

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

CASCADIA WATER, LLC,

Respondent.

Docket UW-240151

**CASCADIA WATER, LLC’S
RESPONSE TO MOTION TO
COMPEL**

1. In accordance with WAC 480-07-375, Cascadia Water, LLC (“Cascadia Water” or the “Company”), responds to the Water Consumer Advocates of Washington (“WCAW”) Motion to Compel (“Motion”). As explained more fully below, the Motion¹ requests the Commission compel Cascadia Water to provide information not relevant to this proceeding. WCAW does not cite to a single investment at issue that the Motion addresses that is in Cascadia Water’s prefiled direct case. This general rate case concerns investments already made, or to be made by the rate effective date, and whether those investments are prudent. Instead, the Motion concerns a data

¹ On November 1, 2024 WCAW improperly provided the Motion to the mediator in a manner inconsistent with Commission rules.

request specifically targeted at future investments, which are beyond the scope of this proceeding.

I. BACKGROUND

2. On September 3, 2024, WCAW propounded ninety-six (96) data requests to Cascadia Water, twenty-three (23) days before Cascadia Water's prefiled direct testimony was due. None of WCAW's data requests were tied to prefiled testimony, and some were related to informal discovery conducted prior to issuance of the Complaint in an attempt to avoid a litigated proceeding. To the extent the requests were relevant to Cascadia Water's case and eventual filing, Cascadia Water provided responses. WCAW DR 69 ("DR 69") requested an estimate of future investments Cascadia Water intends to make to bring the water systems into compliance and full working order. DR 69 also referenced an informal data request response provided to Public Counsel. On September 24, 2024, Cascadia Water responded to DR 69 objecting to the request as seeking information beyond the scope of the proceeding because it seeks investment projections not at issue, along with being overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

3. On September 26, 2024, Cascadia Water filed its direct case, including the testimony of Matthew Rowell and Culley Lehman. Cascadia Water's testimony provided support for investments over the previous couple of years for which it is requesting a prudence determination and recovery in rates. Notably, this is not a multi-year rate plan that requests recovery for

projected capital investments.² Cascadia Water is only requesting a prudence determination on past and present capital investments.³ Cascadia Water explained in testimony the projects follow the guidance of the DOH Water System Design Manual,⁴ were included in the Coordinated Water System Plan,⁵ or were required by the Department of Health. Witness Lehman made explicitly clear in his testimony that “this rate case is not about future spending; it is about recovering historical costs for investments that have already gone into service or will be in service by the rate effective date in this case.”⁶ Instead, in an attempt to expand the issues in this proceeding, WCAW issued DR 69 which only targets estimated future projected costs “for the next five years” rather than investments at issue in the filing.⁷

II. ARGUMENT

4. Discovery is limited to “information that is relevant to the issues in the adjudicative proceeding[.]”⁸ The Commission will deny a motion to compel where it seeks information related to “an issue that is outside the scope of this proceeding” not necessary to determine the merits of the proposed tariff revision.⁹ Here, DR 69 requests estimates related to future projected investments that are not at issue in this proceeding and “an estimate of the dollar value of outstanding investment.” The Motion is clear, WCAW wants to know and challenge Cascadia

² See Rowell, Exh. MJR-1T at 8:5-9:5 (rate base is calculated using “plant in service” that is “used and useful”).

³ See Lehman, Exh. CJL-1T at 9-33.

⁴ Lehman, Exh. CJL-12.

⁵ Lehman, Exh. CJL-8.

⁶ Lehman, Exh. CJL-1T at 10:9-12.

⁷ See Motion at p. 1.

⁸ WAC 480-07-400(3)

⁹ See *WUTC v. PacifiCorp*, Dkt. UE-001734, Sixth Supplemental Order (Sept. 6, 2002).

Water’s capital projections “for the next five years” which is outside the scope of the tariff request.¹⁰

5. The Commission does not need to make a prudence determination on future capital spending estimates to determine the prudence of the investments included in Cascadia Water’s rate case. The Commission reviews the prudence of investments retrospectively, and the review is based on what a reasonable utility knew or should have known at the time the decision was made to move forward with the project, which gives a level of certainty to utilities and investors, who contribute funds towards these investments.¹¹ WCAW is seeking discovery on prospective spending, as of the date of the request, even though the Commission does not make a determination on projects or spending not in rates. This is not only irrelevant, but it is unduly burdensome because it is akin to asking a utility to provide a capital expenditure projection for its next rate case before it has even filed that case. Furthermore, the request is overbroad because it requests system-wide future investment projections, unrelated to the fourteen capital projects identified in the testimony of Culley Lehman.¹²

6. DR 69 references an informal data request response provided to Public Counsel to settle the case before a Complaint was filed rather than testimony or costs in the proposed rates at issue in this rate proceeding. Cascadia Water is not requesting a prudence determination on the figures

¹⁰ Motion at 1.

¹¹ RCW 80.04.250; *WUTC v Puget Sound Energy*, Docket UE-031725, Order 12 ¶ 19 (Apr. 7, 2004); *WUTC v Avista Corp.*, Dockets UE-200900 et al., Order 08/05 ¶ 267 (Sept. 27, 2021).

¹² *See* Lehman, Exh. CJL-1T at 9:7-10:16.

identified in DR 69 and the informal data request, nor does it use those figures as a basis for a prudence determination of any projects at issue.

7. Cascadia Water has submitted testimony and exhibits to support the prudence determination for the capital expenditures, including by Cascadia Water witness Lehman who explained the projects follow the guidance of the DOH Water System Design Manual,¹³ were included in the Coordinated Water System Plan,¹⁴ or were required by the Department of Health. Included in these exhibits are planning documents. The Motion is concerned with projected *costs* of potential future projects. The Motion does not point to a single instance where the Commission has considered the prudence of previous expenditures by evaluating *projected* expenditures for other, *separate* capital projects, not proposed to be in rates. Such requirement would be a dramatic deviation from the Commission’s prudence standard.

8. At the prehearing conference Cascadia Water raised its concern that WCAW would use this proceeding as an opportunity to expand the issues beyond those in the rate case. Order 02 in this docket addressed this concern with a strong warning that WCAW were allowed to intervene but ALJ Callahan “made it clear that the granting of the petition to intervene is subject to the condition that the Intervenor will not expand the issues of this proceeding[.]”¹⁵ Future investment projections are not at issue in this proceeding, and WCAW’s Motion is an explicit

¹³ Lehman, Exh. CJL-12.

¹⁴ Lehman, Exh. CJL-8.

¹⁵ Docket UW-240151, Order 02 ¶16 (September 11, 2024).

attempt to expand the scope of this proceeding. Should this effort persist, the Commission would have the authority to reconsider WCAW's intervenor status.

9. DR 69 is inconsistent with the Commission's rules that require discovery to be relevant to the issues in the adjudicative proceeding, and the Motion should be denied. If WACW requests information related to the prudence of projects in Cascadia Water's prefiled testimony and proposed tariff rates, it has and will provide those items to the extent they are consistent with the Commission's discovery rules or limitations.

CONCLUSION

10. Cascadia Water respectfully requests the Commission deny the Motion.

RESPECTFULLY SUBMITTED this 8th day of November, 2024.

PERKINS COIE LLP

By s/ Byron C. Starkey
Pamela J. Anderson, WSBA #37272
Byron C. Starkey, WSBA #55545
Attorneys for Cascadia Water, LLC