

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

THE PUBLIC COUNSEL SECTION OF)	DOCKET NO. U-030744
THE OFFICE OF THE WASHINGTON)	
ATTORNEY GENERAL,)	
)	ORDER NO. 04
Complainant,)	
)	
v.)	GRANTING COMPLAINANT'S
)	MOTION TO WITHDRAW
CASCADE NATURAL GAS)	COMPLAINT AND DISMISS
CORPORATION, AND PACIFICORP)	PROCEEDING
D/B/A PACIFIC POWER & LIGHT)	
COMPANY,)	
)	
Respondents.)	
.....		

MEMORANDUM

1

Background: 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 tariffs
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 the complaint at
issue here. Citing related proceedings then pending before the Court of Appeals
of the State of Washington, Division III, the Commission entered its Order
Staying Proceedings and Suspending Procedural Schedule in this Docket on
October 6, 2003. The Court of Appeals upheld the Superior Court's decision,
which upheld the Commission.

5 On July 26, 2004, Elaine Willman and the Citizens StandUp! Committee filed a
Petition for Review with the state Supreme Court. The Commission's stay order
remained effective. On August 11, 2005, the Supreme Court entered its
unanimous decision expressly affirming the trial court and the Court of Appeals.

6 **Motion to Withdraw Complaint and for Order of Dismissal:** On October 24,
2005, the Commission gave notice of a prehearing conference, the purpose of
which was to determine whether any issues remained for resolution in this
proceeding. On October 27, 2005, Public Counsel filed its Motion to Withdraw
Complaint and For Order of Dismissal. Public Counsel states that:

In light of the decision of the Washington State Supreme Court on August 11, 2005 in *Elaine Willman et al. v. Washington Utilities and Transportation Commission, Cascade Natural Gas Corporation, and Pacificorp*, Supreme Court No. 75821-2, on overlapping issues, the dismissal is in the public interest.

No answers to Public Counsel's motion were filed.

7 **Commission Determination:** The Commission finds and concludes that it is in the public interest to grant Public Counsel's motion, allowing the Complainant to withdraw its Complaint. It follows that this proceeding should be dismissed and this docket closed.

ORDER

8 THE COMMISSION ORDERS That Public Counsel's Motion to Withdraw Complaint and For Order of Dismissal is granted.

DATED at Olympia, Washington, and effective this ___ day of November 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PHILIP B. JONES, Commissioner