

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

)	
THE PUBLIC COUNSEL SECTION OF)	
THE OFFICE OF THE WASHINGTON)	DOCKET NO. U-030744
ATTORNEY GENERAL,)	
)	
Complainant,)	
)	ORDER NO. 03
v.)	
)	
CASCADE NATURAL GAS)	ORDER STAYING
CORPORATION, AND PACIFICORP)	PROCEEDINGS AND
D/B/A PACIFIC POWER & LIGHT)	SUSPENDING PROCEDURAL
COMPANY,)	SCHEDULE
)	
Respondents.)	
.....)	

MEMORANDUM

1 On August 6, 2002, the Yakama Nation passed an ordinance that required utilities providing service within the boundaries of the Yakima Indian Reservation to pay a fee equal to three percent of the utility’s gross operating revenue within the Reservation. Cascade Natural Gas Corporation (“Cascade”) and PacifiCorp filed tariff revisions with the Commission seeking rate recovery of the payments required under the ordinance. On the basis that the payments under the ordinance were most analogous to a local tax, the utilities sought recovery from ratepayers within the taxing jurisdiction. The Commission considered the tariff filing at public meetings on November 27, 2002, December 11, 2002, and January 8, 2003. The Commission heard and considered extensive written and oral comment and

argument from various interested persons who are some of the parties here and from Commission Staff.

2 The Commission exercised its discretion to take no action and allowed the tariff to take effect by operation of law.

3 On January 9, 2003, Elaine Willman and the Citizens Standup! Committee filed a Petition for Review in Yakima County Superior Court, naming the Commission, PacifiCorp and Cascade as Defendants. *Case No. 03-2-00086-7*. The Court denied Plaintiff's Motion for Partial Summary Judgment and PacifiCorp's and Cascade's cross-motions for summary judgment in a Memorandum Opinion dated June 5, 2003. In subsequent orders entered on July 28, 2003, and August 22, 2003, the Court dismissed Plaintiffs claims.

4 In the meantime, on May 22, 2003, the Public Counsel Section of the Office of the Attorney General ("Public Counsel") filed with the Commission a complaint against Cascade and PacifiCorp regarding the same subject matter then pending before the Court (i.e., the proper regulatory treatment of the charges imposed on the utilities by the Yakama Indian Nation). The Commission conducted a prehearing conference on August 11, 2003. After receiving the Court's second order (i.e., the August 22, 2003 Order), the Commission entered a procedural order (Order No. 1) on August 26, 2003, establishing a procedural schedule.

5 Under the procedural schedule, PacifiCorp, Cascade, and the City of Toppenish filed motions for summary determination on September 15, 2003. Public Counsel, the City of Toppenish, and Elaine Willman, et al. filed responses to PacifiCorp's and Cascade's respective motions on September 29, 2003. PacifiCorp and Cascade filed responses to the City of Toppenish's motion on September 29, 2003.

6 On September 16, 2003, Elaine Willman and the Citizens StandUp! Committee appealed the Yakima Superior Court's orders to the Court of Appeals of the State of Washington, Division III. Cascade cross-appealed in that Court on September 30, 2003. PacifiCorp cross-appealed, also in the Division III Court, on October 1, 2003.

7 There is a significant overlap and, in some cases, an identity of issues in the matters now pending before the Court of Appeals and in the proceedings pending before the Commission. Any decision by the Court of Appeals will inform any decisions that may be subsequently taken by the Commission. Accordingly, the Commission determines on its own motion that it should stay its proceedings and suspend the procedural schedule in this docket in the interests of judicial economy, and preservation and efficacious use of the Commission's and the parties' resources.

8 The Commission recognizes that final action by the Court of Appeals may cause a delay that will not permit the Commission to conclude this docket within the ten-month time frame provided under RCW 80.04.110(3). The Commission, however, finds good cause to extend the date for entry of its final order in this proceeding beyond the time fixed under RCW 80.04.110(3), if such an extension of time becomes necessary considering the pending appeals.

ORDER

9 THE COMMISSION ORDERS THAT the proceedings pending in this Docket No. U-030744 are stayed and the procedural schedule is suspended until further order establishing a new procedural schedule.

DATED at Olympia, Washington, and effective this 6th day of October 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner