

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Proposal by)	
)	
PUGET SOUND POWER & LIGHT)	
COMPANY)	DOCKET NO. UE-951270
)	
to Transfer Revenues from PRAM Rates)	
to General Rates.)	
.....)	
)	
In the Matter of the Application of)	
)	
PUGET SOUND POWER & LIGHT)	
COMPANY and WASHINGTON NATURAL)	DOCKET NO. UE-960195
GAS COMPANY)	
)	
for an Order Authorizing the Merger of)	
WASHINGTON ENERGY COMPANY and)	THIRD SUPPLEMENTAL
WASHINGTON NATURAL GAS COMPANY)	ORDER MODIFYING
with and into PUGET SOUND POWER &)	PREHEARING ORDER
LIGHT COMPANY, and Authorizing the)	
Issuance of Securities, Assumption of)	
Obligations, Adoption of Tariffs, and)	
Authorizations in Connection Therewith.)	
.....)	

This is a consolidated proceeding. Docket No. UE-951270 is a proposal by Puget Sound Power & Light Company (Puget) to transfer to Puget's permanent rate schedules, currently-collected revenue of approximately \$165.5 million authorized in the PRAM ("Periodic Rate Adjustment Mechanism") under Schedule 100. Docket No. UE-960195 is the application of Puget Sound Power & Light Company and Washington Natural Gas Company (WNG) for a Commission order authorizing the merger of Washington Energy Company and Washington Natural Gas Company with and into Puget Sound Power & Light Company, and authorizing the issuance of securities, assumption of obligations, adoption of tariffs, and authorizations in connection therewith.

A prehearing conference was held in Olympia, Washington, on Tuesday, April 30, 1996. The Second Supplemental Order on Prehearing Conference was entered on May 23, 1996. Among the matters determined in the Second Supplemental Order were nineteen petitions to intervene.

Five parties or would-be intervenors have filed objections to the Second Supplemental Order's rulings on petitions to intervene. The petitions that are the subject of these objections are the following:

Summary of Objections

1. The petition to intervene of Public Utility District No. 1 of Snohomish County (Snohomish PUD). Snohomish PUD's petition asserts an interest as a competitor of the merged company. In the prehearing conference, Commission Staff and Puget opposed intervention by Snohomish PUD, arguing that it does not have a "substantial interest" in the outcome of the proceeding to warrant intervention under WAC 480-09-430, and that the "public interest" does not warrant its intervention, citing the Washington Supreme Court's interpretation of those terms in Cole v. Washington Util. & Transp. Comm'n, 79 Wn.2d 302, 485 P.2d 71 (1991). Cole was a Commission rate case. The Washington Supreme Court upheld a Commission decision that unregulated, potential competitors of a regulated company do not have a "substantial interest" in the outcome of a Commission proceeding, and that the "public interest" warrants intervention only to protect the interests of customers of the regulated utility.

The Second Supplemental Order denied Snohomish PUD's petition to intervene on the basis that the interests of Snohomish PUD appear to be those of a competitor and that petitioner did not establish a substantial interest in the outcome of the proceedings, or that the public interest would benefit from its participation.

In its objection, Snohomish PUD contends that its interests as a competitor of Puget justify intervention. It argues that in the event retail wheeling requirements are implemented in Washington, Puget and Snohomish PUD will soon compete for retail customers, and that Snohomish PUD already competes with WNG to meet the energy needs of customers. It argues that it has concerns involving the impact of potential anti-competitive effects upon Snohomish PUD and its citizen-owners, many of whom are customers of WNG, such as inequitable sharing of the benefits resulting from any efficiencies; cross-subsidization between fuels leading to higher prices for certain customers and an unfair competitive advantage of the electric operations; decreased availability of new gas distribution facilities; and exclusion of Snohomish PUD from providing joint underground utility trenches and gas lines in plats.

Snohomish PUD argues that Cole is distinguishable in that it was a rate case whereas this is a merger proceeding, and the would-be intervenor in Cole had no customers in common with the regulated company, whereas Snohomish PUD does and is seeking to intervene to protect those customers' interest. It argues that Cole should not be rigidly applied in an era of rapidly evolving competition in which the concepts of service territories and fixed customer bases are losing their meaning. It argues that it is uniquely situated to assist the parties and the Commission to understand the many-faceted competitive (or anti-competitive) effect of the merger proposal, and to fashion ground rules for the merger that are designed to protect against cross-subsidies and other undesirable effects.

Snohomish PUD also argues that it has an interest as a customer of Puget and of WNG, in that it is a part owner of a hydro generating facility on the Skookumchuck River which Puget serves, and that WNG provides its Everett Cogeneration Plant with gas transportation service.

2. The petition to intervene of City of Tacoma Department of Public Utilities (TPU). TPU's petition asserts a general interest in protecting 80,000 of its customers who are in the proposed service area of the proposed merged company. The petition states a concern that allowing two large entities to merge could reduce market options for those customers, which could have a negative impact upon cost and service to those customers.

Commission Staff opposed the petition in the prehearing conference on the same grounds as it opposed the petition of Snohomish PUD.

The Second Supplemental Order ordered that "Tacoma and Seattle shall present a consolidated case."

Commission Staff objects to the Second Supplemental Order's ruling on TPU's petition. Staff contends that TPU should not be allowed to intervene at all. Staff emphasizes that intervention was not requested by the City of Tacoma but rather by a municipal electric utility that is not subject to the jurisdiction of the Commission. Staff again cites the Cole determination. Staff argues that TPU has requested intervention to protect its own competitive interests. Staff argues that Cole was correctly applied to deny intervention by Snohomish PUD, and that there is no reasons to distinguish between Snohomish PUD and TPU.

TPU also objects to the Second Supplemental Order. TPU contends that the written order limits its participation more than the presiding officer orally ruled, and that the oral ruling was the correct one -- that Seattle and TPU were not ordered to consolidate their cases, but rather were ordered to coordinate their presentations and to designate one lawyer to examine each witness. TPU asks the Commission to modify the order to reflect the oral ruling.

In its objection, TPU also responds to Commission Staff's Cole argument. TPU argues that it is not asserting a concern about competition, but rather a concern about the customers of the merged company.

3. The petition to intervene of the Washington Public Utility District Association (WPUDA). WPUDA is a non-profit corporation comprised of 28 municipally-owned and locally-regulated public utility districts. Members operate water, sewer, and electric utilities that the WUTC does not regulate. The petition to intervene alleges that the members have a direct and substantial interest in this proceeding as retail

customers of Puget and/or as retail distributors of electricity operating in areas which overlap or adjoin those served by Puget and WNG. It alleges that the customer members have a keen interest in rate equity effects of retail open access and competition, and that the WPUDA can provide a customer's perspective on the impact of the merger on retail competition. It alleges that because several members are potential competitors, WPUDA would bring a unique perspective to this case concerning the impact of the merger on competition.

In the prehearing conference, Puget opposed intervention, arguing that the WPUDA sought to intervene by bootstrapping on the interests of four members who have the status of retail customers. It cited Cole for the proposition that the interests of potential competitors are not a public interest which may be considered, and argued that it would place Puget at a competitive disadvantage if its competitors were allowed to intervene, gain access to confidential information, and have a role in fashioning merger conditions which may hamper the applicants' ability to compete.

The Second Supplemental order granted intervention, but directed: "petitioner's involvement shall be limited to representing the interests, as retail customers, of four member public utility districts that operate water companies which are Puget customers."

WPUDA objects that the order exceeds the oral ruling of the presiding officer that WPUDA would be permitted to intervene for the purpose of representing the interests as customers of those members of the association who are customers of either of the [applicant] companies. WPUDA asks the Commission to modify the order to conform to the oral ruling.

WPUDA's objection also asks the Commission to clarify the order "to state that to the extent such issues as the public benefits of the merger, customer market access after the merger, retail wheeling, electric industry restructuring, non-discriminatory pricing, interfuel competition, and any other issues which may involve retail competition as affected by the merger are deemed relevant to this proceeding by the Commission, the Association's members who are customers of either applicant have the same scope of interests and the same rights of participation on such issues as other customers and customer groups admitted herein as parties."

WPUDA's objection also asks the Commission to modify the order "to determine that Association members who are potential competitors of the Applicant have a 'substantial interest' in this proceeding as sellers of the same commodity and representatives of joint customers with the Applicant, or that the Association's participation would otherwise benefit the 'public interest,' and remove any limitation on the Association's participation concerning issues involving competition or potential competition between the Applicant and members of the Association." WPUDA argues

that the landscape has changed considerably since Cole, in that competition now is the model being advanced in the electric industry. It argues that Cole does not preclude the Commission from exercising discretion to determine that competitors do have a "substantial interest" or that their participation would otherwise benefit the "public interest." It argues that such an exercise of discretion is appropriate in this case in which the transition to retail competition from monopoly is a basic issue. It argues that WPUDA members have a substantial interest, which coincides with customers' interests in assuring that the conditions of the merger are not anticompetitive, and that the benefits of competition will be available to all customers. It argues that the Commission should not have a proceeding in which it examines the new competitive model without hearing impacts and getting the advice of some potential competitors. It argues that it would be useful to the Commission to receive information, advice, and input from WPUDA members about how the merger will affect the Commission policy favoring a competitive model.

4. The petition to intervene of the Public Power Council (PPC). PPC is a non-profit corporation consisting of publicly- or cooperatively-owned electric utilities in the Pacific Northwest. Its purpose is to represent the common interests of its members on wholesale power and transmission supply, rate, and planning matters.

PPC's petition asserts an interest based on the Bonneville Power Administration's Residential Exchange program. It asserts that as statutory preference customers of BPA, PPC's members pay for a substantial portion of the Residential Exchange program costs (over 50%) through their Priority Firm (PF) power purchases. Puget is a substantial beneficiary of the Residential Exchange program. BPA sets the PF rate at a level sufficient to recover the cost of resources required to serve preference customers and the net costs of the Residential Exchange. The net costs of the Residential Exchange is the difference between an exchanging utility's "average system cost" and BPA's exchange rate. The petition asserts that because Commission decisions regarding the costs that the merged company will be allowed to recover will affect the level of costs included in the merged company's "average system cost" calculation, the members of PPC have a real and immediate interest in the outcome of this proceeding.

In the prehearing conference, Commission Staff opposed the petition, arguing that under the Commission's intervention rule the PPC does not meet the substantial interest or public interest test. It argued that the interests PPC has are of its member utilities, and not ratepayers of the applicants. Staff also argued that the issues of how the residential exchange works at BPA and how Puget's average system costs will be determined and utilized in the Residential Exchange program will not be impacted by this case. There will be no filing by Puget of its average system costs with BPA as a result of this case, so this case may not impact the Exchange at all. Even if it did, BPA is not bound by Commission determinations.

Puget also opposed the petition, arguing that the interests advanced by PPC are exactly the same interests as asserted by BPA, whose petition to intervene is not opposed. Puget echoed Commission Staff's contention that PPC's interests are indirect. Puget also expressed concern that PPC's participation would be duplicative in that some of its members also are members of the WPUA.

The Second Supplemental Order denied PPC's petition to intervene, on the basis that PPC did not establish a substantial interest in the outcome of the proceedings, or that the public interest would benefit from its participation.

In its objection to the Second Supplemental Order, PPC asks the Commission to modify the order to permit PPC to intervene. It repeats the Residential Exchange argument that it made in its petition. It argues that PPC's interest in this proceeding is direct and substantial, given the enormity of the merged company's potentially exchangeable costs. It argues that in addition to requesting approval of the merger, Puget requests approval of an increase in its rates, and that this is the forum in which underlying costs supporting those increases are presented. It emphasizes language in the Second Supplemental Order stating that this is Puget's next general rate proceeding. It argues that Commission decisions regarding the costs the merged company will be allowed to recover will affect the company's "average system cost" calculation.

PPC argues that it seeks to intervene to ensure that costs eligible for the Residential Exchange are properly categorized in this rate proceeding, thus facilitating the subsequent calculation by BPA of the company's average system costs. It argues that it brings expertise on Residential Exchange issues, and that the applicants and the Commission will benefit from PPC's expertise in average system cost identification and analysis.

Commission Decision

The Commission will not allow a person to intervene in a proceeding when the person does not have a substantial interest in the proceeding or has not shown that its participation would be in the public interest. RCW 34.05.443; WAC 480-09-430. In re The Washington Water Power Company, Docket Nos. UE-941053, 941054, Fourth Supplemental Order (1994). In rate cases, the Commission generally does not grant intervention to unregulated potential competitors of a regulated company, on the basis that the Commission has no authority to consider the economic effects of practices of a regulated utility upon nonregulated competitors, and that the interest of the public which is to be protected is that only of customers of the regulated utility. The Washington Supreme Court found this interpretation of the Commission's regulatory power to be supported by statute and case law, in Cole v. Wn. Util. & Transp. Comm'n, 79 Wn.2d 302, 485 P.2d 71 (1971).

This proceeding raises significant competitive issues beyond those involved in a typical rate case. The transition from monopoly to retail competition in the electric industry is a basic issue in this proceeding. In this transitional environment, the Commission believes that it is in the public interest for it to be generous in allowing issues on the table. WPUDA and other competitors can bring an expertise to the table that may assist the Commission in determining how the merger will affect the Commission policy favoring a competitive model in the electric industry.

Concerning PPC's objection, it is unclear to what extent the Residential Exchange program issue raised by PPC will be implicated in this proceeding. The Commission believes that it is appropriate to allow PPC to participate in this proceeding as an intervenor, limited solely to that issue.

At the same time, the Commission is sensitive to Puget's concern that this proceeding not be abused by potential competitors for the purpose of fashioning merger conditions that will hamper the merged entity's ability to compete effectively. The Commission also is concerned that the proceedings remain manageable .

The Commission makes the following decisions on the petitions to intervene that are the subject of filed objections to the prehearing conference order:

1. Petitions of Washington Public Utility District Association (WPUDA), Public Utility District No. 1 of Snohomish County (Snohomish PUD), and Public Power Council (PPC).

The Commission modifies the Second Supplemental Order to grant the petition to intervene of Washington Public Utility District Association, without restriction as to which members it may represent, subject to the consolidated presentation restriction set out below.

The Commission modifies the Second Supplemental Order to grant the petition to intervene of Public Utility District No. 1 of Snohomish County, subject to the consolidated presentation restriction set out below.

The Commission modifies the Second Supplemental Order to grant the petition to intervene of Public Power Council, with the limitation that PPC is restricted to addressing issues related to the effect of decisions in this proceeding on the Residential Exchange Program, and further subject to the consolidated presentation restriction set out below.

WPUDA, Snohomish PUD, and PPC are required to consolidate their presentations at hearing. That means that only one set of pre-filed materials may be filed, and only one attorney from among the three may cross-examine each witness.

The Commission also may limit participation by those intervenors during the hearings to competitive issues which the Commission determines in the course of this proceeding are relevant to the Commission's decision on the proposed merger. The three intervenors may submit separate briefs.

2. Petition of Tacoma Department of Public Utilities (TPU).

The Commission modifies the Second Supplemental Order to clarify that the City of Seattle and TPU shall consolidate their presentations at hearing, in the sense of filing a single set of prefiled testimony and designating one attorney to cross-examine each witness. They may submit separate briefs.

ORDER

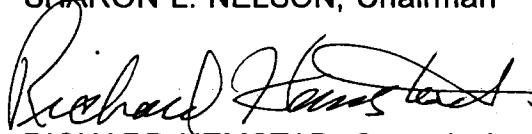
THE COMMISSION ORDERS That the Second Supplemental Order on Prehearing conference is modified as set forth above. All outstanding objections and motions consistent with this order are deemed granted. Those inconsistent with this order are deemed denied.

DATED at Olympia, Washington, and effective this 7th day of June
1996.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD HEMSTAD, Commissioner