

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

In the Matter of Application of

DOCKET NO. UE-991409

PUGET SOUND ENERGY, INC.

for (1) Approval of the Proposed Sale of
PSE's Share of the Centralia Facilities, and
(2) Authorization to Amortize Gain Over a
Five-Year Period.

In the Matter of Application of

DOCKET NO. UE-991255

AVISTA CORPORATION

for Authority to Sell Its Interest In the
Coal-Fired Centralia Power Plant.

In the Matter of Application of

DOCKET NO. UE-991262

PACIFICORP

for an Order Approving the Sale of its
Interest in (1) The Centralia Steam Electric
Generating Plant, (2) The Ratebased
Portion of the Centralia Coal Mine, and (3)
Related Facilities; For a Determination of
the Amount of and the Proper Ratemaking
Treatment of the Gain Associated with the
Sale; and for an EWG Determination.

**IUOE 612'S OBJECTION TO
NOVEMBER 23, 1999 PREHEARING
CONFERENCE ORDER**

BACKGROUND AND SUMMARY

International Union of Operating Engineers, Local 612 ("Local 612" or "the Union")
objects, pursuant to WAC 480-09-460(2), to the limitations imposed upon its intervention

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in these proceedings set forth in the Commission's November 23, 1999 Prehearing Conference Order ("Prehearing Order") in the above captioned matters. The terms of Local 612's intervention overly restrict the type of evidence it may present and deviate from previous Commission rulings. Accordingly, the Union seeks a revised order from the Commission that does not prohibit Local 612 from presenting evidence regarding the overall operational safety of the Centralia facility, including the aspects of that operational safety that bear upon employees and the general public.

In its Prehearing Order, the Commission ruled

Union contract issues, *worker safety issues*, and protecting job security of workers are beyond the scope of Commission authority and are regulated by other entities. They will not be considered here.

Prehearing Order, pages 3 - 4 (emphasis added). The Union objects to this restriction on its ability to present evidence before this Commission in so far as this restriction precludes evidence regarding TransAlta's record on workplace safety as it relates to overall operational safety. Local 612 urges the Commission to use its statutory authority to permit such evidence and to give it full consideration especially since the Commission stands in a unique position among state agencies to review such data prospectively. The Union in no way suggests that the Commission entertain individual worker complaints regarding health and safety issues.

Second, this Prehearing Order deviates from existing precedent. In at least three recent orders, the Commission granted intervening unions greater latitude to present evidence regarding the public interest and employee safety. Third, as a practical matter, the Prehearing Order unnecessarily requires the intervening unions to purge any mention of worker safety

concerns from evidence and testimony about larger operational safety issues. Lastly, the Commission's decision to categorically exclude an entire evidentiary topic is premature at this stage.

ARGUMENT

I. **BY PROHIBITING THE UNION FROM PRESENTING EVIDENCE ON WORKER SAFETY ISSUES, THE COMMISSION HAS OVERLY RESTRICTED LOCAL 612'S INTERVENTION, DEVIATED FROM ITS OWN PRECEDENT, AND LEFT A GAP IN REGULATORY COVERAGE.**

A. **The Commission's Statutory Charge To Monitor Sales Of Utilities In The Public Interest Places It In A Unique Position To Review The Operational History – Including The Employee Safety Record – Of TransAlta, A Power The Department Of Labor And Industries Lacks Under The Washington Industrial Safety And Health Act.**

In RCW 81.01, the legislature charged the Commission with broad authority to monitor and safeguard the operation of utilities in the state of Washington. RCW 80.01.040(3) states that the Commission shall: "Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service ..." To that end, RCW 80.12.020 requires a public service company to secure the Commission's approval in order to sell a public utility. The Commission examines such applications to determine whether a proposed transaction will be in the public interest. E.g., WAC 480-143-050. Here, such examination includes review of the new operator, TECWA, a subsidiary of TransAlta. A component of that review should include the proposed buyer's intentions with regard to safety. Contrary to some arguments raised by staff counsel at the prehearing conference, the Department of Labor and Industries cannot undertake this type of review. By enacting the

Washington Industrial Safety and Health Act (WISHA), RCW 49.17 et seq., the legislature established that it is in the public interest of the state to “assure, ... safe and healthful working conditions for every man and woman working in the state of Washington[.]” Likewise, it is in the public’s interest to minimize personal injuries and illnesses arising from the workplace and to maintain minimum standards of industrial safety, health and welfare. RCW 49.17.010. WISHA creates an array of regulatory and enforcement powers to maintain such standards, however, it extends only to statutory employers as defined in RCW 49.17.020:

The term ‘employer’ means any person, firm, corporation... or other business entity which *engages* in any business, industry, profession or activity in this state and *employs* one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such persons...

(emphasis added). The language speaks in the present tense. It does not extend to corporations that contemplate becoming statutory employers. Thus while RCW 49.17 establishes a framework for enforcement of state workplace health and safety standards, it simply does not enable Labor and Industries to engage in prospective review. That role is left for this Commission.

Therefore, were the Commission to exclude evidence concerning worker safety issues or the employee safety history of TransAlta, it would create a gap in the administrative review process and fail to fulfill the Commission’s statutory obligation to regulate facilities in the public interest. Local 612 does not dispute that Labor and Industries is the appropriate forum for individual complaints regarding WISHA violations. Rather, the Union submits that Labor and Industries simply is not in a position to review worker safety issues in a

prospective fashion. In contrast, the Commission engages in an extensive prospective review, in the public's interest, of proposed transactions. The Commission does not create an administrative or jurisdictional overlap simply by considering TransAlta's worker safety record as part of the evidence submitted regarding TransAlta's operational safety. On the contrary, if it does not consider such evidence, no state agency will.

Also, as referenced above, the public's interest includes assuring safe and healthful working conditions. Consideration of evidence of TransAlta's workplace safety record is a natural component of the Commission's current process and fully consistent with the Commission's statutory charge.

B. Previous Commission Orders Regarding The Scope Of Intervention Permitted Labor Unions Broader Latitude To Present Evidence Relating To Employee Safety.

Applicants in *PacificCorp and Scottish Power PLC*, Docket No. UE-981627, Third Supplemental Order on Prehearing Conference (April 2, 1999), sought approval of a proposed merger and transfer of property application involving the Centralia power plant and coal mine (the same facility at issue in the instant applications). The Commission granted Local 612's petition to intervene in that case, and limited the Union's participation to two major areas: "*safety* and the adequacy of the merger plan to meet customers' needs." *Id.* at 4 (emphasis added). This Order drew upon the Commission's earlier ruling in *Puget Sound Power & Light Company*, Docket Nos. UE-951270 & UE-960195, Second Supplemental Order On Prehearing Conference (May 23, 1996). There the Commission specified that it would "not consider issues of wages, benefits, or job protection" but determined that it would consider safety issues. *Id.* at 3.

Nowhere in either of these rulings did the Commission proscribe the offering of evidence on worker safety as it did in the instant Prehearing Order. In fact in *Pacific Corp and Scottish Power, supra*, the Commission specifically acknowledged the appropriateness of evidence pertaining to safety. By way of contrast, the instant Order imposes a new restrictive limitation on what evidence an intervenor may present. Moreover, there is no citation or reference to existing Commission case law to support this restrictive new departure.

- 1. The Commission previously has recognized the substantive role a labor union plays in monitoring levels of worker safety and has asked an intervening union to bring safety concerns to the Commission's attention.**

In *Puget Sound Power & Light Company, supra*, Fourteenth Supplemental Order Accepting Stipulation; Approving Merger (February 5, 1997), pp 31-33, the Commission considered, at the request of the IBEW Local 77, whether to modify the proposed Stipulation to include employee safety (lost time accidents) as part of the Service Quality Index (SQI). The Commission recognized that “increases in the level of lost time accidents could be a warning sign of excessive cost cutting” and pose a threat to service quality for PSE customers. *Id.* at 32. While it declined to include the lost time accident criterion in the SQI at that time, the Commission “encourag[ed] IBEW Local 77 to continue to monitor worker safety, and to alert the Commission if there is a significant increase in the frequency of lost-time accidents.”

This decision illustrates that the Commission recognizes the significance of worker safety issues in connection with customer service, and the public interest at large. Moreover,

it demonstrates that the Commission values the input labor unions can offer on worker safety matters as evidenced here by an explicit invitation to continue to monitor, and provide future input on, this issue. Lastly, this decision undermines the notion (discussed *supra*) that the Commission is unable to ever entertain worker safety issues either out of concern for exceeding its statutory mandate, or out of deference to the Department of Labor and Industries.¹

Local 612 only urges the Commission not to unnecessarily circumscribe the type of evidence the Union may submit regarding TransAlta's general safety and worker safety record. As the foregoing illustrates, the Commission has experience dealing with issues of employee and workplace safety, and deviated from its past practice by overly limiting the terms of Local 612's intervention.

C. It Is Premature And Unnecessary To Categorically Exclude Evidence On TransAlta's Employee Safety Record.

It is both premature and unnecessary to preclude the Union from submitting any evidence regarding TransAlta's worker safety record. Sustaining Local 612's objections and amending the Prehearing Order will not prejudice the other parties. They will remain free to raise additional objections to evidence the Union presents. WAC 480-09-745. Likewise,

¹ Any suggestion that the Commission has no experience in worker safety issues is equally groundless. In addition to the foregoing cases, the Commission has direct experience addressing issues of employee welfare in the context of railroad workers. "RCW 81.40.095 specifically requires the Commission to 'adopt and enforce rules and regulations relating to sanitation and adequate shelter as it affects the health of all railroad employees. " *Railroad Rulemaking – Chapter 480-60 WAC Clearances and Chapter 480-66 WAC Sanitation*, Dkt No. TR-981101 (September 22, 1999). In that rulemaking recommendation in support of new regulations, the Commission reviewed substantive input of employer and union parties on a variety of issues ranging from walkways and meal periods, to lockers and toilets.

the Commission retains the authority to limit an intervenor's participation to discrete issues. RCW 34.05.443. Thus to categorically exclude evidence pertaining to TransAlta's employee safety record is premature at this time.

From a practical perspective, data pertaining to operational safety often is inextricable from worker safety data. The current Prehearing Order requires those two types of data to be artificially separated. Local 612 submits that in order for the Commission to examine safety issues, it cannot overlook TransAlta's employee safety record. In light of the close relationship between the two types data, the Union suggests that consideration of both poses little additional burden upon the Commission.

CONCLUSION

For the foregoing reasons, IUOE 612 requests the Commission to sustain the objections filed herein and amend the Prehearing Order to permit the Union to submit evidence on TranAlta's record of employee health and safety.

RESPECTFULLY SUBMITTED this 3rd day of December 1999.

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CERTIFICATE OF SERVICE

On this 3rd day of December, 1999, I caused the IUOE Local 612's Objection To November 23, 1999 Prehearing Conference Order to be sent via Electronic Mail and original plus six copies to be mailed first class postage pre-paid mail to:

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