

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
THE NORTHERN CHEYENNE
TRIBE’S LATE-FILED PETITION
TO INTERVENE**

3
4
5
6
7
8
9
10
11
12
13
14
15
16

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 the Northern Cheyenne Tribe (“Tribe”). The late-filed Petition should be denied.
- 2. The Tribe is forum shopping. Having already been told in parallel proceeding before the Montana Public Service Commission (“MPSC”) that it cannot submit evidence relating to “community transition funding,” the Tribe now belatedly seeks to raise similar issues and other alleged economic impacts on the Tribe of the sale of PSE’s interest in Colstrip Unit 4 to NorthWestern Corporation (“NorthWestern”) in this proceeding. The Commission should reject the Tribe’s attempt to misuse this proceeding to advance its out-of-state economic interests.
- 3. Regardless, the Tribe does not meet the standards for intervention. The Tribe’s stated interests for intervening are to protect the out-of-state economic opportunities of it and its members. That not a basis to justify intervention. The

1 Tribe has not demonstrated a “substantial interest” in this proceeding nor can it
2 because the Commission does not have the jurisdiction to address the interests of
3 out-of-state entities and individuals. Nor are such issues the subject of this
4 proceeding which the Commission emphasized are “limited” and strictly focused
5 on whether the transactions at issue are consistent with the public interest in
6 Washington.

7 4. Moreover, the Tribe’s stated reasons for intervening do not, in any way,
8 benefit customers in Washington nor would they otherwise aid the Commission in
9 evaluating the transactions at issue. Rather, they would advance the private
10 interests of the Tribe and its members. This proceeding is not an open forum for
11 the Tribe to advance such interests. The Tribe’s participation is beyond the scope
12 of this proceeding and would distract from the narrow issue before the
13 Commission—whether the transactions proposed in this case are consistent with
14 the public interest in Washington. Accordingly, the Commission should deny the
15 Petition.

16 II. BACKGROUND

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

1 6. On March 13, 2020, a prehearing conference was held at which petitions
2 to intervene by AWEC, Sierra Club, NRDC, NWECA, Renewables Northwest,
3 Avista Corporation, PacifiCorp, and Portland General Electric, were considered
4 by the Commission.

5 7. On March 23, 2020, the Commission issued a Prehearing Conference
6 Order. While in the Order, the Commission permitted the interventions of the
7 above parties, the Commission “emphasized that the scope of the proceeding is
8 limited” and does not include how the Proposed Transactions could impact the
9 “contractual rights or obligations” of the parties¹ nor is it “an opportunity to
10 promote the commercial interests of any party.”² The Commission was clear that
11 “We will not entertain any arguments or issues unrelated to the Proposed
12 Transactions, including any issues that may arise from . . . commercial interests.”³

13 8. On July 7, 2020, the Commission suspended the procedural schedule so
14 PSE could complete and file a Supplemental Application reflecting an amendment
15 to the purchase and sale agreement between PSE and NorthWestern after Talen
16 Montana LLC exercised a right of first refusal to acquire a proportionate interest
17 in Colstrip Unit 4. On August 20, 2020, PSE filed a Supplemental Application
18 reflecting the above amended transactions (“Amended Proposed Transactions”).
19 A second prehearing conference has been set for September 8, 2020.

20 9. On August 24, 2020, the Tribe filed its Petition.

¹ Order 02 ¶ 13.

² *Id.* ¶ 15.

³ *Id.*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

10. As set forth in the Petition, the basis for the Tribe’s intervention is:

- Tribal employment opportunities associated with “Colstrip operations, including associated mining”⁴;
- The “social, economic, and environmental impacts from continued operations, and eventual cleanup and remediation”⁵;
- “Tribal members residing off-Reservation use electricity generated at Colstrip”⁶;
- “The Tribe has abundant renewable energy resources, including solar and wind, and has made significant strides toward development of those resources. The most likely market for renewable Tribal power would be in Washington, likely necessitating transmission through Colstrip”⁷;
- “The development of renewable energy is one of the Tribe’s most promising options to alleviate the high unemployment and poverty that has stricken the Reservation for far too long”⁸;
- “The Tribe’s position with respect to the approval is that the approval must consider the interests of the Northern Cheyenne Tribe, including

4 Petition at 2.

5 *Id.*

6 *Id.* at 3.

7 *Id.*

8 *Id.*

1 employment, community transition, and access to transmission for
2 renewable energy.”⁹

3 11. The Tribe justifies its late-filed Petition because it will not be allowed to
4 present evidence relating to “community transition funding” in parallel
5 proceedings before the MPSC where the MPSC is currently considering
6 NorthWestern’s request for approval to acquire PSE’s interest in Colstrip Unit 4.¹⁰
7 The Tribe also states that it was delayed due to challenges with COVID-19.¹¹

8 III. ARGUMENT

9 12. The Tribe has not shown “good cause” justifying its belated Petition and it
10 has not met the standard for intervention. It only filed its Petition after the MPSC
11 denied the Tribe the ability to present evidence relating to “community transition
12 funding.” Moreover, the Commission may grant a petition to intervene only if the
13 petitioner “discloses a substantial interest in the subject matter of the proceeding
14 or if the petitioner’s participation is in the public interest.”¹² The petitioner must
15 also qualify under the law and the intervention must “not impair the orderly and
16 prompt conduct of the proceedings.”¹³ As set forth below, the Petition should be
17 denied because the Tribe does not have a substantial interest in the Amended
18 Proposed Transactions nor is its intervention in the public interest.

⁹ *Id.*

¹⁰ *Id.* at 4.

¹¹ *Id.* at 4-5.

¹² WAC 480-07-355(3).

¹³ RCW 35.04.443(1).

1 **A. The Tribe Does Not Have a Substantial Interest in the Amended Proposed**
2 **Transactions**

3 13. The Commission should deny the Petition because the Tribe does not have
4 a substantial interest in the Amended Proposed Transactions. The Commission
5 applies a “zone of interest test” to determine whether a party seeking intervention
6 has a substantial interest.¹⁴ As stated in the Prehearing Conference Order, such an
7 interest can be found to exist only when there is a nexus between the petitioner’s
8 stated purpose in seeking to intervene and an interest protected by a Washington
9 statute within the Commission’s jurisdiction.¹⁵ The Tribe has not identified any
10 Washington statutes within the Commission’s jurisdiction that pertain to an
11 interest of the Tribe, who is an out-of-state entity, nor has it stated any other basis
12 establishing substantial interest.

13 14. The Commission defined the statutory scope of this proceeding:

14 **SCOPE OF PROCEEDING.** RCW 80.12.020(1) requires regulated
15 utilities to secure from the Commission an order authorizing the sale
16 of its properties and facilities, which are necessary or useful in the
17 performance of its duties to the public. The Commission will examine
18 whether the utility’s proposed transaction is in the public interest. The
19 Commission will deny a utility’s application for authorization if it
20 finds the proposed transaction is not consistent with the public interest.
21 Therefore, we examine PSE’s Proposed Transactions to determine
22 whether they are consistent with the public interest.¹⁶

14 *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).

15 *Id.*; Order 02 ¶ 11.

16 Order 02 ¶ 7 (citations omitted).

1 15. The “public interest” referenced above pertains to only PSE customers or
2 at most, Washington residents—not out-of-state entities or individuals.¹⁷ “[T]he
3 public interest the Commission must protect is the *interest of customers of*
4 *regulated utilities, not those of an unregulated competitor.*”¹⁸

5 16. The sole basis for the Tribe’s intervention is to advance the economic
6 opportunities of the Tribe and its members which is beyond the jurisdiction of the
7 Commission and not a substantial interest in this proceeding. For example, the
8 Tribe seeks to intervene to protect the employment opportunities of Tribal
9 members, including “associated mining” jobs.¹⁹ As an agency of the State of
10 Washington, the Commission does not have jurisdiction over the employment
11 opportunities of Tribal members.

12 17. The Tribe also vaguely alleges certain “social, economic, and
13 environmental impacts from continued operations”²⁰ but fails to explain how the
14 Amended Proposed Transactions would have any impact on those issues or how
15 the Commission has jurisdiction over such issues as they pertain to the Tribe. The
16 Tribe suggests further that it has an interest in this proceeding because “Tribal
17 members residing off-Reservation use electricity generated at Colstrip.”²¹ The

17 Order 02 ¶ 14.

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

19 Petition at 2.

20 *Id.* at 2.

21 *Id.* at 3.

1 Commission does not have jurisdiction over non-Washington resident Tribal
2 members who use electricity generated from Colstrip.

3 18. The Tribe argues further that it has an “acute interest” in the Amended
4 Proposed Transactions because it has “abundant renewable energy resources,
5 including solar and wind, and has made significant strides toward the
6 development of these resources. The most likely market for renewable Tribal
7 power would be in Washington, likely necessitating transmission through
8 Colstrip.”²² Again, the Tribe’s interest is purely economic: the “development of
9 renewable energy is one of the Tribe’s most promising options to alleviate high
10 unemployment and poverty that has stricken the Reservation for far too long.”²³

11 19. As the Commission made abundantly clear in the Prehearing Conference
12 Order, “[t]his proceeding does not present an opportunity to promote the
13 commercial interests of any party. . . . We will not entertain any arguments or
14 issues unrelated to the Proposed Transactions, including any issues that may arise
15 from the commercial interests of [an intervenor’s] constituents.”²⁴ A private
16 business interest in the potential economic impacts of a Commission proceeding
17 by an entity not regulated by the Commission—like that of the Tribe and its

²² *Id.*

²³ *Id.*

²⁴ Order 02 ¶ 15.

1 members—is insufficient to grant the entity the right to intervene.²⁵ “The
2 Commission has no power to protect the interests of businesses which it does not
3 regulate.”²⁶ “The Commission will not allow . . . petitioners to intervene for the
4 purpose of protecting and promoting their competitive interests.”²⁷ Accordingly,
5 the Tribe’s commercial or economic interests associated with employment or the
6 development of renewable resources are not a substantial interest, are beyond the
7 scope of this proceeding, and are beyond the jurisdiction of the Commission.²⁸

8 **B. The Tribe’s Intervention Is Not in the Public Interest and Will Be**
9 **Detrimental to the Proceeding**

10 20. The Petition also fails to explain how the Tribe’s participation would
11 otherwise be in the public interest. As demonstrated by its alleged basis for
12 intervention described above, the Tribe’s intervention is motivated purely by the
13 economic and business interests of it and its members, such as advancing
14 employment opportunities or further developing its renewable resources.²⁹ This
15 proceeding is not an open forum for the Tribe to advance such interests or to
16 address other vague interests such as “social impacts that can be associated with a
17 temporary workforce spill over onto the Reservation” or “community

²⁵ *Cole v. WUTC*, 79 Wn.2d 302, 305-06, 485 P.2d 71 (1971); *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 Supp. Order (denying intervention where intervenors sought to protect competitive business interest).

²⁶ *Re Application CHA-221 of Brown’s Limousine Crew Car, Inc.*, Order M. v. Ch. No 950 (July 18, 1983).

²⁷ *In the Matter of the Petition of GTE Northwest Inc.*, Docket UT-961632, Third Supp. Order (Mar. 28, 1997).

²⁸ Order 02 ¶ 15.

²⁹ Petition at 3.

1 transition.”³⁰ These issues would significantly distract from the narrow issue
2 before the Commission, i.e., whether the Proposed Transactions are in the public
3 interest in Washington, and will broaden the issues and burden the record.

4 21. Nowhere does the Tribe demonstrate how its intervention will benefit
5 PSE’s customers or the how its participation will aid the Commission in deciding
6 whether the Amended Proposed Transactions are in the public interest in
7 Washington. The Tribe has not suggested it can provide special expertise or
8 knowledge that will aid the Commission in determining whether the Proposed
9 Transactions are in the public interest in Washington. Indeed, there are already
10 twelve parties currently participating in the proceeding, which is more than
11 enough to assist the Commission in evaluating the Amended Proposed
12 Transactions. Since the Tribe is only seeking intervention to advance its economic
13 interests, the Tribe is not an “essential or indispensable party” to the proceeding.³¹
14 Accordingly, the Petition should be denied.

15 **C. The Tribe Has Not Demonstrated Good Cause for Its Late Filing**

16 22. The Tribe has not demonstrated good cause for seeking intervention nearly
17 six months after the intervention deadline.

18 23. The Tribe argues it should be allowed to intervene in this proceeding
19 because in the parallel MPSC proceeding, the MPSC will not allow the Tribe to
20 submit “evidence relating to community transition” which “may not be relevant

³⁰ *Id.*

³¹ *Cost Mgmt. Serv., Inc.*, Dockets UG-070639 et al., Order 01.

1 and admissible in those proceedings.”³² It appears the MPSC and the Commission
2 are on the same page. The economic interests motivating the Tribe’s intervention
3 is beyond the scope of this proceeding. The Tribe admits that it is only seeking
4 intervention in this proceeding so it can find a forum to advance its economic and
5 community transition interests.³³ The Commission should reject the Tribe’s
6 attempt to forum shop having already been turned down before the MPSC.

7 24. The Tribe further attempts to justify its belated intervention due to the
8 challenges associated with COVID-19. While COVID-19 has been an
9 unprecedented crisis, it does not excuse the Tribe’s six-month-delay in
10 intervening. The filings initiating the proceedings before the MPSC and the
11 Commission occurred nearly simultaneously, and the Tribe fails to explain how it
12 was able to secure authorization and resources to intervene in Montana months
13 ago but not Washington. Indeed, the dozen parties currently participating in this
14 proceeding were able to successfully intervene, despite COVID-19. Notably, the
15 Tribe’s counsel is based out of Seattle, not Montana. While COVID-19 may be a
16 justifiable reason for a delay in meeting a filing deadline in some circumstances,
17 given the Tribe’s concession that it only sought intervention in this proceeding
18 *after* learning the MPSC would not allow it to raise community transition issues,
19 it is apparent that was the overwhelming reason for its delay. As required under
20 WAC 480-07-355(1)(b), the Tribe has not provided “a satisfactory explanation of

³² Petition at 4.

³³ *Id.*

1

why [it] did not timely file a petition to intervene” and its Petition should be denied.

2

3

IV. CONCLUSION

4

25. For the reasons set forth above, the PSE respectfully requests that the Commission deny the Tribe’s Petition.

5

6

Dated: September 4, 2020.

PERKINS COIE LLP

By /s/ David S. Steele

Sheree Strom Carson,
WSBA #25349
Jason T. 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

7