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Christine O. Gregoire

ATTORNEY GENERAL OF WASHINGTON

900 Fourth Avenue #2000 • Seattle WA 98164-1012

February 7, 2003

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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

VIA HAND-DELIVERED

Carole Washburn
Executive Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Pk. Dr. S.W.
PO Box 47250
Olympia, WA 98504-7250

Re: *In the Matter of Tariffs Related to Yakama Nation Franchise Ordinance*

Dear Ms. Washburn:

Enclosed please find the original and nineteen copies of the Petition to Establish Collaborative Process. Also enclosed is a diskette containing the document.

Public Counsel will be providing courtesy copies of this petition to interested parties mentioned in the petition. A separate letter will be filed providing specific service information.

Sincerely,

Simon J. Ffitch
Assistant Attorney General
Public Counsel Section
(206) 389-2055

SJf:cjw
Enclosures



BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of

Tariffs Related to Yakama Nation
Franchise Ordinance

DOCKET NO. UG/UE/UT

PETITION TO ESTABLISH
COLLABORATIVE PROCESS

STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

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I. INTRODUCTION

Pursuant to WAC 480-09-465 and 480-09-467, the Public Counsel Section of the Office of the Washington Attorney General (Public Counsel), respectfully requests the Commission to establish a collaborative in order to allow interested persons to review and seek resolution of issues arising under the Yakama Nation Franchise Ordinance.

Public Counsel has considered the option of seeking a declaratory order, or other form of relief, in a formal proceeding before the Commission. At the present time, Public Counsel believes that a preferable initial alternative to a contested case proceeding would be the establishment of a collaborative process. A Commission-sanctioned collaborative will provide a forum for the interested parties to review the correct characterization of the Yakama charge, and the manner in which the charge is to be collected from the affected utilities and its customers.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Confederated Tribes and Bands of the Yakama Nation (Yakama Nation) is a federally recognized Nation pursuant to the Treaty of June 9, 1855 (12 Stat. 951). The Yakima Nation is bordered by Yakima County to the north and east, and Klickitat County to the south.

ORIGINAL

Within the external boundaries of the Yakama Nation are Tribal Trust lands, fee (non-Indian) lands, Allotted lands, and lands repurchased by the tribe. Towns within the boundaries include Toppenish and Wapato.

Cascade Natural Gas Corporation (Cascade), Pacificorp dba Pacific Power & Light Company (Pacificorp), and other regulated utilities provide utility service within the external boundaries of the Yakama Nation Reservation to both tribal and non-tribal members residing on both fee and non-fee land.

On August 6, 2002, the Yakama Nation adopted the Yakama Nation Franchise Ordinance (Franchise Ordinance) T-177-02. The Franchise Ordinance required Cascade, Pacificorp and other utilities operating on the reservation to enter into franchise agreements with the tribe in order to continue providing service on the Reservation. Under the proposed Franchise Agreement, utilities are required to pay a monthly franchise fee based on 3 % (three percent) of gross operating revenues.

Cascade and Pacificorp filed tariffs with the Commission to recover the charges from their ratepayers by means of municipal tax additions to be collected from all their customers living within the Yakama Indian Nation boundaries.¹ The Cascade and Pacificorp tariffs came on before the Commission at open meetings in November, December 2002, and January 2003. After receiving written and oral comment from the companies, the Yakama Nation, and other interested persons, pursuant to Staff recommendations, the Commission took no action to suspend the tariffs and they were allowed to go into effect.

¹ Cascade's initial tariff was filed November 14, 2002, by Advice No. CNG/W02-11-01, docketed UG-021502. Cascade filed a related petition for an accounting order on December 2, 2002, docketed as UG-021576. Pacificorp's tariff was filed December 16, 2002, as Advice No. 02-011, and docketed as UE-021637. Pacificorp also filed a petition for an accounting order.

Pursuant to the approved tariffs, Cascade and Pacificorp are currently authorized to impose a 3 percent surcharge on all of their customers who live within the boundaries of the Yakama Reservation, as a municipal tax addition to their bills.

III. BASIS FOR ESTABLISHMENT OF COLLABORATIVE

Commission practice encourages non-adversarial resolution of disputed issues. WAC 480-09-465, 480-09-467.² Among the mechanisms provided for the use of parties is the “collaborative” process, “a negotiation sanctioned by the Commission in which interested persons work with each other and representatives of the Commission staff to achieve consensus on one or more issues assigned to or identified by the collaborative participants.” WAC 480-09-467(1). This is an appropriate situation in which to employ a collaborative resolution process.

Because the tariffs were not suspended, no formal proceedings were held within which the regulated companies, staff, tribal representatives, and customer representatives had the opportunity to mutually pursue resolution of issues. *See, e.g.*, WAC 480-09-460 (providing for determining feasibility of settlement at the prehearing conference as part of contested case proceedings); WAC 480-09-466.

While the Commission has allowed the tariffs for Cascade and Pacificorp to go into effect, there are remaining unsettled issues regarding the nature of the charges being imposed under the Yakama ordinance. While the charges have been approved for collection by Cascade and Pacificorp as municipal tax additions, the charges are being made under a franchise ordinance and have been asserted by the tribe to be franchise fees. One or more of the affected

² See *In the Matter of Docket No. A-950243 Relating to Alternative Dispute Resolution*, Policy Statement, Docket No. A-950243, Policy Statement (November 1995); *In re the Investigation On the Commission's Own Motion into the Regulatory Process*, Policy Statement On Alternative Dispute Resolution Techniques and Case Management, Docket No. A-940351 (December 22, 1994).

companies have entered, or may shortly enter into franchise agreements with the Yakama Nation. This raises the issue of whether the current treatment of the Yakama charge requires further review by the parties, and if necessary, the Commission. Other affected companies may make future filings with the Commission as a result of the Yakama franchise ordinance raising these issues anew.

A goal of the collaborative would be to provide a forum for a further careful review of these issues, and development of a resolution of outstanding disputed matters, and avoid unnecessary repetition of the issues in future tariff filings. Such a resolution could be presented to the Commission to form the basis for a declaratory order, an interpretive and policy statement, or other appropriate order. The collaborative would not be intended to affect the rights of any person or party to other pending proceedings, or proceedings later initiated, except as agreed by the parties. In the event the collaborative is not successful in resolving outstanding issues with respect to the franchise fee matter, Public Counsel intends to initiate a formal proceeding before the Commission to do so.

IV. PROCEDURAL MATTERS

The collaborative rule provides that “membership in the collaborative must reflect the interests reasonably expected to be substantially affected by the result of the collaborative.” WAC 480-09-467(1). Parties and interested persons to be invited to participate in the collaborative should include: The Yakama Nation, Cascade Natural Gas Corporation, Pacificorp, the Commission Staff, other WUTC - regulated utility companies providing service with the internal boundaries of the Yakama Nation reservation³, Stand Up, and any other interested persons.

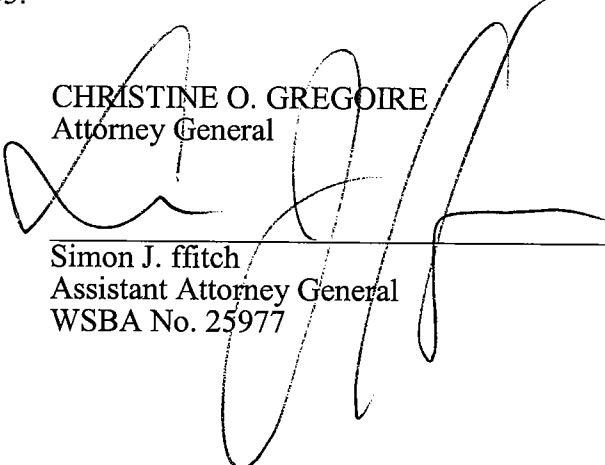
³ Public Counsel understands that Qwest and Sprint also provide service within the reservation.

Public Counsel requests that the collaborative be established with a timeline of ninety (90) days within which to complete its work. Public Counsel further requests that the Commission appoint an Administrative Law Judge to convene the collaborative, and to assist the parties by acting as a mediator during the course of the collaborative.

Public Counsel respectfully requests, if the petition is granted, that the Commission provide notice of the first meeting to the parties and persons listed above, and to any other parties or persons selected by the Commission.

DATED this 7th day of February, 2003.

CHRISTINE O. GREGOIRE
Attorney General



Simon J. ffitch
Assistant Attorney General
WSBA No. 25977