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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 IBEW LOCAL
77'S 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 International Brotherhood of Electrical Workers, Local 77’s (“IBEW Local 77”) Petition to Intervene (“Petition”). The Petition should be denied because IBEW Local 77 does not have a substantial interest in this proceeding because it seeks to introduce issues relating to labor relations and contractual collective bargaining. IBEW Local 77’s intervention is also not in the public interest because it would

1 relationship is governed by a collective bargaining agreement (“CBA”) which is
2 effective through March 31, 2020.³

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

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).⁷

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.”⁸ The petitioner must also
16 qualify under the law and the intervention must “not impair the orderly and
17 prompt conduct of the proceedings.”⁹

³ *Id.* ¶ 6.

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

⁵ *Id.* ¶ 27.

⁶ *Id.* ¶ 28.

⁷ *Id.* ¶ 23.

⁸ WAC 480-07-355(3).

⁹ RCW 35.04.443(1).

1 7. While PSE strongly values its ongoing contractual relationships with its
2 union partners, including IBEW Local 77, PSE respectfully objects to IBEW
3 Local 77's intervention in this matter because the interests raised by the Petition
4 are governed by the CBA and this proceeding is not the appropriate forum to raise
5 contractual collective bargaining issues as the Commission does not have
6 jurisdiction over such issues. Moreover, given the limited scope of this
7 proceeding, IBEW Local 77's intervention is not in the public interest because
8 delving into the issues proposed by IBEW Local 77 are beyond the scope of this
9 proceeding and would distract from the narrow issue before the Commission.

10 **A. IBEW Local 77 Does Not Have a Substantial Interest in the Proceeding**

11 8. IBEW Local 77 does not have a substantial interest in this proceeding
12 because the Commission does not have jurisdiction over labor relation issues that
13 are 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.¹⁰

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

¹⁰ *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.¹¹

3 9. Here, like WNIDCL in Docket U-170970, the issues that IBEW Local 77
4 desires to address and provide information in this proceeding are all labor issues
5 currently addressed in the CBA, including:

- 6 • “wages, hours, safety standards, storm responsiveness, training,
7 construction, staffing, service quality, efficacy of customer
8 service”;¹²
- 9 • “wages, hours, benefits, and other conditions of employment”;¹³
- 10 • “IBEW 77 members’ job satisfaction, safety, health, overall
11 compensation, and engagement.”¹⁴

12 10. As in Docket U-170970, none of these issues are properly before the
13 Commission in this proceeding because the Commission does not have
14 jurisdiction over labor relation issues and contracted collective bargaining
15 agreements. To the extent IBEW Local 77 has concerns over these issues, the
16 collective bargaining process is the proper forum to address these issues. If IBEW
17 Local 77 is dissatisfied or would like to propose changes to the current CBA, it
18 will have an opportunity to do so during the next collective bargaining negotiation
19 process between PSE and IBEW Local 77. Using collateral forums such as this

¹¹ *Id.*

¹² Petition ¶ 10.

¹³ *Id.* ¶ 11.

¹⁴ *Id.*

1 proceeding to circumvent the collective bargaining agreement process is
2 inappropriate.

3 *11.* Moreover, IBEW Local 77's assertion that it has a substantial interest in
4 this proceeding because of the Commitments made in the 2008 proceeding
5 relating to unions is equally unavailing. IBEW Local 77 suggests that the
6 Proposed Transactions could somehow alter these Commitments. This is false.
7 The Commitments agreed to in the 2008 proceeding relating to PSE's relationship
8 with unions are completely unchanged and have been reaffirmed. The Proposed
9 Transactions will change nothing about PSE's management, business structure,
10 parent company Puget Holdings, or PSE's day-to-day business operations, and
11 there will be no impact whatsoever on IBEW Local 77 or the current CBA.

12 *12.* The Joint Applicants support, and PSE looks forward to addressing, the
13 issues raised by IBEW Local 77 during its next collective bargaining process and
14 welcomes the opportunity to hear and discuss IBEW Local 77's concerns at that
15 time. But IBEW Local 77 does not have a substantial interest in this proceeding
16 on those grounds and its Petition should be denied.

17 **B. IBEW Local 77's Intervention Is Not in the Public Interest**

18 *13.* IBEW Local 77's intervention in this matter is not in the public interest
19 because of the narrow scope of this proceeding and because the issues raised by
20 IBEW Local 77 will distract from the core issue before the Commission.

21 *14.* In Docket U-170970, where after extensive litigation on whether
22 WNIDCL should be allowed to participate in that proceeding, the Commission
23 ultimately granted WNIDCL limited intervention on public interest grounds

1 restricted to only issues of “safety and reliability.” In that case, however,
2 Commission Staff strongly opposed WNIDCL’s intervention on both substantial
3 interest and public interest grounds. The presiding officer agreed, finding that
4 WNIDCL’s participation would not benefit the public interest:

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

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

22 16. The same concerns regarding IBEW Local 77 exist in this case but to a
23 much greater extent because compared to Docket U-170970, the present case is
24 far different in both scale and scope. While Docket U-170970 involved a

¹⁵ *WUTC v. Avista Corp.*, Docket U-170970, Order 02, ¶ 9 (Oct. 25, 2017).

¹⁶ *WUTC v. Avista Corp.*, Docket U-170970, Order 03, ¶ 17 (Nov. 20, 2017).

¹⁷ *Id.*

1 complete takeover of Avista, in the present case, non-controlling interests in PSE
2 are simply being transferred to two existing investors in Puget Holdings, and to
3 two new investors. No change in PSE or its parent company Puget Holdings is
4 occurring and there is no change whatsoever to PSE's management or business
5 operations. As noted above, the Commitments agreed to in Docket U-072375
6 have largely been reaffirmed and were sufficient then to ensure the public interest
7 was protected. Nothing about the Proposed Transactions will change PSE's day-
8 to-day operations and thus, IBEW Local 77's concerns are unwarranted. The
9 issues raised by IBEW Local 77 are beyond the scope of the present case and are
10 more appropriately addressed in and should be reserved for other forums or
11 proceedings.

12 17. The difference in scope between Docket U-170970 and the Proposed
13 Transactions are not just a difference in relative scale, but rather, because each
14 dictate completely different standards of review. While Docket U-170970
15 required a more extensive a net benefit investigation and analysis under RCW
16 80.12.020(1), because a non-controlling interest is only being transferred here, the
17 public interest/no harm standard applies. To the extent IBEW Local 77's seeks
18 concessions or new commitments as a result of the Proposed Transactions (which
19 it suggested by its Comments and its statements at the Open Meeting), this is
20 premised on a need to show a net benefit from the status quo which is the
21 incorrect legal standard. This difference in standard significantly narrows the
22 scope of the issues to be addressed, as explained by the Commission in this case:

1 Parties are cautioned to stay focused on the “no harm” standard
2 and its requirement for a showing that customers and the public
3 will be no worse off if the transaction is approved and goes
4 forward. Discovery should be focused solely on the potential
5 harms that might arise as a result of the proposed transfer of
6 interest.¹⁸

7 18. Accordingly, the Commission has instructed that this case is to be a
8 “limited, expedited adjudication,”¹⁹ with narrow discovery that is “focused on the
9 proposed transaction”²⁰ and the potential harms that might arise as a result of the
10 proposed transaction.”²¹ Delving into the issues proposed by IBEW Local 77 will
11 distract from the limited “no harm” analysis and result in an unnecessarily broad
12 discovery and ultimately, adjudication over issues that are simply not relevant to
13 whether the Proposed Transactions are in the public interest.

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

15 19. Finally, while IBEW Local 77 raises alleged concerns regarding safety as
16 justification for its intervention, these concerns are unwarranted. Notably, in
17 neither its Petition nor its Comments filed in this case, does IBEW Local 77
18 identify any actual safety concerns involving PSE. Indeed, PSE’s excellent safety
19 record is well documented²² and PSE has greatly improved its safety record since
20 the 2008 transaction.²³ As part of the 2008 transaction, the owners agreed to
21 specific commitments relating to safety and service quality (Commitment No.

¹⁸ *In the Matter of the Joint Application*, Docket U-180680, Order 01, ¶ 25 (Nov. 9, 2018).

¹⁹ *Id.* ¶ 12.

²⁰ *Id.* ¶ 27.

²¹ *Id.* ¶ 29.

²² *See, e.g.*, PSE’s 2017 Service Quality and Electric Service Reliability Report (Mar. 29, 2018).

²³ *In the Matter of the Joint Application*, Docket U-180680, Joint Application, ¶ 39 (Sept. 5, 2018).

1) ,²⁴ which have been reaffirmed in the Proposed Transactions. There is simply nothing IBEW Local 77 could provide the Commission from a safety and reliability perspective that would demonstrate that allowing non-controlling ownership shares of PSE being transferred to new owners would harm the public since nothing about PSE’s existing operations or management is changing at all.

20. What IBEW Local 77 really wants in this case are concessions that are more appropriately addressed in collective bargaining negotiations. But the fact is, the Commission in Docket U-072375 determined that the commitments agreed to by the owners fully protected PSE’s customers and were in the public interest—a point recently emphasized by the Commission in this case where it stated:

We are mindful of the fact that PSE’s current ownership structure was vetted thoroughly in Docket U-072375, and approved in the Commission’s final order in that proceeding, which included numerous commitments and conditions that the Commission determined fully protected PSE’s customers and the public interest.²⁵

21. The purpose and motivation behind IBEW Local 77’s intervention is to advocate for additional employment benefits for its members, as it already did at the Open Meeting and in its Comments. But those issues are not germane to this

²⁴ 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).

²⁵ *In the Matter of the Joint Application*, Docket U-180680, Order 01, ¶ 29 (Nov. 9, 2018).

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proceeding nor does the Commission have jurisdiction over such issues and
IBEW Local 77's intervention should be denied.

IV. CONCLUSION

22. For the reasons set forth above, the Joint Applicants respectfully request
that the Commission deny IBEW Local 77's Petition.

Dated: November 14, 2018.

Respectfully submitted,

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