

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of ) DOCKET UE-200115  
 )  
 ) NORTHERN CHEYENNE TRIBE’S  
PUGET SOUND ENERGY ) REPLY ON PETITION TO INTERVENE  
 )  
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. )  
\_\_\_\_\_ )

The Northern Cheyenne Tribe (“Tribe”), a federally-recognized Indian tribe with a sovereign government based on the Northern Cheyenne Reservation in close proximity to Colstrip, petitioned the Washington Utilities and Transportation Commission (“WUTC” or “Commission”) for leave to intervene in the above-referenced docket as an intervenor.

Public Counsel filed a statement of non-opposition, correctly noting that there would not be a delay or broadening of the issues caused by the Tribe’s intervention. Puget Sound Energy (“PSE”) filed a “Response In Opposition to the Northern Cheyenne Tribe’s Late-Filed Petition to Intervene.” PSE is the only party to oppose intervention. The Tribe briefly replies to PSE’s arguments below to show the Tribe should be granted intervention.

**I. The Tribe’s Intervention is in the Public Interest.**

PSE’s main contention is that the Tribe’s participation is not in the public interest because “the Tribe’s stated interests for intervening are to protect the out-of-state economic opportunities of it and its members.” PSE Resp. at 1. This argument fails for at least three reasons, set forth below.

**a. The Tribe acts in its quasi-sovereign capacity on behalf of its members.**

First, PSE characterizes the Tribe's interests as akin to a private company, when in fact the Tribe is a sovereign, duly-elected government that intervenes on behalf of its members. The Tribe acts in a public interest to promote the health and well-being of its members, which includes protection from social, environmental, and economic impacts as well as the promotion of employment and development. The Supreme Court terms such governmental interest in the well-being of its populace as "quasi-sovereign interests." *Alfred L. Snapp & Son v. Puerto Rico*, 458 U.S. 592, 602 (1982). "Indian tribes, like states and other governmental entities, have standing to sue to protect sovereign or quasi-sovereign interests." *Quapaw Tribe of Okla. v. Blue Tee Corp.*, 653 F. Supp. 2d 1166, 1179 (N.D. Okla. 2009) (citing *Moe v. Confederated Salish & Kootenai Tribes of Flathead Reservation*), 425 U.S. 463 (1976)). Quasi-sovereign interests form a strong basis for intervention. *See Karnoski v. Trump*, No. C17-01297MJP, 2017 U.S. Dist. LEXIS 194406 (W.D. Wash. Nov. 27, 2017) (State of Washington intervening to protect the interests relating to transgendered individuals in Washington serving in the military).

**b. Tribal members reside in Washington and the Tribe's interests impact ratepayers in Washington.**

PSE asserts that the "public interest" for purposes of intervention "pertains to only PSE customers or at most, Washington residents." PSE Resp. at 7. PSE cites "Order 02 ¶ 14" as its authority, which only references the "interests of Washington ratepayers outside of PSE's service territory," as informative of the public interest. There is no basis for the assertion that these are required conditions of the public interest.

However, even if PSE is correct, as stated in the Tribe's Petition to Intervene (at 3), many of the Tribe's members reside off-Reservation. The Tribe has roughly 11,266 enrolled members,

only 5,012 of whom reside on the Northern Cheyenne Reservation in Montana.<sup>1</sup> Of the other more than 6,000 remaining, some live and work in Washington and likely current or future PSE customers, including in Seattle. The characterization of the Tribe's interests as wholly out of state is inaccurate. Like previous intervenors, the Tribe can provide information regarding the interests of Washington ratepayers, both those in and out of PSE's service territory.

It is also important to note that there is a direct connection between the Tribe's interests in Colstrip and those of Washington ratepayers. That connection is both literal, in the major transmission line that connects Colstrip to Washington, and figurative, in that the Colstrip owner's decisions with respect to the Tribe impact the availability and price of electricity in Washington. For example, the Tribe has detailed its interest in developing a major wind resource, which could provide many megawatts of renewable energy to Washington. Tribe's Petition to Intervene at 3. The Tribe's interest would benefit Washington ratepayers, in enabling the State to obtain abundant renewable energy at a reasonable price. As another example, the Tribe has an interest in assuring that PSE and Northwestern adequately plan for decommissioning and drawdown. If that planning does not occur and is not budgeted, it would be to the Tribe's detriment but also that of future ratepayers, who may be stuck with the costs.

As explained in the petition, other aspects of the Tribe's neighbor, the Colstrip power plant, implicates the broader public interest. For example, over 100 Tribal member jobs are directly tied to operations at Colstrip, which is especially significant given the Tribe's chronic unemployment and the number of families this income supports. Petition at 2-3.

All these interests are tied to the proposed sale of Colstrip Unit 4 by PSE, because that

---

<sup>1</sup> See generally, <http://tribalnations.mt.gov/northerncheyenne>

sale will likely determine the expected life of Colstrip Unit 4, and overall operations at Colstrip. The commitments (or lack of commitments) made in the transaction may govern the duration of operations, cleanup efforts, renewable energy transmission, and community transition. The Tribe and its members have a major stake in all these issues.

In short, the Tribe's intervention is in the public interest because it both represents Tribal member residents and ratepayers of Washington, and directly impacts Washington interests.

**c. The Tribe's intervention would assist the Commission and is therefore in the public interest.**

In ruling on past petitions to intervene, the Commission has determined that intervention that would assist the Commission by providing an additional perspective or expertise is in the public interest. Order 02, ¶¶ 14-15.

Here, the Tribe would be the only Tribal government involved in the proceedings. The Tribe has expertise in the long-term community impacts of Colstrip operations on the Tribal community both in Montana and Washington. The Tribe can also provide perspective on the interactions of a sovereign government with Colstrip, which include a history of negotiation of environmental protection measures and hiring decisions.

While PSE claims that the Tribe would broaden the issues before the Commission and be detrimental to the proceeding, that is not the case. The Tribe plans to present limited testimony regarding its perspective on the public interest. In the unlikely event the Commission later determines that the Tribe's testimony is detrimental or no longer in the public interest, the Commission may limit such testimony or the Tribe's intervention. *See* Order 02 ¶ 16. Given the existing unrelated delays in the proceeding, there would be no delay or other prejudice caused by the Tribe's intervention.

In sum, the Tribe is a sovereign government that represents the interests of the Tribe and its members throughout Montana and Washington. The Tribe's unique experience will provide valuable assistance to the Commission.

## **II. Good Cause for Late Filing.**

PSE also contests the Tribe's good cause for late filing, which is based on the COVID-19 pandemic and inability of Tribal government to convene, and developments in the Montana Public Service Commission proceeding.

With respect to the COVID-19 pandemic, PSE suggests there should not have been delay because other parties were able to intervene and because counsel of the Tribe is based in Seattle. PSE Resp. at 11. PSE overlooks the functioning of Tribal government. Unlike other parties, authorization of intervention or other actions in litigation requires an affirmative vote of the Tribal Council, which meets in person in Montana and requires a quorum of 8 of 11 Council members. In many instances, a Tribal Council resolution is subject to approval by the Bureau of Indian Affairs (BIA) so are routinely sent to BIA for review. The Tribe has been under emergency shelter in place orders since March due to the COVID-19 pandemic and, despite those extraordinary precautions, the Reservation is currently in a crisis state due to the pandemic. From August 9-23, the Tribe went into a restrictive "lockdown,"<sup>2</sup> and on August 23 the Tribal President ordered an "Extreme State of Emergency."<sup>3</sup> The developments of this spring and summer have greatly hindered the Tribal government's ability to meet and to address non-pandemic related matters. The ability of non-Tribal entities to intervene or the location of attorneys for the Tribe has no bearing on the challenges the Tribe faced in authorizing

---

<sup>2</sup> See [https://www.kulr8.com/coronavirus/northern-cheyenne-tribe-to-go-into-lockdown-aug-9/article\\_aa2e3e6c-d8d8-11ea-9be3-d36b2be91ae5.html](https://www.kulr8.com/coronavirus/northern-cheyenne-tribe-to-go-into-lockdown-aug-9/article_aa2e3e6c-d8d8-11ea-9be3-d36b2be91ae5.html);

<sup>3</sup> See <http://www.cheyennation.com/>

intervention.

With respect to the proceedings in Montana, PSE accuses the Tribe of attempting to “forum shop.” PSE Resp. at 11. This is incorrect. Forum shopping involves selectively choosing a venue based on a perceived advantage. Here, the Tribe is doing the opposite, as it is engaged in both Montana and Washington. The Tribe has very limited resources and had aspired to provide input by only being involved in Montana, which proved not to be the case. Promoting the public interest in multiple forums is entirely appropriate. The Tribe notes that other parties, such as the Natural Resources Defense Council and Renewable Northwest, are also involved in the Montana proceedings and that did not affect their intervention here.

Dated this September 7, 2020.

Respectfully submitted,

ZIONTZ CHESTNUT

/s/ Brian Chestnut

Brian Chestnut, WSBA No. 23453

2101 4<sup>th</sup> Avenue, Suite 1230

Seattle, WA 98121

T: (206) 448-1230

F: (206) 448-0962

bchestnut@ziontzchestnut.com

*Attorney for Northern Cheyenne Tribe*