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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

June 13, 2003

Via Overnight Courier

Carole J. Washburn
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

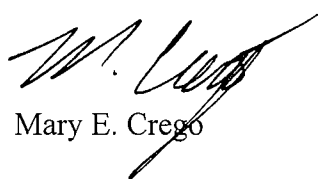
Re: *Docket No. U-30744*

Dear Ms. Washburn:

Enclosed for filing in the above proceeding is an original and 19 copies of Cascade's Answer to Public Counsel's Complaint

Thank you for your assistance in this matter. If you have any questions, please contact me.

Very truly yours,



Mary E. Crego

MEC/bkp
E-Mail: mec@hcmp.com
Enclosures

cc (w/Encl.) Kendall Fisher
Simon ffitc
Robert Cedarbaum

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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

The PUBLIC COUNSEL Section of the
Office of the Washington Attorney General,

Docket No. U-30744

Complainant,

**CASCADE'S ANSWER TO PUBLIC
COUNSEL'S COMPLAINT**

vs.

CASCADE NATURAL GAS
CORPORATION; PACIFICORP dba
PACIFIC POWER & LIGHT COMPANY,

Respondents.

Respondent Cascade answers Public Counsel's Complaint as follows:

1. Paragraph 1 of the Complaint contains an allegation regarding the legal basis of Public Counsel's filing. No response to this allegation is required.

I. INTRODUCTION

2. Cascade is without information or knowledge sufficient to form a reasonable belief as to the truth or falsity of the allegation contained in the first sentence of paragraph 2 and therefore denies the same. Cascade admits the second sentence of paragraph 2. In response to the third sentence of paragraph 2. Cascade admits that it filed a tariff revision and states that the tariff revision speaks for itself. Cascade is without information or knowledge sufficient to form a reasonable belief as to the truth or falsity of allegations directed at PacifiCorp and therefore denies the same. Cascade denies the fourth sentence of paragraph 2. Cascade admits the tariff revision appears as a surcharge on ratepayer bills, and denies the remainder of the fifth sentence of paragraph 2. Cascade admits the tax is being collected

1 solely from utility customers residing within the Yakama Reservation, some of whom also
2 pay other municipal utility taxes. Cascade admits that it has accounted for charges recovered
3 from ratepayers related to the tariff revision in a liability account pending its ongoing
4 negotiations with the Nation. Cascade is without information or knowledge sufficient to form
5 a reasonable belief as to the truth or falsity of the allegation contained in sentence seven of
6 paragraph 2 and therefore denies the same. Except as expressly admitted herein, Cascade
7 denies the remaining allegations in paragraph 2.

8 3. Cascade is without information or knowledge sufficient to form a reasonable
9 belief as to the truth or falsity of allegations directed at PacifiCorp and the Yakama Nation
10 and therefore denies the same. Cascade admits it is continuing to negotiate with the Nation
11 regarding a franchise agreement but denies the remaining allegations of paragraph 3.

12 4. Paragraph 4 states a legal conclusion to which no response is required. In the
13 event a response is required, Cascade denies the allegations in paragraph 4.

14 5. Cascade is without information or knowledge sufficient to form a reasonable
15 belief as to the truth or falsity of Public Counsel's allegations regarding its own reasons for
16 filing the complaint, and therefore denies those allegations. Cascade admits that the
17 Commission did not issue a final order with findings of fact and conclusions of law, but
18 denies the remaining allegations in the second sentence of paragraph 5.

19 6. Paragraph 6, Cascade admits that Public Counsel requested that the
20 Commission establish a collaborative process. The Commission's order on that subject
21 speaks for itself.

22 **II. THE PARTIES**

23 7. Cascade admits the allegations in paragraph 7.

24 8. Cascade admits the allegations in paragraph 8.

25 9. Cascade is without information or knowledge sufficient to form a reasonable
26 belief as to the truth or falsity of the allegations in paragraph 9 and therefore denies the same.
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III. JURISDICTION

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2 10. Paragraph 10 contains a legal conclusion regarding the jurisdiction of the
3 Commission to which no response is required.

IV. STATEMENT OF FACTS

4
5 11. Paragraph 11 does not contain factual allegations directed at Cascade and
6 therefore no response is required.

7 12. Cascade is without information or knowledge sufficient to form a reasonable
8 belief as to the truth or falsity of the allegations directed at PacifiCorp and other regulated
9 utilities and therefore denies the same. Cascade admits that it provides utility service within
10 the external boundaries of the Yakama Nation to both members and nonmembers residing on
11 both fee and non-fee land.

12 13. Cascade is without information or knowledge sufficient to form a reasonable
13 belief as to the truth or falsity of allegations against PacifiCorp and therefore denies the same.
14 Cascade admits, based on information and belief, that the Yakama Nation adopted a franchise
15 ordinance on August 6, 2002. The Franchise Ordinance speaks for itself. Unless specifically
16 admitted, Cascade denies the remaining allegations in paragraph 13.

17 14. Cascade admits that it filed a tariff revision before entering a franchise
18 agreement with the Nation. Cascade's tariff revision speaks for itself. Cascade admits the
19 allegations contained in the second and third sentence of paragraph 14. Cascade denies the
20 allegations contained in the fourth sentence of paragraph 14.

21 15. Cascade is without information or knowledge sufficient to form a reasonable
22 belief as to the truth or falsity of the allegations against PacifiCorp and therefore denies the
23 same. Cascade admits the first sentence of paragraph 15. Cascade admits that it has signed a
24 proposed franchise agreement, submitted it to the Nation, and the Nation has not approved the
25 agreement. Cascade denies the remaining allegations in paragraph 15.

26 16. Paragraph 16 contains legal conclusions to which no response is required. To
27 the extent a response is required, Cascade denies these allegations.

1 17. Cascade is without information or knowledge sufficient to form a reasonable
2 belief as to the truth or falsity of the allegations against PacifiCorp and therefore denies the
3 same. Cascade admits that it has not sought a judicial determination of the validity of the
4 Yakama Nation charge or otherwise challenged the validity of the franchise fee, but denies
5 that it has any legal obligation to do so.

6 18. Cascade admits the allegations contained in paragraph 18.

7 19. Cascade admits the allegations contained in paragraph 19.

8 **V. FIRST CLAIM AGAINST CASCADE**

9 Cascade realleges its responses set forth in previous paragraphs.

10 20. Cascade admits that no franchise agreement has been in place, but denies that
11 such an agreement is necessary as a basis for the charge. To the extent not explicitly
12 admitted, Cascade denies the remaining allegations of paragraph 20.

13 21. Cascade admits that it has not remitted payments to the Nation pending its
14 ongoing negotiations with the Nation. To the extent paragraph 21 alleges that this action is
15 improper, Cascade denies that allegation

16 22. Cascade denies the allegations contained in paragraph 22.

17 **VI. SECOND CLAIM AGAINST CASCADE**

18 Cascade realleges its responses set forth in the previous paragraphs.

19 23. Cascade admits that it has not initiated legal action contesting the validity of
20 the franchise fee, but denies it had any obligation to do so. Cascade denies the remaining
21 allegations contained in paragraph 23.

22 24. Cascade denies the allegations in paragraph 24.

23 25. Cascade denies the allegations in paragraph 25.

24 **VII. THIRD CLAIM AGAINST CASCADE**

25 Cascade realleges its responses set forth in previous paragraphs.
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1 26. The first sentence of paragraph 26 contains a legal conclusion to which no
2 response is required. To the extent a response is required, Cascade denies that allegation.
3 Cascade denies the allegation contained in the first sentence of paragraph 26. Cascade denies
4 the allegations in the second sentence of paragraph 26.

5 27. Paragraph 27 contains a legal conclusion to which no response is required. To
6 the extent a response is required, Cascade denies the allegations in paragraph 27.

7 28. Paragraph 28 contains a legal conclusion to which no response is required. To
8 the extent a response is required, Cascade denies the allegations in paragraph 28.

9 29. Cascade denies the allegations contained in paragraph 29.

10 Paragraphs 30 through 39 contain allegations directed solely at PacifiCorp. Cascade
11 does not have information or knowledge sufficient to form a reasonable belief as to the truth
12 or falsity of these allegations directed at PacifiCorp and therefore denies the same.

13 **AFFIRMATIVE DEFENSES**

14 BY WAY OF FURTHER ANSWER and for its affirmative defenses, Cascade alleges the
15 following affirmative defenses:

- 16 1. Failure to state a claim upon which relief can be granted,
- 17 2. Res judicata,
- 18 3. Collateral estoppel,
- 19 4. Failure to join necessary parties, and
- 20 5. Federal preemption.

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1 **RELIEF REQUESTED**

2 WHEREFORE, having fully answered the Complaint, Cascade requests that the
3 Commission issue an order:

- 4 1. Dismissing Public Counsel's Complaint.
- 5 2. Adopting other such relief as the Commission may deem necessary.

6 DATED this 13th day of June, 2003.

7 HILLIS CLARK MARTIN &
8 PETERSON, P.S.

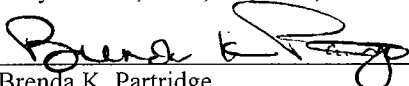
9
10 By 
11 Louis D. Peterson, WSBA #5776
12 Mary E. Crego, WSBA #31593
13 John L. West, WSBA #2318
14 Attorneys for Respondent
15 Cascade Natural Gas Corporation

16 **CERTIFICATE OF SERVICE**

17 The undersigned certifies that on this day she caused a copy
18 of this document to be hand delivered to Simon ffitich and
19 Kendall Fisher and sent by facsimile and overnight courier to
20 Robert Cedarbaum.

21 I certify under penalty of perjury under the laws of the state
22 of Washington and the United States that the foregoing is true
23 and correct.

24 DATED this 13th day of June, 2003, at Seattle, Washington.

25 
26 Brenda K. Partridge

27 #247492 16967-021 5@ys01!.doc 6/13/03