

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION)
4 vs.) DOCKET NO. UG-930511
5 CASCADE NATURAL GAS CORPORATION)
6 -----)

7 A prehearing conference in the above matter
8 was held on August 24, 1993 at 9:43 a.m. at
9 1300 South Evergreen Park Drive Southwest, Olympia,
10 Washington, before Administrative Law Judge ALICE L.
11 HAENLE.

12 The parties were present as follows:

13 WASHINGTON UTILITIES AND TRANSPORTATION
14 COMMISSION STAFF, by ROBERT CEDARBAUM, Assistant
15 Attorney General, 1400 South Evergreen Park Drive
Southwest, Olympia, Washington 98504.

16 CASCADE NATURAL GAS CORPORATION, by JOHN
17 WEST, Attorney at Law, 4400 Two Union Square, Seattle,
Washington 98101

18 BP EXPLORATION AND OIL, INC., by DOUGLAS S.
19 LITTLE, Attorney at Law, 1201 Third Avenue, 40th
Floor, Seattle, Washington 98101.

20 TENASKA WASHINGTON PARTNERS LP by JAMES
21 F. FELL, Attorney at Law, 900 Southwest Fifth Avenue,
Suite 2300, Portland, Oregon 97201.

22 FOR THE PUBLIC, CHARLES F. ADAMS and
23 ROBERT MANIFOLD, Assistant Attorney General, 900
Fourth Avenue, Suite 2000, Seattle, Washington 98164.

24 Cheryl Macdonald, CSR, RPR
25 Court Reporter

1 P R O C E E D I N G S

2 JUDGE HAENLE: The hearing will come to
3 order. This is an initial session in docket No.
4 UG-930511 which is a filing by Cascade Natural Gas
5 Corporation. The initial session is being held August
6 24, 1993 at Olympia, Washington before Administrative
7 Law Judge Alice L. Haenle.

8 I indicated before we went on the record
9 that the administrative law judge primarily assigned
10 to this case is Elmer Canfield. He will be conducting
11 the remainder of the case.

12 I would like to take appearances, at this
13 time, please, beginning with the representatives for
14 the companies. For Cascade -- I indicated give your
15 name, your full business address and your client's
16 name.

17 MR. WEST: My name is John West, 4400 Two
18 Union Square, Seattle, Washington 98101 representing
19 Cascade Natural Gas Corporation.

20 MR. FELL: My name is James F. Fell. I'm
21 with Stole Rives Boley James & Gray. I represent
22 Tenaska Washington Partners LP. The address is 900
23 Southwest Fifth Avenue, Suite 2300, Portland, Oregon
24 97204.

25 MR. LITTLE: My name is Douglas S. Little.

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1 I'm with the law firm of Perkins Coie. Our address is
2 1201 Third Avenue, 40th Floor, Seattle, Washington
3 98101. I am here on behalf of BP Exploration and Oil
4 Inc.

5 MR. ADAMS: Appearing as public counsel
6 Charles F. Adams, 900 Fourth Avenue, Suite 2000,
7 Seattle, 98164, and I would like to also put in an
8 appearance for Robert Manifold.

9 JUDGE HAENLE: Same address.

10 MR. ADAMS: Yes, same address.

11 MR. CEDARBAUM: Representing Commission
12 staff, my name is Robert Cedarbaum. Assistant
13 attorney general. My business address is 1400 South
14 Evergreen Park Drive Southwest in Olympia 98504.

15 JUDGE HAENLE: Is there anyone else that
16 needs to enter an appearance in this matter?

17 All right. As the first order of business,
18 let's take the petitions to intervene. There have
19 been two petitions, I believe, filed to date. One is
20 a petition by BP Exploration and Oil, Inc. Apparently
21 it was just filed yesterday. I've distributed copies
22 to everyone. Did you have anything to add to your
23 petition, Mr. Little?

24 MR. LITTLE: No, I do not, your Honor.

25 JUDGE HAENLE: Is there any comment or

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1 objection to the petition of BP to intervene in this
2 matter? Anyone?

3 MR. WEST: No objection.

4 MR. CEDARBAUM: No objection.

5 JUDGE HAENLE: I will grant the petition of
6 BP to intervene. I believe it has demonstrated
7 sufficient interest to allow it to have the status of
8 intervenor.

9 The second is a petition by Tenaska
10 Washington Partners and was filed on August 16. Did
11 you have anything to add to the petition, Mr. Fell?

12 MR. FELL: Yes, your Honor, I do. Tenaska
13 has an interest in two ways in this proceeding. In
14 the first case, Tenaska has a written agreement under
15 which it will be responsible for a share of any
16 transportation costs in excess of the filed contract
17 rate. In that sense it has a direct interest in the
18 financial outcome of this case. Furthermore, Tenaska
19 was the party that initiated the cogeneration project
20 at this site and initiated the bypass options that
21 were originally investigated in the bypass option that
22 we believe supports the contract that was filed in
23 this case.

24 Tenaska as the one who initiated that is

25 also the one most familiar with the circumstances

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1 surrounding the bypass and the other factual issues in
2 this case, and we feel, beyond a substantial interest
3 otherwise demonstrated, that it would be in the public
4 interest and more efficient for the proceeding for
5 Tenaska to be a party.

6 JUDGE HAENLE: Tenaska has already
7 submitted a contract to the Commission and it has been
8 dealt with in a separate proceeding. Is that correct,
9 sir?

10 MR. FELL: That is correct.

11 JUDGE HAENLE: Any comment or objection to
12 the petition of Tenaska from the company?

13 MR. WEST: Cascade has no objection.

14 JUDGE HAENLE: Commission staff.

15 MR. CEDARBAUM: Yes, your Honor. The staff
16 does object to the intervention of Tenaska for the
17 following reasons. And generally speaking under the
18 Commission's intervention rule a party has to show
19 that they have a substantial interest in the
20 proceeding or that the public interest would require
21 their involvement in the proceeding. It's our
22 position that Tenaska has not satisfied either of
23 those standards. It's clear from reading their
24 petition to intervene and from Mr. Fell's comments

25 this morning that the interests that Tenaska has is

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1 its own individual pecuniary interests which is that
2 if this Commission were to deny the BP/Cascade
3 contract then essentially Tenaska has to indemnify BP
4 for a portion of the additional costs that BP would
5 incur to remain under service with Cascade under
6 tariff rather than contract. That's a financial
7 interest of Tenaska which I don't believe has any
8 bearing whatsoever upon this Commission's analysis
9 under its special contract rule as to whether or not
10 the BP/Cascade contract ought to be approved.

11 And secondly, related to that, is that
12 certainly I don't believe it has met the standard
13 that there is a public interest in having Tenaska in
14 this proceeding. It's an individual interest of that
15 company and I don't think that this proceeding would
16 benefit in any way from its intervention.

17 And finally, with regard to just getting
18 evidence on the record as to what's going on here, as
19 a practical matter if we've got BP and Cascade as
20 parties to this case, they certainly ought to have all
21 of the information that the Commission needs to
22 analyze this contract from a factual perspective, from
23 an economic perspective or from whatever perspective.
24 And I think we can certainly go forward from a

25 practical point of view with the parties as they stand

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1 but without Tenaska.

2 JUDGE HAENLE: I am going to take all of
3 the comments first and then allow you to respond to
4 all of them, Mr. Fell.

5 Mr. Adams, did you have any objection or
6 comment?

7 MR. ADAMS: I think I would agree with
8 staff. I think primarily we're going to have two
9 parties already representing one view and this would
10 make three parties representing the same view and it
11 will be cumulative and I think Tenaska's information
12 can come in through the other parties anyway. They
13 will not be left out in the dark.

14 MR. LITTLE: I would support the
15 intervention by Tenaska. I believe they have a
16 financial interest in the outcome of this proceeding
17 just as BP does. The cost of contract will be shared,
18 if the contract is not approved the costs will be
19 shared in part with Tenaska, as they've indicated
20 earlier. So I think they like BP have a financial
21 stake in the outcome of this proceeding.

22 Secondly, this is a complicated situation.
23 It's a cogeneration facility on BP property. BP and
24 Tenaska are almost like Siamese twins in this. To

25 understand the state of the BP contract today I think

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1 you've got to understand the history that led up to
2 this contract and that history began with Tenaska and
3 Tenaska's bypass threats and its discussions with
4 Cascade. The filing made by Cascade where it
5 submitted this contract for approval mentioned, and
6 used as part of its justification, some of the
7 dealings with Tenaska. Some of the questions from the
8 staff have explored that. I think Tenaska is going to
9 be an essential party to this proceeding, as you might
10 expect with any cogeneration facility where basically
11 BP and Tenaska are very interwoven in terms of their
12 natural gas consumption and their thermal requirement.
13 So I think they are very much an essential party.

14 JUDGE HAENLE: Do you want to respond, Mr.
15 Fell?

16 MR. FELL: Yes, thank you. The bypass
17 option that's under discussion in this case really
18 relates to the cogeneration facility and it arose from
19 the cogeneration of plans for the site. I think it is
20 consistent with the Commission's policy to encourage
21 cost effective cogeneration at industrial facilities
22 within the state, to allow the cogenerator in this
23 case to participate in a case that it has a financial
24 interest in and that it is really integrated to the

25 overall cogeneration transaction. I think there is

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1 unique information that the cogenerator can bring to
2 the proceeding; and I think, frankly, that financial
3 interests are what this Commission deals with all the
4 time, that there is nothing irrelevant about financial
5 interests. It is what rates are all about. So I
6 think that is a legitimate interest. I don't think
7 it's just the individual interest of Tenaska that is
8 at stake here. It's the integration of all of these
9 interests and we are part of that group. We are one
10 of the parties to the integrated transaction that was
11 involved here.

12 JUDGE HAENLE: Anything else?

13 Is there going to be -- I guess I should
14 direct my question to Mr. West or actually perhaps to
15 several of you gentlemen. Is there going to be a
16 request for a protective order in this matter covering
17 any of the materials?

18 MR. WEST: Yes, your Honor.

19 JUDGE HAENLE: What kinds of materials will
20 you be requesting be covered?

21 MR. WEST: Well, I think there are
22 documents that have been already filed under
23 confidentiality, and I suspect there will be
24 additional documents developed that will want the same

25 kind of protection.

10

1 JUDGE HAENLE: Let me try again. What
2 kinds of materials will you be requesting be covered?
3 What types of documents?

4 MR. WEST: In addition to the contracts
5 there will be financial calculation spreadsheets
6 analysis.

7 JUDGE HAENLE: Thank you.

8 MR. CEDARBAUM: Can I just make two quick
9 responses to the comments of counsel?

10 JUDGE HAENLE: Go ahead.

11 MR. CEDARBAUM: First of all, I guess I
12 still fail to understand why Tenaska's participation
13 is necessary just to provide factual background as to
14 the players and what's happened in the past and what's
15 expected to happen in the future. Cascade was a
16 player in the Tenaska contract, staff was a player in
17 the Tenaska contract, they are players in this case,
18 BP is a player in this case and ought to know what its
19 needs are and what the facts are underlying the
20 contract. So, from a practical point of view, I still
21 fail to see the necessity of Tenaska.

22 And secondly, I think we need to refocus on
23 what this proposed special contract is for. It's for
24 natural gas transportation requirements. It's not for

25 cogeneration requirements. It's to provide gas by

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1 transportation to BP from Cascade. That's what the
2 contract is about and not Tenaska's cogeneration
3 facility.

4 MR. WEST: Your Honor, Mr. Stoltz has
5 reminded me of one other thing and that is the Tenaska
6 contract itself has been filed as well under
7 confidentiality and presumably there is underlying
8 financial information that's of a confidential nature
9 relating to that contract. Perhaps having Tenaska as
10 a party to the proceeding might ease our ability to
11 deal with these confidential matters as part of this
12 docket as well.

13 MR. CEDARBAUM: I was going to make one
14 more comment.

15 JUDGE HAENLE: Sorry, I thought you were
16 done.

17 MR. CEDARBAUM: That's okay. I would just
18 ask that if intervention of Tenaska is allowed that --
19 and I don't know if this was going to be a problem or
20 not, but it's our intention to ask that the discovery
21 rule be invoked and it will be our intention to make
22 discovery requests of Tenaska if they are a party,
23 including their contract with BP and perhaps other
24 matters. And that I would like to have a commitment

25 from Mr. Fell, if his client is allowed to intervene,

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1 that those materials will be discoverable. I don't
2 know if that's a problem or not, but I would assume
3 that some of that information is confidential and if
4 it comes on a confidential basis that's fine, but I
5 don't want intervention to be allowed only to be shut
6 off on the discovery process down the road.

7 JUDGE HAENLE: I don't know what the
8 petitioner's position would be with respect to
9 discovery of materials. If you were a party you would
10 be expected to respond to discovery requests.

11 MR. FELL: Your Honor, I understand that.
12 We would be subject to the same responsibilities and
13 have the same rights as other parties with respect to
14 discovery.

15 I would also like to add that there's been
16 no demonstration that there would be a burden on the
17 proceeding by having Tenaska participate. And I would
18 also like to point out that one of the issues in this
19 proceeding is the relationship between this particular
20 contract and the overall bypass option, and I think
21 that by narrowing the focus of who the parties are
22 there's also a subtle narrowing of the focus of the
23 proceeding, which I think is inappropriate considering
24 what the option was here.

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JUDGE HAENLE: Well, the focus of this

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1 proceeding is the contract at issue. This is not
2 meant to be a generic proceeding and one of my
3 concerns is that the issues not be unduly expanded.

4 MR. FELL: Yes. What I am trying to say,
5 though, is that the bypass option needs to be
6 considered and the bypass option includes -- was part
7 of the overall cogeneration transaction. We do not
8 intend to broaden the scope of the proceeding by our
9 intervention.

10 JUDGE HAENLE: I am going to deny the
11 petition of Tenaska to intervene in this matter. I
12 don't believe they have demonstrated an interest under
13 the Commission's intervention rule sufficient to allow
14 the status of intervenor. Their contract has already
15 been dealt with by this Commission and I want to keep
16 the focus on the contract at issue here, not on the
17 issues that Tenaska would necessarily raise. I don't
18 feel that the financial interests that Tenaska has
19 described is sufficient to give it the interest that
20 would allow it to be an intervenor. So I will deny
21 that petition.

22 Were there any other petitions to
23 intervene?

24 Let's go off the record, then, and let's

25 take care of the rest of the things that we need to

14

1 take care of at the initial session.

2 (Recess.)

3 (Marked Exhibit T-1.)

4 JUDGE HAENLE: Let's be back on the record
5 after a discussion about a number of items off the
6 record. One of the things we needed to talk about was
7 setting a schedule in this matter. I believe parties
8 indicated that they were -- because the prefiled
9 materials were just filed this morning they did not
10 feel they had enough information to set the schedule
11 at this point but were willing to talk among
12 themselves and to agree to a schedule which will be
13 filed by the Commission -- filed with the Commission
14 no later than September 1. In discussing the schedule
15 I believe we identified that the drop dead date on
16 this case is April 4, 1994, unless we miscalculated.
17 Because this is an ALJ-only case there will need to
18 be an initial order and, counting back, the briefs
19 that -- your schedule needs to provide that the briefs
20 are due no later than late December, earlier than that
21 if possible. Those are the outside dates. You don't
22 need to take that long if you don't need that long.

23 If I understand, we also discussed that
24 BP's testimony most properly belongs with that of the

25 company, Cascade, and so BP has agreed that the

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1 schedule will provide for a prefiling date for BP and
2 that BP and the company will be crossed at the same
3 time, I believe. Did I miss anything in our
4 discussion of scheduling in this case, anyone?

5 Okay. We also premarked the company's
6 prefiled materials; a multi-page document in the upper
7 right-hand corner JTS-1 will be marked as Exhibit
8 T-1 for identification.

9 I indicated while we were off the record
10 that I feel the contract itself should also be made a
11 part of the record but the parties indicated that they
12 will take care of that either by agreement or on
13 cross-examination.

14 I believe you indicated, Mr. Cedarbaum,
15 that you wanted to request that the discovery rule be
16 invoked.

17 MR. CEDARBAUM: That's correct, your Honor.
18 I think we also had an agreement amongst counsel that
19 all parties will exchange both the data requests
20 themselves and all responses to data requests, but
21 that would be just directly to counsel and not through
22 the Commission's secretary.

23 JUDGE HAENLE: That is my understanding of
24 your discussion. I reminded all of you that anything

25 to do with discovery needs to be sent directly to Mr.

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1 Cedarbaum and not funneled through Paul Curl, the
2 Commission secretary, as is done with any other type
3 of case correspondence.

4 MR. CEDARBAUM: I should also indicate that
5 staff has made some data requests of Cascade and has
6 received some responses and so in the next couple of
7 days we will circulate that material since it wasn't
8 done formally under the discovery rule.

9 JUDGE HAENLE: I also told you that
10 anything you file with the Commission should be done
11 with an original and 19 copies. That does not mean
12 data requests and responses. That means anything that
13 you file with the Commission.

14 You indicated, I believe, Mr. West, that
15 the company was going to request that a protective
16 order be issued.

17 MR. WEST: Yes, your Honor.

18 JUDGE HAENLE: I indicated that the
19 Commission has been using the form of protective order
20 issued in docket No. UT-901029 of Electric Lightwave
21 Inc. I believe when I asked that you all indicated
22 you were familiar with that form. Does anyone object
23 to a protective order in this matter?

24 We did discuss that. I will then take this

25 back and request that the Commission immediately issue

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1 a protective order. Because it takes a couple of days
2 what we've done in the past is ask the parties to
3 agree to be bound by the protective order so the
4 discovery can proceed in the meantime for the few days
5 before that Commission protective order is issued.
6 Once it is issued everyone needs to immediately fill
7 out the attachment, attachment A for attorneys, or
8 Exhibit B for experts, send those back to the company
9 with a copy to the Commission. Do it immediately,
10 please. Is that satisfactory from the company's point
11 of view, Mr. West.

12 MR. WEST: Yes, your Honor.

13 JUDGE HAENLE: From the point of view of
14 your client, Mr. Little?

15 MR. LITTLE: That's correct, yes.

16 JUDGE HAENLE: Since your materials will
17 most likely be the materials that need to be
18 protected.

19 All right with you, Mr. Adams?

20 MR. ADAMS: Fine.

21 JUDGE HAENLE: Mr. Cedarbaum?

22 MR. CEDARBAUM: Yes, it is.

23 JUDGE HAENLE: We will do it in that
24 manner, then.

25 Was there anything else that we discussed

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1 off the record that we needed to include on the
2 record?

3 MR. LITTLE: I believe you indicated there
4 will be one round of simultaneous briefing with no
5 reply briefs.

6 JUDGE HAENLE: Yes, I did. I indicated
7 that -- the briefing date at the outside being in late
8 December, that I did not anticipate reply briefs and
9 that the schedule not provide for reply briefs, as I
10 see it now.

11 Is there anything else we need to discuss?
12 Please address any case-related materials a courtesy
13 copy to the Administrative Law Judge Elmer Canfield,
14 not to me. You had something else?

15 MR. LITTLE: Yes, your Honor. Now having
16 had a chance for the first time to take a look at the
17 prefiled justification for this contract which has
18 been filed by Cascade and just having flipped through
19 it, I would like to ask you to reconsider your ruling
20 on Tenaska. Tenaska's name appears on every page of
21 this supporting document. They are going to be an
22 integral part of the evidence in this case and
23 justification for the contract, and I think this
24 exhibit illustrates that point, and I think that we're

25 going to hear their name perhaps as much if not more

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1 than the name BP in this proceeding and that is why I
2 think they are an essential party to this and I would
3 ask you to reconsider your petition for intervention.

4 JUDGE HAENLE: I don't know if one or the
5 other of you is going to provide a witness from
6 Tenaska to describe any portion of this but that is
7 one of the options as well. The Commission can -- if
8 you make the request to the Commission for
9 reconsideration of an administrative law judge's order
10 that request can be made to the Commission. I assume
11 that actually should probably come from Tenaska rather
12 than from you, Mr. Little, but that request can be
13 made and the Commission will consider that request.

14 MR. FELL: Your Honor, the concern that you
15 expressed that the scope of the proceeding might be
16 broadened by Tenaska's participation I think is pretty
17 well dispelled by the testimony, and if your Honor
18 were to take a few minutes and peruse the filing, the
19 testimony that was filed, might be more efficient if
20 you could reconsider yourself.

21 JUDGE HAENLE: Well, let's go off the
22 record. I can read through the material here. I
23 don't have any idea whether that would affect my
24 ruling or not. Before we do that, is there anything

25 else that we need to discuss or anything else we

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1 discussed while we were off the record that we need to
2 put on the record?

3 MR. LITTLE: One further question and that
4 is we may -- BP may wish to ask for a settlement
5 conference in this proceeding in one form or the other
6 and I assume we should take that up with Judge
7 Canfield?

8 JUDGE HAENLE: Yeah. You can talk among
9 yourself about any settlement of course. If there is
10 something that you want to present you would
11 definitely take that up with Judge Canfield, yes. It
12 occurred to me that looking at this that part of it
13 certainly could be done on the basis of agreed
14 findings rather than requiring testimony and evidence.
15 I would encourage all of you to work together to come
16 -- if you can get agreed facts and if this is a matter
17 indeed that only needs to be briefed, that would also
18 certainly cut down the time that this will take. I
19 haven't looked through -- I'm not real familiar with
20 the situation except generally, but if this is indeed
21 something that is susceptible to agreed facts then
22 that would certainly speed the process up immeasurably
23 but that's between all of you. I would encourage you
24 to do that. The Commission's rule encourage not

25 presenting evidence on matters that are not contested.

21

1 Let's go off the record. I will go back, take a look
2 at this, and give me a few minutes to do that.

3 (Recess.)

4 JUDGE HAENLE: Let's go back on the record.
5 During the time we were off the record I reviewed just
6 briefly the prefiled testimony and do not find a
7 reason to reverse my ruling at this point. What I did
8 suggest is that I would take an oral motion to the
9 Commission to reverse my ruling and that would be to
10 ask that the Commission grant intervenor status to
11 Tenaska. I suggested that we would take that orally
12 now, comments from the parties, and then I will give
13 it to the Commission in the form of an expedited
14 transcript for them to review and issue an order on as
15 soon as possible so that we can move this thing along.
16 I will ask you not to repeat what you said before.
17 That will appear in the transcript and the Commission
18 will consider it, but if you have anything to add, I
19 want to hear that. It seemed to me that the motion,
20 although it was originally formed by Mr. Little,
21 should probably be certainly at least a joint motion
22 with Mr. Fell since he's the primarily impacted party.
23 Did you have anything to add to the reasons that you
24 felt you should be an intervenor in this matter, Mr.

25 Fell?

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1 MR. FELL: Yes. We ask that the hearing
2 officer review the testimony that was filed this
3 morning. That testimony shows that the justification
4 for the special contract in this case arises from the
5 integrated transactions, including the Cascade and
6 Tenaska arrangements that really were related to the
7 original cogeneration project for this site. That the
8 BP contract and the Tenaska contract are related and
9 that the underlying bypass option was related between
10 Tenaska and BP. We are concerned that without being a
11 party to the case we cannot -- we don't have a right
12 of our own to present evidence on what the underlying
13 bypass options were; and, while we believe we can rely
14 on BP and Cascade to present what we consider to be
15 the correct presentation and correct viewpoint on
16 those options, we believe it's appropriate for Tenaska
17 to be a party so that they can participate in the
18 settlement conferences and in the presentation of the
19 evidence in the event that there may be some
20 disagreement about the evidence.

21 JUDGE HAENLE: Were these what you
22 characterize as bypass options not the subject -- were
23 not considered when your contract was considered, the
24 one that's previously been dealt with by the

25 Commission?

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1 MR. FELL: That bypass option was
2 considered in that contract, but there appears to be
3 some disagreement in this filing as to what the bypass
4 option was and when it arose and how it related to BP
5 and Tenaska, separately or together.

6 JUDGE HAENLE: Do you feel that your
7 position differs from that of either BP or Cascade in
8 that respect or when you are talking about
9 disagreement are you talking about a disagreement with
10 the staff?

11 MR. FELL: I am talking about at this point
12 about a disagreement with the staff. This testimony
13 appears to be much closer to Tenaska's point of view
14 about the integrated nature of those transactions and
15 what the bypass option was. So we believe our
16 testimony will substantially support what Cascade and
17 BP will be saying, but there may be features of it
18 where we have something important from Tenaska's point
19 of view to make sure that from our point of view the
20 record is complete.

21 JUDGE HAENLE: Anything to add to what you
22 previously said, Mr. Little?

23 MR. LITTLE: Only this, your Honor. I
24 think what we're looking at is basically a three-party

25 negotiation of contractual arrangements to provide

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1 natural gas to a cogeneration facility, those three
2 parties being Cascade, BP and Tenaska. The BP
3 contract, as I think illustrated by the prefiled
4 testimony received this morning, shows how the BP
5 contract arose out of contractual arrangements and
6 differences of interpretation of the Tenaska Cascade
7 agreement.

8 And that's why Tenaska, I believe, is an
9 essential party to this because the questions as to
10 the scope of the contract between Tenaska and Cascade
11 will have a direct bearing on part of the
12 justification for the BP contract. Tenaska may well,
13 as things go along, take a different point of view as
14 to the scope of that agreement, the interpretation of
15 that agreement, the background for the BP contract. I
16 can't say that will be the case today. They may take
17 the same point of view as BP does on that, but I don't
18 think that they can warrant that they will. So they
19 may well, as things develop, take a different point of
20 view, and for that reason I think they ought to be
21 entitled to their own separate participation in this
22 proceeding.

23 JUDGE HAENLE: All right. Do you have a
24 position, Mr. West? Anything to add?

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MR. WEST: Your Honor, at the risk of

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1 repeating, from Cascade's standpoint I think it would
2 make it easier, as far as protecting confidentiality
3 information, if Tenaska were a party to the protective
4 order. I may have said that before but I wanted to
5 make it clear that I think that it would be
6 appropriate for them to be a party from that
7 standpoint.

8 JUDGE HAENLE: Mr. Cedarbaum, anything to
9 add?

10 MR. CEDARBAUM: Just a few comments, your
11 Honor. First of all, I would stand by what I said
12 earlier this morning that I don't think that the
13 statement of interest by Tenaska satisfies the
14 intervention rule of this Commission. And
15 specifically with regard to whether or not Mr.
16 Stoltz's prefiled testimony should change that
17 opinion, in the opinion of the administrative law
18 judge or the Commission, I don't see how it does, and
19 in fact I think it lends more support to keeping
20 Tenaska out for two reasons. One is it's clear that
21 Mr. Stoltz has extensive knowledge and understanding
22 and factual background of the Tenaska contract and
23 whether or not that has led to the BP contract I think
24 he can certainly provide that factual background that

25 the Commission needs and that Tenaska is unnecessary

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1 to do that.

2 And secondly, I think again we need to
3 refocus on what this case is about. This case is not
4 about the Tonaska/Cascade contract. It's about the
5 Cascade/BP contract. And looking at Mr. Stoltz's
6 testimony, there are a number of pages discussing the
7 Tenaska contract. I guess I would have to question,
8 first of all, whether that's relevant to this
9 proceeding. And secondly, if it is, if all of this is
10 wound up into one big ball, then perhaps the better
11 way of dealing with this procedurally is to have the
12 party -- have Cascade withdraw the BP contract and
13 file an amendment to the Tenaska contract to include
14 BP and then we can deal with these global issues and
15 analyze them from that perspective. And so, again, it
16 seems to me like we're just opening up a can of worms
17 that's either not relevant to the proceeding or can be
18 dealt with in a more logical fashion.

19 JUDGE HAENLE: Anything to add to your
20 previous comment, Mr. Adams?

21 MR. ADAMS: Frankly, I think that as a
22 practical thing we've got basically the problem of
23 practically presenting the issues to consider in this
24 case versus the cumulateness of basically two and

25 three parties perhaps having the same viewpoint, and

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1 so I guess I would move to sort of a neutral position
2 on opposing or supporting the condition of this party.

3 JUDGE HAENLE: Any brief response, Mr.
4 Fell, or have you covered it all?

5 MR. FELL: I would like to respond to the
6 notion that we're introducing global issues. We're
7 introducing issues that are scoped and bound by the
8 cogeneration project at that site. These matters are
9 interrelated. It is not global, it is related to that
10 cogeneration, and it is important for the Commission
11 to understand that in cogeneration projects of this
12 sort many transactions are negotiated individually but
13 all related and that's what happened here.

14 JUDGE HAENLE: Anything more to come before
15 the Commission?

16 MR. CEDARBAUM: I think the Commission
17 needs to be aware that the contract between Cascade
18 and BP is for natural gas that will end up providing
19 -- satisfying thermal requirements beyond what BP is
20 already receiving from the cogeneration facility of
21 Tenaska. That cogeneration facility in its output has
22 no -- nothing to do with this contract. The contract
23 is for additional requirements to that. And natural
24 gas to be provided for those additional requirements,

25 not the cogeneration facility. And so all of this

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1 discussion about the integral nature of the co-gen
2 facility and this contract is not focused on the
3 issue.

4 JUDGE HAENLE: Anything else?

5 MR. FELL: What Mr. Cedarbaum describes is
6 very common to cogeneration projects, that there is
7 other gas usage that is in fact brought into the whole
8 package when bypass is investigated.

9 MR. ADAMS: Your Honor, could I just inject
10 one other issue that however it's decided, again,
11 appears to me reasonable that if the company is
12 allowed, if Tenaska is allowed intervention, that they
13 should also file on behalf at the same time as Cascade
14 and BP. Again, they're on the same side of the issue.

15 JUDGE HAENLE: That's thinking ahead, Mr.
16 Adams.

17 MR. ADAMS: I understand that.

18 JUDGE HAENLE: I appreciate you raising the
19 issue. That also seems to me appropriate. If the
20 Commission determines that you are properly a party I
21 believe you should be filing at the same time as BP
22 to keep this going and to provide for
23 cross-examination of all three of you at the same time
24 as the sponsoring-of-the-contract parties or or in

25 some manner the moving parties. Is that appropriate

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1 for --

2 MR. FELL: We would expect that. Yes. We
3 are promoting approval of the contract.

4 JUDGE HAENLE: Anything more to come before
5 the Commission? I will get this to them in the form
6 of an expedited transcript tomorrow. I hope for a
7 quick response on this. My pre-hearing conference
8 order may or may not include that response. It may be
9 issued separately. I don't have any idea. In any
10 case I will have the Commission immediately issue the
11 protective order as soon as it can be prepared.

12 Anything more? The hearing will be
13 adjourned and there will be a notice issued of the
14 next hearing.

15 (Hearing adjourned at 10:55 a.m.)

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