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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 UNITED  
ASSOCIATION LOCAL 32 OF  
PLUMBERS AND PIPEFITTERS’  
PETITION TO INTERVENE**

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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”), responds and objects to the United Association Local 32 of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the U.S. and Canada’s (“Local 32”) Petition to Intervene (“Petition”). The Petition should be denied because Local 32 does not have a substantial interest in this proceeding because it seeks to introduce issues relating to labor relations and contractual collective bargaining. Local 32’s intervention is also not in the public

1 interest because it would distract from the narrow issue before the Commission—  
2 whether the transactions involving the proposed transfer of non-controlling  
3 interests in PSE (the “Proposed Transactions”), will result in no harm to  
4 customers. This is especially true given the abbreviated adjudicative schedule and  
5 the limited scope of discovery ordered by the Commission. Delving into the  
6 issues raised by Local 32 would require the Commission and the parties to divert  
7 resources away from the narrow focus of this proceeding and would undermine  
8 the process. Accordingly, Local 32’s intervention should be denied.

## 9 II. BACKGROUND

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

15 3. On September 19, 2018, Local 32 filed a petition to intervene in the  
16 proceeding, seeking to be a “full party” under WAC 480-07-340.<sup>1</sup> As stated in its  
17 Petition, Local 32 represents some PSE employees in various trades and positions  
18 within the Company, as well as various workers employed by third parties who  
19 subcontract with PSE.<sup>2</sup> Local 32 and PSE’s contractual relationship is governed

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<sup>1</sup> *In the Matter of the Application of Puget Sound Energy*, Docket U-180680, United Association Local 32 Petition to Intervene, ¶ 1 (Sept. 20, 2018).

<sup>2</sup> *Id.* ¶¶ 5, 7.

1 by a collective bargaining agreement (“CBA”) which is effective through  
2 September 2021.<sup>3</sup>

3 4. On November 9, 2018, the Commission issued an Order authorizing “a  
4 limited adjudicative process” in this matter.<sup>4</sup> While the Commission authorized  
5 discovery, “the discovery process [is] to be narrowly defined and focused on the  
6 proposed transaction.”<sup>5</sup> The Commission instructed the parties to agree to “a  
7 fairly prompt procedural schedule that includes limited data requests.”<sup>6</sup>

8 5. In addition to authorizing a limited adjudicative proceeding, the  
9 Commission held that the Proposed Transactions would be governed by the public  
10 interest, no-harm standard of review, and not the more rigorous, “net benefit”  
11 standard under RCW 80.12.020(1).<sup>7</sup>

### 12 III. ARGUMENT

13 6. The Commission may grant a petition to intervene only if the petitioner  
14 “discloses a substantial interest in the subject matter of the proceeding or if the  
15 petitioner’s participation is in the public interest.”<sup>8</sup> The petitioner must also  
16 qualify under the law and the intervention must “not impair the orderly and  
17 prompt conduct of the proceedings.”<sup>9</sup>

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<sup>3</sup> *Id.* ¶ 6.

<sup>4</sup> *In the Matter of the Joint Application*, Docket U-180680, Order 01, ¶ 25 (Nov. 9, 2018).

<sup>5</sup> *Id.* ¶ 27.

<sup>6</sup> *Id.* ¶ 28.

<sup>7</sup> *Id.* ¶ 23.

<sup>8</sup> WAC 480-07-355(3).

<sup>9</sup> RCW 35.04.443(1).

1 7. While PSE strongly values its ongoing contractual relationships with its  
2 union partners, including Local 32, PSE respectfully objects to Local 32’s  
3 intervention in this matter because the interests raised by the Petition are governed  
4 by the CBA and this proceeding is not the appropriate forum to raise contractual  
5 collective bargaining issues as the Commission does not have jurisdiction over  
6 such issues. Moreover, given the limited scope of this proceeding, Local 32’s  
7 intervention is not in the public interests because delving into the issues proposed  
8 by Local 32 are beyond the scope of this proceeding and would distract from the  
9 narrow issue before the Commission.

10 **A. Local 32 Does Not Have a Substantial Interest in the Proceeding**

11 8. Local 32 does not have a substantial interest in this proceeding because the  
12 Commission does not have jurisdiction over labor relation issues that are  
13 negotiated and resolved through the collective bargaining process. As recently  
14 stated by the Commission in Docket U-170970:

15 The Commission has no legal authority relative to the terms of  
16 collective bargaining agreements that govern the rates of pay,  
17 benefit packages, and employment conditions for construction  
18 workers who may work for contractors who undertake projects  
19 for Avista.<sup>10</sup>

20 In that case, the Commission, “expressly decline[d] to consider . . . any labor  
21 relations matters, including . . . rates of pay, benefit packages, and employment  
22 conditions for construction workers,” and denied the Washington and Northern  
23 Idaho District Council of Laborers (“WNIDCL”) intervention status in that matter

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<sup>10</sup> *WUTC v. Avista Corp.*, Docket U-170970, Order 02, ¶ 9 (Oct. 25, 2017).

1 on that basis because WNIDCL did not, as a matter of law, have a substantial  
2 interest in the proceeding.<sup>11</sup>

3 9. Here, like WNIDCL in Docket U-170970, the issues that Local 32 desires  
4 to address and provide information in this proceeding are all labor issues currently  
5 addressed in the CBA, including:

- 6 • “Local 32 has an interest in representing PSE employees related to  
7 wages, hours, benefits, and other conditions of employment”;<sup>12</sup> and
- 8 • “[E]mployee wages, benefits, health coverage, pension benefits,  
9 and other remuneration.”<sup>13</sup>

10 10. As in Docket U-170970, none of these issues are properly before the  
11 Commission in this proceeding because the Commission does not have  
12 jurisdiction over labor relation issues and contracted collective bargaining  
13 agreements. To the extent Local 32 has concerns over these issues, the collective  
14 bargaining process is the proper forum to address these issues. If Local 32 is  
15 dissatisfied or would like to propose changes to the current CBA, it will have an  
16 opportunity to do so during the next collective bargaining negotiation process  
17 between PSE and Local 32. Using collateral forums such as this proceeding to  
18 circumvent the collective bargaining agreement process is inappropriate.

19 11. Moreover, Local 32’s assertion that it has a substantial interest in this  
20 proceeding because of the Commitments made in the 2008 proceeding relating to

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<sup>11</sup> *Id.*

<sup>12</sup> Petition ¶ 11.

<sup>13</sup> *Id.* ¶ 12.

1 unions is equally unavailing. Local 32 suggests that the Proposed Transactions  
2 could somehow alter these Commitments. This is false. The Commitments agreed  
3 to in the 2008 proceeding relating to PSE’s relationship with unions are  
4 completely unchanged and have been reaffirmed. The Proposed Transactions will  
5 change nothing about PSE’s management, business structure, parent company  
6 Puget Holdings, or PSE’s day-to-day business operations, and there will be no  
7 impact whatsoever on Local 32 or the current CBA.

8 *12.* The Joint Applicants support, and PSE looks forward to addressing, the  
9 issues raised by Local 32 during its next collective bargaining process and  
10 welcomes the opportunity to hear and discuss Local 32’s concerns at that time.  
11 But Local 32 does not have a substantial interest in this proceeding on those  
12 grounds and its Petition should be denied.

13 **B. Local 32’s Intervention Is Not in the Public Interest**

14 *13.* Local 32’s intervention in this matter is not in the public interest because  
15 of the narrow scope of this proceeding and because the issues raised by Local 32  
16 will distract from the core issue before the Commission.

17 *14.* In Docket U-170970, where after extensive litigation on whether  
18 WNIDCL should be allowed to participate in that proceeding, the Commission  
19 ultimately granted WNIDCL limited intervention on public interest grounds  
20 restricted to only issues of “safety and reliability.” In that case, however,  
21 Commission Staff strongly opposed WNIDCL’s intervention on both substantial  
22 interest and public interest grounds. The presiding officer agreed, finding that  
23 WNIDCL’s participation would not benefit the public interest:

1 It does not appear that WNIDCL’s participation would be in  
2 the public interest. Moreover, it seems likely that WNIDCL  
3 participation would include efforts to broaden issues into the  
4 areas the union states are its concerns, but which are not issues  
5 the Commission considers in cases such as this one. In this  
6 sense, WNIDCL’s participation could require expenditures of  
7 resources by the parties and the tribunal that are unnecessary  
8 and burdensome. This would be contrary to the public  
9 interest.<sup>14</sup>

10 15. Only after interlocutory appeal by WNIDCL did the Commission grant  
11 WNIDCL limited intervention on public interest grounds, restricted to “matters  
12 specifically addressing the safety and reliability of service to customers where its  
13 members are actually involved in the provision of such service.”<sup>15</sup> The  
14 Commission, however, “expressly decline[d] to consider . . . any labor relations  
15 matters, including the interests that WNIDCL identified in its initial Petition  
16 related to rates of pay, benefit packages, and employment conditions for  
17 construction workers.”<sup>16</sup>

18 16. The same concerns regarding Local 32 exist in this case but to a much  
19 greater extent because compared to Docket U-170970, the present case is far  
20 different in both scale and scope. While Docket U-170970 involved a complete  
21 takeover of Avista, in the present case, non-controlling interests in PSE are simply  
22 being transferred to two existing investors in Puget Holdings, and to two new  
23 investors. No change in PSE or its parent company Puget Holdings is occurring  
24 and there is no change whatsoever to PSE’s management or business operations.

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<sup>14</sup> *WUTC v. Avista Corp.*, Docket U-170970, Order 02, ¶ 9 (Oct. 25, 2017).

<sup>15</sup> *WUTC v. Avista Corp.*, Docket U-170970, Order 03, ¶ 17 (Nov. 20, 2017).

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

1 As noted above, the Commitments agreed to in Docket U-072375 have largely  
2 been reaffirmed and were sufficient then to ensure the public interest was  
3 protected. Nothing about the Proposed Transactions will change PSE’s day-to-day  
4 operations and thus, Local 32’s concerns are unwarranted. The issues raised by  
5 Local 32 are beyond the scope of the present case and are more appropriately  
6 addressed in and should be reserved for other forums or proceedings.

7 17. The difference in scope between Docket U-170970 and the Proposed  
8 Transactions are not just a difference in relative scale, but rather, because each  
9 dictate completely different standards of review. While Docket U-170970  
10 required a more extensive a net benefit investigation and analysis under RCW  
11 80.12.020(1), because a non-controlling interest is only being transferred here, the  
12 public interest/no harm standard applies. To the extent Local 32’s seeks  
13 concessions or new commitments as a result of the Proposed Transactions (which  
14 it suggested by its Comments and its statements at the Open Meeting), this is  
15 premised on a need to show a net benefit from the status quo which is the  
16 incorrect legal standard. This difference in standard significantly narrows the  
17 scope of the issues to be addressed, as explained by the Commission in this case:

18 Parties are cautioned to stay focused on the “no harm” standard  
19 and its requirement for a showing that customers and the public  
20 will be no worse off if the transaction is approved and goes  
21 forward. Discovery should be focused solely on the potential  
22 harms that might arise as a result of the proposed transfer of  
23 interest.<sup>17</sup>

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<sup>17</sup> *In the Matter of the Joint Application*, Docket U-180680, Order 01, ¶ 25 (Nov. 9, 2018).



1 18. Accordingly, the Commission has instructed that this case is to be a  
2 “limited, expedited adjudication,”<sup>18</sup> with narrow discovery that is “focused on the  
3 proposed transaction”<sup>19</sup> and the potential harms that might arise as a result of the  
4 proposed transaction.<sup>20</sup> Delving into the issues proposed by Local 32 will distract  
5 from the limited “no harm” analysis and result in an unnecessarily broad  
6 discovery and ultimately, adjudication over issues that are simply not relevant to  
7 whether the Proposed Transactions are in the public interest.

8 **C. PSE’s Safety Record Speaks for Itself**

9 19. Finally, while Local 32 raises alleged concerns regarding safety as  
10 justification for its intervention, these concerns are unwarranted. Notably, in  
11 neither its Petition nor its Comments filed in this case, does Local 32 identify any  
12 actual safety concerns involving PSE. Indeed, PSE’s excellent safety record is  
13 well documented<sup>21</sup> and PSE has greatly improved its safety record since the 2008  
14 transaction.<sup>22</sup> As part of the 2008 transaction, the owners agreed to specific  
15 commitments relating to safety and service quality (Commitment No. 1),<sup>23</sup> which

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<sup>18</sup> *Id.* ¶ 12.

<sup>19</sup> *Id.* ¶ 27.

<sup>20</sup> *Id.* ¶ 29.

<sup>21</sup> *See, e.g.*, PSE’s 2017 Service Quality and Electric Service Reliability Report (Mar. 29, 2018).

<sup>22</sup> *In the Matter of the Joint Application*, Docket U-180680, Joint Application, ¶ 39 (Sept. 5, 2018).

<sup>23</sup> The buyers have agreed to continue PSE’s “service quality measures” in Commitment No. 1. As PSE’s annual Service Quality and Electric Service Reliability Report indicates, there are several measures tracked under this program relating to PSE safety and contractor safety including: SQI No. 7, gas safety response time; SQI No. 11, electric safety response time; filing of natural gas emergency response plans for outlying areas; SPI No. 4D, gas service provider response time; SPI No. 1C, gas service provider standards compliance; SPI No. 4B and 4C, Secondary, Non-Emergency Safety Response and Restoration Time; SPI No. 1B, service provider standards compliance. *See* Dockets UE-072300 & UG-072301, 2017 Service Quality and Electric Service Reliability Report (Mar. 29, 2018).

1 have been reaffirmed in the Proposed Transactions. There is simply nothing Local  
2 32 could provide the Commission from a safety and reliability perspective that  
3 would demonstrate that allowing non-controlling ownership shares of PSE being  
4 transferred to new owners would harm the public since nothing about PSE's  
5 existing operations or management is changing at all.

6 20. What Local 32 really wants in this case are concessions that are more  
7 appropriately addressed in collective bargaining negotiations. But the fact is, the  
8 Commission in Docket U-072375 determined that the commitments agreed to by  
9 the owners fully protected PSE's customers and were in the public interest—a  
10 point recently emphasized by the Commission in this case where it stated:

11 We are mindful of the fact that PSE's current ownership  
12 structure was vetted thoroughly in Docket U-072375, and  
13 approved in the Commission's final order in that proceeding,  
14 which included numerous commitments and conditions that the  
15 Commission determined fully protected PSE's customers and  
16 the public interest.<sup>24</sup>

17 21. The purpose and motivation behind Local 32's intervention is to advocate  
18 for additional employment benefits for its members, as it already did at the Open  
19 Meeting and in its Comments. But those issues are not germane to this proceeding  
20 nor does the Commission have jurisdiction over such issues and Local 32's  
21 intervention should be denied.

#### 22 IV. CONCLUSION

23 22. For the reasons set forth above, the Joint Applicants respectfully request  
24 that the Commission deny Local 32's Petition.

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<sup>24</sup> *In the Matter of the Joint Application*, Docket U-180680, Order 01, ¶ 29 (Nov. 9, 2018).

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Dated: November 14, 2018.

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**Respectfully submitted,**

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