

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

EARTHJUSTICE *et.al.*,

DOCKET UG-210111

ORDER 01

DENYING PETITION FOR
ADJUDICATION

BACKGROUND

- 1 On February 18, 2021, Puget Sound Energy (PSE or Company) filed with the Washington Utilities and Transportation Commission (Commission) a Confidential Affiliated Interest Agreement between PSE and Puget LNG, LLC (Puget LNG), for Gas Supply Services, which has been assigned Docket No. UG-210111.
- 2 This filing arose because PSE is constructing a liquefied natural gas facility in Tacoma, Washington. Puget LNG is a co-owner of the facility and PSE's affiliate. PSE's filing contains two documents governing its relationship with Puget LNG: (1) a Base Contract for the Purchase of Natural Gas (base contract) with an associated Amending Agreement to Base Contract (amending agreement), and (2) a Transaction Confirmation/Gas Supply Services Agreement (gas supply services agreement).
- 3 On March 19, 2021, Earthjustice filed comments on behalf of Advocates for Cleaner Tacoma, the Sierra Club, Washington Environmental Council, Physicians for Social Responsibility – Washington, and Stand.earth (collectively, Earthjustice). The comments request the Commission initiate an "investigation and public hearing regarding Docket No. UG-210111 to ensure that the affiliated interest contract between Puget LNG and Puget Sound Energy serves the public interest." Earthjustice specifically alleges that PSE unlawfully delayed its proposed contract by failing to file it before its effective date. Earthjustice further requests the Commission delay the effective date of the contract, and the LNG facility's operations, until after PSE "revises ... necessary safety hazard assessments" related to PSE's Siting and Safety Study and its Fire Protection Evaluation.

ORDER 01

4 Between March 22 and May 5, 2021, the Commission received 2,803 comments from members of the public, most of which are identical form letters or a variation thereof.¹

DISCUSSION

5 As a threshold matter, we construe Earthjustice’s letter as a petition to commence an adjudicative proceeding pursuant to WAC 480-07-305(3)(b), which identifies pleadings as “petitions for commission action when the relief requested requires adjudication or when the commission determines the issues should be resolved through adjudication.” Although not styled as such, the Commission liberally construes filings to effect justice among the parties.² Here, Earthjustice alleges that PSE unlawfully delayed the filing of its contracts with Puget LNG in violation of RCW 80.16.020, and urges the Commission to delay the effectiveness of PSE’s contracts with Puget LNG pending further safety and environmental review pursuant to the Commission’s “broad authority to amend contracts between affiliated entities to ensure they benefit the public.”³ Because the specific relief that Earthjustice requests would require resolution through an adjudicative process, we treat it as we would a petition to commence an adjudicative proceeding and deny it for the reasons discussed below.

Timeliness of PSE’s Filing

6 Earthjustice first alleges that PSE “unlawfully delayed” the filing of its contract with Puget LNG.⁴ We disagree.

7 RCW 80.16.020 requires public service companies to file with the Commission all contracts with affiliates “prior to the effective date of the contract or arrangement.” The base contract between PSE and Puget LNG provides that the contract between the two parties consists of the base contract and any confirmation agreement. The services agreement, which is the parties’ confirmation agreement, provides that its terms control in the event of a conflict with the terms in the base contract. The services agreement

¹ The Commission later learned that at least one of these comments was submitted without the express authorization of the member of the public on whose behalf the submissions were made. A member of the public requested that we remove their comment from the Commission’s website because it contained personally identifying information, a disclosure they did not authorize any person or organization to make on their behalf.

² See WAC 480-07-395(4).

³ Petition, p. 2.

⁴ *Id.*

ORDER 01

further provides that it becomes effective on the “first day of the month during which actual LNG production commences at the Tacoma LNG facility.”⁵

8 Because PSE has not commenced production of LNG, the contract is not yet effective under the services agreement. To the extent that the base contract contains terms that conflict with the effective date in the services agreement,⁶ the services agreement supersedes those terms. Accordingly, we conclude that PSE has not violated RCW 80.16.020 as Earthjustice alleges.

Delaying the Effectiveness of PSE’s Filing Under the Affiliated Interest Statutes

9 Earthjustice next requests that the Commission exercise its power under the affiliated interest statutes to investigate whether PSE’s filing “serves the public interest.”

10 The Legislature enacted Chapter 80.16 RCW to address the ratemaking issues created by affiliate relationships. Where the parties engage in arms-length bargaining for services, rate-setting bodies can presume that the costs properly reflect the utility’s ongoing operating costs.⁷ Because affiliates do not engage in arms-length bargaining,⁸ it raises concerns that the utility will agree to unfavorable terms with its affiliate, enriching shareholders at the expense of the utility itself and, ultimately, its ratepayers.⁹ Chapter 80.16 RCW eliminates this problem through Commission review of contracts between affiliates.¹⁰ The statutory filing requirement alerts the Commission that a given contract has been filed,¹¹ and the Commission’s review requires utilities to prove the contract’s terms are reasonable or in the public interest by providing verified cost records.¹² The Commission can disapprove or reject contracts that are unreasonable or contrary to the public interest. The Commission can also disallow in a rate case costs that were not

⁵ Services agreement at 3 § 3.1.

⁶ See amending agreement at 2 § 2.5,

⁷ *Pac. Tel. & Tel. Co. v. Public Utils. Comm’n of Cal.*, 34 Cal.2d 822, 826, 215 P.2d 441 (1950).

⁸ *State ex rel. Pac. Tel. & Tel. Co. v. Dept. of Public Serv.*, 19 Wn.2d 200, 248-49, 142 P.2d 498 (1943).

⁹ *US W. Commc’ns v. Wash. Utils. & Transp. Comm’n*, 134 Wn.2d 74, 94, 949 P.2d 1337 (1997).

¹⁰ *Pac. Nw. Bell Tel. Co. v. Sabin*, 21 Or. App. 200, 226, 534 P.2d 984 (1975) (“[t]he primary purpose of such regulation is to protect the corporation’s treasury and preserve its financial integrity.”) (quoting *in re Gen. Tel. Co. v. Lundy*, 17 N.Y.2d 373, 380, 271 N.Y.S.2d 216, 218 N.E.2d 274 (1966)).

¹¹ RCW 80.16.020.

¹² RCW 80.16.040.

ORDER 01

prudently incurred.¹³ In addition, the Commission's control continues over the life of a contract and includes any amendments thereto.¹⁴

- 11 As Earthjustice notes, the public service laws require “[e]very public service company” to “file with the [C]ommission a verified copy . . . of a contract or arrangement providing for the furnishing of management, supervisory[,] construction, engineering, accounting, legal, financial, or similar services,” as well as “any contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing” made between the public service company and any of its affiliated interests.¹⁵ The Commission may investigate a contract or arrangement and disapprove or reject it if the Commission “finds the public service company has failed to prove that it is reasonable and consistent with the public interest.”¹⁶
- 12 According to Earthjustice, the LNG facility requires further safety review,¹⁷ as well as further environmental review,¹⁸ which is the subject of Earthjustice's appeal of the State Environmental Impact Statement (SEIS) issued by the Puget Sound Clean Air Agency (PSCAA) before the Pollution Control Hearings Board (PCHB).¹⁹
- 13 We find that Earthjustice's requests exceed the scope of the affiliated interest statutes, and thus are not appropriate for consideration in this Docket. Chapter 80.16 RCW uses the term “public interest” to include preserving the utility's financial health, which, in turn, prevents ratepayers from being forced to pay costs that enrich a utility's shareholders. The safety and environmental concerns raised by Earthjustice do not fall within the ambit of the “public interest” as Chapter 80.16 RCW contemplates the meaning of that term. Neither concern implicates the utility's financial health or ratepayer enrichment of the utility's shareholders, and neither arises due to the lack of arms-length bargaining between PSE and Puget LNG.²⁰ Scrutiny of the contract under Chapter 80.16 RCW to address Earthjustice's concerns is thus unwarranted.

¹³ RCW 80.16.030.

¹⁴ RCW 80.16.050.

¹⁵ RCW 80.16.020 (third alteration in original).

¹⁶ *Id.*

¹⁷ Letter at 2-3.

¹⁸ Letter at 3.

¹⁹ *Advocates for a Cleaner Tacoma et al. v. Puget Sound Clean Air Agency*, PCHB No. 19-087c

²⁰ *E.g., State ex rel. Pac. Tel. & Tel. Co.*, 19 Wn.2d at 248-49.

ORDER 01

14 We also decline to take action to address Earthjustice’s environmental concerns because doing so would amount to a collateral attack on the order issued by the PSCAA that is pending appeal before the PCHB. Earthjustice specifically requests the Commission delay the effectiveness of PSE’s contract while it pursues its appeal of the PSCAA’s SEIS with the PCHB, which would preclude the LNG plant’s operation during the pendency of its appeal. Earthjustice similarly requested that the PCHB stay the PSCAA’s issuance of a permit for the LNG plant, thus stopping its operations, during the pendency of its appeal.²¹ The PCHB denied that request.²² Commission interference with this decision – *i.e.*, delaying the effectiveness of PSE’s contracts during Earthjustice’s SEPA appeal – would constitute an impermissible collateral attack on the PCHB’s order denying Earthjustice’s motion to stay.

Affiliated Interest Contract

15 Pursuant to WAC 480-90-245, which governs affiliated interest contracts or arrangements for regulated natural gas companies, the Commission “may institute an investigation and disapprove the contract or arrangement if the commission finds the utility has failed to prove that it is reasonable and consistent with the public interest.” The Commission reviewed the Confidential Affiliated Interest Agreement between PSE and Puget LNG (Agreement) filed in this Docket and finds that PSE has provided sufficient evidence to establish that the Agreement is reasonable and consistent with the public interest for the reasons discussed above. Accordingly, we conclude that instituting an investigation of the Agreement pursuant to WAC 480-90-245 is unwarranted, and that commencing an adjudication to address the timeliness of PSE’s filing is without merit. Finally, we conclude that granting Earthjustice’s request to delay the execution of the Agreement would amount to a collateral attack on the PCHB’s order.

ORDER

16 **THE COMMISSION ORDERS THAT** Earthjustice’s petition to commence an adjudicative proceeding, filed on behalf of Advocates for Cleaner Tacoma, the Sierra Club, Washington Environmental Council, Physicians for Social Responsibility – Washington, and Stand.earth, is DENIED.

²¹ *ACT v. PSCAA*, PCHB No. 19-087C, Order Denying Motions for Stay, at 2:1-2 (Mar. 16, 2020).

²² *Id.* at 18-2-3.

DATED at Lacey, Washington, and effective May 11, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner