

**BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION  
COMMISSION**

In the Matter of the Petition of

CASCADE NATURAL GAS  
CORPORTION,

for an accounting order authorizing  
deferred accounting treatment of loss in  
margin due to Company sponsored  
conservation programs, or, in the  
alternative, the continuation of the pilot  
decoupling mechanism that was approved  
in Docket UG-060256

DOCKET NO. UG-101656

PUBLIC COUNSEL [PROPOSED]  
REPLY TO CASCADE RESPONSE  
TO MOTION TO DISMISS

**I. REPLY**

1. Pursuant to WAC 480-07-370(1)(d), for the reasons set forth below, Public Counsel hereby replies to Cascade Natural Gas Corporation's (Cascade) Response to Public Counsel Motion to Dismiss ("Cascade Response" or "Response").

**II. ARGUMENT**

**A. Procedural History.**

2. Cascade filed its petition for an accounting order in this docket on October 1, 2010. Cascade did not serve Public Counsel. As the Commission's own records in this docket confirm, no certificate of service was filed with the petition. Cascade's cover letter accompanying the filing does not reflect that any service was made, or that any copy was provided to any other person or party. Although the petition directly implicates matters in Docket UG-060256 which

established the decoupling pilot, Commission records for that docket do not reflect any filing or service on Public Counsel or any other party.

3. On October 7, 2010, Public Counsel staff contacted Cascade to inquire as to its intentions regarding the pilot extension and related rate case. Cascade staff advised that a filing had been made on October 1 and confirmed that the Conservation Advisory Group (CAG) had not been provided with a copy of the filing.

4. On October 7, 2010, Public Counsel filed a Notice of Appearance in this docket. Public Counsel then began to evaluate the filing and contacted Staff about their position and to inquire about docket status. The Cascade petition was not set for Open Meeting or Prehearing Conference prior to October 22.

5. On October 22, 2010, Public Counsel filed its Motion To Dismiss, 15 days after learning of the Cascade petition.

6. To date, Cascade has not served a copy of its petition on Public Counsel.

**B. Public Counsel's Motion To Dismiss Is Not Time-Barred.**

7. Public Counsel's response was timely, filed only 15 days after Public Counsel became aware of the filing. Arguably, since Public Counsel has not yet been served, the time for filing a motion to dismiss under WAC 480-07-380(1)(b) has not yet started to run. Even if time is calculated from October 7, the date when Public Counsel learned of the petition and could be deemed served, the filing of the motion within fifteen days is timely under the rule since it is "within twenty days after the petition is served."

8. Cascade made no effort to notify Public Counsel of the petition, either formally by service, or informally at the time of filing. Indeed, had Public Counsel not made inquiry of

Cascade, it is possible that Public Counsel would never have become aware of the filing until after October 21. Under Cascade's theory, a motion to dismiss would then be permanently time-barred even if Public Counsel had no knowledge of the filing and hence no opportunity to file by October 21. This reading of the rule rewards Cascade for failing to provide notice or service, enabling it to avoid any motions against its petition.

9. Cascade's response does not claim any prejudice to Cascade or any party from the timing of the filing. As of October 22 the procedural status of the docket was not clear. It had not been set for the Open Meeting, nor for adjudication, and no prehearing conference had been set. The Commission had not issued a notice or schedule for the docket. No other party had responded or filed a notice of appearance. Cascade's current counsel did not appear in the case themselves until October 29.

10. In the event that the Commission finds, however, that the correct filing date for a motion to dismiss under the rule is October 21, Public Counsel respectfully requests that the Commission find Public Counsel has shown good cause for a one day delay in filing, as permitted under WAC 480-07-380(1)(b). Good cause is shown based on Cascade's failure to serve, the uncertain procedural status of the docket, and the absence of any prejudice to Cascade.

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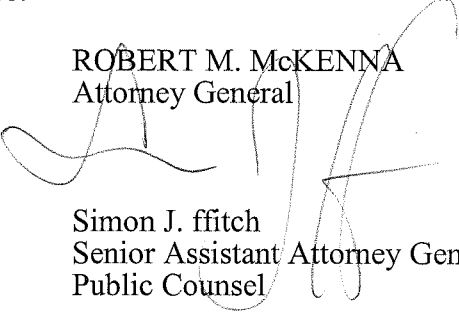
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### III. CONCLUSION

11. For the foregoing reasons, Public Counsel respectfully requests that the Commission reject Cascade's argument that the Motion to Dismiss is time-barred.
12. DATED this 4<sup>th</sup> day of November, 2010.

ROBERT M. McKENNA  
Attorney General



Simon J. Ffitch  
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Public Counsel