

**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 THE PUYALLUP
TRIBE OF INDIANS' PETITION FOR
INTERVENTION**

- I.* In accordance with RCW 34.05.443 and WAC 480-07-355(2) Puget Sound Energy (“PSE”) responds and objects to the Puyallup Tribe of Indians’ (the “Tribe”) Petition for Intervention (“Petition”). The Petition should be denied because the Tribe cannot demonstrate a substantial interest, it does not identify a public interest rationale for intervention, and intervention risks the process being unnecessarily used to divert resources away from the focus of this proceeding.

PUGET SOUND ENERGY’S RESPONSE TO
THE PUYALLUP TRIBE OF INDIANS’
PETITION FOR INTERVENTION – 1

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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 request is for a prudency determination for expenses related to the Tacoma LNG Plant.¹
3. On February 23, 2022 the Tribe filed a petition to intervene in the proceeding under WAC 480-07-340(1). The Tribe claims it “holds unique and distinct evidence” regarding the “costs PSE incurred” for the Tacoma LNG plant.² The Tribe also claims it owns facilities and its members use PSE services.³
4. The Tribe has a long history opposing the Tacoma LNG project dating back to 2015. It has challenged the project’s Shoreline Substantial Development Permit by the City of Tacoma and unsuccessfully appealed the decision to the Court of Appeals.⁴ The Tribe also challenged the Section 401 Certification and Coastal Zone Management Certification,⁵ and unsuccessfully appealed the decision to the superior court. Finally, the Tribe also challenged the decision of the Puget Sound Clean Air Agency issuance of a Notice of Construction and a Supplemental Environmental Impact Statement specific to greenhouse gas emissions, both of which were upheld by the Pollution Control Hearing Board (“PCHB”).⁶ The Tribe was able to conduct

¹See, generally, Prefiled Direct Testimony of Ron J. Roberts, Exh. RJR-1CT.

² Petition at ¶ 5

³ *Id.* at ¶ 4.

⁴ Shoreline Hearings Board (SHB No. 16-002).

⁵ Pollution Control Hearing Board (PCHB-16-120c).

⁶ Pollution Control Hearing Board (PCHB-19-087c).

discovery in these proceedings, and even requested delays to the proceeding to conduct discovery in its challenge to the Section 401 Certification.⁷ There are still multiple active proceedings in which the Tribe is challenging rulings unfavorable to the Tribe related to the Tacoma LNG plant. In every proceeding thus far, the Tribe has ultimately been unsuccessful. The Tribe has used these litigation and discovery processes to delay the Tacoma LNG project and has appealed almost every permitting decision. Indeed just last week, the Tribe sent a 60-day notice of intent to sue for additional alleged deficiencies related to the air permit notwithstanding the PCHB's recent decision upholding that permit. As discussed in more detail below, the interests identified by the Tribe do not meet the substantial interest or public interest standard.

5. If the Tribe is granted intervention, the Tribe's participation should be limited only to issues directly related to its members and interests not already represented by another party. Finally, given the Tribe's past use of the discovery process to delay proceedings, the Tribe should not be permitted to abuse the Commission's discovery process, or improperly use the discovery process to gain access to documents to use in other appeals or other proceedings related to the Tacoma LNG plant.

II. ARGUMENT

6. 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

⁷ See PCHB No. 16-120c, Order on Motions at p. 8 (Jan. 16, 2018) (citing April 21, 2017 motion to continue hearing).

the public interest.”⁸ The petitioner must also qualify under the law and the intervention must “not impair the orderly and prompt conduct of the proceedings.”⁹

7. The Tribe does not sufficiently identify a substantial interest in this case that is not already represented, nor does the Tribe adequately identify why its participation is in the public interest. Additionally, the Tribe does not articulate a nexus between the “unique” evidence it claims to possess for the Tacoma LNG plant, and the interests it proffers: the use of PSE utility services and members who qualify for need-based assistance.

8. Notably, the Tribe’s “unique and distinct evidence” has no further description or explanation. The Tribe is not hiding its true motivations here; it wants to present evidence already discredited in prior proceedings to obfuscate this process. This is not a basis to find a substantial interest much less a public interest. The Tribe could simply provide this evidence to Staff or Public Counsel, and if the purported evidence is credible, it will be used in the proceeding.

9. If the Commission does allow the Tribe to intervene, the Tribe will distract from the issues properly before the Commission and use the process as leverage in other appeals unless appropriate limitations are imposed.

⁸ WAC 480-07-355(3).

⁹ RCW 35.05.443(1).

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

10. 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.”¹⁰ Generally, the 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.¹²
11. 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. The Tribe’s Petition does not meet this standard because it claims to have “evidence regarding the *actual* natural gas service provided to ratepayers” based on representations to regulatory agencies.¹³ The Tribe’s statement does not articulate the extent to which it wishes to participate, only that it wishes to present evidence from other proceedings. The Commission should be concerned the Tribe will dramatically expand the scope of its participation given it is involved in active litigation against PSE on issues much broader than those before the Commission, and a

¹⁰ WAC 480-07-355(3).

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) (denying intervention because 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 Petition at ¶ 5 (emphasis in the original).

primary basis for its participation is purported evidence related to those proceedings rather than the interests of its members. This is inconsistent with the requirements of WAC 480-07-355(1)(c).

1. The Tribe Cannot Demonstrate a Substantial Interest

12. The Tribe’s justifications for intervention are insufficient to demonstrate a substantial interest in the subject matter of the hearing. The Tribe’s basis for intervention is that it claims to have “evidence regarding the *actual* natural gas service provided to ratepayers” based on PSE’s representations to regulatory agencies.¹⁴ But, this is insufficient to show a substantial interest that cannot be represented by other parties because the purported evidence should be readily available, or the Tribe can simply provide the information in coordination with other parties. Unsuccessfully litigating against a project’s permits is not a basis to meet the substantial interest standard.

13. The Tribe also mentions it uses PSE for utility services and its members are PSE customers that might qualify for need-based utility assistance.¹⁵ The general services provided by PSE to the Tribe are not unique and are adequately represented by other parties in this litigation. Additionally, the Tribe has not demonstrated any unique level of expertise that

¹⁴ Petition at ¶ 5 (emphasis in the original).

¹⁵ Petition at ¶ 4.

typically warrants intervention.¹⁶ The Tribe’s interest can adequately be represented in comments or coordination with other parties.

14. Finally, the stated purpose of the Tribe’s intervention is primarily based on its preference to present purportedly unique evidence that was made available in administrative proceedings. Clearly, the Tribe’s Petition does not attempt to demonstrate or explain the nexus between the interests proffered and the apparent need to offer evidence from an administrative proceeding.

15. If the Tribe is allowed to intervene, the Commission should exercise its authority under RCW 35.04.443(1) and limit the Tribe’s participation only to matters related to its members who are “eligible for need-based utility assistance” to ensure the orderly and prompt conduct of the proceedings.¹⁷

2. *The Tribe Cannot Demonstrate Intervention is in the Public Interest*

16. The Petition does not proffer an argument specific to whether the Tribe’s intervention is in the public interest. Rather, the Petition conflates the two standards, claiming their participation would be in the public interest because they claim to have a substantial interest.¹⁸ Even if the Commission construes the argument that possession of “evidence as to the actual use of the

¹⁶ 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 particular expertise 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).”.

¹⁷ Petition at ¶ 4.

¹⁸ Petition at ¶ 6

facility” as an argument in favor of the public interest standard, the Petition still fails to meet the standard. If the purported evidence from public proceedings the Tribe possesses is somehow exclusively in their possession, the Tribe offers no explanation how that warrants intervention. In fact, allowing intervention on this basis would be against the public interest because it would incentivize parties to withhold vital evidence unless they are granted intervention status. The Tribe can easily participate in the public comment process and coordinate with other parties to enter the purported evidence into the record if it is relevant.

B. If the Tribe is Granted Intervention, Participation Should be Limited to Avoid Broadening the Issues.

17. Under RCW 35.05.443(1) authorizes intervention if it “will not impair the orderly and prompt conduct of the proceedings.” RCW 35.05.443(2) also authorized the imposition of conditions to limit issues to a particular interest and limit the use of discovery to promote the orderly and prompt conduct of the proceeding. The Tribe’s regular role as an unsuccessful appellant of Tacoma LNG plant permits in administrative proceedings demonstrates that it has conducted extensive discovery to no avail.¹⁹ There are serious concerns the Tribe will use the discovery process in this rate case to either delay the proceedings or further assist it with other appeals and proceedings related to permitting decisions.

¹⁹ See e.g., Shoreline Hearings Board (SHB No. 16-002); Pollution Control Hearing Board (PCHB-16-120c); Pollution Control Hearing Board (PCHB-19-087c).

18. If the Tribe is authorized to intervene, its participation and use of discovery should be limited to a narrow set of interests identified in its Petition and the Tribe should be expressly instructed not to use information gained in discovery in this proceeding for purposes outside of the current Commission proceeding. The Tribe should not be permitted to intervene in this proceeding for the purpose of seeking discovery of documents for use in other appeals and proceedings.

III. CONCLUSION

RESPECTFULLY SUBMITTED this 24th day of February, 2022.

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