

SERVICE DATE

JAN 19 2001

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of)	
)	DOCKET NO. UG-001119
CASCADE NATURAL GAS)	
CORPORATION,)	
)	FIRST SUPPLEMENTAL ORDER
for a Certificate of Public Convenience and)	DENYING SUMMARY
Necessity to Operate a Gas Plant for Hire in)	DETERMINATION; NOTICE OF
the General Area of Grant County)	PREHEARING CONFERENCE
.....)	(January 30, 2001)

1 **SYNOPSIS:** The Commission denies the request of Cascade Natural Gas Corporation for a summary determination of whether Cascade needs certificate authority to provide the services listed in Schedule 700 of its tariff, ruling that the significant factual and legal issues raised by the question are not a proper subject for summary determination.

2 **PROCEDURAL HISTORY:** On July 17, 2000, Cascade Natural Gas Corporation ("Cascade") filed with the Commission an application to amend its Certificate of Convenience and Necessity ("Certificate") so that it may operate gas plant for hire in Grant County. The area Cascade seeks a Certificate to serve is within the certificate territory of Avista Corporation ("Avista"). Cascade limited the scope of its application to offering services contained in its Rate Schedule 700 ("Schedule 700"). A copy of the tariff pages is attached as Appendix A.

3 A prehearing conference was held on October 26, 2000. The parties asked the Commission to decide whether Cascade needs a Certificate in a first stage of this proceeding. The parties agreed to file concurrent briefs on November 16, 2000. On December 7, 2000, the Commission sent out bench requests seeking further information from Cascade asking for more information regarding what the Company is seeking in this proceeding, and how it proposes to offer its services. Cascade answered on December 12, 2000.

4 **PARTIES:** The parties were present as follows: Cascade Natural Gas by John West, attorney at law, Seattle; the Washington Utilities & Transportation Commission and its staff ("Commission Staff") by Robert D. Cedarbaum, Assistant Attorney General, Olympia; Avista Corporation ("Avista") by Tom DeBoer, Paine, Hamblen, Coffin, Brooke & Miller LLP, Spokane; and Northwest Industrial Gas Users ("NWIGU") by Edward A. Finklea, Energy Advocates LLP, Portland.

5 **BACKGROUND:** Both Cascade and Avista are engaged in the business of furnishing gas service within the state of Washington as public service companies. Avista currently holds a certificate for gas service in the portion of Grant County in which Cascade seeks to provide the services described in its Schedule 700. Avista has held this authority since 1960. The area Cascade proposes to serve encompasses eight square miles of Grant County adjacent to the city of Warden. The Williams gas pipeline bisects the area.

6 The spark that fired this controversy is a decision by Basin Foods, Inc. ("Basin") to construct its own bypass line to the interstate pipeline. Avista has provided gas sales service to Basin under a filed tariff since December 1999, and will continue to do so until Basin's pipeline is completed. Cascade has overseen the construction of Basin's bypass pipeline, and Basin has asked Cascade to maintain and operate the line once construction is complete. Although Basin is the only potential customer discussed in the parties' filing, Cascade seeks broader authority to serve any customers in an eight-square-mile territory. If the Commission decides that no Certificate is needed, then Cascade proposes to offer its services statewide.

7 The parties originally stipulated that Cascade seeks to provide, and will limit itself to providing, the services outlined in its Schedule 700. Those services are:

- Design piping system
- Construct piping system
- Operation and maintenance of customer-owned piping system
- Design cathodic protection system
- Install cathodic protection system
- Operation and maintenance of cathodic protection system
- Perform leak surveys Repair leaks
- Locating Services
- Odorization Testing
- Preparation of required reports to WUTC & other Agencies, as required. Such reports may include Operation and Maintenance Plans, Written Emergency Plans, other compliance reports.

10 On December 7, 2000, the Commission served three Bench Requests on Cascade, seeking further information on the factual bases for its application. The requests asked: (1) Please list exactly what services you want to provide to customer-owned pipelines. (2) How do the items listed in response to question (1) overlap with the menu of services included in Cascade's Rate Schedule 700? And (3) Does Cascade plan to make the services it offers available at the option of the Company, or does it propose to offer these services to anyone that owns piping systems?

11 Cascade's responses to the bench requests indicate that it proposes to offer the services included in its Schedule 700, but also alleges that Cascade does not intend to promote or construct bypass pipelines. Cascade indicates that it intends to offer services to assist customers to operate their own property safely and in compliance with state and federal regulations.

THE PRESENT MOTIONS

12 The inquiry before the Commission, which the parties framed in the prehearing conference, is in the nature of cross motions for summary determination. In a summary determination proceeding inquiry the Commission would need to determine that no issues of material fact are present, then apply the law to agreed facts. *McDonald v. State Farm Fire & Casualty Co.*, 119 Wn.2d 724; 837 P.2d 1000 (1992).

13 The document Cascade filed on November 16, 2000, (Petition for Determination the Cascade Does Not Require Certificate of Public Convenience and Necessity for Services Described in Rate Schedule 700) raises an additional issue. If the Commission were to convert this application proceeding to a petition for declaratory order, additional process will be needed. Under RCW 34.05.240(7), before entering a declaratory order that would substantially prejudice the rights of any person who would be a necessary party, the Commission would need to receive that person's written consent. We would have to give notice to all certificated gas companies pursuant to RCW 34.05.240 and WAC 480.09.230, and seek their consent. Given the fact that Avista is actively opposing Cascade's application, it is highly unlikely that the Commission would receive this consent.

14 The Commission is charged with regulating in the public interest 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 gas companies. In order to rule on cross motions for summary determination the Commission would need to answer the following questions, basing its conclusion on the facts with which the parties have agreed.

- (A) Is the natural gas pipeline owned by Basin, or any other gas pipelines that may be built in the nine square mile area Cascade seeks to serve, "gas plant?"

"Gas plant" includes all 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.

15 If yes, then

(B) Is Cascade a "gas company"?

"Gas company" includes every corporation or company owning, controlling, operating or managing any gas plant within this state. Whether or not any person or corporation is conducting business subject to regulation under this title is a question of fact to be determined by the Commission.

RCW 80.04.010 defines "gas company" to include every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receiver appointed by any court whatsoever, and every city or town, owning, controlling, operating or managing any gas plant within this state.

16 If yes, then

(C) Is supplying the rates, services, facilities and practices listed in Schedule 700 engaging in supplying any utility service or commodity to the public for compensation?

17 If resolution of any of these questions relies on facts that are not included in the record, or that require further development in the record, the Commission will need to continue the questions to a fact finding hearing.

THE PARTIES' PRESENTATIONS ON THE MOTIONS

18 Cascade frames two main arguments: first, that the Commission lacks authority to require Cascade to obtain a certificate, and second, that a certificate is not appropriate because other companies deliver similar services in Washington without certificates.

19 Cascade argues that it does not need a Certificate to operate a gas plant in Grant County, and that the Commission lacks authority to require a Certificate for services that do not involve operation of a gas plant. Cascade insists that it does not, and does not intend, to own, lease, control, or use the gas pipeline, stressing that it only seeks to provide services to lines that are privately owned and operated in the county. Cascade describes its services as "limited to the design, maintenance, inspection, and repair activities described in Cascade's application and Rate Schedule 700." Cascade Brief, p. 4. Cascade argues, "there is no provision of Title 80 that authorizes the commission to regulate" the services Cascade seeks to provide in this case. *Id.* p. 7.

20 Cascade acknowledges in its statement of background facts that it is engaged in the business of furnishing gas service within the state of Washington as a public service company. Cascade argues, however, that certificate authority should not be required in this

case because other companies deliver similar services in Washington without certificates, claiming that requiring it to obtain a certificate before it provides these services while at the same time other companies engage in identical activities without regulation lacks apparent fairness.

Cascade argues that the Commission must be strictly limited in its operations to the authority provided by the legislature, and that "vigilance" is particularly a concern in this case because the statutes at issue concern the authority of the Commission to create and regulate monopolies and exclusive rights, citing *Electric Lightwave v. Utilities & Transp. Comm'n*, 123 Wn.2d 530, 869 P.2d 1045 (1994). In *Electric Lightwave* the court upheld a Commission determination that the Commission had not granted U S WEST an exclusive operating territory. Cascade acknowledges that the gas statute, in RCW 80.28.190, expressly provides the Commission with the power to grant exclusive rights to gas companies operating "gas plants" in defined areas. Cascade repeats its argument that the statute does not apply to companies providing gas line design, maintenance, inspection, and repair services. On this basis it claims that "The inference to be drawn from this is that the legislature intended for there to be competition among providers of such services." Cascade.Petition, p. 8.

- 21 The parties did not stipulate whether the services contained in schedule 700 are available from entities other than Avista or Cascade. Cascade alleges that other companies deliver similar services in Washington without certificates. It states: "These companies include major corporations that own and operate or contract with others to operate gas facilities in areas in which Cascade does possess certificates." Cascade Petition p. 8.
- 22 NWIGU agrees with Cascade, without any analysis of the statutory language, stating that "so long as an entity seeks only to provide these services, and not to own or operate 'gas plant' in the state, as that term is defined in the relevant statutes, the entity does not need a Certificate" from the Commission. NWIGU Comments, p. 1.
- 23 NWIGU has posited the argument that Cascade is not a gas company under RCW 80.28.190 so long as it does not own, lease, control, or use any real estate, fixtures, or personal property for or in connection with the transmission, distribution, sale, or furnishing of any type of gas for light, heat, or power in Grant County to third parties.
- 24 NWIGU argues that Cascade does not require a certificate because the provision of such services is not within the authority of the Commission to regulate.
- 25 Avista argues that the services proposed in Schedule 700 clearly fall within the provisions of RCW 80.28.190, and require a certificate from the Commission. Avista notes the definition of "gas plant" and claims that the pipeline is "used or to be used for or in connection with" the "furnishing of natural gas." Avista Brief, p. 7. Avista claims that the

pipeline services that Cascade has proposed to offer are broad, and include all services necessary to operate the pipeline, noting that Schedule 700 includes, among other services “[o]peration and maintenance of customer-owned piping system.”

26 Avista also argues that Cascade is a “gas company” subject to the general jurisdiction of the Commission. Avista notes that Cascade may argue that it is only offering services that other non-regulated pipeline companies may offer without a certificate, but argues that there is a significant difference between Cascade and other service providers because Cascade is in the business of supplying natural gas while other pipeline service companies are not. Avista argues that if Cascade is allowed to provide these services without a public interest review, then it would be in a position to encourage the construction of pipelines in order to bypass existing providers.¹

27 Avista argues that a narrow reading of RCW 80.28.190 is inconsistent with the language, intent, and policy of the laws regulating public utilities, and that the provisions of the public utility statutes must be construed together to accomplish the purpose of assuring the public of adequate service at fair and reasonable rates. Avista argues, further, that other jurisdictions have broadly construed their public utility statutes to effectuate the purpose of the statutes.

28 Avista notes: “While Cascade may argue that it is only offering service that other non-regulated pipeline companies may offer without a Certificate issued by the Commission, there is a significant difference between Cascade and these other service providers—Cascade is in the business of supplying natural gas while other pipeline service companies are not.” Brief of Avista, p. 7.

29 Commission Staff agrees with Avista that “gas plant” includes property “used or to be used for or in connection with the furnishing of natural gas. Staff Brief, p.4. Staff argues that it doesn’t matter whether the customer, rather than Cascade, owns the piping system, or that the system may not include transmission or distribution facilities, or that Cascade does not sell natural gas to any customer. Rather, according to Staff, “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. *Id.*

30 Commission Staff notes: “Cascade 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, not evidence of

¹ The Commission has authorized banded rates in past proceedings as a tool to discourage uneconomic bypass of gas companies. See, *WUTC v. The Washington Water Power Company*, Docket No. UG-901459, Third Supplemental Order (March 1992), p. 21. The concept is somewhat akin to “cream skimming.” See, *In re Superior Refuse Removal Corp.*, Order M.V.G. No. 1357, App. No. GA-849 (June 1988).

any such occurrences.” Brief of Commission Staff, p. 6, fn. 3.

31 Commission Staff argues that Cascade acts as a gas company subject to Commission regulation in providing the services listed in Schedule 700 because Cascade is operating or managing gas plant within this state. RCW 80.04.010. Staff also notes that Cascade may argue that there are other companies providing services similar to Schedule 700, but without a certificate, but that there is no evidence of any such occurrence. Staff views as the “ultimate irony” the possibility that the Commission might 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.

32 Commission Staff asks the Commission to ascertain and give effect to the intent of the Legislature as embodied in the relevant statutes.

THE COMMISSION’S DISCUSSION AND DECISION

33 Cascade has consistently described Schedule 700 as “limited to the design, maintenance, inspection, and repair activities described in Cascade’s application and Rate Schedule 700.” The language of Schedule 700 is, however, much broader. It includes: “Operation and maintenance of customer-owned piping system” along with ten other tasks.

34 Although the parties all agree that the activities in Schedule 700 provide the factual basis for the Commission’s examination of the cross motions for summary determination, they interpret the meaning of the described activities differently. In deciding a motion for summary determination, the Commission is guided by CR 56 of the civil rules for superior court. WAC 480-09-426. In deciding summary judgment motions before the superior court, the court is charged with viewing all facts, and inferences therefrom, in the light most favorable to the non-moving party. *Washington Fed’n of State Employees, Council 28, etc. v. Office of Fin. Management*, 121 Wn.2d 152; 849 P.2d 1201(1993).

35 In reviewing the cross motions for summary determination before us, the Commission will apply the same standard. In deciding the motion for summary determination by Cascade, therefore, the Commission interprets the services offered in Schedule 700 as broadly as possible, as is most favorable to Avista and Commission Staff. Given a broad reading, the facts could indicate that Cascade is proposing to operate a gas plant for hire. In deciding the motion for summary determination by Avista and Commission Staff, however, the Commission interprets the services offered in Schedule 700 as narrowly as possible; as is most favorable to Cascade. Given a narrow reading, the facts could indicate that Cascade is not proposing to operate a gas plant for hire. Both motions should be denied, so that the Commission can explore the issue in a more fully developed factual context. Some parties have argued that the services listed in

Schedule 700, when combined, describe what it means to operate a pipeline. The parties have not provided any information on what tasks are performed by these or other parties when operating a pipeline. The Commission needs to explore the factual circumstances in more depth to determine this issue.

36 All parties have made factual assertions regarding what pipeline services, if any, are being provided by non-regulated companies. Based on these assertions, they have argued that certain outcomes are appropriate. The record, however, contains no facts regarding whether other providers exist, or what services they provide. If a party believes that this issue is relevant, then it should develop a factual record to support its contention.

37 The Commission will deny both motions for summary determination. A second prehearing conference will be held to allow the parties to plan and move forward on the hearing phase of this proceeding.

NOTICE OF PREHEARING CONFERENCE

38 **NOTICE IS HEREBY GIVEN That a prehearing conference will be held at 9:30 a.m., on Tuesday, January 30, 2001, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.** If you are unable to attend the prehearing conference in person, you may attend via the commission's teleconference bridge line. The Commission's conference bridge number is 360-664-3846. Any party wishing to participate via the conference bridge line should call the conference bridge number at the time for scheduled for the prehearing conference.

ORDER

39 The cross motions for summary determination are denied.

DATED at Olympia, Washington, and effective this 19th day of January, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION


MARILYN SHOWALTER, Chairwoman


RICHARD HEMSTAD, Commissioner

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APPENDIX A

WN U-3

Substitute Original Sheet No. 700

CASCADE NATURAL GAS CORPORATION

OPTIONAL CUSTOMER-OWNED PIPING CONSTRUCTION, OPERATION, & MAINTENANCE SCHEDULE NO. 700

AVAILABILITY:

This schedule offers optional services not currently provided under other schedules. The services are available, at the option of the Company, to anyone that owns piping systems located within the Company's certificated area. Under no circumstances will this tariff supercede the Company's response to any emergency situation. Customers electing these optional services will remain liable for the safety of their customer owned piping systems as defined in Rule 10 of this tariff.

(N)

DESCRIPTION:

Under this schedule the Company will provide a menu of services for customer-owned piping systems. The services available under this schedule include the following:

- Design piping system
- Construct piping system
- Operation and maintenance of customer-owned piping system
- Design cathodic protection system
- Install cathodic protection system
- Operation and maintenance of cathodic protection system
- Perform leak surveys
- Repair leaks
- Locating Services
- Odorization Testing
- Preparation of required reports to WUTC & other Agencies, as required. Such reports may include Operation and Maintenance Plans, Written Emergency Plans, other compliance reports.

RATE:

I. The charges for these services will be specified in the contract and will be on a time and material basis. The following represent standard service rates which apply during regular business hours.

Labor & Equipment

	Semi-Skilled Labor	\$45 per hour
Skilled Labor	\$60 per hour	
Professional/Technical	\$90 per hour	
Supervisory	\$120 per hour	
Service Truck w/ Gas Technician	\$60 per hour	
Dump Truck w/ Driver	\$75 per hour	
Backhoe w/ Operator	\$90 per hour	
Welding Rig w/ Welder & Helper	\$105 per hour	
3 Man Crew & Equipment	\$220 per hour	

Services performed on Evenings/weekends will be charged at 1.5 times the standard hourly rate. Services performed on holidays will be charged at 2 times the standard hourly rate. A one hour minimum will apply.

Materials

Cost of materials plus 35% for handling.

II.

The total of all charges invoiced by Company shall be subject to state sales tax.

WASHINGTON UTILITIES & TRANSPORTATION COMM. DOCKET NO. UG-000598

CNG/W00-03-02

ISSUED April 20, 2000

EFFECTIVE May 11, 2000

WN U-3

Substitute Original Sheet No. 700A

CASCADE NATURAL GAS CORPORATION

**OPTIONAL CUSTOMER-OWNED PIPING CONSTRUCTION, OPERATION, & MAINTENANCE
SCHEDULE NO. 700
continued**

CONTRACT:

Customers receiving service under this rate schedule shall execute a contract for those services.

TERMS OF PAYMENT:

Payment shall be due and payable within fifteen (15) days from the date the bill is rendered.

SPECIAL TERMS AND CONDITIONS:

1. The application of this rate is subject to the General Rules and Regulations of the Company as they may be in effect from tin

(N)

WASHINGTON UTILITIES & TRANSPORTATION COMM. DOCKET NO. UG-000598

CNG/W00-03-02

ISSUED April 20, 2000

EFFECTIVE May 11, 2000

**APPENDIX B
GOVERNING STATUTES AND RULES**

The following statutory provisions and rules establish standards that govern the Commission's determinations in this proceeding:

RCW 80.01.040 General powers and duties of commission. The utilities and transportation commission shall:

(1) Exercise all the powers and perform all the duties prescribed therefore by this title and by Title 81 RCW, or by any other law.

(3) 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, electrical companies, gas companies, irrigation companies, telecommunications companies, and water companies.

RCW 80.04.010 Definitions. As used in this title, unless specifically defined otherwise or unless the context indicates otherwise:

"Gas plant" includes all 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, or the manufacture, transmission, distribution, sale or furnishing of other type gas, for light, heat or power.

"Gas company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receiver appointed by any court whatsoever, and every city or town, owning, controlling, operating or managing any gas plant within this state.

"Public service company" includes every gas company, electrical company, telecommunications company, and water company. . . .

The term "service" is used in this title in its broadest and most inclusive sense.

RCW 80.04.015 Conduct of business subject to regulation--Determination by commission. Whether or not any person or corporation is conducting business subject to regulation under this title, or has performed or is performing any act requiring registration or approval of the commission without securing such registration or approval,

shall be a question of fact to be determined by the commission. . . .

RCW 80.28.190 Gas companies--Certificate--Violations--Commission powers--Penalty--Fees. No gas company shall . . . operate in this state any gas plant for hire without first having obtained from the commission under the provisions of 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 serving such area will not provide the same to the satisfaction of the commission and in all other cases, with or without hearing, to issue said certificate as prayed for; or for good cause shown to refuse to issue same, or to issue it for the partial exercise only of said privilege sought, and may attach to the exercise of the rights granted by said certificate such terms and conditions as, in its judgment, the public convenience and necessity may require. . . .

RCW 34.05.240 Declaratory order by agency--Petition. (1) Any person may petition an agency for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency. The petition shall set forth facts and reasons on which the petitioner relies to show:

(a) That uncertainty necessitating resolution exists; (b) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion;

(c) That the uncertainty adversely affects the petitioner;

(d) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested; and

(e) That the petition complies with any additional requirements established by the agency under subsection (2) of this section.

(2) Each agency may adopt rules that provide for: (a) The form, contents, and filing of petitions for a declaratory order; (b) the procedural rights of persons in relation thereto; and (c) the determination of those petitions. These rules may include a description of the classes of circumstances in which the agency will not enter a declaratory order and shall be consistent with the public interest and with the general policy of this chapter to facilitate and encourage agencies to provide reliable advice.

(3) Within fifteen days after receipt of a petition for a declaratory order, the agency shall give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person it deems desirable.

(4) RCW 34.05.410 through 34.05.494 apply to agency proceedings for declaratory orders only to the extent an agency so provides by rule or order.

(5) Within thirty days after receipt of a petition for a declaratory order an agency, in writing, shall do one of the following:

(a) Enter an order declaring the applicability of the statute, rule, or order in

question to the specified circumstances;

(b) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition;

(c) Set a specified time no more than ninety days after receipt of the petition by which it will enter a declaratory order; or

(d) Decline to enter a declaratory order, stating the reasons for its action.

(6) The time limits of subsection (5) (b) and (c) of this section may be extended by the agency for good cause.

(7) An agency may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

(8) A declaratory order has the same status as any other order entered in an agency adjudicative proceeding. Each declaratory order shall contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusions.

WAC 480-09-230 Declaratory orders. As prescribed by RCW 34.05.240, any interested person may petition the commission for a declaratory order. The commission will consider the petition. Within fifteen days after receiving the petition, the commission will give notice of the petition to all persons required by law and to any other person the commission deems desirable. Within thirty days of receipt of a petition for declaratory order, the commission will:

(1) Enter a declaratory order; or

(2) Notify the petitioner that no declaratory order is to be entered and state reasons for the action; or

(3) Set a specified time, no later than ninety days after the day the petition was filed, by which the commission will enter a declaratory order; or

(4) Set a reasonable time and place for a hearing. If a hearing is held, it must be held no more than ninety days after receipt of the petition. If a hearing is held, the commission will give at least seven days' notification to the petitioner, all persons to whom notice is required by law and any other person it deems desirable. The notice must include the time, place, and the issues involved.

(5) The commission may upon a finding of good cause extend the times specified in subsections (3) and (4) of this section.

(6) If a hearing is held or statements of fact are submitted, as provided in subsection (4) of this section, the commission shall within a reasonable time:

(a) Enter a declaratory order; or

(b) Notify the petitioner that no declaratory order is to be entered and state the reasons for the action.

The commission will serve its order upon all persons who are required to receive notice under subsection (4) of this section.

WAC 480-09-426 Motion for summary disposition. (1) Motion to dismiss. A party may move to dismiss an opposing party's pleading, including the documents initiating the case, if the pleading fails to state a claim on which the commission may grant relief. In ruling upon a motion made under this subsection, the commission will consider the standards applicable to a motion made under CR 12 (b)(6), 12(c), or 50, as applicable, of the civil rules for superior court.

(2) Motion for summary determination. A party may move for summary determination if the pleadings filed in the proceeding, together with any properly admissible evidentiary support, show that there is no genuine issue as to any material fact and the moving party is entitled to summary determination in its favor. In considering a motion made under this subsection, the commission will consider the standards applicable to a motion made under CR 56 of the civil rules for superior court.