

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of)	DOCKET No. UG-001119
)	
CASCADE NATURAL GAS CORPORATION)	BRIEF OF AVISTA CORPORATION ON
)	THE ISSUE OF WHETHER CASCADE
For a Certificate of Public Convenience)	NATURAL GAS MUST OBTAIN A
and Necessity to Operate a Gas Plant for)	CERTIFICATE TO OFFER RATE
Hire in the General area or areas of)	SCHEDULE 700 SERVICES
)	
WARDEN, GRANT COUNTY)	
(DESIGN & MAINTENANCE SERVICES)	
ONLY))	

I. INTRODUCTION

In this docket, Cascade Natural Gas Corporation (Cascade) has filed an application for a Certificate of Public Convenience and Necessity (Certificate) to operate gas plant for hire in Grant County. Cascade stipulated that its sole purpose in seeking this Certificate is to enable it to provide pipeline services under its Rate Schedule 700 (enclosed as Attachment 1). At the pre-hearing conference on October 26, 2000, Cascade took the position that a Certificate from the Washington Utilities and Transportation Commission (“WUTC” or “Commission”) is not required in order to provide the services listed in its application. The purpose of this brief is to address the issue of whether Cascade must obtain a Certificate in order to provide the pipeline services listed in its Rate Schedule 700. Avista Corporation (Avista) believes that a Certificate is required and that Cascade may not provide these services without obtaining a Certificate.

II. FACTUAL HISTORY

On July 17, 2000, Cascade filed, pursuant to RCW 80.28.190, an Application for a Certificate of Public Convenience and Necessity to Operate a Gas Plant for Hire in Grant County (Application). In its Application, Cascade seeks to serve an eight square-mile area encompassing the customer-owned gas line of Basin Frozen Foods which is adjacent to the City of Warden, Grant County (Proposed Service Area). The bulk of Cascade's Proposed Service Area is presently included in Avista's natural gas service area pursuant to a Certificate of Public Convenience and Necessity issued April 7, 1960. (*In the Matter of the Application of Columbia Gas Company for a Certificate of Public Convenience and Necessity to Operate a Gas Plant for Hire in the general area or areas of The Incorporated Areas of the Town of Warden and adjacent area in Grant County, Washington, Cause No. U-9197, Order Granting Application and Amending Present Certificate (April 7, 1960)*).¹ Avista currently serves a number of customers within the Proposed Service Area. Additionally, Avista has provided gas sales service to Basin Frozen Foods under a filed tariff since December 1999 and will continue to do so until Basin Frozen Food's pipeline is completed.²

Basin Frozen Foods, a food processing plant located in Avista's service area, is in the process of constructing a gas pipeline that will interconnect its facility with the Williams Gas Pipeline. In 1999, Avista attempted to negotiate a long-term gas distribution agreement with Basin Frozen Foods, but were unable to reach agreement. Thereafter, Basin Frozen Foods elected to construct its own gas distribution line to interconnect with the Williams Pipeline. Cascade has overseen the construction of the Basin Frozen Foods pipeline and has

¹ This Certificate was later transferred to Avista when Avista's predecessor-in-interest, The Washington Water Power Company, acquired Columbia Gas Company's facilities in the Warden area.

² Construction of the pipeline was scheduled to be completed in October 2000. Avista is not aware of the status of the construction of the pipeline as of the date of this filing.

offered to maintain and operate the line once construction is complete. Cascade has stipulated that the services it will offer in the Proposed Service Area will be limited to those described in Rate Schedule 700. (*In the Matter of the Application of Cascade Natural Gas Corporation for a Certificate of Public Convenience and Necessity to Operate a Gas Plant for Hire in the General Area of Grant County, Washington*, Docket No. UG-001119, Prehearing Conference Order, ¶ 4 (Nov. 8, 2000)).

III. LEGAL ANALYSIS and DISCUSSION

As an initial matter, whether the services Cascade has proposed to offer in Grant County fall within the jurisdiction of the Commission is a question to be determined by the Commission.

RCW 80.04.015. This statute provides in relevant part:

Whether or not any person or corporation is conducting business subject to regulation under this title, or has performed or is performing any act requiring registration or approval of the commission without securing such registration or approval, shall be a question of fact to be determined by the commission.

RCW 80.04.015. Accordingly, the Commission must examine the activities of Cascade within the context of the language, policy and intent of the laws and regulations governing regulated public utilities in determining whether Cascade is required to obtain a Certificate prior to providing Rate Schedule 700 services.

A. The Language of RCW 80.28.190 Expressly Requires Cascade to Obtain a Certificate

Cascade may not offer services under Rate Schedule 700 without a Certificate of Public Convenience and Necessity for the areas to be served. *See* RCW 80.28.190. The Commission has jurisdiction to grant or amend Certificates for natural gas service. *Id.* This statute provides in relevant part:

No gas company³ shall, after January 1, 1956, operate in this state any gas plant for hire without first having obtained from the commission under the provisions of this chapter a certificate declaring that public convenience and necessity requires or will require such operation and setting forth the area or areas within which service is to be rendered . . .

RCW 80.28.190 (emphasis added). “Gas plant” is defined to include “all real estate, fixtures and personal property, owned, leased, controlled, used or to be used for or in connection with the transmission, distribution, sale or furnishing of natural gas . . .” RCW 80.04.010 (emphasis added). Therefore, based on the language of these statutes, any gas company that operates a pipeline used to furnish natural gas can only do so after obtaining a Certificate.

Cascade is a “gas company” subject to the general jurisdiction of the Commission. The pipeline services that Cascade has proposed to offer are broad and include all services necessary to operate the pipeline. The fact that Cascade is proposing to operate the pipeline is made clear by Cascade’s Rate Schedule 700⁴ that includes, among other services, “[o]peration and maintenance of customer-owned piping system.” (Attachment 1, Rate Schedule 700).

Accordingly, the services listed in Cascade’s tariff amount “operat[ing] . . . gas plant for hire” and falls within the Commission’s jurisdiction under RCW 80.28.190.

³ RCW 80.04.010 defines “gas company” to include “every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receiver appointed by any court whatsoever, and every city or town, owning, controlling, operating or managing any gas plant within this state.”

⁴ Cascade lists in its Application, Exhibit A, the following services it proposes to offer: (1) pipeline and facility design; (2) equipment and material specification; (3) construction inspection; (4) employee or operator qualification; (5) facility maintenance and repair; (6) leak detection and repair; (7) cathodic protection design, installation, inspection and maintenance; (8) line locating; (9) other activities related to operation of the facility as requested by customer. We note however, that the services listed in Exhibit A differ slightly from the services listed in Rate Schedule 700 (*see* Attachment 1 hereto). Avista assumes that Cascade intends to offer all the services listed in its Rate Schedule 700.

B. The Commission Has Authority to Require Cascade to Obtain a Certificate Under its General Powers to Regulate Public Utilities

Even assuming the Commission determined it did not have authority under the express language of RCW 80.28.190 to order Cascade to obtain a Certificate, the Commission has broad powers to regulate public utilities in the public interest. RCW 80.01.040; *see also U.S. West Comm., Inc. v. Washington Util. & Transp. Comm'n*, 134 Wn.2d 74, 96, 949 P.2d 1337 (1997) (noting that “[t]he Commission has broad authority to regulate the practices of public utilities”); *Tanner Elec. Coop. v. Puget Sound Power & Light*, 128 Wn.2d 656, 666, 911 P.2d 1301 (1996) (noting that “RCW 80.01.040 grants the WUTC broad authority to regulate the practices of public utilities”). RCW 80.01.040 provides in relevant part:

The utilities and transportation commission shall:

....

(3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities; including, but not limited to, electrical companies, gas companies, irrigation companies, telecommunications companies, and water companies.

RCW 80.01.040 (emphasis added). The broad language of RCW 80.01.040 grants the Commission jurisdiction over “utility service” and “related activities.” Moreover, “[t]he term ‘service’ is used in this title in its broadest and most inclusive sense.” RCW 80.04.010; *see also Cole v. Washington Util. & Transp. Comm'n*, 79 Wn.2d 302, 485 P.2d 71 (1971) (holding that the leasing of gas appliances by a regulated utility is a jurisdictional activity of the utility subject to regulation by the Commission).

Cascade has suggested that the services it proposes to offer do not fall within the terms of RCW 80.28.190 and thus no Certificate is necessary. However, such a narrow reading of the statute is inconsistent with language, intent and policy of the laws regulating public utilities. *See, e.g., State of Washington ex rel. Pub. Util. Dist. No. 1 of Okanogan County v. Department of*

Pub. Serv., 21 Wn.2d 201, 208-209, 150 P.2d 709 (1944) (noting that the Commission may exercise those powers expressly granted “or have, by implication, been conferred upon it as necessarily incident to the exercise of those powers expressly granted.” (Citations omitted)). Moreover, “[a]ll of the provisions of the public utilities statutes must be construed together to accomplish the purpose of assuring the public of adequate service at fair and reasonable rates. Statutes on the same subject matter must be read together to give each effect and to harmonize each with the other.” *U.S. West Communications, Inc. v. Washington Util. and Transp. Comm’n*, 134 Wn.2d 74, 118, 949 P.2d 1337 (1997). In order to give effect to the intent of the public utilities statutes, the services proposed by Cascade must come within the jurisdiction of the Commission to require a Certificate.

Similarly, other jurisdictions have broadly construed their public utility statutes to effectuate the purpose of the statutes. *See, e.g., Re Tri-State Generation and Transmission Ass’n, Inc.*, 104 PUR 4th 221 (Colo. Pub. Util. Comm’n, 1989). In *Tri-State Generation*, a regulated utility sought an order from the Colorado Public Utilities Commission (CPUC) that a certificate of public convenience and necessity was not required to acquire a seven percent capacity entitlement in a electric transmission line. *Id.* at 222. The applicable Colorado statute requires a regulated utility to obtain a certificate of public convenience and necessity prior to the “construction of a new facility, plant, or system, or of any extension of its facility, plant, or system.” Colo. Rev. Stat. § 40-5-101(1). The regulated utility argued that the statute was not applicable since it was not constructing the facility nor would it be the operator of the facility once it was constructed. 104 PUR 4th at 223. The CPUC held that a certificate was required. *Id.* The CPUC noted that the “overly literalistic interpretation of [the utility] would defeat the obvious purpose of the statute which is to prevent duplication of facilities and to require regulatory approval before a public utility undertakes some major project.” *Id.* at 223. The CPUC further noted that “we believe such a declaratory ruling might possibly open the door to

inter-corporate arrangements for the purpose of evading the obvious salutary intent of the statute.” *Id.* at 223. As discussed below, similar concerns are raised in this docket if Cascade is not required to obtain a Certificate prior to offering Rate Schedule 700 services.

The pipeline services that Cascade has proposed to offer are broad and include all services needed to operate gas plant except the actual sale of natural gas. These services are clearly “services” within the Commission’s jurisdiction under RCW 80.01.040. Furthermore, the intent and policy of the public service laws would be undermined if such services could be performed by a regulated utility without first obtaining a Certificate. One of the main purposes of RCW 80.28.190 is to prevent the construction of costly and unnecessary duplicative facilities without a determination that such facilities are in the public interest. It would certainly be an anomalous situation if a regulated gas company could essentially build a duplicate pipeline under the guise of providing unregulated “services.” Allowing such broad services to be performed without Commission oversight would effectively circumvent the purpose of statute requiring Certificates in the first place. Thus, the Commission must assert jurisdiction over the services proposed by Cascade in Grant County.

While Cascade may argue that it is only offering services that other non-regulated pipeline companies may offer without a Certificate issued by the Commission, there is a significant difference between Cascade and these other service providers – Cascade is in the business of supplying natural gas while other pipeline service companies are not.⁵ Because the essence of Cascade’s business is to sell and provide natural gas service there is an inherent difference between Cascade and other non-regulated entities as well as an inherent interest in selling natural gas to the new “customer.” If Cascade is allowed to provide these services without a public interest review, it would then be in a position to encourage the construction of pipelines in the hopes of bypassing the existing providers. Such a result is at odds with the underlying purpose of the public utility laws.

⁵ BRIEF OF AVISTA takes no position on whether the Commission may assert jurisdiction over the services provided by unregulated pipeline service companies in offering pipeline services.

IV. CONCLUSION

Cascade is a regulated public utility and the Commission has jurisdiction over the Rate Schedule 700 services that Cascade has proposed to offer in Grant County. The express language of RCW 80.28.190 requires that Cascade obtain a Certificate prior to performing services under Rate Schedule 700. Additionally, the underlying purposes of the public utility laws is undermined if Cascade is not required to obtain a Certificate.

For these reasons, Avista respectfully requests that the Commission order Cascade to request a Certificate of Public Convenience and Necessity before it offers to provide services in Avista's certificated area. Further, if the Commission determines that a Certificate is needed, further hearing is needed to determine the appropriateness of Cascade receiving such a Certificate.

DATED this _____ day of November, 2000.

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By: _____
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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that, pursuant to WAC 480-09-120, I have caused this day to be served the original plus nineteen (14) copies, by FEDEX, of the foregoing **BRIEF OF AVISTA CORPORATION ON THE ISSUE OF WHETHER CASCADE NATURAL GAS MUST OBTAIN A CERTIFICATE TO OFFER RATE SCHEDULE 700 SERVICES** on Carole Washburn, Executive Secretary for the Washington Utilities & Transportation Commission, 1300 S. Evergreen Park Drive S.W., Olympia, WA 98504, for filing and have served a copy by first class mail, postage duly prepaid thereon, upon each person designated on the following service list.

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