BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Washington Utilities and Transportation Commission, Complainant, v. Puget Sound Energy, Inc. Respondent	Dockets UE-111048 and UG-111049 (consolidated) **SIERRA CLUB'S REPLY TO OBJECTIONS TO ITS LATE-FILED PETITION TO INTERVENE**

Sierra Club hereby replies to the *Objection of Commission Staff to Sierra Club's Late-Filed Petition to Intervene*, filed on August 9, 2011 ("Staff's Objection") and *Puget Sound Energy, Inc.'s Objection to Sierra Club's Late-Filed Petition to Intervene*, filed August 16, 2011 ("PSE's Objection"). Sierra Club filed its petition to intervene on August 2, 2011 ("Petition"), less than two weeks after the July 20, 2011 prehearing conference for this proceeding. Sierra Club recognized that it did not timely file the Petition, and it therefore requested that the Commission grant its late-filed Petition pursuant to WAC 480-07-355(1)(b), which permits the Commission to allow a party to intervene late upon a showing of good cause. Contrary to Staff's and PSE's Objections, Sierra Club's Petition demonstrated both good cause for its late intervention and the substantial interest of its members in the proceeding. Furthermore, no party will be harmed or disadvantaged by the Commission granting Sierra Club's late intervention given the relatively early stage of this proceeding and the fact that Sierra Club's participation will not broaden the scope of this proceeding.

I. THE ENERGY LANDSCAPE IN THE PACIFIC NORTHWEST IS RAPIDLY CHANGING

Significant and recent developments in the Pacific Northwest prompted Sierra Club to reevaluate the need to intervene in this proceeding. Together, these unanticipated changes demonstrate that Sierra Club had good cause to file its late Petition to intervene. The Petition stated that Sierra Club intends to participate in Puget Sound Energy's ("PSE") upcoming 2011 Integrate Resource Plan ("IRP"). Sierra Club recognizes the

importance of these long-term planning dockets and understands that, in contrast to the forward looking nature of an IRP, a general rate case typically looks at the prudency of past investments made by a utility. The 2011 IRP remains an important proceeding for planning purposes. However, several significant events occurred in 2011 that led Sierra Club to conclude that intervention in this docket was necessary to address important and immediate issues related to the long-term generating resources that PSE relies on.

First, in 2011 both the Centralia coal plant in Washington and the Boardman coal plant in Oregon each announced agreements that set near-term retirement dates for the plants. On April 29, 2011, Governor Gregoire signed SB 5769, which instituted a plan to phase out the use of coal by the Centralia plant in the coming years. Among other things, the bill stated the Washington Legislature's finding that, "generating electricity from the combustion of coal produces pollutants that are harmful to human health and safety and the environment."[1] The Boardman announcement came shortly after on July 19, 2011, just one day before the prehearing conference in this proceeding, and similarly announced the retirement of that facility. Together, the retirement of the Centralia and Boardman plants will end coal generation in the Pacific Northwest. Sierra Club participated extensively in the discussions and various proceedings that ultimately lead to these retirement announcements.

The 2011 retirement announcements of the two remaining coal plants in the Pacific Northwest were not anticipated by PSE's 2009 IRP. These announcements will fundamentally change the energy market in Washington, making investments in renewable resources such as the Lower Snake River Wind Project even more important for the future. At the same time, however, events in 2011 also demonstrated some of the challenges faced by the wind industry. On May 13, 2011, the Bonneville Power Administration ("BPA") issued new policies that may lead to the curtailment of wind generation in the Pacific Northwest. In response, on June 13, 2011 several wind generators filed a complaint with the Federal Energy Regulatory Commission ("FERC") challenging this action.[2] That proceeding is currently ongoing, and it remains unclear

---

[1] RCW 80.80.010, as amended by SB 5769, Sec. 101, 2011 ch. 180, eff. July 22, 2011.

[2] *See*, *Iberdrola Renewables, Inc. et. al v. Bonneville Power Administration,* Federal Energy Regulatory Commission, Docket No. EL11-44-000.

what effect that BPA's curtailment rules will have on the wind generation industry in the Pacific Northwest.

In the face of these significant developments related to the Pacific Northwest's transition from old and dirty coal generation to renewable energy resources such as wind, Sierra Club reevaluated the need to intervene in PSE's general rate case. The announced coal plant retirements and the wind curtailment by BPA will create unexpected challenges that PSE's 2009 IRP could not have anticipated. Sierra Club intends to support PSE's investment in the Lower Snake River Wind Project against potential challenges that may arise in this proceeding as a result of the changes in the energy landscape in the Pacific Northwest. Sierra Club also intends to critically evaluate PSE's continued reliance on electric generation from the Colstrip coal plant, which reliance is particularly relevant given the Washington Legislature's recent finding in SB 5769 that support a transition away from coal-fired generation and toward cleaner electricity generation.

As Staff noted in its Objection, PSE's June 13, 2011 filing of its general rate case in this proceeding included relevant information related to both the acquisition of the Lower Snake River Wind Project and PSE's ongoing costs related to Colstrip. At that time, however, Sierra Club did not fully recognize the importance of intervening in the general rate case. The significant events discussed above that occurred in 2011, and which are still ongoing, prompted Sierra Club to reevaluate the need to intervene in this proceeding. The significance of PSE's investment in wind energy and the risks associated with continued reliance on Colstrip were amplified by the recent events in 2011, and those issues are present **now.** Sierra Club would risk losing a critical opportunity to represent its members' interests if it delayed participation until the 2011 IRP. Sierra Club could not have fully evaluated all of these issues prior to the intervention deadline because they were still ongoing at the time that the deadline to intervene passed.

As noted in Sierra Club's Petition, the Commission has previously granted late filed petitions to intervene in similar circumstances. *See Washington Utilities and Transportation Commission v. Puget Sound Energy, Inc.,* Docket No. UE-090704, Order 05, July 30, 2009 ("the case is at a relatively early point in its development insofar as

dates for testimony and hearings are concerned…and the public interest may benefit from having the perspective of a major natural gas transportation customer brought to bear"); *In the Matter of the Joint Application of Qwest Communications International, Inc. and Centurytel, Inc. For Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company LLC, and Qwest LD Corp.,* Docket UT-100820, Order 06, July 13, 2010 (granting intervention where T-Mobile had a substantial interest in the matter, agreed not to broaden the issues, and agreed to abide by the established schedule). Sierra Club's late-filed petition in this proceeding squarely falls within the set of circumstances where the Commission previously granted late intervention: this proceeding is still in its early stages; Sierra Club is committed to working within the established schedule; and Sierra Club will not broaden the issues.

PSE cited to *In the Matter of the Joint Application of MidAmerican Energy Holdings Co. and PacifiCorp, d/b/a Pac. Power & Light Co. for an Order Authorizing Proposed Transaction*, Docket No. UE-051090, Order 04 (Aug. 26, 2005) as an example of the Commission denying a late-filed petition. However, that order is clearly distinguishable from the present circumstances. In that proceeding, the International Brotherhood of Electrical Workers ("IBEW") filed a standard petition to intervene after the deadline to intervene had passed. Importantly, IBEW did not indicate that its petition to intervene was a "late-filed petition to intervene," and IBEW did not provide any statement whatsoever regarding good cause for its late-filed intervention. These omissions clearly violated WAC 480-07-355(1)(b), which require a late-filed petition to intervene to include a statement as to why the petition was not timely filed. In contrast to IBEW's petition to intervene, which completely failed to address its tardiness, Sierra Club clearly identified its petition to intervene as a late-filed petition and provided a detailed explanation as to why it missed the deadline to intervene and the good cause for granting the late-filed intervention. The Commission therefore should not rely on the order cited by PSE because the circumstances are distinguishable.

To be clear, Sierra Club does **not** intend to broaden the issues in this proceeding to address the matters discussed above to the extent that they do not directly relate to PSE's general rate case filing. Rather, those issues related to the rapidly changing and incredibly complex energy landscape in the Pacific Northwest establish the context for

Sierra Club's late intervention. Sierra Club must raise those issues here to demonstrate good cause, but Sierra Club will not broaden this proceeding beyond the matters raised by PSE's general rate case filing.

II. SIERRA CLUB HAS A SUBSTANTIAL INTEREST IN THE PROCEEDING

Staff and PSE's Objections asserted that Sierra Club does not have a substantial interest in this proceeding. Sierra Club strongly disagrees with these assertions regarding the lack of substantial interest by Sierra Club members in Washington, many of whom are residential customers of PSE. It is troubling that both Staff and PSE are attempting to restrict the participation of a public interest non-profit organization from representing the interests of its members in this proceeding. Furthermore, Sierra Club's intervention in this proceeding will serve the public interest because of the experience and expert analysis that Sierra Club will provide to the Commission related to implementing the transition away from coal-fired generation toward cleaner electricity generation. Such a transition is a public policy goal that the Washington Legislature expressly endorsed in SB 5769, and it is an issue that is squarely present in PSE's general rate case filing. The perspective of Sierra Club, which is a recognized national environmental organization, will benefit the Commission's evaluation of issues in this proceeding.

Sierra Club's intervention in this proceeding will not be duplicative of Public Counsel's involvement. Sierra Club members who are customers of PSE have interests that are particularly related to the environmental and health impacts that result from PSE's choice of energy supply. Staff's contention that Public Counsel will adequately represent Sierra Club members' interests because they are residential customers inaccurately characterizes residential customers as a monolithic block of like-minded customers. Nothing could be further from the truth. Sierra Club's involvement is necessary because its members' interests are not adequately represented by Public Counsel, and it would be inefficient for each member to participate in this proceeding individually to explain how their interests may or may not conform with Public Counsel's concept of "residential customer interests." Sierra Club members rely on the Sierra Club for this type of representation before public bodies such as the Commission.

Both Staff and PSE repeatedly assert that Sierra Club intends to broaden the issues in this proceeding, or that Sierra Club's intervention has the "potential to broaden the issues."[3] These concerns are unfounded. Sierra Club fully understands the purpose of general rate cases to evaluate the prudency of utility investments. Sierra Club may pursue broader policy goals outside of this proceeding that will advance the interests of its members, but Sierra Club will not use this proceeding to address any issues that are not within the scope of PSE's general rate case filing. In fact, Sierra Club would welcome an order from this Commission that expressly limits Sierra Club's involvement to issues related to the investments in the Lower Snake River Wind Project and the ongoing investments that PSE is making in the Colstrip facility. Sierra Club will not ask this Commission to make decisions that exceed its authority,[4] and Sierra Club will not ask this Commission to supplant the policy goals already implemented by the Washington Legislature.[5]

Sierra Club's narrow scope of intervention in this proceeding will nevertheless serve the public interest. Sierra Club has extensive experience throughout the country in utility economics related to the transition away from traditional fuel sources, such as coal, toward renewable generation such as wind. Washington is at the forefront of this transition, and PSE's general rate case raises pertinent issues related to the implementation of this transition that will impact its customers. As noted above, the issues raised by PSE in this general rate case are even more important given the recent and significant events that have impacted the energy policy landscape in the Pacific Northwest. Sierra Club intends to be a productive and helpful participant in this proceeding as the Commission deals with these important issues.

/////

/////

/////

/////

---

[3] Staff Objection, p. 3; PSE's Objection, p. 3.

[4] Staff's Objection, p.3.

[5] PSE's Objection, p.4.

For the foregoing reasons and for having shown good cause, Sierra Club asks the Commission to grant its late-filed petition to intervene in this matter.

August 16, 2011

Respectfully submitted,

*/s/ Travis Ritchie*________
Travis Ritchie
Sierra Club Environmental Law Program
85 Second Street, 2nd Floor
San Francisco, CA 94105
415-977-5727
travis.ritchie@sierraclub.org