

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKETS UE-220066, UG-220067, &
UG-210918 (*consolidated*)

COMMISSION STAFF'S RESPONSE
TO PSE'S MOTION FOR
CLARIFICATION OF ORDER 32/18

I. INTRODUCTION

1 During the early days of the pandemic, the Commission authorized PSE to defer costs incurred due to the pandemic, including bad debt expense, in FERC Account 186 (Account 186). Years later, when entering Order 32/18 in these dockets to allow PSE to end the to-some-extent-COVID-related suspension of its dunning processes, the Commission authorized PSE to record a substantial amount of 2020- and 2021-vintage arrearages in FERC Account 182.3 (Account 182.3). With this motion, PSE asks the Commission to clarify what it views as an inconsistency between the 2020-era deferral approvals and the amount of 2020- and 2021-vintage arrearages the Commission authorized it to record in Account 182.3 in Order 32/18; PSE also asks the Commission to authorize it to transfer post-2021-vintage bad debt deferred amounts from Account 186 to Account 182.3.

2 The Commission should treat PSE's motion as a petition for amendment or correction of Order 32/18, amend the amount of 2020-21 vintage arrearages that PSE may defer in Account 182.3, and deny PSE's request to transfer additional amounts to Account 182.3. Doing so recognizes that failure to amend the amount of 2020- and 2021-vintage arrearages authorized for deferral will allow PSE to double recover those amounts. It will also allow PSE and the Commission to address the treatment of post-2021-vintage

arrearages in the appropriate place, the docket where the deferral of those amounts is squarely at issue.

II. PROCEDURAL HISTORY

3 In late 2020, PSE filed accounting petitions to seek from the Commission authority to defer certain COVID-19 related costs and cost savings for the years 2020 through 2022.¹ The Commission ultimately authorized PSE to book deferred amounts, including bad debt expense in excess of the company's bad debt baseline, in Account 186.² PSE began doing so, and later filed amended petitions seeking authorization to book bad debt expense for the years 2023 and 2024 in the deferral.³ The Commission granted those petitions based on the ongoing rulemaking proceedings in Docket U-210800.⁴

4 That rulemaking involved a comprehensive reevaluation of utility credit and collection practices.⁵ In PSE's 2022 general rate case, it agreed to settlement terms that froze in place its then-existing credit and collection practices, which did not allow PSE to engage in dunning efforts, until the Commission finished that rulemaking.⁶ When the rulemaking proceeding extended into 2023, PSE petitioned the Commission to modify the order

¹ *In re Petition of PSE*, Dockets UE-200780 & UG-200781, Petition of Puget Sound Energy (Sept. 3, 2020). PSE amended its petition roughly two months later. *In re Petition of PSE*, Dockets UE-200780 & UG-200781, Amended Petition of Puget Sound Energy (Nov. 6, 2020).

² *In re Petition of PSE*, Dockets UE-200780 & UG-200781, Order 01, 6-7 ¶ 17, 8 ¶ 22 (Dec. 8, 2022).

³ *In re Petition of PSE*, Dockets UE-200780 & UG-200781, Amended Petition of Puget Sound Energy to Amend Order 02 (Dec. 12, 2022); *In re Petition of PSE*, Dockets UE-200780 & UG-200781, Petition of Puget Sound Energy to Amend Order 01 to Reflect Extension of Certain Provisions Pursuant to Order 06 in Docket U-200281 (Sept. 3, 2020)

⁴ *In re Petition of PSE*, Dockets UE-200780 & UG-200781, Order 03, 3 ¶ 14 (Dec. 21, 2023); *In re Petition of PSE*, Dockets UE-200780 & UG-200781, Order 02, 2-3 ¶ 12 (Dec. 22, 2022).

⁵ *E.g.*, *In re Rulemaking to Consider Potential Long-Term Changes & Improvements to Customer Credit*, Notice, & Collection Rules, Docket U-210800, Notice of Opportunity to Comment (mar. 18, 2022).

⁶ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-220066, UG-220067 & UG-210918, Order 24/10, at Appx. A at 26 (Dec. 22, 2022).

approving the settlement to eliminate that term.⁷ After a contested proceeding, the Commission issued Order 32/18 to grant PSE’s petition in part.⁸

5 In Order 32/18, the Commission, on its own motion, determined that the arrearages from the COVID-19 disconnection moratorium, from March 2020 to December 2021, shall be deemed bad debt and subject to collection in rates. PSE indicates that arrearages from this same time period currently amount to \$60 million. The Commission grants deferred accounting treatment for these costs . . . and the Company may accrue interest on this debt, at the Company’s cost of debt as authorized in Final Order 24/10, beginning on the first day of the month following the entry of this Order. The Company shall record this bad debt amount to FERC Account 182.3. We find that treating arrearages from this time period as bad debt strikes a reasonable balance among the interests of the Company, customers with past-due balances, and other PSE customers. The COVID-19 pandemic represented extraordinary circumstances that justified state-wide prohibitions on disconnections and likewise justifies spreading costs for this time period across PSE’s customer base.⁹

6 The \$60 million figure approved for deferral in Account 182.3 came from PSE’s response to Bench Request No. 12, which requested that PSE provide, among other things, the “[t]otal cumulative arrearage amounts from the period March 1, 2020, through December 31, 2021, that the Company has deemed “uncollectable” or that have been written off.”¹⁰

7 PSE now seeks clarification of Order 32/18.¹¹ In doing so, PSE contends that it misunderstood Bench Request No. 12 given its preamble, and that the arrearage amounts that it has not recovered through other means, the amount that PSE should record in Account

⁷ *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, 2024).

⁸ See generally *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-220066, UG-220067 & UG-210918, Order 32/18 (May 16, 2024) (Order 32/18).

⁹ Order 32/18 at 17 ¶ 55.

¹⁰ Bench Request No. 12(e).

¹¹ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-220066, UG-220067 & UG-210918, Puget Sound Energy’s Motion for Clarification of Order 32/18 (May 28, 2024) (PSE’s Motion).

182.3 for later recovery, is \$1.3 million.¹² It asks the Commission to clarify the order appropriately.¹³ PSE also asks the Commission to authorize it to transfer bad debt deferred in Account 186 to Account 182.3, and to allow the company to continue to record bad debt in Account 182.3 until December 2024.¹⁴

III. ARGUMENT

8 The Commission should: (1) construe PSE’s motion as a petition for amendment or correction of Order 32/18, (2) grant the petition to the extent that it seeks modification of the amount of 2020-21-vintage arrearages that it may record in Account 182.3, and (3) deny the petition to the extent that it seeks to transfer bad debt deferrals from Account 186 to Account 182.3 or authorization to record bad debt deferrals in Account 182.3 until December 2024. Staff addresses each of those points in order below.

A. **The Commission Should Construe PSE’s Motion as a Petition for Amendment or Correction of Order 32/18**

9 The Commission’s rules allow parties to seek clarification;¹⁵ rescission, correction, or amendment;¹⁶ or reconsideration¹⁷ of a final order.¹⁸ The name given to the pleading by the filing party is not dispositive; the Commission will construe a pleading as of the type appropriate for seeking the form of relief sought by the requester.¹⁹

¹² PSE’s Motion at 7-8 ¶ 18.

¹³ PSE’s Motion at 7-8 ¶¶ 17-19.

¹⁴ PSE’s Motion at 8-9 ¶¶ 20-22.

¹⁵ WAC 480-07-835, -840.

¹⁶ WAC 480-07-875.

¹⁷ WAC 480-07-850.

¹⁸ The Commission defines a final order as “orders that a majority of the commissioners enter that resolve the substantive disputed issues in an adjudication in which the commissioners preside or that a majority of the commissioners enter on review of an initial order entered by an administrative law judge or the commission secretary.” WAC 480-07-820 (1)(b). Order 32/18, entered by a majority of the Commissioners to resolve the dispute surrounding PSE’s petition to modify order 24/10, is a final order.

¹⁹ WAC 480-07-395(4).

10 A motion for clarification allows parties to seek several forms of relief. Clarification allows the Commission to “resolve inconsistencies.”²⁰ It also permits the Commission to correct patent error or reconsider issues without the need for a petition for reconsideration.²¹ Notably, that latter form of relief has its limits. A party seeking to change the outcome with respect to one or more issues must file a petition for reconsideration, not a motion for clarification.²²

11 A petition for amendment, rescission, or correction of a final order also allows multiple forms of relief. As concerns non-ministerial changes,²³ the Commission must provide notice to the affected public service company and all parties to the underlying proceeding.²⁴ It must also allow the company and parties to respond, consistent with due process.²⁵ Assuming that it complies with those procedural prerequisites, the Commission may correct, rescind, or amend the order at issue if the petitioner makes a showing equivalent to one that would justify rehearing.²⁶ As relevant here, that could include showing “[a]n effect of the order that the commission or the petitioner did not contemplate or intend,”²⁷ or “other good and sufficient cause that the commission did not consider or determine in the order.”²⁸

²⁰ WAC 480-07-835(1)(b).

²¹ WAC 480-07-835(1)(b).

²² WAC 480-07-835(2).

²³ Compare WAC 480-07-875(1) with WAC 480-07-875(2).

²⁴ WAC 480-07-875(1)(a).

²⁵ WAC 480-07-875(1).

²⁶ WAC 480-07-875(1).

²⁷ WAC 480-07-870(1)(c).

²⁸ WAC 480-07-870(1)(d).

12 While PSE casts its motion as one that simply seeks to resolve inconsistencies, it seeks significantly greater relief, and thus the Commission should construe it as something other than a motion for clarification. PSE urges the Commission to: (1) reverse its authorization for PSE to record in Account 182.3 \$60 million in vintage 2020-21 arrearages that the Commission believed PSE had not recovered, and instead authorize PSE to record \$1.3 million in 2020-21-vintage arrearages in Account 182.3; and (2) authorize it to transfer from Account 186 to Account 182.3 approximately \$20 million in post-2021-vintage arrearages, and to authorize the company to record additional arrearage amounts in Account 182.3 until December 2024.

13 The first form of relief largely nullifies what the Commission did in Order 32/18 with regard to the 2020-21 vintage arrearages. The Commission ordered PSE to defer and record \$60 million in arrearages so that it could socialize those costs across its entire customer base. PSE contends that the Commission ordered that amount based on a misunderstanding, and it asks the Commission to issue an order that reflects the actual, outstanding amount. That is not the resolution of an inconsistency; that is the correction of something like a non-patent error.²⁹ The Commission generally does that through amendment, correction, review, or reconsideration, not clarification.

²⁹ Staff describes this as “like the correction of a non-patent error” because Staff cannot say that the Commission erred here given the record before it at the time that it made the decision at issue. The Commission relied on PSE’s bench request response, and only in retrospect, after PSE has explained what happened and provided corrected numbers, can the parties say that there is something to address.

14 The second form of relief asks the Commission to grant relief that it initially chose to withhold. By specifically limiting the vintages that PSE could record in Account 182.3, the Commission implicitly forbade PSE from recording other vintages,³⁰ and its explanation of its decision implies that it selected the 2020-21-vintage arrearages for deferral and collection, and only those vintages, based on a careful weighing of various interests. PSE is asking the Commission to allow it to record other arrearages in Account 182.3 changes the outcome of the order and upsets the logic used by the Commission to reach its initial decision.

15 Because PSE cannot seek those forms of relief it desires through a motion for clarification, the Commission would ordinarily construe the motion as a petition for reconsideration.³¹ Unfortunately, here the Commission cannot do so and yet still address PSE's request for relief on the merits. Both the Administrative Procedure Act and the Commission's rules provide that a motion for reconsideration is deemed denied as a matter of law unless the Commission, within 20 days from the date of filing, either disposes of the petition or serves a notice specifying the time by which it will act on the petition.³² While the Commission could theoretically exempt application of the rule,³³ it cannot amend or

³⁰ See *City of Vancouver v. Public Emp't Relations Comm'n*, 180 Wn. App. 333, 352, 325 P.3d 213 (2014) (agency orders interpreted using the same tools that statutes are); *State v. Kelley*, 168 Wn.2d 72, 83, 226 P.3d 773 (2010) (the interpretative principles applied to statutes provide that the expression of a one thing implies the exclusion of others, "and this exclusion is presumed to be deliberate"); Order 32/18 at 17 ¶ 55 (stating that "treating arrearages from this time period as bad debt strikes a reasonable balance among the interests of the Company, customers with past-due balances, and other PSE customers. The COVID-19 pandemic represented extraordinary circumstances that justified state-wide prohibitions on disconnections and likewise justifies spreading costs for this time period across PSE's customer base;" all of which implies a carefully balanced consideration of the time period for which PSE could defer costs in Account 182.3).

³¹ WAC 480-07-835(2).

³² RCW 34.05.470(3); WAC 480-07-850(2).

³³ *E.g.*, WAC 480-07-110.

modify the statute through an order or operation of its rules.³⁴ As PSE filed this motion more than 20 days ago, if the Commission construes it as a petition for reconsideration, it has already been denied by operation of law.

16 Staff, accordingly, suggests that the Commission construe PSE’s petition as one for amendment or correction of Order 32/18 because the Commission has taken the steps necessary to afford those forms of relief. PSE, the affected public service company, has notice of the requested forms of relief since it asked for them, and thus its position is on record in the form of its motion. The Commission provided written notice of PSE’s filing to all other parties to this proceeding and offered them the opportunity to present argument for or against the grant of relief. The Commission has provided due process, and it may address the petition on its merits.

B. The Commission Should Grant PSE’s Petition with Regard to the \$60 Million Authorized for Recording in Account 182.3, but Otherwise Deny It

17 If the Commission does construe PSE’s request as one for amendment or correction, Staff recommends that the Commission grant the petition to the extent that it seeks amendment of the amount of 2020-21-vintage arrearages that the company may book to Account 182.3 and collect from its customer base, but deny the petition to the extent that PSE seeks authorization to transfer deferred post-2021-vintage arrearages from Account 186 to Account 182.3.

18 PSE has made a showing that would justify rehearing (and thus amendment or correction) with regard to the 2020-21-vintage arrearages. PSE contends that it

³⁴ *E.g., See Superior Asphalt & Concrete Co. v. Dept. of Labor & Indus.*, 84 Wn. App. 401, 405, 929 P.2d 1120 (1996) (“[a]n administrative agency may not adopt a regulation that effectively modifies or amends a statute”).

misunderstood a bench request, and that this misunderstanding led to the Commission relying on incorrect numbers when entering Order 32/18. That reliance caused the Commission to allow PSE to record as a deferral roughly \$60 million that the company has largely already recovered through other means. Because Account 182.3 includes amounts that the Commission will “probabl[y]” allow into rates,³⁵ Order 32/18 effectively announces a likelihood that PSE will double recover those amounts. That is a result that the Commission could not have intended or contemplated, and the Commission should amend or correct the order to address the issue.

19 Amending or correcting Order 32/18 to allow PSE to defer \$1.3 million in 2020-21-vintage arrearages in Account 182.3 advances the public interest, and the Commission should modify the order on that basis. Staff has met with PSE and engaged in discovery and can verify that the amount of 202-21-vintage arrearages that PSE has not yet recovered through other means is \$1.3 million. Authorizing the company to defer that amount will allow it to attempt to recover the arrearages from customers or from other funding sources.³⁶ If it cannot do so, PSE will write the arrearages off as bad debt.

20 PSE, however, fails to make a showing that rehearing (and thus that amendment or correction) is warranted with regard to its request to defer post-2021-vintage arrearages. The Commission did not authorize any treatment for those vintages of arrearages in Order 32/18, and PSE cannot show an unintended consequence for a seemingly deliberate choice by the Commission that accomplishes exactly what the Commission seemingly intended it to (limit

³⁵ 18 U.S.C. § 182.3(B).

³⁶ Staff determined through discovery that even if PSE cannot collect the remaining \$1.3 million in arrearage, its bad debt expense for 2020 and 2021 is sufficiently below the bad debt baseline that the write off will not raise the expense above the baseline, and thus will have no rate impact.

the vintages of arrearages eligible for deferral in Account 182.3 and collection of those accrued during the disconnection moratorium). And PSE cannot show other good cause not considered or determined because, as just mentioned, the Commission's logic implicitly rules out PSE's requested relief.

21 Regardless, the Commission should deny PSE's request to allow the transfer of deferred post-2021-vintage arrearage amounts from Account 186 to 182.3. Those amounts are, obviously, deferred, preserving PSE's ability to potentially recover them. And, as noted above, utilities should book amounts into Account 182.3 when it is probable that it will recover them.³⁷ The requested transfer can only constitute a first step in the process of rate recovery. That treatment is unwarranted here, where the arrearages have not yet been written off, and thus the amount of PSE's bad debt expense in excess of the bad debt baseline is unknown.³⁸ The Commission should deny the petition to the extent that it seeks this relief and instead: (1) order PSE to petition to extend the deferral in Dockets UE-200780 and UG-200781, and (2) ultimately address cost recovery at the time that PSE's actual bad debt write offs are known.³⁹

III. CONCLUSION

22 The Commission should construe PSE's motion for clarification as a petition for amendment or correction of Order 32/18, grant the petition as far as it concerns changing the amount of 2020-21-vintage arrearages authorized for deferral in Account 182.3 to \$1.3

³⁷ See 18 C.F.R. Part 101, § 182.3.

³⁸ See *in re Petition of PSE*, Dockets UE-200780 & UG-200781, First Amended Petition, at 3 (discussing the use of actual write offs in the bad debt deferral).

³⁹ See *in re Petition of PSE*, Dockets UE-200780 & UG-200781, First Amended Petition, at 3.

million, and deny the petition to the extent that it seeks permission to defer in Account 182.3 post-2021-vintage arrearages.

DATED this 14th day of June, 2024.

Respectfully submitted,

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