

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)

COMMISSION STAFF RESPONSE
TO THE PUYALLUP TRIBE'S
LATE-FILED PETITION TO
INTERVENE AND FOR LEAVE
TO FILE A RESPONSE TO PUGET
SOUND ENERGY'S AMENDED
APPLICATION

1 On July 16, 2104, the Puyallup Indian Tribe (the Tribe) filed a “Petition for Intervention and for Leave to File Response to PSE’s Amended Application.” The Tribe seeks Commission permission to intervene late in this docket.

I. COMMISSION INTERVENTION STANDARDS

The Commission will grant intervention “if the petition discloses a substantial interest in the subject matter of the hearing or if the petitioner’s participation is in the public interest.” WAC 480-07-335(3). The Tribe is required to state its interest in the proceeding, and whether it intends to broaden the issues. If the Tribe intends to broaden the issues, it must state those issues together with supporting facts. WAC 480-07-355(1)(c)(ii) and (iv).¹

2 The Commission is not empowered to address all the interests a person may have who seeks to participate in a Commission hearing. The Commission’s authority is to “regulate in the public interest, *as provided by the public service laws ...*”. RCW 80.01.040(3) (Emphasis added).

3 For example, the public service laws do not charge the Commission with protection of the interests of unregulated fuel oil dealers who compete with regulated gas utilities. Accordingly, the Commission acted lawfully when it denied intervention to a group of fuel oil dealers in a Washington Natural Gas Company rate case. *Cole v. Wash. Util. & Transp. Comm’n*, 79 Wn.2d 302, 306, 485 P.2d 71 (1971).

4 Consequently, Commission Staff evaluates the Tribe’s intervention petition though the lens of the public service laws, to determine whether the Tribe has justified intervention.

¹ For a late intervention, which is the situation here, the Tribe must also demonstrate “good cause” for late intervention. WAC 480-07-355(1)(b). The Tribe argues that its rights were protected under the initial version of the contract between PSE and Electron Hydro LLC, and it was only because of changes to that agreement (*i.e.*, Amendment 4) that the Tribe’s interests became affected. *Petition at 4-5, ¶ 4*. If the Tribe had a substantial interest protectable by the Commission, it appears to Staff that the Tribe has demonstrated good cause for filing for intervention at this time.

II. DISCUSSION

5 The Tribe identifies three separate interests in support of intervention: 1) alleged
Endangered Species Act violations by PSE and/or Electron Hydro LLC; 2) alleged unlawful
assignment of contract rights from PSE to Electron Hydro LLC; and 3) rate impacts of the
PSE/Electron Hydro LLC sale.

6 **Endangered Species Act.** The Tribe alleges that, through its operation of the
Electron Project, PSE and/or Electron Hydro LLC have or will violate the federal
Endangered Species Act. *Petition at 8-12, ¶¶ 10-17.* As the Tribe describes, enforcement
of the Endangered Species Act is through federal agencies, or, failing that, by private action;
the Tribe now is considering these enforcement options. *Petition at 10, ¶ 14.*

7 While the Tribe's allegations should be of general concern, the Commission does not
have the expertise or, more importantly, the statutory authority to resolve claims under the
Endangered Species Act. Accordingly, the Tribe has not justified intervention on the basis
of the Endangered Species Act.

8 **Breach of the Resource Enhancement Agreement.** The Tribe also is interested in
enforcement of its agreement with PSE, called the Resource Enhancement Agreement
(REA). The Tribe alleges that by entering into the contract with Electron Hydro LLC, PSE
has unlawfully assigned the Tribe's rights under the REA, in violation of Section 18.1 of the
REA. *Petition at 3-6, ¶¶ 3-10.* As the Tribe explains, it plans to "begin dispute resolution
proceedings under the REA shortly after filing [its Petition]." *Petition at 8, ¶ 11.*

9 Like the Endangered Species Act, the Commission does not enforce the REA, either.
Any dispute resolution proceedings under the REA will not be before the Commission.
Moreover, the agreement between PSE and Electron Hydro LLC states: "PSE will maintain

the REA in full force and effect for the remainder of its term ...”² Accordingly, it is not established that PSE has made an unlawful assignment, at all.

10 In the end, enforcement of the REA is a private matter between PSE and the Tribe. The Commission has no role in that. For that reason, the Tribe has not justified intervention on the basis of an alleged breach of the REA by PSE.

11 **Rate impacts.** The Tribe asserts that it is “a [PSE] ratepayer with a definitive interest in the rates charged by PSE,” and the PSE/Electron Hydro LLC transaction could have “detrimental impacts to the Tribe as a ratepayer.” *Petition at 3, ¶ 3.*

12 Obviously, PSE’s rates are a primary concern of the Commission and the interest of customers in fair, just and reasonable rates is recognized throughout the Commission’s statutes, for example, RCW 80.01.040(3) and RCW 80.28.020, to name just two. However, the Tribe has not demonstrated that PSE rates are or will be adversely affected by the sale of the Electron Hydro facility, or the unlawful conduct the Tribe alleges PSE and/or Electron Hydro LLC has or will engage in.

13 As Staff explained in its July 18, 2014, Staff Response to Commission Notice in this docket,³ if PSE breaches the REA, and higher costs result, such costs would be imprudent and would not be borne by ratepayers.⁴ Accordingly, even assuming a breach, that would not necessarily change the economics of the deal, from a regulatory perspective.

² Amended Application, Amendment No. 4, Exhibit 2, first page, third “Whereas”).

³ The following language is *verbatim* from ¶¶ 16 -18 of the Staff Response to Commission Notice, except for the confidential phrase in ¶18 of that Response. To minimize the display of confidential information, we refer to that document.

⁴ “A public utility will not be permitted to include negligent or wasteful losses among its operating charges.” *West Ohio Gas. Co. v. Pub. Util. Comm’n*, 294 U.S. 62, 68, 55 S. Ct. 316, 79 L. Ed. 761 (1935); *See also Jewell v. Utilities & Transp. Comm’n*, 90 Wn.2d 775, 777, 585 P.2d 1167 (1978) (Expenses must contribute to “prompt, expeditious and efficient” service (using terms from RCW 80.36.080. Similar language applies under RCW 80.28.010, applicable to electric utilities: services shall be “safe adequate and efficient.”)

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The same rationale applies if PSE has violated or will violate the Endangered Species Act, as the Tribe also alleges.⁵ Ratepayers are not responsible for costs resulting from statutory violations, either, should such violations occur. Therefore, the resulting costs would not affect the economics of the deal, from a regulatory perspective.

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The Tribe further alleges that PSE will receive less power from the Electron Project than PSE contemplates, thereby negatively impacting ratepayers.⁶ To minimize the display of confidential information, we refer the Commission to the Staff Response to Commission Notice (July 18, 2014), Paragraph 18 (confidential version), for an explanation why the Tribe has not alleged harm in this regard.⁷

III. CONCLUSION

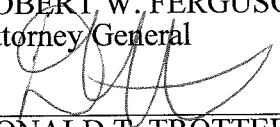
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For the reasons stated above, the Tribe has not demonstrated a substantial interest cognizable under the public service laws of this state. While the Tribe's interests in the REA and the status of the fishery involved appear substantial in their own right, the Commission is not the forum for addressing those interests. Accordingly, the Commission should deny the Petition.

DATED this 22nd day of July 2014.

Respectfully submitted,

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⁵ Petition at 9-10, ¶¶ 12-14.

⁶ Petition at 10-11, ¶ 15.

⁷ *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-130617, PSE Confidential Exhibit No. ___ (PKW-13C) at 10.