

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

PUGET SOUND ENERGY

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

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY

Respondent.

In the Matter of the Petition of

PUGET SOUND ENERGY

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

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 UE-130583
(Consolidated)

DOCKET UE-130617
(Consolidated)

DOCKET UE-131099
(Consolidated)

DOCKET UE-131230
(Consolidated)

THE PUYALLUP TRIBE OF INDIANS'
MOTION TO REPLY TO PUGET
SOUND ENERGY'S AND
COMMISSION STAFF'S OBJECTION
TO INTERVENTION

MOTION TO REPLY- 1

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I. MOTION TO REPLY

1. Pursuant to WAC 480-07-370(1)(d), the Puyallup Tribe of Indians (“Puyallup Tribe”) file this motion requesting permission to reply to the respective answers of Puget Sound Energy (“PSE”) and Washington Utilities and Transportation staff (“Staff”) opposing the Puyallup Tribe’s Petition to Intervene. This motion is timely because it is filed within five days of the PSE and Staff respective answer. The Puyallup Tribe has not sought and does not seek to expand the issues before the Commission.

II. REASONS FOR THE MOTION TO REPLY

2. The Puyallup Tribe must state the reasons why a reply is necessary pursuant to WAC 480-07-370(1)(d)(ii). A reply is necessary because PSE and Staff’s analysis is based upon the faulty assumption that the Electron Project is not necessary or useful. WAC 480-143(1); PSE Application at 12 ¶ 34. PSE and Staff argue that the Electron Project is not necessary and useful because PSE will purchase all of the power generated from the dam. This conclusion is based upon the unsupported assumption that the purchaser Electron Hydro LLC (“Electron Hydro”) has the expertise to continue operations at the dam. A thorough analysis of Electron Hydro’s history and financiers demonstrates otherwise. For example, the preliminary permit issued for White River Hydro, LLC, was cancelled by FERC in September 2013 for failure to submit the progress reports required under the permit. Black Canyon Hydro’s preliminary permit is still in the process with significant studies being performed as to feasibility and impacts. No operations have occurred under the preliminary permit and there is significant participation in the process by opponents and the State of Washington. Black Creek Hydro, which PSE identifies to show the principal’s experience is a small, 3.8 megawatt facility that lacks any of the challenges of high silt, large debris, or fish issues found at Electron Dam. Contrary to PSE’s assertion, this mandatory analysis of Electron Hydro will not “broaden the issues.” Rather, this analysis is an

essential element of the Commission's analysis. Based upon PSE and Staff's replies, it is apparent that the ALJ will only receive this analysis if the Puyallup Tribe is allowed to intervene.

3. Similarly, a reply is necessary because PSE and Staff argue that Electron Hydro has the financial capacity to operate the dam. A review of limited liability companies that comprise Electron Hydro demonstrates otherwise. For example, Electron Hydro LLC is 75% owned by Electron Holding's Inc. formed solely for the operation of the Electron Facility. Electron Holdings, Inc, is owned by a wholly owned subsidiary of yet another wholly owned subsidiary, and so on, until you reach, four wholly owned subsidiaries later, an individual with the possible financial ability to fund the project, Victor Budzinski. Mr. Budzinski, to our knowledge, has made no financial guarantees and has insulated himself through the corporate entity ladder. Financial analysis is an essential element of the Commission's analysis. Because the financial documents are classified, the Puyallup Tribe cannot be sure that the ALJ has reviewed the Puyallup Tribe's financial analysis and concerns regarding Electron Hydro and its affiliated limited liability companies.

4. A reply is necessary because PSE's alternative argument under WAC 480-143-120 is false. It is not in the public interest to sell a power-generating dam to an entity that has, at best, limited experience with hydropower. There is no assurance here that power generation will continue, or that the dam will be operated in a manner that complies with law. *See also* WAC 480-143-170 (giving the Commission the authority to deny the application if the Commission finds the application is not in the public interest).

5. A reply is necessary because the public interest demands a full evaluation of rate-payer expense. Here, in response to Puyallup Tribe's petition, PSE alleges that it will remain responsible for all costs under the Resource Enhancement Agreement ("REA"). PSE must identify the cost associated with this ongoing financial requirement.

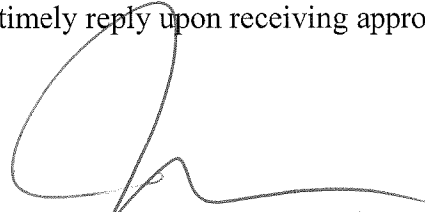
6. Finally, a reply is necessary because PSE and Staff's response misconstrues the facts regarding the Puyallup Tribe's participation in this matter. Puyallup Tribe filed its petition to intervene at the earliest possible moment upon learning that PSE has requested to fundamentally change the structure of the transaction related to the Puyallup Tribe. Under PSE's initial application, the Asset Purchase Agreement required PSE to receive the consent of the Puyallup Tribe to terminate the REA. *See e.g.*, Docket UE-131099 Order 02 at ¶ 63. Thus, under the original transactional terms, the Puyallup Tribe could determine whether the sale complied with controlling law and the Puyallup Tribe's interests. Now, PSE's amended application attempts to remove the requirement. As a result, the Puyallup Tribe must appear before the ALJ to raise the significant issues outlined above. The Puyallup Tribe submitted a petition to intervene eight days after learning of PSE's attempt to undermine the Puyallup Tribe's rights. This eight day period is reasonable and expedient considering the significant legal, contractual, and factual issues at stake.

7. In response to PSE and Staff's stated concerns, the Puyallup Tribe has now secured counsel with UTC experience to ensure an efficient and orderly proceeding in accordance with law and UTC's procedural rules.

III. THE REPLY AND THE PUYALLUP TRIBE'S INTERVENTION WILL ENSURE A LAWFUL REVIEW OF THE ISSUES RAISED BY PSE IN ITS INITIAL APPLICATION AND ITS AMENDED APPLICATION.

8. Each issue raised in the Puyallup Tribe's petition to intervene is directly related to the issues raised by PSE in its initial application. The Puyallup Tribe only requests that the UTC reach a decision based upon facts and reasoned analysis, as required by law, *i.e.*, RCW 80.12.020 and Chapter 480-143 WAC.

9. For these reasons, the Puyallup Tribe requests that the ALJ approve the Puyallup Tribe's motion to reply. Puyallup Tribe will submit a timely reply upon receiving approval from the ALJ.



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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the persons and entities listed on the Service List below via electronic mail and by depositing a copy of said document in the United States mail, addressed as shown on said Service List, with first class postage prepaid in accordance with the provisions of WAC 480-07-150.

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DATED this 24th day of July, 2014 at Seattle, Washington.



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MOTION TO REPLY- 7

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