

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	DOCKET NO. UG-940814
Complainant,)	
)	
v.)	THIRD SUPPLEMENTAL ORDER
)	
WASHINGTON NATURAL GAS COMPANY,)	ORDER DENYING PETITION FOR
)	INTERLOCUTORY REVIEW
Respondent.)	
.)	

This proceeding involves tariffs for the transportation of natural gas. Cost Management Services, Inc., filed a petition for intervention seeking to participate in the proceeding. It is a marketer of natural gas services; it neither purchases nor sells gas.

The presiding administrative law judge denied three petitions for intervention,¹ expressing her decision orally at the prehearing conference and in writing in the Second Supplemental Order. She ruled under WAC 480-09-430² that petitioners have no interest that the Commission may lawfully consider, and consequently under the Administrative Procedure Act the petitioner has no interest that may be adversely affected.³

¹Two other petitioners for intervention are similarly situated to the petitioner.

²The rule reads in part, "If the [petitioner for intervention] discloses a substantial interest in the subject matter of the hearing, or if the participation of the petitioner is in the public interest, the commission may grant the petition . . ." (Emphasis added.) Petitioner does not contend and we do not find that it has a right to participate in the proceeding, and thus the grant of intervenor status is discretionary with the Commission.

³The leading case is Cole v. Washington Utilities and Transportation Commission, 79 Wn.2d 302, 485 P.2d 71 (1971). There, marketers of natural gas furnaces and home appliances asked intervention in a rate proceeding because Washington Natural Gas Company's marketing efforts were affecting their business. The Commission denied intervention. Both Superior and Supreme courts affirmed the denial, ruling that the Commission had no jurisdiction over the independent appliance marketers, that it could not consider their interests in the rate proceeding, and that denial of the intervention was proper. The Supreme Court also stated, at pp. 306-307, that the Commission's rule (largely similar to the current rule) reserves discretion to grant or deny interventions and that the test for impropriety would be an abuse of that discretion. Here, we believe that the denial of intervention is clearly within our discretion, and clearly appropriate under the circumstances.

Now Cost Management Services petitions for "reconsideration" of the order.⁴ It asks that the ruling be reversed, stating that it has been granted intervenor status in the past; that it provided expert testimony and consultant services for PERCC, an intervenor in those proceedings; that CMS will not burden the proceeding; that its customers have an economic interest in the result of the proceeding; and that it has developed expertise in the subject area that would assist parties and the Commission in resolving issues in the proceeding. The Commission remains unpersuaded that petitioner has an interest that the Commission may consider, or that its participation would be in the public interest, and denies interlocutory review.

1. **Prior intervenor status.** Petitioner contends that it was accepted as an intervenor in prior cases, contrary to representations made by parties at the prehearing conference. That the petitioner may have participated as an intervenor in the past does not entitle it to intervenor status in a subsequent proceeding. First, Petitioner states that its interests in at least one prior proceeding were aligned with those of the Partnership for Equitable Rates for Commercial Customers, or PERCC. It admits that those interests are different in this proceeding, and reasons making intervention consistent with the public interest in a prior proceeding thus may not exist here. Second, the Commission may weigh the pros and cons of participation in each proceeding, and hear the parties' arguments. Here, after hearing the parties' arguments -- all parties of right to the proceeding opposed intervention, including public counsel -- the ALJ was persuaded that the intervention should be denied. The Commission agrees with her decision.

2. **Provision of services to an existing intervenor.** Petitioner argues that it is entitled to intervenor status because it had presented expert testimony for PERCC in a prior case, when their interests were aligned. The argument is not persuasive, because participation as an expert witness in one proceeding has no bearing on the value of party status in a later proceeding.

3. **Lack of burden to the proceeding.** Petitioner contends that its participation as an intervenor will neither expand the scope of the proceeding nor burden it. The parties of right, and the Commission, disagree. Petitioner admits that its interests differ from the other parties, meaning that it would presumably present evidence and argument to support its interests that other parties would not present (requiring examination and response from other parties) and requiring consideration by the

⁴Petitioner clearly seeks review of an interlocutory order under WAC 480-09-760, as provided in WAC 480-09-430(3).

Commission. Here its interests as a private marketer of services related to gas use are not within the scope of matters that the Commission may consider, and allowing its evidence in furtherance of those interests would burden the parties and the Commission. Even were we not proscribed from considering petitioner's interests, we have discretion to deny the intervention. We do not feel that intervenor's participation would assist the Commission in reaching a sound decision and do not believe the intervention would be in the public interest.

4. **Interests of Petitioner's customers.** Petitioner contends that unless it participates, the interests of its customers will be unrepresented. We find this argument unpersuasive as well. Petitioner's interests are not necessarily those of its customers, and petitioner is not here as counsel for its customers to represent their interests. Petitioners' customers were free to participate as intervenors, either individually or in an association such as PERCC's. They are free to consult with public counsel, to testify as members of the public, to attend all hearing sessions, and in general to undertake whatever level of participation is consistent with their own interests.

5. **Contribution to the proceeding.** Finally, petitioner contends that if it does not participate, its contribution to the proceeding will be lost. We noted above that, because of the nature of petitioner's interest, its contribution could be burdensome rather than helpful. Petitioner is free to consult with public counsel, and its existence is known to the other parties and to the Commission. Any party believing the evidence to be a contribution to the proceeding may offer it, as PERCC did in a prior proceeding. The offer would be subject to objection, of course, and its offer would not guarantee receipt in evidence.

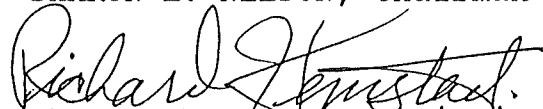
Conclusion. Petitioner's interests are not within those that the Commission is required to consider. It does not meet the threshold test for participation as an intervenor and its participation would be a burden on the Commission and the parties.

DATED at Olympia, Washington and effective this 24th
day of August 1994.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD HEMSTAD, Commissioner