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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’ MOTION TO
STRIKE THE TESTIMONY OF D.
TIMOTHY ARNOLD FILED ON
BEHALF OF IBEW LOCAL 77**

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I. INTRODUCTION

I. Pursuant to Prehearing Conference Order 03 ¶ 23 and WAC 480-07-375, 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”), moves and respectfully requests that the Commission strike the testimony filed by D. Timothy Arnold on behalf of the International Brotherhood of Electrical Workers, Local 77 (“IBEW”) in its entirety. Mr. Arnold is not qualified to provide the testimony he offers. His testimony is also beyond the scope of IBEW’s intervention in this case. Mr. Arnold’s testimony provides no information relating

1 to whether the transaction at issue in this case will be detrimental to “the safety
2 and reliability of service to PSE’s customers where its members are actually
3 involved in the provision of such service.”¹ Instead, Mr. Arnold’s testimony
4 addresses collective bargaining issues that are inappropriate and beyond the
5 Commission’s jurisdiction.

6 2. Given that Mr. Arnold’s testimony should be stricken, the Commission
7 should correspondingly issue a limiting instruction reiterating IBEW’s restricted
8 role at the settlement hearing. The Commission has already determined that
9 IBEW does not have a substantial interest in this proceeding.² The only purpose
10 of IBEW’s intervention was to provide information relating to how the Proposed
11 Transactions would impact the safety and reliability of service to customers where
12 its members are actually involved in the provision of such service. Given that
13 IBEW has not complied with that limitation, the Joint Applicants are concerned
14 that IBEW will attempt to use the settlement hearing as a platform to
15 inappropriately raise collective bargaining issues.

16 3. The Joint Applicants respectfully request that the Commission issue an
17 order reminding IBEW of its restricted role in this case and should IBEW violate
18 this parameter, IBEW should be dismissed as an intervening party under WAC
19 480-07-355(4) immediately.

¹ *In the Matter of the Application of Puget Sound Energy*, Docket U-180680, Order 03, ¶ 23 (Nov. 21, 2018) (“Order 03”).

² *Id.* ¶ 22.

1 **II. BACKGROUND**

2 **A. IBEW Seeks Intervention**

3 4. On September 5, 2018, the Joint Applicants filed an application seeking
4 approval of the sale of a 43.99 percent ownership interest in Puget Holdings, LLC
5 (“Puget Holdings”) currently held by Macquarie Infrastructure Partners, Inc. and
6 Padua MG Holdings LLC, to existing owners AIMCo and BCI, and to two new
7 owners, OMERS and PGGM (the “Proposed Transactions”).

8 5. On September 19, 2018, IBEW filed a petition to intervene in the
9 proceeding, seeking “full party” status under WAC 480-07-340.³ As stated in its
10 petition to intervene, IBEW represents some PSE employees in various trades and
11 positions within PSE, as well as various workers employed by third parties who
12 subcontract with PSE.⁴ IBEW and PSE’s contractual relationship is governed by a
13 collective bargaining agreement, which is effective through March 31, 2020.⁵

14 **B. The Commission Grants IBEW Limited Intervention**

15 6. On November 14, 2018, the Joint Applicants filed an opposition to
16 IBEW’s petition to intervene objecting to IBEW’s intervention on the grounds
17 that IBEW does not have a substantial interest in this proceeding because IBEW
18 seeks to introduce collective bargaining issues into the proceeding and that
19 IBEW’s intervention is not in the public interest because such issues would only
20 distract from the narrow issue before the Commission, which is whether the

³ *In the Matter of the Application of Puget Sound Energy*, Docket U-180680, IBEW Local 77 Petition to Intervene, ¶ 1 (Oct. 22, 2018).

⁴ *Id.* ¶¶ 5, 7.

⁵ *Id.* ¶ 6.

1 transfer of a 43.99 percent interest in Puget Holdings is in the public interest
2 under the Commission’s no-harm standard.⁶ Other parties contested IBEW’s
3 participation, including Commission Staff.⁷

4 7. On November 21, 2018, the Commission determined that IBEW did not
5 have a substantial interest in the proceeding because “employment issues such as
6 workplace changes, labor contracts, wages, hours, and staffing are outside the
7 Commission’s purview.”⁸ Nevertheless, the Commission ultimately granted
8 IBEW limited intervention because its intervention “may be useful to the
9 Commission in compiling an appropriate record and determining whether the
10 transactions will result in ‘no harm’ to PSE’s customers.”⁹

11 8. However, the Commission narrowly limited IBEW’s participation to
12 “matters specifically addressing the safety and reliability of service to customers
13 where its members are actually involved in the provision of such service.”¹⁰ The
14 Commission also warned that “in the event it becomes clear later in the
15 proceeding that . . . IBEW’s continued participation is not in the public interest,
16 the Commission has the authority to dismiss . . . [IBEW] as an intervenor.”¹¹

⁶ *In the Matter of the Application of Puget Sound Energy*, Docket U-180680, Joint Applicants’ Opposition to IBEW Petition to Intervene (Nov. 14, 2018).

⁷ Order 03 at ¶ 10.

⁸ *Id.* ¶ 22.

⁹ *Id.*

¹⁰ *Id.* ¶ 23

¹¹ *Id.*

1 **C. IBEW Declines to Join the Multiparty Settlement**

2 9. On January 15, 2019, all of the full participants in the proceeding,
3 including the Joint Applicants, Commission Staff, the Public Council Unit of the
4 Washington State Attorney General’s Office, the Alliance of Western Energy
5 Consumers, The Energy Project, the NW Energy Coalition, and the Federal
6 Executive Agencies, either entered into or did not oppose a Multiparty Settlement
7 Stipulation and Agreement (“Settlement Stipulation”) resolving all issues in the
8 case.¹² The only parties opposing the Settlement Stipulation were parties with
9 restricted participation in the proceeding; namely, IBEW and the other union
10 participants, the WNIDCL and UA Local 32.¹³

11 **D. IBEW Files Testimony That Exceeds the Scope of Its Intervention**

12 10. On February 8, 2019, IBEW filed testimony opposing the Settlement
13 Stipulation provided by D. Timothy Arnold. Mr. Arnold—a former PSE
14 employee—holds himself out as an expert in utility operations, states he has
15 specific knowledge of PSE’s safety and reliability systems, and that he “feel[s]
16 uniquely qualified to provide [his] . . . perspective given that I worked directly
17 with PSE, its employees, and customers.”¹⁴

¹² All of the full parties entered into the Settlement Stipulation except for the Federal Executive Agencies, which does not oppose the Settlement Stipulation.

¹³ Like IBEW, the Commission limited WNIDCL’s and UA Local 32’s participation to matters addressing how the Proposed Transactions will impact safety and reliability of service to customers where its members are actually involved in the provision of such service. Order 03 at ¶¶ 17, 23. UA Local 32 has not filed testimony opposing the settlement but has not signed onto the Settlement Stipulation.

¹⁴ Testimony of D. Timothy Arnold, Exh. DTA-1T at 5:22-6:3 (“Arnold Testimony”).

1 11. Absent, however, from Mr. Arnold’s testimony is any description or
2 summary of Mr. Arnold’s employment for the past twenty years. His employment
3 with PSE ended in 1999 and while he mentions generally he has worked for
4 Pilchuck Construction and has “been a consultant to builders and contractors,”¹⁵
5 he provides no specific information surrounding his work in these areas or during
6 what time periods. Mr. Arnold also does not appear to have any experience with
7 utilities transactions, such as the Proposed Transactions in this case.

8 12. Mr. Arnold’s testimony addresses a wide range of issues, none of which
9 relate to the Proposed Transactions and most of which are labor relations issues
10 that should be addressed in a collective bargaining agreement. Mr. Arnold
11 addresses: “insufficient staffing”;¹⁶ “overreliance on employee overtime hours”;¹⁷
12 “inadequate employee training”;¹⁸ “failure to ensure reliability during-and-after
13 storm outages”;¹⁹ “failure to utilize qualified electrical workers in outages
14 resulting in greater risk of harm to employees and the public”;²⁰ “issues regarding
15 subcontracted labor”;²¹ “decrease in vehicle safety”²²; “inadequate succession
16 planning and underutilization of apprenticeship.”²³

¹⁵ *Id.* at 1:10-12.

¹⁶ *Id.* at 10:18.

¹⁷ *Id.* at 11:12.

¹⁸ *Id.* at 13:12.

¹⁹ *Id.* at 17:7.

²⁰ *Id.* at 20:10-11.

²¹ *Id.* at 21:6.

²² *Id.* at 21:13.

²³ *Id.* at 22:6.

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III. ARGUMENT

A. Mr. Arnold Is Not Qualified to Render Opinions Regarding the Safety and Reliability of PSE’s Infrastructure and Service to Customers and His Testimony Should Be Stricken on this Basis

13. Mr. Arnold’s testimony should be stricken because he is not qualified to offer opinions regarding the safety or reliability of PSE’s systems or service to customers or how such issues would be impacted by the Proposed Transactions. While Mr. Arnold is a former PSE employee, his past employment with PSE ended twenty years ago. Since 1999, PSE’s electric and gas operations have changed considerably. Moreover, Mr. Arnold provides almost no testimony regarding his employment since that time. He vaguely mentions working for Pilchuck and as a “consultant to builders and contractors” but provides no description of this work. It does not appear that Mr. Arnold has ever been retained as an expert witness or has had any interaction with any utility in any capacity since his employment with PSE ended in 1999.

14. Moreover, despite opining on a broad array of issues, Mr. Arnold does not describe any personal survey or inspection of PSE’s operations, systems, or infrastructure. He did not claim to have interviewed any PSE employees. Rather, the sole basis of his testimony appears to be a selection of responses to IBEW data requests and his own personal assessment of how he believes PSE is operating as a whole. Such a superficial assessment of PSE cannot provide Mr. Arnold the requisite in-depth knowledge to opine on the safety and reliability of PSE’s operations. Moreover, given that Mr. Arnold has no apparent knowledge regarding utility property transactions, he does not even attempt to opine on the

1 Proposed Transactions and how it might impact safety and reliability of service to
2 customers.

3 15. In sum, given that Mr. Arnold has not been involved in the utility business
4 for two decades and the sole basis of his testimony is responses to IBEW data
5 requests, Mr. Arnold is simply not qualified to opine on how the Proposed
6 Transactions could impact the reliability and safety of PSE's service.
7 Accordingly, he should be disqualified as a witness and his testimony should be
8 stricken in its entirety on that basis.

9 **B. Mr. Arnold's Testimony Should Be Stricken Because It Does Not Contain**
10 **Any Connection to the Proposed Transactions and Instead, Raises Labor**
11 **Relations Issues Beyond the Jurisdiction of the Commission**

12 16. Even if the Commission decides not to disqualify Mr. Arnold as a witness,
13 in order for Mr. Arnold's testimony to be admissible, in accordance with the
14 restrictions imposed by the Commission regarding IBEW's role in this case and
15 the applicable "no harm" standard, Mr. Arnold must provide testimony showing
16 how the Proposed Transactions will impact safety and reliability of service to
17 PSE's customers, to the extent IBEW's members are involved in the provision of
18 such service. Testimony that does not show specifically how the Proposed
19 Transactions will impair safety and reliability of service to customers is irrelevant
20 to, and beyond the scope of, the proceeding and should be stricken.

21 17. Accordingly, Mr. Arnold's testimony should be stricken in its entirety
22 because it does not provide information showing how the Proposed Transactions
23 will specifically impair the safety or reliability of service to PSE's customers and

1 instead, addresses labor relations issues that are beyond the jurisdiction of the
2 Commission.

3 **1. Mr. Arnold’s testimony does not contain any information**
4 **demonstrating how the Proposed Transactions could impair safety**
5 **and reliability of service to customers**

6 18. Mr. Arnold testimony is irrelevant and beyond the scope of the proceeding
7 because it provides no information relating to how the Proposed Transactions
8 would impact the safety or reliability of service to PSE’s customers. The sole
9 purpose of this case is to evaluate whether the Proposed Transactions are in the
10 public interest under the “no harm” standard. Testimony that provides general
11 information regarding staffing, safety, training, or any of the other issues raised
12 by Mr. Arnold, without any specific tie to the Proposed Transactions, is irrelevant
13 and beyond the scope of this proceeding.

14 19. Mr. Arnold suggests that IBEW should still be permitted to raise these
15 issues now in this proceeding because “IBEW Local 77 did not participate in the
16 2008 Macquarie transfer before the Commission” and “IBEW Local 77 was not
17 afforded any opportunity between the 2008 transfer and today to provide input or
18 perspective on change in ownership.”²⁴ IBEW’s decision to not participate in the
19 2008 transaction does not provide IBEW with an open-ended opportunity to raise
20 any grievance it might have regarding PSE’s operations in this case. Moreover,
21 simply because “the Commission has not considered IBEW Local 77’s members

²⁴ Arnold Testimony at 3:17-21.

1 concerns before,”²⁵ does not mean this proceeding is the appropriate forum to
2 raise IBEW’s “concerns.” It is apparent that despite the Commission’s restriction
3 on IBEW’s intervention, Mr. Arnold’s testimony disregards that limitation and
4 addresses a variety of issues, none of which relate to the Proposed Transactions.
5 Accordingly, his testimony should be stricken.

6 **2. Mr. Arnold’s testimony addresses labor relations issues which are**
7 **outside of the jurisdiction of the Commission**

8 20. In addition to Mr. Arnold’s testimony not addressing how the Proposed
9 Transactions will impair safety and reliability of service to customers, Mr.
10 Arnold’s testimony addresses labor relations issues that are beyond the
11 jurisdiction of the Commission and should be stricken.

12 21. In granting IBEW intervention, the Commission expressly stated that
13 “employment issues such as workplace changes, labor contracts, wages, hours,
14 and staffing” are beyond the purview of the Commission and are beyond the
15 scope of this case.²⁶ Mr. Arnold ignores that limitation and concedes that his
16 testimony addresses staffing, overtime, training, apprenticeship programs, and
17 other issues.²⁷ Mr. Arnold, however, believes that these issues do not implicate
18 collective bargaining because “[t]he issues IBEW Local 77 is raising as potential
19 harms are not remedied through the collective bargaining agreement.”²⁸ This is
20 inconsistent with the Commission order stating that “employment issues” like

²⁵ *Id.* at 4:13.

²⁶ Order 03 at ¶ 22.

²⁷ Arnold Testimony at 4:23-5:12.

²⁸ *Id.* at 7:21-22.

1 those raised by IBEW are beyond its jurisdiction. Whether or not an employment
2 issue is captured in a collective bargaining agreement is irrelevant as that itself
3 may be a collective bargaining decision. Mr. Arnold’s extensive testimony
4 regarding staffing, training programs, overtime, apprenticeships, and more, are all
5 labor relations issues that should be stricken because they are beyond the
6 jurisdiction of the Commission and, as discussed above, have no connection to the
7 Proposed Transactions.

8 **C. Because IBEW Has Exceeded Its Intervention, the Commission Should Issue**
9 **a Strict Limiting Instruction to Ensure IBEW Does Not Violate the**
10 **Parameters of its Intervention at the Settlement Hearing**

11 22. Given that IBEW has violated the scope of its intervention, the Joint
12 Applicants are concerned that IBEW will attempt to use the settlement proceeding
13 as a platform to further its collective bargaining concerns. In its petition to
14 intervene, IBEW assured the Commission that it “will not broaden the issues,
15 burden the record, nor delay the proceeding.”²⁹ IBEW has violated that assurance.
16 Under WAC 480-07-355(4), the Commission has the authority to dismiss
17 intervening parties where their intervention is no longer in the public interest.
18 Indeed, in granting IBEW limited intervention, the Commission warned that “[i]n
19 the event it becomes clear later in the proceeding that . . . IBEW’s continued
20 participation is not in the public interest, the Commission has the authority to
21 dismiss [IBEW] . . . as an intervenor.”³⁰ Dismissal of IBEW would be appropriate

²⁹ *In the Matter of the Application of Puget Sound Energy*, Docket U-180680, IBEW Local 77 Petition to Intervene, ¶ 17 (Oct. 22, 2018).

³⁰ Order 03 at ¶ 23.

1 under the circumstances. But at a minimum, pursuant to WAC 480-07-375(1), the
2 Commission should reiterate that IBEW's role in the settlement proceeding is
3 limited to matters addressing how the Proposed Transactions would impair the
4 safety and reliability of service to customers to the extent its members are actually
5 involving in the provision of such service with the warning that should IBEW
6 breach its limitation again, it be dismissed.

7 23. All of the full parties in this case have entered into, or do not oppose, the
8 Settlement Stipulation that fully addresses all issues in this case and support a
9 dispute resolution process that quickly and efficiently resolves the case. The only
10 parties that oppose settlement—IBEW and the other unions—are parties whose
11 role in the case is limited and purely informational; i.e., the sole purpose of their
12 intervention was to provide information to the Commission that could bear on
13 whether the Proposed Transactions would impair safety or reliability of service
14 for customers to the extent their members are actually involved in the provision of
15 such service. IBEW had that opportunity and as provided above, its testimony
16 should be stricken because it inappropriately exceeded the scope of the
17 proceeding by addressing labor relations issues.

18 24. As explained by the Commission in a case involving a similar limited
19 intervention, intervening parties without a substantial interest in a settlement
20 proceeding have limited authority, if any, to influence a settlement, particularly
21 one that is otherwise unanimous:

22 Time Warner's claim that its opposition renders the
23 settlement a non-unanimous settlement is tenuous, given
24 Time Warner's lack of substantial interest in the

1 proceeding. While technically a non-unanimous settlement
2 (because one party opposes it), the settlement is more like a
3 full settlement of all issues in the proceeding as defined in
4 WAC 480-07-730(1). The settlement is opposed by a party
5 with no substantial interest in the outcome, indeed, a party
6 who may have no right to be a party.³¹

7 25. Intervening parties like IBEW, without a substantial interest in a
8 proceeding and whose role is purely informational, should not be afforded the
9 opportunity to unnecessarily burden or obstruct the resolution of a matter where
10 all full-party participants with a substantial interest in the proceeding either
11 support or do not oppose the settlement. Indeed, intervenors should not do
12 anything that “will unnecessarily frustrate or delay this proceeding.”³²

13 26. Having already exceeded the bounds of its intervention in this case, IBEW
14 should not be given additional opportunities to unnecessarily complicate the
15 settlement proceeding by delving into unrelated issues. IBEW should not be
16 permitted to participate in the hearing and cross-examination of witnesses at the
17 hearing on matters that do not affect safety and reliability, are aimed at advancing
18 the employment benefits of its members, and are outside the scope of the
19 Commission’s jurisdiction.

20 27. IBEW’s underlying interest in this case is to advance the employment
21 opportunities for its workers and IBEW is inappropriately using this proceeding
22 as a collateral platform to advance issues that have no relation whatsoever to any
23 of the fundamental issues before the Commission as relating to the Proposed

³¹ *WUTC v. Advanced Telecom Group, Inc.*, Docket UT-033011, Order No. 19 (Dec. 22, 2004).

³² Order 03 at ¶ 24.

1 Transactions. To ensure the prompt and efficient resolution of this matter, the
2 Commission should issue a limiting instruction to IBEW at the hearing.

3 **IV. CONCLUSION**

4 28. For the reasons set forth above, the Joint Applicants respectfully request
5 that the Commission strike the testimony of D. Timothy Arnold and reiterate the
6 restrictions on IBEW's role in this matter at the settlement proceeding

7 **Respectfully submitted this 11th day of February, 2019.**
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9 **Perkins Coie LLP**

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