

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

IN THE MATTER OF THE JOINT  
APPLICATION OF

NO. U-180680

PUGET SOUND ENERGY, ALBERTA  
INVESTMENT MANAGEMENT  
CORPORATION, BRITISH COLUMBIA  
INVESTMENT MANAGEMENT  
CORPORATION, OMERS  
ADMINISTRATION CORPORATION, AND  
PGGM VERMOGENSBEHEER B.V.

**IBEW LOCAL 77'S OPPOSITION TO  
JOINT APPLICANTS' MOTION TO  
STRIKE TESTIMONY**

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

**I. INTRODUCTION**

I. The International Brotherhood of Electrical Workers, Local 77 ("IBEW"), in compliance with Order 05, filed testimony and exhibits in opposition to Joint Applicants' proposed settlement agreement on February 8, 2019.<sup>1</sup> The Joint

---

<sup>1</sup> *In the Matter of the Application of Puget Sound Energy*, Docket U-180680, Order 05, ¶16 (Jan. 11, 2019) ("Order 05").

1 Applicants, in complete disregard to the Commission's well-established procedural  
2 rules, filed an eleventh-hour objection to IBEW's participation in the form of a  
3 Motion to Strike IBEW's witness' testimony. The Joint Applicants' motion is unfair  
4 and prejudicial to IBEW. The Joint Applicants should not be rewarded for their  
5 indifference to the Commission's rules and procedures. To limit IBEW's evidence,  
6 and/or to exclude IBEW from the February 15, 2019 hearing, would be an extreme,  
7 prejudicial, and unjust remedy.

8  
9 2. The Joint Applicants questioned IBEW's expert witness Tim Arnold's ("Arnold")  
10 qualifications, but offered no case law or rule that requires expert witnesses to have  
11 an expertise in utility transactions.<sup>2</sup> In fact, the Commission limited IBEW's  
12 participation to the issues of "safety and reliability of service to PSE's [Puget Sound  
13 Energy's] customers where its members are actually involved in the provision of such  
14 service."<sup>3</sup> Arnold, a former PSE employee of thirty years, is frankly over-qualified to  
15 offer his perspective on how the proposed transaction would impact safety and  
16 reliability to PSE's customers.<sup>4</sup> The scope of Arnold's testimony is limited to safety  
17 and reliability. Arnold's testimony expounds upon what is and is not included in the  
18 collective bargaining agreement. Arnold's testimony was intended to educate the  
19  
20  
21

22 <sup>2</sup> See Joint Applicants' Motion to Strike the Testimony of D. Timothy Arnold Filed On Behalf of IBEW  
Local 77, ¶11: 6-7 (Feb.11, 2019) ("Motion to Strike").

23 <sup>3</sup> *In the Matter of the Application of Puget Sound Energy*, Docket U-180680, Order 03, ¶23 (Nov. 21,  
2018) ("Order 03").

24 <sup>4</sup> See Testimony of D. Timothy Arnold, Exh. DTA-1T at 1:20-2:5 ("Arnold Testimony").

1 Commission – which lacks labor experience – that the issues raised by IBEW are not  
2 subject to the agreement, but are capable of being remedied by the Commission.

3 3. IBEW has respectfully complied with all Commission boundaries and  
4 requirements as an intervenor in this matter. IBEW has not burdened or obstructed  
5 the transaction. If the Joint Applicants expected the intervenors to simply sit back  
6 and observe, but not to participate, then they have misunderstood the purpose and role  
7 of an intervenor. The Commission granted IBEW’s petition to intervene to assist the  
8 Commission in “compiling an appropriate record and determining whether the  
9 proposed transactions will result in ‘no harm’ to PSE’s customers.”<sup>5</sup> Here, IBEW did  
10 just that, by offering expert testimony to further inform and educate the Commission  
11 on how the proposed transactions would affect safety and reliability.  
12

13 4. As such, the Commission should strike the Joint Applicants’ Motion to Strike and  
14 deny their request for a limiting instruction.  
15

## 16 **II. ARGUMENT**

### 17 **A. THE MOTION TO STRIKE SHOULD BE STRICKEN.**

#### 18 **1. The Joint Applicants’ Motion Is Untimely and Prejudicial.**

19 5. The Joint Applicants’ untimely Motion to Strike violates WAC procedural rules.  
20 WAC 480-07-375(4) affords a party opposing a written motion five business days to  
21  
22

23  
24 <sup>5</sup> Order 03, ¶22.

1 respond after the motion is served.<sup>6</sup> IBEW has been denied the five business days to  
2 respond given that the Joint Applicants' motion was not served until 4:45 p.m. on  
3 Monday. Thus, IBEW was prejudiced by not being afforded sufficient time to  
4 articulate a response.

5 6. The Joint Applicants' suspicious timing for filing indicates an intent to forestall  
6 IBEW's participation at the last possible moment. The Commission should not  
7 condone such unfair tactics. "The Commission has a duty to all parties to ensure that  
8 proceedings are conducted in a fair manner...Parties who do not comply with  
9 procedural requirements and deadlines do so at their own peril..."<sup>7</sup> In the *Continued*  
10 *Costing* matter, the Commission struck a party's testimony that included  
11 recommendations based on a cost study model not offered as an exhibit by any party.  
12 The Commission explained, "[I]n light of time constraints necessary in order to  
13 conclude Part A proceedings without causing prejudice to any party, the Movants are  
14 deprived of a fair opportunity to conduct discovery in response to information that is  
15 not otherwise a part of this case."<sup>8</sup> Thus, the Commission has authority to permit or  
16 strike evidence and motions as it deems appropriate. Here, the Commission is  
17 empowered to strike Joint Applicants' motion because it was untimely filed and  
18 deprives IBEW of the required five day response.  
19  
20

21 <sup>6</sup> "A party that opposes a written motion...may file a written response within five business days after the  
22 motion is served, or may make an oral or written response at such other time as the presiding officer may  
23 set." WAC 480-07-375 (4).

24 <sup>7</sup> *In the Matter of the Continued Costing and Pricing of Unbundled Network Elements, Transport, and*  
25 *Termination*, Docket UT-003013, Sixth Supplemental Order, ¶18 (Aug. 18, 2000) ("Continued Costing").

<sup>8</sup> *Continued Costing*, ¶21.

1 7. If the Joint Applicants wished to challenge IBEW's participation post-settlement  
2 agreement, they have had three weeks to do so.<sup>9</sup> Instead, the Joint Applicants  
3 intentionally delayed until the hearing week to assert a challenge. The Joint  
4 Applicants should not be rewarded for delaying and surprising IBEW with this  
5 motion on the same week of the hearing.

6 **2. Limiting Evidence And/Or Excluding IBEW From The Hearing Is**  
7 **An Extreme And Prejudicial Remedy.**

8 8. Limiting a party's participation at the hearing or on cross-examination is an  
9 extreme remedy. The Commission noted that IBEW has a unique perspective and can  
10 offer supplemental information to bear on the transaction.<sup>10</sup> IBEW's opposition  
11 testimony and exhibits relate to reliability and safety, and the issues falling under  
12 those broad topics. Because Arnold's testimony is IBEW's primary evidence to  
13 support its opposition to the settlement, excluding his testimony would be highly  
14 prejudicial to IBEW's interests. At no other point in this proceeding will IBEW be  
15 able to present Arnold's testimony and exhibits in the same manner. The Joint  
16 Applicants have vigorously opposed IBEW and sought to prevent IBEW from  
17 bringing the employee's point of view to the Commission's attention. The  
18 Commission should have access to any and all information it would need to decide if  
19  
20  
21

22 <sup>9</sup> The Multiparty Settlement Stipulation and Agreement was filed on January 15, 2019.

23 <sup>10</sup> See Order 03, ¶22; see also *WUTC v. Puget Sound Energy*, Docket UE-161123, Order Accepting  
24 Interlocutory Review of Order 04, ¶17 (January 3, 2017) ("The Commission benefits from hearing from  
25 parties with competing interests, at least when each such party offers unique information or perspectives on  
the issues presented.")

1 this proposed transaction is in the public interest. This information, by the  
2 Commission's own admission, includes the employee's perspective on the  
3 transactions' effects on safety and reliability. The Commission should disregard the  
4 Joint Applicants' motion and consider Arnold's testimony.

5 **B. ARNOLD'S TESTIMONY SHOULD NOT BE STRICKEN.**

6 **1. Arnold Is A Qualified Witness.**

7  
8 9. Arnold is amply qualified to testify on matters regarding the risks to safety and  
9 reliability that the proposed transaction would have on PSE customers. The  
10 Commission has stricken the testimony of an expert for two reasons: (1) lacking  
11 qualifications to opine on factual matters relevant to the proceeding, and (2) for  
12 proffering testimony that was largely irrelevant to the proceeding.<sup>11</sup> Here, Arnold has  
13 the qualifications to testify on precisely what the Commission permitted: "the safety  
14 and reliability of service to PSE's customers where its members are actually involved  
15 in the provision of such service."<sup>12</sup> IBEW's members are electrical workers, and  
16  
17 Arnold has spent thirty years working for PSE in the electrical field.

18 In my thirty years employed by PSP&L [Puget Sound Power & Light] and  
19 PSE, I was responsible for the design, construction and maintenance of  
20 electrical systems. I have supervised linemen, servicemen, equipment  
21 operators, meter readers, collectors, engineers, storerooms, wiremen,  
22 substation inspectors and customer service personnel. I have had  
extensive experience in storm restoration including managing crews,  
examining restoration priorities, leading contract crews from other areas,

23 <sup>11</sup> *WUTC v. Puget Sound Energy*, Docket UE-170033 and UG-170034 (Consolidated), Order 07, ¶6 (Aug.  
25, 2017).

24 <sup>12</sup> Order 03, ¶22.

1 setting up temporary command facilities and coordinating helicopter  
2 services. I have managed millions of dollars of maintenance and operation  
3 budgets, and tens of millions of new construction and new customer  
4 facilities.<sup>13</sup>

5 Arnold is a utility expert who has first-hand knowledge of PSE's operations.

6 10. The Joint Applicants argue that Arnold's testimony should be stricken because  
7 "Mr. Arnold's testimony addresses a wide range of issues, none of which relate to the  
8 Proposed Transactions,"<sup>14</sup> essentially arguing that Arnold's testimony is irrelevant to  
9 the proceeding. Arnold's investigation, however, was based on the Commission's  
10 permission to explore issues of safety and reliability from PSE employees'  
11 perspective. Arnold based much of his analysis on data PSE supplied about its own  
12 operations. These exhibits are PSE records that describe their operations, a subject  
13 wholly relevant to this case because they reveal how different ownership interests can  
14 have an effect on the priorities in running the utility.

15 11. The Joint Applicants confusingly attempt to have it both ways: on one hand, they  
16 harangue IBEW as a party limited to the subjects of safety and reliability and then, on  
17 the other hand, they complain that IBEW's expert does not have large utility  
18 transaction experience, a subject beyond the scope of safety and reliability. Arnold is  
19 not testifying as to the overall transaction of this proceeding -- that is not his area of  
20 expertise. He is testifying on how IBEW-represented workers have fared under new  
21

22  
23 <sup>13</sup> Arnold Testimony at 1:20-2:5.

24 <sup>14</sup> Motion to Strike, ¶12:8-9.

1 ownership and what they know regarding issues pertaining to safety and reliability for  
2 their customers.

3 **2. Arnold's Testimony Does Address Safety and Reliability.**

4 12. All of the potential harms to customers raised in Arnold's testimony fall under the  
5 umbrella of safety and reliability. Safety and reliability are expansive categories and  
6 encompass many things. Overtime hours, staffing, succession planning,  
7 apprenticeship, training, and safety issues fall within this broad ambit. Arnold  
8 explained, "IBEW Local 77 represents actual PSE employees who have experienced  
9 first-hand the consequences of a change in ownership. The members' quality of work  
10 depends on their health, safety, and job satisfaction, which will have a downstream  
11 effect on PSE's electric customers."<sup>15</sup> PSE employees conduct work that is often  
12 dangerous and/or hazardous to ensure customers receive safe and reliable service. If  
13 these employees are overworked, understaffed, insufficiently trained, and exposed to  
14 safety hazards, the safety and reliability of energy services will diminish. This is a  
15 direct and causal relationship, and Arnold's testimony explains how this should  
16 concern the Commission.  
17

18  
19 13. IBEW, through Arnold's testimony and participation at the hearing, desires to  
20 show the Commission how its concerns fall within the umbrella of safety and  
21 reliability. The Joint Applicants are trying to forestall that opportunity and in the  
22 process are making nonsensical allegations. Are the Joint Applicants really claiming  
23

24 <sup>15</sup> Arnold Testimony at 4:5-8.



1 that Arnold's identification of safety issues is not, in fact, safety-related? The Joint  
2 Applicants are grasping at straws and are claiming that safety issues/inadequacies are  
3 not covered by testimony entirely focused on "safety and reliability."

4 **3. IBEW's Concerns Are Not Covered By Collective Bargaining.**

5 14. IBEW was sensitive to the Commission's request not to explore issues governed  
6 by collective bargaining.<sup>16</sup> IBEW has honored that command. IBEW included the  
7 CBA as an exhibit to demonstrate that the issues it has raised are, in fact, not  
8 governed by collective bargaining. Arnold's testimony emphasizes the continued  
9 staffing reductions, overreliance on high overtime hours, insufficient training, and  
10 steady pace of vehicle accidents. All these issues correlate with safety and reliability.  
11

12 15. Whether PSE has sufficient employees and staffing to cover its work impacts both  
13 safety and reliability. PSE cannot operate without employees. If PSE is consistently  
14 understaffing and pushing overtime hours to an extreme, that is dangerous and  
15 potentially a safety hazard. It can also impact the reliability of electricity  
16 transmission if fewer employees are available to complete critical, time-sensitive, and  
17 specialized work. All of these issues fall within the purview of IBEW's participation.  
18 The Joint Applicants do not cite any provision of the CBA where IBEW's stated  
19 harms are covered. The Joint Applicants do not do so because they impliedly admit  
20 that the harms are not covered by collective bargaining. Explicitly, however, the  
21  
22

23 

---

<sup>16</sup> Order 03, ¶22 ("As discussed above, employment issues such as workplace changes, labor contracts,  
24 wages, hours, and staffing are outside the Commission's purview.")

1 Joint Applicants do make the far-fetched claim that virtually anything not covered by  
2 collective bargaining could *potentially* be covered by collective bargaining, and  
3 therefore should be excluded from consideration by the Commission.<sup>17</sup> Inadequate  
4 training, understaffing, failure to use qualified electrical workers, subcontracted labor,  
5 decreasing vehicle safety, and inadequate succession planning are all areas raised in  
6 Arnold's testimony and are all plainly not collective bargaining issues. The  
7 Commission cannot change the IBEW-PSE Collective Bargaining Agreement, nor is  
8 IBEW requesting here that the Commission do so. The agreement is locked in place  
9 until 2020 as PSE admits.<sup>18</sup> In recognition of this limitation, Arnold's testimony  
10 focuses upon issues that are not remedied in the Collective Bargaining Agreement,  
11 but subject to PSE's exclusive control.  
12

13 **C. IBEW HAS PARTICIPATED IN THIS MATTER IN GOOD FAITH.**

14 **1. IBEW Has Not Exceeded Its Boundaries And Has Adhered To All**  
15 **Commission Requirements.**

16 16. The Joint Applicants erroneously claimed that "IBEW is inappropriately using  
17 this proceeding as a collateral platform to advance issues that have no relation  
18 whatsoever to any of the fundamental issues before the Commission as relating to the  
19 Proposed Transactions."<sup>19</sup> This claim is evidently false. Are the Joint Applicants  
20

21  
22 <sup>17</sup> Motion to Strike, ¶21:1-3 ("Whether or not an employment issue is captured in a collective bargaining  
23 agreement is irrelevant as that itself may be a collective bargaining decision.")

24 <sup>18</sup> *Id.* at ¶5:12-13.

<sup>19</sup> *Id.* at ¶27:21-1.

1 questioning the propriety and appropriateness of safety and reliability as issues in this  
2 proceeding? As previously noted, the issues raised by IBEW are not remedied  
3 through collective bargaining, but are in fact responsive to the Commission's  
4 limitation to issues applicable to safety and reliability of electrical service to  
5 customers. The Joint Applicants also claim – without evidence – that IBEW's  
6 participation is not in the public interest. Yet, the Commission already ruled by  
7 permitting IBEW's intervention, that it is in the public interest for IBEW to  
8 participate. Re-litigating failed motions is not appropriate the week of the hearing.  
9

10 17. The Joint Applicants further attempt to muddy the waters by asserting that IBEW  
11 has exceeded its purely informational role in the proceeding. At what point did the  
12 Commission rule that IBEW was limited to an informational role? If that was the  
13 case, IBEW would not have had the ability to perform discovery, participate at the  
14 settlement conference, file testimony before the UTC, or participate at the hearing.  
15 The Joint Applicants claimed that IBEW's sole purpose was "to provide information  
16 relating to how the Proposed Transactions would impact the safety and reliability of  
17 service to customers where its members are actually involved in the provision of such  
18 service."<sup>20</sup> That is exactly what IBEW is doing here. Arnold's testimony and  
19 exhibits were filed to support the issues of safety and reliability of service. PSE is  
20 simply trying to forestall IBEW's testimony and contribution to this proceeding  
21 because it does not like the information that IBEW put forward. IBEW has  
22  
23

24 <sup>20</sup> *Id.* at ¶2:9-12.

1 understood its limited role in this proceeding and has respectfully gathered relevant  
2 and useful information to be presented in a public forum. The Commission can then  
3 render a knowledgeable and informed decision and decide if the proposed  
4 transactions are in the public interest.

5 **2. The Joint Applicants Falsely Claimed That IBEW Has “Burdened  
6 And Obstructed” The Proceeding.**

7 18. Under the Joint Applicants’ theory, simply not joining a settlement agreement  
8 automatically causes the opposing party to burden and obstruct the proceeding. That  
9 conclusion is nonsensical. The Joint Applicants claimed that without a substantial  
10 interest in the outcome of this proceeding, IBEW’s opposition to the settlement  
11 unnecessarily burdens the matter, and cites to *Advanced Telecom Group, Inc.*  
12 Conveniently, the Joint Applicants left out a large portion of the Commission’s  
13 reasoning when it ultimately made its ruling on Time Warner’s role as an intervenor  
14 in that matter. After the Commission granted Time Warner’s petition for  
15 intervention, and after they had conducted discovery on the settlement, cross-  
16 examined witnesses supporting the settlement, and presented argument in opposition  
17 to the proposed settlement both in writing and orally in a hearing before the  
18 Commission, Time Warner requested an additional hearing before the Commission to  
19 present its evidence on the merits of the case.<sup>21</sup> The Commission rejected this  
20 request:  
21  
22  
23

24 <sup>21</sup> See *WUTC v. Advanced Telecom Group, Inc.*, Docket UT-033011, Order 19, ¶59 (Dec. 22, 2004).

1 Given Time Warner's tenuous interest in the proceeding, and weighing  
2 that interest against the Commission's interest in promoting the orderly  
3 and prompt conduct of the proceedings, the Commission determines, at  
4 [sic] this time, that additional testimony on the merits in the proceeding is  
not necessary. The Commission limits Time Warner's participation in the  
proceeding to filing a written offer of proof in support of its preferred  
result with respect to the proposed settlement.<sup>22</sup>

5 The Joint Applicants preemptively placed the cart before the horse. IBEW has not  
6 even reached the level of participation that Time Warner had achieved in their case.  
7 The Joint Applicants are looking to dispel IBEW from even achieving attendance at  
8 the hearing. IBEW has not yet cross-examined witnesses nor has it presented  
9 argument in opposition to the settlement to the Commission. IBEW has no intention  
10 to request an additional hearing to present its own evidence on the merits of the  
11 proposed transaction. To analogize Time Warner and IBEW at this point in the case  
12 is inappropriate and poorly reasoned.  
13

14 19. IBEW has done nothing to burden or obstruct this proceeding. IBEW would have  
15 gladly joined a settlement agreement if the Joint Applicants included them in the  
16 conversation or actually considered their concerns. Instead, the Joint Applicants  
17 locked IBEW and the Laborers out of the process and left them no choice, but to  
18 proceed to hearing. IBEW just wants to be heard and has dutifully followed the  
19 Commission's case schedule and rules in order to share its perspective on the matter.  
20 The Joint Applicants continually claimed that IBEW is obstructing the process. Is  
21 filing testimony and exhibits as required in the case schedule obstruction? Is  
22  
23

---

24 <sup>22</sup> *Id.* at ¶60.

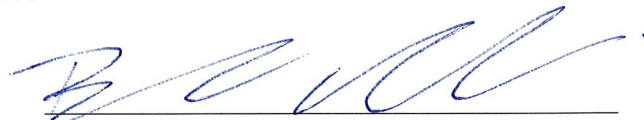
1 identification of “potential harms” obstruction? Perhaps the Joint Applicants believe  
2 so, but IBEW trusts the Commission to see through such foggy and meritless  
3 assertions.

4 20. As an example, and as the Joint Applicants may recall, IBEW had opposed the  
5 acceleration of the hearing date to February 15, 2019. The Commission overruled  
6 IBEW and the Laborers’ objection and accelerated the hearing. Thus, it is hard to  
7 fathom how IBEW could have obstructed the hearing when the Joint Applicants have  
8 succeeded in securing an expedited schedule and then further accelerating the hearing  
9 date to a time it desired. IBEW had neither burdened nor obstructed this proceeding,  
10 and should be permitted to submit and present testimony as provided by the case  
11 schedule.  
12

13 **III. CONCLUSION**

14 21. For the reasons stated above, the Joint Applicants’ Motion to Strike should be  
15 stricken and their request for a limiting instruction be denied.  
16

17 DATED this 14<sup>th</sup> day of February, 2019.

18 

19 Bradley Medlin, WSBA No. 43486  
20 Robblee Detwiler PLLP  
21 2101 Fourth Avenue, Suite 1000  
22 Seattle, Washington 98121  
23 Telephone: (206) 467-6700  
24 Facsimile: (206) 467-7589  
Email: [bmedlin@unionattorneysnw.com](mailto:bmedlin@unionattorneysnw.com)

Attorneys for IBEW Local 77