

00001

1

BEFORE THE WASHINGTON UTILITIES AND

2

TRANSPORTATION COMMISSION

3

4 In the Matter of the) Docket No. UG-001119
Application of) Volume I
5) Pages 1-23
CASCADE NATURAL GAS)
6 CORPORATION)
7 for a Certificate of Public)
Convenience and Necessity to)
8 Operate a Gas Plant for Hire)
in the General Area of Grant)
9 County.)
_____)

10

11

12 A hearing in the above matter was
13 held on October 26, 2000, at 9:35 a.m., at 1300
14 Evergreen Park Drive Southwest, Olympia, Washington,
15 before Administrative Law Judge MARJORIE R. SCHAER.

16

17

18

19 The parties were present as

20 follows:

21 CASCADE NATURAL GAS CORPORATION,
by John L. West, Attorney at Law, 500 Galland
22 Building, 1221 Second Avenue, Seattle, Washington
98101-2925, and Jon T. Stoltz, Senior Vice President,
23 222 Fairview Avenue North, Seattle, Washington 98109.

24

25 AVISTA CORPORATION, by Thomas A.

00002

1 DeBoer, Attorney at Law, 717 W. Sprague Avenue, Suite
2 1200, Spokane, Washington 99201-3505, and Robert H.
3 Gruber, Manager, Natural Gas Resources, 1411 East
4 Mission, P.O. Box 3727, Spokane, Washington
5 99220-3727.

6 THE COMMISSION, by Robert
7 Cedarbaum, Assistant Attorney General, 1400 Evergreen
8 Park Drive, S.W., P.O. Box 40128, Olympia, Washington
9 98504-0128.

10 NORTHWEST INDUSTRIAL GAS USERS, by
11 Ed Finklea, Attorney at Law, 526 N.W. 18th Avenue,
12 Portland, Oregon 97209 (Appearing Via Teleconference
13 Bridge.)

14

15

16

17

18

19

20

21

22

23 Barbara L. Nelson, CCR

24 Court Reporter

25

JUDGE SCHAER: Let's go ahead and be on the

00003

1 record. We're here this morning for a prehearing
2 conference in Docket Number UG-001119. This is a
3 petition by Cascade Natural Gas Corporation to amend
4 its certificate of convenience and necessity to
5 operate a gas plant for hire in Grant County,
6 Washington. We are appearing today in the
7 Commission's Hearing Room 206 in the Commission
8 Headquarters Building in Olympia, Washington. I'm
9 Marjorie Schaer, and I'm the Administrative Law Judge
10 assigned by the Commission to this proceeding.

11 I would like to start this morning by
12 taking appearances from all parties, starting with
13 the Company, and I would like you to, since this is
14 your first appearance, to provide your address and
15 pertinent phone numbers, including your fax and
16 e-mail addresses, please. Let's go ahead, Mr. West.

17 MR. WEST: Thank you, Your Honor. My name
18 is John West. My address is 500 Galland Building,
19 G-a-l-l-a-n-d, 1221 Second Avenue, Seattle,
20 Washington, 98101. My telephone number is (206)
21 623-1745. My fax number is (206) 623-7789. And my
22 e-mail address is jlw@hcmp.com.

23 JUDGE SCHAER: Thank you.

24 MR. WEST: And I'm appearing for Cascade
25 Natural Gas Corporation.

00004

1 JUDGE SCHAER: Yes. Then, for Commission
2 Staff, Mr. Cedarbaum.

3 MR. CEDARBAUM: My name is Robert
4 Cedarbaum, I'm an Assistant Attorney General
5 appearing for Commission Staff. My business address
6 is the Heritage Plaza Building, 1400 South Evergreen
7 Park Drive, S.W., Olympia, Washington, 98504. My
8 telephone number is (360) 664-1188. The fax is (360)
9 586-5522. And my e-mail address is
10 bcedarba@wutc.wa.gov.

11 JUDGE SCHAER: Thank you. And has anyone
12 heard from Public Counsel about whether or not they
13 would want to participate in this proceeding?

14 MR. CEDARBAUM: My office has. When we
15 were preparing the draft notice of hearing for the
16 Commission, we contacted Public Counsel to find out
17 if they wanted to be on the notice of hearing, and
18 they indicated that they did not need to be, since
19 they would not be participating, so I don't expect
20 them to appear.

21 JUDGE SCHAER: Thank you, Mr. Cedarbaum.
22 Let's go, then, to appearances on behalf of the
23 intervenors, starting with you, Mr. DeBoer.

24 MR. DEBOER: Tom DeBoer, that's
25 D-e-B-o-e-r, appearing for Avista Corporation. My

00005

1 business address is 717 West Sprague Avenue, Suite
2 1200, Spokane, Washington, 99201. Phone is (509)
3 455-6000. Fax, (509) 838-0007. E-mail is
4 tdeboer@painehamblen.com.

5 JUDGE SCHAER: Thank you. And then from
6 you, Mr. Finklea, please.

7 MR. FINKLEA: Edward A. Finklea, appearing
8 on behalf of the Northwest Industrial Gas Users. My
9 business address is 526 N.W. 18th Avenue, Portland,
10 Oregon, 97209. My phone is (503) 721-9118. Fax is
11 (503) 721-9121. And e-mail is
12 efinklea@energyadvocates.com.

13 JUDGE SCHAER: Thank you. And the next
14 issue I'd like to move to, then, is motions for
15 intervention, and again, we'll go with you first, Mr.
16 DeBoer.

17 MR. DeBOER: Your Honor, we filed a written
18 motion to intervene that was received on October
19 11th. Avista Corporation currently has a certificate
20 for the area that Cascade has moved to provide
21 service in, and that is the basis of Avista Corp's
22 intervention.

23 JUDGE SCHAER: All right. Is there any
24 objection to intervention by Avista?

25 MR. WEST: No, Your Honor.

00006

1 MR. CEDARBAUM: No.

2 JUDGE SCHAER: Let me indicate, then, that
3 I have reviewed the petition for intervention that
4 was filed with the Commission on October 11th, on
5 behalf of Avista Corporation, and it does state an
6 interest in this matter sufficient to grant
7 intervention, and that intervention petition is
8 granted.

9 The next petition for intervention that we
10 will take up is that filed by Mr. Finklea. Would you
11 go ahead, please.

12 MR. FINKLEA: Yes, Your Honor. On October
13 24th, the Northwest Industrial Gas Users filed a
14 motion to intervene, which I believe was received
15 October 25th by the Commission. The Industrial Gas
16 Users are a non-profit association of 31 industrial
17 end users of natural gas in Washington, Oregon and
18 Idaho. Several of the members take service from
19 Cascade Natural Gas Corporation.

20 To Mr. Cedarbaum's comment, I will note
21 that we have members who could take these kind of
22 service offerings from Cascade. We therefore have an
23 interest in their ability to make these service
24 offerings. We also have members who are customers of
25 Avista.

00007

1 JUDGE SCHAER: I'm going to ask you to
2 speak a little bit closer to the phone or a little
3 bit louder, Mr. Finklea. I've heard what you just
4 said. Were Counsel able to hear? Okay.

5 MR. FINKLEA: Do you want me to repeat
6 anything?

7 JUDGE SCHAER: No, but I want to ask you
8 who your members are that are in Grant County.

9 MR. FINKLEA: Oh, I'd have to check. I'm
10 not certain, Your Honor.

11 JUDGE SCHAER: Do you have some?

12 MR. FINKLEA: I'm not certain if there are
13 any in Grant County or not.

14 JUDGE SCHAER: Okay. Any other questions
15 for Mr. Finklea or any other comments? Mr.
16 Cedarbaum.

17 MR. CEDARBAUM: I guess I have a comment.
18 I would have no objection to the intervention of the
19 Northwest Industrial Gas Users if they have member
20 companies who would be in the service territory
21 proposed to be served by Cascade in this application,
22 but if they don't, I don't see the interest that they
23 would have in this application.

24 The fact that they may be able to be
25 provide a service under Schedule 700 in other parts

00008

1 of Cascade's service territory isn't really an issue
2 in this case, so unless Mr. Finklea's client has some
3 members who could be served by Cascade if this
4 application were granted, I would object to the
5 intervention. It's not clear for me, from Mr.
6 Finklea's comments, if that's true or not.

7 JUDGE SCHAER: Mr. West.

8 MR. WEST: Your Honor, I have one other
9 item that I might mention. In the event that it is
10 found that Cascade does, in fact, require a
11 certificate to provide these kinds of services, one
12 item that we would like to raise is whether our
13 application should be expanded to be able to serve
14 statewide in one certificate, rather than going for
15 individual certificates for each client.

16 JUDGE SCHAER: So do you expect to amend
17 your petition, or what is your thinking on that, Mr.
18 West?

19 MR. WEST: Our thinking hasn't progressed
20 very far. I just wanted to raise that that would be
21 an issue, and that we will consider amending our
22 petition.

23 JUDGE SCHAER: Mr. Finklea, I'm going to
24 take your petition under advisement at the moment,
25 and when we get to a discussion of what issues are

00009

1 framed in this proceeding, which I have on our agenda
2 for a little bit later this morning, I think once we
3 have had a discussion of what issues are framed, I'll
4 have a better idea or you might have a better
5 argument whether or not your clients should be
6 involved in that discussion.

7 MR. FINKLEA: Very good, Your Honor.
8 Certainly, given Mr. West's observation, that
9 certainly does broaden the impact that this
10 proceeding could have.

11 JUDGE SCHAER: It could if we do get an
12 amended petition, but we'll talk about that in a few
13 minutes.

14 MR. FINKLEA: I understand. The issue that
15 was raised about whether Cascade even needs a
16 certificate to perform these services would then have
17 broader implications than just for Grant County.

18 JUDGE SCHAER: The next topic I would like
19 to take up is whether there's going to need to be a
20 need for a protective order in this proceeding. Have
21 the parties thought about that? Where have you ended
22 up on that issue? Mr. West.

23 MR. WEST: Your Honor, Cascade does not see
24 a need for a protective order.

25 JUDGE SCHAER: Does any other party see a

00010

1 need for a protective order?

2 MR. DeBOER: Not at this time, Your Honor.

3 JUDGE SCHAER: All right. I will, then,

4 not issue a protective order or have the

5 Commissioners issue one. I do want to indicate that

6 if any data is sought, which you would want to seek

7 protection for, it will be incumbent on whoever wants

8 to protect that information to answer within the time

9 frames allowed, and in order to do that, if you need

10 to initiate some kind of expedited process to get a

11 protective order, you are responsible for that, as

12 well.

13 Next, in looking through the Commission's

14 record in this proceeding, it appears that, based on

15 the distribution list internally that we currently

16 have, the parties should be looking to file an

17 original, plus 14 copies of everything that you file

18 in this proceeding. I would like everything that is

19 filed with the Commission to be filed in an

20 electronic format, as well as a paper format. If

21 there are any kinds of documents that you have

22 trouble obtaining in electronic format, then I would

23 like those specifically highlighted and the reasons

24 why they cannot be provided electronically to be

25 provided.

00011

1 I want this not just for exhibits, but for
2 motions, for briefs, for just about anything that you
3 file with us, because it does decrease our need to
4 have paper copies to distribute and save money for
5 all parties in that way. It also assists the Bench
6 in responding quickly at times to things that come up
7 that need to be dealt with in an immediate way.

8 There are rules in the Commission's
9 procedural rules that indicate to you the format that
10 documents should be in, and also the electronic
11 format that they should be filed in. Basically, we
12 can use WordPerfect, Word, Excel or Lotus or, if you
13 have none of those, there's something called a PDF
14 file, and your computer people can talk to our
15 computer people and we can make that work, but that
16 is something that is very important to the Bench,
17 that we have those available.

18 If you need assistance in figuring out any
19 of those provisions, please contact the Commission
20 Records Center at (360) 664-1234. And if they have
21 questions that they need my help with, they will
22 contact me on those.

23 Next I would like to address the area of
24 issues that the parties see framed by this
25 proceeding, and I'd start with you, Mr. West, and ask

00012

1 you to outline what issues you think are raised and
2 what kind of scope you think the Commission has in
3 dealing with those issues for a moment, if you would,
4 please.

5 MR. WEST: Well, the initial issue would be
6 whether a petition is required -- or whether a
7 certificate is required, pardon me. And I think
8 that's just a matter of statutory instruction of the
9 applicable RCW. So far as the Commission's scope
10 goes, I think they would have discretion in that
11 regard. I'm not sure exactly what else that you
12 would like in the way of information on that.

13 JUDGE SCHAER: I just want a heads up if
14 there's anything else out there, like some kind of
15 federal policy or something else, some new case
16 somewhere that you think has some influence on that.
17 If you think it's --

18 MR. WEST: Nothing I'm aware of, Your
19 Honor.

20 JUDGE SCHAER: Okay. Then what other
21 issues do you see framed, please?

22 MR. WEST: The other issue is the granting
23 of the certificate itself, if it is necessary. Of
24 course, the Commission has full authority on that
25 issue.

00014

1 are just breakouts of what Mr. West indicated about
2 the application itself. If a certificate is
3 necessary, there are essentially two issues under RCW
4 28.190, whether or not the public convenience and
5 necessity requires the service that is proposed and
6 whether or not the existing service provider in that
7 territory, which would be Avista, provides service
8 that is satisfactory to the Commission.

9 So those are the application issues that
10 would come up. And I would say that, although I
11 haven't studied yet the Commission orders on other
12 industries, I think we could look to other statutes
13 that have public convenience and
14 necessity/satisfaction of the Commission's
15 certificate requirements in a number of areas like
16 private ferries, solid waste, bus authority, to get
17 an idea as to what the Commission looks at for those
18 types of issues.

19 JUDGE SCHAER: Okay. And then you, Mr.
20 DeBoer.

21 MR. DeBOER: Your Honor, no issues, other
22 than those mentioned.

23 JUDGE SCHAER: How about you, Mr. Finklea?

24 MR. FINKLEA: No additional issues, Your
25 Honor.

00015

1 JUDGE SCHAER: And on these issues, talk to
2 me a little bit more, then, at this point about your
3 client's interest, please.

4 MR. FINKLEA: Well, the threshold issue of
5 whether a certificate is necessary raises legal
6 issues and policy issues to that application
7 throughout the state in Cascade's service territory.
8 And our clients, as industrial end users, we feel
9 have an interest in how those issues will be resolved
10 by the Commission.

11 On the narrow question of public
12 convenience and necessity --

13 JUDGE SCHAER: Mr. Finklea, you're going to
14 have to speak up or pull your phone closer, because
15 we are having trouble hearing you.

16 MR. FINKLEA: On the narrower questions of
17 if an application or certificate is required, is
18 there a public convenience and necessity and would
19 the existing provider provide adequate service, those
20 are issues that are unique to this application, but
21 we do think how the Commission would act upon those
22 could have effects on beyond just this certificate.
23 There are precedential effects even on the narrower
24 questions, but the legal issue, as to whether a
25 certificate is necessary, have implications to gas

00016

1 users throughout the state.

2 JUDGE SCHAER: Okay. Having heard those
3 statements, Mr. Cedarbaum, do you continue to object
4 to the intervention of NWIGU?

5 MR. CEDARBAUM: I can understand Mr.
6 Finklea's interest in the threshold legal issue, and
7 so I would withdraw my objection to the intervention
8 as to that portion of this case, and if I could have
9 permission to renew my objection to the intervention
10 once we get past that, so I wouldn't be deemed to
11 have waived my ability to do that, I would have no
12 objection proceeding on that basis.

13 JUDGE SCHAER: If we were to go on to a
14 proceeding of public convenience and necessity and
15 service satisfactory to the Commission, since those
16 are fairly new issues in the natural gas arena, would
17 you think it might be appropriate for NWIGU to have a
18 say in what those standards should be, as well?

19 MR. CEDARBAUM: I think that's certainly
20 within the Commission's discretion to allow that.
21 I'm not convinced that parties in the case as it
22 stands couldn't flesh out those issues on our own
23 without Mr. Finklea's client's help. But I certainly
24 understand if the Commission -- I don't think there's
25 any legal prohibition of Mr. Finklea's client

00017

1 participating if the Commission wishes to do that.

2 JUDGE SCHAER: Well, I'm going to go ahead
3 and grant the intervention by NWIGU at this point,
4 and I will allow parties to object at some later time
5 if they think that NWIGU is expanding issues beyond
6 those contemplated or taking us into areas that make
7 an efficient resolution of this proceeding less
8 likely to happen, but at this point, I will grant
9 that intervention.

10 And so then we need to go forward, I
11 believe, and discuss the discovery process that may
12 be contemplated. And is any party to this proceeding
13 going to ask that the discovery rule outlined in
14 480-09-480 be triggered?

15 MR. CEDARBAUM: Your Honor, I guess I don't
16 know what kind of discovery we're going to be doing
17 in this case, but just out of precaution, I would ask
18 that we go ahead and trigger that rule, so that we
19 can use it if we need it.

20 JUDGE SCHAER: Have the parties looked at
21 this rule and thought about what kind of discovery
22 you're going to need to do, Mr. DeBoer?

23 MR. DeBOER: Your Honor, we haven't really
24 looked at that in detail yet, but at this point we
25 wouldn't have any objection to triggering it. We see

00018

1 that the burden is on the other parties, so we're not
2 quite sure how far they're going to want to push the
3 discovery issues.

4 JUDGE SCHAER: Often, when the burden's on
5 another party, it's the parties who are responding
6 that find that they need the ability to do some
7 discovery, in my experience. But I am looking at WAC
8 480-09-480, and looking at kind of the beginning of
9 this, which indicates that the exceptions to the
10 rule, that the only discovery process available is a
11 subpoena, and I'm looking at 480-09-480(2) and
12 (2)(a), (b) and (c), and I would like people to
13 briefly look at that, if you have that available, and
14 address why you think this proceeding might fall into
15 one of those exceptions.

16 And if anyone would like to go off the
17 record for a moment so you can get a copy of that, we
18 can do that, also. So we're going to go off the
19 record for just a moment.

20 (Discussion off the record.)

21 JUDGE SCHAER: We're back on the record.
22 We've had some discussion of scheduling and process
23 going forward, and it looks like it would be useful
24 at this point in time for the parties to have some
25 discussion among themselves on specifics of what's

00019

1 involved in resolving this question. So we're going
2 to take our morning recess at this time, and we will
3 be back on the record at 10:25. We're off the
4 record.

5 MR. FINKLEA: Thank you.

6 (Recess taken.)

7 JUDGE SCHAER: Let's be back on the record
8 after our morning recess. During the recess, I
9 believe that the parties were able to discuss how we
10 should go forward in this proceeding, and I'm going
11 to ask you, Mr. West, to report on those
12 conversations at this point, if you would.

13 MR. WEST: Yes, Your Honor. The parties
14 discussed that the limitation of the issues or
15 limitation of what Cascade Services would be
16 providing in this case would be Rate Schedule 700,
17 and that, to the extent the application goes beyond
18 Rate Schedule 700, that we would stipulate that it
19 would be considered only those -- only those
20 services.

21 JUDGE SCHAER: And I believe you had
22 indicated that the company had had further thoughts
23 about expanding your petition. Would you like to
24 reflect that on the record, as well, please?

25 MR. WEST: Yes, Your Honor. On further

00020

1 reflection, the Company does not now intend to expand
2 this application, this certificate application,
3 beyond the Grant County territory, which it includes
4 right now.

5 JUDGE SCHAER: Okay. And I believe that
6 the parties had discussed how we should go forward
7 from now, and what was that proposal, please?

8 MR. WEST: The parties discussed going
9 forward without -- with the factual stipulation being
10 that only the Rate Schedule 700 services would be
11 included in the petition, and that we would attempt
12 to separate the legal issue from the balance of the
13 petition and have a briefing schedule that related
14 only to the legal issue of whether or not a
15 certificate was required.

16 JUDGE SCHAER: And had you discussed when
17 those briefs would be made available to the
18 Commission?

19 MR. WEST: Yes, Your Honor. We had
20 suggested that November 16th be an appropriate filing
21 date.

22 JUDGE SCHAER: And any other parties wish
23 to comment on this? Mr. DeBoer.

24 MR. DeBOER: That sounds fine with Avista
25 Corporation.

00021

1 JUDGE SCHAER: Mr. Cedarbaum.

2 MR. CEDARBAUM: Mr. West's recitation was
3 accurate.

4 JUDGE SCHAER: Mr. Finklea, do you have any
5 questions of the other parties or any comments at
6 this point?

7 MR. FINKLEA: Is it intended that there
8 will be a single simultaneous briefing or is there
9 going to be opening and reply briefs?

10 JUDGE SCHAER: It's my understanding that
11 the parties were discussing a single brief. Do you
12 have any comments on what it should be?

13 MR. FINKLEA: Oh, I think that's -- the
14 idea is that would be efficient. There could be a
15 necessity to have replies.

16 JUDGE SCHAER: If anyone would like to have
17 replies, speak up now. I would probably be inclined
18 to give you a very short time period, having them
19 here either the Wednesday before Thanksgiving or the
20 Monday morning afterward. But does anyone feel that
21 there's a need for that, I guess would be my
22 question? Don't everybody speak up at once.

23 MR. CEDARBAUM: I guess I'm comfortable
24 proceeding without the reply brief, and that if Mr.
25 West just says something totally outlandish in his

00022

1 brief, I'll ask permission to file a reply brief on a
2 short turnaround basis. As long as we don't kind of
3 waive that ability, I'm fine proceeding on that
4 basis.

5 JUDGE SCHAER: Is that agreeable with you,
6 Mr. Finklea?

7 MR. FINKLEA: Yes, Your Honor.

8 JUDGE SCHAER: Okay. Then we'll have one
9 round of briefs filed on November 16th, and we will
10 note that if anyone, on reading those briefs, feels
11 prejudiced by their inability to respond to anything
12 that they see, it will be incumbent upon them to
13 inform the Bench of that immediately. And in making
14 that request for an ability to provide a limited
15 reply, they will keep in mind that their replies will
16 be due on November 22nd.

17 Anything else we need to talk about, in
18 terms of briefing? We had also discussed, Mr.
19 Finklea, that it might be appropriate to just go this
20 far with this case now and then, pending the outcome
21 of determination of the first issue of whether a
22 certificate is required, should that be determined
23 that a certificate is required, we would call another
24 prehearing conference, in which we would discuss
25 issues of discovery and scheduling of a remainder of

00023

1 the proceeding.

2 MR. FINKLEA: That makes sense to me.

3 JUDGE SCHAEER: Okay. How about the other

4 parties? Does that make sense to everyone?

5 MR. WEST: Yes, Your Honor.

6 MR. CEDARBAUM: Yes.

7 MR. DeBOER: Yes.

8 JUDGE SCHAEER: Is there anything further
9 that needs to come before us this morning? Hearing
10 nothing, I want to thank you, Counsel, for working
11 cooperatively together. I hope that this can
12 continue through the proceeding. And we are off the
13 record.

14 (Proceedings adjourned at 10:34 a.m.)

15

16

17

18

19

20

21

22

23

24

25

