

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

**Docket UE-220066
Docket UG-220067**

**PUGET SOUND ENERGY'S
RESPONSE TO COALITION OF
EASTSIDE NEIGHBORHOODS FOR
SENSIBLE ENERGY'S PETITION
FOR INTERVENTION**

1. In accordance with RCW 34.05.443 and WAC 480-07-355(2), Puget Sound Energy (“PSE”) responds and objects to Coalition of Eastside Neighborhoods for Sensible Energy’s (“CENSE”) Petition to Intervene (“Petition”). The Petition should be denied because CENSE has no substantial interest not already represented, it does not identify a public interest rationale for intervention, and intervention will be unnecessarily duplicative and impair the orderly and prompt conduct of the proceeding.

I. BACKGROUND

2. On January 31, 2022, PSE submitted its multiyear general rate case requesting updates to its electric and natural gas rates including the recovery of prudent expenses. Included in that is a request for a prudence determination for expenses related to a necessary transmission line

upgrade project, Energize Eastside, which is needed to address a deficiency in electrical transmission capacity on the Eastside during peak periods.¹

3. On February 23, 2022, CENSE filed a petition to intervene in the proceeding under WAC 480-07-340(1). CENSE represents a group of Eastside residents and small businesses organized in 2014 to oppose the Energize Eastside project.² CENSE has actively opposed the project and its Environmental Impact Statement (“EIS”) since 2014, including in various land use, legislative and permit proceedings³ including before the Federal Energy Regulatory Commission (“FERC”), in permitting proceedings before the City of Bellevue, in a LUPA appeal in King County Superior Court, and before the City of Renton. Despite unsuccessfully challenging these permits and proceedings, CENSE uses these forums to relitigate the same failed arguments—that the Energize Eastside project is not needed— despite repeated findings and studies demonstrating the need for the project.⁴

4. Exactly how CENSE intends to contribute to this proceeding remains unclear. CENSE appears to seek intervention for two reasons: 1) because PSE is requesting a “prudence determination regarding Energize Eastside plans and PSE’s request to include costs they have incurred in promoting, planning, and attempting to permit EE” and 2) because “CENSE

¹ See, generally, Prefiled Direct Testimony of Dan’l R. Koch, Exh. DRK-1T at p. 43-83.

² Petition at ¶ 3.

³ *Id.*

⁴ See, generally, Prefiled Direct Testimony of Dan’l R. Koch, Exh. DRK-1T and supporting exhibits.

members would be affected if PSE is allowed to substantially raise electric rates.”⁵ However, CENSE admits that it has “not yet determined” how it intends to participate in the proceeding except to protect “the interests of its members[.]”⁶ As discussed in more detail below, the general interests that CENSE has identified—prudence of the Energize Eastside project and a proposed increase in electric rates— are adequately protected by other parties to the case and fall squarely within the ambit of Public Counsel’s responsibilities to represent PSE’s residential and small business customers. Allowing CENSE to intervene will be duplicative and does not meet the standard for intervention.

II. ARGUMENT

5. The Commission may grant a petition to intervene 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.”⁷ The petitioner must also qualify under the law and the intervention must “not impair the orderly and prompt conduct of the proceedings.”⁸

6. The interests CENSE identifies are already adequately represented and protected by other statutory parties to the case, and CENSE does not explain why its participation is in the public interest. Additionally, CENSE’s ambiguous articulation of the purpose and scope of its interest (i.e., CENSE provides no information as to how the effect of a rate change would be adverse or

⁵ Petition at ¶ 4-5.

⁶ *Id.* at ¶ 6.

⁷ WAC 480-07-355(3).

⁸ RCW 35.05.443(1).

in any way significant to its members) raises the concern that CENSE is attempting to use the rate case to relitigate permitting decisions already made by municipalities involving Energize Eastside. Delving into these issues are beyond the scope of this proceeding and would distract from the issues before the Commission.

A. CENSE’s Petition for Intervention Does Not Meet the Substantial Interest or Public Interest Standard

7. A petition to intervene may be granted if the petitioner “has a substantial interest in the subject matter of the hearing or if the petitioner's participation is in the public interest.”⁹

CENSE’s Petition fails to meet either of these standards.

8. WAC 480-07-355(1)(c) requires the petitioner to identify its interest in the proceeding, its position with respect to the matters in controversy, and whether it proposes to broaden the issues. CENSE’s Petition fails to meet this standard because it does not clearly or concisely articulate its expected involvement. Instead, CENSE vaguely states that it “has not yet determined the extent of its participation or the precise nature of the relief it will request[.]”¹⁰ Without articulating the extent to which CENSE will participate, CENSE has not met the basic requirements in WAC 480-07-355(1)(c). The Commission should be wary of interventions where a group or organization is unable to explain the expected extent of its involvement and whether it will expand the issues.

⁹ WAC 480-07-355(3).

¹⁰ Petition at ¶ 6.

1. CENSE Cannot Demonstrate a Substantial Interest

9. Generally, a petitioner must demonstrate “a nexus between the stated purpose of its intervention and an interest protected by a Washington statute within the Commission's jurisdiction.”¹¹ To demonstrate a petitioner’s interest is substantial, the petitioner must also show the interest is not adequately represented by another party, like Public Counsel.¹² CENSE cannot demonstrate it has a substantial interest in the subject matter of the case not already represented, as the Commission requires.¹³ CENSE states its members are PSE residential and small business customers where the Energize Eastside project is proposed, and it has participated in public commenting and open record permitting forums in the past, but it does not articulate how that participation or geographic connection equates to a substantial interest in the proceeding.¹⁴ Claiming an interest based on service territory affiliation is insufficient to demonstrate a substantial interest, especially when those interests are already represented by Public Counsel.¹⁵ Residential and small business customers are not granted intervention in general rate cases because representing residential and small commercial ratepayers is the statutory responsibility of Public Counsel.¹⁶ A similar argument was proffered in Avista’s 2019 rate case by an interest

¹¹ *In the Matter of the Application of Puget Sound Energy for an Ord. Authorizing the Sale of All of Puget Sound Energy’s Ints. in Colstrip Unit 4 & Certain of Puget Sound Energy’s Ints. in the Colstrip Transmission Sys.*, Docket UE-200115, Order 04 ¶14 (Sept. 10, 2014).

¹² *See WUTC v. Avista Corporation*, Docket UE-190334 (consolidated), Order 04 at ¶ 15 (June 28, 2019) (holding the intervenor’s interests were “adequately represented by Public Counsel, whose sole responsibility is to represent residential and small commercial ratepayers before the Commission”).

¹³ *Id.*

¹⁴ *See* Petition ¶¶ 3-6.

¹⁵ *See WUTC v. Avista Corporation*, Docket UE-190334 (consolidated), Order 04 at ¶ 15 (June 28, 2019) (holding “representation of the interests of those same customers [as Public Counsel] would be unnecessarily duplicative”).

¹⁶ *Id.*

group like CENSE which claimed its intervention was necessary to safeguard the interests of residential and small business customers in Avista's service territory.¹⁷ The Commission denied intervention in part because Public Counsel adequately represents, and is statutorily required to represent, the interests of residential and small business members.¹⁸

10. CENSE's representation of certain residential and small business interests would be unnecessarily duplicative, and CENSE does not proffer an argument or evidence that Public Counsel is unable to represent their interests in any meaningful manner. Accordingly, CENSE cannot demonstrate that it has a substantial interest in this proceeding.

2. CENSE Cannot Demonstrate Intervention is in the Public Interest

11. CENSE's intervention is also not in the public interest. CENSE does not explain why its participation would benefit the public interest under WAC 480-07-355, except the Petition generally makes the point that CENSE members will be affected by the Commission's decisions in the proceeding.¹⁹ But that is potentially true for all of PSE's customers and is insufficient to demonstrate how CENSE's intervention will uniquely benefit the public interest. As noted above, Public Counsel is tasked with representing the interests of residential and small commercial ratepayers, so there is no unique interest not already adequately represented.²⁰

¹⁷ *Id.* at ¶¶ 13-14.

¹⁸ *Id.* at ¶¶ 13-14; see also RCW 80.04.510.

¹⁹ See Petition at ¶ 5.

²⁰ *WUTC v. Avista Corporation*, Docket UE-190334 (consolidated), Order 04 at ¶ 15 (June 28, 2019).

12. CENSE also alludes to its participation in legislative and permit proceedings for the Energize Eastside project but fails to articulate how providing comments during permitting processes brings a perspective that benefits the public interest.²¹ The Commission has denied interventions for similar interest groups, where the primary nexus for its interests are based on a particularly salient issue to that group, its members are in the service area, and when the organization fails to articulate how Public Counsel is unable to represent those interests.²² Nor does CENSE identify any area of expertise it would bring that would benefit the public interest.²³ The Commission should deny CENSE’s petition for intervention.²⁴

13. Notably, denying the Petition will not preclude CENSE’s participation. There will be opportunities for CENSE to participate in the proceeding through public comment (oral and written) and the Commission will be able to consider those comments to the extent they are relevant. The Commission has found the public comment processes provide “individual customers, or groups of customers, ample opportunity to share their concerns in general rate proceedings.”²⁵

²¹ See Petition at ¶ 3.

²² *WUTC v. Avista Corporation*, Docket UE-190334 (consolidated), Order 04 at ¶¶ 13-15, 23 (June 28, 2019).

²³ See *WUTC v. Avista Corporation*, Docket UE-190334 (consolidated), Order 03 at FN 10 (May 30, 2019) (Noting the Commission has granted intervention to parties with a demonstrated area of expertise separate from Public Counsel like: “low-income advocates (e.g. The Energy Project), large industrial customers (e.g. AWEC and its predecessors, Industrial Consumers of Northwest Utilities and Northwest Industrial Gas Users), and environmental organizations (e.g. Sierra Club, NW Energy Coalition).”).

²⁴ See generally *id.* at ¶ 16.

²⁵ *Id.* at ¶ 14.

B. CENSE’s Intervention Will Broaden the Issues.

14. The Commission should be concerned about CENSE’s motives for intervening in this case. CENSE was required under WAC 480-07-355(1)(c) to clearly state its interests in the proceeding, its position with respect to issues in the proceeding, and whether it intends to broaden the issues in the case. While CENSE baldly claims it will not “unnecessarily broaden the issues or burden the record in this proceeding,”²⁶ CENSE also broadly states that it will participate “to the extent necessary to ensure the interests of its members and other Washington ratepayers in PSE’s jurisdiction are protected.”²⁷ CENSE candidly admits that it “has not yet determined the extent of its participation or the precise nature of the relief it will request.”²⁸ Particularly given CENSE’s past actions surrounding Energize Eastside proceedings, this is insufficient to assure the Commission that CENSE will not broaden the issues in this proceeding, duplicate efforts, or use the general rate case as a collateral forum to relitigate issues decided in prior cases.
15. CENSE has repeatedly, and unsuccessfully, opposed and appealed the Energize Eastside project in multiple forums, leading to delays and extended proceedings.²⁹ The Commission should not allow CENSE to intervene, unnecessarily expand and delay the proceeding, and

²⁶ Petition at ¶ 6.

²⁷ *Id.*

²⁸ *Id.*

²⁹ As previously noted, CENSE has unsuccessfully challenged the Energize Eastside transmission proceedings before FERC (2015), in the Bellevue conditional use permit (“CUP”) hearing (2018), in a LUPA proceeding in King County Superior Court (2020), and a Renton CUP hearing (2020). CENSE also opposed the Energize Eastside project in the Newcastle CUP hearing (2022), for which a decision has not yet been issued.

relitigate issues that have been addressed and are appropriately addressed in other proceedings in which it has participated.

16. In the Petition, CENSE lists several issues for which it advocates, including “concerns about the need, safety, cost and environmental impacts of ... Energize Eastside.”³⁰ If granted intervention, CENSE likely will seek to relitigate concerns about safety and environmental impacts, that are outside the Commission’s jurisdiction. Furthermore, these concerns were already addressed by the permitting jurisdictions and through the finalized EIS, and on appeal before FERC and in superior court. Having asked these questions and having them resolved elsewhere, there can be no additional public interest served by re-engaging them here.

III. CONCLUSION

17. The Commission should deny CENSE’s Petition. CENSE is a group of residential and small business customers whose interests are already ably protected by Public Counsel. Denying the Petition does not foreclose CENSE’s participation because it will have the opportunity to be heard through the public comment process, and if it wishes, by coordinating its concerns with Public Counsel. CENSE has not demonstrated it has a substantial interest not already protected, or that its intervention is in the public interest.

RESPECTFULLY SUBMITTED this 24th day of February, 2022.

³⁰ Petition at ¶ 3.

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