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<input type="checkbox"/> EXPEDITE <input checked="" type="checkbox"/> Hearing is set: Date: <u>November 21, 2014</u> Time: <u>9:00 a.m.</u> Judge/Calendar: <u>CHRISTINE SCHALLER</u>

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

NORTHWEST ENVIRONMENTAL DEFENSE
CENTER NORTHWEST; NORTHWEST
ENVIRONMENTAL ADVOCATES; and
COLUMBIA RIVERKEEPER,

NO. 12-2-02077-2

MOTION TO INTERVENE BY ENERGY
NORTHWEST

Petitioners,

v.

ENERGY FACILITY SITE EVALUATION
COUNSEIL,

Respondent.

I. RELIEF REQUESTED

Energy Northwest ("EN"), the permittee of the challenged permit and the party who would be most affected by any adverse decision, moves this Court for an Order permitting it to intervene as a party respondent.

II. FACTS

On October 30, 2014, Northwest Environmental Defense Center, Northwest Environmental Advocates, and Columbia Riverkeeper ("Petitioners") filed this action challenging the Washington Energy Facility Site Evaluation Council's ("EFSEC") September 30, 2014 decision to issue National Pollution Elimination Pollutant Discharge Elimination System ("NPDES") Permit No. WA002515-1 under the Clean Water Act. The Permit was issued to EN for operation of a cooling water intake structure from the

COPY

1 Columbia River to the Columbia's "closed-loop" cooling system and for subsequent
2 discharges of treated wastewater back to the Columbia River. EN now moves to
3 intervene in this case.
4

5 III. ISSUE

6 CR 24(a)(2) provides for intervention as a matter of right when the party (1) has an
7 interest in the lawsuit; (2) there is a risk that disposition in the applicant's absence will
8 practically or legally impair that person's ability to protect the interest; and (3) existing
9 parties do not adequately protect that interest. Here, NPDES Permit No. WA002515-1
10 was issued to EN, and the relief sought by Petitioners would affect EN's operations and
11 cost EN and the ratepayers of the Pacific Northwest millions of dollars. EN should be
12 permitted to intervene in this matter.
13

14 IV. EVIDENCE

15 The records and pleadings on file.
16

17 V. AUTHORITY

18 CR 24(a)(2) provides CR 24(a)(2) provides for intervention as a matter of right
19 when the applicant claims an interest in the property or transaction that is the subject
20 matter of the action. A party has a right to intervene when the trial court determines that
21 the applicant for intervention has demonstrated: (1) an interest in the lawsuit; (2) a risk
22 that disposition in the applicant's absence will practically or legally impair that person's
23 ability to protect the interest; and (3) existing parties do not adequately protect that
24 interest.¹
25

26 ¹ CR 24(a)(2); *Spokane County v. State*, 136 Wn. 2d 644, 649, 966 P.2d 305 (1998); *Westerman v. Cary*,
125 Wn. 2d 277, 303, 892 P.2d 1067 (1994).

1 The term “interest” is construed broadly.² An economic interest in the subject
2 matter of the litigation satisfies this element.³ Importantly, it is not necessary that the
3 intervenor’s interest be in direct conflict with those of existing parties; it is only necessary
4 that the interest may not be adequately articulated and addressed.⁴ Moreover, it has
5 been said that “not much of a showing is required” to establish an interest under CR
6 24(a)(2).⁵
7

8 Intervenor EN is the entity to which NPDES Permit No. WA002515-1, the subject of
9 this action, was issued for its Columbia Generating Station (“Columbia”), the only
10 commercial nuclear energy facility in the region. Columbia began delivering power to the
11 region in 1984,⁶ and since then it has provided billions of dollars’ worth of electricity
12 while emitting virtually no greenhouse gases or carbon emissions commonly associated
13 with natural gas, coal and other fossil fuel powered plants.⁷ Today, Columbia produces
14 approximately 1,170 megawatts of electricity, equivalent to about 10 percent of
15 Washington’s power needs and four percent of all the electric power used in the Pacific
16 Northwest.⁸ All costs to operate Columbia are paid by public power customers through
17

18
19 ² *Vashon Island Committee for Self-Government v. Washington State Boundary Review Bd. for King County*,
127 Wn. 2d 759, 765, 903 P.2d 953 (1995).

20 ³ *Loveless v. Yantis*, 82 Wn. 2d 754, 759, 513 P.2d 1023 (1973) (property owners in area affected by
21 county’s denial of approval of plat had interest by way of “diminution in value of their property” resulting
22 from defendant’s action).

23 ⁴ *Columbia Gorge Audubon Society v. Klickitat County*, 98 Wn. App. 618, 629-30, 989 P.2d 1260 (1999).
24 See also *American Discount Corp. v. Saratoga West, Inc.*, 81 Wn. 2d 34, 42, 499 P.2d 869 (1972)
(unsecured creditor not represented at all in mortgage foreclosure action where only parties were another
25 creditor and a nonresisting debtor); *Loveless*, 82 Wn. 2d at 759 (property owners permitted to intervene in
26 action concerning denial of plat by county; interests not adequately represented despite county’s obligation
to represent all residents, where intervenors had a “sometimes antagonistic viewpoint to that of the county
as a whole”).

⁵ *Columbia Gorge Audubon Society*, 98 Wn. App. at 629.

⁶ Declaration of Bradley J. Sawatzke in support of Energy NW’s Motion to Intervene (“Sawatzke Decl.”), ¶2.

⁷ Sawatzke Decl., ¶3.

⁸ *Id.*

1 electric rates established by the Bonneville Power Administration (BPA).⁹ EN provides at-
2 cost power to BPA and ultimately to over 1.5 million rate payers of the Pacific Northwest
3 at the least cost.¹⁰ EN is a joint operating agency – a municipal corporation of the State
4 of Washington¹¹ – comprised of 27 member public utility districts and municipalities and
5 92 participants, not a for-profit utility.¹² As such, it is incumbent on EN to keep costs as
6 low as possible through well-planned and communicated operating and capital budgets.¹³
7

8 In this action, the Petitioners seek revisions to the NPDES permit issued to
9 Columbia that could cost EN well over \$20 million if implemented. For example, the
10 direct costs of installing the new intake structure and screen sought by Petitioners is
11 estimated at over \$1.74 million, including design, engineering and analysis of a new
12 intake structure and screen, fabrication and licensing of the new intake structure and
13 screen design through the Nuclear Regulatory Commission, which would be required
14 before Columbia could resume operations.¹⁴ More notably, EN would have to temporarily
15 shut down Columbia for installation of Petitioner's proposed system, thereby losing
16 between \$19 million to \$24 million from lost power sales, as the installation of a new
17 screen can only be done in low water (i.e. August-September), during which time
18 Columbia generates approximately \$1.2 million worth of power per day.¹⁵
19

20 Accordingly, EN, its members and participants, and the ratepayers of the Pacific
21

22 ⁹ Sawatzke Decl., ¶4.

23 ¹⁰ *Id.*

24 ¹¹ RCW 43.52.360

25 ¹² Sawatzke Decl., ¶2.

26 ¹³ RCW 43.52.385 (“ . . . the best interests of all ratepayers affected by the joint operating agency and its projects shall determine the interest of the operating agency and its board.”)

¹⁴ Sawatzke Decl., ¶5.

¹⁵ *Id.*

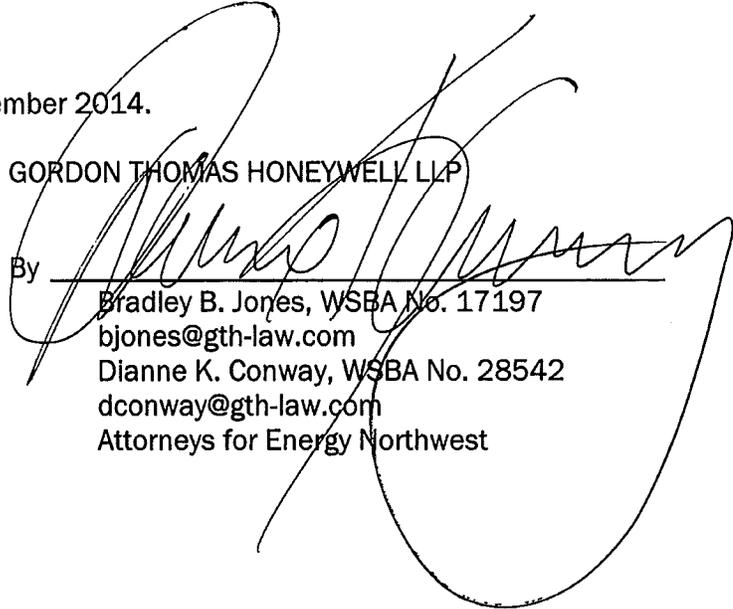
1 Northwest have a vital economic and electric-energy interest in the outcome of this
2 action. EN's interest is distinct from that of EFSEC, as EN, its members and participants,
3 and the ratepayers are the ones who will need to pay for any modifications to the NPDES
4 permit if the Court grants Petitioners' the relief they demand through BPA rates. This
5 motion is timely, as the action was filed only two weeks ago.
6

7 VI. CONCLUSION

8 This Court should grant EN's motion and allow it to intervene as a party
9 respondent.

10 Dated this 13th day of November 2014.

11 GORDON THOMAS HONEYWELL LLP

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