in August 2023. Both PSE and the Commission knew or should have known that rulemakings frequently take a long time. Important policy issues with potentially profound effects on customers deserve thorough deliberations and fully developed evidentiary records. Here, the Commission issued its first notice in the Credit and Collections rulemaking just 16 months ago.¹⁶ It is extremely common and well known that Commission rulemakings regularly extend beyond 16 months.¹⁷ Many rulemakings take double that time.¹⁸ The Commission sets rulemaking schedules stretching over 40 months.¹⁹ A long rulemaking schedule is not a changed circumstance.

¹⁵ *Id.*

¹⁶ Dkt. U-210800, Notice of Opportunity to Comment on CR-101 (March 18, 2022).

¹⁷ UE-170002 & UG-170003, Cost-of-Service Rulemaking (29 months, March 2018 to July 2020); U-180525, Advanced Metering Infrastructure Rulemaking (24 months, July 2018 to July 2020); U-140621, Pole Attachments Rulemaking (18 months, April 2014 to Oct. 2015); UE-131723, Energy Independence Act (I-937) Rulemaking (23 months, October 2013 to Sept. 2015); TG-131255, UE-112133, Interconnection of Electric Generators Rulemaking (19 months, Dec. 2011 to July 2013).

¹⁸ U-161024, Integrated Resource Planning Rulemaking, (33 months, Sept. 2016 to June 2019); Lurito-Gallagher Methodology Rulemaking (89 months, July 2013 to Dec. 2020); Dkt. A-130355, Rulemaking to Make Corrections and Changes in Rules in WAC 480-07, Relating to Procedural Rules (66 months, March 2013 to Sept. 2018); A-010648, Rulemaking Concerning Public Access to Information and Procedural Rules (31 months, May 2001 to December 2003).

¹⁹ *See, e.g.*, Dkt. U-210590, Proceeding to Develop a Policy Statement on Alternatives to Traditional Cost of Service Rate Making, Notice of Opportunity to File Written Comments, at

15 Delays due to scheduling conflicts and staff workload are also unavoidable and were contemplated by the Commission at the time of the Order. In fact, the Order considers and expressly references issues related to limited staff resources.²⁰ The Commission has finite staff resources and a full slate, and the months before the settlement was signed featured numerous staff departures that were widely known to parties. Further, delays associated with scheduling conflicts and staff workload were happening in the months before the settlement agreement was signed, and well before the Commission issued its Final Order.²¹

16 Delays in rulemakings are common, were considered by the Commission, and do not represent changed circumstances.

2. PSE fails to allege any harms or effects other than the Order’s obvious and foreseeable consequences.

17 The harms and effects of the Order that PSE alleges purportedly relate to the foreseeable and foreseen rulemaking delays referenced above. Those harms and effects—that is, accumulated arrearages, lost revenue to PSE, increased past-due balances for some customers, and increases to other customers’ rates to cover PSE’s lost revenues²²—are the known, natural, and obvious consequences of the settlement’s credit/collection provision accepted by PSE and adopted by the

Appendix A (Oct. 11, 2021) (draft work plan for one rulemaking docket showing schedule with milestone dates spanning 40 months); Dkt. U-190485, Energy Legislation Implementation Plan (August 2019) (rulemaking and policy statement work plan spanning 42 months).

²⁰ Final Order 24 at ¶ 38 (“As this MYRP comes to a close, however, we encourage PSE, and indeed all investor-owned electric companies, to consider ways they might avoid filing their next GRCs in close proximity to those of another investor-owned utility, thereby helping the Commission and others to manage their resources.”).

²¹ See, e.g., Dkt. U-210590, Notice Rescheduling Virtual Workshop (March 7, 2022) (postponing workshop by one month).

²² Petition at ¶¶ 15, 16.

3. PSE fails to establish any other good or sufficient cause that the Order did not consider.

20 PSE does not present any other good or sufficient cause to re-open the proceeding that the Commission did not consider at the time of the Order. The credit/collection provision of the Commission's Order was intended to protect vulnerable customers from disconnection and related harms until the Commission had the opportunity to address disconnection and customer protection policies on a state-wide basis in Docket U-210800. PSE has presented neither changed circumstances nor any other good or sufficient cause to warrant undermining the Commission's intent.

B. The Commission should deny the Petition to avoid chilling future multiyear rate plan settlements.

21 PSE agreed to a settlement in which it received a considerable benefit in securing its revenue requirement in exchange for making concessions to benefit other parties. The credit/collection provision protecting vulnerable customers from disconnection through the conclusion of Docket U-210800 was one such concession. PSE makes it sound as though the credit/collection provision was *imposed* upon it: "PSE has been required to hold dunning to Phase 1."²⁷ But PSE *agreed* to provide these protections after extensive multi-party negotiations. TEP, for example, agreed to the provisions benefitting PSE in exchange for the protections for vulnerable customers. Now, without even consulting with the other parties to the settlement agreement, PSE requests a modification to the Commission's Order that would maintain its own benefits while stripping away the protections benefitting the vulnerable customers that TEP represents.

²⁷ Petition at ¶ 10.

could also create a risk of conflicting decisions, not least because the evidence presented in Docket U-210800 could differ from the evidence presented in the Petition.

25 Additionally, the Commission should consider disconnection policy in Docket U-210800, rather than in response to this Petition, because the public interest favors detailed consideration of disconnection-related issues, especially in light of the equity component of the public interest standard.²⁹ The Commission has an obligation to establish an appropriate framework for disconnection policy on a statewide basis before allowing the disconnection of thousands of vulnerable customers in response to one utility’s request.

D. The Commission should not make changes to an Order in a general rate case based on the inadequate showing provided by PSE.

26 PSE proposes to modify an Order concluding a multiyear rate case. A general rate case is a formal proceeding with a significant degree of procedure—i.e., discovery, testimony, and cross-examination—intended to yield close and careful consideration of facts. WAC 480-07, Part III, Subpart B describes the “special requirements” applicable to general rate proceedings, including a requirement that utilities provide “detailed support for [their] proposals.”³⁰ Further, in general rate proceedings, the utility has the burden of proof, including both the burden to produce evidence and the burden of persuasion.³¹

27 A Petition to modify an Order concluding a general rate proceeding should be held to a high standard. Because the utility was required to produce “detailed support” for its proposals leading to the Order, changing the Order should require a similarly detailed showing. PSE’s Petition is cursory and should be denied because it lacks adequate support for the facts alleged.

²⁹ RCW 80.28.425(1).

³⁰ WAC 480-07-510(3).

³¹ WAC 480-07-540.

E. PSE’s proposal is not in the public interest because it fails to analyze equity or propose concrete actions to address the known disparate impacts of disconnecting customers for nonpayment.

28 PSE’s Petition should be denied for the independent reason that it fails to take concrete steps to address—or even acknowledge—the racially disparate impacts of disconnections for nonpayment. As TEP explains below, a significant body of evidence shows that utility shutoffs have a disparate impact on communities of color and other frontline communities.³² These equity concerns are essential components of the public interest analysis that guides the Commission’s decisions.³³ In the 2021 Cascade Natural Gas Rate Case, the Commission clarified that regulated companies must “integrate equity into each of [their] proposals,” and it provided specific guidance for doing so.³⁴ PSE has not met the Commission’s requirements for analyzing and correcting the known racial inequities of disconnections for nonpayment. The Commission should deny the Petition on that basis alone.

³² Dkt. U-210800, Presentation Materials of David Konisky, at 11 (June 22, 2023) (presenting research from a survey of household energy insecurity showing that Black and Hispanic households experience disconnections at disproportionately high rates relative to White households); Dkt. U-210800, Presentation Materials of John Howat on behalf of the Nat. Consumer Law Center, at 6-7 (June 22, 2023) (reviewing research on racial disparities in disconnections); *see also* Dkt. U-210800, Comments of Joint Advocates, at 1-5 (Oct. 17, 2022) (collecting research on inequitable impacts of disconnections for nonpayment); Dkt. U-210800, Second Comments of the Energy Project, at 4 (Aug. 19, 2022) (same); Dkt. U-210800, Initial Comments of the Energy Project, Attachment A: Nat. Consumer Law Center: Implementing a Roadmap to Utility Service as a Human Right, at 1 (April 29, 2022) (“Available data indicate that utility service disconnections disproportionately harm people of color.”).

³³ Dkt. UG-210755, *Washington Utilities & Transportation Commission v. Cascade Natural Gas Corporation*, Order 09, ¶¶ 52-60 (Cascade GRC Order 09) (explaining the importance of equity in the public interest analysis).

³⁴ Cascade GRC Order 09 at ¶ 59.

1. To meet the public interest standard, PSE must analyze and incorporate equity into its proposal.

29 RCW 80.28.425(1) directs the Commission to consider equity as a key component of the public interest analysis.³⁵ As the Commission noted in the 2021 Cascade Natural Gas Rate Case, several other statutes reinforce the importance of equity to the public interest, including the Clean Energy Transformation Act (CETA), which defines the public interest to include the “equitable distribution of energy benefits and reduction of burdens to vulnerable populations and highly impacted communities.”³⁶

30 In the 2021 Cascade Natural Gas Rate Case, the Commission adopted several principles to ensure the proper consideration of equity in Commission proceedings. To advance its goal of achieving equity in energy regulation, the Commission applies an “equity lens in all public interest considerations” that requires “evaluat[ing] the equitable impacts of an agency’s policy” on “groups of people who have been historically, and are currently, marginalized.”³⁷ Following the evaluation of equity impacts, regulated companies and the Commission must engage in “active and intentional efforts” in keeping with the principles of energy justice to ensure “systemic harm is reduced rather than perpetuated by [the Commission’s] processes, practices, and procedures.”³⁸

³⁵ RCW 80.28.425(1) (“In determining the public interest, the commission may consider such factors including, but not limited to, environmental health and greenhouse gas emissions reductions, health and safety concerns, economic development, and equity, to the extent such factors affect the rates, services, and practices of a gas or electrical company regulated by the commission.”).

³⁶ RCW 19.405.010(6); *see also* Cascade GRC Order 09 at ¶¶ 52-58 (reviewing relevant state law including CETA and legislation establishing the state Office of Equity and associated equity principles).

³⁷ Cascade GRC Order 09 at ¶ 58.

³⁸ *Id.* at ¶¶ 55-57.

31 In both the Cascade decision and the Commission’s order approving PSE’s multiyear rate plan, the Commission made clear that the consideration of equity imposes both substantive and procedural obligations on regulated companies. The Commission reiterated that “PSE must integrate considerations of equity into every proposal through an energy justice lens.”³⁹ To do so, PSE must “inquire whether each proposed modification to [its] rates, practices, or operations corrects or perpetuates inequities.”⁴⁰ Under the principles of procedural and recognition justice, PSE must take steps to ensure that “all individuals and communities can participate in policy development activities.”⁴¹ PSE must develop a “comprehensive understanding” of the ways in which its programs perpetuate systemic racism and propose “corrective intervention[s].”⁴² Finally, when appearing before the Commission, PSE must be “prepared to provide testimony and evidence to support [its] position” on equity.⁴³ As described below, PSE’s proposal does not meet these requirements.

2. Significant evidence demonstrates that disconnections for nonpayment create disparate impacts on people of color and other frontline communities.

a. Disconnections disproportionately harm people of color.

32 In the Credit and Collections Rulemaking, The Energy Project, the Joint Advocates, and outside experts provided the Commission and utilities research demonstrating that utility

³⁹ PSE GRC Final Order at ¶ 228.

⁴⁰ Cascade GRC Order 09 at ¶ 58.

⁴¹ *Id.* at ¶ 57.

⁴² *Id.* at ¶ 58.

⁴³ *Id.*

disconnections disproportionately harm communities of color.⁴⁴ These disparate impacts stem in part from systemic inequities in economic security and access to wealth.⁴⁵ But even more starkly, the documented racial disparities in disconnections persist across comparable levels of income. For example, data from the United States Energy Information Administration’s Residential Energy Consumption Survey shows that, “among financially similar customers, African Americans experienced disconnections more frequently [than White households]. Among all households at or below 150% of the federal poverty level, 11.3% of African American headed households were shut off in contrast to 5.5% of Caucasian headed households.”⁴⁶ Those results are supported by other studies from across the country.⁴⁷ For that reason, the NAACP and other organizations

⁴⁴ See, e.g., Dkt. U-210800, Second Comments of the Energy Project, at 2 (Aug. 19, 2022) (summarizing research showing that “even at comparable levels of income, Black households face disconnections at disproportionately high rates, relative to white households”); Dkt. U-210800, Comments of Joint Advocates, at 1-5 (Oct. 17, 2022) (reviewing research on inequitable impacts of disconnections on communities of color); *id.* at 4 (citing an analysis of zip code level utility disconnection data in California finding that Black and Latinx households disproportionately experience utility shutoffs); Dkt. U-210800, Presentation Materials of David Konisky, at 11 (June 22, 2023) (presenting research showing that Black and Hispanic households experience disconnections at disproportionately high rates); Dkt. U-210800, Presentation Materials of John Howat on behalf of the National Consumer Law Center, at 6-7 (June 22, 2023) (reviewing evidence of racial disparities in disconnections).

⁴⁵ Franklin, M. & Kurtz, C., *Lights Out in the Cold: Reforming Utility Shut-off Policies as if Human Rights Matter*, National Association for the Advancement of Colored People, at 9-11 (2017), <https://naacp.org/resources/lights-out-cold>.

⁴⁶ *Lights Out in the Cold* at 14 (summarizing research).

⁴⁷ E.g., Kowalski, K., *Racial disparities persist in electric service. Is ‘willful blindness’ to blame?*, Energy News Network (July 1, 2020) (summarizing research showing that “on a nationwide basis, African Americans earning less than 150% of the poverty level were about twice as likely to have their electricity shut off as white households with comparable incomes”), <https://energynews.us/2020/07/01/racial-disparities-persist-in-electric-service-is-willful-blindness-to-blame/> (accessed Aug. 27, 2023); Housing Matters, *Which Americans Face the Greatest Risk of Utility Shut-Offs, and How do they Cope?* (Housing Matters Research Summary) (Nov. 3, 2021), <https://housingmatters.urban.org/research-summary/which-americans-face-greatest-risk-utility-shut-offs-and-how-do-they-cope> (accessed Aug. 27, 2023).

dedicated to the advancement of racial justice oppose the use of utility disconnections.⁴⁸

b. Disconnections have inequitable impacts on other communities.

33 Disconnections have other concerning equity implications for vulnerable populations and highly impacted communities. Low-income customers, renters, customers with medical conditions, and families with children are more likely to experience disconnections than other customers.⁴⁹

34 Not only are these groups more likely to be disconnected, disconnections also pose acute health and safety risks for many members of these groups. Cutting off service poses dangers to low-income customers and neighbors when individuals resort to grills, candles, kerosene lamps, and other makeshift means of indoor cooking and providing light and heat.⁵⁰ To avoid disconnections, customers forego basic necessities, such as food and medicine, in order to stay current on utility bills.⁵¹ Disconnections also cause food and medicine that require refrigeration to spoil, putting customers at further risk of food insecurity or hospitalization.

35 Utility disconnections can also compromise children’s healthy living environments, affecting learning, development, and emotional well-being.⁵² As a result, disconnections can

⁴⁸ *Lights Out in the Cold* at iii, 32.

⁴⁹ Housing Matters Research Summary at 1 (“Households most likely to experience energy insecurity tend to have children, lower incomes, a Black head of household, no high school degree, and are more likely to be renters.”).

⁵⁰ *Lights Out in the Cold* at 67, fn. 57 (describing the same risks).

⁵¹ See generally Sanya Carley et al., Behavioral and financial coping strategies among energy-insecure households, *Proceedings of the National Academy of Sciences*, Vol. 119, No. 36 (2022) (describing harmful impacts and coping strategies for dealing with chronic energy burdens).

⁵² *Lights Out in the Cold* at 67, fn. 57; see also Dkt. U-210800, Customer Notice and Fees Rulemaking Workshop (June 22, 2023), Comments of Talesha Roberson on behalf of Spokane Neighborhood Action Partners (describing work with a customer whose children experienced trauma from losing utility services).

increase the risk of interventions by child protective services (CPS), including separation of children from parents, if CPS determines that the loss of utility services contributes to an unsafe home.⁵³

36 Renters likewise face unique risks. Many leases include a provision requiring tenants to maintain utility services, and utility shutoffs that constitute a default on a lease obligation result in landlords evicting tenants, who then experience homelessness.⁵⁴ At the June 22, 2023 workshop for the Credit and Collections Rulemaking, comments from Stefanie Demmitt of Rural Resources highlighted those risks. Demmitt relayed the story of a single mother who could not afford to pay her utility deposit. After losing electricity service, her landlord evicted her family from their unit, causing the mother and child to be homeless.⁵⁵

3. PSE has not met the Commission’s requirements for integrating equity into its proposal.

37 PSE is aware of the inequitable impacts that disconnections create, and yet has not taken any of the actions required by the Commission to integrate equity into its proposal.

a. PSE fails to recognize or analyze the equity impacts of its proposal.

⁵³ Housing Matters Research Summary at 1.

⁵⁴ See, e.g., Tenants Union of Washington State, Utilities FAQ, <https://tenantsunion.org/rights/utilities-faq> (“Keeping current on utility bills is a condition of your tenancy. If you do not pay utility bills, the landlord may charge late fees or serve you with a 10-day notice to comply or vacate, even if the utility bill is in your name.”); Sample Washington State Residential Lease Agreement, § 11, <https://rentalleaseagreements.com/wp-content/uploads/2013/12/Washington-State-Residential-Lease-Agreement.pdf>, (“Resident agrees to establish use, maintain and pay without delinquency the following utilities used in or charged to the Premises during this tenancy without delinquency: electricity garbage sewer water natural gas . . .”).

⁵⁵ U-210800, Customer Notice and Fees Rulemaking Workshop (June 22, 2023), Comments of Stefanie Demmitt on behalf of Rural Resources.

38 First, PSE did not perform an equity analysis to understand the impacts of disconnecting customers and consider potential alternatives, even though the Commission has directed utilities to develop a “comprehensive understanding” of the ways in which a proposal “corrects or perpetuates inequities.”⁵⁶ Indeed, PSE’s Petition does not even acknowledge the documented equity concerns with using disconnections as a collections tool. The absence of any recognition or meaningful analysis of the equity implications of PSE’s proposal directly contravenes the principles of distributional and recognition justice, which require “an understanding of historic and ongoing inequalities and . . . efforts that seek to reconcile these inequalities.”⁵⁷

b. PSE failed to consult with affected customers, the settling parties, or its equity and low-income advisory groups in the identification of equity impacts and development of solutions, as required by the principle of procedural justice.

39 Second, PSE has not met the procedural justice requirements of integrating equity into its proposal. As the Commission recently reiterated to PSE, “[e]nergy justice involves providing *meaningful* opportunity for those affected to participate in and have meaningful impact on decision-making processes.”⁵⁸ No such opportunity was provided here. PSE submitted its Petition without engaging low-income customers, people of color, or its equity and low-income advisory groups in the development of a plan to understand or address the inequities described above.

40 If PSE had consulted with representatives of vulnerable populations before unilaterally filing its Petition, PSE likely would have found support for some changes to its credit/collection practices, such as increased outreach to customers with arrearages that does not erode trust by

⁵⁶ Cascade GRC Order 09 at ¶ 58.

⁵⁷ Cascade GRC Order 09 at ¶ 56.

⁵⁸ Dkt. UE-210795, In the Matter of Puget Sound Energy Clean Energy Implementation Plan, Final Order 08, at ¶ 147 (June 6, 2023) (emphasis in original).

making threats of disconnection. However, TEP opposes—and the Commission’s principles of energy justice do not allow—PSE to unilaterally eliminate protections against disconnection without regard to the needs of, or sufficient consultation with, parties to the proceeding and representatives of disproportionately impacted communities, including people of color, low-income customers, and moderate-income customers with high energy burdens.

c. PSE fails to propose any concrete actions to eliminate or mitigate the disparate impacts of disconnections.

41 Finally, PSE has not proposed any actions to remedy the disparate impacts that disconnections impose on people of color and other frontline communities. As the Commission explained in the 2021 Cascade Natural Gas Rate Case, equity requires “developing, strengthening, and supporting policies and procedures that distribute and prioritize resources to those who have been historically and currently marginalized, including tribes,” to ensure “systemic harm is reduced rather than perpetuated by our processes, practices, and procedures.”⁵⁹ In this case, PSE has failed to develop “corrective intervention[s]” to eliminate the disparate impacts of utility shutoffs.⁶⁰ The Commission should not approve PSE’s Petition, which lacks an adequate plan to address documented racial disparities and other inequities in utility disconnections.

42 Literature presented to the Commission shows that disconnections perpetuate systemic harm, including disparate impact on communities of color and other frontline communities. The Petition did not attempt to evaluate equity or mitigate inequitable outcomes, nor did PSE satisfy the procedural justice requirements of collaborating with affected customers to co-develop more equitable practices. The Commission must deny PSE’s Petition because it does not meet the Commission’s requirements for considering equity, and therefore is not in the public interest.

⁵⁹ Cascade GRC Order 09 at ¶ 54-56.

⁶⁰ Cascade GRC Order 09 at ¶ 54-56.

IV. If the Commission entertains the Petition, it must hold a prehearing conference to grant the parties an opportunity to be heard consistent with the requirements of due process.

43 The Commission may grant a petition to amend an order only after providing an opportunity for parties to respond “consistent with due process.”⁶¹ Here, if the Commission intends to entertain the Petition rather than denying it outright, WAC 480-07-870 requires that the Commission provide process sufficient to investigate and verify the untested and disputed facts set out in the Petition.

44 The settlement and Final Order at issue here arose out of a general rate proceeding. Further, the particular provision PSE seeks to modify has especially significant implications for people of color and vulnerable customers (see section III.E above). The Commission must provide evidentiary process commensurate with the gravity of these issues and the high level of scrutiny given to facts in the general rate proceeding from which the Order originated.

45 The Petition relies on numerous untested facts and allegations that must be verified if the Commission is to evaluate the Petition. These allegations include PSE’s assertions about the scope of its past-due balances (*e.g.*, are PSE’s balances larger than those of other utilities in the state merely because PSE serves more customers than others in the state),⁶² the amounts of total arrearages over time,⁶³ the effects of the credit/collection provision on PSE’s customer and outreach practices,⁶⁴ whether maintaining current credit/collection processes “will result in unintended consequences that are not in the public interest,”⁶⁵ and the estimated rate impacts (*e.g.*,

⁶¹ WAC 480-07-875(1)(b).

⁶² Petition at ¶ 9.

⁶³ *Id.*

⁶⁴ *Id.* at ¶ 10.

⁶⁵ *Id.* at ¶ 11.

are PSE's alleged rate impacts accurately calculated, why does PSE assert that rate impacts will recur annually when arrears today have been accumulating since the pandemic began over three years ago, and why does PSE cite rate impacts for all classes of customers vs. only residential customers or a subset of residential customers).⁶⁶ The Petition also relies on the untested factual assertions made in Exhibit B to the Petition, including assertions about the extent to which increased arrearages are a consequence of the COVID moratorium rather than the provision challenged in the Petition.⁶⁷ In addition, if the Commission evaluates the Petition, it should consider other relevant factors beyond those PSE alleged, including equity-related impacts (as described in section III.E), as well as data on what effects PSE's proposed dunning procedures beyond Phase I would likely have. These considerations would expose which measures may reduce outstanding debt by the greatest amount while balancing equity and other impacts on customers.

46 TEP needs time to conduct discovery to investigate PSE's factual assertions. Further, TEP may request the opportunity to present its own evidence or to cross-examine witnesses to test PSE's claims. Due to the gravity of the issues at stake, due process requires a full accounting of the facts. Thus, if the Commission intends to entertain the Petition rather than deny it outright, the Commission should convene a pre-hearing conference so that the Commission and the parties may consider the scope of the procedures necessary to verify the Petition's assertions.

V. Conclusion

47 For the reasons explained above, the Commission should deny the Petition.

⁶⁶ *Id.* at ¶ 12.

⁶⁷ *Id.*, Exhibit B at 3.

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