

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

CASCADE NATURAL GAS
CORPORATION,

Respondent.

DOCKET NO. UG-060256

PUBLIC COUNSEL'S MOTION TO
COMPEL SUPPLEMENTATION OF
CASCADE'S GENERAL RATE CASE
FILING PURSUANT TO WAC 480-07-
500 AND WAC 480-07-510

I. PETITION

1. Pursuant to WAC 480-07-375, WAC 480-07-500, and WAC 480-07-510 the Public Counsel Section of the Attorney General's Office (Public Counsel) petitions the Washington Utilities and Transportation Commission (WUTC) to compel Cascade Natural Gas Corporation (Cascade) to supplement its initial filing in the above captioned docket. We request that Cascade supplement the record by April 7, 2006, so that the parties may review the information prior to the April 11, 2006, prehearing conference in this matter.

II. ARGUMENT

2. WAC 480-07-510(3) requires that a company's general rate case filing must include all work papers relevant to the company's filing unless too voluminous to provide with the initial filing. In that case, the work papers must be made available upon request. A company may incorporate the information required by WAC 480-07-510(3) into work papers, testimony or exhibits. Regardless of the vehicle, among the items that must be included in the filing is a

“detailed portrayal of restating actual and pro forma adjustments that the company uses to support the filing, specifying all relevant assumptions, and including specific references to charts of accounts, financial reports, studies, and all similar records *relied on by the company* in preparing its filing, supporting testimony, and exhibits.” *Id.* (emphasis added).

3. There are numerous instances in Cascade’s filing where the testimony is lacking in detail and Cascade fails to either reference or provide work papers or exhibits containing the necessary information. By way of example, we list a few of these.¹ The list is in no way exhaustive and we request Cascade supplement the entire record in accordance with the Commission’s rule.

A. The \$37 Million Identified in the Safety and Reliability Adjustment Mechanism Proposal Is Unsupported in the Initial Filing.

4. Mr. Lamar Maxwell Dickey sponsors the Company’s cost of service study, required by WAC 480-07-510(6), yet provides no work papers supporting his study. Exhibit No. ____ (LMD-1T). On page 15 of Mr. Dickey’s testimony, he refers to Schedule LMD–3 and LMD–4, which he says contains a complete listing of the allocation of every item contained in the cost study to the individual rate schedules. The Company did not file Schedule LMD-3 and LMD-4 with its opening testimony. If the Company did not file these papers because they are too voluminous, its still should have offered their availability pursuant to WAC 480-07-510(3). However, if the Company failed to file them because they contain confidential information that information can be redacted until a protective order is in place. It is inappropriate to withhold redacted documents simply because a protective order has not been issued.

¹ We offer examples as they are useful in determining compliance with the Commission rule. *See e.g.*, Civil Rule of Procedure 12(e), Motion for More Definite Statement: “The motion shall point out the defects complained of and the details desired.” Nonetheless, the filing is clearly inadequate on its face.

5. Additionally, it is unclear whether the provision of Schedule LMD-3 and LMD-4 would fulfill the Company's entire obligation under the rule. In other words, these schedules are definitely necessary but probably not sufficient to support the Company's cost study. For instance, these schedules appear not to include how the allocation factors were developed or how the peak demands by class were estimated. Such information is also lacking in the testimony.

B. The Cost of Service Study Lacks Supporting Work Papers.

6. The Company proposes a "Safety and Reliability Infrastructure Adjustment Mechanism" or "SRIAM" to recover \$19.3 million for system reinforcement, \$15.8 million for replacement projects and \$1.875 million for municipal projects over the next five years. The testimony supporting this request is sponsored by Mr. F. Jay Cummings. Exhibit No. ___ (FJC-1T). Mr. Cummings' testimony includes a chart outlining historical expenditures and projected future expenditures. *Id.* at p. 4. The total projected future expenditures are broken down for each year from 2007 through 2011. Unfortunately, that is where the break down of the data ends. Mr. Cummings never provides details of the system reinforcement, system replacement or municipal projects it intends to undertake and the specific cost details for any of these projects.

7. Testimony offered by Mr. David W. Stephens also discusses, in a general way, the additional investments in facilities allegedly necessitating the SRIAM. Exhibit No. ___ (DWS-1T), p. 6. But this testimony also lacks detail. He mentions the need to replace significant portions of pipe in Longview and Anacortes but fails to identify the specific projects and associated costs. *Id.* at p. 6. Instead, this project is lumped together with creek crossings, odorizing facilities, and ground beds for cathodic protection. Lumped together, the Company arrives at a total predicted investment of over \$15.8 million in replacement projects in

Washington. *Id.* at 6-7. Again, the projects are not itemized and their costs are withheld.

Indisputably, Cascade's failure to provide any work papers or testimony regarding how it arrived at more than \$37 million in estimated plant costs violates the Commission's rule.

C. The \$58 Million for New Distribution Services Identified in the Requested Return on Equity is Unsupported in the Initial Filing.

8. Apart from the \$37 million for the SRIAM, the Company identifies the need for approximately \$58 million over the next five years for new distribution mains and services in Washington. Exhibit No. ___(DWS-1T), p. 8. The Company apparently identifies these new capital expenditures to support its requested return on equity. *Id.* Once again, however, the Company's filing identifies a very large amount of money without any supporting testimony or documents as required by the rule.

D. The New Conservation Efforts Proposed, Including \$150,000 for Promotional Activities, Are Unsupported in the Initial Filing.

9. Mr. Jon T. Stoltz identifies \$150,000 in new spending for "Conservation Promotions" but fails to explain how this number was arrived at in this case or what exactly will be promoted. Exhibit No. ___(JTS-1T), pp. 29-30. *See also*, Exhibit No. ___(KJB-1T), p. 18. Additionally, the Company says it expects to increase investment in DSM programs identified in its current IRP but it fails to identify which programs will see increased spending or how much they will be increased. Exhibit No. ___ (JTS-1T), p. 30.

E. The \$800,000 Proposed for Low Income Assistance is Unsupported in the Initial Filing.

10. Not one witness identifies, by testimony or work paper, how the Company arrived at the \$800,000 figure it proposes for low income assistance. Exhibit No. __ (KJB-20) offered by Ms. Katherine J. Barnard merely identifies the dollar amount. *See also*, Exhibit No. __ (KJB-T), p. 19.

F. Public Counsel’s Ability to File Data Requests for the Information is An Inadequate Remedy. The Appropriate Remedy is for the Commission to Compel Production.

11. WAC 480-07-500 and -510 allow the Commission to summarily reject any general rate case filing that does not conform to the Commission’s requirements. We are not requesting that in this case. Instead, we request that Cascade be compelled to supplement its opening testimony to comply with the rules.

12. We expect that Cascade will argue that all of the information we identified as missing from the filing is readily obtainable through data requests. This argument inadequately addresses our concerns.

13. Cascade has the burden of proof to show that its proposed tariff is fair, just, and reasonable.² We believe that the Commission intended WAC 480-07-510 as an extension of the Company’s burden of production in general rate cases. *See*, WAC 480-07-540, “The burden of proof includes the burden of going forward with evidence and the burden of persuasion.” *See also*, WAC 480-07-500(3), “The special requirements in subpart B are designed to standardize

² Thus, the ultimate remedy for an inadequate filing remains Commission rejection.

presentations, clarify issues, and speed and simplify processing.”³ Requiring Public Counsel to affirmatively file data requests for information we are entitled to by Commission rule impermissibly shifts the burden of production onto us and wastes limited public resources. We do understand the need for flexibility in these proceedings and so this issue is not being raised casually. We truly believe that our failure to rectify this problem in the face of obvious non-compliance will lead to further erosion of compliance with the Commission’s rule and result in shifting the burden of production from regulated companies to the public.

14. Moreover, data requests are simply not equivalent to pre-filed testimony. WAC 480-07-405(9) makes it quite clear that the Commission will not consider data requests or treat them as evidence “unless and until it is entered into the record.” No similar prohibition exists regarding pre-filed testimony. To the contrary, WAC 480-07-510 requires the information we seek be part of the Company’s initial filing of testimony and exhibits in support of its proposals. In short, this information is presumptively part of a company’s case-in-chief.

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³ Even without the benefit of WAC 480-07-510, the Commission has said that information available early in the case “should not be hoarded.” *WUTC v. Puget Sound Power & Light Co.*, Docket Nos. U-89-2688-T, U-89-2955-T, Third Supplemental Order, p. 37 (January 1990).

We are also concerned that inadequate opening testimony will lead to extensive rebuttal from the Company, including the addition of positions and information that should have been contained in opening testimony. Indeed, the Commission’s order in the 1990 Puget Case also stands for the proposition that a company may not make its case on rebuttal. *See Id.* at p. 79: “The Commission is concerned that the company waited to present its...proposal until rebuttal. This tactic is unacceptable, since it severely limits the opportunity for the other parties to examine the proposal. In future cases, the company will be expected to present its proposals in its direct case.”

III. CONCLUSION

15. For the foregoing reasons, Public Counsel respectfully requests that the Commission compel Cascade to supplement its filing in accordance with Commission rules by April 7.

Dated this 30th day of March, 2006.

ROB MCKENNA
Attorney General

JUDITH KREBS
Assistant Attorney General
Public Counsel Section