

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	DOCKET UE-130583
)	
PUGET SOUND ENERGY)	ORDER 04
)	
For an Accounting Order Authorizing)	
Accounting Treatment Related to)	
Payments for Major Maintenance)	
Activities)	
.....)	
)	
WASHINGTON UTILITIES AND)	DOCKET UE-130617
TRANSPORTATION COMMISSION,)	
)	ORDER 08
Complainant,)	
)	
v.)	
)	
PUGET SOUND ENERGY)	
)	
Respondent.)	
.....)	
)	
In the Matter of the Petition of)	DOCKET UE-131099
)	
PUGET SOUND ENERGY)	ORDER 04
)	
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 Petition of)	
)	DOCKET UE-131230
PUGET SOUND ENERGY)	
)	ORDER 04
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)	
.....)	

**ORDER GRANTING LATE-FILED PETITION TO INTERVENE AND FOR
LEAVE TO FILE RESPONSE TO PSE’S AMENDED APPLICATION
AND
NOTICE OF PREHEARING CONFERENCE
(Set for Tuesday, July 29, 2014, at 1:30 p.m.)**

1 **Background.** On October 23, 2013, the Washington Utilities and Transportation Commission (Commission) entered a final order approving and adopting a settlement stipulation in Dockets UE-130583, UE-130617, UE-131099, and UE-131230 (Order 06).¹ Among other things, Order 06 approved the sale by Puget Sound Energy (PSE or Company) of the Electron Hydroelectric Facility (Facility) to Electron Hydro LLC (Electron LLC) as in the public interest provided there were no material changes to the Asset Purchase Agreement as filed.² On June 25, 2014, PSE filed an Amended Application containing revisions to the Asset Purchase Agreement, including a waiver of the condition precedent requiring Electron LLC to enter into its own agreement with the Puyallup Tribe (Tribe) to replace the existing Resource Enhancement

¹ *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 UE-130583, Order 02; *WUTC, Complainant, v. Puget Sound Energy, Respondent*, Docket UE-130617, Order 06; *In the Matter of the Petition of Puget Sound Energy, 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 UE-131099, Order 02; and *In the Matter of the Petition of Puget Sound Energy, 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-131230, Order 02, Final Order Approving and Adopting Settlement Agreement (October 23, 2013) .

² Order 06, ¶ 25.

Agreement (REA)³ PSE has with the Tribe.⁴ PSE asserts that negotiations with the Tribe for assignment of PSE's obligations regarding the Facility to Electron have proven unproductive.⁵ Instead, PSE proposes that it remain a party to the REA until such time as the Tribe consents to an assignment or enters into an operating agreement with Electron LLC.⁶ The Company and Electron LLC would enter into a Facility Operation Agreement requiring Electron LLC "to operate the [Facility] in compliance with [the REA] requirements and to make required payments to the [Tribe] (through PSE)."⁷ PSE requests that the Commission find that the Facility is not necessary or useful pursuant to RCW 80.12.020 and WAC 480-143-180, or in the alternative approving the transfer of the Facility pursuant to WAC 480-143-120; and approve the accounting and ratemaking treatment proposed in the Amended Application.⁸ The Company states that the closing date of the transaction is set for July 31, 2014, and requests that the Commission enter an order on the Amended Application by July 25, 2014.⁹

- 2 **Petition.** On July 16, 2014, the Puyallup Tribe filed a Petition to Intervene and for Leave to File Response to PSE's Amended Application (Tribe's Petition). Pursuant to WAC 480-07-355(1)(b), the Tribe explains that it did not intervene in the original proceeding because its interests were protected under PSE's original application.¹⁰ The Tribe states, "it was clear the REA between the Tribe and PSE would be resolved between the Tribe and PSE before any sale of the [F]acility closed."¹¹ PSE's Amended Application removes this protection, according to the Tribe.¹² The Tribe argues:

³ Among other things, the REA obligates PSE to either upgrade and license the facility or retire it by 2026. The Tribe's Petition, ¶ 3.

⁴ *Id.*, ¶ 11.

⁵ *Id.*, ¶¶ 10-11.

⁶ *Id.*, ¶ 11.

⁷ *Id.*

⁸ *Id.*, ¶ 2.

⁹ *Id.*, ¶ 1.

¹⁰ Tribe's Petition, ¶ 4.

¹¹ *Id.*

¹² *Id.*, ¶ 5.

[i]nstead the Amended Asset Purchase Agreement requires PSE and Electron [LLC] to enter into the Electron Facility Operation Agreement whereby Electron LLC is obligated to abide by the REA and PSE is obligated to only act under the REA, with few exceptions, through approval of Electron [LLC]. The Tribe has never been notified of this new agreement by PSE although it directly violates the REA.¹³

- 3 The Tribe claims an interest in the subject matter of the proceeding on several grounds. First, it asserts that it is directly affected by PSE's assignment of the Company's obligations under the REA to Electron LLC, an entity created just for this transaction.¹⁴ The Tribe also argues that both PSE and Electron LLC are subject to claims under the Endangered Species Act for the destruction of fish caused by the Facility.¹⁵ The violations of both the REA provisions and the Endangered Species Act, according to the Tribe, give rise to substantial liabilities that will negatively impact ratepayers. Further, the Tribe, as a ratepayer receiving electric services from PSE, claims it has a substantial interest in this proceeding.¹⁶
- 4 The Commission's regulatory staff (Staff)¹⁷ filed a Response to the Tribe's Petition (Staff's Response) on July 22, 2014. Staff argues that the Commission does not have jurisdiction over alleged violations of the Endangered Species Act, nor is the Commission the appropriate venue for enforcement of the terms and conditions of the REA.¹⁸ With regard to the Tribe's status as a ratepayer, Staff asserts that the Tribe has not demonstrated that rates will be adversely affected by the transaction or any alleged violations of the REA or the Endangered Species Act.¹⁹ In any event, Staff contends ratepayers would not be responsible for the costs of these violations.²⁰

¹³ *Id.* Internal citations omitted.

¹⁴ *Id.*, ¶¶ 8-10.

¹⁵ *Id.*, ¶¶ 12-13.

¹⁶ *Id.*, ¶ 2.

¹⁷ In formal proceedings, such as this, Staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

¹⁸ Staff's Response, ¶¶ 7 and 9.

¹⁹ *Id.*, ¶ 12.

²⁰ *Id.*, ¶ 14.

- 5 PSE filed an Objection to the Tribe's Petition (PSE's Response) on July 23, 2014. PSE opposes the Tribe's Petition, arguing that it has not demonstrated good cause for the late-filed request.²¹ Comments on the Amended Application, according to PSE, were due on July 11, 2014, and the Tribe failed to meet this deadline without providing an explanation for its inaction.²² PSE also asserts that the Tribe's intervention would broaden the issues and burden the record by questioning Electron LLC's ability to operate the Facility and satisfy its obligations under the Facility Operations Agreement.²³
- 6 **Decision.** WAC 480-07-355(1)(b) mandates that late-filed interventions contain "a satisfactory explanation of why the person did not timely file a petition." The Tribe acknowledges that it was satisfied with the original application's protection of its relationship with PSE in the REA. It was only after learning that PSE intended to avoid further negotiations with the Tribe by creating a subcontract with Electron LLC that the Tribe decided to request involvement. Further, the Tribe alleges, and PSE does not dispute, that it only became aware of the Company's Amended Application on July 8, 2014, and the information received was not from PSE. The Tribe has presented a satisfactory explanation for its late-filed request.
- 7 WAC 480-07-355(3) provides that petitions to intervene may be granted if the petitioner discloses a substantial interest in the subject matter of the hearing or if the petitioner's participation is in the public interest. We find that the Tribe's participation is in the public interest. That said, the Commission can impose conditions upon any intervenor's participation in the proceedings.²⁴ Both PSE and Staff question the Commission's jurisdiction over the Tribe's REA and Endangered Species Act complaints. For that reason, we will convene a prehearing conference to consider whether the Tribe's participation should be narrowed, as well as to establish a time for the Tribe to file a response.

²¹ PSE's Response, ¶ 4.

²² *Id.*, ¶ 5.

²³ *Id.*, ¶ 11.

²⁴ RCW 34.05.443(2).

8 **THE COMMISSION GIVES NOTICE That a prehearing conference in this matter will be held on Tuesday, July 29, 2014, beginning at 1:30 p.m. in Room 206, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**

9 Finally, PSE requested that the Commission make a determination on its Amended Application by July 25, 2014, in order to close the transaction by July 31, 2014. PSE has failed to state a reason for such expedited treatment and should appear at the prehearing conference prepared to justify its request.

ORDER

THE COMMISSION ORDERS THAT:

- 10 (1) The Petition to Intervene and For Leave to File Response to PSE's Amended Application, filed by the Puyallup Tribe, is GRANTED.
- 11 (2) Conditions may be imposed upon the Puyallup Tribe's intervention at the prehearing conference set for **Tuesday, July 29, 2014**, pursuant to RCW 34.05.443(2).

Dated at Olympia, Washington, and effective July 25, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.