BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND ENERGY CEIP, Respondent.	DOCKET UE-210795 STAFF'S POST-HEARING BRIEF

POST-HEARING BRIEF ON BEHALF OF COMMISSION STAFF

ROBERT W. FERGUSON
Attorney General

Nash Callaghan, WSBA 49682
Assistant Attorney General
Office of the Attorney General
Utilities & Transportation Division
P.O. Box 40128
Olympia, WA 98504-0128
(360) 709-4830
Nash.Callaghan@atg.wa.gov

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I. INTRODUCTION

1 At the evidentiary hearing, Staff recommended that the Commission consider whether it had the information it needed to make decisions on the issues in this case, what information it needed to decide the issues in this case, and when it should require PSE to provide that information. In this brief, Staff will describe what information it believes is missing, why that information is important, and when Staff believes the Commission should require PSE to provide it. Broadly, what is missing is information necessary to confirm that PSE's plan meets CETA's lowest reasonable cost and equity requirements.[1] Staff's recommended conditions set a reasonable timeline for the Company to provide that information.[2] Adopting these conditions and those proposed by other parties would not, as the Company suggests, be "let[ting] process become the enemy of progress[.]"[3] Beyond this slogan, the Company provided no evidence that adopting a majority of the conditions recommended by Staff and the other parties would prevent PSE achieving its interim targets, and common sense suggests otherwise.[4]

2 PSE's testimony is a hotbed of contradiction. On one hand, they assure the Commission that the Company is working and will continue to work on the issues raised by the other parties.[5] On the other, they ask that the Commission not to adopt too many of the conditions that would verify that the Company will do as they claim.[6] They acknowledge the

[1] Nightingale, Exh. JBN-1T at 6:9-7:6, *see also* WAC 480-100-610(4)-(5) & WAC 480-100-605 (definition of lowest reasonable cost).
[2] *See* Snyder, Exh. JES-3.
[3] Durbin, Exh. KKD-6T at 6:20-7:2.
[4] For example, in what way would requiring the Company to improve its Vulnerable Populations designation methodology hinder PSE's acquisition of renewable resources? The only plausible answer is employee workload, but as the Company is well aware, hiring additional employees to meet new statutory and regulatory requirements, if necessary, is expected. An order adopting a substantial number of conditions would –at most- result in the Company needing to hire additional personnel. It would not cause delay in progress toward the interim targets.
[5] *See e.g*, Durbin, Exh. KKD-6T at 40:5-7, Archuleta, Exh. GA-1T at 26:3-6.
[6] *See* Durbin, Exh. KKD-6T at 3:5-9.

shortcomings of the CEIP, yet ask the Commission to approve it as filed.[7] PSE agrees in principle with Staff's condition for improving the DER selection process,[8] yet has apparently done nothing to implement that recommendation since it was made nearly a year ago.[9] This simply underscores that what matters now is what the Company actually does, and specifically, what the Commission requires it to do.

3 At the evidentiary hearing, the Company agreed with the vast majority of Staff's proposed conditions in Exhibit JES-3.[10] In light of that fact, Staff focuses this brief on the areas that remain contested between itself and the Company, and on topics that Staff can provide the Commission with a helpful perspective. Staff first addresses specific actions, which lack important information related to both equity and lowest reasonable cost. Next, Staff addresses the equity-specific deficiencies caused by the current vulnerable populations designation methodology and Customer Benefit Indicators (CBIs). Staff then addresses deficiencies impacting the Commission's ability to assess the lowest reasonable cost requirement. Namely, the Company's use of the projected incremental cost calculation threshold[11] as part of the CEIP preferred portfolio selection process.

II. SPECIFIC ACTIONS

4 As filed, the CEIP does not contain sufficient information to determine whether the proposed specific actions meet CETA's requirements. The problem with PSE's specific actions is not just a matter of degree, but type. The information included in the specific actions chapter is simply not the type of information the Commission needs to fully assess the CEIP. That is why Staff seeks further Commission guidance on specific actions

[7] Durbin Exh. KKD-6T at 6:11.
[8] Einstein, Exh. WTE-1T at 27:1-14 (Company response to Staff condition 4 in Exh. JES-3).
[9] Einstien, TR. 247:5-248:22.
[10] See Durbin, TR. 149:9-158-11.
[11] WAC 480-100-660(2) & (4).

standards and requirements. If this were only a matter of the degree of detail provided in the CEIP, then addressing the issue on a case-by-case basis rather than providing general guidance would be more appropriate. But the question here is less "how specific do specific actions need to be?" and more "does the type of information provided by PSE allow the Commission to make the necessary determinations?" Answering the latter question requires an understanding of what the Commission required specific actions to include in a CEIP and why. Staff recommended that the Commission approve the CEIP under the condition that PSE update all specific actions in the 2023 Biennial CEIP Update.[12] Staff hopes that Commission guidance will clarify its expectations on specific actions, and that the Company will follow that guidance as part of its updated specific actions.

A. Legal Standard

5 CETA does not define specific actions, but some requirements of specific actions are outlined in statute. Under RCW 19.405.060(1)(b)(iii), the law states that the CEIP must:

> Identify specific actions to be taken by the investor-owned utility over the next four years, consistent with the utility's long-range integrated resource plan and resource adequacy requirements, that demonstrate progress toward meeting the standards under RCW 19.405.040(1) and 19.405.050(1) and the interim targets proposed under (a)(i) of this subsection. The specific actions identified must be informed by the investor-owned utility's historic performance under median water conditions and resource capability and by the investor-owned utility's participation in centralized markets. In identifying specific actions in its clean energy implementation plan, the investor-owned utility may also take into consideration any significant and unplanned loss or addition of load it experiences.

6 This statement alone provides limited insight into any minimum legal requirements for specific actions. However, the function that specific actions serve in the statute as a whole allows one to infer some additional basic requirements, and the commission rules reflect these basic requirements.

[12] Snyder, Exh. JES-3.

7 The information a utility must include in a CEIP on specific actions is found in WAC 480-100-640(5) and (6). Subsection (5) requires that the utility provide the "general location… proposed timing, and estimated cost of each specific action"[13] including whether the resource will be located in highly impacted communities or "will be governed by, serve, or otherwise benefit highly impacted communities or vulnerable populations in part or in whole." The rule also requires that for each specific action the utility include metrics related to resource adequacy and customer benefit indicator values.[14]

8 Subsection (6) requires a narrative description of the specific actions describing how they demonstrate progress toward the 2030 and 2045 standards and demonstrate consistency with the standards identified in WAC 480-100-610(4). This includes "[a] description of how the specific actions in the CEIP mitigate risks to highly impacted communities and vulnerable populations and are consistent with the longer-term strategies and actions described in the utilities most recent IRP and CEAP."[15] It also requires "A description of the utility's approach to identifying the lowest reasonable cost portfolio of specific actions that meet the requirements … including a description of its methodology for weighing considerations in WAC 480-100-610(4)"[16] Finally, subsection (6) also requires "[s]upporting documentation justifying each specific action identified in the CEIP."[17]

9 This list of requirements is lengthy, and with good reason. The specific actions are the end product of all the analysis conducted, data collected, and input received in the CEIP up to this point. The specific actions *are* the plan. The rest of the CEIP is mostly support and

[13] WAC 480-100-640(5)(a).
[14] WAC 480-100-640(5)(b)-(c).
[15] WAC 480-100-640(6)(b)(ii).
[16] WAC 480-100-640(6)(f)(i).
[17] WAC 480-100-640(6)(f)(iii).

justification for those proposals.[18] As noted above, Commission rule describes the CEIP preferred portfolio[19] as a portfolio of specific actions instead of the more traditional description of these kinds of planning documents as a portfolio of resources.

10 The adoption order describes the Commission rules on specific actions as follows:

> Proposed WAC 480-100-640(5) addresses specific actions a utility plans to take under its CEIP to meet the requirements of RCW 19.405.060(1)(b)(iii), including operational and regulatory requirements, and requires utilities to provide, among other details, information related to customer benefits for each specific action. This information includes the general location of the specific action, if applicable, and a designation of whether the specific action is located within a highly impacted community or will be governed by, serve, or otherwise benefit highly impacted communities or vulnerable populations in part or in whole. We intend to review the customer benefits on a portfolio-level. Therefore, it is important for the utility to identify which specific actions provide customer benefits.[20]

11 The adoption order also explains the rationale behind the requirement that the utility demonstrate that specific actions are consistent with the IRP and CEAP[21]:

> These two elements of the narrative are necessary because the Commission's compliance determination may require an evaluation of the timing and quantity of benefits throughout the transition to clean energy, both as the utility begins implementation and over the trajectory of implementation. As noted above, an equitable distribution of benefits will depend on the total benefits of the transition to clean energy, which will occur over time. An evaluation of the equitable distribution of benefits must consider when the benefits will begin accruing to customers and reflect whether the benefits will continue into future implementation periods. The narrative we require in subsection (6) provides an opportunity for utilities to describe how the CEIP, as a whole and through specific actions, will meet the customer benefit requirements.[22]

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[18] This statement is qualified because vulnerable populations designation and CBIs/CBI metrics serve distinct functions, and because the portfolio of specific actions serves as support for approval of the interim and specific targets.

[19] This is a term not found in commission rule or statute. It refers to the portfolio in the CEIP that the utility proposes ultimately form the basis for approving the interim and specific targets approved by the Commission. The term "CEIP preferred portfolio" is meant to distinguish this portfolio from the "preferred portfolio" referenced in the IRP rules. *See* WAC 480-100-620(11) and -625(3).

[20] *In the Matter of Adopting Rules Relating to Clean Energy Implementation Plans and Compliance with the Clean Energy Transformation Act*, Dockets UE-191023 & UE-190698 (Consolidated), General Order 601 (Dec. 28, 2020) (hereinafter "Adoption Order") at 25, ¶ 64.

[21] Clean Energy Action Plan. While the title of the CEAP suggests it is separate from the IRP and CEIP, in reality the CEAP is a part of the IRP. WAC 480-100-620(12).

[22] Adoption Order at 26, ¶ 67.

12 The rule's plain language and the adoption order's discussion of the specific actions both indicate that each specific action must include certain types of information: location, estimated cost, the potential impact on Named Communities, etc. It also demonstrates that there is sound logic behind requiring this type of information and level of detail. In short, the information is necessary to determine whether plan is compliant with the equity mandate and the other standards summarized in WAC 480-100-610(4) and (5) generally. These requirements were not simply added the CEIP rules without discussion and due consideration, the rules reflect the fact that the specific actions *are* the plan.

B. Information Missing from the Company's Specific Actions

13 PSE's CEIP discusses Specific Actions in Chapter 4.[23] On the first page of this chapter, PSE tacitly admits that the CEIP does not fully comply with commission rule requirements for specific actions.[24] The CEIP lists the All-Source RFP and DER RFP as the primary means by which the Company proposes to meet its interim targets.[25] While in places the CEIP does outline what it (presumably) predicts as the result of those RFPs,[26] the Company also characterizes the All-Source and DER RFPs as themselves specific actions in the CEIP.[27] The Company states that "PSE's All-Source Request for Proposal (RFP) and Targeted Distributed Energy Resources (DER) RFP are the primary solicitation vehicles for securing resources at the lowest reasonable cost while maximizing customer benefit; they

[23] Corrected 2021 CEIP at 105-170.
[24] CEIP at 105 ("Where feasible, PSE includes the population impacted by the distribution of benefits, although not the specific location. However, we have not solidified the data to quantify these benefits yet. PSE will continue to investigate ways to address this gap in data in the biennial 2023 Clean Energy Implementation Plan (CEIP) update.")
[25] *See* CEIP, Chapter 1 at 4.
[26] *Id*. at 7, Figure 1-4 (the 2024 and 2025 columns).
[27] CEIP, Chapter 4, page 118 ("The specific action is an All-Source RFP and the selection of the resource that fits those characteristics."), *see also Id*. at 110 ("To pursue demand response in this 2021 CEIP, PSE takes two initial actions: 1. Complete the distributed energy resource, including demand response RFP (Targeted DER RFP)…"). While Staff did state in response testimony that under certain circumstances RFPs could be specific actions, Staff also explained why there should be a limit to how significant an RFP should be as a component of the CEIP's portfolio.

constitute PSE's primary specific actions in the beginning of the CEIP period. As PSE secures resources from the two RFP processes, we will add more specific actions in the 2023 biennial CEIP update."[28]

14 Appendix L of the CEIP lists PSEs specific actions. In the location column of Appendix L of the 33 specific actions listed, 29 list the location of the specific action as "PSE Service Territory."[29] In the Named Community column, presumably where the Company intends to demonstrate compliance with the Named Community requirement in WAC 480-100-640(5)(a),[30] 17 rows are marked "TBD" and eight are marked "N/A"[31] The appendix does, however, include information related to estimated cost and Chapter 4 overall does provide information related to timing. The absence of equity related information is understandable considering where the Company was in the RFP process at the time the CEIP was developed and filed, but this causes obvious issues with assessing the plan's compliance with CETA.

C. Staff Response and Recommendation

15 Staff noted that PSE's specific actions in this CEIP are dominated by the 2021 All-Source RFP and the 2022 Distributed Energy Resources (DER) RFP.[32] Staff witness Snyder also noted that "PSE included a detailed analysis of distributed energy resources that provided an estimate of future DER specific actions but, outside of the BCP, plans to implement programs or acquire specific resources were not available to demonstrate progress towards CETA standards."[33]

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[28] CEIP at Chapter 4, page 105.
[29] CEIP Appendix L, specific actions and benefits tab.
[30] Specifically this part of the rule: "…including whether the resource will be located in highly impacted communities, will be governed by, serve, or otherwise benefit highly impacted communities or vulnerable populations in part or in whole;"
[31] CEIP Appendix L, specific actions and benefits tab.
[32] Snyder, JES-1T at 25:3-10, citing Dockets UE-210220 and UE-210878.
[33] *Id*. citing Durbin, Exh. KKD-1T at 26:6-12.

16 Staff argued that the level of detail in a CEIP should be comparable to the information included in a Biennial Conservation Plan.[34] Staff also reasoned that the alignment of the CEIP and MYRP filing encouraged under RCW 80.28.425(9) indicates that specific actions were intended to include information comparable to a pro forma plant addition a utility seeks to include provisionally in rates as part of a multiyear rate plan.[35] Information such as location and governance are important when estimating the impact a specific action may have on equity.[36] Finally, Staff described how the timing issue could be avoided in the future, and suggested that the timing of IRPs, RFPs and CEIPs might benefit from guidance in the form of a future policy statement or rulemaking.[37]

D. PSE's Response to Staff

17 On rebuttal, PSE states that Staff's views on the standard for specific actions are "simply not reasonable,"[38] although the reason the Company gives for taking this position reveals that it misread Staff's response testimony. While the Company cites the correct portion of Staff testimony,[39] it mischaracterizes Staff's position as being that the information provided to support specific actions should be "comparable to a plant addition in a rate proceeding" and then objects that this is an unfair comparison given that a plant addition is a resource the utility has already acquired.[40] Staff actually compares the information it believes specific actions should include to the information required for "a pro forma plant addition a utility seeks to include *provisionally in rates as part of a multiyear rate plan*."[41] In footnote 16, Staff cites to the Used and Useful policy statement's discussion on the threshold for

[34] Snyder, JES-1T at 10:5-17.
[35] *Id*. at 12:9-17.
[36] *Id*. at 13:2-5.
[37] Snyder, JES-1T at 26:11-27:8.
[38] Durbin, Exh. KKD-6T at 36:14.
[39] Id. at 36, n.55.
[40] Id. at 36:12-16.
[41] Snyder, Exh. JES-1T at 12:12-14.

including provisional pro forma adjustments in rates subject to future review and refund.[42] Staff maintains that the comparison between specific actions included as part of the four year CEIP implementation period and a pro forma plant addition included provisionally as part of a MYRP proposal is a reasonable one.

18 Finally, in response to bench questions about specific actions at the hearing PSE mentioned that it had expressed concerns related the timing of IRPs, RFPs, and CEIPs during the CEIP/IRP rulemaking in 2020.[43] The Commission should not be sympathetic to this argument at this point. If PSE believed or knew that it was incapable of meeting the specific action rules, it could have sought an exemption from those rules, and it chose not to.

E. Summary of Specific Actions Issue

19 Staff is cognizant of the practical difficulties presented by the requirements in rule and the timing of the RFP and CEIP.[44] Staff is also aware of the fact that this is the first round of CEIPs and that the Commission indicated in the Adoption Order that it would judge the filings in light of that fact. Staff's recommendations account for all this by simply asking that PSE include in its 2023 Biennial CEIP Update[45] a revision of all specific actions in order to meet the requirements of Commission rule. This would incorporate whatever guidance the Commission finds appropriate, if any, to include in the Order. In other words,

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[42] Id. at 12 n. 16, citing *In the Matter of the Commission Inquiry into the Valuation of Public Service Company Property that Becomes Used and Useful after Rate Effective Date*, Docket U-190531, Policy Statement on Property that Becomes Used and Useful After Rate Effective Date, p. 12, ¶ 35 ("The threshold for including provisional pro forma adjustments will be determined on a case-by-case basis according to the specifications of the rate-effective period investment. For example, there is a greater degree of certainty that an investment is known and measurable if it is part of an approved Clean Energy Implementation Plan … The evidentiary standard for purely projected investments will require information regarding the level of spending, cost controls, and the specific need for the projected investment.") (Jan. 31, 2020).

[43] Durbin, TR 203:23-204:21.

[44] Snyder, Exh. JES-1T at 25:12-26:9.

[45] While Staff believes it is reasonable to include all of the conditions outlined in Exh. JES-3 on the deadlines included in that exhibit, it should be noted that the Commission could in its order require any condition be met at any time. The Commission could even decide to move the due date of the Biennial Update by granting an exemption to WAC 480-100-640(11) given that the update is a requirement of rule and not statute.

Staff asks that improvements and iterations to PSE's specific actions occur in a timely fashion. Given the impact that the proposed actions will have on the overall transition to clean energy, Staff believes that these conditions are more than reasonable. The Commission has made clear that utilities are expected to continue making progress implementing the clean energy transformation even as litigation is ongoing.[46]

III. VULNERABLE POPULATIONS METHODOLOGY

20 Improvements need to be made to PSE's Vulnerable Populations designation methodology in order to provide the Commission with the necessary information and achieve CETA's equity mandate. Staff provided several recommendations to improve PSE's vulnerable populations methodology and proposed conditions that require improvement in future iterations.[47] While the Company did not oppose Staff's vulnerable populations related conditions at the evidentiary hearing, they did disagree in rebuttal testimony with the more specific recommendations in Staff testimony regarding future improvements. Recognizing that vulnerability is both relative and absolute, Staff made several specific recommendations for improvement that it did not propose as conditions, but nonetheless feel are important. These recommendations include, for example, setting the quintiles based on a standard for a given metric, rather than an equal distribution among the quintiles. These recommendations are consistent with the Commission guidance in the adoption order that the purpose of the equity mandate is to prioritize those that experience the greatest inequities and disproportionate impacts. The following is a discussion of the Staff's position and the

[46] *See* Order 10/10 in *WUTC v. Puget Sound Energy,* Docket UE-220066 (April 18, 2022) and *WUTC v. Puget Sound Energy CEIP*, Docket UE-210795, page 7, ¶ 24 (April 18, 2022)("… the Company is required to work towards CETA compliance even while awaiting Commission approval of interim targets in the CEIP."); Order 15/03 in Dockets UE-220066 and UE-210795 (May 23, 2022) (upholding interlocutory order denying motion to strike).

[47] Snyder, Exh. JES-1T at 34:10-22, Exh. JES-3 at 1-2 (Conditions 5 and 12).

Company's responses. Staff hopes this discussion will provide clarity regarding the nature of the disagreement between Staff and the Company in the event that the Commission wishes to signal a specific direction that future iterations should follow.

A. Legal Standard

21 RCW 19.405.040(8) requires that electric utilities "ensure that all customers are benefiting from the transition to clean energy: Through the equitable distribution of energy and nonenergy benefits and reduction of burdens to vulnerable populations and highly impacted communities..." CETA defines vulnerable populations as communities that experience a disproportionate cumulative risk from environmental burdens due to adverse socioeconomic factors and sensitivity factors.[48] For both adverse socioeconomic factors and sensitivity factors, the statutory definition gives a non-exhaustive set of examples.[49] Commission rule did not modify the statutory definition. The Adoption Order does not prescribe a particular method of designating vulnerable populations beyond the rule requiring participation of the EAG in the designation process.[50] However, the order does state the following: "Similarly, we concur with Front and Centered's comments that the purpose of equitable distribution in the statute is to *prioritize* vulnerable populations and highly impacted communities *that experience the greatest inequities and disproportionate impacts, and that have the greatest unmet needs*."[51] It also specifies that both the distribution of benefits and the reduction of burdens must be equitable.[52]

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[48] RCW 19.405.020(40).
[49] *Id*. *See also* Adoption Order at 20 ¶ 48 ("The definition includes a non-exhaustive list of factors (*e.g.*, unemployment, linguistic isolation, low birth weight) associated with adverse socioeconomic conditions and sensitivity factors.")
[50] WAC 480-100-655(1)(b).
[51] Adoption Order at 20 ¶ 47. Emphasis added.
[52] *Id*. ("Finally, the Commission agrees with Avista's interpretation that both the distribution of benefits and the reduction of burdens must be equitable.")

B. Discussion

22 Before going into detail on the issue of vulnerable population designation methodology, it is important to reflect on the real world impact that this designation will have on the communities in question. Commission rule clarifies that utilities have a duty to ensure both an equitable distribution of benefits and a reduction of burdens on vulnerable populations and highly impacted communities.[53] By its plain language, the statute indicates that the "distribution of benefits" requirement is an assessment made relative to other ratepayers, while the "reduction of burdens" requirement is assessed in absolute terms.[54] Therefore, those communities designated as vulnerable populations should be demonstrably better off, both in relative and absolute terms, as a result of the clean energy transformation.[55] Over - or under - designation of vulnerable populations will influence both the level of funds necessary to achieve these statutory requirements, and the potential actions that a utility could take to reduce the burdens on the designated communities. Further, note that the vulnerable populations designation is a process upstream of other CEIP decisions such as CBIs and specific actions. Getting the vulnerable population designation process as "right" as possible and as soon as possible is therefore important to avoid future disruptions to those elements of a CEIP.

23 In the CEIP, PSE rescaled its vulnerability data by dividing each set into quintile tranches, data points in each factor were effectively lined up from highest to lowest and divided into five equally sized groups.[56] These quintiles would then receive scores of 1 to 5.

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[53] WAC 480-100-610(4)(c)(i).
[54] In this context Staff is using the phrase "absolute terms" to mean a given community's conditions at the end of the clean energy transformation compared with that community's initial conditions.
[55] As with CBI results, this assessment will need to account, as best as possible, for the impact of forces outside the control of the utility that influence outcomes for named communities over the course of the clean energy transformation, whether positive or negative.
[56] *Id*. at 30:13-18.

PSE then adds the 1-5 scores from each factor's data set together, and then rank orders the census tracts based on these total scores.

24 In response testimony, Staff criticized the method PSE used to identify vulnerable populations.[57] The primary issues Staff raised were "their rescaling of data, treating vulnerability as a single vector, and the dearth of analysis of vulnerable populations."[58] Staff noted the potential for significant distortions of data distributions using PSE's methodology.[59] While dividing the data points into five equally sized quintiles gives information about where these census tracts are relative to each other, it does not provide a sense of each data set's significance. For example, if Factor A yields widespread, extreme results and Factor B yields average results, census tracts are given the same distribution of 1-5 scores for both factors. Staff is also concerned that by turning vulnerability into a single vector, PSE essentially treats each metric as equally important.[60]

25 On rebuttal, PSE witness Phillips addresses Staff's criticisms about PSE's approach to designating vulnerable populations.[61] The Company argues that it should designate at a geographic level because customer-by-customer data is not available for the vulnerability factors designated by CETA and the EAG, and because it did use individual customer data when available.[62] This response does not address Staff's main concerns with PSE's methodology. Staff's only mention of anything related to customer-by-customer information vs. census tract level information was a recommendation to "[i]dentify vulnerable populations through more specific characteristics that may not correlate with Census-tract-

[57] *See* Snyder, Exh. JES-1T at 30-35.
[58] Snyder, Exh. JES-1T at 30:4-5.
[59] *Id*. at 31:1-18.
[60] *Id*. at 32:18-33:8.
[61] Phillips, Exh. AJP-1T at 5:8-19.
[62] Phillips, Exh. AJP-1T at 6:1-18.

level mapping."[63] This is a far cry from recommending customer-by-customer *designation*, and also not the main source of Staff's criticism. In fact, the portion of Staff testimony cited by Company witness Phillips includes recommendations aimed at improving census tract level analysis, not removing and replacing them.[64] Staff's position is that both types of information should be utilized in the designation process. A position that PSE appears to agree with, given that it states that "[i]n cases where there is a trustworthy, publicly available source of customer-level data to quantify a vulnerability factor, PSE applied that source."[65]

26 On rebuttal, the Company also responds to Staff's criticism regarding PSE weighing all vulnerability factors equally by stating the following:

> Weighting some vulnerability factors higher than others, without explicit legal guidance or input from stakeholders, introduces a number of hypotheticals that are difficult for PSE to resolve with available data. For example, PSE would have to consider whether being in a Black, Indigenous, and People of Color community is "more important," in the sense of vulnerability, than having limited English proficiency; or whether being a renter is "more important" than being a senior citizen with fixed income. PSE is neither well positioned nor comfortable making those value judgments without robust input and recommendations from stakeholders; consequently, PSE regarded all vulnerability factors as carrying equal weight.[66]

27 This statement merits a few responses. First, logically, not all factors contribute equally to a community's cumulative risk from environmental burdens. Second, while nothing in the statute or rule requires a utility to weigh vulnerability factors differently, nothing requires that the factors be weighed equally either. And there is good reason not to weigh them equally, since doing so will distort the results leading to an inaccurate picture of which census tracts are most vulnerable. If one factor covers 1 percent of a population and

[63] Snyder, Exh. JES-1T at 34:13-14
[64] Phillips, Exh. AJP-1T at 5, n.12 citing Snyder, Exh. JES-1T at 34:13-22.
[65] Philips, Exh. AJP-1T at 6:4-6.
[66] Phillips, Exh. AJP-1T at 9:16-10:5.

another covers 20 percent of a population, but the results from both factors are weighed equally, then the group falling within the 1 percent factor are being treated as "more important" than the other group. While the work of deciding how to weigh different factors may not be comfortable, it is necessary to prevent the ultimate designations from being distorted. This is especially true given the Commission's guidance in the adoption order to "prioritize vulnerable populations and highly impacted communities that experience the greatest inequities and disproportionate impacts, and that have the greatest unmet needs." While designation itself it a binary choice, the information and analysis from the designation process is crucial to prioritizing those vulnerable populations facing the greatest inequities.

28 Finally, Staff rejects the characterization of weighting vulnerability factors as "value judgments." The ultimate goal of the designation process is to identify "communities that experience a disproportionate cumulative risk from environmental burdens,"[67] and again, not all factors will contribute equally to a community's overall risk. Weighing each factor based on how much each factor contributes to a community's risk from environmental burdens is necessary to accurately assess cumulative risk. These are not "value judgments" in the sense of determining whether the groups of people covered by different factors are more or less worthy of being designated as vulnerable. The question is how much each factor tells us about a given community's risk from environmental burdens. Engaging in this type of assessment is just as much a "value judgment" as deciding whether or not to add additional factors, which the Company was apparently comfortable with doing.[68] Staff believes that, at the very least, the question of whether factors should be weighed differently should be explicitly put to PSE's Equity Advisory Group for their input.

[67] RCW 19.405.020(40).
[68] *See* CEIP at 52-53.

IV. CUSTOMER BENEFIT INDICATORS

29 Staff recommends that in future CEIPs, "PSE propose interim CBI targets… a series of clear and adaptive goal post metrics over the coming years would greatly help to ensure [an] equitable distribution… Interim CBI targets should especially be adopted for CBIs that PSE is most directly capable of effecting."[69] Staff believes that the draft metric design principles detailed for performance metrics, once finalized, should be considered when designing CBIs.[70] Staff also notes the potential for consolidation of the efforts made on CBIs and performance metrics under RCW 80.28.425.[71] Staff also recommended removing or improving some individual CBIs and metrics.[72]

A. Legal Standard

30 Customer Benefit Indicators and CBI metrics are the means by which the Commission will measure progress on CETA's equity mandate. CBIs must cover all the categories listed in RCW 19.405.040(8).[73] The process of designing CBIs and related metrics requires input from the public and a utility's advisory group, especially the Equity Advisory Group.[74] Commission rule defines customer benefit indicators as "an attribute, either quantitative or qualitative, of resources or related distribution investments associated with customer benefits described in RCW 19.405.040(8)." The Commission left this is definition intentionally broad to allow the advisory groups and the public participation process the flexibility to shape and define the priorities of the equity mandate within each service territory.[75]

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[69] Snyder, Exh. JES-1T at 36:8-13.
[70] Snyder, Exh. JES-1T at 21:18-22:1.
[71] Snyder, Exh. JES-1T at 21:6-22:14.
[72] Snyder, Exh. JES-1T at 38:10-43:15.
[73] *See* Adoption Order at 19-27, ¶ 44-70.
[74] *See* Adoption Order at 21, ¶ 50; 25, ¶ 62; 27, ¶ 70.
[75] *See* Adoption Order at 25 ¶ 62 ("First, customer and stakeholder input is necessary to determine whether an attribute is an indicator of customer benefit, and whether it reflects a reduction of a burden. Second, customer

B. Discussion

31 On rebuttal, PSE responds to the noncompany party recommendations on the CBIs by stating that the metrics currently included were those that the Company "…could reasonably track given the data available." PSE goes on to recommend that any additions or changes to the CBIs are delayed until the 2025 CEIP.[76]

32 With respect to Staff's recommendations on individual CBIs, the Company agrees with Staff's recommendations on the climate change and resiliency CBIs.[77] The Company disagrees with Staff's position on the cost reduction CBI, stating that "PSE's cost reduction CBIs are reasonable and meet the regulatory requirements of CETA. The measurement of medians is a reasonable way to track the data. Furthermore, these metrics do not lack accountability. There are multiple exogenous factors, such as a recession, that are outside PSE's control and will affect these calculations. PSE continues to believe its cost-reduction CBI is reasonable."[78] This does not address Staff's criticism of this CBI, namely that a metric that focuses on lowering a median value cannot ensure an equitable outcome.[79]

33 Finally, the Company "urges the Commission to limit the number of CBIs and metrics that are tracked over time in each CEIP to resource related topics, and allow non-resource topics such as energy assistance to be handled more holistically in a separate proceeding."[80] PSE states that it sees the CEIP as a "resource-planning document" and therefore the CEIP should not include "CBIs covering energy assistance programs, and

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and stakeholder input regarding weighting factors is necessary to understand the degree to which benefits can be equitability distributed when considered in light of appropriate factors, such as current conditions and the estimated amount of benefits over the whole transition.").

[76] Durbin, Exh. KKD-6T at 20:2-5.
[77] Id. at 26:14-27:11.
[78] Durbin, Exh. KKD-6T at 27:17-28:3.
[79] Snyder, Exh. JES-1T at 40:21-41:1.
[80] Durbin, Exh. KKD-6T at 23:3-6.

associated metrics such as arrearages and disconnections"[81] This is a puzzling position for a few reasons. First, reviewing the definition of CBIs and the benefits listed in RCW 19.405.040(8) immediately raises the question of why tracking arrearages and disconnections would be outside of the intended scope of CBIs, while presumably all of PSE's proposed CBIs are within the scope. Staff finds nothing in statute, commission rule or the adoption order that supports a limitation on CBIs related to energy assistance. Second, while the utility certainly does report on energy assistance programs and arrearages and disconnections to the Commission and other agencies already, the issue is not whether arrearages and disconnections are already tracked elsewhere, but whether adding this as a CBI would aid in assessing compliance with CETA's equity mandate.[82] For a list of CBI screening questions Staff recommends, see Exhibit JES-1T at 23:1-13.

V. INCREMENTAL COST

34 Staff recommends that the Commission require PSE not to use incremental cost of compliance (IC) as a constraint for future CEIP base portfolio selection processes.[83] Normally, the incremental cost calculation should not be an issue of great concern during the review of a CEIP. This is because the CEIP itself includes only the projected incremental cost calculation,[84] which in essence acts as a trial run for the actual incremental cost calculation performed during the compliance review phase.[85] Projecting incremental cost both highlights any disagreements among interested parties prior to the compliance review phase and provides the Commission with useful information when making its decision on

[81] Durbin Exh. KKD-6T at 22:11-18.
[82] *See* WAC 480-100-650(1)(e)(i).
[83] Nightingale, Exh. JBN-1T at 3:19-20.
[84] WAC 480-100-640(7), -660(4).
[85] WAC 480-100-660(5).

the CEIP, but it does not determine whether the IC alternative compliance pathway is available to the utility.

35 In this case however, PSE appears to have used this calculation as part of the preferred portfolio decision making process.[86] This is concerning because the CEIP's preferred portfolio is supposed to be created based on the principles of lowest reasonable cost.[87] If a utility's preferred portfolio is driven in part by considering the ICC threshold figure as a "budget," that may exclude a resource portfolio that is the lowest reasonable cost option in the long term. In the future, PSE should propose a preferred portfolio based only on its best lowest reasonable cost analysis, and let the Commission make the policy call on whether a lowest reasonable cost preferred portfolio above the threshold should be approved. Staff also ask for Commission guidance on an incremental cost related issue, and highlights another potential issue.

A. Legal Standard

36 The incremental cost calculation is meant to quantify the cost of meeting RCW 19.405.040, RCW 19.405.050 and the interim targets, as compared to the cost that otherwise would have been incurred in a world in which RCW 19.405.040 and -.050 did not exist.[88] In the CEIP/IRP rulemaking adoption order, the Commission said "The statute does not prohibit a utility from spending, on average over four years, more than the incremental cost threshold on compliance. However, the Legislature intended to restrain the amount of spending a utility must invest to meet the statutory requirements. If a utility relies on the incremental cost of compliance pathway, the utility should restrain and target its spending to just over the compliance

[86] *See* CEIP at 117 ("To make reasonable progress in this first CEIP, PSE seeks to acquire renewable resources in 2022–2025 at a pace that meets the two-percent annual average incremental cost of compliance.")
[87] WAC 480-100-610(5); WAC 480-100-640(6)(f).
[88] *See* RCW 19.405.060(3).

threshold."[89] The Commission goes on to state that "Rather than requiring utilities to precisely spend a certain amount of money to use this compliance pathway, our intent is to signal that the utility should not spend any amount seeking compliance with the statutory requirements if it has met or exceeded the incremental cost of compliance threshold, barring other considerations."[90] Crucially though, footnote 49 on page 40 of the order gives an example of the other considerations mentioned: "For example, a utility may have a time-limited opportunity for an investment that may be large, such as a generation asset, that would cause the utility to greatly exceed the compliance threshold. The Commission would likely look favorably on such an investment if the utility can demonstrate that the investment is beneficial to the company and its ratepayers over the long run." The Commission also stated that "Accordingly, the specific actions, specific targets, and interim targets should not require the utility to spend an amount that approaches its incremental cost estimate; to the contrary, as we stated above, CETA requires utilities to meet the statutory requirements at the lowest reasonable cost."[91]

37 With respect to the Alternative LRC portfolio, the Commission stated that "[t]he Commission can only determine whether a utility actually met the spending requirements to use the incremental cost compliance pathway with a baseline portfolio that includes, to the extent possible, an accurate representation of what the utility's portfolio would have cost."[92] It also stated that "the requirement for utilities to ensure all customers are benefiting from the transition to clean energy, as well as the other requirements set out in RCW 19.405.040(8), are explicitly part of the costs to implement RCW 19.405.040 and should be

[89] Adoption Order at 39 ¶ 107. Citations omitted.
[90] Adoption Order at 39-40 ¶ 107.
[91] Adoption Order at 44-45 ¶ 120.
[92] Adoption Order at 45-46 ¶ 124. Note that references to "baseline portfolio" in the adoption order refer to the Alternative LCR portfolio.

considered a directly attributable cost of compliance. Accordingly, these costs are not included in the baseline portfolio."[93]

B. Discussion

38 In rebuttal, PSE states the following related to incremental cost: "PSE views the incremental cost as an approximate spending guide that the Company used to inform the development of its interim target."[94] In essence, it appears that the Company treated the results of the ICC as a budget. As noted above, this creates two potential problems.

39 First, using the projected ICC this way is not consistent with lowest reasonable cost principles, which should result in the most efficient portfolio regardless of whether that portfolio crosses the ICC threshold or not. Hypothetically, there could be instances in which the lowest reasonable cost portfolio in the long run would exceed the ICC threshold within the immediate compliance period. In that event, the utility should present that portfolio to the Commission, allowing it to make the important policy decision of whether the long term benefits outweigh the short term incremental costs. Were PSE to continue the practice of using the projected ICC threshold as a budget, this important policy decision may not be clearly presented to the Commission, if at all. The Commission made clear in the adoption order that it would want to be aware of such a situation.[95]

40 The second issue is that even if it were appropriate to base the preferred portfolio on the ICC threshold, as discussed above, the Company's projected ICC result is not the actual compliance pathway threshold. The Company's projected ICC is unlikely, for a variety of reasons,[96] to be the figure that the Commission will ultimately use to determine

[93] Adoption Order at 47 ¶ 130.
[94] Durbin, Exh. KKD-6T at 31:17-18.
[95] Adoption Order at 40 n.49.
[96] There are a variety of reasons that the projected and actual ICC could differ, even setting aside inaccurate forecasts. The incremental cost calculation is principally a comparison between the costs of a portfolio with the requirements of RCW 19.405.040 and -.050, (i.e., the Preferred portfolio) and a hypothetical portfolio in a

whether the alternative compliance pathway is actually available. The use of the Company's projected ICC as a budget constraint will have a cascading effect on the preferred portfolio and the interim targets. Lowest reasonable cost principles should drive the Company's decision on the preferred portfolio and the interim targets it presents,[97] not a dollar figure that is unlikely to be right.

C. Staff Requests Commission Guidance on Incremental Cost Calculation and the New Equity Requirements under RCW 80.28.425, and Notes, but Does Not Request Guidance on, the Impact of the CCA on Future Incremental Cost Calculations

41 Staff requests guidance on how incremental cost should treat equity-related costs given the Commission's guidance in the most recent Cascade GRC Order.[98] In the CEIP/IRP adoption order, the Commission stated that costs related to meeting the equity requirements in RCW 19.405.040(8) were not included in the Alternative LRC portfolio.[99] However, that statement was prior to the new multiyear rate plan requirements under RCW 80.28.425 and the Commission's guidance in the Cascade GRC order on the new statute's equity requirements.[100] As noted in Staff testimony, based on these new legal requirements it would appear that a majority, if not all, of equity costs are no longer directly attributable to

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world without those requirements, known as the "Alternative lowest reasonable cost and reasonably available portfolio." WAC 480-100-605. Constructing this hypothetical portfolio and its costs requires making assumptions that, by definition, are debatable and impossible to verify. It could easily be the case that the Commission disagrees with some aspect of how the Company calculated this alternative portfolio during the compliance review phase. Revisions to the Alternative LRCP would in turn increase or decrease the ICC results.

[97] Adoption Order at 44-45 ¶ 120.

[98] *WUTC v. Cascade Natural Gas Corporation*, Docket UG-210755, Final Order 09, pp. 16-20 (Aug. 23, 2022) (2021 Cascade GRC Order). Although the order's discussion was primarily focused on the equity provisions in RCW 80.28.425(1), the Commission noted that "[a]lthough CETA applies to electric utilities only, its objective and language are instructive to the Commission's regulatory work generally as we clarify our definition of "public interest" to include equity considerations." (*Id*. at 17, ¶ 52.) and that "we must apply an equity lens in all public interest considerations going forward." (*Id*. at 19, ¶ 58.) Staff therefore believes that the discussion of general principles of equity within the order is relevant to this proceeding as well.

[99] Adoption Order at 47 ¶ 130.

[100] 2021 Cascade GRC Order at 16-20.

RCW 19.405.040(8), although Staff does note some possible exceptions.[101] Staff requests Commission guidance on this issue to prevent unnecessary disputes in the future.

42 Finally, Staff would like to highlight another issue with interpreting the incremental cost calculation. Although Staff is not asking for guidance on this issue at this time, it believes the Commission should take note of this issue for future consideration. As discussed above, the incremental cost calculation is primarily a comparison between the costs actually incurred to comply with RCW 19.405.040 and -.050, and a hypothetical portfolio that a utility would have built in the absence of those sections, the Alternative LRCP. The electric IOUs that the Commission regulates are now "covered entities" under the Climate Commitment Act (CCA).[102] This means that they are obligated to participate in the cap and trade program established by the Washington State Department of Ecology.[103] Because electric IOUs are already required to reduce retail electric load emissions to zero by 2045 under CETA, the CCA grants electric IOUs no-cost allowances.[104] This was likely done to prevent double charging the utilities and their ratepayers for the carbon emissions produced over the course of the clean energy transition. The issue this presents is that the CCA's allocation of no-cost allowances is based upon the existence of RCW 19.405.040 and -.050.

43 The Alternative LRCP is "the portfolio of investments the utility would have made and the expenses the utility would have incurred if not for the requirement to comply with RCW 19.405.040 and 19.405.050."[105] Were it not for those sections of CETA, it is very likely that the electric IOUs would not be granted no-cost allowances under the CCA, and

[101] Snyder, Exh. JES-1T at 19:11-20:14. *See* footnote 36 on page 20 for possible exceptions.
[102] RCW 70A.65.080(1).
[103] RCW 70A.65.060.
[104] *See* RCW 70A.65.120.
[105] WAC 480-100-605.

would therefore have to pay for allowances or obtain offsets instead.[106] Should the Alternative LRCP now include an estimate of the cost of allowances or offsets that the utilities would have been obligated to purchase to comply with the CCA? In other words, does "an accurate representation of what the utility's portfolio would have cost"[107] include assumptions as to how subsequent legislation would have been different in the absence of -.040 and -.050? While there appears to be a plausible argument that the answer is yes, Staff is concerned about engaging in this type of counterfactual and where it could lead. While Staff is not asking for Commission guidance on this issue at this point, future discussion may be warranted.

VI. CONCLUSION

44 As filed, the CEIP is missing key information that the Commission needs to determine that CETA's standards are being met. Staff's position is that the Commission should get that information as soon as possible. When considering reasonable deadlines to set on any conditions of approval, the Commission should bear in mind that PSE has been aware of all proposed conditions since at least response testimony was filed on October 10, 2022, if not when comments were filed in March 2022, and that PSE is apparently anticipating that the Comion will place conditions on the approval of the CEIP.[108] The Commission should also recall that it has already put the Company on notice that it does not consider pending litigation a good reason for delaying CETA implementation.[109]

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[106] RCW 70A.65.010(51)-(52), RCW 70A.65.170.
[107] Adoption Order at 45-46 ¶ 124.
[108] *See* Durbin, Exh. KKD-6 at 3:5-16.
[109] *See* Order 10/01 in Dockets UE-220066 and UE-210795, page 7, ¶ 24 (April 18, 2022)("… the Company is required to work towards CETA compliance even while awaiting Commission approval of interim targets in the CEIP."); Order 15/03 in Dockets UE-220066 and UE-210795 (May 23, 2022) (upholding interlocutory order denying motion to strike).

45 At the evidentiary hearing, Commissioner Doumit asked whether PSE's stance on specific actions was implicitly advocating that CETA's requirements conform to PSE's processes, rather than the other way around.[110] It's a fair question to ask not only about the Company's stance on specific actions, but about its' overall position in this case. PSE appears to ask the Commission to set the deadlines based on the Company's workload rather than on the urgency with which the Commission needs the information.

46 And there is good cause for urgency, especially when it comes to equity-related information and analysis. The clean energy transformation will only happen once. If we discover too late that the resources built to achieve the transition do not lead to an equitable distribution of benefits, correcting those mistakes may be a long, difficult, and costly process. We must all guard against unintentionally treating the equity mandate as secondary to CETA's clean energy goals. Regardless of the good intentions of all parties involved, if our decisions have the effect of prioritizing those goals at the expense of the equity mandate, then we repeat history rather than break from it.

Respectfully submitted this 22nd day of February, 2023.

ROBERT W. FERGUSON
Attorney General

/s/ *Nash Callaghan*, WSBA No. 49682
Assistant Attorney General
Office of the Attorney General
Utilities and Transportation Division
P.O. Box 40128
Olympia, WA 98504-0128
(360) 709-4830

[110] *See* Doumit, TR. 203:15-18.