

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

Complainant,

v.

CASCADE NATURAL GAS  
CORPORATION; PacifiCorp dba PACIFIC  
POWER & LIGHT COMPANY

Respondents.

Docket No. U-030744

**PACIFICORP'S OPPOSITION TO CITY  
OF TOPPENISH PETITION FOR  
INTERVENTION**

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COMMISSION

PacifiCorp opposes the City of Toppenish ("Toppenish") petition for intervention as follows:

**I. BACKGROUND**

On May 22, 2003 Public Counsel filed a Complaint before the Washington Utilities and Transportation Commission ("Commission" or "WUTC") regarding the charges imposed on utilities operating within the boundaries of the Yakama Reservation pursuant to the Yakama Franchise Ordinance (the "Ordinance"). Public Counsel asserts three claims against PacifiCorp.<sup>1</sup> First, Public Counsel challenges the justness and reasonableness and legality of PacifiCorp's collection of charges from customers with respect to the Ordinance. Public Counsel's second claim is that PacifiCorp should have challenged the exaction associated with the Ordinance because PacifiCorp "did not believe" the exaction was valid and therefore it was imprudent for PacifiCorp to pay the fees to the Yakama Nation. Last, Public Counsel alleges that Supreme Court and Ninth Circuit case law creates a basis to challenge the Nation's jurisdiction to impose a franchise fee measured by gross revenues from customers on the Reservation and that payment

<sup>1</sup> The same claims are raised against Cascade Natural Gas Corporation ("Cascade").

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of the franchise fee without a legal challenge was imprudent. Toppenish filed and served a petition to intervene on June 13, 2003.

## **II. THE MATTERS AT ISSUE SHOULD BE LIMITED TO THE CLAIMS RAISED BY PUBLIC COUNSEL'S COMPLAINT**

In its petition, Toppenish states that the scope of its participation will be limited to the “proper regulatory characterization of the Yakama Nation’s franchise fee.” Petition at 3. Toppenish also states that it “will not broaden the issues to be addressed, burden the record or delay the proceedings.” *Id.*

A person may petition to intervene provided that they do not seek to broaden the issues of the proceeding. WAC 480-09-430(1)(a).<sup>2</sup> A petition may be granted if the petition “discloses a substantial interest in the subject matter of the hearing, or if the participation of the petitioner is in the public interest ....” WAC 480-09-430(3).

Public Counsel does not challenge the regulatory characterization of the charges associated with the Ordinance. Although the Complaint alludes to the “proper regulatory treatment” of the Ordinance in its introduction, Complaint at p. 2, Public Counsel’s claims focus on different issues. Specifically, the bases for Public Counsel’s Complaint and requested relief are whether: (1) PacifiCorp (and Cascade) improperly recovered the Ordinance fees without having a franchise agreement with the Nation; (2) it was imprudent to pay the fee and collect it from ratepayers without first challenging the validity of the Ordinance; and (3) payment of the fees without challenging the method of calculation of the payment was imprudent. Complaint at pp. 6 *et seq.*

If permitted to make arguments about the appropriate regulatory treatment of the Ordinance fees, Toppenish’s participation would necessarily broaden the scope of the proceeding beyond the claims set forth in Public Counsel’s Complaint. Moreover, Toppenish’s petition seeks to rehash issues that the Commission already addressed in Docket numbers UG-021502

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<sup>2</sup> A person may seek special leave to intervene to broaden the scope of the proceeding but Toppenish does not seek special status, nor should such status be granted. WAC 480-09430(2).

(Cascade) and UE-021637 (PacifiCorp). Toppenish had the opportunity to participate in those dockets and to challenge the regulatory treatment of the Ordinance charges at that time, but did not. Toppenish's petition to intervene should be denied to the extent that it seeks to broaden the issues beyond the scope of Public Counsel's Complaint.


### **III. TOPPENISH'S INTEREST IN THE PROCEEDING SHOULD BE LIMITED TO ITS INTERESTS AS A CUSTOMER**

Toppenish claims that its interests will be directly affected by the outcome of this proceeding and that its interests are not represented in this proceeding. Petition at 2. Toppenish also states that it seeks to intervene for itself and for *its residents*. *Id.* (emphasis added.) PacifiCorp does not object to Toppenish's participation in the proceeding in and of itself, in its capacity as a customer of PacifiCorp. But it is inappropriate for Toppenish to attempt to represent the interests of its residents in this proceeding. Public Counsel is statutorily charged to represent the people of the State of Washington, including residents in Toppenish. RCW 80.01.100. Indeed, it is on behalf of the very same residents that Public Counsel filed its Complaint. Toppenish's participation in the proceeding on behalf of its residents would be duplicative of Public Counsel's efforts. "In order to promote the orderly and prompt conduct of proceedings, the Commission may deny intervention of a person whose interests are adequately represented." *Puget Sound Power & Light*, Docket Nos. UE-951270, UE-960195, 5<sup>th</sup> Supplemental Order (July 10, 1996). Because Toppenish residents already are represented by Public Counsel, Toppenish's petition to intervene on behalf of its residents should be denied.

### **IV. CONCLUSION**

WHEREFORE, PacifiCorp respectfully requests that the Commission limit Toppenish's participation in the above-captioned proceeding to the issues raised by Public Counsel in its Complaint, and deny Toppenish's petition for intervention to the extent that the petition seeks to broaden the scope of the proceeding and/or to represent the interests of its residents.

DATED: July 3, 2003.



WSBA 28855

James M. Van Nostrand  
Michael P. O'Connell  
Of Attorneys for PacifiCorp

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon the parties of record in Docket No. U-030744, on the following individuals in the manner indicated below:

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