

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	DOCKET NO. UE-161123
TRANSPORTATION COMMISSION,	)	
	)	THE NORTHWEST AND
Complainant,	)	INTERMOUNTAIN POWER
	)	PRODUCERS COALITION REPLY TO
v.	)	PUGET SOUND ENERGY'S
	)	RESPONSE IN OPPOSITION TO THE
PUGET SOUND ENERGY,	)	PETITION TO INTERVENE OF THE
	)	NORTHWEST AND
Respondent.	)	INTERMOUNTAIN POWER
_____	)	PRODUCERS COALITION

**I. INTRODUCTION**

1. Pursuant to Washington Administrative Code (“WAC”) § 480-07-355, the Northwest and Intermountain Power Producers Coalition (“NIPPC”) files this reply to Puget Sound Energy’s (“PSE”) response in opposition to NIPPC’s petitions to intervene in this proceeding.<sup>1</sup> The Washington Utilities and Transportation Commission (the “Commission”) should grant NIPPC’s intervention in this proceeding because NIPPC has a substantial interest in this proceeding, and its participation will further the public interest and develop a record that more fully informs the Commission on key issues than would be the case without NIPPC’s participation.
  
2. NIPPC is a non-profit trade association whose primary purpose is to develop rules and policies that help achieve a competitive electric power supply market in the Pacific

<sup>1</sup> NIPPC notes that PSE filed their response less than two businesses days (and less than two business hours) before the prehearing conference. WAC 480-07-355(2) (A party’s written response to a petition to intervene must be filed and served at least two business days before the next prehearing conference or hearing date). The Commission has the discretion to ignore the written filing because it unfairly prejudices NIPPC.

Northwest, including functioning retail wheeling programs. The key issues in this proceeding include: 1) designing a tariff under which eligible customers shall arrange to purchase supplied power from one or more third party power suppliers; 2) ensuring that the customer, or its power supplier acquires required transmission, ancillary, scheduling, coordination, and energy imbalance that may be purchased from a power supplier; 3) addressing the risk of wholesale market prices; and 4) calculating the appropriate stranded costs. NIPPC's members could be "power suppliers" under Schedule 451 (Large Customer Retail Wheeling) because some of them already are third party power suppliers that directly sell power to end use consumers. As NIPPC and its members have extensive expertise and will provide a unique perspective on these issues, the Commission has a strong interest in seeing that the record is fully developed relative to changes PSE proposes.

3. While NIPPC does not advocate on behalf of any specific NIPPC members, its members' ability to participate in the Commission approved Schedule 451 and sell power to eligible customers may be directly impacted by this proceeding. This provides NIPPC a substantial interest in the outcome of this proceeding. PSE fails to note that, while NIPPC's member are generally competitors of PSE in wholesale and retail markets, they will not be PSE's direct competitors under Schedule 451 because end use customers will stop buying from PSE and purchase power from third parties. Even more important, the Commission will set the terms and conditions of this retail wheeling program, which could significantly harm any NIPPC member whose ability to sell power is limited. This could also harm any eligible customer whose options to purchase power could be

severely constrained if insufficient power suppliers can qualify to participate in the program.

4. PSE misstates the legal standard and relevant Washington law regarding interventions in Commission proceedings, including extensive reliance on case law that this Commission has acknowledged no longer directly governs this situation. PSE failed to refer to numerous Commission decisions in which it allowed non-profit trade associations and other parties whose primary interest reason for participation is not based on their status as end use consumers. In fact, the Commission has allowed direct competitors of electric utilities to participate in proceedings to address the competitive impacts of the utility's tariffs, including retail wheeling tariffs.

## **II. REPLY**

### **1. NIPPC's Intervention Will Benefit the Public Interest**

5. NIPPC's participation in this case will benefit the Commission and the public interest because NIPPC has experience and expertise in all of the key issues that will be addressed in this proceeding. The success of Schedule 451 depends on the active participation of independent power producers and retail wheeling power suppliers operating under the new tariff. The public interest and PSE's current customers eligible for Schedule 451 will be harmed by a more limited record that fails to fully inform the Commission on these matters than would be the case with NIPPC's participation.

6. The Commission should also grant NIPPC's intervention because NIPPC is a non-profit trade association whose goals and purposes are to foster healthy electricity markets and not the specific commercial interests of any particular members. Non-profit trade associations, including those whose members are utility competitors and

independent power producers, frequently intervene in Commission proceedings. Finally, PSE's characterization of the legal standard for intervention is unduly narrow, which is demonstrated by the Company's failure to cite more recent precedent allowing the intervention of entities and companies whose primary purpose was to address potentially anti-competitive utility actions that harmed their business interests.

**A. NIPPC's Purpose Is to Promote the Development of Electricity Markets and Retail Direct Access**

7. As a preliminary matter, NIPPC objects to only being narrowly labeled as only representing PSE's competitors. NIPPC is not intervening to advocate on behalf of its members. The Commission often looks to the broad public policy goals of particular organizations when justifying the intervention and full participation of particular parties. For example, the Commission recently allowed the late-filed intervention and full participation of the Northwest Energy Coalition in part because it has a broad and diverse membership including "environmental groups and utilities, low-income advocates and clean energy businesses" and it offered a "unique perspective that isn't otherwise replicated among the current intervenors."<sup>2</sup> The Commission has also allowed the intervention of unions, environmental advocates, and Renewable Northwest, which is a non-profit with overlapping members with NIPPC and that "supports expanded development of renewable energy and energy efficiency programs in Washington."<sup>3</sup>

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<sup>2</sup> Wash. Utils. & Transp. Comm'n v. Pac. Power & Light Co., Docket No. UE-152253, Order Granting NWEC's Late-Filed Petition for Intervention at ¶ 11 (Feb. 4, 2016).

<sup>3</sup> Re Petition of PSE For an Order Authorizing the use of the Proceeds from the Sale of RECs and Carbon Financial Instruments, Docket UE-070725, Petition to Intervene of Renewable Northwest Project at ¶ 4 (Nov. 24, 2009).

8. NIPPC is a non-profit trade association whose primary purpose is to promote market competition and retail access. NIPPC, like Renewable Northwest, supports expanded development of competitive markets, independent power producers, and retail access and wheeling. Similar to the Northwest Energy Coalition with its diverse membership, NIPPC offers a unique perspective that is not replicated among the current intervenors.

9. NIPPC also intervenes and participates routinely in other states. For example, NIPPC has been a party without opposition in numerous proceedings in Oregon, Idaho and before the Bonneville Power Administration.<sup>4</sup> NIPPC has never been denied intervention in a state regulatory proceeding.

**B. The Commission Frequently Grants the Intervention of Organizations and Specific Utility Competitors When It Benefits the Public Interest and the Development of the Record**

10. Even assuming *arguendo* that NIPPC's interests were solely parochial and based on the competitive impacts upon its members (which it is not), intervention would still be warranted because it would benefit the public interest. Entities representing general

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<sup>4</sup> Re Investigation Regarding Competitive Bidding, OPUC Docket No. UM 1182, Ruling at 1 (Mar. 31, 2005); Re PacifiCorp, dba Pac. Power, Petition for Approval of the 2017 PacifiCorp Inter-Jurisdictional Allocation Protocol, OPUC Docket No. UM 1050, Ruling at 1 (Apr. 11, 2016); Re PGE Petition for Partial Waiver of Competitive Bidding Guidelines and Approval of RFP Schedule, OPUC Docket No. UM 1773, Ruling at 1 (May 24, 2016); Re PacifiCorp, dba Pac. Power, Application to Reduce QF Contract Term and Lower the QF Standard Contract Eligibility Cap, OPUC Docket No. UM 1734, Ruling at 1 (June 12, 2015); Re Commission Investigation of Competitive Bidding Guidelines Related to Senate Bill 1547, OPUC Docket No. UM 1776, Ruling at 1 (June 20, 2016); Re Joint Petition of Idaho Power Co., Avista Corp., and PacifiCorp, dba Rocky Mountain Power to Address Avoided Cost Issues and to Adjust the Published Avoided Cost Rate Eligibility Cap, IPUC Case No. GNR-E-10-04, Order No. 32143 at 1 (Dec. 22, 2010); Bonneville Power Administration 2016 Rate Adjustment Proceeding, BPA Docket No. BP-16, Order Granting Intervention and Amending Service List at 1 (Feb. 3, 2015).

competitors as well as specific competitors should be granted intervention when they “bring an expertise to the table that may assist the Commission” regarding the key issues in the proceeding, including how the case “will affect the Commission policy favoring a competitive model in the electric industry.”<sup>5</sup>

11. PSE argues that the public interest is only benefited by the participation of entities that represent end-use customers and not competitors, repeatedly citing Cole v. Wash. Utils. & Transp. Comm’n (“Cole”) and various other cases relying on it.<sup>6</sup> Cole’s relevance has been limited, however, as the Commission has repeatedly recognized that Cole was decided in 1971 and prior to the passage of the modern Administrative Procedure Act (“APA”), which provides broader grounds to allow interventions. As the Commission has explained in rejecting a utility’s effort to keep a competitor from intervening in a case by relying upon Cole:

We disagree with Commission Staff and PacifiCorp that the *Cole* decision controls our decision in this case. The *Cole* case was decided in 1971, and precedes the adoption of the Administrative Procedure Act. *RCW 34.05.443* governs intervention and provides broad discretion in granting a petition for intervention.<sup>7</sup>

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<sup>5</sup> Re Proposal of Puget Sound Power & Light Co. to Transfer Revenues from PRAM Rates to General Rates, Docket Nos. UE-951270 and UE-960195 (consolidated) Third Suppl. Order Modifying Prehearing Order at 7 (June 10, 1998).

<sup>6</sup> PSE Response at 6-8 citing Cole, 79 Wn.2d 302, 305-06, 485 P.2d 71 (1971). Eleven of PSE’s 24 footnotes that refer to cases or decisions cite to Cole.

<sup>7</sup> Wash. Utils. & Transp. Comm’n v. PacifiCorp, dba Pac. Power & Light Co., Docket No. UE-001734, Second Suppl. Order Denying Motion to Dismiss and Granting Petition to Intervene at ¶ 29 (July 9, 2001); Wash. Utils. & Transp. Comm’n v. PacifiCorp dba Pac. Power & Light Co., Docket No. UE-130043, Order 03 at ¶ 6 (Feb. 14, 2013).

The standards for intervention under the APA that govern modern interventions should be liberally interpreted.<sup>8</sup>

12. PSE's arguments and cases either extensively rely upon Cole or otherwise suffer from infirmities.<sup>9</sup> For example, PSE relies upon a 1981 decision by the Ohio Public Utilities Commission in which there were 19 other companies that had intervened in the proceeding and would adequately represent the potential intervenor's interests.<sup>10</sup> including cases in which: 1) the party sought to intervene in a messy telecommunications case would raise "a significant probability of impediment to the proceeding;"<sup>11</sup> 2) a company that petitioned to intervene and sought to consolidate the case with a separate complaint filing;<sup>12</sup> 3) were based on an ancient and extinct version of the Commission's intervention rule;<sup>13</sup> 4) the attorney failed to appear at the prehearing conference;<sup>14</sup> and 5)

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<sup>8</sup> Columbia Gorge Audubon Soc. v. Klickitat Cty, 98 Wash. App. 618, 623, 989 P.2d 1260 (1999).

<sup>9</sup> The following cases cited by PSE rely upon Cole to deny intervention: Re Application of the Ohio Bell Tel. Co. for Auth. to Amend & Increase Certain of its Intrastate Tariffs and to Change Regulations and Practices Affecting the Same, Case No. 81-436-TP-AIR, 1981 WL 703630 (Ohio P.U.C. Sept. 2, 1981); Wash. Utils. & Transp. Comm'n. v. Wash. Nat. Gas, Docket UG-940814, Third Suppl. Order (Aug. 24, 1994); Re Petition of GTE Nw. Inc. For Depreciation Accounting Changes, Docket UT-961632, Third Suppl. Order (Mar. 28, 1997); Cost Mgmt. Serv., Inc. v. Cascade Nat. Gas Corp., Dockets UG-070639, UG-070332, UG-070639, Order 05 (Oct. 12, 2007); In re Application CHA-221 of Brown's Limousine Crew Car, Inc., Order M. V. CH. No 950, 1983 WL 908124 (July 18, 1983); Re Wash. Water Power Co., Docket Nos. UE-941053 and UE-941054 (consolidated), Fourth Suppl. Order (Dec. 22, 1994); Re Puget Sound Power & Light Co., Docket Nos. UE-951270 and UE-960195 (consolidated), 10<sup>th</sup> Suppl. Order (Oct. 25, 1996).

<sup>10</sup> Ohio P.U.C. Case No. 81-436-TP-AIR at ¶ 11.

<sup>11</sup> Re Petition of GTE Northwest Inc. For Depreciation Accounting Changes, Docket UT-961632, Third Supplemental Order (Mar. 28, 1997).

<sup>12</sup> Cost Mgmt. Serv., Inc. v. Cascade Nat. Gas Corp., Dockets UG-061256, UG-070332, UG-070639, Order 05 (Oct. 12, 2007).

<sup>13</sup> In re Application CHA-221 of Brown's Limousine Crew Car, Inc., Order M. V. CH. No 950, 1983 WL 908124 (July 18, 1983) (the then current rule provided

when the intervenors had filed a federal lawsuit against the utility and apparently sought to use their intervention as leverage in the separate case.<sup>15</sup>

13. The Commission rejected PSE's reliance upon Cole to bar the intervention of the Public Utility District No. 1 of Snohomish County ("Snohomish PUD"), Public Power Council, and Washington Public Utility District Association ("WPUD") in a consolidated proceeding regarding retail wheeling and the merger of Washington Energy Company and Washington Natural Gas Company with and into Puget Sound Power & Light Company ("PSP&L").<sup>16</sup> Snohomish PUD asserted an interest as a competitor of the merged company and sought to address "retail wheeling".<sup>17</sup> The WPUDA consisted non-regulated competitors of PSP&L and argued its intervention should be granted, in part, because it "would bring a unique perspective to this case concerning the impact of the merger on competition."<sup>18</sup>

14. The Commission granted the interventions of the competitor utilities, even after recognizing the rationale and limitations addressed in Cole. The Commission explained that the case was unlike a typical rate case, because issues of competition, including retail access, were front and center, and that it would be in the public interest to allow the utility's competitors to bring their expertise to bear on these issues. Specifically, the Commission explained:

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that: "Persons whose interests would be adversely, affected, by the granting of an application or by a rate schedule becoming effective may file protests thereto . . .")

<sup>14</sup> Re Wash. Water Power Co., Docket Nos. UE-941053 and UE-941054 (consolidated), Fourth Suppl. Order (Dec. 22, 1994).

<sup>15</sup> Re Puget Sound Power & Light Co., 1996 WL 760071.

<sup>16</sup> Docket Nos. UE-951270 and UE-960195 (consolidated) Third Suppl. Order at 6-7.

<sup>17</sup> Id. at 2.

<sup>18</sup> Id. at 4.



**This proceeding raises significant competitive issues beyond those involved in a typical rate case. The transition from monopoly to retail competition in the electric industry is a basic issue in this proceeding.** In this transitional environment, the Commission believes that it is in the public interest for it to be generous in allowing issues on the table. **WPUDA and other competitors can bring an expertise to the table that may assist the Commission in determining how the merger will affect the Commission policy favoring a competitive model in the electric industry.**<sup>19</sup>

15. Another illustrative example is when the Commission twice denied PacifiCorp's attempts, in two different proceedings and over a decade apart, to bar the intervention of Columbia Rural Electric Association, Inc. ("CREA") in its rate cases by citing Cole.<sup>20</sup> CREA and PacifiCorp do not have an exclusive service territory agreement, and the cooperative is a direct competitor of PacifiCorp for end use consumers. Despite the fact that CREA's primary interest in the cases was the competitive impact of PacifiCorp's tariffs, which were designed to charge net removal costs upon departing customers, the Commission allowed its intervention on the grounds of it benefiting the public interest.

Judge Moss explained:

CREA is a competitor of PacifiCorp in Washington. CREA's concern in this proceeding stems from PacifiCorp's proposed changes to Schedule 300.... [T]he Commission has a strong interest in seeing that the record is fully developed relative to changes PacifiCorp proposes. CREA's participation, limited to this issue, may result in a record that more fully informs the Commission on this matter than would be the case without CREA's participation. The Commission determines for this reason that CREA's participation is in the public interest, which establishes sufficient grounds for allowing it to intervene.<sup>21</sup>

16. The Commission more recently allowed the intervention of PSE's competitors, the Washington State Heating, Ventilation, and Air Conditioning Contractors Association

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<sup>19</sup> Id. at 7 (emphasis added).

<sup>20</sup> Docket No. UE-001734, Second Suppl. Order at ¶ 29; Docket No. UE-130043, Order 03 at ¶ 6.

<sup>21</sup> Docket No. UE-130043, Order 03 at ¶ 6.

and the Western Washington Chapter of the Sheet Metal and Air Conditioning Contractors National Association despite PSE's same Cole argument.<sup>22</sup> The Commission concluded "that both of the HVAC associations have a substantial interest in the subject matter of the proceeding and that their participation is in the public interest."<sup>23</sup> The Commission concluded that PSE's filing implicated the market for HVAC equipment and "PSE has placed the HVAC equipment market at issue in this proceeding."<sup>24</sup>

17. These cases illustrate that it is well within the Commission's discretion to allow intervention of electric utility competitors, especially when the utility's filing places the issue competition directly at issue. It is hard to imagine there being any case more on point than the PSP&L merger case in which the Commission allowed the participation of utility competitors and their trade associations when one of the issues specifically addressed the issues of competition and retail direct access. In this proceeding, retail access and competition are not just one of a number of relevant issues, but they are the central, if not only, issues. In CREA's example, PacifiCorp placed at issue the utility's tariff provisions that could limit the ability of its customers to choose to take service from PacifiCorp's competitor. In PSE's HVAC example, PSE placed at issue a market for equipment that directly impacted its competitors. In all the above examples, the participation of the utility's competitors benefited the public interest because it allowed the Commission to fully ascertain the effect of the tariffs on PSE's and PacifiCorp's customers, competition, and retail choice.<sup>25</sup>

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<sup>22</sup> Wash. Utils. & Transp. Comm'n. v. PSE, Dockets UE-151871 and UG-151872 (consolidated), Order 02 at ¶ 8 (Jan. 7, 2016).

<sup>23</sup> Id. at ¶ 9.

<sup>24</sup> Id. at ¶ 11.

<sup>25</sup> Id. at ¶ 13; Docket No. UE-130043, Order 03 at ¶ 6.

**C. NIPPC's Participation Will Assist in the Commission's Consideration of the Key Issues of Retail Competition, Electricity Markets, and Whether PSE's Schedule 451 Is in the Public Interest**

18. Whether considered as a non-profit entity interested in promoting competitive market and retail access, or as representing PSE's competitors, NIPPC will help inform the record and benefit the public interest on nearly all the relevant issues in this proceeding. PSE's Advice Letter, the direct testimony of PSE witness Jon Piliaris, and the direct testimony of Microsoft witness Irene Plenefisch placed issues related to retail access, alternative power suppliers, retail and wholesale markets, transmission service, and stranded costs front and center of the proceeding. The Commission's understanding of these issues and its ability to fulfill its statutory responsibilities will be diminished without NIPPC's participation and knowledge which no other party is capable of providing.
19. A key issue raised by PSE's Advice Filing is "Alternative Power Suppliers and Supplied Power."<sup>26</sup> Service under Schedule 451 will occur when the eligible customer arranges to purchase power from non-PSE power suppliers in specific amounts and consistent with the terms and billing arrangements specified in the rate schedule.<sup>27</sup> As explained by PSE witness Jon Piliaris "Power supply is arranged directly between the customer and their supplier."<sup>28</sup>
20. Despite being a critical component of the success of Schedule 451, PSE wants to exclude the participation of the arranger of this power supply from this case. However, there is no party that represents the interests of alternative power suppliers or who better

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<sup>26</sup> Advice Letter at 2.

<sup>27</sup> Id.

<sup>28</sup> Prefiled Direct Testimony of Jon A. Piliaris Exhibit No. \_\_\_\_ (JAP-1CT) at 16.

understands how or whether PSE's Schedule 451 can be successfully used to provide alternative supplied power to eligible customers than NIPPC. The Commission, PSE and eligible customers will all benefit from NIPPC's expertise, which may be invaluable in creating a successful program. Simply put, Schedule 451 cannot be successful without entities willing and able to sell power to eligible customers, and it would behoove the Commission not to take advantage of this expertise.

21. Under PSE's proposed Schedule 451, a Power Supplier may be responsible for taking transmission, ancillary, imbalance, scheduling, coordination and other services prior to an eligible customer purchasing alternative power.<sup>29</sup> NIPPC has extensive knowledge regarding transmission service and its members are experienced in obtaining transmission service for their own generation and selling power under retail access programs in states across the country. Again, the Commission could benefit from NIPPC's review and participation to ensure that these provisions are workable.

22. NIPPC could provide unique elucidation on nearly all the other issues in this case. PSE has proposed specific eligibility of service requirements,<sup>30</sup> and NIPPC's members have worked on direct access eligibility criteria in numerous states and can bring invaluable perspectives. Other issues identified by PSE and Microsoft include the risk of market prices and stranded costs.<sup>31</sup> As the only parties in this case that own significant amounts of non-utility generation and that have survived the vagaries of the power market, NIPPC's members endow NIPPC with specialized and relevant knowledge on

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<sup>29</sup> Advice Letter at 2-5.

<sup>30</sup> Id. at 2.

<sup>31</sup> Id. at 4.

these topics. NIPPC and its members have participated in numerous stranded cost valuation cases.

23. Microsoft’s testimony also illustrates the ways in which NIPPC’s participation will benefit both customers and the Commission. Microsoft witness Irene Plenefisch explains that Microsoft engages with “independent power producers to identify sources of reliable, affordable, sustainable energy” and wants to continue those efforts in Washington.<sup>32</sup> Ms. Plenefisch further explained that: “Microsoft, however, is capable of and wishes to select its own suppliers, enter into contracts with them, and assume the related risks and benefits”<sup>33</sup> and “wants more certainty in its pricing and can achieve more certainty by conducting its own procurement process . . . .”<sup>34</sup> As representing the interests of independent power producers and marketers in promoting competitive markets, NIPPC has unique knowledge about whether and how Microsoft and other eligible customers’ goals can be achieved.

**2. NIPPC and Its Members Have a Substantial Interest in This Proceeding**

24. PSE has placed the retail market at issue in this proceeding and has designed a tariff upon which the participation of alternative power suppliers is required, which provides NIPPC and its members a substantial interest. NIPPC also has standing because its members could be directly harmed by the terms and conditions of Schedule 451 if the tariff allows only certain or otherwise unlawfully discriminates between particular non-utility power suppliers.

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<sup>32</sup> Direct Testimony of Irene Plenefisch Exhibit No. \_\_\_\_ (IP-IT) at 3, 5.

<sup>33</sup> Id. at 6

<sup>34</sup> Id. at 7.

25. A person whose interests may be adversely affected by an order has standing to obtain or to participate in an adjudicative proceeding. An order is “a written statement of particular applicability that finally determines the legal rights, duties, privileges, immunities, or other legal interests of a specific person or persons.”<sup>35</sup> A party has standing to challenge an order when it directly impacts their interest and they have sufficient facts to demonstrate an injury in fact.<sup>36</sup>
26. PSE’s Schedule 451 is specifically designed to sets the conditions for which alternative power suppliers can sell power to eligible customers, providing NIPPC and its members a substantial interest in the outcome of this proceeding. PSE has decided to no longer sell power to otherwise eligible customers, and allowing alternative power suppliers to fulfill this need.<sup>37</sup> At least for Microsoft and other eligible customers, NIPPC’s members are no longer PSE’s competitors.
27. NIPPC’s members direct harm could be that Schedule 451’s terms, conditions, and requirements that could allow some, but not other, alternative power suppliers to sell power to Microsoft and other eligible customers. Thus, the Commission’s decision in this case will not have just a generic impact on market competition, but will directly determine the rights and responsibilities of specific companies. If these alternative power supplies or their regional industry representative are unable to participate in this case, then they will have no ability challenge or otherwise participate in an proceeding that directly impacts their interest and causes an injury in fact.

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<sup>35</sup> RCW 34.05.010(11)(a).

<sup>36</sup> City of Burlington v. Wash. State Liquor Control Bd., 187 Wash. App. 853, 876-77, 351 P.3d 875 (2015); see also Seattle Bldg. & Constr. Trades Council v. Washington State Apprenticeship & Training Council, 129 Wn.2d 787, 804, 920 P.2d 581 (1996).

<sup>37</sup> See generally Advice Letter.

28. In addition, this proceeding is similar to PSE’s recent HVAC proceeding in which the Commission found that a trade association of impacted competitors had a substantial interest in the outcome of the proceeding. PSE’s tariff implicated the market for HVAC equipment and placed the HVAC equipment market at issue.<sup>38</sup> The Commission concluded that the competitors “have a substantial interest in that market as current participants.”<sup>39</sup> Similarly, PSE has directly placed the retail electric market and retail wheeling at issue in this proceeding, and NIPPC and its members have a substantial interest in that market as current participants.

29. While NIPPC is responding to PSE’s response in less than one business day, NIPPC is not aware of any jurisdiction in which the entities that sell power and will participate in a retail access program are not permitted to participate. For example, Oregon has a retail access program that has specific administratively determined policies regarding eligibility of energy service suppliers that sell power to end use consumers, eligibility of retail customers to participate, and stranded cost and benefits calculations.<sup>40</sup> NIPPC and individual independent power suppliers that sell to end use customers frequently participate in those proceedings without opposition.<sup>41</sup>

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<sup>38</sup> Dockets UE-151871 and UG-151872 (consolidated), Order 02 at ¶ 10.

<sup>39</sup> Id. at ¶ 9.

<sup>40</sup> Oregon has a unique and burdensome approach to valuing stranded costs and benefits in which there are annual stranded cost/benefit proceedings. Oregon customers’ participation is generally on a one or five year basis, after which they can return to cost of service regulation. In contrast, PSE’s proposed Schedule 451 and the existing Schedule 448/449 are permanent elections in which will not require annual re-evaluation of stranded costs for the customers that elect retail access.

<sup>41</sup> E.g., Re PacifiCorp, dba Pac. Power, 2016 Transition Adjustment Mechanism, OPUC Docket No. UE 307, Prehearing Conference Memorandum at 1 (Apr. 26, 2016) (Noble Solutions, a energy service supplier has “sufficient interest in the proceedings to participate and that their participation will not unreasonably

30. The participation of direct access eligible customers has not been sufficient to fully address issues related to the reasonableness of Oregon's direct access program. For example, eligible retail access customers have at times been active in addressing the reasonableness of the terms of the utilities programs.<sup>42</sup> However, in other cases they have deferred to energy service suppliers to identify and litigate retail access issues because they have more experience and understanding regarding how the programs actually work.<sup>43</sup> Without the participation and expertise of entities that sell power to retail customers, it would be nearly impossible to adequately investigate and address whether the retail access programs are consistent with the law and the interest of remaining customers.

### III. CONCLUSION

31. NIPPC respectfully requests that the Commission grant its petition to intervene with full party status in this proceeding. Denying NIPPC's intervention will harm both

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broaden the issues, burden the record, or delay the proceedings.”); Re PacifiCorp, dba Pac. Power, 2016 Transition Adjustment Mechanism, OPUC Docket No. UE 296, Prehearing Conference Memorandum at 1 (May 1, 2015) (Two energy service suppliers (Noble Solutions and YAM Services) were granted intervention); Re PacifiCorp, dba Pac. Power, Transition Adjustment, Five-Year Cost of Service Opt-Out, OPUC Docket No. UE 267, Ruling at 1 (May 13, 2013) and Ruling at 1 (Apr. 4, 2013) (The interventions of NIPPC and three energy service suppliers (Noble, Shell Energy, and Constellation NewEnergy) were granted).

<sup>42</sup> E.g., Re PacifiCorp, dba Pac. Power, Transition Adjustment, Five-Year Cost of Service Opt-Out, OPUC Docket No. UE 267, Order No. 15-060 at 1, 4-13 (Feb. 24, 2015) (industrial customers, NIPPC and numerous energy service suppliers litigated retail access issues); Re Commission Investigation into Direct Access Issues for Industrial and Commercial Customers Under SB 1149, OPUC Docket No. UM 1081, Order No. 04-516 at 3-15 (Sept. 14, 2004) (eligible customers and energy service supplier litigated direct access issues).

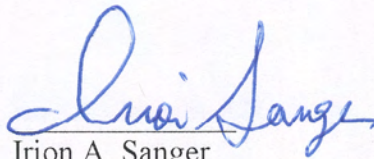
<sup>43</sup> E.g., Re PacifiCorp, dba Pac. Power, 2017 Transition Adjustment Mechanism, OPUC Docket No. UE 307, Order No. 16-418 at 1-2 (Oct. 27, 2016) (only Noble Solutions raised retail access issues).



the public interest, fail to fully develop a record, and injure the substantial interests of NIPPC and its members.

Dated this 7th day of November, 2016.

Respectfully submitted,



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