

Sanger Law PC

1041 SE 58th Place Portland, OR 97215

tel (503) 420-7734 fax (503) 334-2235 marie@sanger-law.com

March 12, 2020

Via E-filing

Mr. Mark Johnson
Executive Director
Washington Utilities & Transportation Commission
621 Woodland Square Loop SE
Lacey, Washington 98503

Attn: Filing Center

RE: In the Matter of the Application 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 No. UE-200115

Dear Mr. Johnson:

Please find for filing in the above-referenced the Reply to PSE Response in Opposition to Petition to Intervene on behalf of Renewable Northwest.

Thank you for your assistance. Please do not hesitate to contact me with any questions.

Sincerely,



Marie P. Barlow

cc: Service List

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UTIL. AND TRANSP.
COMMISSION

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of)	DOCKET UE-200115
)	
PUGET SOUND ENERGY,)	
)	RENEWABLE NORTHWEST REPLY TO
For an Order Authorizing the Sale of All)	PSE RESPONSE IN OPPOSITION TO
of Puget Sound Energy's Interests in)	PETITION TO INTERVENE
Colstrip Unit 4 and Certain of Puget)	
Sound Energy's Interests in the Colstrip)	
<u>Transmission System</u>)	

I. INTRODUCTION

1. Pursuant to Washington Administrative Code (“WAC”) § 480-07-355, Renewable Northwest (“RNW”) offers this Reply to Puget Sound Energy’s (“PSE’s”) Response in Opposition to RNW’s Petition to Intervene (“Response”) for consideration by the Washington Utilities and Transportation Commission (the “Commission”). PSE’s primary objections to RNW’s Petition to Intervene are that RNW does not have a substantial interest in this proceeding and that its stated interests are in furtherance of private interests rather than public ones. The Commission should grant RNW’s intervention in this proceeding because RNW has a substantial interest in the proceeding and its participation will further the public interest without burdening the proceeding.

II. REPLY

1. RNW’s Intervention Will Benefit the Public Interest

A. RNW’s Intervention Is Consistent with the Public Interest Standard

2. Commission rules allow intervention either where the intervenor discloses a “substantial interest in the subject matter of the hearing or if the petitioner’s participation

is in the public interest.”¹ PSE relies on *Cole v. Wash. Util. and Trasnp. Comm’n*, in reaching the conclusion that the “‘public interest,’ in the context of the public service laws, is ‘that only of customers of the utilities which are regulated.’”² In that case decided in 1971, the complainant, Cole, argued that a gas company promotional program was being used to gain new customers at the expense of existing customers.³ The Commission denied intervention to an association of oil dealers that wanted to show the impact of the program on local fuel oil dealers.⁴ In denying intervention, the Commission held that it “‘had no jurisdiction to examine the economic effects of practices of a regulated public utility upon nonregulated competitors.’”⁵ The Court affirmed, noting that if the association could demonstrate that it had a substantial interest, then the Commission still retained discretion to grant intervention.⁶

3. In a recent case more directly applicable to the facts at hand, the Commission granted intervention of a trade association representing the interests of independent power producers.⁷ In that case, the Commission found that even where an organization does not have a “substantial interest” in the subject matter of the proceeding, intervention is allowed where “participation could assist the Commission and be in the public interest to the extent no competitive harm would result.”⁸

¹ WAC 480-07-355.

² PSE Response at 4 (citing *Cole v. Wash. Utils. & Transp. Comm’n*, 79 Wn2d 302, 306, 485 P.2d 71 (1971)).

³ *Id.* at 304.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 306.

⁷ *Wash. Utils. and Transp. Comm’n v. Puget Sound Energy*, Docket No. UE-161123, Order 05 (Jan. 3, 2017) (granting intervention of independent power trade association).

⁸ *Id.* at 3.

4. It is worth noting that what constitutes the “public interest” appears to have evolved since *Cole*. Indeed, Washington’s recently enacted Clean Energy Transformation Act (“CETA”) provides that “the public interest includes . . . long-term and short-term public health, economic, and environmental benefits and the reduction of costs and risks; and energy security and resiliency.”⁹

B. RNW’s Intervention Is In Support of its Mission—Not of Commercial Interests

5. RNW is a nonprofit advocacy organization that advocates for the development of environmentally responsible renewable resources in the Northwest. Contrary to PSE’s assertions, RNW’s intervention is not for the purpose of “protect[ing] the competitive and economic opportunities of its members.”¹⁰ RNW has over 50 member organizations; while some of these organizations are renewable energy developers and manufacturers, the membership also consists of consumer advocates, environmental groups, and other industry advisers.¹¹ At its core, RNW is and always has been driven by its mission and its vision. RNW’s mission is to “advocate for the expansion of environmentally responsible renewable energy resources in the Northwest through collaboration with government, industry, utilities, customers, and advocacy groups.”¹² As for its vision, RNW “envision[s] the Northwest powered by clean, affordable, reliable, renewable energy that protects the climate, strengthens the economy, and preserves our quality of life.”¹³ Nowhere in the mission or vision is there any reference to protecting an

⁹ S.B. 5116, 66th Leg., Reg. Sess. §3 (Wash. 2019), 2019 Wash. Sess. Laws 1608, 1609.

¹⁰ See PSE Response at 1.

¹¹ The full membership list is available at https://renewablenw.org/our_members.

¹² RNW, *Our Story*, <https://renewablenw.org/node/our-story>.

¹³ *Id.*

individual member’s economic or business opportunities. Rather, RNW’s diverse members are united in their commitment to “collaborative development of a diverse energy portfolio that builds on the region’s base of hydroelectricity while keeping electricity prices reasonable and improving public health and protecting our environment.”¹⁴ That RNW is driven by its public interest mission is further evidenced by its bylaws, which require that a majority of the organization’s Board of Directors be “affiliated with nonprofit conservation, environmental, or other public interest organizations.”¹⁵

6. While RNW is not representing any individual member’s commercial or economic interests in the proceeding, RNW’s nonprofit members stand to be substantially impacted by PSE’s proposed sale of assets—either directly or indirectly. Several of these members include Washington-based nonprofits with memberships that include PSE customers. All of these members share in RNW’s interest in protecting and advancing the competitive and economic opportunities for renewable resources in the Pacific Northwest and for PSE customers, but like RNW, they do not seek to protect specific business interests that may be found in RNW’s membership . While RNW seeks to create and expand opportunities for renewable resources generally, RNW does not seek to protect any particular proposed or existing resource.

7. RNW’s intervention would advance the public interest in material ways. First, RNW has unique and specialized expertise with respect to evaluation of the Colstrip

¹⁴ *Id.*

¹⁵ RNW, Bylaws of Renewable Northwest Project, Art. III, § 2, <https://www.renewablenw.org/sites/default/files/pdfs/RNP%20Bylaws.pdf>. Currently, only four of RNW’s eleven board members represent for-profit enterprises, and only two of those four come from the development community.

Transmission System (“CTS”). The CTS asset was previously put into rate base for the benefit of PSE’s customers. RNW’s participation in this proceeding would help the Commission evaluate the benefits to PSE’s customers of PSE’s CTS ownership and sale, including by assisting the Commission in evaluating the merits of divesting of the asset at the proposed price. Indeed, RNW staff has often been asked to offer its expertise on CTS issues to government entities throughout the Northwest. Second, RNW has a long history of advocating and engaging on clean energy policies in the Northwest, including Washington’s Renewable Portfolio Standard and the newly enacted CETA. RNW is widely recognized among industry and climate experts in the field for its expertise on clean energy policy, and that expertise would benefit this proceeding. Indeed, in support of its application in this docket, PSE cites CETA, noting that “[t]he Proposed Transactions are a necessary step in preparing PSE for the period beginning January 1, 2026, in which PSE will no longer be able to serve retail customer loads with power from coal-fired generation due to the passage of [CETA].”¹⁶ With the passage of CETA, the Washington legislature specifically found that “the public interest includes . . . long-term and short-term public health, economic, and environmental benefits and the reduction of costs and risks; and energy security and resiliency.”¹⁷ RNW’s experience with CETA and related policies is therefore relevant to the proceeding and would assist the Commission in its deliberations.

¹⁶ PSE Application at 2.

¹⁷ S.B. 5116, 66th Leg., Reg. Sess. §3 (Wash. 2019), 2019 Wash. Sess. Laws 1608, 1609.

2. RNW Has a Substantial Interest in This Proceeding

8. RNW has a substantial interest in the proceeding. As previously noted, achieving climate and environmental goals are central to RNW's mission, and as PSE's own application articulates, this proceeding is a "necessary step" in connection with PSE's CETA compliance. While RNW appreciates PSE's efforts to prepare for CETA compliance, RNW cannot merely accept PSE's premise that the proposed transaction is in furtherance of PSE's decarbonization goals. To this end, RNW has a direct and substantial interest in analyzing whether the proposed transaction would indeed facilitate decarbonization of PSE's portfolio and bring the benefits that PSE claims. Moreover, as discussed above, RNW has several nonprofit member organizations that are PSE customers and that look to RNW for guidance on evaluating PSE's decarbonization efforts and the effects on PSE customers. RNW staff have a history of providing such analytical support on similar issues, and RNW has a direct and substantial interest in performing that function in this proceeding.

9. Just as RNW has a substantial interest in analyzing the decarbonization benefits of the proposed transaction, RNW also has a substantial interest in analyzing whether the proposed transaction would affect transmission availability. At this stage, RNW cannot verify the accuracy of PSE's contention that the proposed transaction would not affect transmission availability. In the transmission realm, "availability" is not solely about physical existence. A transmission asset has the potential to become unavailable if it cannot be utilized to meet customer needs or sold on the market for the benefit of the utility's customers because it is encumbered by contractual obligations or use by other owners. PSE's testimony in this proceeding tacitly acknowledges how transmission

capacity could become unavailable for PSE's or customers' use when he describes how available transmission capacity for PSE's current interests in Montana wind projects will be unaffected because PSE retains enough ownership of the CTS to accommodate the Montana project.¹⁸ Transmission capacity can also be effectively unavailable if it becomes uneconomic to access, as shown by PSE's own modeling on the levelized cost of resources.¹⁹ Thus, RNW has a substantial interest in ensuring the efficient use of the transmission capacity at issue here and the benefits to PSE customers of the proposed transaction. Who has ownership of the capacity is relevant to such an evaluation, and as PSE's Response acknowledges, the Commission indeed has jurisdiction over the ownership question. RNW's participation in connection with these issues would assist the Commission in developing a more complete record.

3. RNW's Participation Will Not Burden the Proceeding

10. Contrary to PSE's contention, RNW's participation will not burden the proceeding. RCW 34.05.443 provides, "[t]he presiding officer may grant a petition for intervention at any time, upon determining that the petitioner qualifies as an intervenor under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings."²⁰ To help facilitate the prompt and orderly conduct of the proceeding, RNW and NVEC intend to combine their presentation of evidence and argument, cross-examination, discovery and participation in general. Such close collaboration with another mission-based nonprofit

¹⁸ Flynn, Thomas Exh. TMF-1T at Section III.

¹⁹ PSE 2017 IRP at 2-10, see Figure 2-5: Wind and Solar Cost Components, page 2-10.

²⁰ RCW 34.05.443(1).

advocacy organization further underscores that RNW's intervention is not, as PSE claims, "to advance the economic and commercial interests of [RNW's] members."²¹ Finally, PSE inaccurately claims that RNW intends to "introduce" other issues²²; however, RNW's intervention states that it intends to "examine" other issues in this proceeding.²³ Thus, RNW's participation will not broaden the scope of or otherwise burden the proceeding.

11. Finally, the fact that RNW advocates on its own behalf consistent with its own mission and vision is not a reason to deny participation altogether, but goes to the weight of the evidence it provides.²⁴ The Commission benefits from hearing diverse perspectives and as articulated above, RNW can provide unique information and perspective on the issues presented. Should PSE or other parties take issue with any particular position, they will have an opportunity to respond and provide their views on the accuracy and credibility of the evidence presented by RNW.

12. To the extent PSE's opposition may be due to any concern that RNW members who compete with PSE may gain access to confidential information related to this docket,²⁵ PSE can be assured that RNW's individual members do not sign protective orders in cases that RNW intervenes in. RNW, at this time, has not determined who will

²¹ PSE Response at 8.

²² *Id.* at 7.

²³ RNW Petition to Intervene at 3.

²⁴ *See* Docket No. UE-161123, Order 05 at 2 ("We are aware that [intervenor], like other private entities, advocates on its own behalf, but such inherent bias goes to the weight of the evidence it provides, not whether the Commission should consider that information at all.").

²⁵ *Id.* (restricting access to confidential information where PSE raised concerns that "it was uncomfortable with the possibility that [intervenor] and its members would have access to confidential information; especially related to the closure of the certain units of the Colstrip plant.")

need access to confidential information, but RNW's attorneys, experts, and staff will sign protective orders to the extent necessary to participate in the case and will fully abide by the terms of those protective orders. Should PSE take issue with any particular individual's access to confidential information, Commission rules and the protective order entered in this docket provide an appropriate forum for objecting to and addressing such issues; therefore, it is not appropriate to deny intervention based on those concerns.

III. CONCLUSION

13. RNW respectfully requests that the Commission grant its petition to intervene with full party status in this proceeding. Denying RNW's intervention will harm the public interest, fail to fully develop a record, and injure the substantial interests of RNW and its members.

Dated this 12th day of March 2020.

Respectfully submitted,



Irion Sanger
Marie P. Barlow
Sanger Law P.C.
1041 SE 58th Place
Portland, OR 97215
marie@sanger-law.com
Telephone: 503-420-7734
Fax: 503-334-2235

Of Attorneys for Renewable Northwest

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing document on behalf of the Renewable Northwest upon the parties, on the service list via electronic mail.

Dated at Portland, Oregon, this 12th day of March 2020.

Sincerely,

/s/ Min Hu

Min Hu

Paralegal

Sanger Law P.C.

min@sanger-law.com

Jon Piliaris
Puget Sound Energy
PO BOX 97034 PSE-08N
Bellevue, WA 98009-9734
jon.piliaris@pse.com

Joe Dallas
WUTC
PO Box 47250
Olympia, WA 98504
joe.dallas@utc.wa.gov

David Steele
Perkins Coie, LLP
10885 NE Fourth Street STE 4900
Bellevue, WA 98004
dsteele@perkinscoie.com

Etta Lockey
Pacific Power & Light Company
825 NE Multnomah St. STE 1800
Portland, OR 97232
etta.lockey@pacificorp.com

Sheree Strom Carson
Perkins Coie, LLP
10885 N.E. Fourth Street STE 700
Bellevue, WA 98004-5579
scarson@perkinscoie.com

Patrick Ehrbar
Director of Regulator Affairs
Avista Corporation dba Avista Utilities
PO Box 3727 - MSC-29
Spokane, WA 99220
pat.ehrbar@avistacorp.com

Jason Kuzma
Perkins Coie, LLP
10885 N.E. Fourth St. STE 700
Bellevue, WA 98004-5579
JKuzma@perkinscoie.com

Washington Dockets
825 NE Multnomah Street STE 2000
Portland, OR 97232
washingtondockets@pacificorp.com

Brent Coleman
Alliance of Western Energy Consumers
1750 SW Harbor Way STE 450
Portland, OR 97201
blc@dvclaw.com

David Meyer
VP and Chief Counsel
Avista Corporation dba Avista Utilities
P.O. Box 3727
Spokane, WA 99220-3727
david.meyer@avistacorp.com

Bradley Mullins
Davison Van Cleve, PC
1750 SW Harbor Way STE 450
Portland, OR 97201
brmullins@mwanalytics.com

Tyler Pepple
Davison Van Cleve, PC
1750 SW Harbor Way STE 450
Portland, OR 97201
tcp@dvclaw.com

Michael Andrea
Senior Counsel
Avista Corporation dba Avista Utilities
1411 East Mission Ave., MSC-23
Spokane, WA 99220
michael.andrea@avistacorp.com

Ajay Kumar
825 NE Multnomah Street STE 1800
Portland, OR 97232
Ajay.Kumar@pacificorp.com

Lisa Gafken
Office of the Attorney General
800 Fifth Avenue STE 2000
Seattle, WA 98104-3188
Lisa.Gafken@atg.wa.gov

Nina Suetake
Assistant Attorney General
Attorney General's Office
800 5th Avenue STE 2000
Seattle, WA 98104-3188
NinaS@atg.wa.gov

Ann Paisner
800 Fifth Avenue STE 2000
Seattle, WA 98104-3188
Ann.Paisner@atg.wa.gov

jog@dvclaw.com;
Chanda.Mak@atg.wa.gov;
sarahl2@atg.wa.gov;
pccseaef@atg.wa.gov;
kevin.burdet@atg.wa.gov;