

August 14, 2025

Rebecca Rothwell
Rulemaking Lead
Shoreline Management Act Rulemaking
Department of Ecology
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Subject: Comment Letter – Rulemaking process to amend Chapters 17318, -20, -22, -26, and -27 under the Shoreline Management Act

Dear Ms. Rothwell:

Puget Sound Energy (PSE) appreciates the opportunity to provide input and feedback on the Department of Ecology's (DOE) preliminary draft changes to Chapters 173-18, -20, -22, -26, and -27 of the Washington Administrative Code (WAC) implementing the Shoreline Management Act (SMA). PSE is the state's oldest and largest energy utility, serving more than 1.2 million electric customers and 900,000 natural gas customers in a 6,000-mile service territory that traverses 10 counties, primarily in the Puget Sound region of Western Washington. PSE is committed to delivering safe and reliable service to the residents and businesses throughout our service territory and is regularly subject to the policies of the SMA through city and county Shoreline Master Programs (SMPs).

PSE supports DOE's mission to protect and proactively manage state shorelines and wants to work collaboratively with DOE to ensure we can continue to efficiently and safely serve all our electric and gas customers, as mandated by state law. We offer the following comments to notify DOE about the potential impacts of the proposed code changes to PSE operations and maintenance activities.

1. General Comments

PSE is a regulated utility with an obligation to serve customers per WAC 480-100 and WAC 480-90. PSE must comply with state and federal regulations administered by various authorities, including the Washington Utilities and Transportation Commission (WUTC) and the North American Electric Reliability Corporation (NERC). PSE is also subject to state mandates to comply with the Clean Energy Transformation Act (CETA) (Ch. 19.405. RCW) and supply electricity that is 100% renewable and non-emitting by 2045. Transforming an electric grid that fuels not only homes and businesses, but also vehicles and ferries while relying primarily on renewable resources will require a more

robust and enhanced transmission system. Increasing regulations under the SMA could delay these important projects by creating an unpredictable and overly complex framework, rather than an efficient program through which PSE can avoid, minimize and mitigate potential impacts in the shoreline environment. PSE cannot completely avoid shoreline environments with our linear utilities. Our mandate to serve requires that PSE serve all customers that request electric or gas service and this includes shoreline dependent uses. Additionally, much of PSE's utility infrastructure within shoreline environments is existing and was established as early as the 1940s or 50s. We must retain the ability to repair, maintain and upgrade this critical infrastructure in a timely manner. Poles, conductors, underground conduit, cables, pipes and other accessory equipment have been installed over time. When PSE's equipment is located within road right-of-way, it must be placed to avoid conflict with other uses in the right-of-way including motorized and non-motorized uses, other utilities and features. In many cases, this pushes PSE's infrastructure to the very edge of the right-of-way, which is often unimproved, or onto private property. Even when poles are not physically located on private property, there can be a need for PSE to acquire easements on property adjacent to the right-of-way to accommodate for the swinging of wire due to wind and heat. These easements also allow PSE to maintain vegetation and meet clearance standards from the conductor. This limits the location of where PSE can place utility infrastructure and results in unavoidable, but often negligible, impacts to critical areas and vegetation within the shoreline environment. With this understanding, PSE urges DOE to preserve and protect the current shoreline substantial development permit exemption process in WAC 173-27-040(2)(b) specifically for maintenance, replacement, and upgrading of existing PSE electric and natural gas infrastructure. PSE is committed to implementing avoidance and minimization measures which greatly reduce or outright avoid impacts to state shorelines. Due to the linear nature of PSE infrastructure, overhead and underground utility facilities are located within shoreline jurisdiction to serve development and uses occurring within the shoreline or to link two defined locations that cross over shoreline areas. This includes crossing critical areas and their buffers within the shoreline jurisdiction, so similar exemptions should be extended to limited impacts to wetlands and wetland buffers for maintenance, replacement and upgrading of existing utility facilities located within or adjacent to road right-of-way or existing utility easements.

PSE must also comply with industry vegetation clearance standards to meet state and federal safety requirements to manage vegetation. In many cases, aerial powerlines are located within road right-of-way with existing vegetation around the poles, wires and other equipment has been consistently maintained by the utility or the local jurisdiction. This vegetation maintenance not only prevents outages on the electrical system but prevents storm-related traffic impacts, property damage and wildfire risk. PSE strongly urges DOE to include utility exemptions in the SMA to acknowledge the importance of vegetation management requirements for overhead electric utility lines. We suggest ensuring consistency throughout the chapter amendments that provides allowance in the SMA for ongoing maintenance of utilities, such as *“Vegetation management, including tree pruning and removal, within easements and road right-of-way necessary to maintain safe and reliable utility systems.”*

Further, as Ecology works to refine its proposed regulations to implement RCW 90.58.630, PSE requests that DOE include specific and limited common exemption language for utilities that eliminates the need for a sea level risk analysis for replacement and maintenance of existing infrastructure. It is anticipated that a consequence of higher sea levels will be an increase in the frequency of high-tide flooding and the increased potential for storm damage. PSE is governed by the National Electrical Safety Code (NESC), which the WAC refers to for most of their regulations governing electric utilities (refer to WAC 296-45-045). These safety standards take into account electrical infrastructure that may be subject to tidal action or flooding.

As jurisdictions incorporate sea level rise considerations into their SMP updates, it is important to again note that PSE is obligated to serve all customers that request electric or gas service and to maintain utility systems that can continue to provide reliable service to existing customers. This includes serving new and existing shoreline uses as well as maintaining and building new structures as part of the overall delivery system - even in high risk areas for sea level rise. For repairing, maintaining and upgrading existing critical PSE infrastructure (such as replacing a pole or underground pipe or cable – often located within road right-of-way), there should be an exemption as PSE is governed by design and operation standards that already account for tidal action and flooding. PSE would like to be a collaborative partner to create an efficient pathway to upgrade and strengthen our infrastructure as we address the evolving risk of sea level rise across our service territory.

2. Detailed comments

In addition to the general comments set forth above, PSE submits the following detailed comments on the proposed changes to Chapters 173-18, -20, -22, -26, and -27 under the Shoreline Management Act (SMA).

SMA Section	PDF Page #	Code Description	PSE Comment
73-26-020 Definitions	Pg. 17	“Hazard Tree”	PSE mitigates wildfire risk and safety concerns by removing hazardous trees near its facilities and conducting regular vegetation management along power line corridors. This includes removal of hazardous trees identified by qualified arborists and maintenance of trees that have historically been topped. Both practices prevent dangerous encroachment on the power lines. The proposed definition may not allow PSE to qualify trees growing under our lines as hazard trees. Please consider adding language that identifies trees “that pose a hazard to utility equipment and infrastructure as determined by a qualified arborist.” in the Hazard Tree definition.
173-26-226(1)(d)(ii)	Pg. 120	Activities and modifications not allowed within wetlands or their protective buffers unless proposed as part of a restoration or enhancement project. Includes (D) driving pilings; (E) placing of obstructions; (F) construction, reconstruction, demolition, or expansion of any structure; (G) significant vegetation removal; and (H) other uses or	This will have implications to current PSE infrastructure located near or in wetlands that require modification/expansion to support growth load. PSE’s mandate to serve requires that PSE serve all customers that request electric or gas service, including uses in the shoreline jurisdiction. PSE needs to ensure that maintenance and upgrades of existing utility infrastructure is permissible and timely. The proposed changes state that development activities and modifications are not allowed within wetlands or their protective buffers. PSE has existing overhead and

		development that result in ecological impacts on wetlands	underground infrastructure including poles, underground conduit and gas lines that may cross wetlands or crossing a wetland. The linear nature of PSE's infrastructure may limit our ability to avoid all wetlands and their protective buffers. PSE needs the ability to repair and maintain our existing infrastructure and install new services to developments and uses occurring in the shoreline. These activities result in no to negligible impacts to wetland functions and values and often can be restored without requiring mitigation.
173-26-226(1)(h)(ii)(B)	Pg. 131	New utilities and repair and maintenance activities related to utilities deleted from appropriate/necessary use within CMZ	Please consider keeping deleted language in Channel Migration Zones (CMZ) section related to utilities being allowed in CMZ zones if no other feasible alternative exists. The linear nature of PSE's infrastructure may limit our ability to avoid all CMZ.
173-26-226(2)(e)(ii)	Pg. 138	Shoreline vegetation protection/conservation.	This vegetation protection standards as proposed will limit PSE's ability to perform routine repair/maintenance work that is necessary to serve shoreline development and uses. PSE should not be required to replace trees that have historically been cleared from the ROW but new growth has occurred since the last clearing. A limited exemption for vegetation management should be added for existing utility infrastructure installation, repair and maintenance.
173-26-226(2)(e)(iii)(C)	Pg. 141	Selective tree pruning allowed for safety and view protection as long as tree health not impacted. Tree topping is prohibited. Tree removal/replacement ratios must exceed 3:1	PSE must comply with federal and state vegetation clearance standards around our facilities. PSE mitigates wildfire risk and safety concerns by removing hazardous trees near its facilities and conducting regular vegetation management along power line corridors. This includes removal of hazardous trees identified by qualified arborists and maintenance of trees that have historically been topped. Both practices prevent dangerous encroachment on the power

			<p>lines. PSE requests that limited utility exemptions be added to the proposed language in this section that permits vegetation management for overhead electric utilities, such as “Tree and other vegetation pruning and removal within easements and right-of-way for the purposes of operating and maintaining utilities.”</p> <p>Tree replacement ratio: Since utility corridors and transmission rights-of-way are not always safe or feasible locations to replant trees, PSE strongly encourages the inclusion of a fee-in-lieu mitigation option.</p>
173-26-231(3)(r)(v) and (iv)	Pg. 153	Limitations on vegetation modifications	<p>Recommend adding vegetation removal for operation and maintenance of utility lines to the exception from the vegetation modification standards,</p> <p>Vegetation removal restrictions added in item (iv) should include an additional allowance as follows:</p> <p>(D) Vegetation removal or clearing necessary as part of routine utility corridor maintenance according to best management practices</p>
173-26-241(3)(l)	Pg. 180-181	Shoreline Uses - Utilities	<p>Suggest adding a subsection (F) that allows for routine maintenance and replacement of existing powerlines, including corresponding vegetation management.</p> <p>Suggest adding to Subsection I.i.C which is specific to 'transmission' facilities, to include 'distribution' facilities as well.</p>
173-26-246(8)	Pg. 188	Development standards for Sea Level Rise Hazard Areas	<p>PSE has obligations to provide service within the areas that would be designated as Sea Level Rise Hazard Areas in the future. The draft language includes allowance for “minor repair and maintenance of existing structures.” 173-26-</p>

			246(8)(e)(i). This won't address PSE's obligation to provide service to water dependent and other uses however. PSE requests express exemptions/allowances for the construction of new utilities and maintenance of existing utilities serving existing and future development in SLR hazard areas provided that such utility facilities are designed, built and operated taking into considerations risks inherent with sea level rise.
173-27-030	Pg. 10	Definitions: Height	The operational height of electric distribution and transmission poles exceeds 35 feet above grade. In many jurisdictions, this is interpreted to mean each time a new pole is installed or an existing pole is replaced with a taller pole to meet safety clearances within the shoreline jurisdiction, a Shoreline Variance approval is required. This is not an efficient use of state and local resources and is not required by RCW 90.58.320, which limits structures taller than 35 feet in the shoreline jurisdiction only where they will "obstruct the view of a substantial number of residences on areas adjoining such shorelines". PSE suggests that the definition of height be revised to expressly exclude power poles from those structures subject to the height restriction.
173-27-030	Pg. 10	Definitions: Normal appurtenance or normal structure	The definition states that normal appurtenances do not include any development within a wetland. PSE has existing overhead and underground infrastructure that serves single-family residences including poles, underground conduit and gas lines that may cross wetlands or crossing a wetland may be the only option for serving a new customer. PSE needs the ability to repair and maintain our existing infrastructure and install new services to shoreline developments and uses without onerous permitting that does not apply to the primary

			residence being served. These activities result in no to negligible impacts to wetland functions and values as temporary impacts can be restored.
173-27-035(2)	Pg. 13	Exemptions from the substantial development permit process.	In subsection (a), consistency with the Sea Level Rise Hazard Area, critical area protection, mitigation sequence, use regulations, shoreline environment designation, and shoreline modification provisions is required. For repairing, maintaining and upgrading existing critical PSE infrastructure (such as replacing a pole or underground pipe or cable – often located within road right-of-way), there should be an exemption from such an arduous process that will lead the reviewer to the same conclusion as exempting the activity.
173-27-035(3)	Pg. 13	Proposals and activities that are not development or substantial development.	<p>RCW 90.58.140(1) provides that “development” shall not be undertaken on the shoreline unless it is consistent with the SMA and SMP. The proposed new WAC provision specifically addresses activities that do not qualify as development. Consequently, the standards of the SMA and local SMP need not apply.</p> <p>Further, the inclusion of “tree removal” and the catchall “other associated permits and approvals” as triggers for local government to impose master program policies and regulations is concerning. Not only would resource constraints at the local level likely render this infeasible, but the ability to perform essential maintenance on a range of existing structures (utilities, roads, residences, etc.) could be unreasonably restricted. At a minimum, recommend striking “tree removal” and “other associated permits and approvals” from the first paragraph.</p>

173-27-040	Pg. 14-15		The proposed changes dramatically alter the way exempt activities are treated under the SMA. The revised language mandates that exempt projects demonstrate all of the following: how “narrowly construed exemption criteria” are met; verify consistency with SMP policies; the burden of proof of compliance; and that conditions of approval are applied by local agencies. These requirements are more characteristic of a full-blown permit application and add substantial unwarranted burden to exempt activities.
173-27-040(2)	Pg. 15	Developments not requiring substantial development permits	In addition to (a) normal maintenance or repair of existing structures or developments, an exemption should be added for utility infrastructure that is installed within existing paved areas, road rights-of-way, under trails or driveways, graveled areas or within paved parking lots. A new section (o) should be added for utility repair and maintenance activities; specifically including overhead to underground conversion of electric distribution lines. Note that construction of service roads and utilities are currently included as exempt activities in (2)(d) of this section, but for a very limited purpose.
173-27-040(3)	Pg. 24	Application requirements for an exemption	The requirements outlined to apply for an exemption are excessive and defies the definition of exemption. Streamlining of the process is strongly encouraged; and the removal of item (g) in this section.
173-27-044	Pg. 25	Developments not required to obtain shoreline permits or local reviews	Many of the maintenance and repair activities described within subsection “(3) WSDOT facility maintenance and safety improvements” also apply to critical PSE infrastructure. DOE should add an allowance for utilities to have the same or similar allowances as WSDOT due to the essential nature of our facilities.

173-27-044(6)	Pg. 26-27		PSE requests that all utility relocations required by fish and wildlife habitat and fish passage projects are added as an outright exemption. This will eliminate a common oversight in the permit process and reduce confusion over permit requirements and risk to the projects.
173-27-185(3)	Pg. 49	Application requirements for projects in the Sea Level Rise Hazard Area	In subsection (b), if the local government determines that a proposed development is low risk, the submittal requirements in subsections (c) through (i) do not apply. Instead of leaving this determination to the discretion of each individual jurisdiction, DOE should develop common exemptions for the requirement for Sea Level Rise Hazard Area analyses, including exemptions for repair and maintenance of existing utility infrastructure,

3. Ongoing Collaboration

We request that DOE consider the unique needs of utility providers, as well as other critical infrastructure, and incorporate more flexibility into the SMA regulations to ensure that safety, reliability, and environmental goals can be achieved. The obligations and public expectations placed on government entities and owners of critical infrastructure are higher than ever, at the same time resources are being constrained. It is imperative that changes in regulation reflect this reality as we navigate the current challenges. We look forward to working with you and other affected parties to identify efficiencies and alternative methods to ensure the shorelines are protected.

Please do not hesitate to contact me at (206) 419-7840 or at brian.carrico@pse.com. PSE welcomes continued engagement throughout this process.

Sincerely,

A handwritten signature in dark ink, appearing to read "Brian Carrico", with a stylized, cursive script.

Brian Carrico
Manager, Major Facility Siting
Puget Sound Energy