



Christine O. Gregoire

**ATTORNEY GENERAL OF WASHINGTON**

900 Fourth Avenue #2000 • Seattle WA 98164-1012

August 8, 1994

Steve McLellan, Secretary  
Washington Utilities and  
Transportation Commission  
Chandler Plaza Building  
1300 S. Evergreen Park Drive S.W.  
P.O. Box 47250  
Olympia, WA 98054-7250

Re: WUTC v. Washington Natural Gas Company  
Docket No. UG-940814

Dear Mr. McLellan:

Enclosed please find for filing an original and 19 copies of  
Public Counsel Response to Motion to Eliminate Multiple Hearings,  
Etc. in the above entitled case.

Thank you for your assistance.

Very truly yours,

Donald T. Trotter  
Assistant Attorney General  
Public Counsel

DTT/ljb  
cc: parties

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GENERAL COUNSEL  
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BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,  
  
Complainant,  
  
vs.  
  
WASHINGTON NATURAL GAS COMPANY,  
  
Respondent.

Docket No. UG-940814  
  
PUBLIC COUNSEL RESPONSE  
TO MOTION TO ELIMINATE  
MULTIPLE HEARINGS, ETC.

I. INTRODUCTION

On August 4, 1994 potential intervenors Northwest Industrial Gas Users, Inland Pacific Energy Services Corp., and Associated Gas Services Inc. (hereafter "Movants") filed a "Motion to Eliminate Multiple Hearings and Establish Procedural Schedule" (hereafter "Motion"). While the Motion was not filed in a manner sufficient to provide time for the written responses allowed per WAC 480-09-735 (15) we have taken the opportunity to so respond.

We observe at the outset that we are not opposed to mechanisms that will truly improve the "efficiency" of the process, while protecting our right to prepare our case. We should not lose sight of the fact that this case involves a proposal to shift tens of millions of dollars in cost responsibility to the residential class. Movants represent the primary beneficiaries of that proposal. It is in their pecuniary interest to eclipse the procedural phases of this case.

In our opinion, the ability to handle this case in the statutory time period is itself efficiency. We seriously doubt a

case of this magnitude would have a prayer of reaching a decision within several years, let alone ten months, if this were a civil case tried in the judicial system.

The Motion seeks the Commission to order the following:

1. Provide for only one cross-examination hearing, at the end of the schedule, or, in the alternative, two hearings (cross of company in one hearing, and then cross of Staff, Public Counsel, Intervenors, and company rebuttal in the second hearing).
2. Staff, Public Counsel and Intervenors would file rebuttal to each other;
3. Mandatory settlement conferences would be scheduled; and
4. Oral argument would be held in addition to briefs.

The rationale for these proposals is Movants' allegation that this case primarily depends on "policy" issues, not factual issues, since the company's filing is based on the Commission's order in Docket No. UG-931405, and there are "no revenue requirement issues". (Motion, p. 2-3). Movants then articulate a desire for "efficiency" in the process.<sup>1</sup>

## II. SUMMARY OF PUBLIC COUNSEL'S RESPONSE TO MOTION

Based on our review of the Motion, and on the basis that Movants are permitted to intervene in this case, we recommend the following:

1. The one-hearing proposal should be rejected; the "Modified Oregon" approach is acceptable.
2. The "surrebuttal" proposal is not unacceptable.

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<sup>1</sup> We note that under the banner of "efficiency," Movants actually add three additional procedural phases to this case: oral argument, "surrebuttal" and settlement conferences. We seriously doubt that actual hours spent by the parties will be reduced by these additional measures.

3. The Mandatory Settlement Conference proposal should be rejected - settlement discussions should be left to the parties;
4. The oral argument proposal should be rejected. The Commission can request oral argument if and when appropriate.

### III. DISCUSSION

#### A. The Relief Sought in the Motion is Premature.

We are unable at this time to share the view espoused by Movants that this is primarily a "policy" case. Discovery has barely commenced. The Company's direct case, which presents three cost study results, is still in the nascent stage of review.

Second, the factual underpinning for the motion does not exist. Movants erroneously assert that the Commission "approved" "the overall revenue requirement" in Docket No. UG-931405 (Motion, p. 3). In fact, the Commission in that case did not approve an overall revenue requirement. It did not even accept specific test-year rate base or expense amounts. The only operating result approved in Docket UG-931405 was the stipulated annual revenue increase.<sup>2</sup> As a result, there may well be contested factual issues at the input level. Again, we will not know until the case is evaluated.

Third, at a minimum, we will require cross-examination of the company before full development and presentation of our case can be accomplished.

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<sup>2</sup> Stipulation for Submission and Decision, p. 3, item 1, and Fourth Supp. Order, in Docket UG-931405 and UG-931442, p. 6, Finding of Fact No. 10 (May 27, 1994)

B. The "Modified Oregon" Approach is Acceptable

We do not object to a "Modified Oregon" Approach, whereby cross of the Company Rebuttal case as well as the Staff, Public Counsel and Intervenor cases, are conducted during the same set of hearings, but following cross of the Company's direct case. If scheduled appropriately, this format does not impact our opportunity to prepare our case. The Company can voice its own concerns, if any.

C. The Proposal for Staff, Public Counsel, and Intervenor "Surrebuttal" is Not Unacceptable

We will not object to Movants' request for Staff, Public Counsel and Intervenor "Surrebuttal."

However, this additional testimony drafting exercise penalizes parties on severely restricted budgets, such as Public Counsel. However, in this case it may not be inappropriate to permit this additional procedural phase.

D. Settlement Conferences Should Not be Required; Any Party is Free to Suggest Settlement Among the Parties at Any Time

Movants request that settlement conferences be scheduled prior to each hearing date. (Motion, p. 4). This is plainly excessive.

First, the relief sought is unnecessary. The parties can and should simply circulate settlement proposals among themselves other and present the settled results to the Commission. That is how Docket UG-931405 was successfully resolved.

Second, there is inefficiency built into movants' proposal. If their motion is granted, a person other than the ALJ will either be required to preside, or should preside, at such conferences.

They will be required to familiarize themselves with the record. We have no desire to have the presiding ALJ, who will assist in the decisionmaking, also preside at a settlement conference.

E. Oral Argument Is Unnecessary

The request for oral argument will not add efficiency to the process either.<sup>3</sup> First, the briefing process should be sufficient, as it has been in virtually every major case before the Commission in the last 15 years.

Second, if the Commission desires oral argument, the Commission can ask for it when the Commission deems appropriate.

Third, oral argument is not likely to improve the briefing process and may be detrimental to that process. Movants' proposal will either cause us to reallocate already limited briefing time to oral argument, or expend additional resources to a function that historically has not been deemed useful.

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<sup>3</sup> We assume Movants would not request 20 minutes per moving party. If each Intervenor represented by the same law firm or posing the same interests is allowed 20 minutes, this would be plainly objectionable.

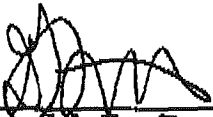
IV. CONCLUSION

The Motion should be denied except as recommended in part II above.

DATED this 8th day of August, 1994.

Respectfully submitted,


Christine O. Gregoire  
Attorney General

  
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Donald T. Trotter  
Assistant Attorney General  
Public Counsel

CERTIFICATE OF SERVICE

I hereby certify that I have this day served one copy of the foregoing document upon all parties of record in this proceeding, as shown on the attached service list, by hand delivery, by legal messenger, or by mail properly addressed and prepaid.

Dated this 8th day of August, 1994.

  
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Linda J. Borla  
Legal Secretary  
Public Counsel



SERVICE LIST  
WUTC v. Washington Natural Gas  
UG-940814

WNG

D. Scott Johnson  
Attorney at Law  
815 Mercer Street  
Seattle, WA 98111  
FAX 382-7875  
(206) 622-6767

Seattle Steam

Frederick O. Frederickson  
Graham & Dunn  
1420 Fifth Avenue, Suite 3300  
Seattle, Washington 98101-2390  
FAX (206) 340-9599  
(206) 624-8300

Staff

Robert D. Cedarbaum, AAG  
Heritage Plaza Building  
1400 S. Evergreen Park Dr. SW  
P.O. Box 40128  
Olympia, WA 98504-8002  
FAX (206) 586-5522  
(206) 753-2282

PERCC

Carol S. Arnold  
Preston Gates & Ellis  
5000 Columbia Center  
701 Fifth Avenue  
Seattle, WA 98104-7078  
FAX (206) 623-7022  
(206) 623-7580

NWIGU and  
Inland Pacific Energy Services  
Corporation

Edward A. Finklea  
Paula E. Pyron  
Ball, Janik & Novack  
101 S.W. Main Street  
Suite 1100  
Portland, OR 97204-3274  
FAX (503) 295-1058  
(503) 228-2525