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6 **STATE OF WASHINGTON**
7 **WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

8 IN THE MATTER OF THE JOINT
9 APPLICATION OF

CASE NO. U-180680

10 PUGET SOUND ENERGY, ALBERTA
11 INVESTMENT MANAGEMENT
12 CORPORATION, BRITISH COLUMBIA
13 INVESTMENT MANAGEMENT
14 CORPORATION, OMERS
15 ADMINISTRATION CORPORATION,
16 AND PGGM VERMOGENSBEHEER B.V.

**WASHINGTON AND NORTHERN
IDAHO DISTRICT COUNCIL OF
LABORERS' OPPOSITION TO
JOINT APPLICANTS' MOTION TO
STRIKE**

17 FOR AN ORDER AUTHORIZING
18 PROPOSED SALES OF INDIRECT
19 INTERESTS IN PUGET SOUND ENERGY

20 **I. INTRODUCTION**

21 *I.* Washington and Northern Idaho District Council of Laborers (“WNIDCL”) has offered
22 testimony from three witnesses: Erin Hutson, Walter Jones, and Glen Frieberg. Taken together,
23 the purpose of this three part presentation is to explain the bases for WNIDCL’s position that
24 there are potential risks to safety and reliability if the proposed sale of a 43.99% interest in Puget
Holdings is authorized with no commitments beyond those stated in the proposed settlement.
Joint Applicants do not challenge the qualifications of each witness, but argue that their
testimonies should be struck on grounds that the subject matter of each presentation is irrelevant
and beyond the scope of WNIDCL’s intervention.

1 in 2008. Since that time, as pointed out by WNIDCL witness Huston, PSE has relied
2 increasingly on a contracted out workforce to perform utility operations. The 2008 adjudication
3 did not consider whether the transaction could create risks of harm with respect to PSE's
4 contracting out of key services, a practice that is now integral to PSE's business model.

5 5. When the instant docket was initiated, WNIDCL sought and was granted intervention,
6 over Joint Applicants' objection. In granting WNIDCL's request, the ALJ held:

7 We nevertheless find that permitting WNIDCL to intervene in this case is in the
8 public interest because its participation will be useful to the Commission in
9 compiling an appropriate record. In Order 05 in Docket UT-090842, we granted
10 IBEW's petition for intervention on interlocutory review because we found that
11 "the observations of its members as to their work 'in the field' pertains directly to
12 safety and reliability issues within the purview of the Commission." We disagree
13 with the Joint Applicants' position that there is "nothing WNIDCL could provide
14 the Commission from a safety and reliability perspective that would demonstrate
15 that [the proposed transfers] would harm the public." Information showing
16 whether the proposed transaction would be detrimental to the safety and reliability
17 of PSE's system is relevant to the Commission's evaluation of whether the
18 proposed transaction would result in "no harm" to customers. Consideration of
19 such information therefore is in the public interest.

20 Order 03 at 5. As discussed below, WNIDCL has offered precisely the sort of testimony
21 referenced in the prehearing order.

22 III. ARUMENT

23 A. The motion to strike should be denied.

24 1. WNIDCL Has Not Raised Collective Bargaining Concerns; It Has Raised Issues Directly Related to the Safety and Reliability of PSE's Services Based On Its Experiences with PSE Contractors.

6. The Joint Applicants repeatedly mischaracterize WNIDCL's testimony as "addressing
collective bargaining issues." Motion at 18:5; see id. at 15:7 11; and 16:4 6. This is inaccurate,
as WNIDCL neither has nor seeks to have a collective bargaining relationship with PSE.
WNIDCL has instead at all times been cognizant of and careful to observe the terms under which
its intervention in this case was granted, and the direction that WNIDCL address the service

1 safety and reliability issues relating to the proposed transaction. As addressed infra, WNIDCL’s
2 witnesses address the ways in which PSE’s contracting practices present potential risks to PSE
3 ratepayers, and more specifically, how Macquarie’s departure from the Puget Holdings
4 consortium could impact those risks.

5 7. The Commission should reject Joint Applicants’ suggestion that the UTC lacks
6 jurisdiction to consider any issue that WNIDCL, as a labor organization, may raise, based on
7 Joint Applicants’ mistaken assumption that any issues WNIDCL is concerned about are ipso
8 facto labor issues beyond the UTC’s purview. There can be no doubt that the UTC has authority
9 to consider matters such as PSE’s supply chain and contracting practices where contractors make
10 up the vast majority (84%) of the PSE workforce performing construction-related activities (a
11 trend that is discussed in Ms. Hutson’s testimony). It is difficult to fathom, for example, PSE’s
12 suggestion that the UTC lacks jurisdiction to consider PSE’s use of construction firms with
13 below-industry standard safety track records. Indeed, in a separate case involving safety issues
14 raised by a PSE contractor, the Commission “emphasize[d] the responsibility of regulated
15 utilities to ensure adequate safeguards are in place to protect the public, even when relying on
16 contractor employees to achieve portions of their mission.” Puget Sound Energy, Inc., Docket
17 PG-060215, Order 03 (April 9, 2008).

18 8. It is precisely these safety and reliability issues that WNIDCL’s witnesses address. That
19 WNIDCL’s perspective is based in large part on its role as a labor organization does not
20 somehow taint all of its witnesses’ observations and render them of no value to the UTC. To the
21 contrary, as the collective voice of workers that are usually dispersed and otherwise unable to
22 convey their knowledge and observations about PSE’s practices (all the more so for PSE’s
23 contracted workforce, who are yet another layer removed from PSE), WNIDCL offers a unique
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1 perspective and firsthand information about the ways in which PSE’s contracting practices create
2 safety and reliability risks.

3 **2. Witness Hutson’s Testimony Directly Addresses Proposed Risks of the**
4 **Transaction Related to Safety and Reliability.**

5 9. The Joint Applicants claim that Ms. Hutson’s testimony fails to address the issue at hand
6 in this case – whether the proposed transaction will create risks of harm to PSE ratepayers. The
7 contention is meritless. Witness Hutson’s testimony explains the ways in which the completion
8 of the proposed sale may have an adverse impact on PSE’s contractor procurement practices,¹
9 and proposes conditions that are intended to address this concern in a manner that would allow
10 the sale to proceed while protecting worker and customer safety and reliability.² Ms. Hutson
11 provides background on contractor involvement in PSE operations and explains the importance
12 of training requirements to contractor procurement decisions may have an impact on service
13 safety and reliability. She then identifies specific risks that the transaction as proposed poses, and
14 then identifies additional commitments that would eliminate or alleviate those risks.

15 10. Ms. Hutson’s testimony does more than identify problematic practices in PSE’s
16 contracting practices. Instead, she focuses on the way in which the departure of Macquarie, in
17 particular, is likely to exacerbate an already bad procurement situation. Ms. Hutson explains that
18 Macquarie was the only member of the consortium with a Responsible Contractor Policy in
19 place. Macquarie’s policy existed for the precise reason of guiding the contracting policies of
20 the utilities in which it invested (like PSE). Macquarie made no secret of the fact that it viewed
21 itself as an active investor. As Macquarie witness Christopher Leslie explained in the 2008
22 adjudication, “we [Macquarie] believe investors are entitled to a degree of influence through us
23 over the investments we make on their behalf.... It would be unlikely for us to take very small

24 ¹ Hutson at 12-16.

² *Id.* at 17-25.

1 positions in businesses where we had no ability to influence the outcome of that business...”
2 Docket U-072375, Leslie, TR. 860:14-861:2. The departure of this single largest member of the
3 Puget Holdings Consortium, with a self-proclaimed intention of being actively involved in PSE’s
4 business, and which was the only member of the Consortium with a policy in place that
5 addresses the PSE’s contracting practices, raises concerns relevant to the matters at issue here.
6 And, as Ms. Hutson’s testimony further explains, PSE’s reliance on outside contractors has
7 accelerated under the ownership of the Puget Holdings Consortium, heightening the significance
8 of PSE’s contracting practices. See Hutson Testimony at p. 4:14-18. In sum, the contention that
9 “none” of Ms. Hutson’s testimony “explains how the Proposed Transactions will actually impair
10 the safety and reliability of service to PSE customers as it relates to nonunion labor” (Motion at
11 14) is just wrong.

12 *11.* The joint applicants then go on to attack Ms. Hutson’s proposed commitments as
13 inappropriate because they involve terms and conditions of employment and collective
14 bargaining issues. In fact, each of Ms. Hutson’s proposed commitments is specifically crafted to
15 address the particular safety and reliability risks she identifies earlier in her testimony. None of
16 them attempts to set the wages, benefits, or any traditional terms of employment labor between
17 PSE and WNIDCL-represented employees. Each condition seeks to provide assurance that
18 PSE’s contracting practices will not deteriorate under the new Consortium in ways that sacrifice
19 safety and reliability of PSE ratepayers.

20 *12.* That the proposed conditions do not seek to create terms and conditions of employment
21 for any contractor employees should be clear on their face.

22 *13.* The first proposed commitment would ensure that when PSE contracts out, it draws from
23 a national bank of contractor firms that specialize in pipeline and distribution work, and that have
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1 an established and well-tenured pool of employees that are fully trained to perform the type of
2 work for which PSE would use them in lieu of an in-house workforce.

3 *14.* The second proposed commitment would require PSE and Puget Holdings to adopt a new
4 Responsible Contractor Policy with quantifiable metrics and which precludes PSE from utilizing
5 contractors that rely upon temporary staffing agencies to supply labor. This commitment targets
6 the criteria PSE utilizes when selecting contractors—and does not seek to regulate the terms of
7 employment of either PSE in house personnel or WNIDCL members.

8 *15.* The third proposed commitment would require PSE to utilize contractors with rigorous
9 training programs in place, and that utilize apprentices on the jobsites. Nothing about this
10 commitment would require PSE to utilize any particular contractor, or even to utilize only union
11 contractors. The purpose of the commitment is to ensure that PSE relies upon contractors that
12 are more likely to have a well-trained workforce.

13 *16.* Finally, in the alternative, Ms. Hutson suggests that if none of the commitments she
14 proposes are adopted, that the UTC open a new docket that examines PSE’s contracting practices
15 and problems relating to an inadequately trained contractor workforce. Nothing about this
16 suggestion, either, relates to collective bargaining issues or employment conditions.

17 *17.* Along with arguing that Ms. Hutson’s testimony is irrelevant, Joint Applications also
18 attempt to rebut the substance of her presentation, arguing that PSE remains fully committed to
19 maintaining a responsible contractor policy and that nothing about its contracting practices will
20 change with the change in ownership. Motion at 16. WNIDCL obviously disagrees with this
21 contention and has introduced evidence to that effect. PSE is free to attempt to offer its own
22 evidence on this issue, but must do so through witnesses, and not via a motion to reject. To state
23 the obvious, statements of counsel are not evidence.

1 **3. Mr. Jones’ Provides Relevant Information That Directly Relates to**
2 **the Safety Risks Raised in Ms. Hutson’s Testimony As Well As the**
3 **Additional Commitments Proposed by Ms. Hutson.**

4 18. While Mr. Jones does not directly discuss the proposed transaction, he has unique
5 expertise that allows him to provide relevant background information on topics relating to the
6 risks of this transaction and WNIDCL’s proposed solutions. For instance, Mr. Jones’ testimony
7 about the safety risks of using temporary labor supply companies directly relates to these
8 proceedings in that it bolsters Ms. Hutson’s testimony concerning PSE’s reliance on contractors
9 that utilize temporary labor supply companies. While Ms. Hutson provides detailed testimony
10 about the dangers of doing so, Mr. Jones’ presentation was included to ensure that the
11 Commission has a full record on this concern. Similarly, while Ms. Hutson testifies regarding
12 the dangers of an inadequately trained workforce, Mr. Jones holds specialized expertise on this
13 subject and provides additional supporting detail on this point.

14 **4. Mr. Frieberg Offers Testimony Directly Relevant to Safety Risks**
15 **Stemming From an Inadequately Trained Workforce.**

16 19. Mr. Frieberg’s testimony provides relevant information both because he offers a deeper
17 exploration of some of the issues addressed in Ms. Hutson’s testimony relating to the risks
18 associated with an inadequately trained workforce and also because he discusses a proposed
19 solution that would help mitigate those risks. In particular, Mr. Frieberg highlights that the
20 proposed transaction fails to address PSE’s contracted workforce, and the additional commitment
21 he would propose to ensure that PSE ratepayers are not harmed. PSE argues that Mr. Frieberg
22 fails to explain how the harms he addresses would be impaired by the proposed transaction.
23 WNIDCL disagrees, and contends, for the reasons explained in Ms. Hutson’s testimony, that
24 there is a serious risk that PSE’s contracting practices, including the adequacy of the training

1 regimes utilized by such contractors, will deteriorate under the new consortium's ownership.
2 PSE is free to dispute that conclusion, but the appropriate way to do so is by introducing its own
3 evidence, not by making a collateral attack in the form of a motion to strike.

4 **B. THE MOTION TO ADMONISH OR DISMISS WNIDCIL SHOULD**
5 **LIKEWISE BE DENIED.**

6 20. Along with asking that the testimony of WNIDCL's witnesses be struck, Joint Applicants
7 ask that the ALJs either dismiss WNIDCL or admonish the Union that its participation rights are
8 limited. Motion at 17. For the reasons explained above, WNIDCL has stayed well within the
9 guardrails set by the Commission, and has focused on providing relevant information supporting
10 its concerns about the safety and reliability risks raised by the transaction. Neither an
11 admonishment nor dismissal is warranted and Joint Applicants' request should be denied.

12 **IV. CONCLUSION**

13 21. For all the above-stated reasons, Joint Applicants motion to strike should be denied in its
14 entirety.

15 RESPECTFULLY SUBMITTED this 13th day of February, 2019.

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