

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKETS UE-151871 and UG-151872

**PUGET SOUND ENERGY'S  
RESPONSE IN OPPOSITION TO  
SUNRUN, INC.'S PETITION TO  
INTERVENE**

**I. INTRODUCTION**

1. In accordance with RCW 34.05.443 and WAC 480-07-355(2), Puget Sound Energy (PSE) responds and objects to the Petition to Intervene filed by Sunrun, Inc. (Sunrun). Sunrun, a nonregulated out-of-state business entity, has no substantial interest that can or should be addressed by the Commission in this Proceeding. Moreover, as Sunrun is only seeking intervention to further its independent business interests, the public interest will not be served by Sunrun's intervention in this case. For over a half-century, the Commission has approved similar equipment leasing programs and PSE's proposed equipment lease service is likewise fully within its jurisdictional authority and is beneficial to PSE and its customers. For these reasons, Sunrun cannot intervene and its petition should be denied.

**II. BACKGROUND**

2. Sunrun is a nonregulated Delaware company headquartered in California. According to its Petition to Intervene, Sunrun "is the largest dedicated residential rooftop solar company in the United States. The company designs, installs, monitors and maintains solar

panels on homeowner rooftops.”<sup>1</sup> Sunrun does not conduct sales in or have customers in PSE’s service area or anywhere in Washington state.<sup>2</sup>

3. Sunrun claims it has an interest in PSE’s proposed equipment lease service because one of its subsidiaries, AEE Solar, “is a market participant within PSE’s service territory . . . and employs residents of Washington State.”<sup>3</sup> AEE Solar is a nonregulated company incorporated in and headquartered in California. AEE Solar is a wholesale distributor of parts and products used in the solar panel industry.<sup>4</sup>

4. Sunrun “seeks to expand its operations in the rooftop solar market and is concerned that a decision approving the proposed Equipment Lease Service for distributed energy resources (DER) will encourage anti-competitive behavior by PSE and inhibit the growth of a private marketplace.”<sup>5</sup> Sunrun believes that PSE’s proposed program will “have a material and adverse impact on Sunrun’s interests.”<sup>6</sup> Without citing any legal authority, Sunrun also believes that PSE’s lease program is “contrary to law.”<sup>7</sup> Sunrun argues it should be able to intervene because, according to Sunrun, it “has a vested interest in ensuring distributed energy resources . . . are deployed efficiently and economically.”<sup>8</sup>

5. On December 4, 2015, Sunrun filed its Petition to Intervene.

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<sup>1</sup> Sunrun Petition to Intervene, ¶ 1.

<sup>2</sup> Sunrun, Where We Are, <http://www.sunrun.com/solar-by-state> (last visited Dec. 22, 2015) (stating Sunrun is in 15 states, but not Washington).

<sup>3</sup> Sunrun Petition to Intervene, ¶ 1.

<sup>4</sup> AEE Solar, <http://www.aeesolar.com/> (last visited Dec. 22, 2015).

<sup>5</sup> Sunrun Petition to Intervene, ¶ 1.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* ¶ 4.

<sup>8</sup> *Id.* ¶ 2.

### III. ARGUMENT

6. The Commission may grant a petition to intervene only if the petitioner “discloses a substantial interest in the subject matter of the proceeding or if the petitioner’s participation is in the public interest.”<sup>9</sup> As discussed in more detail herein, the arguments Sunrun makes in support of intervention have been rejected by the Washington Supreme Court and the Commission in prior cases. Sunrun’s argument that it should be permitted to intervene because of the alleged harm PSE’s program could have on Sunrun’s business interests does not meet the standard for intervention. Sunrun—an out-of-state entity—cannot demonstrate a substantial interest in the subject matter of this Proceeding because it is a business entity that is not subject to Commission regulation. Further, Sunrun’s intervention is not in the public interest because the Commission’s duty is to protect the interest of customers of regulated utilities, not unregulated businesses, and therefore the Commission does not have the jurisdiction or authority to consider the alleged effects of PSE’s leasing program on Sunrun. For these reasons, Sunrun’s Petition to Intervene should be denied.

#### A. Sunrun Does Not Have a Substantial Interest in the Subject Matter of the Proceeding

7. Nonregulated potential competitors of a regulated entity do not, as a matter of law, have a substantial interest in a Commission rate proceeding.<sup>10</sup> Thus, a nonregulated business entity’s commercial business interests in the outcome of a proceeding, and the potential

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<sup>9</sup> WAC 480-07-355(3).

<sup>10</sup> *Cole v. Wash. Utils. & Transp. Comm’n*, 79 Wn.2d 302, 305-06, 485 P.2d 71 (1971); *Cost Mgmt. Serv., Inc. v. Cascade Nat. Gas Corp.*, Dockets UG-070639, UG-070332, UG-070639, 2007 WL 3048838, at \*1 (Wash. U.T.C. Oct. 12, 2007) (Order Accepting CMS’ Petition for Interlocutory Review; Denying Petition; Order Consolidating Docket); *In the Matter of the Petition of GTE Northwest Inc. For Depreciation Accounting Changes*, Docket UT-961632, 1997 WL 35263579 (Wash. U.T.C. Mar. 28, 1997) (Third Supplemental Order Accepting Review of Interlocutory Order; Denying Request to Reverse Interlocutory Ruling; Denying Petitions to Intervene).

economic or market impacts of the proceeding, are wholly insufficient to grant the nonregulated entity the right to intervene.<sup>11</sup>

8. Here, Sunrun should not be permitted to intervene because as a nonregulated business entity, it cannot, as a matter of law, have a substantial interest in the Proceeding. In *Cole v. Washington Utilities & Transportation Commission*, the Washington Supreme Court affirmed the Commission's denial of intervention to an association of nonregulated fuel oil dealers because as nonregulated businesses, the association did not have a substantial interest in the proceeding.<sup>12</sup> There, the association sought to intervene in a Commission proceeding and halt a program of the Washington Natural Gas Company (WNG) to lease gas appliances to customers.<sup>13</sup> The fuel dealer association attempted to intervene to demonstrate the alleged adverse competitive impacts of the program on dealers.<sup>14</sup> The Court confirmed that the Commission's denial of the association's petition to intervene was both proper and reasonable, because, being comprised of business entities not subject to Commission regulation, the association could not demonstrate a substantial interest in a Commission rate proceeding.<sup>15</sup>

9. The same analysis holds true in this case. Like the business entities in *Cole*, while Sunrun believes that PSE's proposed equipment lease service will harm its ability to effectively compete against PSE,<sup>16</sup> as a nonregulated entity, Sunrun's private, commercial interests are not a substantial interest that the Commission recognizes for purposes of intervention in a rate

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<sup>11</sup> *SeaTac Shuttle, LLC, C-1077 v. Kenmore Air Harbor, LLC*, Docket TC-072180, 2008 WL 4824352, at \*11 (Wash. U.T.C. Oct. 31, 2008) (Final Order Denying in Part Petition for Administrative Review; Upholding Initial Order; Remanding Issue for Consideration); *Cost Mgmt. Serv., Inc.*, 2007 WL 3048838 at \*1; *In the Matter of the Petition of GTE Northwest Inc.*, 1997 WL 35263579.

<sup>12</sup> *Cole*, 79 Wn.2d at 305-10, 485 P.2d 71.

<sup>13</sup> *Id.* at 304.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 306.

<sup>16</sup> Sunrun Petition to Intervene, ¶¶ 2-4.

proceeding of a regulated entity.<sup>17</sup> As the Washington Supreme Court stated in *Cole*, “it is doubtful whether the [fuel dealer association] can prove a ‘substantial interest’ in rates charged to customers of a competitor who is regulated by different laws.”<sup>18</sup> Nonregulated competitors “do not have a right to participate freely in the determination of their regulated competitors’ rates. The Commission will not allow . . . petitioners to intervene for the purpose of protecting and promoting their competitive interests.”<sup>19</sup>

10. Finally, to the extent Sunrun believes or alleges that it has a substantial interest because it is acting on behalf of its customers or prospective customers,<sup>20</sup> the Commission has held that this type of relationship is simply “too remote to demonstrate a substantial interest” so as to justify intervention.<sup>21</sup> Not only are Sunrun’s customers all currently located out of state, but Sunrun’s “interests are not necessarily those of its customers, and [Sunrun] is not here as counsel for its customers to represent their interests.”<sup>22</sup> Rather, the interests of Sunrun’s existing or potential customers are already adequately protected by the WUTC Staff and Public Counsel.<sup>23</sup>

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<sup>17</sup> See *In the Matter of the Petition of GTE Northwest Inc.*, 1997 WL 35263579 (“[Petitioners’] interest in keeping prices as low as possible for all services they take from GTE does not constitute a ‘substantial interest.’”); *Re Puget Sound Power & Light Co.*, Dockets UE-951270 & UE-960195, 1996 WL 760071 (Wash. U.T.C. Oct. 25, 1996) (Tenth Supp. Order).

<sup>18</sup> *Cole*, 79 Wn.2d at 305, 485 P.2d 71.

<sup>19</sup> *In the Matter of the Petition of GTE Northwest Inc.*, 1997 WL 35263579. See also *In the Matter of the Application of the Ohio Bell Tel. Co. for Auth. to Amend & Increase Certain of Its Intrastate Tariffs & to Change Regulations & Practices Affecting the Same.*, 81-436-TP-AIR, 1981 WL 703630, at \*2 (F.E.D.A.P.J.P. Sept. 2, 1981) (holding “competitors of public utilities that are not ratepayers should not be permitted to intervene in cases involving a public utility before a public service or public utility commission”).

<sup>20</sup> Sunrun Petition to Intervene, ¶¶ 2-4.

<sup>21</sup> *Cost Mgmt. Serv., Inc.*, 2007 WL 3048838 at \*1.

<sup>22</sup> *Wash. Utils. & Transp. Co. v. WNG*, Docket UG-940814, 1994 WL 578214 (Wash. U.T.C. Aug. 24, 1994) (Third Supp. Order) (rejecting petitioner’s argument that it was intervening on behalf of its customers).

<sup>23</sup> *In the Matter of the Petition of GTE Northwest Inc.*, 1997 WL 35263579.

And, as a regulated entity, PSE is subject to a myriad of consumer protection statutes and rules that ensure public interests are protected.<sup>24</sup>

11. As an out-of-state business entity not subject to Commission regulation, Sunrun does not have a substantial interest in the Proceeding, and should not be permitted to intervene.

**B. Sunrun's Participation Does Not Serve the Public Interest**

12. In addition to being unable to demonstrate that it has a substantial interest in the Proceeding, Sunrun also cannot demonstrate that its intervention is in the public interest. As the Washington Supreme Court stated in *Cole*, “public interest,” in the context of the public service laws, is “that only of *customers* of the utilities which are regulated.”<sup>25</sup> Sunrun, who is not a customer of PSE, instead believes that its intervention is in the public interest because of the alleged competitive harm PSE’s proposed leasing program could have on its business interests.<sup>26</sup> However, Sunrun’s independent business interests are not a public interest. As stated by the Commission, “the public interest the Commission must protect is the *interest of customers of regulated utilities, not those of an unregulated competitor.*”<sup>27</sup> “Public interest cannot be served if the elements of public convenience and necessity require consideration of activities over which the Commission has no power to control, to supervise, or to regulate in any fashion. The

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<sup>24</sup> See, e.g., RCW 80.04.220, 380, 385, 405, 440; RCW 80.28.010, 020, 080, 090, 100, 110, 130, 212; WAC 480-90, -100.

<sup>25</sup> *Cole*, 79 Wn.2d at 306, 485 P.2d 71 (emphasis added) (“Although RCW 80.01.040(3) demands regulation in the public interest, that mandate is qualified by the following clause ‘as provided by the public service laws \* \* \*’ Appellants fail to point out any section of Title 80 which suggests that nonregulated fuel oil dealers are within the jurisdictional concern of the commission. An administrative agency must be strictly limited in its operations to those powers granted by the legislature.”) (citation omitted).

<sup>26</sup> Sunrun Petition to Intervene, ¶¶ 2-4.

<sup>27</sup> *Cost Mgmt. Serv., Inc.*, 2007 WL 3048838 at \*1 (emphasis added).

Commission has no power to protect the interests of businesses which it does not regulate.”<sup>28</sup>

Thus, as an out-of-state, nonregulated business only concerned about its profits, Sunrun is not an “essential or indispensable party” to the Proceeding.<sup>29</sup> Sunrun’s interests are not the type recognized by the Commission as benefiting the public interest.<sup>30</sup>

13. In assessing public interest, because a nonregulated entity’s interests are not the type recognized by the Commission, the Court in *Cole* held that the Commission does not have the jurisdiction or authority “to consider the effect of a regulated utility upon a nonregulated business.”<sup>31</sup> The Court found that the “[fuel dealer association]’s objections are beyond the concern of the commission under a reasonable interpretation of the term ‘public interest[,]’” and noted with approval that the Commission “concluded that it had jurisdiction only to consider the effects of competitive practices of one regulated utility upon another regulated utility and no other business.”<sup>32</sup> Therefore, “[s]ince the commission has neither express nor implied authority to examine the institute’s contentions, its denial of the institute’s petition to intervene was both proper and reasonable.”<sup>33</sup>

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<sup>28</sup> *Re Application CHA-221 of Brown’s Limousine Crew Car, Inc.*, Order M. v. Ch. No 950, 1983 WL 908124 (Wash. U.T.C. July 18, 1983) (Commission Decision and Order Denying Exceptions; Affirming Proposed Order Granting Application As Amended).

<sup>29</sup> *Id.*

<sup>30</sup> *See, e.g., Re Puget Sound Power & Light Co.*, 1996 WL 760071 (denying nonregulated businesses’ petition to intervene since contractual business interests “are not the ones the Commission has any authority to protect or influence”); *In re Wash. Water Power Co.*, Docket UE-041053 & UE-941054, 1994 WL 750580 (Wash. U.T.C. Dec. 22, 1994) (Fourth Supp. Order) (denying nonregulated company’s petition to intervene since its “interests are not such as the commission is required to consider, nor that the public services laws are designed to protect”); *WNG*, 1994 WL 578214 (“Here [petitioner’s] interests as a private marketer of services related to gas use are not within the scope of matters that the Commission may consider.”).

<sup>31</sup> *Cole*, 79 Wn.2d at 306, 485 P.2d 71.

<sup>32</sup> *Id.* at 305-06.

<sup>33</sup> *Id.* at 306.

14. Because Sunrun is a nonregulated business entity, the Commission cannot, as a matter of law, even consider the alleged anticompetitive or commercial impacts of PSE's proposed program on Sunrun because it does not have jurisdiction over those interests. The Commission simply does not have the authority "to examine the economic effects of practices of a regulated public service utility upon nonregulated competitors."<sup>34</sup>

15. Even if the Commission could consider Sunrun's allegations of harm, Sunrun has not provided any evidence of actual injury from PSE's proposed program. As noted above, Sunrun is an out-of-state company that deals in solar panels and does not compete in or have customers in PSE's service area. Indeed, Sunrun merely alleges that it "seeks to expand its operations . . . and is concerned" that PSE's program would "have a material and adverse impact on Sunrun's interests."<sup>35</sup> Thus, Sunrun's speculative concerns regarding a program in another state that is not even in effect are merely "general statement[s] of interest in the proceeding . . . not sufficient to justify intervention."<sup>36</sup>

16. Therefore, as a nonregulated business entity, Sunrun does not have a public interest that the Commission can or should consider in the context of this Proceeding and Sunrun's Petition to Intervene should be denied.

**C. Sunrun Does Not Have Standing to Intervene**

17. Even if Sunrun was regulated by the Commission, Sunrun does not have standing to intervene because PSE's proposed equipment lease service does not have anything to do with Sunrun's business. Sunrun is a solar panel company that sells and leases solar panels. The tariffs at issue in this docket would set the terms and conditions by which PSE would lease

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<sup>34</sup> *Cost Mgmt. Serv., Inc.*, 2007 WL 3048838 at \*1.

<sup>35</sup> Sunrun Petition to Intervene, ¶ 1.

<sup>36</sup> *SeaTac Shuttle, LLC, C-1077*, 2008 WL 4824352 at \*11.



equipment relating to natural gas and electric space heating and water heating equipment, which are wholly separate and distinct from Sunrun's business. In addition, Sunrun does not even conduct business in PSE's service area.<sup>37</sup> To remedy this, Sunrun apparently believes that it can salvage its failure to establish any connection to PSE's program or its service territory by noting that Sunrun's subsidiary, AEE Solar, "is a market participant within PSE's service territory . . . and employs residents of Washington State."<sup>38</sup> AEE Solar's purported participation within PSE's service area is irrelevant in this tariff proceeding because AEE Solar is a solar-panel product wholesale distribution company and would not be competing with PSE. The fact that AEE Solar apparently employs residents of Washington state is also irrelevant and does not provide Sunrun with standing to intervene.

**D. PSE's Leasing Program Is a Jurisdictional Activity of a Regulated Utility and Is An Appropriate Method of Stimulating Growth**

18. Finally, Sunrun's Petition to Intervene should be denied because PSE's proposed equipment lease service is well-within PSE's jurisdictional authority and Sunrun has no legitimate basis to challenge the legality of PSE's lease program.

19. In its Petition, Sunrun states that it "believes [PSE's] proposed schedule is contrary to law."<sup>39</sup> This is incorrect. Again, *Cole* presents nearly identical facts that control here. In that case, as described above, an association of fuel dealers sought intervention to challenge WNG's program leasing heating appliances in which the association argued the

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<sup>37</sup> See *In the Matter of the Petition of Qwest Corp., for Comm'n Approval of 2007 Additions to Non-Impaired Wire Ctr. List*, 08, 2008 WL 1815182, at \*2 (Apr. 16, 2008) (denying petition to intervene where petitioner did "not have any customers in Washington," "did not provide any information regarding a date certain when it intends to commence operations in Washington," and thus its "interest in this proceeding appears to be speculative, not substantial").

<sup>38</sup> Sunrun Petition to Intervene, ¶ 1.

<sup>39</sup> *Id.* ¶ 4.

program was harming competition.<sup>40</sup> After the Court rejected the association's argument that it had the requisite interest to intervene, the association argued that under RCW 80.04.270, the leasing of gas appliances was not a jurisdictional activity of a regulated utility and was unlawful.<sup>41</sup> RCW 80.04.270 prohibits regulated entities from "engaging in the *sale* of merchandise or appliances or equipment" unless they do so with a separate account.<sup>42</sup>

20. The Washington Supreme Court rejected the association's argument because "there is a well-recognized difference in meaning between the terms 'sale' and 'lease,' and that the jurisdictional exclusion of RCW 80.04.270 relates only to the former. . . . [A]ppellants cannot expect the commission to decide that a common lease falls within the purview of RCW 80.04.270."<sup>43</sup> Therefore, the Court confirmed the Commission's finding that leasing appliances or equipment is firmly within the jurisdictional authority of a regulated entity.<sup>44</sup>

21. Further, the leasing of equipment is a well-recognized method of stimulating growth by a utility enterprise.<sup>45</sup> As found by the Court and Commission in *Cole*, "the leasing program was legal, fully compensatory and of great benefit to the utility and to its consumers."<sup>46</sup> PSE's proposed equipment lease service is well within its jurisdictional authority; it is an appropriate business activity for PSE and is a method of promoting efficient energy related products and services. In fact, PSE has been providing equipment lease services for its natural gas customers for over 50 years and has offered equipment lease programs for electric equipment

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<sup>40</sup> *Cole*, 79 Wn.2d at 304-05, 485 P.2d 71.

<sup>41</sup> *Id.* at 307.

<sup>42</sup> RCW 80.04.270 (emphasis added).

<sup>43</sup> *Cole*, 79 Wn.2d at 307-08, 485 P.2d 71.

<sup>44</sup> *Id.* at 307-11.

<sup>45</sup> *Cole*, 79 Wn.2d at 307, 485 P.2d 71.

<sup>46</sup> *Id.*

and lighting services for over 40 years with tremendous benefit to its customers.<sup>47</sup> These programs are entirely Commission-approved and PSE's proposal is simply an extension of these well-established programs.

22. In addition, PSE's program will further the use of energy efficient appliances in Washington. Studies conducted by PSE have revealed that a significant percentage of customers in PSE's service territory are still using appliances that have exceeded their useful life and are not energy efficient.<sup>48</sup> Because the existing market is not adequately addressing this issue, PSE's program is specifically designed to stimulate and expand the use of energy efficient appliances by providing its customers with easy access to such appliances and by making such appliances affordable for customers who cannot purchase them outright.<sup>49</sup> The program will also achieve demonstrable, quantifiable public benefits through energy conservation and energy bill savings.<sup>50</sup> Sunrun's arguments to the contrary are unsupported by law and fact and do not provide a basis for Sunrun's intervention.

23. Considering Sunrun lacks a justifiable basis for its intervention, if permitted to intervene, Sunrun's involvement will likely only result in the introduction of irrelevant and inappropriate issues that will unnecessarily encumber the Proceeding.<sup>51</sup>

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<sup>47</sup> See PSE's Substitute Filing Cover Letter (Nov. 6, 2015), at 6-8; PSE's Initial Filing Cover Letter (Sept. 18, 2015), at 3-4.

<sup>48</sup> See PSE's Substitute Filing Cover Letter (Nov. 6, 2015), at 2-3.

<sup>49</sup> See PSE's Substitute Filing Cover Letter (Nov. 6, 2015), at 2-3; PSE's Initial Filing Cover Letter (Sept. 18, 2015), at 2-3.

<sup>50</sup> See PSE's Substitute Filing Cover Letter (Nov. 6, 2015), at 2-5.

<sup>51</sup> *In the Matter of the Petition of GTE Northwest Inc.*, 1997 WL 35263579 (“[T]here is a substantial likelihood that allowing these competitors to intervene in this proceeding would result in broad and contentious discovery requests, efforts to interject issues that are not material to our determination, unnecessarily long and complex hearings, and an unnecessarily large volume of evidence to consider.”); *WNG*, 1994 WL 578214 (rejecting petition to intervene since “the nature of petitioner’s interest, its contribution could be burdensome rather than helpful”).

#### IV. CONCLUSION

24. For the reasons stated above, the Commission should deny Sunrun's Petition to Intervene.

Respectfully submitted this 31st day of December, 2015.

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