Supreme Court No. ____
Court of Appeals, Division III, No. 402126

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY,

Respondent,

v.

PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY,

Petitioner.

ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

Pursuant to RAP 13.4(d), Public Utility District No. 1 of Chelan County ("Chelan") files this answer to Public Utility District No. 2 of Grant County's ("Grant") petition for review.

II. INTRODUCTION

This is a routine contract interpretation case involving the application of settled legal principles to valid, existing, and durable contracts. In 1955, Grant and Chelan, acting in their proprietary capacities, negotiated and signed an agreement in which Chelan promised not to oppose Grant's construction and operation of the Wanapum Dam in exchange for Grant's promise to make Chelan whole by "fully compensating" Chelan for lost hydropower at its upstream Rock Island Dam. For decades, Grant complied with its like-for-like commitment by returning in-kind hydropower. Now, after changes in the power market, Grant seeks to rewrite its contractual obligation to obtain a windfall.

Grant misunderstands the Court of Appeals' decision. Like the Superior Court before it, the Court of Appeals applied established rules of contract interpretation and, unsurprisingly, reached the same conclusion: The agreement unambiguously "requires Grant to return hydropower for hydropower." Unwilling to accept compliance with its make-whole obligation, Grant attempts to dodge that obligation by declaring it cannot

color-code electrons and by asking this Court to reconsider Washington law to overturn the lower courts' well-reasoned decisions. But the Court of Appeals' decision simply holds Grant to its word. It does not require Grant to color-code electrons or do anything other than what it has previously done for Chelan and does for its specified source and output customers. As a result, there is nothing for this Court to do: *first*, the Court of Appeals properly applied tried-and-true principles of Washington law; and *second*, there is no issue of substantial importance that warrants this Court's attention or resources. This is a straightforward contract case. The Court should deny Grant's petition.

III. ISSUE PRESENTED

Chelan does not raise any issues for review and disagrees with Grant's characterization of the Court of Appeals' decision in its single issue presented. *See* Pet. for Rev. at 3.[1]

IV. STATEMENT OF THE CASE

A. The Parties' Agreements Require Grant to Make Chelan Whole for Lost Hydropower

Chelan and Grant are public utility districts serving customers in Chelan and Grant counties, respectively. 1CP 10

[1] Further, Grant has not justified or preserved review of the Court of Appeals' decision affirming dismissal of Grant's unjust enrichment counterclaim. *See infra* n.7. The Court of Appeals' decision was correct.

(Chelan Complaint for Declaratory and Injunctive Relief ¶¶ 1–2). Both own and operate hydroelectric generating facilities (i.e., dams) on the Columbia River. *Id.*; 5CP 919 (Declaration of Janet Jaspers in Support of Chelan's Motion for Summary Judgment ¶¶ 6–7). Chelan's Rock Island was constructed in 1930 about 12 miles downstream of Wenatchee. 5CP 919 (¶ 6). It has always and only generated hydropower. *Id.*

Years later, Grant proposed to construct Wanapum downstream from Rock Island. 5CP 919 (¶¶ 7–8). Wanapum is part of Grant's Priest Rapids Hydroelectric Project ("Priest Rapids"), which includes the Priest Rapids Dam located downstream from Wanapum. 5CP 919 (¶ 7). Grant's development and operation of Wanapum created an upstream reservoir that encroaches on Rock Island, thereby decreasing Rock Island's hydropower generation. 5CP 919 (¶ 8).[2] As a result, Chelan's consent was required for the Federal Power Commission ("FPC"), now the Federal Energy Regulatory Commission ("FERC"), to issue Grant a license to build and operate Wanapum. *See* 1CP 11 (¶¶ 7–9); 5CP 919 (¶ 8).[3]

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[2] Wanapum's encroachment on Rock Island is significant, reducing Rock Island's average annual energy output by more than 20 percent and its average generating capacity by more than 15 percent. 5CP 919 (¶ 8).

[3] *See also Pac. Gas & Elec. Co. v. FERC*, 720 F.2d 78, 89–90 & n.31 (D.C. Cir. 1983) ("[W]hen FERC issues a license covered by [S]ection 6 [of the Federal Power Act ("FPA")] it tacitly

1. The 1955 Agreement Requires Grant to Make Chelan Whole for Lost Hydropower

In 1955, Chelan and Grant entered into an agreement regarding Wanapum's encroachment on Rock Island to ensure Chelan would be made whole for lost hydropower generation. 5CP 919–20 (¶ 10); 4CP 629–33 (1955 Agreement). To secure Chelan's consent to construct Wanapum, Grant agreed to fully compensate Chelan for the hydropower Chelan lost and continues to lose because of Wanapum's encroachment on Rock Island. As provided in the 1955 Agreement:

> 1. Grant agrees to ***fully compensate*** [] Chelan . . . for ***all loss, damage and expense*** which [] Chelan . . . shall sustain or incur by reason of the construction or operation of [the] Priest Rapids ***Hydroelectric*** Development or any part thereof.
>
> . . .
>
> 2. ***Without limiting the generality of the foregoing***, Grant agrees regarding loss of power and energy, to compensate [] Chelan for ***all loss in the generation of power and energy at the Rock Island Project*** which shall result from the ***backwater*** of the Wanapum Project, by delivering to [] Chelan ***the***

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undertakes not to issue other licenses that will significantly interfere with operations already licensed, whether the interference will adversely affect the prior licensee's physical plant, its 'project works,' or its supplies of water."); FPA Section 6, 16 U.S.C. § 799 ("Licenses . . . may be altered . . . only upon mutual agreement between the licensee and the Commission[.]").

> ***amount of power and energy so lost at the Rock Island Project***, which deliveries by Grant shall be made into the [] transmission system[] of [] Chelan simultaneously with the occurrences of the ***losses at the Rock Island Project*** to the end that the amount of power and energy available to [] Chelan ***from the Rock Island Project***, plus the deliveries to [] Chelan as foresaid, ***shall at all times equal the power and energy which would have been available to [] Chelan at the Rock Island Project*** in the ***absence*** of said Priest Rapids ***Hydroelectric*** Development.

4CP 631–32 (1955 Agreement §§ 1–2 (emphases added)).

The 1955 Agreement has no expiration date, *see generally* 4CP 629–33, and remains in full force and effect. Grant agrees it is "still a binding contract." VRP at 74:12–15 ("The 1955 Agreement is still there, it's not—you know, we said it before, it's still a binding contract, it's still valid, it's not gone, it's still there.").

2. The 1967 Agreement Addresses Calculation and Delivery of Replacement Hydropower

The 1955 Agreement did not specify how to calculate the amount of hydropower Grant owed Chelan or how Grant would provide it to Chelan. *See generally* 4CP 629–33. As a result, in September 1967, after Wanapum was built, Chelan and Grant signed an "Agreement on Rock Island-Wanapum Encroachment Power" ("1967 Agreement") to implement the 1955 Agreement by addressing the calculation and delivery of replacement

hydropower "from the Wanapum Development into Chelan's system[.]" 4CP 636 (Recitals 7, 9); *see also generally* 4CP 634–72 (1967 Agreement); 5CP 920 (¶ 12). It established the "basic principles and procedures to be used for" computing replacement hydropower. 4CP 638–39, 643–44 (§§ V, XII).

The 1967 Agreement repeats Grant's core obligation to "fully compensate" Chelan for hydropower losses at Rock Island:

> Grant [] and Chelan entered into an agreement under date of August 8, 1955, relative to Grant's ***fully compensating*** [] Chelan . . . for ***all loss, damage and expense*** which . . . Chelan . . . shall sustain or incur by reason of the construction or operation of the Wanapum Development, wherein, ***without limiting the generality of the foregoing***, Grant agrees to compensate [] Chelan for all loss in ***the generation of power and energy at the Rock Island Project*** which results from the backwater of the Wanapum Project, such losses of power and energy being hereinafter referred to as "Encroachment Power."

4CP 635 (Recital 3 (emphases added)). It was replaced in 1974. 4CP 680 (1974 Agreement § IX).

3. The 1974 Agreement Resolves the Parties' Dispute Regarding Chelan's Expansion of Rock Island

In 1973, Chelan applied to the FPC to amend its Rock Island license to add a second powerhouse. 5CP 920 (¶ 13). The Parties disagreed about whether the 1955 Agreement would

require Grant to fully compensate Chelan for hydropower losses at the second powerhouse. *See id.*; 5CP 933 (Resolution No. 3096, Recital 7). The Parties settled their dispute outside the FPC proceeding. 5CP 933 (Recital 8).

In May 1974, Chelan and Grant issued a joint statement describing Grant's obligation to use hydropower as the source of encroachment power:

> At the present time Wanapum Reservoir encroaches on the existing [Rock Island] plant and ***in accordance with agreements between the two Districts, Wanapum returns on a continuous basis the capacity and energy to keep Rock Island generation equivalent to what the Rock Island Plant could have generated under the same situation had the Wanapum Reservoir not existed.***

5CP 835 (Rock Island Encroachment Settlement ¶ 3) (emphasis added)); 5CP 921–22 (¶ 18).

Later that month, Chelan and Grant entered into an "Agreement Relating to Wanapum Development Encroachment on Rock Island Project" ("1974 Agreement"). 4CP 673–705 (1974 Agreement); 5CP 921 (¶ 17). It again repeats Grant's core obligation to make Chelan whole:

> Grant and Chelan . . . entered into an agreement under date of August 8, 1955, relative to Grant's ***fully compensating*** the owners of Rock Island for ***all loss, damage and expense*** which such owners . . . shall sustain or incur by reason of the construction

> or operation of Wanapum, wherein, ***without limiting the generality of the foregoing***, Grant agreed to compensate such owners for ***all loss in the generation of power and energy at Rock Island*** resulting from the backwater of Wanapum.

4CP 674 (Recital 3 (emphases added)).

The 1974 Agreement requires Grant to replace all lost hydropower at Rock Island's first powerhouse and fifty percent of lost hydropower at the second powerhouse. *See, e.g.*, 4CP 688 (1974 Agreement, Exhibit A § 8). Contrary to its effect on the 1967 Agreement, the 1974 Agreement did not supersede or replace the 1955 Agreement and the 1955 Agreement remains in effect. *See also* VRP at 74:12–15 (Grant's counsel conceding the 1955 Agreement is "still a binding contract").

B. Grant Provides Chelan Replacement Hydropower for Decades

For more than half a century, as required by the 1955 Agreement, Grant provided hydropower to Chelan. This is confirmed by contemporaneous actions and statements from both Parties, including (1) provisions in Grant's power sales contracts, (2) correspondence between the Parties, (3) the 1974 joint statement, (4) Grant's provision of encroachment power to Chelan via the coordination of seven hydro projects on the Columbia River, (5) Grant's official statements supporting bonds for Wanapum and Priest Rapids, and (6) Grant's FPC and

FERC filings. *See* Resp.'s Br. at 17–22 (citing evidence in the record). These all confirm that, as required by the 1955 Agreement, Grant provided Chelan hydropower. Both Grant and Chelan expressly and repeatedly recognized—for more than fifty years—that Grant had to provide, and in fact was providing, encroachment power from a hydro source.

Grant now argues that provision of hydropower is impossible because "there is no 'color-coding' system for identifying that certain electrons sent by Grant are 'hydropower electrons'[.]" Pet. for Rev. at 12. But this confuses the issues and is belied by Grant's own briefing and practice of providing specified source power to other parties. App.'s Br. at 50 ("Notably, both Grant and Chelan had contracts with other power purchasers that ***did*** specify the source of the power to be delivered. These 'output' or 'slice' power sale contracts entitle the purchaser a right in a specific hydropower project's generated output." (citations omitted) (emphasis in original)); 10CP 1650–58 (Nordt Dep. at 147:5–149:1, 175:4–178:3, and 211:8–212:25 (discussing how Grant accounts for hydropower it sells to contract purchasers and that it warrants those purchasers and Grant's specified source customers get carbon-free power)); 10CP 1618–19 (Grant's Specified Source Rate Schedule No. 13SS). As it did and does for its specified source and output customers, Grant is fully capable of complying with its make-

whole promise by providing replacement hydropower to Chelan and warranting that power is from a hydro source.[4]

Grant's make-whole obligation has nothing to do with "color-coding" electrons. Its argument about "color-coding" electrons is nothing more than an attempt to distract from the language of the agreements. In any event, parties can—and do—promise to and provide power from certain sources or types of power despite their inability to "color-code" electrons. *See, e.g.*, 5CP 925–26 (discussing Chelan's and Grant's accounting and allocation of hydropower generation within the closed Hourly Coordination system of hydro projects on the Columbia River). Indeed, Grant has made such commitments to its specified source and output customers. *See, e.g.*, 10 CP 1618–19, 1650–58. Grant made the same commitment to Chelan through its contractual promise to "fully compensate" Chelan for lost hydropower.[5]

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[4] *See also, e.g.*, Oral Argument at 24:05–24:45, 27:10–30:30, *Pub. Util. Dist. No. 2 of Grant Cnty. v. Pub. Util. Dist. No. 1 of Chelan Cnty.*, No. 40212-6-III, 2025 WL 1638976 (Wash. Ct. App. Apr. 14, 2025), https://tvw.org/video/division-3-court-of-appeals-2025041401/?eventID=2025041401 (discussing representations that Grant is providing hydropower to Chelan).

[5] Despite Grant's incorrect portrayal of how it and the energy industry operate in the region, the Court should decline to address Grant's "red herring" disputes of fact, including about "color-coding" electrons, because they are outside the narrow issue Grant has presented. *See* Pet. for Rev. at 3. Grant's issue statement alleges no errors regarding disputes of fact and thus Grant failed to preserve any such disputes. RAP 13.4(c)(5)

C. In 2014, Grant Suggests for the First Time It Could Replace Chelan's Lost Hydropower with Power from Any Source

In June 2014, Chelan first became aware of Grant's new position that it was not obligated to provide encroachment power from a hydro source. 5CP 927 (¶ 30); 6CP 1080–84 (emails between Chelan and Grant).[6] Chelan promptly objected. *See* 6CP 1081.

D. Chelan Files This Lawsuit; Grant Counterclaims and is Denied Summary Judgment

In May 2020, to protect its contractual rights and interests, Chelan filed suit. *See* 1CP 9–23 (Chelan Complaint for Declaratory and Injunctive Relief). Grant sought partial summary judgment, arguing that the agreements require it to

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(requiring a petition for review to contain "[a] concise statement of the issues presented for review"); *State v. Korum*, 157 Wn.2d 614, 624–25, 141 P.3d 13 (2006) (declining to review an issue that was not raised properly in petition's statement of issues); *State v. Collins*, 121 Wn.2d 168, 178–79, 847 P.2d 919 (1993) (declining to consider issue raised only in argument section of petition for review; a petition must "state the issues with specificity")

[6] Grant became aware of the increasing value of hydropower one year earlier. 4CP 710–11 (Grant's Answer to Chelan's Interrogatory No. 33 (admitting it "became aware that power from non-carbon sources such as hydropower could be sold or exchanged at a greater value than power generated from carbon sources in approximately 2013 when California's cap-and-trade program launched")).

replace the amount of hydropower lost at Rock Island, but do not require a hydro source. 1CP 139–57 (Grant's Motion for Partial Summary Judgment). The Superior Court denied Grant's motion. 3CP 584–88 (Order Denying Grant's Motion for Partial Summary Judgment); VRP at 4:1–39:15.

E. Chelan Prevails on Summary Judgment

In November 2023, the Parties cross-moved for summary judgment. 6CP 1091–1128 (Chelan's motion); 6CP 1129–1155 (Grant's cross-motion). In its second bite at summary judgment, Grant raised arguments nearly identical to those the Superior Court had previously rejected, *compare* 6CP 1129–55 with 1CP 139–57, and the Superior Court again denied Grant's motion, 11CP 1815–24 (Order Denying Grant's Cross-Motion for Partial Summary Judgment); VRP at 39:19–116:10.

The Superior Court granted Chelan's motion for summary judgment because "the only reasonable interpretation of the parties' agreements requires Grant to provide Chelan encroachment power from a hydropower source." 11CP 1822 (¶ 4). As the Superior Court explained: "the reality is the purpose of the agreement was to make Chelan County whole, to put them in the position they would have been [in] had Grant County not built the [Wanapum] dam so tall." VRP at 110:24–111:2.

F. Chelan Prevails on Appeal

Grant appealed, and on June 10, 2025, the Court of Appeals issued its unpublished opinion affirming summary judgment for Chelan. It found "no genuine issue of material fact" and "that the 1955 agreement between the parties unambiguously requires Grant to fully compensate Chelan for all loss, damage, and expense Chelan sustains by reason of Grant's construction of the Wanapum Dam and, in the context of this dispute, requires Grant to return hydropower for hydropower." No. 40212-6-III, ("Slip op.") at 1.

The Court of Appeals concluded that Grant's obligation to deliver hydropower to Chelan was "unambiguous." Slip op. at 12–13. It acknowledged the 1974 joint statement "support[ed]" Chelan's argument "that the parties had always returned hydropower for hydropower" and rejected Grant's arguments about using undifferentiated power because Grant's evidence "relies on its early unilateral practice (unknown to Chelan) or on a new practice" and "is thus not evidence of the parties' mutual intent at the time they signed the 1955 Agreement." *Id.* at 13 n.2.

V. STANDARD OF REVIEW

Grant "must demonstrate that the Court of Appeals decision conflicts with a decision of this [C]ourt or with a published Court of Appeals decision, or that [it] is raising a

significant constitutional question or an issue of substantial public interest." *In re Williams*, 197 Wn.2d 1001, 484 P.3d 445, 446 (2021) (citing RAP 13.4(b)).

VI. ARGUMENT

Grant invites this Court to "revisit contract interpretation," Pet. for Rev. at 31, for no compelling reason. First, Grant contends that the Court of Appeals' decision conflicts with Washington law on contract interpretation, as articulated by this Court in *Berg v. Hudesman*, 115 Wn.2d 657, 801 P.2d 222 (1990), *Hearst Communications, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 115 P.3d 1037 (2005), and *International Marine Underwriters v. ABCD Marine, LLC*, 179 Wn.2d 274, 313 P.3d 395 (2013). *Id.* at 18–27. Second, Grant asserts this Court should accept review because the Court of Appeals' decision involves so-called "legacy contracts" that may affect contract disputes between other parties. *Id.* at 27–30. Grant is wrong on both.[7]

[7] Grant does not contend the Court of Appeals' opinion is inconsistent with its precedent or involves a significant question of law under the United States or Washington constitutions. *See generally* Pet. for Rev.; *see also* RAP 13.4(b)(2)–(3). Because the burden is on Grant to demonstrate grounds for review, *see In re Williams*, 484 P.3d at 446, the Court should consider both these grounds unsatisfied. In any event, the Court of Appeals decision is consistent with its own precedent, *see* Slip op. at 12, and does not involve a significant question of law under either constitution.

There is no need to expend additional judicial resources on this case. First, the lower courts applied settled principles of Washington law and reached the same result. The Court of Appeals' decision is in line with this Court's precedent, including the opinions cited by Grant. Second, Grant's distinction between "legacy contracts" and other contracts is pure fiction. This Court's precedent applies across the board—to contracts written in 1955, 1974, or 2025. This Court should decline Grant's attempt to recharacterize this dispute as anything other than what it is: A rote contract dispute between two parties.

A. The Court of Appeals' Decision Does Not Conflict with This Court's Decisions

The Court of Appeals applied Washington law to reach the correct result: The only reasonable interpretation of the Parties' hydro-specific agreements is that they require Grant to replace Chelan's lost hydropower with hydropower.

1. Washington's objective manifestation theory

Washington follows the "objective manifestation theory of contracts," which requires a court to determine the parties' intent "by focusing on the objective manifestations of the agreement, rather than on the unexpressed subjective intent of the parties." *Hearst*, 154 Wn.2d at 503. "The cardinal rule with which all interpretation begins is that its purpose is to ascertain the intention of the parties." *Berg*, 115 Wn.2d at 663 (citation

omitted); *see also Int'l Marine Underwriters*, 179 Wn.2d at 282 ("During interpretation, a court's primary goal is to ascertain the parties' intent at the time they executed the contract."). Courts "generally give words in a contract their ordinary, usual, and popular meaning," *Hearst*, 154 Wn.2d at 504, and "examin[e] the context surrounding an instrument's execution" to determine the parties' intent, *id.* at 502. To determine intent, a court may consider evidence relating to "(1) the subject matter and objective of the contract, (2) all the circumstances surrounding the making of the contract, (3) the subsequent acts and conduct of the parties, and (4) the reasonableness of respective interpretations urged by the parties." *Id.* (citing *Berg*, 115 Wn.2d at 667).

2. The Court of Appeals correctly applied the objective manifestation theory

Applying this Court's settled precedent, Slip op. at 12 ("The touchstone of contract interpretation is the parties' intent. Washington courts follow the objective manifestation theory of contracts, imputing an intention corresponding to the reasonable meaning of the words used." (cleaned up)), the Court of Appeals concluded that the 1955 Agreement "unambiguous[ly]" requires Grant to return hydropower to Chelan because "by returning undifferentiated power, which has a lower market value, Grant is not fully compensating Chelan for its 'loss, damage, and

expense.'" Slip op. at 12–13. The Court of Appeals grounded its decision in the language of the Parties' contracts. *Id.* at 12–16.

The Court of Appeals started with Paragraph 1 of the 1955 Agreement and correctly determined that it establishes Grant's core obligation to make Chelan whole for lost hydropower:

> Grant agrees to ***fully compensate*** . . . Chelan . . . ***for all loss, damage and expense*** which . . . Chelan . . . shall sustain or incur by reason of the construction or operation of [the] Priest Rapids Hydroelectric Development or any part thereof[.]

4CP at 631 (emphases added); Slip op. at 12–13. It reasoned this "unambiguous" obligation to "fully compensate" Chelan requires Grant to return hydropower to Chelan because "by returning undifferentiated power, which has a lower market value, Grant is not fully compensating Chelan for its 'loss, damage, and expense.'" Slip op. at 12–13. The Court of Appeals observed that the Parties' subsequent conduct supported this interpretation of the contract language. *Id.* at 13 n.2.

Grant claims the Court of Appeals used evidence about current market conditions to interpret the contracts. Pet. for Rev. at 16, 19, 24–27. But Grant misunderstands what the Court of Appeals did. The Court of Appeals merely acknowledged the undisputed reality that undifferentiated power is less valuable

than hydropower[8] and that, as a result, Grant's proposal to give Chelan unspecified power would not make Chelan whole for lost hydropower. Slip op. at 13. Grant's obligation to "fully compensate" Chelan did not change simply because hydropower became more expensive. Regardless of what was happening in 1955, what is happening today, or what will happen in 2055, Chelan loses hydropower because of Wanapum and Grant must make Chelan whole for that lost hydropower by returning hydropower.

Next, the Court of Appeals turned to Paragraph 2 of the 1955 Agreement and "decline[d] to ignore" its "opening phrase." *Id.* at 14. It rejected Grant's argument that the words "[w]ithout limiting the generality of the foregoing" somehow diminish Grant's "fully compensate" obligation in Paragraph 1. *Id.* In giving full meaning to Paragraph 2, the Court of Appeals noted that "[a]n interpretation of a writing which gives effect to all of its provisions is favored over one which renders some of the language meaningless or ineffective." *Id.* (quoting *Wagner v. Wagner*, 95 Wn.2d 94, 101, 621 P.2d 1279 (1980)). Grant's protestations, *see* Pet. for Rev. at 20–21, do not change the meaning of the words "limiting" and "foregoing." The language

[8] Grant concedes this fact. Pet. for Rev. at 26 ("It is of course undisputed that hydropower ***is currently*** more valuable than undifferentiated power." (emphasis in original)).

is plain. It requires Grant to—*without limitation*—"fully compensate" Chelan for its hydropower losses. The Court of Appeals interpreted the 1955 Agreement correctly.

Finally, the Court of Appeals analyzed the 1974 Agreement. Slip op. at 15. It rejected similar arguments Grant makes now, Pet. for Rev. at 8–9, 21–22, and correctly concluded that neither Section X nor anything else in the 1974 Agreement "alters Grant's obligation to fully compensate Chelan for all loss, damage and expense," Slip op. at 15. The Court of Appeals observed that (1) "nothing in the [1974] agreement requires encroachment power to be hydropower"—it had already correctly concluded the 1955 Agreement requires that—and (2) "nothing in the [1974] agreement permits encroachment power to be undifferentiated power"—a direct rejection of Grant's arguments to the contrary. *Id.* There is nothing remarkable about this conclusion. Indeed, the contracts require hydropower.

In short, there was nothing new or novel about how the Court of Appeals decided this case. It correctly applied the objective manifestation theory consistent with *Berg*, *Hearst*,[9]

[9] Despite Grant's attempts to manufacture one, Pet. for Rev. at 23–25, the Court of Appeals' decision does not conflict with *Hearst.* In *Hearst*, this Court refused to read words into a contract that were contrary to the contract's actual language. 154 Wn.2d at 510 ("Hearst essentially asks us to rewrite the JOA by revising

and *International Marine*. This alone is sufficient reason to deny Grant's petition.

B. The Court of Appeals' Decision Does Not Involve an Issue of Substantial Public Importance

There are several flaws with Grant's assertion that this case involves the interpretation of so-called "legacy contracts" and thus "an issue of substantial public importance." Pet. for Rev. at 27, 30. This Court should also deny review on this ground.

First, Washington law does not recognize the concept of "legacy contracts." Grant fails to provide any citations for its proposition that "legacy contracts" are purportedly "outdated due to changing times or economies." *See id.* at 28; *see also generally id.* In essence, Grant wants a windfall because the hydropower it deprives Chelan of is more valuable today than it was in 1955. Regardless of their age, however, contracts are subject to the same settled law on contract interpretation. *Cf. Hearst*, 154 Wn.2d at 495 ("The law of contracts is the same whether the parties are two publishing giants fighting for market control or

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the loss operations clause, something we are not at liberty to do."). Here, the Court of Appeals interpreted the language of the contracts (it did not rewrite anything) and correctly concluded that Grant can only "fully compensate" Chelan under the 1955 Agreement by returning "hydropower for hydropower," and that nothing in the 1974 Agreement "permits encroachment power to be undifferentiated power." Slip op. at 15.

two individuals disputing the cost of appliance repair work."). This Court should reject Grant's attempt to manufacture an issue to escape its make-whole commitment to Chelan.

Second, Grant misapprehends the Court of Appeals' opinion, claiming it "h[eld] that as the industry evolves, old contracts will be interpreted by applying the industry's current understanding of market economics, instead of how parties understood what they were negotiating at the time the contract was executed." Pet. for Rev. at 28. The Court of Appeals made no such holding. It simply evaluated whether Grant's proposal to provide undifferentiated power to Chelan would satisfy Grant's obligation to "fully compensate" Chelan for lost hydropower and correctly determined that, "in the context of this dispute," it would not. Slip op. at 1, 13. The Court of Appeals expressly limited its decision to this specific case. *Id.* at 16. Nothing here warrants review.

Third, Grant broadly claims "[t]he Court of Appeals' Opinion has reverberated throughout the Pacific Northwest's energy industry" and "has direct application to every other industry operating under old contracts." Pet. for Rev. at 29. If this were the case, it is surprising that no party participated as amicus and only one non-party moved to publish. Grant cites nothing

beyond this one motion to publish to support its broad claims.[10] Regardless, Grant agreed to "fully compensate" Chelan for lost hydropower—as that is what Chelan loses and will continue to lose without regard to market conditions. This case is nothing more than a classic contract dispute that the lower courts easily resolved by applying settled precedent. Courts in future cases can apply this same precedent, whether they are interpreting energy or other contracts, new or old.

VII. CONCLUSION

This case is a hornbook example of a contract dispute. It is unfortunate Grant continues to consume judicial resources in its quest to free itself of its obligation to make Chelan whole. If Grant had not built Wanapum, Chelan would produce more hydropower at Rock Island. But Grant built Wanapum and the resulting hydropower losses at Rock Island are what Grant agreed to fully compensate Chelan for in the 1955 Agreement. The Court of Appeals correctly applied settled Washington law

[10] Grant makes several assumptions in relying on this motion to publish. For example, while Public Utility District No. 1 of Pend Orielle County did not identify the date of its contracts, *see generally* Pet. for Rev., App'x B, Grant asserts those contracts were entered into on or around the same time as the contracts at issue here, while providing no support for that assumption, Pet. for Rev. at 27–30.

and concluded that Grant must provide hydropower to Chelan. There is nothing for this Court to review.

For the foregoing reasons, Chelan respectfully asks the Court to deny Grant's petition.

I certify this document contains 4,947 words in compliance with RAP 18.17(b).

DATED this 8th day of August, 2025.

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