

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
PETITION FOR INTERVENTION OF
ELAINE WILLMAN, ET AL.**

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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

PacifiCorp opposes the petition for intervention filed by Elaine Willman,
follows:

I. BACKGROUND

On May 22, 2003, Public Counsel filed a Complaint before the Washington Utilities and Transportation Commission (the "Commission") 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.¹ First, Public Counsel challenges the justness, 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 U.S. Supreme Court and Ninth Circuit case law creates a basis to challenge the Nation's

¹ The same claims are raised against Cascade Natural Gas Corporation ("Cascade").

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jurisdiction to impose a franchise fee measured by gross revenues from customers on the Reservation and that payment of the franchise fee without a legal challenge was imprudent. Elaine Willman and others (collectively “Willman”) filed and served a petition to intervene on July 9, 2003.

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

In her petition, Willman would have the Commission rule on a “further issue” not directly contested in this matter: “whether the respondent utilities’ payment of the fee demanded by the Ordinance should be included in general rates borne by all ratepayers of respondent utilities, as a franchise fee, rather than passed through solely to ratepayers within the Yakama Indian Reservation, as a local tax.” (Petition § 5(b).) Willman is already litigating this very same issue in her appeal in Yakima County Superior Court on appeal of Docket Nos. U1G-021502 (Cascade) and UE-021637 (PacifiCorp).

A person may petition to intervene provided that petitioner does not seek to broaden the issues of the proceeding. WAC 480-09-430(1)(a).² 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 2), Public Counsel’s claims focus on different issues. Specifically, the bases for the Complaint and requested relief are whether

² A person may seek special leave to intervene to broaden the scope of the proceeding, but petitioners here do not seek special status, nor should such status be granted. WAC 480-09430(2).

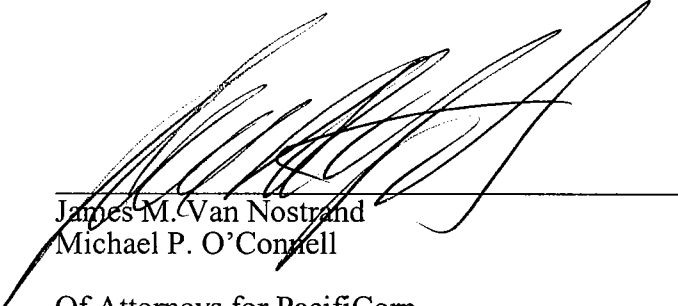
(a) PacifiCorp (and Cascade) improperly recovered the Ordinance fees without having a franchise agreement with the Nation, (b) it was imprudent to pay the fee and collect it from ratepayers without first challenging the validity of the Ordinance and (c) payment of the fees without challenging the method of calculation of the payment was imprudent. (Complaint at 6, *et seq.*)

If permitted to make arguments about the appropriate regulatory treatment of the Ordinance fees, Willman's participation would necessarily broaden the scope of the proceeding beyond the claims set forth in the Complaint. If petitioners feel further Commission proceedings are necessary on this issue, their remedy is to file a new complaint, not to improperly expand the existing case.

III. CONCLUSION

PacifiCorp respectfully requests that the Commission limit petitioners' participation in the above-captioned proceeding to the issues raised by Public Counsel in its Complaint and deny the present petition for intervention to the extent that the petition seeks to broaden the scope of the proceeding.

DATED: July 22, 2003.



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:

Simon ffitch
Assistant Attorney General
Office of the Attorney
900 Fourth Avenue, Suite 2000
Seattle, WA 98164

Via U.S. First Class Mail

Robert D. Cedarbaum
Office of the Attorney General
1400 S. Evergreen Park Dr. SW
PO Box 40128
Olympia, WA 98504-0128

Via U.S. First Class Mail

Mary E. Crego
John L. West
Hillis Clark Martin & Peterson, P.S.
500 Galland Building
1221 Second Avenue
Seattle, WA 98101-2925

Via U.S. First Cass Mail

Courtesy copy provided to:
P. Stephen DiJulio
Jeffery A. Richard
Foster Pepper & Shefelman PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101
For the City of Toppenish

DATED July 23, 2003, at Seattle, Washington.



Shelley Sasse, Legal Secretary to
James M. Van Nostrand