

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND ENERGY, Respondent.	DOCKETS UE-220066 and UG- 220067 (<i>Consolidated</i>) ORDER 15
In the Matter of PUGET SOUND ENERGY Clean Energy Implementation Plan Pursuant to WAC 480-100-640	DOCKET UE-210795 ORDER 03 DENYING MOTION TO STRIKE; GRANTING REVIEW AND UPHOLDING INTERLOCUTORY ORDER DENYING MOTION FOR CONSOLIDATION

BACKGROUND

- 1 On December 17, 2021, Puget Sound Energy (PSE or Company) filed with the Washington Utilities and Transportation Commission (Commission) its Final Clean Energy Implementation Plan (CEIP) in Docket UE-210795.
- 2 On January 31, 2022, PSE filed revisions to its currently effective Tariff WN U-60, Tariff G, Electric Service, and its currently effective Tariff WN U-2, Natural Gas, which the Company characterizes as a general rate case (GRC). The Commission suspended the

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filings and commenced an adjudication in this proceeding in consolidated Dockets UE-220066 and UG-220067.

- 3 On March 30, 2022, PSE filed a Motion to Consolidate Proceedings and Motion for Exemption from WAC 480-100-645(2) (Motion). PSE submits that the Commission should consolidate its GRC with Docket U-210795. PSE contends that there are related issues of fact and law between the two proceedings, and consolidation would support judicial economy and facilitate its acquisition of renewable resources to comply with the Clean Energy Transformation Act (CETA).¹
- 4 On April 6, 2022, Commission staff (Staff) filed a Response to Motion to Consolidate Proceedings and Motion for Exemption from WAC 480-100-645(2). Staff maintains that the Commission should not consolidate the Company’s GRC and CEIP, arguing that the facts and law in the two proceedings are not sufficiently related to justify consolidation, which would add to the number of complex issues that the parties and the Commission must address within the statutory suspension period and could undermine the deliberative process. Staff also disagrees that consolidation is necessary for the Company to move forward with acquiring CETA-compliant resources.
- 5 On April 6, 2022, the Public Counsel Unit of the Attorney General’s Office (Public Counsel) filed a Response to Motion to Consolidate Proceedings and Motion for Exemption from WAC 480-100-645(2). Public Counsel takes a similar position to Staff’s, contending that the Commission should deny PSE’s Motion because the GRC and CEIP proceedings are “fundamentally different.” According to Public Counsel, PSE minimizes the complexity of both proceedings, the novelty of CEIP review, and the limitations that would result if the Commission attempted to resolve both proceedings within the remaining months of the suspension period for the GRC.
- 6 On April 6, 2022, NW Energy Coalition (NWECC) and Front and Centered filed a Response to PSE’s Motion. NWECC and Front and Centered recommend the Commission consolidate PSE’s GRC and CEIP, largely for the reasons PSE gives in its Motion.
- 7 On April 18, 2022, the Commission entered Order 10 in consolidated Dockets UE-220066 and UG-220067 and Order 01 in Docket UE-210795 (Order 10/01) in which the presiding administrative law judge denied the Motion. The judge agreed with Staff and

¹ Chapter 19.405 RCW.

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Public Counsel that while some factual issues overlap in the two proceedings, the legal issues and standards are distinct, and consolidation would result in needless complexity that would be difficult to resolve within the limited time remaining in the GRC, particularly given the novelty of CEIP review.

- 8 On April 28, 2022, PSE filed a Petition for Administrative Review of Interlocutory Order Denying Motion for Consolidation (Petition). PSE contends that it would be substantially prejudiced if the Commission did not immediately review Order 10/01 and that such review would save substantial effort and expense. PSE largely reiterates the arguments it made in support of its Motion, claiming a significant overlap in the factual and legal issues presented in both proceedings and describing the risks PSE would face in acquiring CETA-compliant resources if the GRC and CEIP are not resolved simultaneously. The Company also maintains in its Petition that the interlocutory order erred by (1) relying on differences in legal standards, (2) disregarding the statutory direction to the Commission to consider GRCs and CEIPs together, (3) unfairly criticizing PSE for not filing a reply brief when the Company had no right to do so, and (4) referencing the Commission's Used and Useful Policy Statement as support for denying the Motion.
- 9 On May 9, 2022, Staff filed a Response to PSE's Petition for Administrative Review advocating that the Commission either refuse to review Order 10/01 or uphold that order. Staff observes that Commission review of interlocutory orders is discretionary and maintains that PSE has not satisfied the requirements for such review. Staff further contends that the Company has not demonstrated any error in Order 10/01, unpersuasively focuses on reducing its own risks, and fails to address the concerns that the Commission will not have adequate time to address the CEIP issues if the proceedings are consolidated.
- 10 On May 12, 2022, Public Counsel also filed a Response to PSE Petition for Administrative Review arguing that the Petition is without merit, and the Commission should deny it. Public Counsel maintains that Order 10/01 was a proper exercise of discretion and correctly resolved the issues raised in the Motion. According to Public Counsel, the Petition merely makes the same arguments that PSE made in its Motion, and Order 10/01 did not err in rejecting those contentions.
- 11 On May 13, 2022, PSE filed a Motion to Strike Late-Filed Response. The Company observes that Public Counsel filed its response to the Petition three days after a response

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was due and contends that the Commission should strike that response for failure to comply with Commission rules.

- 12 On May 19, 2022, Public Counsel filed its Response to PSE Motion explaining that its tardy filing was the result of a calendaring error that calculated the response date using business days rather than calendar days. Public Counsel maintains that the error did not prejudice or harm any other party and asks that the Commission exercise its discretion to waive the 10-calendar-day response period and deny PSE's motion.
- 13 No other party responded to the Petition.

DISCUSSION

Motion to Strike

- 14 Responses to a petition for administrative review of an interlocutory order are due 10 days after the petition is filed.² PSE filed its Petition on April 28, 2022, and responses were therefore due on May 9, 2022. Public Counsel, however, filed its response on May 12, 2022, three days after the deadline, which Public Counsel claims was due to a calendaring error that resulted in no harm or prejudice to the other parties. We find it ironic that two months ago in another docket, Public Counsel moved to strike testimony that a party filed one day late because of a calendaring error, even though no prejudice or harm resulted to the other parties.³ If we followed Public Counsel's advocacy in that docket, we would grant PSE's motion to strike Public Counsels' filing on the same basis.⁴
- 15 The Commission has established deadlines in its procedural rules for a reason, and parties must comply with those deadlines unless good cause prevents such compliance. Even in exceptional circumstances, we expect a party to request a deviation from a deadline, in advance of that date, if possible, but at least as soon as the party becomes aware of the need for special dispensation. Here, Public Counsel did not even acknowledge its failure to comply with the applicable Commission rule, much less request Commission

² WAC 480-07-810(3)(b).

³ *Washington Utilities and Transportation Commission v. CenturyLink Communications, LLC*, Docket UT-181051, Public Counsel Motion to Strike Untimely Response Testimonies of CenturyLink Communications, LLC (April 1, 2022).

⁴ The presiding administrative law judge in that proceeding, however, denied Public Counsel's motion to strike. *Id.* Order 05 (April 26, 2022).

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accommodation, until Public Counsel responded to PSE's motion to strike. Such laissez faire disregard for Commission rules falls well short of the conduct we expect from parties that appear before the Commission, especially parties that regularly participate in Commission adjudicative proceedings.

- 16 The issue, then, is whether the appropriate sanction for Public Counsel's lack of compliance with Commission rules is to strike its untimely response to the Petition. Striking a party's filing is a severe sanction that the Commission does not impose lightly, particularly when that filing assists the Commission in resolving disputed issues presented to it. We thus weigh the benefit of the challenged filing against the severity and impact of the violation. Errors happen, and it may be that no party suffered any prejudice or harm because Public Counsel filed its response to PSE's Petition three days late. Such delay, however, hampers the Commission's ability to promptly resolve disputed issues. And with PSE's subsequent motion to strike and Public Counsel's response to that motion, the delay in developing the issues stretched from three days to 10. On the other hand, PSE's Petition raises important considerations, and the Commission benefits from the views of all parties on those issues.
- 17 We find in this case that the balance of competing interests narrowly favors denying PSE's motion to strike Public Counsel's response. We nevertheless caution Public Counsel that we expect it to comply with Commission rules more strictly in the future. And we remind all parties that administrative errors you challenge today may be administrative errors you make tomorrow.

Discretionary Review

- 18 The Commission may exercise its discretion to review interlocutory orders if it finds, among other conditions, that "[i]mmediate review is necessary to prevent substantial prejudice to a party that would not be remediable in the commission's final order" or "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."⁵ PSE claims just such substantial prejudice is present here, and immediate review would save the Commission substantial effort or expense. Staff and Public Counsel disagree and

⁵ WAC 480-07-810(2).

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contend that PSE has not satisfied the Commission's requirements for review of interlocutory orders.

- 19 PSE's claims in support of immediate Commission review are indistinguishable from its arguments in favor of consolidation. We will not address both issues simultaneously. Rather we find that the issues in Order 10/01 effectively would be moot if we did not review that order until the conclusion of these dockets. In these circumstances, then, review delayed would be review denied, an outcome we generally avoid. We find that in this case, this factor outweighs the costs in time and delay of exercising review now. Accordingly, we will exercise our discretion to review Order 10/01.

Consolidation

- 20 The Commission has discretion to "consolidate two or more proceedings in which the facts or principles of law are related."⁶ In determining whether to exercise such discretion, the Commission considers the extent to which the factual and legal issues are related and whether consolidation would promote judicial economy and would not unduly delay the resolution of one or all of the proceedings.⁷ PSE claims that the legal and factual issues in its GRC and CEIP review are substantially related and that consolidation would promote judicial economy without delaying the proceedings. Order 10/01 concludes otherwise, finding insufficient overlap of the issues in the proceedings to justify the undue strain on party and Commission resources if the Commission attempted to make a final determination in the CEIP review docket within the time remaining in the suspension period in PSE's GRC. Staff and Public Counsel support the findings and conclusion in Order 10/01.
- 21 We will not consolidate the GRC and CEIP review. We agree with Order 10/01 and, with certain exceptions,⁸ adopt it as our own. Any efficiency that would result from considering the overlapping issues in the GRC and CEIP review in the same proceeding does not outweigh the complexity and challenges that would result from consolidation.

⁶ WAC 480-07-320.

⁷ *E.g., Qwest Corp. v. Level 3 Comm.*, Docket UT-063038, Order 09, ¶ 13 (February 15, 2008).

⁸ PSE did not seek review of the determination in Order 10/01 not to grant an exemption from WAC 480-100-645(2), and thus we do not express any opinion on that issue. In addition, we do not adopt the last sentence in paragraph 27 of Order 10/01 or ascribe any significance to the fact that PSE did not request the opportunity to file a reply brief in support of its Motion.

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We appreciate the risks that PSE describes in the Petition with respect to the Company's acquisition of CETA-compliant resources, but we do not believe that consolidation would significantly mitigate those risks in a manner consistent with the public interest. Docket UE-210795 presents the Commission with its first opportunity to conduct a CEIP review under CETA and our recently adopted rules implementing that statute. The Commission's focus in that docket should be on a careful and complete analysis and resolution of the issues, not a race to make a determination at the same time as the GRC.

22 Nor would consolidation necessarily bring the results that PSE seeks. The Company assumes that consolidating the GRC and CEIP review would require the Commission to enter a single final order within the GRC suspension period. That assumption is consistent with the Commission's general practice, but no Commission rule requires only one final order in a docket, much less in multiple consolidated dockets.⁹ Indeed, PSE suggests that "the CEIP can join the general rate case with a separate but parallel procedural schedule that is congruent with, not cumulative to, the existing rate case schedule."¹⁰ Such a "congruent" schedule could have separate evidentiary hearings and a separate final order on CEIP review, which the Commission could enter after it enters its final order resolving the GRC. Rather than consolidation with its GRC, PSE effectively seeks expedited review of the Company's CEIP. Such a timing issue, however, is better considered in the context of establishing the procedural schedule in Docket UE-210795 than in a request to consolidate the GRC and CEIP review.

23 We also find no merit in PSE's assignment of errors in Order 10/01. That order considers both the factual and legal issues in both proceedings and properly finds insufficient overlap of all issues to justify consolidation. The legislation PSE cites does not require joint consideration of the GRC and CEIP review in all cases but allows the Commission to consider the practicalities of consolidation. Order 10/01 does just that and correctly finds that consolidation of these three dockets would be impractical. Finally, the order references the Used and Useful Policy Statement in the context of observing that the Commission can permit a company to provisionally recover investments subject to later review. Such provisional recovery would minimize PSE's risk in making CETA-

⁹ See, e.g., *In re Investigation into U S West Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996, et al.*, Dockets UT-003022, et al. (in which the Commission entered several final orders).

¹⁰ PSE Petition ¶ 19.

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compliant investments without the Commission simultaneously rendering a decision in the GRC and CEIP review dockets.¹¹

24 We therefore exercise our discretion to review Order 10/01 and uphold that order.

ORDER

THE COMMISSION ORDERS That

- 25 (1) The Commission denies Puget Sound Energy's Motion to Strike Late-Filed Response.
- 26 (2) The Commission grants, in part, Puget Sound Energy's Petition for Administrative Review of an Interlocutory Order Denying Consolidation to the extent that the Commission exercises its discretion to review that interlocutory order.
- 27 (3) The Commission denies, in part, Puget Sound Energy's Petition for Administrative Review of an Interlocutory Order Denying Consolidation to the extent that the Commission upholds that interlocutory order and denies Puget Sound Energy's request to consolidate Docket UE-210795 with Dockets UE-220066 and UG-220067.

DATED at Lacey, Washington, and effective May 23, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

¹¹ PSE also assigns error to Order 10/01's reference to the lack of PSE's request to file a reply to other parties' oppositions to the Motion. While we do not adopt this portion of Order 10/01, we find that it was not a decisive factor but was merely an observation that PSE did not provide information that would address the Commission's and other parties' concerns. We do not find error, but had there been any, it was harmless.

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ANN E. RENDAHL, Commissioner