

**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
WASHINGTON STATE HEATING,
VENTILATION, AND AIR
CONDITIONING CONTRACTORS
ASSOCIATION'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 Washington State Heating, Ventilation, and Air Conditioning Contractors Association (WSHVACCA). The WSHVACCA, an association of nonregulated business entities, has no substantial interest that can or should be addressed by the Commission in this Proceeding. Moreover, as the WSHVACCA is only seeking intervention to further its collective independent business interests, the public interest will not be served by the WSHVACCA'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, the WSHVACCA cannot intervene and its petition should be denied.

II. BACKGROUND

2. The WSHVACCA is an association representing the heating, ventilation, and air condition (HVAC) industry in Washington state. The WSHVACCA is comprised of independent, nonregulated contractors, suppliers, and manufacturers in the HVAC industry, some of which operate within PSE's service territory.¹

3. The WSHVACCA seeks intervention because it believes that PSE's proposed equipment lease program "will hinder . . . getting energy efficient appliances into homes and businesses, will encourage anti-competitive behavior by PSE, and weaken consumer protection."² The WSHVACCA alleges that PSE's program could have "material and adverse impacts on the interests of the members of the WSHVACCA and on the interests of their customers."³

4. On December 21, 2015, the WSHVACCA 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."⁴ As discussed in more detail herein, the arguments the WSHVACCA makes in support of intervention have been rejected by the Washington Supreme Court and the Commission in prior cases. The WSHVACCA's argument that it should be permitted to intervene because of the alleged harm PSE's program could have on the WSHVACCA's members' business interests does not meet the standard for intervention. The WSHVACCA

¹ WSHVACCA Petition to Intervene, ¶ 1.

² *Id.* ¶¶ 1-2.

³ *Id.*

⁴ WAC 480-07-355(3).

cannot demonstrate a substantial interest in this Proceeding because neither it nor the business entities it represents are subject to Commission regulation. Further, the WSHVACCA'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 competitors, and therefore, the Commission does not have the jurisdiction or authority to consider the alleged effects of PSE's leasing program on the WSHVACCA or its members. For these reasons, the WSHVACCA's Petition to Intervene should be denied.

A. The WSHVACCA 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.⁵ 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.⁶

7. Here, the WSHVACCA cannot intervene into 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

⁵ *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).

⁶ *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.

association did not have a substantial interest in the proceeding.⁷ 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.⁸ The fuel dealer association attempted to intervene to demonstrate the alleged adverse competitive impacts of the program on its nonregulated member dealers.⁹ 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.¹⁰

8. The same analysis holds true in this case. Like the association in *Cole*, while the WSHVACCA believes that PSE's proposed equipment lease service could harm its members' ability to effectively compete against PSE,¹¹ as nonregulated entities, neither the WSHVACCA 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.¹² 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."¹³ Nonregulated competitors "do not have a right to participate freely in the

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

⁸ *Id.* at 304.

⁹ *Id.* at 304.

¹⁰ *Id.* at 306.

¹¹ WSHVACCA Petition to Intervene, ¶¶ 1-4.

¹² 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).

¹³ *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.”¹⁴

9. Finally, to the extent the WSHVACCA believes or alleges that it has a substantial interest because it is acting on behalf of its members' customers or prospective customers,¹⁵ the Commission has held that this type of relationship is simply “too remote to demonstrate a substantial interest” so as to justify intervention.¹⁶ Neither the WSHVACCA nor its members' “interests are . . . necessarily those of its customers, and [the WSHVACCA] is not here as counsel for its customers to represent their interests.”¹⁷ Rather, the interests of the WSHVACCA's members as members of the public and the interests of their customers are already adequately protected by the WUTC Staff and Public Counsel.¹⁸ And, as a regulated entity, PSE is subject to a myriad of consumer protection statutes and rules that ensure public interests are fully protected.¹⁹

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

¹⁴ *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”).

¹⁵ WSHVACCA Petition to Intervene ¶¶ 2-4.

¹⁶ *Cost Mgmt. Serv., Inc.*, 2007 WL 3048838 at *1.

¹⁷ *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).

¹⁸ *In the Matter of the Petition of GTE Northwest Inc.*, 1997 WL 35263579.

¹⁹ 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.

B. The WSHVACCA'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, the WSHVACCA 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.”²⁰ The WSHVACCA 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.²¹ However, the WSHVACCA 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.*”²² “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.”²³ Thus, being comprised of nonregulated business entities concerned about their independent commercial interests, the WSHVACCA is not an “essential or

²⁰ *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).

²¹ WSHVACCA Petition to Intervene, ¶¶ 1-2, 4.

²² *Cost Mgmt. Serv., Inc.*, 2007 WL 3048838 at *1 (emphasis added).

²³ *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).

indispensable party” to the Proceeding.²⁴ The WSHVACCA’s interests are not the type recognized by the Commission for purposes of protecting the public interest.²⁵

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.”²⁶ 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.”²⁷ 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.”²⁸

13. Like the association in *Cole*, because the WSHVACCA is comprised of nonregulated business entities, the Commission cannot, as a matter of law, even consider the alleged anticompetitive or “pecuniary”²⁹ impacts of PSE’s proposed program because it does not have jurisdiction over those interests. The Commission simply does not have the authority “to

²⁴ *Id.*

²⁵ 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.”).

²⁶ *Cole*, 79 Wn.2d at 306, 485 P.2d 71.

²⁷ *Id.* at 305-06.

²⁸ *Id.* at 306.

²⁹ WSHVACCA Petition to Intervene, ¶ 5.

examine the economic effects of practices of a regulated public service utility upon nonregulated competitors.”³⁰ Therefore, as a representative of nonregulated business entities, the WSHVACCA does not have a public interest that the Commission can or should consider in the context of this Proceeding and the WSHVACCA’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, the WSHVACCA’s Petition to Intervene should be denied because PSE’s proposed equipment lease service is well-within PSE’s jurisdictional authority and the WSHVACCA has no legitimate basis to challenge the legality of PSE’s proposed lease program.

15. In its Petition, the WSHVACCA states that it believes PSE’s proposed lease program is contrary to law.³¹ 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.³² 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.³³ 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.³⁴

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

³⁰ *Cost Mgmt. Serv., Inc.*, 2007 WL 3048838 at *1.

³¹ WSHVACCA Petition to Intervene, ¶¶ 1-4.

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

³³ *Id.* at 307.

³⁴ RCW 80.04.270 (emphasis added).

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.”³⁵ Therefore, the Court confirmed the Commission’s finding that leasing appliances or equipment is firmly within the jurisdictional authority of a regulated entity.³⁶

17. Further, the leasing of equipment is a well-recognized method of stimulating growth by a utility enterprise.³⁷ 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.”³⁸ 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.³⁹ 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.⁴⁰ In its petition, the WSHVACCA incorrectly and without any basis asserts

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

³⁶ *Id.* at 307-11.

³⁷ *Cole*, 79 Wn.2d at 307, 485 P.2d 71.

³⁸ *Id.*

³⁹ 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.

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

that PSE's program will hinder the advancement of getting energy efficient appliances into homes.⁴¹ In reality, 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 appliances by providing its customers with easy access to such appliances and by making such appliances affordable for customers who cannot purchase them outright.⁴² The program will also achieve demonstrable, quantifiable public benefits through energy conservation and energy bill savings.⁴³ The WSHVACCA's arguments to the contrary are unsupported by law and fact and do not provide a basis for the WSHVACCA's intervention.

19. Considering the WSHVACCA lacks a justifiable basis for its intervention, if permitted to intervene, the WSHVACCA's involvement will likely only result in the introduction of irrelevant and inappropriate issues that will unnecessarily encumber the Proceeding.⁴⁴

IV. CONCLUSION

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

Respectfully submitted this 31st day of December, 2015.

⁴¹ WSHVACCA Petition to Intervene, ¶¶ 1, 5.

⁴² 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.

⁴³ See PSE's Substitute Filing Cover Letter (Nov. 6, 2015), at 2-5.

⁴⁴ *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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