

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of)	
)	
CASCADE NATURAL GAS)	DOCKET NO. UG-001119
CORPORATION)	
)	
For a Certificate of Public Convenience)	BRIEF OF COMMISSION STAFF
And Necessity To Operate Gas Plant)	IN SUPPORT OF NEED FOR
For Hire in the General Area of Grant)	APPLICATION
County)	
.....))	

On July 17, 2000, Cascade Natural Gas Corporation (Cascade) filed an application to amend its existing Certificate of Public Convenience and Necessity to include the area of Warden, Grant County. Cascade states, however, that the services it proposes to offer are outside the jurisdiction of the Commission and, therefore, no application is actually required.

Staff disagrees with Cascade on this threshold issue. While Cascade will not own any facilities in the area to be served, it will operate and maintain gas plant for hire in that territory. All applicable statutes and case law, therefore, require Cascade to obtain certificate authority from the Commission before Cascade offers those services as proposed.

I. STATEMENT OF FACTS

The facts relevant to this jurisdictional dispute are straightforward and undisputed. First, the area Cascade proposes to serve encompasses eight square miles of Grant County adjacent to the City of Warden. A map identifying the proposed service area and an accompanying legal description are included in Cascade’s application. They are included with this brief as Attachment A.

Second, Cascade will not own gas plant in the proposed service area. Instead, it intends to offer a host of utility operation and maintenance services on customer-owned piping systems. These services are listed in Cascade's Schedule 700, which is a tariff on file currently with the Commission and in effect throughout Cascade's existing certificated service area. A copy of Schedule 700 is included with this brief as Attachment B. It shows that the existing services to be extended by Cascade to Grant County include the following:

- Design of piping systems
- Construction of piping systems
- Operation and maintenance of customer-owned piping systems
- Design of cathodic protection systems
- Installation of cathodic piping systems
- Operation and maintenance of cathodic protection systems
- Performance of leak surveys
- Repair of leaks
- Location of services
- Odorization testing
- Preparation of required reports to the Commission and other appropriate agencies

The rates and charges to be assessed by Cascade in Grant County for these operation and maintenance services are also included in Schedule 700. Those rates and charges are expressly made subject to Cascade's tariff on General Rules and Regulations, also as approved already by the Commission.

Finally, there are no restrictions on the proposed services except for the limitation to Schedule 700 services. Any customer in the identified eight square miles of Grant County can be served, as long as the customer owns the piping system, whether that piping system is located on public or private property. In fact, Cascade intends to provide these services statewide, including in the certificated service territories of all other local distribution companies, even if that plan requires an amendment to its application in this docket should the Commission conclude that certificate authority is necessary. (Tr. 8: 8-15.)

II. LEGAL ARGUMENT IN SUPPORT OF COMMISSION JURISDICTION

The issue of Commission jurisdiction in this case is primarily one of statutory construction. The goal, therefore, is to ascertain and give effect to the intent of the Legislature as embodied in the relevant statutes. Ravenscroft v. Washington Water Power, 136 Wn.2d 911, 920, 969 P.2d 75 (1998). Legislative intent must be determined by evaluating and harmonizing each such statute as a whole, as well as with other statutes pertaining to the same subject matter. State v. Besio, 80 Wn. App. 426, 430, 907 P.2d 1220 (1995). This exercise demonstrates that the Commission has jurisdiction over the operation and maintenance services proposed by Cascade. Therefore, certificate authority is necessary prior to those services being rendered.

First, the Commission's general grant of jurisdiction is stated broadly in RCW 80.01.040(3):

The utilities and transportation commission shall . . . 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, . . . gas companies . . ." (Emphasis added.)

There can be no dispute that the operation and maintenance services Cascade proposes to sell to the public in Grant County fall within the Commission's jurisdiction under this statute. Indeed, the term "service," as used throughout title 80 RCW, is to be given its "broadest and most inclusive" meaning. RCW 80.04.010.

It would also be the ultimate irony to conclude that the Commission does not regulate Cascade's provision of operation and maintenance services in a new territory, when the Commission now regulates those same services under tariff throughout Cascade's existing certificated territory. Our conclusion that Cascade must first amend its Certificate is clearly

consistent with the statutory mandate, and current application of that mandate, that the Commission oversee “practices,” “any utility service,” and “related activities.”¹

Second, there is no doubt that Cascade acts as a gas company, subject to Commission regulation, in the provision of services listed in Schedule 700. Under RCW 80.04.010, a “gas company” is defined to include: “every corporation . . . owning, controlling, operating or managing any gas plant within this state.” (Emphasis added.) The same statute defines “gas plant” to include: “[A]ll 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 . . .” (Emphasis added.)

Thus, Cascade does not escape Commission jurisdiction because the offered services would be provided on a piping system the customer, rather than Cascade, owns. Nor does Cascade escape Commission jurisdiction because the customer-owned piping system may not include transmission or distribution facilities, or because Cascade does not sell natural gas to any customer.² It is enough that Cascade proposes to operate and maintain the customer’s system, and that the piping system (again, regardless of ownership) is used in connection with the provision of natural gas, as is clearly the case here.

Third, the requirement for any gas company to obtain from the Commission a certificate of public convenience and necessity before service is rendered is contained in RCW 80.28.190:

No gas company 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

¹This application of the term “service” is consistent with other areas of Commission jurisdiction. For example, statutes concerning rates and charges all apply broadly to any service rendered or to be rendered, regardless of plant ownership. RCW 80.28.060. RCW 80.28.080. RCW 80.28.090. RCW 80.28.100.

²Customer-owned piping systems may involve bypass systems that connect the customer directly to an interstate pipeline. Therefore, it may well be within the scope of Cascade’s proposal that this customer-owned “gas plant” is also used in connection with the transmission or distribution of natural gas within the meaning of RCW 80.04.010.

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 . . . The commission shall have power, after hearing, when the applicant requests a certificate to render service in an area already served by a certificate holder under this chapter only when the existing gas company or companies servicing such area will not provide the same to the satisfaction of the commission . . . (Emphasis added.)

This statute, consistent with others cited earlier, does not require ownership of any gas plant by the gas company. Nor does it require the gas company to sell or transport natural gas. The statute only requires the gas company to “operate” “any gas plant for hire” in order to “render service,” where “service,” under RCW 80.04.010, is to be given its broadest and most inclusive meaning. All of the jurisdictional requirements of RCW 80.28.190 are, therefore, satisfied by Cascade’s proposal.

Finally, cases of our State Supreme Court have interpreted these statutes to require the business of a company to be dedicated to a public use in order for Commission jurisdiction to attach. The test was established in Inland Empire Rural Electrification, Inc. v. Department of Public Service, 199 Wash. 527, 537, 92 P.2d 258 (1939), as follows:

A corporation becomes a public service corporation, subject to regulation by the department of public service, only when, and to the extent that, its business is dedicated or devoted to a public use. The test to be applied is whether or not the corporation holds itself out, expressly or impliedly, to supply its service or product for use either by the public as a class or by that portion of it that can be served by the utility; or whether, on the contrary, it merely offers to serve only particular individuals of its own selection.

See also West Valley Land v. Nob Hill Water Co., 107 Wn.2d 359, 365, 729 P.2d 42 (1986).

Cascade may argue that its proposal does not meet this “public use” test because it seeks to provide service under Schedule 700 only to Basin Frozen Foods, which is a food processing plant near Warden that is in the process of constructing its own gas pipeline to interconnect its

plant with Williams Pipeline.³ The service described in Cascade's application, however, is not so restricted. Any customer can be served by Cascade, as long as the customer owns the piping system and that system is located anywhere, whether on public or private property, in the eight square miles proposed to be served by Cascade. The fact that this eight square mile area is geographically separate from the territory described in Cascade's existing certificate is, therefore, irrelevant.

Moreover, Cascade intends to offer Schedule 700 services statewide, i.e., everywhere outside its existing certificated area including in the certificated service areas of all other local distribution companies. (Tr. 8: 8-15.) Clearly, this constitutes the business of providing utility services to the public for compensation. Therefore, even if the Commission concludes that Cascade does not need new certificate authority to provide operation and maintenance services solely in Grant County, the Commission should still conclude that certificate authority is required if Cascade wishes to provide those services statewide. Cascade would, then, have the responsibility to amend its application accordingly so that all other interested persons, including Puget Sound Energy and Northwest Natural Gas Company, can have the opportunity to participate in that expanded proceeding.

III. CONCLUSION

RCW 80.28.190 was enacted in 1955 and has never diverged from the requirement that the operation of gas plant for hire in this state can occur only if the Commission first issues a certificate of public convenience and necessity. (Laws of 1955, ch. 316, § 4; Laws of 1961,

³Cascade may also argue that there are other companies providing services similar to Schedule 700, but without a certificate of public convenience and necessity from the Commission. There is, however, no evidence of any such occurrences.

More important, if such other companies do exist, the remedy is not to find Cascade's current application unnecessary. Rather, the remedy is to institute a classification proceeding under RCW 80.04.015 to determine whether these other companies are, in fact, conducting business subject to regulation by the Commission for which certificate authority is necessary.

ch. 14, § 80.28.190; Laws of 1971, ch. 81, § 141.) This reflects a long and consistent history of legislatively-mandated Commission supervision over the introduction of gas utility services of any kind in any area of the state.

The facts in this case demonstrate that Cascade proposes to offer services within the meaning of this statute and other statutes bearing on the same subject. The Commission should, therefore, require Cascade to obtain certificate authority before those services are rendered. The application should not be dismissed, but set for evidentiary hearing on the issues of public convenience and necessity and the nature of service by Avista. Should Cascade wish to amend its application to provide service statewide, the case should be redocketed to allow other interested parties the opportunity to participate.

DATED this 16th day of November, 2000.

Respectfully submitted,

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