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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
WASHINGTON AND NORTHERN
IDAHO DISTRICT COUNCIL OF
LABORERS' 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 Washington and Northern Idaho District Council of Laborers’ (“WNIDCL”) Petition to Intervene (“Petition”). The Petition should be denied because the Commission has already determined that the interests raised by WNIDCL—contractual collective bargaining issues—exceed the Commission’s jurisdiction and do not demonstrate substantial interest.

1 2. Moreover, WNIDCL’s intervention does not benefit the public interest.
2 The public interest in the Proposed Transactions has been determined by the
3 Commission to be whether there will be no harm to customers as a result of the
4 Proposed Transactions. WNIDCL’s participation in this matter to provide “safety
5 and reliability” information is outside the scope of this proceeding and would
6 distract from the narrow issue before the Commission—whether the transactions
7 involving the proposed transfer of non-controlling interests in PSE (the “Proposed
8 Transactions”), will result in no harm to customers. This is especially true given
9 the abbreviated adjudicative schedule and the limited scope of discovery ordered
10 by the Commission. Delving into the issues raised by WNIDCL would require the
11 Commission and the parties to divert resources away from the narrow focus of
12 this proceeding and would undermine the process. Accordingly, WNIDCL’s
13 intervention should be denied.

14 **II. BACKGROUND**

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

1 4. On October 22, 2018, WNIDCL filed a petition to intervene in the
2 proceeding, seeking “full party status,” under WAC 480-07-340(1).¹ WNIDCL, a
3 “democratic labor organization,” represents construction workers that are not PSE
4 employees, but rather are subcontractors of contractors hired by PSE.² In other
5 words, PSE does not hire WNIDCL’s members, WNIDCL does not represent any
6 actual PSE employees, and WNIDCL does not have a contractual collective
7 bargaining relationship with PSE. Nevertheless, WNIDCL seeks intervention so it
8 can introduce collective bargaining issues into this proceeding, including “wage
9 rates, training requirements, construction standards, local employment impacts,
10 and workforce development investments.”³

11 5. Notably, in 2008, in Docket U-072375, which is the precursor to this
12 proceeding where Puget Holdings originally acquired its ownership interest in
13 PSE, WNIDCL also sought intervention in that matter,⁴ only to be denied by the
14 Commission. In that case, the Commission determined that WNIDCL’s asserted
15 interests did not establish a substantial interest because WNIDCL failed to
16 establish any nexus between itself as an organization and any potential issue in
17 that proceeding, nor would its participation benefit the public interest.⁵

¹ *In the Matter of the Application of Puget Sound Energy*, Docket U-180680, WNIDCL Petition to Intervene, ¶ 3 (Oct. 22, 2018) (“Petition”).

² *Id.* ¶¶ 3-5, 7.

³ *Id.* ¶ 6.

⁴ *In Re Joint Application of Puget Holdings LLC and Puget Sound Energy, Inc. For an Order Authorizing Proposed Transaction*, Docket U-072375, WNIDCL Petition to Intervene (Jan. 14, 2008).

⁵ *In Re Joint Application of Puget Holdings LLC and Puget Sound Energy, Inc. For an Order Authorizing Proposed Transaction*, Docket U-072375, Order 01, ¶ 6 (Jan. 17, 2008).

1 6. On November 9, 2018, the Commission issued an Order authorizing “a
2 limited adjudicative process” in this matter.⁶ While the Commission authorized
3 discovery, “the discovery process [is] to be narrowly defined and focused on the
4 proposed transaction.”⁷ The Commission instructed the parties to agree to “a
5 fairly prompt procedural schedule that includes limited data requests,”⁸ and that
6 “[d]iscovery should be focused solely on the potential harms that might arise as a
7 result of the proposed transaction.”⁹

8 7. 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).¹⁰

12 III. ARGUMENT

13 8. 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.”¹¹ The petitioner must also
16 qualify under the law and the intervention must “not impair the orderly and
17 prompt conduct of the proceedings.”¹²

⁶ *In the Matter of the Joint Application*, Docket U-180680, Order 01, ¶ 25 (Nov. 9, 2018).

⁷ *Id.* ¶ 27.

⁸ *Id.* ¶ 28.

⁹ *Id.* ¶ 29.

¹⁰ *Id.* ¶ 23.

¹¹ WAC 480-07-355(3).

¹² RCW 35.04.443(1).

1 9. WNIDCL should be denied intervention because the Commission already
2 denied WNIDCL intervention in Docket U-072375, which is the precursor to the
3 Proposed Transactions where the current PSE ownership structure was
4 established. WNIDCL was not permitted to participate in that transaction then,
5 and there is no reasonable basis justifying WNIDCL's participation now where
6 only non-controlling interests in the current ownership structure are being
7 transferred.

8 10. Moreover, WNIDCL does not have a substantial interest in this case
9 because the Commission does not have jurisdiction over contractual collective
10 bargaining issues, such as those presented by WNIDCL here. WNIDCL's
11 participation is also not in the public interest because the Commission has ordered
12 that this proceeding be narrowly tailored and focused only on whether the
13 Proposed Transactions are in the public interest.¹³ Delving into the issues
14 proposed by WNIDCL are beyond the scope of this proceeding and would distract
15 from the narrow issue before the Commission.

16 **A. The Commission Already Denied WNIDCL Intervention in the Precursor to**
17 **the Proposed Transactions in Docket U-072375**

18 11. WNIDCL should not be permitted to intervene in this matter because the
19 Commission already denied WNIDCL intervention in the precursor matter to the
20 present case in Docket U-072375. In that case, the Commission denied WNIDCL
21 intervention where Puget Holdings acquired all of the outstanding shares of

¹³ *Id.* ¶ 29.

1 common stock issued by PSE in a financial transaction that resulted in PSE no
2 longer being a publicly traded company.¹⁴

3 12. Despite that case being a far more significant transaction in comparison to
4 the current one, the Commission in Docket U-072375 nevertheless determined
5 that WNIDCL “failed to establish that it has a substantial interest in the
6 proceeding or that its participation would be in the public interest.”¹⁵ Given that in
7 the Proposed Transactions, a non-controlling minority upstream interest in PSE’s
8 current ownership structure is simply being sold to two existing investors in Puget
9 Holdings and to two new investors; where there will be no change to PSE’s parent
10 company, management, or business operations; where the Commitments agreed to
11 by the owners in Docket U-072375 are either intact, completed, or reaffirmed;
12 there is no basis for allowing WNIDCL intervention in this case when it was
13 denied intervention in the earlier matter. WNIDCL was not allowed to participate
14 then and it should not be permitted to participate now.

15 **B. WNIDCL Still Does Not Have a Substantial Interest in the Proposed**
16 **Transactions**

17 13. Even setting aside the Commission’s prior denial of WNIDCL’s
18 intervention, WNIDCL still cannot show it has a substantial interest in this case.
19 WNIDCL concedes that it does not represent any actual PSE employees, nor does
20 it have a collective bargaining agreement with PSE, yet WNIDCL seeks to

¹⁴ *In Re Joint Application of Puget Holdings LLC and Puget Sound Energy, Inc. For an Order Authorizing Proposed Transaction*, Docket U-072375, Order 01, ¶ 6 (Jan. 17, 2008).

¹⁵ *Id.*

1 advocate on behalf of its members regarding “wage rates, training requirements,
2 construction standards, local employment impacts, and workforce development
3 investments.”¹⁶ But these issues are beyond the Commission’s jurisdiction and do
4 not demonstrate a substantial interest in this proceeding.

5 14. In Docket U-170970, WNIDCL recently sought intervention on nearly the
6 exact same grounds as WNIDCL seeks in this case.¹⁷ WNIDCL’s intervention
7 was objected to by Commission Staff, who argued that WNIDCL’s stated
8 interests in the proceeding, including interests relating to pay rates, benefit
9 packages, and employment conditions, are not matters the Commission regulates,
10 nor would introducing such issues have a nexus to the transaction before the
11 Commission.¹⁸ In denying intervention, the presiding officer agreed, stating:

12 The Commission has no legal authority relative to the terms of
13 collective bargaining agreements that govern the rates of pay,
14 benefit packages, and employment conditions for construction
15 workers who may work for contractors who undertake projects
16 for Avista. Thus, WNIDCL failed to establish a substantial
17 interest that would support its participation in this proceeding.
18 Based on the Commission’s experience in prior, similar cases
19 (i.e., transfers of property subject to RCW Chapter 80.12) its is
20 unlikely that information concerning wage rates, training
21 requirements, construction standards, local employment
22 impacts, and workforce development investments will be more

¹⁶ Petition ¶ 6.

¹⁷ WNIDCL used the exact same language in support of its intervention in Docket U-170970, including “wage rates, training requirements, construction standards, local employment impacts, and workforce development investments.” *WUTC v. Avista Corp.*, Docket U-170970, WNIDCL Petition to Intervene, ¶ 6 (Oct. 17, 2017).

¹⁸ *WUTC v. Avista Corp.*, Docket U-170970, Commission Staff’s Response to WNIDCL Petition for Interlocutory Review, ¶ 11 (Nov. 17, 2017).

1 than tangentially, if at all, relevant to any issue that might bear
2 on the Commission's determinations in this proceeding.¹⁹

3 15. Having been denied by the presiding officer, WNIDCL filed a petition for
4 interlocutory review, requesting the Commission consider its request for
5 intervention. Upon review, the Commission agreed with the presiding officer that
6 WNIDCL did not have a substantial interest in the proceeding because collective
7 bargaining issues are not jurisdictional to the Commission.²⁰

8 16. The same analysis holds true in this case. WNIDCL again seeks to
9 advance the collective bargaining interests of its members, including "collective
10 bargaining agreements that govern the rates of pay, benefit packages, and
11 employment conditions."²¹ Not only does the Commission not have jurisdiction
12 over collective bargaining issues, but such issues are irrelevant to the Proposed
13 Transactions, particularly since WNIDCL does not represent any PSE employees
14 nor does it have a contractual relationship with PSE. WNIDCL does not have a
15 substantial interest because its interests are not within the zone of interests
16 protected by a Washington statute that is within the Commission's jurisdiction
17 and WNIDCL's Petition on these grounds should be denied.

18 **C. WNIDCL's Intervention Is Not in the Public Interest**

19 17. Setting aside again the fact that the Commission already determined that
20 WNIDCL's participation in the precursor matter in Docket U-072375 was not in

¹⁹ *WUTC v. Avista Corp.*, Docket U-170970, Order 02, ¶ 9 (Oct. 25, 2017).

²⁰ *WUTC v. Avista Corp.*, Docket U-170970, Order 03, ¶¶ 12, 14 (Nov. 20, 2017).

²¹ Petition ¶ 5.

1 the public interest, WNIDCL’s participation in the present case should be denied
2 because WNIDCL still has not shown that its participation is in the public interest.

3 18. WNIDCL argues that its intervention is in the public interest based on a
4 vague “safety and reliability” argument.²² WNIDCL relies on Docket U-170970,
5 where after extensive litigation on whether WNIDCL should be allowed to
6 participate in that proceeding, the Commission granted WNIDCL limited
7 intervention restricted to issues of “safety and reliability.” In that case, as noted
8 above, Commission Staff strongly opposed WNIDCL’s intervention on both
9 substantial interest and public interest grounds. The presiding officer agreed,
10 finding that that WNIDCL’s participation would not benefit the public interest:

11 It does not appear that WNIDCL’s participation would be in
12 the public interest. Moreover, it seems likely that WNIDCL
13 participation would include efforts to broaden issues into the
14 areas the union states are its concerns, but which are not issues
15 the Commission considers in cases such as this one. In this
16 sense, WNIDCL’s participation could require expenditures of
17 resources by the parties and the tribunal that are unnecessary
18 and burdensome. This would be contrary to the public
19 interest.²³

20 19. Only after interlocutory appeal by WNIDCL did the Commission grant
21 WNIDCL limited intervention on public interest grounds, restricted to “matters
22 specifically addressing the safety and reliability of service to customers where its
23 members are actually involved in the provision of such service.”²⁴ The
24 Commission, however, “expressly decline[d] to consider . . . any labor relations

²² Petition ¶ 7.

²³ *WUTC v. Avista Corp.*, Docket U-170970, Order 02, ¶ 9 (Oct. 25, 2017).

²⁴ *WUTC v. Avista Corp.*, Docket U-170970, Order 03, ¶ 17 (Nov. 20, 2017).

1 matters, including the interests that WNIDCL identified in its initial Petition
2 related to rates of pay, benefit packages, and employment conditions for
3 construction workers.”²⁵

4 20. WNIDCL apparently believes that because the Commission granted
5 WNIDCL limited intervention in Docket U-170970 to present information
6 relating to “safety and reliability,” that similar intervention is justified in this case.
7 But that is incorrect because the present case is far different in both scale and
8 scope. WNIDCL’s involvement will harm the public interest because its
9 involvement will distract from the narrow issue currently before the Commission.

10 21. While Docket U-170970 involved a complete takeover of Avista, in the
11 present case, non-controlling interests in PSE are simply being transferred to two
12 existing investors in Puget Holdings, and to two new investors. No change in PSE
13 or its parent company Puget Holdings is occurring and there is no change
14 whatsoever to PSE’s management or business operations. As noted above, the
15 Commitments agreed to in Docket U-072375 have largely been reaffirmed and
16 were sufficient then to ensure the public interest was protected. Nothing about the
17 Proposed Transactions will change PSE’s day-to-day operations, including its
18 construction projects, which is the only possible issue that might concern
19 WNIDCL. While safety and reliability are of critical importance to PSE,
20 WNIDCL’s promised contributions, including those relating to WNIDCL’s
21 theories of methods to improve traffic safety and safety for non-PSE employees,

²⁵ *Id.*

1 are not relevant, are largely beyond the scope of the present case, and are more
2 appropriately addressed in, and should be reserved for, other forums or
3 proceedings.

4 22. The difference in scope between Docket U-170970 and the Proposed
5 Transactions are not just a difference in relative scale, but rather, because each
6 dictate completely different standards of review. While Docket U-170970
7 required and justified a more extensive a net benefit investigation and analysis
8 under RCW 80.12.020(1), because a non-controlling interest is only being
9 transferred here, the public interest/no harm standard applies. The difference in
10 standard significantly narrows the scope of the issues to be addressed and
11 investigated, as explained by the Commission in this case:

12 Parties are cautioned to stay focused on the “no harm” standard
13 and its requirement for a showing that customers and the public
14 will be no worse off if the transaction is approved and goes
15 forward. Discovery should be focused solely on the potential
16 harms that might arise as a result of the proposed transfer of
17 interest.²⁶

18 23. Accordingly, the Commission has instructed that this case is to be a
19 “limited, expedited adjudication,”²⁷ with narrow discovery that is “focused on the
20 proposed transaction.”²⁸ Delving into the issues of enhanced traffic safety and
21 safety for non-PSE employees, as proposed by WNIDCL, will distract from the
22 limited “no harm” analysis and result in an unnecessarily broad discovery and

²⁶ *In the Matter of the Joint Application*, Docket U-180680, Order 01, ¶ 25 (Nov. 9, 2018).

²⁷ *Id.* ¶ 12.

²⁸ *Id.* ¶ 27.

1 ultimately, adjudication over issues that are simply not relevant to whether the
2 Proposed Transactions are in the public interest.

3 **D. PSE’s Safety Record Speaks for Itself**

4 24. Finally, while WNIDCL raises alleged concerns regarding safety and
5 reliability as justification for its intervention, these concerns are completely
6 unwarranted and conceal WNIDCL’s ulterior motives for intervening in this
7 matter. Notably, in neither its Petition nor its Comments filed in this case, does
8 WNIDCL identify any actual safety concerns involving PSE. Indeed, PSE’s
9 excellent safety record is well documented²⁹ and PSE has greatly improved its
10 safety record since the 2008 transaction.³⁰ As part of the 2008 transaction, the
11 owners agreed to specific commitments relating to safety and service quality
12 (Commitment No. 1),³¹ which have been reaffirmed in the Proposed Transactions.
13 There is simply nothing WNIDCL could provide the Commission from a safety
14 and reliability perspective that would demonstrate that allowing non-controlling
15 ownership shares of PSE being transferred to new owners would harm the public
16 since nothing about PSE’s existing operations or management is changing at all.

²⁹ See, e.g., PSE’s 2017 Service Quality and Electric Service Reliability Report (Mar. 29, 2018).

³⁰ *In the Matter of the Joint Application*, Docket U-180680, Joint Application, ¶ 39 (Sept. 5, 2018).

³¹ 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 25. What WNIDCL really wants in this case is concessions from PSE and the
2 new owners. In its Comments, WNIDCL complains that in the 2008 transaction
3 (which it was excluded from participating in), WNIDCL never received what it
4 perceives as adequate commitments and financial concessions that it believes its
5 members were entitled to then and are still entitled to now. But the fact is, the
6 Commission determined in that case that the Commitments agreed to by the
7 owners fully protected PSE’s customers and were in the public interest—a point
8 recently emphasized by the Commission in this case where it stated:

9 We are mindful of the fact that PSE’s current ownership
10 structure was vetted thoroughly in Docket U-072375, and
11 approved in the Commission’s final order in that proceeding,
12 which included numerous commitments and conditions that the
13 Commission determined fully protected PSE’s customers and
14 the public interest.³²

15 26. The purpose and motivation behind WNIDCL’s intervention is to
16 advocate for its union employees and union training to be used by PSE’s
17 subcontractors. It seeks to advocate for that position here, as it already did at the
18 Open Meeting and in its Comments. But those issues are not germane to this
19 proceeding nor does the Commission have jurisdiction over such issues.
20 WNIDCL did not have a role in the 2008 transaction and it does not have a role
21 now, even from a safety and reliability perspective, and its intervention should
22 again be denied.

³² *In the Matter of the Joint Application*, Docket U-180680, Order 01, ¶ 29 (Nov. 9, 2018).

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IV. CONCLUSION

27. For the reasons set forth above, the Joint Applicants respectfully request that the Commission deny WNIDCL’s Petition.

Dated: November 14, 2018.

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Respectfully submitted,

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