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**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**IN THE MATTER OF THE JOINT  
APPLICATION OF PUGET SOUND  
ENERGY, ALBERTA INVESTMENT  
MANAGEMENT CORPORATION,  
BRITISH COLUMBIA INVESTMENT  
MANAGEMENT CORPORATION,  
OMERS ADMINISTRATION  
CORPORATION, AND PGGM  
VERMOGENSBEHEER B.V. FOR AN  
ORDER AUTHORIZING PROPOSED  
SALES OF INDIRECT INTERESTS  
IN PUGET SOUND ENERGY**

**Docket U-180680**

**JOINT APPLICANTS' RESPONSE  
IN OPPOSITION TO THE  
PETITION TO INTERVENE OF J.  
RICHARD LAUCKHART**

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**I. INTRODUCTION**

*I.* Pursuant to RCW 34.05.443 and WAC 480-07-355(2), Puget Sound Energy (“PSE”), together with the Alberta Investment Management Corporation (“AIMCo”), the British Columbia Investment Management Corporation (“BCI”), OMERS Administration Corporation (“OMERS”), and PGGM Vermogensbeheer B.V. (“PGGM”) (together, PSE, AIMCo, BCI, OMERS and PGGM are referred to as the “Joint Applicants”), respond and object to the Petition to Intervene (“Petition”) of J. Richard Lauckhart (“Mr. Lauckhart”). The Petition should be denied because Mr. Lauckhart does not have a substantial interest in the proceeding nor would his participation be in the public interest.

1 **II. BACKGROUND**

2 2. On September 5, 2018, the Joint Applicants filed the Proposed  
3 Transactions, where the 43.99 percent ownership interest in Puget Holdings, LLC  
4 (“Puget Holdings”) currently held by Macquarie Infrastructure Partners, Inc. and  
5 Padua MG Holdings LLC (together, “Macquarie”), would be sold to existing  
6 owners AIMCo and BCI, and to two new owners, OMERS and PGGM.

7 3. On November 13, 2018, Mr. Lauckhart filed a petition to intervene in the  
8 matter. If the Commission were to solely examine the Petition, Mr. Lauckhart’s  
9 own words do not demonstrate an interest in this proceeding. He is neither a  
10 customer of Puget Sound Energy (“PSE”) nor a resident of Washington. Rather,  
11 Mr. Lauckhart maintains a consulting business based out of El Macero,  
12 California.<sup>1</sup> Mr. Lauckhart does not appear to be representing any particular entity  
13 or individual that is a customer of PSE or potentially affected by the Proposed  
14 Transactions.

15 4. Based on comments filed by Mr. Lauckhart in this proceeding on  
16 September 28, 2018,<sup>2</sup> however, it is apparent that Mr. Lauckhart may intend to  
17 use this proceeding to launch yet again another challenge to a PSE infrastructure  
18 project because his prior challenges have failed to receive any traction. The  
19 Commission should not allow Mr. Lauckhart to commandeer this proceeding to  
20 address issues neither caused nor affected by the Proposed Transactions. Simply

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<sup>1</sup> Petition ¶ 1.

<sup>2</sup> Written Comments of J. Richard Lauckhart, Docket U-180680 (Sept. 28, 2018), available at <https://www.utc.wa.gov/layouts/15/CasesPublicWebsite/GetDocument.aspx?docID=76&year=2018&docketNumber=180680> (“Lauckhart Comments”).

1 stated, Mr. Lauckhart’s alleged grievances have no place in this proceeding, and  
2 the Commission should deny his attempt to intervene.

3 **III. ARGUMENT**

4 5. Washington’s Administrative Procedure Act provides that a presiding  
5 officer may grant a petition to intervene “upon determining that the petitioner  
6 qualifies as an intervenor under any provision of law and that the intervention  
7 sought is in the interests of justice and will not impair the orderly and prompt  
8 conduct of the proceedings.”<sup>3</sup> The Commission’s procedural rules governing  
9 adjudicative proceedings provide that the Commission “may grant a petition to  
10 intervene if the petitioner has a substantial interest in the subject matter of the  
11 hearing or if the petitioner's participation is in the public interest.”<sup>4</sup> The  
12 Commission may dismiss an intervenor from a proceeding at any time if the  
13 Commission determines that “the intervenor has no substantial interest in the  
14 proceeding and the public interest will not be served by the intervenor’s continued  
15 participation.”<sup>5</sup>

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<sup>3</sup> RCW 35.04.443(1).

<sup>4</sup> WAC 480-07-355(3).

<sup>5</sup> WAC 480-07-355(4).

1 **A. Mr. Lauckhart Has Failed to State a Nexus Between His Stated**  
2 **Purpose in Seeking to Intervene and an Interest Protected by a**  
3 **Washington Statute Within the Commission’s Jurisdiction**

4 6. The Commission applies a “zone of interest test” to determine whether a  
5 party seeking intervention has a substantial interest.<sup>6</sup> Such an interest can be  
6 found to exist only when there is a nexus between the petitioner’s stated purpose  
7 in seeking to intervene and an interest protected by a Washington statute within  
8 the Commission’s jurisdiction.<sup>7</sup> In this proceeding, the Commission must  
9 determine under RCW Chapter 80.12 (Transfers of Property) whether the  
10 Proposed Transactions, if consummated, satisfy the public interest standard,  
11 which requires a showing that the proposed transactions will not harm the public  
12 interest.<sup>8</sup>

13 7. Mr. Lauckhart states his purpose in intervening in this proceeding as  
14 follows:

15 Lauckhart seeks to intervene in this proceeding to ensure that the  
16 proposed acquisition complies with Washington law and will not  
17 harm PSE’s customers.<sup>9</sup>

18 This stated purpose merely recites the interest protected by a Washington statute  
19 within the Commission’s jurisdiction and provides no nexus between

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<sup>6</sup> *In Re Joint Application of Verizon Commc’ns, Inc. & Frontier Commc’ns Corp. for an Order Declining to Assert Jurisdiction Over, or, in the Alternative, Approving the Indirect Transfer of Control of Verizon Nw., Inc.*, Docket UT-090842, Order 05 ¶ 14 (Sept. 10, 2009).

<sup>7</sup> *In Re Joint Application of Verizon Commc’ns, Inc. & Frontier Commc’ns Corp.*, Order 05 ¶ 14.

<sup>8</sup> *See* RCW 80.12.020; *see also In the Matter of the Joint Application of Puget Sound Energy, Alberta Inv. Mgmt. Corp., British Columbia Inv. Mgmt. Corp., OMERS Admin Cor., & PGGM Vermogensbeheer B.V. for an Order Authorizing Proposed Sales of Indirect Interests in Puget Sound Energy*, Docket U-180680, Order 01 ¶ 39 (Nov. 9, 2018).

<sup>9</sup> Petition ¶ 4.

1 Mr. Lauckhart’s intervention in this proceeding and the Commission’s obligations  
2 to determine that the Proposed Transactions would not result in a harm to the  
3 customers of PSE.

4 8. Although the Petition does not directly allude to any specific interest of  
5 Mr. Lauckhart in seeking to intervene in this proceeding, he has filed the  
6 Lauckhart Comments in this proceeding on September 28, 2018, regarding PSE’s  
7 Energize Eastside project that do suggest the intent of his intervention.  
8 Mr. Lauckhart’s Comments relate to a long-standing disagreement with respect to  
9 the need for and process used by PSE for the Energize Eastside project.  
10 Opponents of the Energize Eastside project have challenged this project in a  
11 number of venues, a challenge before the Federal Energy Regulatory Commission  
12 that was summarily dismissed because such challenges amounted to nothing more  
13 than

14 vague allegations that Respondents [which included PSE] have  
15 violated Order Nos. 890, 1000, and 2000, as well as the Puget  
16 Sound Tariff and Planning Agreement, without citing any specific  
17 provision of those orders, the Tariff, or the Planning Agreement  
18 that Respondents have allegedly violated. Thus, Complainants  
19 have not identified the “applicable statutory standards or regulatory  
20 requirements,” that Respondents have allegedly violated. We  
21 cannot conclude that the Complaint has sufficiently identified the  
22 behavior that allegedly violates the applicable standards or  
23 requirements, or that it has sufficiently explained how there is such  
24 a violation, when Complainants have not even identified the  
25 applicable standards or requirements.<sup>10</sup>

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<sup>10</sup> *Coalition of Eastside Neighborhoods for Sensible Energy, Citizens for Sane Eastside Energy, Larry G. Johnson, Glenna F. White, and Steven D. O’Donnell v. Puget Sound Energy, Seattle City Light, Bonneville Power Administration, and ColumbiaGrid*, 153 FERC ¶ 61,076 at P 59 (2015).

1 In short, the Comments submitted by Mr. Lauckhart reflect yet again another  
2 challenge to a PSE infrastructure project because prior challenges alleging the  
3 same issues and/or facts have failed to receive any traction.

4 9. Mr. Lauckhart has proposed commitments to the proposed transactions  
5 that are inappropriate for consideration in this proceeding and depart from the “no  
6 harm” standard established by the WUTC for these proceedings. For example,  
7 Mr. Lauckhart has proposed conditions that would require PSE to (i) address in an  
8 Integrated Resource Plan process any major improvements to its transmission  
9 system to meet reliability requirements and (ii) put the construction of any  
10 transmission line out to bid.<sup>11</sup> Such conditions are unnecessary for consideration  
11 in this proceeding and would circumvent an ongoing rulemaking by the  
12 Commission. In Docket U-161024, the Commission is considering, among other  
13 things, the topic of transmission and distribution planning within the Integrated  
14 Resource Plan (“IRP”) and Request for Proposal (“RFP”) processes. Any  
15 proposals of Mr. Lauckhart with respect to the IRP and RFP processes can be  
16 voiced in the Commission’s rulemaking docket in Docket U-161024.

17 10. Mr. Lauckhart has proposed a condition that would require PSE to do its  
18 transmission planning work under the auspices of its own transmission planning  
19 staff.<sup>12</sup> This proposed condition is perplexing because the transmission planning  
20 work for the Energize Eastside project has always been conducted under the  
21 auspices of PSE’s own transmission planning staff. Although PSE did retain the

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<sup>11</sup> Lauckhart Comments at 3.

<sup>12</sup> *Id.*

1 assistance of Quanta Technology to assist in performing studies for the Energize  
2 Eastside project, such studies were joint studies conducted under the direction and  
3 control of PSE’s transmission planning staff. Any suggestion that PSE abdicated  
4 its study responsibilities to a third party is simply false.

5 11. Mr. Lauckhart has also proposed a commitment that would require PSE  
6 (or any third party) to “get needed permits for building the line through [the  
7 Washington State Energy Facility Site Evaluation Council (EFSEC)] if EFSEC is  
8 authorized by law to permit the line.”<sup>13</sup> Additionally, Mr. Lauckhart proposes a  
9 condition that would require PSE to “request that EFSEC approve the [Energize  
10 Eastside project] under the EFSEC procedures.”<sup>14</sup> Such conditions are  
11 inconsistent with existing law that allows the utility to seek review under EFSEC  
12 or the various local jurisdictions affected by the project in question. PSE  
13 understands and is fully aware of the various EFSEC processes but has elected to  
14 work directly with the various jurisdictions instead of EFSEC. PSE has elected for  
15 review by the various jurisdictions because PSE believes that such review allows  
16 for the most collaborative approach. PSE’s actions are entirely consistent with its  
17 rights under law, and there is nothing improper with PSE’s election to permit the  
18 Energize Eastside Project through the various local jurisdictions involved.

19 12. Mr. Lauckhart further proposes a condition that would prohibit PSE from  
20 “tell[ing] WECC and/or ColumbiaGrid that they have committed to build a line

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<sup>13</sup> *Id.*

<sup>14</sup> Lauckhart Comments at 4.

1 until they have received permits for the line.”<sup>15</sup> Such an obligation is unnecessary  
2 and inappropriate. PSE must provide information to WECC and/or ColumbiaGrid  
3 consistent with respect to PSE’s obligations to such entities. The Commission  
4 should not impose any condition on PSE that could result in inconsistencies with  
5 or violations of any obligations of PSE to WECC and/or ColumbiaGrid.

6 13. Finally, Mr. Lauckhart has proposed a condition that would prohibit PSE  
7 from “request[ing] inclusion in ratebase of any dollar amounts that PSE has  
8 spent . . . to get [Conditional Use Permits] from 5 different jurisdictions.”<sup>16</sup> This  
9 proposed condition is improper for the Commission to consider in this  
10 proceeding. PSE’s capital expenditures with respect to the Energize Eastside  
11 project should be treated no differently than capital expenditures for other  
12 projects. The Commission should reject this proposed condition and consider  
13 these costs if and when PSE submits these costs to the Commission for inclusion  
14 in rates. To prohibit PSE from seeking recovery of these costs now would  
15 improperly prejudice the prudence of these costs.

16 14. In sum, the Energize Eastside project simply has no bearing on the  
17 Commission’s obligation in this proceeding to ensure that the proposed transfer of  
18 non-controlling, minority interests in Puget Holding would not result in a harm to  
19 the customers of PSE. Therefore, Mr. Lauckhart has failed to state a nexus  
20 between his stated purpose in seeking to intervene and an interest protected by a  
21 Washington statute within the Commission’s jurisdiction.

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<sup>15</sup> *Id.* at 3-4.

<sup>16</sup> *Id.* at 4.

1 **B. Mr. Lauckhart Has Failed to Demonstrate that His Participation in**  
2 **this Proceeding Would be in the Public Interest**

3 15. As previously discussed, Mr. Lauckhart seeks to use this proceeding to  
4 launch yet again another challenge to the Energize Eastside project because prior  
5 challenges to such project have failed to receive any traction. Incorporating these  
6 issues would inappropriately complicate this proceeding and expand the length of  
7 time necessary to conduct this proceeding.

8 16. Moreover, Mr. Lauckhart has failed to state any individual, entity, or  
9 groups thereof that he seeks to represent and simply alleges that he seeks to  
10 represent PSE customers in general:

11 Lauckhart requests leave to intervene in this docket to represent  
12 PSE customers who are being harmed now and likely will be  
13 harmed in the future if certain conditions are not imposed on  
14 approval of this transfer of ownership.<sup>17</sup>

15 In other words, the Petition suggests that Mr. Lauckhart seeks to act as a private  
16 attorney general on behalf of all customers. Such a role is inappropriate because  
17 PSE customers are already represented in this proceeding through the Office of  
18 the Attorney General's Utilities and Transportation Division and Public Counsel  
19 Unit.

20 17. Indeed, the Petition itself tacitly acknowledges that Public Counsel is the  
21 more appropriate party to address the issues that Mr. Lauckhart seeks to raise, if  
22 they are to be raised at all:

23 Lauckhart has asked Public Counsel to allow him to testify in this  
24 proceeding as an expert for them under their intervention.

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<sup>17</sup> Petition ¶ 4.

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However, the short time allowed for requests for intervention has not allowed that communication to mature.<sup>18</sup>

Although the Joint Applicants disagree that the issues that Mr. Lauckhart seeks to raise should be heard in this proceeding for the reasons set forth above, the Joint Applicants agree that the interests of PSE customers are adequately represented by the Office of the Attorney General’s Utilities and Transportation Division and the Office of the Attorney General’s Public Counsel Unit. These attorneys have the obligation to represent PSE customers generally, and Mr. Lauckhart’s attempt to represent PSE customers separately would likely frustrate the proceeding and not be in the public interest.

18. Based on the representations in the Petition, the Joint Applicants recognize that Public Counsel and Mr. Lauckhart may be in discussions that could result in the retention of Mr. Lauckhart to serve as a witness on behalf of Public Counsel. For the reasons set forth above, the Joint Applicants do not believe that that the issues that Mr. Lauckhart seeks to raise should be addressed in this proceeding.

**IV. CONCLUSION**

19. For the reasons set for the above, the Commission should deny the Petition because Mr. Lauckhart does not have a substantial interest in the proceeding nor would his participation be in the public interest.

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<sup>18</sup> *Id.* ¶ 6.

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Dated: November 14, 2018.

**Respectfully submitted,**

**Perkins Coie LLP**

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