

1
2

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**In the Matter of the Petition of
PUGET SOUND ENERGY
For an Order Authorizing the Sale of
All of Puget Sound Energy’s Interests in
Colstrip Unit 4 and Certain of Puget
Sound Energy’s Interests in the Colstrip
Transmission System**

Docket UE-200115

**PUGET SOUND ENERGY’S
RESPONSE IN OPPOSITION TO
PORTLAND GENERAL
ELECTRIC’S PETITION TO
INTERVENE**

3
4
5
6
7
8
9
10
11
12
13
14
15

I. INTRODUCTION

1. Pursuant to RCW 34.05.443 and WAC 480-07-355(2), Puget Sound Energy (“PSE”), responds and objects to the Petition to Intervene (“Petition”) of Portland General Electric Company (“PGE”). The Petition should be denied because PGE does not have a substantial interest in this proceeding. The Washington Utilities and Transportation Commission (the “Commission”) does not have jurisdiction over PGE, its customers, or the Colstrip ownership and operation agreements referenced in its Petition.

2. Moreover, PGE’s intervention does not benefit the public interest. PGE’s stated reasons for intervening do not in any way benefit customers in Washington, but rather are PGE’s private, out-of-state interests. This proceeding is not an open forum for PGE to protect such interests. PGE’s participation is beyond the scope of this proceeding and would distract from the narrow issue before the

1 Commission—whether the transactions proposed in this case are consistent with
2 the public interest. Accordingly, the Commission should deny the Petition.

3 **II. BACKGROUND**

4 3. On February 19, 2020, PSE filed its Application, seeking to (i) sell PSE
5 interests in Colstrip Unit 4 to NorthWestern Energy; (ii) sell certain PSE interests
6 in the Colstrip Transmission System to NorthWestern Energy; and (iii) enter into
7 a power purchase agreement between PSE and NorthWestern Energy for 90 MW
8 of the output of Colstrip Unit 4 with a term beginning June 1, 2020, and expiring
9 on May 15, 2025 (the “Proposed Transactions”).

10 4. On March 10, 2020, PGE filed the Petition in the proceeding.¹ PGE is an
11 investor-owned public utility company based in Portland, Oregon.² As stated in
12 the Petition,

13 PGE is an investor-owned public utility company engaged in,
14 among other things, the business of generating, transmitting, and
15 distributing electric power to retail customers in Oregon.³

16 PGE is not regulated by the Commission but rather is regulated by the Oregon
17 Public Utility Commission.

18 5. As explained further by PGE in its Petition,

19 PGE is a 20 percent owner in Colstrip Units 3 and 4 and is a party
20 to the Ownership and Operation Agreement between and amongst
21 the owners, which governs the ownership and operation of Colstrip
22 Units 3 and 4. Similarly, PGE is an owner of the Colstrip
23 Transmission System and is a party to the Colstrip Project

1 Petition, Docket UE-200115 (Mar. 10, 2020).

2 *Id.* ¶ 3.

3 *Id.*

1 Transmission Agreement, which governs the ownership and
2 operation of the Colstrip Transmission Agreement.⁴

3 6. Because of this, PGE believes it has a substantial interest in the Proposed
4 Transaction, which it asserts “could substantially and directly affect PGE and
5 PGE’s customers.”⁵

6 **III. ARGUMENT**

7 7. The Commission may grant a petition to intervene only if the petitioner
8 “discloses a substantial interest in the subject matter of the proceeding or if the
9 petitioner’s participation is in the public interest.”⁶ The petitioner must also
10 qualify under the law and the intervention must “not impair the orderly and
11 prompt conduct of the proceedings.”⁷

12 8. PGE—an out-of-state, investor-owned utility, not regulated by the
13 Commission, and with no Washington customers—does not have a substantial
14 interest in the Proposed Transactions because neither it, nor its customers, nor the
15 Colstrip agreements referenced in its Petition, are subject to the jurisdiction of the
16 Commission. Likewise, PGE’s participation is not in the public interest because
17 PSE’s customers have no interest in PGE’s private, contractual interests, and
18 PGE’s concerns would distract from the narrow issues before the Commission.
19 The Commission should deny the Petition.

4 *Id.* ¶ 4.

5 *Id.*

6 WAC 480-07-355(3).

7 RCW 35.04.443(1).

1 **A. PGE Does Not Have a Substantial Interest in the Proposed Transactions**
2 **Because Its Stated Interests in the Proceeding Are Outside the Commission’s**
3 **Jurisdiction**

4 9. The Commission should deny the Petition because PGE does not have a
5 substantial interest in the Proposed Transactions. The Commission applies a
6 “zone of interest test” to determine whether a party seeking intervention has a
7 substantial interest.⁸ Such an interest can be found to exist only when there is a
8 nexus between the petitioner’s stated purpose in seeking to intervene and an
9 interest protected by a Washington statute within the Commission’s jurisdiction.⁹

10 10. PGE’s stated interest for participating in the proceeding is to protect it and
11 its customers from being affected by the Proposed Transactions.¹⁰ But neither
12 PGE nor its customers can have a substantial interest in this proceeding because
13 neither are regulated by or under the jurisdiction of the Commission.¹¹ The
14 Commission’s powers are set forth in Title 80 RCW, which provides that the
15 Commission has the power to

16 [r]egulate in the public interest . . . the rates, services, facilities,
17 and practices of all persons engaging within this state in the
18 business of supplying any utility service or commodity to the
19 public for compensation.¹²

⁸ *In Re Joint Application of Verizon Commc’ns, Inc. & Frontier Commc’ns Corp. for an Order Declining to Assert Jurisdiction Over, or, in the Alternative, Approving the Indirect Transfer of Control of Verizon Nw., Inc.*, Docket UT-090842, Order 05 ¶¶ 14-15 (Sept. 10, 2009) (“*Verizon Commc’ns, Inc.*”).

⁹ *Id.*

¹⁰ Petition ¶ 4.

¹¹ *See, e.g., Verizon Commc’ns, Inc.* (finding union did not have substantial interest in proceeding because Commission did not have jurisdiction over labor relations).

¹² RCW 80.01.040(3).

1 The “public interest,” in the context of the public service laws, is “that only of
2 *customers* of the utilities which are regulated.”¹³ “[T]he public interest the
3 Commission must protect is the *interest of customers of regulated utilities, not*
4 *those of an unregulated competitor.*”¹⁴ Thus, PGE’s concern that “PSE’s sale of
5 such interest could substantially and directly affect PGE and PGE’s customers”¹⁵
6 is not a substantial interest before the Commission because the Commission does
7 not have jurisdiction over entities or persons outside of Washington.¹⁶ “The
8 Commission has no power to protect the interests of businesses which it does not
9 regulate.”¹⁷

10 *11.* Likewise, PGE’s suggestion that it has a substantial interest in this
11 proceeding because it is a partial owner of Colstrip Unit 4 and the Colstrip
12 Transmission System and is a party to various ownership and operation
13 agreements of those facilities¹⁸ is wrong because the Commission does not have
14 jurisdiction over those agreements and in particular, PGE’s claimed contractual

¹³ *Cole v. Wash. Utils. & Transp. Comm’n*, 79 Wn.2d 302, 306, 485 P.2d 71 (1971) (emphasis added).

¹⁴ *Cost Mgmt. Serv., Inc. v. Cascade Nat. Gas Corp.*, Dockets UG-070639 et al., Order 01 (Oct. 12, 2007) (emphasis added).

¹⁵ Petition ¶ 4.

¹⁶ *See, e.g., WUTC v. PSE*, Dockets UE-151871/UG-151872, Order 02 ¶ 14 (Jan. 7, 2016) (denying intervention to out-of-state company without customers in PSE’s service territory).

¹⁷ *Re Application CHA-221 of Brown’s Limousine Crew Car, Inc.*, Order M. v. Ch. No 950 (July 18, 1983).

¹⁸ Petition ¶ 4.

1 rights or entitlements associated with those agreements.¹⁹ Moreover, a private
2 business interest in the potential economic impacts of a Commission proceeding
3 by an entity not regulated by the Commission is insufficient to grant the entity the
4 right to intervene.²⁰ “The Commission will not allow . . . petitioners to intervene
5 for the purpose of protecting and promoting their competitive interests.”²¹

6 12. PGE does not have a substantial interest in this proceeding because neither
7 it, nor its customers, nor its Colstrip contracts, fall under the jurisdiction of the
8 Commission, and its private contractual or economic interests are not a substantial
9 interest that the Commission can address in this proceeding.

10 **B. PGE’s Intervention Is Not in the Public Interest and Will Be Detrimental to**
11 **the Proceeding**

12 13. In addition, the Petition fails to explain how PGE’s participation would be
13 in the public interest. The Petition only states vaguely that “PSE’s sale of such
14 interests could substantially and directly affect PGE and PGE’s customers”²² and
15 makes no reference to benefiting PSE customers or how its participation will aid

¹⁹ See, e.g., *In re Puget Sound Power & Light Co.*, Dockets UE-951270, UE-960195 (Oct. 25, 1996) (denying intervention to industrial entities because no substantial interest in protecting various power supply contracts and that “court is the appropriate forum for their issues to be addressed”); *Re Wash. Water Power Co.*, Dockets UE-941053, UE-941054, 4th Suppl. Order (Dec. 22, 1994) (denying intervention to gas company during merger proceeding because its concerns over loss of sales as a result of merger not a substantial interest for intervening).

²⁰ *Cole*, 79 Wn.2d at 305-06, 485 P.2d 71; *Cost Mgmt. Serv., Inc.*, Dockets UG-070639 et al., Order 01 (“While CMS may be interested in how the Commission resolves Cascade’s proposed tariff, CMS is not a customer of Cascade and has no “substantial interest,” as the term is used in determining intervention and standing, in the outcome of the proceeding.”); *In the Matter of the Petition of GTE Northwest Inc. For Depreciation Accounting Changes*, Docket UT-961632, Third Suppl. Order (Mar. 28, 1997) (denying intervention where intervenors sought to protect competitive business interest).

²¹ *In the Matter of the Petition of GTE Northwest Inc.*, Docket UT-961632, Third Suppl. Order.

²² Petition ¶ 4.

1 the Commission in deciding whether the Proposed Transactions are in the public
2 interest in the State of Washington. Indeed,

3 [p]ublic interest cannot be served if the elements of public
4 convenience and necessity require consideration of activities over
5 which the Commission has no power to control, to supervise, or to
6 regulate in any fashion.²³

7 Thus, as an out-of-state, nonregulated entity, seeking intervention for private
8 business reasons, PGE is not an “essential or indispensable party” to the
9 proceeding.²⁴

10 14. Instead, given PGE’s stated concern regarding the various Colstrip
11 ownership and operation agreements and its concerns over its customers in
12 Oregon—all of which are beyond the scope of this proceeding and the
13 Commission’s jurisdiction—PGE’s intervention will distract from the narrow
14 focus of this proceeding (i.e., whether the Proposed Transactions are in the public
15 interest in the State of Washington) and contrary to PGE’s suggestion, will
16 broaden the issues and burden the record in this proceeding. Accordingly, PGE’s
17 Petition should be denied.

²³ *Re Application CHA-221 of Brown’s Limousine Crew Car, Inc.*, Order M. v. Ch. No 950.

²⁴ *Id.*

1 **IV. CONCLUSION**

2 15. For the reasons set forth above, the PSE respectfully requests that the
3 Commission deny PGE's Petition.

4 Dated: March 11, 2020.

PERKINS COIE LLP

By /s/ David S. Steele
Sheree Strom Carson,
WSBA #25349
Jason Kuzma, WSBA #31830
David S. Steele, WSBA # 45640
Perkins Coie LLP
10885 NE 4th Street, Suite 700
Bellevue, Washington 98004-5579
Phone: (425) 635-1400
Email: scarson@perkinscoie.com
jkuzma@perkinscoie.com
dstele@perkinscoie.com

Attorneys for Puget Sound Energy