

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of:

CASCADE NATURAL GAS COMPANY

For a Waiver from WAC 480-07-505 –
General Rate Proceedings

Docket UG-151309

**NWIGU AND PUBLIC COUNSEL
ANSWER AND OBJECTION TO
PETITION OF CASCADE
NATURAL GAS CORPORATION
FOR WAIVER**

**EXPEDITED TREATMENT
REQUESTED**

I. INTRODUCTION

1. Pursuant to WAC 480-07-370(1)(c), Northwest Industrial Gas Users (“NWIGU”) and the Public Counsel Unit of the Washington State Attorney General’s Office (“Public Counsel”) (collectively, “Respondents”) submit this Answer and Objection to the Petition of Cascade Natural Gas Corporation For A Motion For Waiver (“Petition”). Concurrent with the Petition, Cascade Natural Gas Corporation (“Cascade”) filed Advice No. CNG/W15-06-01, seeking an increase to its base rates (“Rate Filing”). The Petition seeks a waiver from WAC 480-07-505(1)(c) and asks the Commission to consider the Rate Filing without processing that filing as a general rate case. The Rate Filing constitutes a general rate case filing in two respects: (1) it seeks a change in Cascade’s cost of capital, and (2) it increases rates to a customer class by more than three percent.¹ Cascade’s Petition requests a waiver only as to the first issue and fails to address the second.

¹ WAC 480-07-505(1).

2. As explained in more detail below, Cascade's requested rate increase does not have the same level of impact on all customers. For example, while the requested increase appears modest for some industrial customers at 1.26%, the proposed increase to transportation customers is 6.28%, which is more than twice the threshold triggering a general rate case filing. The Commission should therefore require the request in the Rate Filing to be submitted as a general rate case just as it does with other requests of that magnitude.
3. As further described below, the Petition is inadequate to warrant a waiver of WAC 480-07-505(1)(c). Cascade's Rate Filing in its current form is also defective in several regards, failing to comply with the filing requirements of the general rate case rule. The Commission should therefor dismiss the filing as defective, with leave to refile.
4. In the event the Commission decides to accept the filing, it should suspend the Rate Filing and follow the normal procedures used in general rate cases, allowing Cascade an opportunity to supplement its filing in a timely fashion. If the Commission decides to not treat the Rate Filing as a general rate case, NWIGU and Public Counsel have made a separate filing seeking suspension of the Rate Filing to afford all parties an opportunity to build an adequate record to ensure the filing results in rates that are fair, just and reasonable.

II. ARGUMENT

A. The Petition Does Not Adequately Address the Commission's Rule Waiver Criteria

5. WAC 480-07-110(1) provides that the Commission may grant an exemption from its rules in individual cases "if consistent with the public interest, the purposes of the underlying regulation,

and applicable statutes.” That rule spells out a particular process the requestor must follow and a petition for waiver must “provide a full explanation of the reason for requesting the exemption.”²

6. WAC 480-07-110(3) provides the specific standard the Commission will use when considering a request to waive its rules:

The standard for consideration is the public interest standard. Factors the commission may consider include whether application of the rule would impose undue hardship on the requesting person, of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the underlying purposes of the rule.

7. The Commission should first note that the Petition does not “provide a full explanation of the reason” Cascade requests the waiver as required by WAC 480-07-110(2)(a). The “Discussion” section of the Petition consists of two paragraphs in which Cascade describes the amount of its requested increase, followed by a brief statement that the increase is based on the Commission Basis Report Cascade filed in Docket UG-150668. Despite the prescriptive language of the waiver rule, the Petition does little to address *why* the Commission should grant the waiver. Indeed, the Petition does not even assert, much less support an assertion, that the waiver is in the public interest.

8. Nor does the Petition address the factors the Commission uses to consider the waiver request. The first factor WAC 480-07-110(3) encourages the Commission to consider is whether waiver of the rule would prevent an “undue hardship” on Cascade that is unique to Cascade. The Petition, however, does not state that Cascade would face any undue hardship if the Commission

² WAC 480-07-110(2)(a).

processes the Rate Filing as a general rate case. This is likely because Cascade would have a difficult time providing support for such a statement.

9. General rate cases are a normal part of the regulatory process that governs utility operations in Washington.³ Cascade's last general rate case was in 2006.⁴ Cascade has had nearly a decade to continuously determine whether its rates remain adequate. A single general rate case every ten years is no burden to a regulated utility, much less an undue hardship. Moreover, Cascade is already *required* to file a new general rate case by virtue of the pipeline cost recovery mechanism ("CRM") the Commission approved in Docket UG-141202. The CRM is authorized through the Commission's policy statement in Docket UG-120715.⁵ In that policy statement, the Commission declared that a CRM has an effective life of no more than four years and that a utility using a CRM must file a general rate case within that time frame.⁶ Indeed, Cascade has indicated to Respondents that it is already planning to file a general rate case in 2016, which would also satisfy the requirement from the CRM Policy.

10. Rather than assert the existence of a hardship, Cascade's Petition argues only that the changes requested in the Rate Filing are "not significant enough to necessitate a general rate case proceeding."⁷ This reasoning is flawed for two reasons. First, it is the Commission's rules, not

³ See *In the Matter of Puget Sound Energy for an Accounting Order Approving the Allocation of Proceeds of the Sale of Certain Assets to Pub. Util. Dist. #1 of Jefferson Cnty.*, Docket UE-132027, Order 04 ¶¶16-17 (Sept. 11, 2014) ("In Washington, and many other jurisdictions, the regulator fulfills its responsibility under the regulatory compact by using the rate base/rate of return approach to set rates" based on evidence presented in a general rate case).

⁴ *WUTC v. Cascade Natural Gas Corporation*, Docket UG-060256 ("Cascade's 2006 GRC").

⁵ *In the Matter of the Policy of the Washington Utilities and Transportation Commission Related to Replacing Pipeline Facilities with an Elevated Risk of Failure*, Docket UG-120715, Policy Statement (Dec. 31, 2012) ("CRM Policy").

⁶ CRM Policy ¶75.

⁷ Petition at page 1.

Cascade, that determines when changes are significant enough to warrant a general rate case proceeding. WAC 480-07-505(1) very clearly sets forth both the size (e.g. an increase in revenue of more than 3%) and the type (e.g. a change in authorized rate of return) of change that must be treated as a general rate case. While Respondents recognize the relative modesty of the amount of Cascade's overall request, the impact of the Rate Filing is significant for Cascade's transportation customers and is more than double the threshold established in the Commission's rules. Second, the general rate case process is flexible enough to treat smaller rate increases appropriately. For example, the Commission can determine a narrower scope of review or establish shorter time periods to reflect the reduced complexity of the case.

11. The second factor WAC 480-07-110(3) encourages the Commission to consider is whether the effect of *applying* the rule is contrary to the purpose of the rule. Again, the Petition is silent in this regard and does not assert that processing the Rate Filing as a general rate case would somehow be contrary to WAC 480-07-505.

B. Granting the Petition Will Not Meet the Public Interest Standard

12. WAC 480-07-110 provides that a rule waiver must be consistent with the public interest. As noted above, the Petition does not address whether the public interest standard is met. Nor is the Petition consistent with prior cases where the Commission has determined the public interest is satisfied when waiving some general rate case requirements. For example, the Commission has waived general rate case requirements when: (1) there have been no significant changes since a

prior, recent rate case that may offset the need for additional revenue;⁸ (2) increases are necessitated by mandates from third parties (such as franchise fees);⁹ and (3) the company's financial information supports the proposed changes.¹⁰

13. Here, in light of the amount of time that has elapsed since Cascade's last general rate case, the Commission cannot meaningfully determine whether significant changes have taken place that may offset the need for additional revenue. One major change in Cascade's financial situation is its acquisition by MDU Resources Group, Inc., in 2007. When the Commission approved that acquisition, it approved a multi-party stipulation that required, in part, "Cascade will not advocate for a higher cost of debt or equity capital as compared to what Cascade's cost of debt or equity capital would have been, absent MDU Resources' ownership."¹¹ The Rate Filing seeks a specific overall rate of return of 7.5%, but does not describe the cost of debt or equity capital that makes up that figure. Given the nature of Cascade's ownership, examination of Cascade's capital structure is appropriate. It may be that Cascade's actual cost of capital justifies a lower rate of return and, therefore, could offset the need for additional revenue. The Commission has expressed

⁸ See *In the Matter of the Petition of ROCHE HARBOR WATER SYSTEM Seeking Exemption from the Provisions of WAC 480-07-505 and WAC 480-07-530, Both Relating to General Rate Proceedings*, Docket UW-100954, Order 01 ¶6 (July 29, 2010).

⁹ *Id.*; see also *In re Tariff Revisions to Increase Rates Due to a Disposal Fee Increase Filed by STANLEY'S SANITARY SERVICE, LLC DBA STANLEY'S SANITARY SERVICE*, Docket TG-131951, Order 01 ¶5 (Nov. 27, 2013).

¹⁰ *Id.*

¹¹ *Cascade's 2006 GRC*, Order 06, Stipulation at p.7 ¶17.

a keen interest in making sure a utility's cost of capital is up-to-date and has refused to waive the general rate case rules where the record does not allow the Commission to address that issue.¹²

14. The Rate Filing also appears to be based on increased costs that are fully within Cascade's control and, therefore, are not being mandated by a third party. Although not included in the Rate Filing, Cascade's website announcing the Rate Filing states the following:

The main reason for the rate increase request is to recover the cost of the increased investment in natural gas facilities. Cascade's 2014 total gross investment for Washington natural gas operations is \$607 million, which is \$144 million more than the total gross investment in 2006 when the last general rate case was filed.¹³

With this increase in investment driving the requested rate increase, the Commission and parties may be interested in reviewing the prudence of Cascade's decisions to make those investments during a period of severe economic downturn and flat usage growth. The possibility of a prudence review is one of the primary goals of the general rate case process. By relying only on the Commission Basis Report for the Rate Filing, Cascade is not allowing the Commission or other parties to have an adequate record for such a review.

15. It is also not clear that Cascade's financial information supports the requested rate increase. As stated in the Petition and the Rate Filing, Cascade is relying solely on its Commission Basis Report to support the requested increase. Although the Commission Basis Report contains much of the information that is relevant to a general rate case, the two processes are not identical. What's

¹² *In the Matter of the Petition of AVISTA CORPORATION, D/B/A AVISTA UTILITIES, For an Order Approving Avista's Update of its Base Power Supply and Transmission Costs*, Docket UE-061411, Order 04 ¶¶12-13 (Dec. 26, 2006) ("Avista PTC Order").

¹³ <http://www.cngc.com/rates-services/rate-cases> (last accessed July 8, 2015).

more, the general rate case process requires the utility to more heavily document that information through testimony, detailed workpapers, and financial reports such as annual reports, FERC forms, and 10K filings.¹⁴

16. Another basis for waiving the rules the Commission has relied on when meeting the public interest standard is the Commission's desire in some situations to pursue alternatives to the general rate case process. For example, in the recent proceedings involving Puget Sound Energy's ("PSE") Expedited Rate Filing ("ERF"), the Commission both waived the rules relating to general rate cases and relied on information contained in a Commission Basis Report to set new rates.¹⁵ Cascade's situation, however, is nothing like the PSE situation that justified the ERF.

17. Commission Staff originally supported the ERF mechanism in response to the fact that PSE was filing almost continuous rate cases. As the Commission described it, Staff's proposal was "to establish a process that would allow a company's rates to be updated shortly after a GRC to address cost recovery issues arising from the regulatory lag that is an inherent part of the ten month GRC process."¹⁶ When it first approved the ERF, the Commission reiterated that a key purpose of that filing "was to provide the means to avoid yet another GRC close on the heels of PSE's 2011/2012 GRC and the need for general rate case after general rate case going forward."¹⁷ Moreover, the Commission's decision to waive the general rate case rules in the ERF docket was expressly

¹⁴ WAC 480-07-510.

¹⁵ See, *In the Matter of the Petition of Puget Sound Energy, Inc., and Northwest Energy Coalition For an Order Authorizing PSE to Implement Electric and Natural Gas Decoupling Mechanism and To Record Accounting Entries Associated With the Mechanisms*, Dockets UE-121697/UG-121705, Order 07 (June 25, 2013) ("ERF Order").

¹⁶ ERF Order ¶34.

¹⁷ ERF Order ¶189.

premised on having given all parties adequate opportunity to develop a record and submit briefs on the various issues in that case.¹⁸

18. Unlike PSE, Cascade has not been filing continuous rate cases, and the Rate Filing does not assert that Cascade is facing any cost recovery issues arising from regulatory lag. Nor is there any indication that Cascade's financial situation runs the risk of requiring general rate case after general rate case going forward.

19. Cascade also proposes to have *no* process for the other parties to develop a record or to submit briefs on the relevant issues. As noted above, the Commission conducted the ERF proceeding in a manner that at least mirrored a general rate proceeding by requiring parties to submit testimony and allowing the parties to brief the factual and legal issues that arose. Not only does Cascade's proposal not contemplate the development of a full record, the information Cascade provided in the Rate Filing does not approximate the information required in a general rate case. Such information would include testimony and exhibits, detailed workpapers, a summary document, cost studies, and reports to shareholders or stockholders.¹⁹ Cascade did not provide this information in its Rate Filing and the only description of the need for the requested increase Respondents are aware of is the statement Cascade makes on its website.²⁰

20. Because Cascade has not had a general rate case in so long, and because this is the first time Cascade has requested a specific rate of return since its acquisition by MDU Resources Group,

¹⁸ *Id.*

¹⁹ WAC 480-07-510.

²⁰ See note 13, *supra*.

Inc., it is in the public interest to require Cascade to file a general rate case, and it would not satisfy the public interest standard to waive those rules in this case.

C. The Petition Is Inaccurate and Incomplete

21. Even if Cascade's request to avoid a general rate case were justified, which it is not, the Petition is inaccurate and incomplete. For these reasons alone, the Petition should be denied.

22. The Petition is inaccurate because it states the Rate Filing "is not addressing any new" issues. To the contrary, the Rate Filing proposes to restart the "four year clock" that applies to the CRM. As noted above, the Commission's order in Docket UG 120715 requires a utility with a CRM to file a general rate case within the four year period that the CRM is in place. The order did not provide any exceptions to that requirement. It may be that Cascade's request accomplishes the intent of the order, or that Cascade could justify an exemption from that requirement. Either way, this is a new issue that has never been considered by the Commission and is not appropriate for resolution without further consideration by the Commission and interested parties.

23. The Petition is incomplete because it seeks a waiver only from WAC 480-07-505(1)(c). That rule concludes that any filing requesting a change in the utility's authorized rate of return is a general rate case. However, the Rate Filing is also a general rate case under WAC 480-07-505(1)(b) because the resulting rates exceed the three percent (3%) threshold established by that rule. Specifically, the Rate Filing proposed an increase of 6.28% for transportation customers. Cascade has not requested a waiver to WAC 480-07-505(1)(b). Thus, even if the Commission grants the Petition, the Rate Filing must still be processed as a general rate case under that rule to address the large impact on transportation customers.

24. Cascade apparently believes that a waiver of WAC 480-07-505(1)(b) is unnecessary because it “is not restructuring rates but rather applying the increase on an equal percent of margin.”²¹ However, this conclusion is contrary to the express language of the rule and Cascade offers no legal justification for its reading of the rule language. Further, there is no cost study that justifies applying the increase on an equal percent of margin basis or that supports the current rate spread and design to determine if rates are fair, just and reasonable.

25. WAC 480-07-505(1)(b) defines a “general rate proceeding” in part as a filing that meets the following criterion: “Tariffs would be restructured such that the gross revenue provided by any customer class would increase by three percent or more.” The rule does not define what it means to “restructure” a rate. However, the plain meaning of “restructure” is to “give a new structure or organization to.”²² The rate schedule is an integral part of a tariff’s organization or structure and cannot be divorced from the other terms of the tariff.²³ Indeed, the Commission has determined before that the relevant definition of a general rate case is the magnitude of the filing, not its purpose. In the *Avista PTC Order*, the Commission rejected Avista’s attempt to avoid a general rate case, stating, “[the tariffs filed and suspended in this docket bring it clearly within the rule’s definition of a general rate case, as it proposes rates that impose more than 3% overall (here it is 8.8%) and more than 3% for any customer class (here, it is 9.7% for residential customers).”²⁴ Cascade’s proposal to increase rates for transportation customers, even “just” by adding additional

²¹ Rate Filing, Cover Letter p.2.

²² Webster’s Third New International Dictionary.

²³ See WAC 480-80-102(5) requiring tariffs to contain rate schedule section with applicable rates.

²⁴ *Avista PTC Order* ¶11.

costs on an equal percent of margin basis, clearly exceeds the three percent (3%) threshold for that class of customers and must therefore be treated as a general rate case.

III. CONCLUSION

26. For the reasons stated above, NWIGU and Public Counsel urge the Commission to deny Cascade's request for a waiver and to reject the Rate Filing as defective. In the alternative, the parties respectfully request that the Rate Filing be suspended and conducted as a general rate case, allowing Cascade an opportunity to remedy the defects in the filing. In the event the Commission grants the requested waiver, NWIGU and Public Counsel request, pursuant to their separately filed Petition, that the Rate Filing be suspended for investigation and hearing consistent with Commission precedent for smaller rate requests.

Dated in Portland, Oregon, this 9th day of July 2015.

CABLE HUSTON LLP



Chad M Stokes WSBA 37499, OSB 004007
Tommy A Brooks WSBA 40237, OSB
076071

Cable Huston LLP
1001 SW Fifth Avenue, Suite 2000
Portland, OR 97204-1136
Telephone: (503) 224-3092
Facsimile: (503) 224-3176
E-mail: cstokes@cablehuston.com
tbrooks@cablehuston.com

ATTORNEY GENERAL OF
WASHINGTON
Public Counsel Unit



for Simon Ffitch
Senior Assistant Attorney General

Attorneys for Northwest Industrial Gas Users

PAGE 12 – ANSWER AND OBJECTION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing document upon all parties of record (listed below) in this proceeding by mailing a copy properly addressed with first class postage prepaid.

Michael Parvinen
Manager, Regulatory
Cascade Natural Gas Corporation
8113 W Grandridge Blvd
Kennewick, WA 99336-7166
Michael.parvinen@cngc.com

Lisa Gafken
Office of the Attorney General Public
Counsel Section
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
Lisa.gafken@atg.wa.gov


Brett Shearer
WUTC
PO Box 40128
Olympia, WA 98504-0128
bshearer@utc.wa.gov

Ed Finklea
Executive Director
Northwest Industrial Gas Users
326 Fifth Street
Lake Oswego, OR 97034
efinklea@nwigu.org

Simon ffitch
Office of the Attorney General
800 Fifth Avenue STE 2000
Seattle, WA 98104-3188
simonf@atg.wa.gov

Brad M. Purdy
The Energy Project
2019 N 17th Street
Boise, ID 83702
bmpurdy@hotmail.com

Dated in Portland, Oregon this 9th day of July 2015.



Chad M. Stokes, WSBA 37499, OSB 00400
Tommy A. Brooks, WSBA 40237, OSB 076071
Cable Huston, LLP
1001 SW Fifth Avenue, Suite 2000
Portland, OR 97204-1136
Telephone: (503) 224-3092
Facsimile: (503) 224-3176
E-mail: cstokes@cablehuston.com
tbrooks@cablehuston.com