BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of PUGET SOUND ENERGY For an Order Authorizing Accounting for Costs Associated with COVID-19 Public Health Emergency	DOCKETS UE-200780 and UG-200781
In the Matter of the Petition of AVISTA CORPORATION, d/b/a AVISTA UTILITIES For an Order Authorizing Deferral of Costs and Benefits Associated with COVID-19 Public Health Emergency	DOCKETS UE-200407 and UG-200408
In the Matter of PACIFICORP d/b/a PACIFIC POWER & LIGHT COMPANY Petition for an Order Approving Deferral of Costs Associated with COVID-19 Public Health Emergency	DOCKET UE-200234
In the Matter of CASCADE NATURAL GAS CORPORATION Petition for an Accounting Order Associated with COVID-19 Public Health Emergency	DOCKET UG-200479
In the Matter of NORTHWEST NATURAL GAS COMPANY d/b/a NW NATURAL Petition for an Accounting Order Associated with COVID-19 Public Health Emergency	DOCKET UG-200264

COMMENT IN RESPONSE TO THE PETITIONS FOR ACCOUNTING ORDER

INTRODUCTION

Pursuant to WAC 480-07-370(4)(b) and WAC 480-07-900, Earthjustice, on behalf of Puget Sound Sage and Front and Centered, files the following comment in response to the petitions for accounting order filed by Puget Sound Energy, Avista Utilities, PacifiCorp, Cascade Natural Gas Company, and Northwest Natural Gas Company (collectively, the "utilities") in the above-captioned dockets.

As so many others have stressed in their filings, the COVID-19 pandemic is imposing extraordinary hardship on all Washingtonians, and especially on those least able to afford it. In contrast, the utilities are not claiming financial need in their petitions and remain financially healthy in spite of the pandemic. Nonetheless, the utilities are asking the Commission to insulate their profits from the impacts of a public health and economic crisis, laying the groundwork for ratepayers to absorb the utilities' pandemic-related expenses instead.

This stark reality must be the backdrop for the Commission's decision on these petitions for deferred accounting. The Commission is statutorily obligated to regulate in the public interest. The public interest is clearly not served by a scheme in which ratepayers—many of whom have lost jobs, lost loved ones, and are hardest hit by this pandemic—will be saddled with the utilities' pandemic-related costs. The Commission has discretion to deny the utilities' petitions in their entirety, and the public interest compels the Commission to do so here.

I. THE COMMISSION HAS THE AUTHORITY AND DUTY TO REGULATE IN THE PUBLIC INTEREST

A. The Commission has a statutory duty to regulate in the public interest

The Commission's fundamental charge is to "[r]egulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices" of all investor-owned electric utilities. RCW 80.01.040. This requirement to regulate in the public interest is

Earthjustice
810 Third Ave., Suite 610
Seattle, WA 98104
(206) 343-7340

overarching, and applies to each of the many decisions the Commission must make in the course of regulating electric utilities.

The public service laws provide additional standards that govern the Commission's obligation to consider the public interest in the context of some specific decisions. The provision governing deferred accounting does not provide such additional standards. RCW 80.04.090. *See also* RCW 80.04.015.

The absence of statutory public interest factors for deferred accounting specifically does not lessen the Commission's obligation to ensure that its decisions further the public interest. RCW 80.01.040. The Commission must regulate *all* "rates, services, facilities, and practices" in the public interest. *Id.* Accounting practices, including petitions for deferred accounting, fall within this requirement.

In determining how to weigh the public interest in deciding a petition for deferred accounting, the Commission may consider the standards and legislative statements of intent that apply to related decisions.[1] In setting rates, for example, the Commission must determine that rates are "just, fair, reasonable, and sufficient." RCW 80.28.010(1); RCW 80.28.020. This standard requires the Commission to consider fairness to ratepayers as well as the utilities' needs.[2]

Likewise, in the Clean Energy Transformation Act, the legislature reiterated that the Commission must regulate in the public interest. RCW 19.405.010(5). The legislature specified that the public interest includes increased benefits and reduced harm to communities, especially

---

[1] *See, e.g., Wash. Pub. Ports Ass'n v. Dep't of Revenue*, 148 Wn.2d 637, 645 (2003) (court considers "not only the ordinary meaning of the words, but the underlying legislative purposes and closely related statutes to determine the proper meaning of the statute").

[2] *People's Org. for Wash. Energy Res. v. Wash. Utilities & Transp. Comm'n*, 104 Wn.2d 798, 808 (1985); *Willman v. Wash. Utilities & Transp. Comm'n*, 122 Wn. App. 194, 204 (2004), *aff'd*, 154 Wn.2d 801 (2005).

Earthjustice
810 Third Ave., Suite 610
Seattle, WA 98104
(206) 343-7340

the most vulnerable. RCW 19.405.010(6).[3] The legislature also plainly stated its intent to increase energy assistance to the households that are most in need. RCW 19.405.120. These related standards and legislative statements of intent should inform the Commission's interpretation of the public interest requirement in the context of deferred accounting.[4]

These related requirements underscore that the Commission should consider fairness to ratepayers and burdens on communities in deciding whether the public interest supports granting the utilities' petitions for deferred accounting.

B. The public interest weighs strongly in favor of denial here

As other comments have stressed, and as is obvious from any number of sources, many ratepayers are currently facing extraordinary hardship. Small businesses are closing, families in Washington face record levels of unemployment, the need for food assistance is soaring, and loved ones are dying.

In contrast, the utilities provide an essential service and have not faced precipitous declines in demand for their services. While the pandemic has imposed some unforeseen costs on the utilities, they have not alleged that these costs threaten them with financial ruin. Financial ruin and worse, however, is precisely what many ratepayers are now facing.

The Commission's charge to regulate in the public interest compels considering these extraordinary circumstances when deciding the petitions for deferred accounting. *See* RCW 80.01.040. This includes considering fairness to customers alongside fairness to the utility, RCW 80.28.010(1); RCW 80.28.020, as well as ratepayers' financial need and the harm to our most vulnerable communities, RCW 19.405.010; RCW 19.405.120.

---

[3] "The legislature recognizes and finds that the public interest includes, but is not limited to: The equitable distribution of energy benefits and reduction of burdens to vulnerable populations and highly impacted communities; long-term and short-term public health, economic, and environmental benefits and the reduction of costs and risks; and energy security and resiliency." RCW 19.405.010(6).

[4] *Supra* n.1.

Earthjustice
810 Third Ave., Suite 610
Seattle, WA 98104
(206) 343-7340

While granting the petitions does not automatically increase rates today, it does leave substantial costs that must be addressed in the future. The public interest does not support leaving these costs for future resolution when the balance of harms is so extreme today. The public interest and basic fairness to ratepayers strongly support the conclusion that the utilities should share in these costs now.

II. THE COMMISSION SHOULD EXERCISE ITS DISCRETION TO DENY THE PETITIONS IN THEIR ENTIRETY

A. The Commission has discretion to deny a deferred accounting petition

The statute authorizing the Commission to consider a deferred accounting petition also grants the Commission substantial discretion, including to deny such a petition in full. *See* RCW 80.04.090. Utilities bear the burden of establishing that they are incurring such extraordinary costs that they should be permitted to track those costs through deferred accounting.[5] Even in times of crisis when utilities have incurred extraordinary costs, the Commission has rejected deferred accounting petitions, opting instead for other forms of relief.[6]

Given the Commission's obligation to balance consumer and investor interests and to regulate in the public interest, it is no surprise that deferred accounting is generally disfavored. As Public Counsel and The Energy Project have pointed out, deferred accounting may result in utilities cherry-picking isolated types of costs while failing to fully account for cost offsets, thereby exposing consumers to excessive rates.[7] In contrast, in general rate cases, the entirety of a utility's finances are before the Commission for a forward-looking determination on rates. Importantly, "rates, no matter how they are determined, need only enable the company to operate

[5] *See In re PacifiCorp*, Dockets UE-020417 and UE-991832, Sixth Suppl. Order: Denying Petition for Accounting Order; Rejecting Tariff Filing; Authorizing Subsequent Filing, ¶¶ 22, 48 (July 15, 2003).
[6] *See Wash. State Attorney Gen.'s Office v. Wash. Utilities & Transp. Comm'n*, 128 Wn. App. 818, 830 (2005).
[7] Joint Response of the Office of the Washington Attorney General, Public Counsel Unit and The Energy Project, submitted to the above-captioned dockets on November 19, 2020 ("AG/TEP Brief") at 5–6.

successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed."[8]

Even if the utilities have incurred extraordinary or unforeseen costs, that alone does not entitle them to deferred accounting.[9] The Commission should not allow utilities to insulate their profits in the midst of a public health and economic crisis that is devastating their ratepayers.

B. Under the circumstances presented, the Commission should deny the utilities' petitions for deferred accounting in full

The Commission should exercise its discretion to deny the petitions for deferred accounting in full. Such denial is in the public interest given the impact of the COVID-19 pandemic on Washington consumers. The pandemic has had a catastrophic impact on Washingtonians—nearly a million people are receiving food assistance, and close to 200,000 people have lost their jobs.[10] The utilities, on the other hand, have reported that the financial impacts of the pandemic through fall 2020 have been immaterial. *See* AG/TEP Brief at 34–36. Yet despite the lack of demonstrated financial need, the utilities are requesting extraordinary relief through deferred accounting.

Deferred accounting in this situation would lay the groundwork for the utilities to impose the brunt of the burden of this pandemic on ratepayers, including those who can least afford to pay. We are all weathering the storm of this crisis, and the utilities are doing relatively well—this must factor into the Commission's decision. The Commission must "fairly weigh[] both

[8] *People's Org. for Wash. Energy Res. v. Wash. Utilities & Transp. Comm'n*, 104 W.2d 798, 811 (1985) (internal quotations and citations omitted).
[9] *See Wash. State Attorney Gen.'s Office*, 128 Wn. App. at 830 (rejecting petition for deferred accounting and emergency rate relief based on "unforeseeable power market crisis").
[10] *See* Puget Sound Sage comments, submitted to the above-captioned dockets on November 25, 2020, https://www.utc.wa.gov/docs/Pages/DocketLookup.aspx?FilingID=UE-200780; *see also* https://www.commerce.wa.gov/datadashboard/.

Earthjustice
810 Third Ave., Suite 610
Seattle, WA 98104
(206) 343-7340

consumer and investor interests in arriving at its decision,"[11] and it is hard to imagine a more lopsided outcome than what the utilities have proposed.

While the Commission has substantial discretion in discharging its regulatory duties, such discretion must still be exercised in a manner that comports with the law.[12] Given the well-documented hardships that Washington households and small businesses are experiencing, set against the lack of demonstrated financial need by the utilities, we urge the Commission to exercise its discretion in furtherance of the public interest and deny the petitions in their entirety.

Additionally, the Commission, in its October 20, 2020 written order, suggested that enhanced bill assistance and debt erasure would be contingent on the utilities' ability to recover these costs in rates. *See* Docket U-200281, Order 01, at 6–7, ¶ 27. The Commission should clarify that the utilities must provide this assistance regardless of whether their petitions for deferred accounting are granted. The Commission adopted terms in the Revised Term Sheet that it found to be "just, fair, reasonable, and sufficient"—denial of the deferred accounting petitions should not alter that determination.

III. THE COMMISSION SHOULD ISSUE A STATEMENT CALLING FOR SHARED SACRIFICE

In addition to denying in full the utilities' petitions for deferred accounting, the Commission should issue a statement calling for the utilities to embrace the principle of shared sacrifice during this historic crisis. Such a statement would be consistent with the Commission's statutory charge to consider the public interest, and signal to the for-profit utilities that future petitions must take into account the Commission's obligation to balance the interests of the

---

[11] *See People's Org. for Wash. Energy Res. v. Wash. Utilities & Transp. Comm'n*, 104 Wn.2d at 805; *see also Wash. State Attorney Gen.'s Office*, 128 Wn. App. at 826 ("In setting rates, the Commission must balance investor and consumer interests.").

[12] Washington courts will overturn as arbitrary and capricious an agency order that "is willful and unreasoning and taken without regard to the attending facts or circumstances." *See Wash. State Attorney Gen.'s Office*, 128 Wn. App. at 824 (quoting *Hillis v. Dep't of Ecology*, 131 Wn.2d 373, 383 (1997); *see also* RCW 34.05.570.

Earthjustice
810 Third Ave., Suite 610
Seattle, WA 98104
(206) 343-7340

utilities with the interests of ratepayers. We acknowledge that the Commission cannot order the utilities to make an offer of shared sacrifice to Washington residents, but the Commission can and does issue policy statements and otherwise express its policy preferences. It should do so here.

As COVID-19 wreaks havoc across the country, public service commissions in other states have had to address the issue of cost recovery and have used their authority to promote an approach that is rooted in the spirit of shared of sacrifice. For instance, the Michigan Public Service Commission held, "[w]hile rate-regulated energy providers are lawfully entitled to recover reasonably and prudently incurred expenses related to the cost of service, this is also an opportunity for the utilities to share the economic burden that has been brought on by the pandemic and approach cost recovery with the spirit of shared sacrifice."[13] Michigan utilities responded favorably by offering financial assistance to households, small business, and other vulnerable customers. *See* AG/TEP Brief at 36–37. The Commission should show similar leadership in these challenging times and issue a statement calling for shared sacrifice—we hope that the utilities would likewise heed the call.

CONCLUSION

The decision before the Commission is more than just one of accounting—it is a matter of whether the utilities, shareholders, and ratepayers will all share in the sacrifice that this moment commands. The Commission must regulate in the public interest and balance the interests of all parties in reaching its decision. For the reasons given above, this balancing weighs heavily in favor of the Commission exercising its discretion to deny the utilities' petitions

[13] *In the Matter, On the Comm'n's Own Motion, to Review Its Response to the Novel Coronavirus (COVID- 19) Pandemic; Including the Statewide State of Emergency, and to Provide Guidance and Direction to Energy and Telecomm. Providers and Other Stakeholders*, Case No. U-20757, Order at 30 (Mich. Pub. Serv. Comm'n July 23, 2020).

Earthjustice
810 Third Ave., Suite 610
Seattle, WA 98104
(206) 343-7340

for deferred accounting in full. We also ask the Commission to issue a statement encouraging the utilities to approach future proceedings in the spirit of shared sacrifice.

Dated this 4th day of December, 2020.

Respectfully submitted,

Amanda W. Goodin (WSBA No. 41312)
Earthjustice
810 Third Avenue, Suite 610
Seattle, WA 98104
Telephone: 206.343.7340
Email: agoodin@earthjustice.org
Attorney for Puget Sound Sage and Front and Centered