

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UE-161123

**PUGET SOUND ENERGY'S
RESPONSE IN OPPOSITION TO THE
PETITION TO INTERVENE OF THE
NORTHWEST AND
INTERMOUNTAIN POWER
PRODUCERS COALITION**

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 Northwest and Intermountain Power Producers Coalition (“NIPPC”). NIPPC, a nonregulated trade association whose members include private industry participants active in the Pacific Northwest and Western energy markets, has no substantial interest that can or should be addressed by the Commission in this Proceeding. Moreover, as NIPPC is only seeking intervention to further the independent business interests of its members, the public interest will not be served by NIPPC’s intervention in this case. NIPPC cannot intervene and its petition should be denied.

II. BACKGROUND

2. On November 2, 2016, NIPPC filed the Petition to Intervene of the Northwest and Intermountain Power Producers Coalition in Docket UE-161123 (the “NIPPC Petition to Intervene”).

3. NIPPC is an association of nonregulated independent power producers that participate in competitive energy markets. According to the NIPPC Petition to Intervene, the purpose of NIPPC “is to represent the interests of independent power producers and marketers in developing rules and policies that help achieve a competitive electric power supply market in the Pacific Northwest.”¹

4. The NIPPC Petition to Intervene states NIPPC’s interest in PSE’s proposed Schedule 451 as follows:

NIPPC generally supports direct access because it lowers end use consumer retail rates, and fosters competitive power markets. NIPPC’s members’ ability to participate in competitive energy markets and sell power to Washington customers may be directly impacted by this proceeding. Any Commission determination made in connection with these proceedings could impact NIPPC’s current and future members. Accordingly, NIPPC has a direct and substantial interest in this proceeding that will not be adequately represented by any other party.²

The NIPPC Petition to Intervene further describes NIPPC’s interest in this proceeding as follows:

NIPPC plans to participate and review PSE’s proposed filings to ensure it complies with Washington and federal law. NIPPC intends to participate in all aspect of this particular proceeding and will not unreasonably broaden the issues, burden the record, or delay this proceeding. Without the opportunity to intervene herein, NIPPC would be without a manner or means of participating in the lawful determination of issues that may affect NIPPC members.³

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

¹ NIPPC Petition to Intervene, ¶ 4.

² *Id.*, ¶ 7.

³ *Id.*, ¶ 8.

in the public interest.”⁴ As discussed in more detail herein, the arguments NIPPC makes in support of intervention have been rejected by the Washington Supreme Court and the Commission in prior cases.

6. NIPPC’s argument that it should be permitted to intervene because “[a]ny Commission determination made in connection with these proceedings could impact NIPPC’s current and future members”⁵ does not meet the standard for intervention. NIPPC cannot demonstrate a substantial interest in the subject matter of this proceeding because each of NIPPC and its members is a business entity that is not subject to Commission regulation. Further, NIPPC’s intervention is not in the public interest because the Commission’s duty is to protect the interest of customers of regulated utilities and not unregulated businesses. Therefore, the Commission does not have the jurisdiction or authority to consider the alleged effects of the proposed Schedule 451 on NIPPC or its members. For these reasons, the NIPPC Petition to Intervene should be denied.

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

7. Neither nonregulated competitors nor nonregulated potential competitors of a regulated entity have a substantial interest in a Commission rate proceeding as a matter of law.⁶

Thus, a nonregulated business entity’s commercial business interests in the outcome of a

⁴ WAC 480-07-355(3).

⁵ NIPPC Petition to Intervene, ¶ 7.

⁶ *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).

proceeding—and the potential economic or market impacts of the proceeding—are wholly insufficient to grant the nonregulated entity the right to intervene.⁷

8. Here, NIPPC should not be permitted to intervene because NIPPC and each of its members is a nonregulated business entity that 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.⁸ There, the association sought to intervene in a Commission proceeding and halt a program of the Washington Natural Gas Company to lease gas appliances to customers.⁹ The fuel dealer association attempted to intervene to demonstrate the alleged adverse competitive impacts of the program on dealers.¹⁰ The Court confirmed that the Commission’s denial of the association’s petition to intervene was both proper and reasonable because the association or nonregulated business entities not subject to Commission regulation could not demonstrate a substantial interest in a Commission rate proceeding.¹¹

9. The same analysis holds true in this case. The private, commercial interests of NIPPC members—like private, commercial interests of the business entities in *Cole*—are not substantial interests that the Commission recognizes for purposes of intervention in a rate

⁷ *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.

⁸ *Cole*, 79 Wn.2d at 305-10, 485 P.2d 71.

⁹ *Id.* at 304.

¹⁰ *Id.*

¹¹ *Id.* at 306.

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 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

10. Finally, to the extent NIPPC believes or alleges that it or any of its members has a substantial interest because NIPPC is acting on behalf of its members’ customers or prospective customers, the Commission has held that this type of relationship is simply “too remote to demonstrate a substantial interest” so as to justify intervention.¹⁵ The interests of the potential customers of NIPPC’s members “are not necessarily those of its customers, and [NIPPC] is not here as counsel for its customers to represent their interests.”¹⁶ Rather, the interests of potential customers of NIPPC’s members are already adequately protected by the Commission Staff and Public Counsel.¹⁷ And, as a regulated entity, PSE is subject to a myriad of consumer protection statutes and rules that ensure public interests are protected.¹⁸

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.

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

¹⁶ *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).

¹⁷ *In the Matter of the Petition of GTE Northwest Inc.*, 1997 WL 35263579.

¹⁸ 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.

11. As a nonregulated trade association whose members include private industry participants active in the Pacific Northwest and Western energy markets, NIPPC does not have a substantial interest in this proceeding and should not be permitted to intervene.

B. NIPPC’s Participation Does Not Serve the Public Interest

12. In addition to being unable to demonstrate that it has a substantial interest in this proceeding, NIPPC 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.”¹⁹ NIPPC, who is not a customer of PSE, instead believes that its intervention is in the public interest because “[a]ny Commission determination made in connection with these proceedings could impact NIPPC’s current and future members.”²⁰

13. The independent business interests of NIPPC and its members, however, are not a public interest. As previously stated by this Commission, “the public interest the Commission must protect is the *interest of customers of regulated utilities, not those of an unregulated competitor.*”²¹ “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

¹⁹ *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).

²⁰ *Id.*, ¶ 7.

²¹ *Cost Mgmt. Serv., Inc.*, 2007 WL 3048838 at *1 (emphasis added).

of businesses which it does not regulate.”²² Thus, as a nonregulated trade association whose members include private industry participants active in the Pacific Northwest and Western energy markets, NIPPC is not an “essential or indispensable party” to this proceeding.²³

14. The interests of NIPPC and its members are simply not the type recognized by the Commission as benefiting the public interest.²⁴ 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.”²⁵ 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.”²⁶ 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.”²⁷

15. NIPPC is a nonregulated trade association whose members include private industry participants active in the Pacific Northwest and Western energy markets, and the Commission cannot, as a matter of law, even consider the alleged anticompetitive or commercial

²² *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).

²³ *Id.*

²⁴ *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.”).

²⁵ *Cole*, 79 Wn.2d at 306, 485 P.2d 71.

²⁶ *Id.* at 305-06.

²⁷ *Id.* at 306.

impacts of PSE's proposed Schedule 451 on NIPPC or its members because the Commission 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."²⁸ Even if the Commission could consider NIPPC's allegations of harm, NIPPC has not provided any evidence of actual injury from PSE's proposed Schedule 451. Thus, NIPPC's speculative concerns regarding Schedule 451 are merely "general statement[s] of interest in the proceeding . . . not sufficient to justify intervention."²⁹

16. Therefore, as a nonregulated trade association whose members include private industry participants active in the Pacific Northwest and Western energy markets, NIPPC does not have a public interest that the Commission can or should consider in the context of this proceeding, and the Commission should deny the NIPPC Petition to Intervene.

IV. CONCLUSION

17. For the reasons stated above, the Commission should deny the NIPPC Petition to Intervene.

Respectfully submitted this 4th day of November, 2016.

²⁸ *Cost Mgmt. Serv., Inc.*, 2007 WL 3048838 at *1.

²⁹ *SeaTac Shuttle, LLC, C-1077*, 2008 WL 4824352 at *11.

PERKINS COIE LLP



By: _____

Jason Kuzma, WSBA No. 31830
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Telephone: 425-635-1400
Facsimile: 425.635.2400
Email: jkuzma@perkinscoie.com

Attorney for Puget Sound Energy