

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

PUGET SOUND ENERGY, INC.

For an Accounting Order Authorizing
Accounting Treatment Related to
Payments for Major Maintenance
Activities

Docket No. UE-130583

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent

Docket No. UE-130617

In the Matter of the Application of

PUGET SOUND ENERGY, INC.

For an Order Authorizing the Sale of the Water
Rights and Associated Assets of the Electron
Hydroelectric Project in Accordance with
WAC 480-143 and RCW 80.12

Docket No. UE-131099

PUGET SOUND ENERGY'S
OBJECTION TO PUYALLUP TRIBE'S
LATE-FILED PETITION TO
INTERVENE

In the Matter of the Application of

PUGET SOUND ENERGY, INC.

For an Order Authorizing the Sale of
Interests in the Development Assets
Required for the Construction and
Operation of Phase II of the Lower
Snake River Wind Facility

Docket No. UE-131230

I. INTRODUCTION

1 Pursuant to the Notice of Opportunity to Reply to Petition for Late Intervention issued
July 17, 2014, Puget Sound Energy, Inc. (“PSE”) hereby files this objection to Puyallup Tribe’s
Late-Filed Petition to Intervene (“Petition”). Puyallup Tribe has neither shown good cause why
it should be allowed to intervene out of time nor demonstrated either a substantial interest in this
proceeding or that its participation is in the public interest. Further, Puyallup Tribe’s Petition is
likely to broaden the issues in this proceeding.

II. ARGUMENT

2 WAC 480-07-355(1)(b), states that the Commission “will grant a late-filed petition to
intervene only on a showing of good cause, including a satisfactory explanation of why the
person did not timely file a petition.”

3 Additionally, WAC 480-07-355(3) states that the Commission may grant a petition to
intervene if the petition “discloses a substantial interest in the subject matter of the proceeding of
if the petitioner’s participation is in the public interest . . .” Further, a petition to intervene must
state “whether the petitioner proposes to broaden the issues in the proceeding and, if so, a
statement of the proposed issues and an affidavit or declaration that clearly and concisely sets
forth the facts supporting the petitioner’s interest in broadening the issues.”

A. Puyallup Tribe has not Demonstrated Good Cause for its Late-Filed Petition

4 Puyallup Tribe has not demonstrated good cause for its late intervention. Specifically, it
has not provided a satisfactory explanation of why it did not timely file a petition to intervene.
On July 2, 2014, the Commission issued a Notice and Opportunity to Comment on PSE’s
Amended Application (“Notice”). The Notice required that all comments be filed no later than
July 11, 2014. Puyallup Tribe states that it learned of PSE’s Amended Application on July 8,

2014, by “searching and checking the dockets for this proceeding” on the Commission’s website. (See Petition at ¶ 4 and Exh. C to Petition at ¶ 4). Accordingly, Puyallup Tribe was, or should have been, aware of the Commission’s deadline of July 11, 2014, several days before comments were due because the Notice was also clearly posted on the Commission’s website in these dockets at that time. Puyallup Tribe states that it is seeking leave to intervene because, “the initial hearing dates in these consolidated matter have already occurred.” (Petition at ¶ 4). Yet, the Puyallup Tribe’s own petition demonstrates that it had prior notice of the hearing dates and still failed to comment.

5 Puyallup Tribe did not file its Petition by July 11, 2014, nor did it request additional time . More importantly, Puyallup Tribe has not explained why it was unable to meet the Commission’s deadline. In fact, it has not even claimed that it *was* unable to timely file a petition to intervene. The Commission’s rules require that Puyallup Tribe provide a satisfactory explanation for its failure to timely file comments and a petition to intervene, yet Puyallup Tribe has provided no explanation at all. Accordingly, the Puyallup Tribe has not carried its burden to show that good cause exists.

6 This Commission has previously denied late-filed petitions to intervene. *See, e.g., In the Matter of the Petition of Qwest Corporation, for Commission Approval of 2007 Additions to Non-Impaired Wire Center List*, Docket UT-073033 (Bifurcated), Order 11 (Aug. 22, 2008). “Our procedural rules are designed to ensure orderly proceedings and fairness. Parties who appear before the Commission must familiarize themselves with, and follow the requirements of these rules.” *In the Matter of the Joint Application of MidAmerican Energy Holdings Company and PacifiCorp, d/b/a Pacific Power & Light Company for an Order Authorizing Proposed Transaction*, Docket No. UE-051090; Order 04 (Aug. 26, 2005).

7

An efficient and orderly proceeding is particularly essential in this docket because PSE has requested that the Commission issue an order on or before July 25, 2014. Puyallup Tribe was aware of PSE's request for expedited treatment in this proceeding, yet failed to timely file comments or a petition to intervene. Puyallup Tribe's late-filed Comments and Petition to Intervene have already caused unnecessary delay in this proceeding. Further delay would unduly prejudice PSE.

B. Puyallup Tribe's Intervention Will Broaden the Issues and Burden the Record

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The gravamen of the Petition is the false assertion that PSE "does in fact seek to assign many of the its [sic] obligations under" the Resource Enhancement Agreement between PSE and the Puyallup Tribe. (Petition at ¶ 7.) The Facility Operations Agreement does not assign any of PSE's obligations under the Resource Enhancement Agreement and remains fully responsible for those obligations. Indeed, the Facility Operations Agreement expressly states that PSE will maintain the Resource Enhancement Agreement in full force and effect for the remainder of its term. (Facility Operations Agreement, Exh. F-5 to Amended Application, at § 2.) Nothing in the Facility Operations Agreement affects the Puyallup Tribe's rights vis-à-vis PSE or excuses PSE from performance under the Resource Enhancement Agreement.

9

The Puyallup Tribe erroneously suggests that PSE is avoiding the obligation under section 11.1 of the Resource Enhancement Agreement to remove the Electron Dam from the channel of the Puyallup River upon retirement. In an attempt to support this incorrect assertion, the Puyallup Tribe cites to pages 39-40 of the Prefiled Direct Testimony of Mr. Paul K. Wetherbee, Exhibit No. ___(PWK-1CT). That testimony, however, was filed in May 2013 and referred to the benefits of the Asset Purchase Agreement, which originally had a condition precedent to closing that Electron Hydro LLC ("Electron Hydro") would execute a Renewable

Resource Agreement with the Puyallup Tribe and that PSE and the Puyallup Tribe would terminate the Resource Enhancement Agreement. (Asset Purchase Agreement, Exh. F-1 to Amended Application, at § 4.2.2.)

10 If the Resource Enhancement Agreement had been terminated as contemplated by section 4.2.2 of the Asset Purchase Agreement, then PSE would have avoided the obligation to remove the Electron Dam from the channel of the Puyallup River. Amendment No. 4 of the Asset Purchase Agreement, however, removed the condition precedent that required termination of the Resource Enhancement Agreement. Therefore, PSE will, consistent with section 4.2.2 of the Asset Purchase Agreement, remain responsible for the removal of the Electron Dam from the channel of the Puyallup River. Section 5 of the Facility Operation Agreement subcontracts the obligation to remove the Electron Dam from the channel of the Puyallup River to Electron Hydro, but, like any subcontract, PSE ultimately remains contractually liable to the Puyallup Tribe for this obligation under the Resource Enhancement Agreement.

11 Finally, the Petition raises questions regarding the qualifications of Electron Hydro to operate the Electron Facility and satisfy its obligations under the Facility Operations Agreement. Puyallup Tribe's position in this regard will broaden the issues in this proceeding. Therefore, Puyallup Tribe must clearly and concisely sets forth the facts supporting their interest before the Commission can broaden the issues at this late date. However, the Puyallup Tribe has failed to set forth facts that merit broadening the issues, their stated concerns are unsupported, and the Puyallup Tribe should not be permitted to delay this proceeding with unfounded allegations. In deciding to sell the Electron Facility, PSE evaluated the experience of the Electron Hydro team and concluded that the team's experience level made them a practical choice for operating the Electron Facility. Electron Hydro is a joint venture that is 25 percent owned by Electron

Management, LLC and 75 percent owned by Electron Holdings, Inc. Electron Management, LLC is 90 percent owned by Thom Fischer, and the remaining 10 percent is owned by Steve Marmon. Electron Holdings, Inc. is a-wholly owned subsidiary of JAVA Hydro Electric, Inc., which in turn is a wholly owned subsidiary of JAVA Holdings Ltd. JAVA Holdings Ltd. is wholly owned by 1428802 Alberta Ltd., which, in turn, is wholly owned by Victor Budzinski. (PSE Response to Bench Request No. 3.)

12 Electron Hydro is affiliated with Black Creek Hydro, Inc. (“Black Creek”), the owner and operator of the 3.8 MW Black Creek Hydroelectric Project (the “Black Creek Facility”). Black Creek is wholly owned by Valtec Power, LLC (“Valtec Power”). Valtec Power is 25 percent owned by Tollhouse Energy Company (“Tollhouse”) and 75 percent owned by JAVA Holdings Ltd. Tollhouse is wholly owned by Thom Fischer and currently is in the process of developing three hydroelectric projects in the states of Washington and Montana. Tollhouse has obtained preliminary permits from the Federal Energy Regulatory Commission (“FERC”) for two hydroelectric facilities: (1) White River Hydro, LLC (FERC Project No. 13804); and (2) Black Canyon Hydro, LLC (FERC Project No. 14110). Tollhouse has also obtained a FERC original license for the Gibson Dam Hydroelectric Company, LLC (FERC Project No. 12478).

13 In short, the Electron Hydro principals have extensive experience in developing, owning, and operating hydroelectric resources and are capable of fulfilling the obligations under the Facility Services Agreement. Puyallup Tribe has set forth no facts supporting their interest in broadening the issues in this proceeding; therefore, the Commission should deny its Petition.

III. CONCLUSION

14 The Commission should reject the Petition because the Puyallup Tribe has not demonstrated good cause for its late-filed petition to intervene and seeks to broaden the issues

and burden the record. Indeed, the Petition raises no issues that would be relevant to the Commission's determination as to whether the proposed sale of the Electron Facility to Electron Hydro is in the public interest. Instead, the Puyallup Tribe appears to seek to raise issues under the Resource Enhancement Agreement that it has with PSE. These private, contractual issues are beyond the jurisdiction of this Commission and are properly raised pursuant to the terms of the dispute resolution provisions of section 15 of the Resource Enhancement Agreement.

15 Furthermore, the Puyallup Tribe's allegations regarding PSE's breach of the Resource Enhancement Agreement are without merit. Nothing in the Resource Enhancement Agreement prohibits PSE from selling the assets associated with the Electron Facility or subcontracting obligations under the Resource Enhancement Agreement, and PSE is not excused from its obligations thereunder. Post-closing, the Puyallup Tribe will have the same rights vis-à-vis PSE, and nothing in the proposed transaction alters or affects those rights.

DATED this 22nd day of July, 2014.

Respectfully Submitted,

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