

**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

ORDER 04

DENYING INTERLOCUTORY
REVIEW

BACKGROUND

- 1 On September 5, 2018, Puget Sound Energy (PSE or Company) filed with the Washington Utilities and Transportation Commission (Commission) a joint application for the proposed sale of a 43.99 percent indirect ownership interest in PSE currently held by Macquarie Infrastructure Partners Inc. and Padua MG Holdings LLC, a Macquarie entity (collectively Macquarie) (Joint Application). Puget Holdings LLC (Puget Holdings) indirectly holds 100 percent of the ownership interest in PSE. Macquarie intends to sell all of its 43.99 percent interest in Puget Holdings to four different buyers (collectively, with PSE, Joint Applicants).
- 2 On November 13, 2018, J. Richard Lauckhart filed a petition to intervene in this proceeding.
- 3 On November 14, 2018, the Joint Applicants filed a response opposing Mr. Lauckhart's petition to intervene. The Joint Applicants argue that Mr. Lauckhart's issues with PSE's transmission planning are unrelated to the subject of this proceeding, and that he has failed to establish a nexus between his reasons for seeking intervention and a protected statutory interest. The Joint Applicants contend that although Mr. Lauckhart failed to

state his interest in his petition, his earlier comments relate to a long-standing disagreement over PSE's Energize Eastside project. As such, the Joint Applicants contend that Mr. Lauckhart's proposed commitments are inappropriate for consideration in this proceeding and depart from the "no harm" standard under which the Commission will review the proposed transactions.

- 4 On November 15, 2018, Mr. Lauckhart filed a response to the Joint Applicants' response to his petition. In his response, Mr. Lauckhart notes that he is a PSE customer, and that he intends to focus his participation on addressing the problems with PSE's transmission planning that have arisen under foreign ownership by proposing conditions that will require PSE to increase its transparency in this area.
- 5 The Commission convened a prehearing conference in this docket at Olympia, Washington on November 16, 2018, before Administrative Law Judges Rayne Pearson and Andrew J. O'Connell. During the prehearing conference, Commission staff (Staff) and the Joint Applicants presented oral arguments opposing Mr. Lauckhart's Petition.
- 6 On November 21, 2018, the Commission entered Order 03, which, among other things, concluded that Mr. Lauckhart failed to demonstrate a substantial interest that would support his participation in this proceeding. Specifically, Order 03 concluded that Mr. Lauckhart failed to establish a nexus between his reasons for seeking intervention and a protected statutory interest, and that Mr. Lauckhart's interests as a residential customer are adequately represented by the Public Counsel Unit of the Washington Attorney General's Office (Public Counsel). Order 03 further concluded that Mr. Lauckhart's participation would not be in the public interest because his knowledge related to his former employment with the Company does not establish a sufficient foundation for party status, and that granting Mr. Lauckhart party status would not aid the Commission in its evaluation of the Joint Application.
- 7 On November 26, 2018, Mr. Lauckhart filed a Petition for Interlocutory Review of Order 03 (Petition). Mr. Lauckhart argues that interlocutory review is warranted because his participation in this proceeding was terminated by Order 03, which could cause substantial and irreparable harm to PSE customers. Mr. Lauckhart further argues that his participation is in the public interest "because of his unique qualifications and knowledge

of abuses that foreign owners have been placing and likely will continue to place of [sic] PSE customers if appropriate ‘conditions’ are not placed on this ownership transfer.”¹

- 8 Mr. Lauckhart states that Public Counsel did not oppose his petition to intervene at the prehearing conference, which, he argues, supports his position that Public Counsel does not represent his interest in the proceeding.
- 9 On December 3, 2018, the Alliance of Western Energy Consumers (AWEC), an intervenor in this proceeding, filed a response opposing Mr. Lauckhart’s Petition. AWEC argues that allowing Mr. Lauckhart’s intervention would unnecessarily and inappropriately broaden the scope of the proceeding and distract from the pertinent issue in his case. AWEC contends that Mr. Lauckhart’s interest in this proceeding appears to be related exclusively to his opposition to PSE’s Energize Eastside project, a transmission project wholly unrelated to the Proposed Transaction.
- 10 On December 4, 2018, Public Counsel filed a letter stating it takes no position on Mr. Lauckhart’s Petition.
- 11 Also on December 4, 2018, Staff filed a response opposing the Petition. Staff argues that the Commission need not accept Mr. Lauckhart’s Petition because he has not demonstrated substantial and irreparable harm, substantial prejudice, or resource savings. In the event the Commission decides to exercise review, Staff asserts the Commission should uphold the decision to deny the Petition because Mr. Lauckhart has not demonstrated that he has a substantial interest in the proceeding or that his participation is in the public interest. Finally, Staff argues that Mr. Lauckhart’s participation would likely impair and delay the proceedings.
- 12 On December 6, 2018, the Joint Applicants filed a response opposing the Petition. The Joint Applicants argue that Mr. Lauckhart has not demonstrated a substantial interest in this proceeding. Instead, the concerns he has raised relate primarily to his disagreement with various transmission planning issues that are not presently before the Commission. The Joint Applicants further argue that Mr. Lauckhart’s interests are no different from those of any other PSE customer, and Mr. Lauckhart was provided an opportunity to submit his comments and concerns both orally and in writing. The Joint Applicants note that Mr. Lauckhart appears to concede that he does not have a substantial interest in this proceeding. Finally, the Joint Applicants argue that Mr. Lauckhart’s participation is not

¹ Petition ¶ 5.

in the public interest because the issues he seeks to raise are beyond the scope of this proceeding and would distract from the narrow issue in this case, which is whether the proposed transactions are in the public interest.

DISCUSSION AND DECISION

13 The Commission may accept review of interim or interlocutory orders if it finds that:

- (a) The order terminates a party's participation in the proceeding, and the party's inability to participate thereafter could cause it substantial and irreparable harm;
- (b) Immediate review is necessary to prevent substantial prejudice to a party that would not be remediable in the Commission's final order; or
- (c) Immediate review could save the Commission and the parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review.²

14 We agree with Staff that Mr. Lauckhart has not demonstrated substantial and irreparable harm or prejudice to him as a result of Order 03, or resource savings that parties and the Commission would realize from interlocutory review.³ We nevertheless exercise our discretion to accept review of the determination in Order 03 to deny his petition to intervene. We agree with that determination and thus deny the Petition.

15 The presiding officer in a Commission adjudication may grant a petition to intervene "[i]f the petition discloses a substantial interest in the subject matter of the hearing or if the petitioner's participation is in the public interest."⁴ Mr. Lauckhart's Petition does not challenge the finding in Order 03 that he lacks a substantial interest. Rather, he contends only that his participation would be in the public interest.⁵

² WAC 480-07-810(2).

³ Staff Response to Petition ¶¶ 9-12.

⁴ WAC 480-07-355(3).

⁵ Petition ¶ 2. Accordingly, Mr. Lauckhart has waived any claim that Order 03 erred in determining that he does not have a substantial interest in the subject matter of this proceeding, and we do not address that issue.

- 16 Specifically, Mr. Lauckhart claims that his “participation in this case will benefit the Commission and the public interest because of his unique qualifications and knowledge of abuses that foreign owners have been placing and likely will continue to place of [sic] PSE customers if appropriate ‘conditions’ are not placed on this ownership transfer to new Pension Fund manager owners.”⁶ According to Mr. Lauckhart, “Order 03 harms the public interest because it inhibits the development of a robust record on the issue of transmission planning abuses by foreign owners that are harming PSE customers and what can be done to stop them.”⁷
- 17 Mr. Lauckhart has not demonstrated that his participation in this proceeding would be in the public interest. Public Counsel has the statutory duty “to represent and appear for the people of the state of Washington” in Commission proceedings.⁸ The administrative law judge correctly concluded in Order 03 that Public Counsel represents PSE’s residential customers, and Mr. Lauckhart’s purported representation of the interests of those same customers would be redundant at best. Nor is transmission planning at issue in this case. As Staff observes, “Mr. Lauckhart’s issues are best considered in an Integrated Resource Plan proceeding and/or a general rate case considering the investments and expenditures that are the subject of Mr. Lauckhart’s concerns.”⁹
- 18 We have Mr. Lauckhart’s comments and proposed conditions that he identifies in his Petition,¹⁰ and we will consider them to the extent they are relevant to the determinations we must make in this proceeding. Beyond that, however, we agree with the conclusion in Order 03 “that granting Mr. Lauckhart party status would not aid the Commission in its evaluation of the Joint Application and is not in the public interest.”¹¹

⁶ *Id.* ¶ 5.

⁷ *Id.* § III, ¶ 3.

⁸ RCW 80.01.100.

⁹ Staff Response to Petition ¶ 14.

¹⁰ Petition ¶ 5.

¹¹ Order 03 ¶ 29.

ORDER

THE COMMISSION ORDERS That J. Richard Lauckhart's Petition for Interlocutory Review of Order 03 is DENIED.

Dated at Olympia, Washington, and effective December 13, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner