

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

CASCADIA WATER, LLC,

Respondent.

Docket UW-240151

**CASCADIA WATER, LLC'S
RESPONSE TO CUSTOMERS
PETITION FOR INTERVENTION**

- 1.* In accordance with RCW 34.05.443 and WAC 480-07-355(2), Cascadia Water, LLC (“Cascadia Water” or the “Company”), responds to the Petition to Intervene of Water Consumer Advocates of Washington (“Petition”). As explained more fully below, Cascadia Water does not oppose the Petition, provided the petitioner customers are agreeable to the Commission placing clear requirements on and guardrails around their participation. If the petitioner customers will not agree to requirements on and guardrails around their participation, then Cascadia Water opposes the Petition because the petitioner customers have no substantial interest not already represented, the Petition does not identify a public interest rationale for intervention, and intervention will be unnecessarily duplicative and could impair the orderly and prompt conduct of the proceeding.

I. BACKGROUND

2. On July 9, 2024, Stephen M. Todd, Vicki Colburn, Blaine Gilles, Dave Bennett, Kent Hanson, Rick Smith, and Judy Endejan, (collectively the “Customers”) filed a petition to intervene in the proceeding under WAC 480-07-340(1). The Customers assert they represent a number of Cascadia Water customers of the informally organized Water Consumer Advocates of Washington (“Water Consumer Advocates”).¹ The Customers refer to themselves as members of an “Executive Committee” and claim they therefore are “authorized representatives” of the informal group of Cascadia Water customers, although the structure and authority of the group remains unclear.² The Customers explain the informal group has twice morphed from advocating for Dungeness Estates customers, to Olympic Peninsula customers, to its current Water Consumer Advocates iteration which includes “[n]umerous Cascadia customers on Whidbey Island and elsewhere...”³
3. Neither the Customers nor the Water Consumer Advocates are a membership organization, a non-profit, a specialized interest group, or other organization that might bring unique knowledge or expertise to the underlying proceeding. Neither the Customers nor the Water Consumer Advocates appear to have any employees and they have not expressed any intent to hire experts for this proceeding. In addition, the attorney that had been representing the “Advocates of

¹ Petition at ¶ 4.

² Petition at ¶ 4.

³ Id.

Olympic Peninsula” claims to have withdrawn from formal representation,⁴ and two of the Customers who self-identified in the Petition as retired attorneys, Stephen M. Todd and Kent E. Hanson, filed a notice of appearance as “Representatives” on Sunday, August 18, 2024.

4. Exactly how the Customers intend to contribute to this proceeding beyond what would be available through public comment remains unclear. The Customers appear to seek intervention because they “will be financially impacted by any rate increase” as Cascadia Water customers.⁵ However, the Customers admit their intent is to, in part, challenge Cascadia Water’s overall “business plan” and the “assumption of economy of scale in water system consolidations.”⁶ Both of these items are general public policy considerations, not issues in this rate case. As discussed in more detail below, the general interests that the Customers have identified—prudence of the proposed increase in water rates for residential customers—are adequately protected by other parties to the case and fall squarely within the ambit of Public Counsel’s responsibilities to represent residential and small business customers.

II. ARGUMENT

5. The Commission may grant a petition to intervene if the petitioner “discloses a substantial interest in the subject matter of the proceeding or if the petitioner’s participation is in the public

⁴ Petition at ¶ 11; a notice of withdrawal does not appear to have been filed in this docket as required by WAC 480-07-345(2)(d).

⁵ Petition at ¶ 12.

⁶ Petition at ¶ 14.

interest.”⁷ The petitioner must also qualify under the law and the intervention must “not impair the orderly and prompt conduct of the proceedings.”⁸

6. The interests the Customers identify are already adequately represented and protected by other statutory parties to the case, and the Customers fail to explain why their participation is in the public interest. The Customers have instead identified a broad range of positions they intend to take, including issues not implicated in the rate case.⁹ Delving into these issues is beyond the scope of this proceeding and would distract from the rate issues currently pending before the Commission. While the Customers are not prohibited from expressing unrelated positions, they are best suited for public comment.¹⁰ Nonetheless, if the Customers are agreeable to the Commission placing clear requirements on and guardrails around their participation, Cascadia Water would not oppose their intervention.

A. Cascadia Water Does Not Oppose the Customers’ Petition to Intervene, Provided the Customers Are Agreeable to the Commission Placing Clear Requirements On and Guardrails Around the Customers’ Participation.

7. The Customers’ motives for intervening in this case are not clear. WAC 480-07-355(1)(c) requires any intervenor to clearly state its interests in the proceeding and whether it intends to

⁷ WAC 480-07-355(3).

⁸ RCW 35.05.443(1).

⁹ Petition at ¶ 14, including but not limited to, items (7), (11), and (13).

¹⁰ It is worth noting that in their former iteration as “Water Consumer Advocates of Olympic Peninsula,” the Customers submitted public comments in this proceeding on June 21, 2024, and a number of the individual Customers provided comments at the Commission’s Open Meeting on June 27, 2024.

broaden the issues in the case. The Petition fails to do so. The Customers have instead identified a broad range of positions they intend to take, including issues not presented in the rate case.¹¹

8. Furthermore, the Customers have not complied with the requirements for participation before the Commission. WAC 480-07-345 requires an authorized representative to be an “officer or employee of a party” seeking intervention. The Customers appear to be a part of an “executive committee” but the exact nature of the group for whom they are an “executive committee” is not known and their authority to act on behalf of the unknown members of the informal group remains unclear. In reality, the Customers are six individuals who appear to be seeking intervenor status and the right to act on behalf of an unknown number of unidentified Cascadia Water customers, the Water Consumer Advocates.¹² This does not comply with the requirements in the WAC and is likely to impair the Commission’s ability to conduct orderly and prompt proceedings.

9. The uncertainty of the organizational structure and status of Water Consumer Advocates, if any, the Customers’ role with Water Consumer Advocates, and lack of counsel could present problems with conducting an orderly proceeding. The Petition appears to request intervenor status for six individuals, none of whom are officers or otherwise have a duty to represent the interests of the informal Water Consumer Advocates group. This could present additional hurdles for the proceeding should a settlement be reached, discovery disputes arise, or any other

¹¹ Petition at ¶ 14.

¹² Petition at ¶ 4-11.

issue related to the Customers' participation in the proceeding, as individuals or ostensibly on behalf of Water Consumer Advocates.

10. Therefore, as a condition of the Commission granting the Petition, the Commission should require the following from the Customers:

- a. a clear statement identifying any formalities regarding the formation of Water Consumer Advocates;
- b. the identity of every customer or member of Water Consumer Advocates and evidence or other confirmation that each customer or member has authorized the Customers to act on their behalf in this proceeding;
- c. the identity of every member of the "executive committee" of Water Consumer Advocates and whether the Customers and the "executive committee" are one and the same;
- d. an explanation of how the "executive committee" of Water Consumer Advocates operates and reaches decisions; for example, if there is a settlement, whom from the "executive committee" (or Water Consumer Advocates) needs to authorize the Customers to join or oppose that settlement;
- e. a clear statement of the interests of Water Consumer Advocates in the issues presented in the rate case and confirmation that the Water Consumer Advocates, the Customers and the "executive committee" will not seek to broaden the issues in the case;
- f. an explanation of how the Customers intend to ensure the positions they take in this proceeding are authorized by the "executive committee" and Water Consumer Advocates;
- g. an explanation of how the Customers intend to comply with the Commission's confidentiality processes, and how the Customers or Water Consumer Advocates intend to be responsible should a violation occur; and
- h. identification of an individual or individuals who will be legally responsible for the actions of the Water Consumer Advocates' conduct in this hearing and its compliance with the Commission's rules, including confidentiality restrictions.

11. If the Commission does grant intervenor status to the Customers, the Commission should require compliance with WAC 480-07-345. Consistent with the above conditions, the Customers should

be clear as to the extent of their authority to act on behalf of Water Consumer Advocates, whether it is in their individual capacity or otherwise, and the Commission should limit any participation to the issues in the rate case.

B. If the Customers Will Not Agree to Place Requirements On and Guardrails Around Their Participation, Cascadia Water Opposes the Customers’ Petition for Intervention Since it Does Not Meet the Substantial Interest or Public Interest Standard

12. A petition to intervene may be granted if the petitioner “has a substantial interest in the subject matter of the hearing or if the petitioner's participation is in the public interest.”¹³ The Customers’ Petition fails to meet either of these standards and allowing the Customers to intervene will be duplicative and could improperly broaden the scope of issues to be resolved in this case.
13. WAC 480-07-355(1)(c) requires the petitioner to identify its interest in the proceeding, its position with respect to the matters in controversy, and whether it proposes to broaden the issues. The Customers’ Petition fails to meet this standard because it does not clearly or concisely articulate the actual Cascadia Water customers who are “members” of Water Consumer Advocates, nor does it articulate the scope of the Customers’ expected involvement. Instead, the Customers vaguely state that they will act as “the spokesperson for its members[.]”¹⁴ As noted before, Water Consumer Advocates includes “numerous Cascadia customers on Whidbey Island

¹³ WAC 480-07-355(3).

¹⁴ Petition at ¶ 14.

and elsewhere...”¹⁵ Acting as “the spokesperson” for a group of unidentified “members”, without articulating the scope or extent to which the Customers will participate, does not meet the basic requirements in WAC 480-07-355(1)(c).

14. On August 19, 2024, the Customers emailed a list of topics for the prehearing conference on August 21, 2024, including topics that will explicitly expand the issues before the Commission in a rate case.¹⁶ For example, the Customers request the Commission evaluate the underlying financials and “rates of return” for Cascadia’s parent company and it asks the Commission to weigh in on broad constitutional questions. The Customers also identify highly technical issues like water quality evaluation, system installation, and peaking capacity as potential topics but have not demonstrated any expertise or experience with these areas, nor have they identified the capacity to hire experts that may opine on these issues. The Commission should give particular scrutiny to interventions where a group or informal organization is unable or refuses to define or list its members, explain the expected extent of its intended involvement, or plausibly claim it will not expand the issues.

¹⁵ Petition at ¶ 4.

¹⁶ This topic list was not filed but was emailed to counsel for the parties and the Administrative Law Judge.

1. The Customers Cannot Demonstrate a Substantial Interest

15. Generally, a petitioner must demonstrate “a nexus between the stated purpose of its intervention and an interest protected by a Washington statute within the Commission's jurisdiction.”¹⁷ To demonstrate a petitioner’s interest is substantial, the petitioner must also show the interest is not adequately represented by another party, like Public Counsel.¹⁸ The Customers cannot demonstrate they have a substantial interest in the subject matter of the case that is not already represented, as the Commission requires.¹⁹ The Customers claim to be a group of residential customers speaking on behalf of other customers in Cascadia Water’s service territory, and that they have participated in public comment and open forums in the past, yet they fail to articulate how that participation or geographic connection equates to a substantial interest in this proceeding.²⁰ Claiming an interest based on service territory affiliation is insufficient to demonstrate a substantial interest, especially when those interests are already represented by Public Counsel.²¹ Residential and small business customers are not granted intervention in general rate cases because representing residential and small commercial ratepayers is the statutory responsibility of Public Counsel.²² A similar argument was proffered in Avista’s 2019

¹⁷ *In the Matter of the Application of Puget Sound Energy for an Ord. Authorizing the Sale of All of Puget Sound Energy’s Ints. in Colstrip Unit 4 & Certain of Puget Sound Energy’s Ints. in the Colstrip Transmission Sys.*, Docket UE-200115, Order 04 ¶14 (Sept. 10, 2014).

¹⁸ *See WUTC v. Avista Corporation*, Docket UE-190334 (consolidated), Order 04 at ¶ 15 (June 28, 2019) (holding the intervenor’s interests were “adequately represented by Public Counsel, whose sole responsibility is to represent residential and small commercial ratepayers before the Commission”).

¹⁹ *Id.*

²⁰ *See* Petition ¶¶ 4-11.

²¹ *See WUTC v. Avista Corporation*, Docket UE-190334 (consolidated), Order 04 at ¶ 15 (June 28, 2019) (holding “representation of the interests of those same customers [as Public Counsel] would be unnecessarily duplicative”).

²² *Id.*

rate case by an interest group that claimed its intervention was necessary to safeguard the interests of residential and small business customers in Avista’s service territory.²³ The Commission denied intervention in part because Public Counsel adequately represents, and is statutorily required to represent, the interests of residential and small business members.²⁴

16. The *Avista* case is an apt example of the arguments submitted by the Customers, where the primary basis for intervention is a geographical nexus as residential customers and opposition to the proposed rate increase, all of which the Commission rejected.²⁵ As Commission Staff pointed out in that case, “allowing intervention by any ratepayer who disagrees with a position taken on a particular issue in a past proceeding would impair the Commission’s ability to conduct orderly and prompt proceedings.”²⁶ Rather, the Commission generally looks for an interest that is not represented by statutory parties (e.g., Alliance of Western Energy Consumers or “AWEC”)²⁷ or a heightened level of expertise on relevant issues (e.g., Sierra Club) to meet the substantial or public interest standard. The Customers show none of these.
17. As the Commission noted in *Avista*, public comment processes “provide individual customers, or groups of customers, ample opportunity to share their concerns in general rate proceedings.”²⁸

²³ *Id.* at ¶¶ 13-14.

²⁴ *Id.* at ¶¶ 13-14; see also RCW 80.04.510.

²⁵ *Id.* at ¶ 13 (status as a residential customer is not a substantial interest); ¶ 14 (location is not germane when Public Counsel represents residential customers); ¶ 16 (lack of expert level understanding weighs against intervention).

²⁶ See *WUTC v. Avista Corporation*, Docket UE-190334 (consolidated), Order 04 at ¶ 7 (June 28, 2019).

²⁷ AWEC represents large industrial customers that are not represented by Public Counsel.

²⁸ *Id.* at ¶ 14; the Customers have availed themselves of the Commission’s public comment process prior to and during the June 27, 2024 Open meeting, and will likely have additional opportunities to do since the proceeding has now been set for hearing.

The Customers' alleged representation of "numerous other customers" would be unnecessarily duplicative, and the Customers do not proffer an argument or evidence that Public Counsel is unable to represent their interests in any meaningful manner. Accordingly, the Customers cannot demonstrate that they have a substantial interest in this proceeding.

2. The Customers Cannot Demonstrate Intervention is in the Public Interest

18. The Customers do not explain why their participation would benefit the public interest under WAC 480-07-355. The Petition generally makes the point that the Customers or their claimed members will be affected by the Commission's decisions in the proceeding.²⁹ But that is potentially true for all of Cascadia Water's customers and is insufficient to demonstrate how the Customers' intervention will uniquely benefit the public interest. As noted above, Public Counsel is tasked with representing the interests of residential ratepayers, so the Customers present no unique interest that is not already adequately represented.³⁰
19. The Commission has denied interventions for similar interest groups, where the primary nexus for their interests are based on a particularly salient issue to that group, its members are in the service area, and when the organization fails to articulate how Public Counsel is unable to represent those interests.³¹ Nor do the Customers identify any area of expertise they bring that

²⁹ See Petition at ¶ 4.

³⁰ *WUTC v. Avista Corporation*, Docket UE-190334 (consolidated), Order 04 at ¶ 15 (June 28, 2019).

³¹ *WUTC v. Avista Corporation*, Docket UE-190334 (consolidated), Order 04 at ¶¶ 13-15, 23 (June 28, 2019).

would benefit the public interest.³² If the Customers will not agree to requirements on and guardrails around their participation, Cascadia Water opposes, and the Commission should deny, the Customers' Petition to intervene.³³

20. Notably, denying the Petition will not preclude the Customers from participating in the rate case proceeding. The Customers will have the opportunity to participate in the proceeding through public comment (oral and written) and the Commission will be able to consider those comments as part of its decision making. The Commission has found the public comment processes provide "individual customers, or groups of customers, ample opportunity to share their concerns in general rate proceedings."³⁴

CONCLUSION

21. Cascadia Water respectfully requests the Commission either place clear requirements on and guardrails around the Customers' participation in this proceeding or deny the Customers' Petition in accordance with this Response.

³² See *WUTC v. Avista Corporation*, Docket UE-190334 (consolidated), Order 03 at FN 10 (May 30, 2019) (Noting the Commission has granted intervention to parties with a demonstrated area of expertise separate from Public Counsel like: "low-income advocates (e.g. The Energy Project), large industrial customers (e.g. AWEC and its predecessors, Industrial Consumers of Northwest Utilities and Northwest Industrial Gas Users), and environmental organizations (e.g. Sierra Club, NW Energy Coalition)."

³³ See generally *id.* at ¶ 16.

³⁴ *Id.* at ¶ 14.

RESPECTFULLY SUBMITTED this 19th day of August, 2024.

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