

**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 THE  
SHEET METAL AND AIR  
CONDITIONING CONTRACTORS  
NATIONAL ASSOCIATION,  
WESTERN WASHINGTON'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 the Sheet Metal and Air Conditioning Contractors National Association, Western Washington (SMACNA-WW). SMACNA-WW, an association of nonregulated business entities, has no substantial interest that can or should be addressed by the Commission in this Proceeding. Moreover, as SMACNA-WW is only seeking intervention to further its collective independent business interests, the public interest will not be served by SMACNA-WW'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, SMACNA-WW cannot intervene and its petition should be denied.

## II. BACKGROUND

2. SMACNA-WW is a trade association representing independent, nonregulated businesses specializing in the sale, installation, and servicing of heating, ventilation, and air conditioning equipment.<sup>1</sup>

3. SMACNA-WW seeks intervention because it believes that PSE's proposed equipment lease program "would place PSE in direct competition with SMACNA members."<sup>2</sup> SMACNA-WW alleges that "there is a substantial danger that some costs of the proposed service may not be reflected in the prices for the service, thereby unfairly giving PSE a competitive advantage in this market."<sup>3</sup>

4. On December 29, 2015, SMACNA-WW filed its Petition to Intervene.

## III. ARGUMENT

5. 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>4</sup> As discussed in more detail herein, the arguments SMACNA-WW makes in support of intervention have been rejected by the Washington Supreme Court and the Commission in prior cases. SMACNA-WW's argument that it should be permitted to intervene because of the alleged harm PSE's program could have on SMACNA-WW's members' business interests does not meet the standard for intervention. SMACNA-WW cannot demonstrate a substantial interest in this Proceeding because neither it nor the business entities it represents are subject to Commission regulation. Further, SMACNA-WW's intervention is not in the public

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<sup>1</sup> SMACNA-WW Petition to Intervene, ¶ 2.

<sup>2</sup> *Id.* ¶ 6.

<sup>3</sup> *Id.*

<sup>4</sup> WAC 480-07-355(3).

interest because the Commission's duty is to protect the interest of customers of regulated utilities, not unregulated competitors, and therefore, the Commission does not have the jurisdiction or authority to consider the alleged effects of PSE's leasing program on SMACNA-WW or its members. For these reasons, SMACNA-WW's Petition to Intervene should be denied.

**A. SMACNA-WW Does Not Have a Substantial Interest in the Subject Matter of the Proceeding**

6. Nonregulated potential competitors of a regulated entity do not, as a matter of law, have a substantial interest in a Commission rate proceeding.<sup>5</sup> Thus, a nonregulated business entity's commercial business interests in the outcome of a proceeding, and the potential economic or market impacts of the proceeding, are wholly insufficient to grant the nonregulated entity the right to intervene.<sup>6</sup>

7. Here, SMACNA-WW cannot intervene in this Proceeding either independently, or as a representative of its nonregulated business entities, because neither are subject to Commission regulation. 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

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<sup>5</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).

<sup>6</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.

a substantial interest in the proceeding.<sup>7</sup> There, the association sought to intervene in a Commission proceeding and halt a program by the Washington Natural Gas Company (WNG) to lease gas appliances to customers.<sup>8</sup> The fuel dealer association attempted to intervene to demonstrate the alleged adverse competitive impacts of the program on its nonregulated member dealers.<sup>9</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>10</sup>

8. The same analysis holds true in this case. Like the association in *Cole*, while SMACNA-WW believes that PSE's proposed equipment lease service could harm its members' ability to effectively compete against PSE,<sup>11</sup> as nonregulated entities, neither SMACNA-WW nor its members' private, commercial interests are a substantial interest that the Commission recognizes for purposes of intervention in a rate proceeding of a regulated entity.<sup>12</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>13</sup> Nonregulated competitors "do not have a right to participate freely in the

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<sup>7</sup> *Cole*, 79 Wn.2d at 305-10, 485 P.2d 71.

<sup>8</sup> *Id.* at 304.

<sup>9</sup> *Id.* at 304.

<sup>10</sup> *Id.* at 306.

<sup>11</sup> SMACNA-WW Petition to Intervene, ¶ 6.

<sup>12</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>13</sup> *Cole*, 79 Wn.2d at 305, 485 P.2d 71.

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>14</sup>

9. Finally, to the extent SMACNA-WW believes or alleges that it has a substantial interest because it is acting on behalf of its members' customers or prospective customers,<sup>15</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>16</sup> Neither SMACNA-WW nor its members' “interests are . . . necessarily those of its customers, and [SMACNA-WW] is not here as counsel for its customers to represent their interests.”<sup>17</sup> Rather, the interests of SMACNA-WW's members as members of the public and the interests of their customers are already adequately protected by the WUTC Staff and Public Counsel.<sup>18</sup> And, as a regulated entity, PSE is subject to a myriad of consumer protection statutes and rules that ensure public interests are fully protected.<sup>19</sup> Thus, PSE's “general customers”<sup>20</sup> are already adequately represented.

10. Being comprised of business entities not subject to Commission regulation, neither SMACNA-WW nor its member entities have a substantial interest in the Proceeding and should not be permitted to intervene.

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<sup>14</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>15</sup> SMACNA-WW Petition to Intervene, ¶¶ 4-7.

<sup>16</sup> *Cost Mgmt. Serv., Inc.*, 2007 WL 3048838 at \*1.

<sup>17</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>18</sup> *In the Matter of the Petition of GTE Northwest Inc.*, 1997 WL 35263579.

<sup>19</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>20</sup> SMACNA-WW Petition to Intervene, ¶ 7.

## B. SMACNA-WW's Participation Does Not Serve the Public Interest

11. In addition to being unable to demonstrate that it has a substantial interest in the Proceeding, SMACNA-WW 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>21</sup> SMACNA-WW instead believes that its intervention is in the public interest because of the alleged competitive harm PSE’s proposed leasing program could have on the business interests of its members.<sup>22</sup> However, SMACNA-WW and its members’ 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>23</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 Commission has no power to protect the interests of businesses which it does not regulate.”<sup>24</sup> Thus, being comprised of nonregulated business entities concerned about their independent commercial interests, SMACNA-WW is not an

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<sup>21</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>22</sup> SMACNA-WW Petition to Intervene, ¶ 6.

<sup>23</sup> *Cost Mgmt. Serv., Inc.*, 2007 WL 3048838 at \*1 (emphasis added).

<sup>24</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).

“essential or indispensable party” to the Proceeding.<sup>25</sup> SMACNA-WW’s interests are not the type recognized by the Commission for purposes of protecting the public interest.<sup>26</sup>

12. In assessing public interest, because a nonregulated entity’s business 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>27</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>28</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>29</sup>

13. Like the association in *Cole*, because SMACNA-WW is comprised of nonregulated business entities, the Commission cannot, as a matter of law, even consider the alleged anticompetitive impacts of PSE’s proposed program 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

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<sup>25</sup> *Id.*

<sup>26</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>27</sup> *Cole*, 79 Wn.2d at 306, 485 P.2d 71.

<sup>28</sup> *Id.* at 305-06.

<sup>29</sup> *Id.* at 306.

competitors.”<sup>30</sup> Therefore, as a representative of nonregulated business entities, SMACNA-WW does not have a public interest that the Commission can or should consider in the context of this Proceeding and SMACNA-WW’s Petition to Intervene should be denied.

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

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

15. In its Petition, SMACNA-WW suggests that PSE’s proposed lease program is contrary to law.<sup>31</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 program was harming competition.<sup>32</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>33</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>34</sup>

16. 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

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<sup>30</sup> *Cost Mgmt. Serv., Inc.*, 2007 WL 3048838 at \*1.

<sup>31</sup> SMACNA-WW Petition to Intervene, ¶ 6.

<sup>32</sup> *Cole*, 79 Wn.2d at 304-05, 485 P.2d 71.

<sup>33</sup> *Id.* at 307.

<sup>34</sup> RCW 80.04.270 (emphasis added).



cannot expect the commission to decide that a common lease falls within the purview of RCW 80.04.270.”<sup>35</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>36</sup>

17. Further, the leasing of equipment is a well-recognized method of stimulating growth by a utility enterprise.<sup>37</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>38</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 and lighting services for over 40 years with tremendous benefit to its customers.<sup>39</sup> These programs are entirely Commission-approved and PSE’s proposal is simply an extension of these well-established programs.

18. 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>40</sup> The existing market is not currently adequately addressing this issue. PSE’s program is specifically designed to stimulate and expand the use of energy efficient

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<sup>35</sup> *Cole*, 79 Wn.2d at 307-08, 485 P.2d 71.

<sup>36</sup> *Id.* at 307-11.

<sup>37</sup> *Cole*, 79 Wn.2d at 307, 485 P.2d 71.

<sup>38</sup> *Id.*

<sup>39</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>40</sup> See PSE’s Substitute Filing Cover Letter (Nov. 6, 2015), at 2-3.

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>41</sup> The program will also achieve demonstrable, quantifiable public benefits through energy conservation and energy bill savings.<sup>42</sup> SMACNA-WW's arguments to the contrary are unsupported by law and fact and do not provide a basis for SMACNA-WW's intervention.

19. Considering SMACNA-WW lacks a justifiable basis for its intervention, if permitted to intervene, SMACNA-WW's involvement will likely only result in the introduction of irrelevant and inappropriate issues that will unnecessarily encumber the Proceeding.<sup>43</sup>

#### IV. CONCLUSION

20. For the reasons stated above, the Commission should deny SMACNA-WW's Petition to Intervene.

Respectfully submitted this 31st day of December, 2015.

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<sup>41</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>42</sup> See PSE's Substitute Filing Cover Letter (Nov. 6, 2015), at 2-5.

<sup>43</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”).

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