WUTC v. Cascade Natural Gas Corporation

Docket No. PG-230800 - Vol. I (April 25, 2025)

BUELL | RJW
REALTIME REPORTING | TRANSCRIPTION

1325 Fourth Avenue, Suite 1840 Seattle, Washington 98101
6 South Second Street, Suite 718 Yakima, Washington 98901
Bellingham | Everett | Tacoma | Olympia | Yakima | Spokane
Seattle 206.287.9066 | Tacoma 253.235.0111 | Eastern Washington 509.624.3261
www.buellrealtime.com
email: audio@buellrealtime.com

BEFORE THE WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant,	)
vs.	)DOCKET NO. PG-230800
CASCADE NATURAL GAS, Respondent.	)VOLUME I)PAGES 1-27

VIRTUAL PREHEARING CONFERENCE

BEFORE ADMINISTRATIVE LAW JUDGE

CONNOR THOMPSON

Via Zoom
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, Washington 98504

DATE TAKEN: April 25, 2025

TRANSCRIBED BY: ELIZABETH PATTERSON HARVEY, FAPR, RPR, WA CCR 2731

A P P E A R A N C E S:

FOR COMMISSION STAFF:

Josephine Strauss
Josephine.Strauss@atg.wa.gov
Office of the Attorney General
Utilities and Transportation Division
PO Box 47250
Lacey, Washington 98503
360.664.1188

FOR THE RESPONDENT:

Sherree Carson
scarson@perkinscoie.com
Byron C. Starkey
ByronStarkey@perkinscoie.com
Perkins Coie LLP
10885 Northeast Fourth Street
Suite 700
Bellevue, Washington 98004
425.635.1400

FOR SAPPHIRE GAS SOLUTIONS:

George O. Wilkinson, Jr.
gwilkinson@velaw.com
Kevin A. Moscon
kmoscon@velaw.com
Vinson & Elkins
Texas Tower
845 Texas Avenue
Suite 4700
Houston, Texas 77002
713.758.2087

ALSO PRESENT:

Dennis Ritter

April 25, 2025 9:30 a.m.

-o0o-

JUDGE THOMPSON: Thank you very much.

Good morning. We're here today for a prehearing conference in Docket PG-230800. This case is captioned Washington Utilities and Transportation Commission vs Cascade Natural Gas Corporation.

This is a penalty case relating to an incident that occurred involving a mobile LNG facility, resulting in the release of LNG, which then formed a vapor cloud, subsequently exploding, resulting in an injury and a death.

My name is Connor Thompson. I am an administrative law judge with the commission. And I will be presiding in this matter along with the commissioners. The commissioners will not be joining us at this prehearing conference.

Let's go ahead and start by taking appearances. And we'll go ahead and begin with staff.

ATTORNEY STRAUSS: Good morning, your Honor. Josephine Strauss, the Washington State Attorney General's office, representing staff.

With me, I have Dennis Ritter.

JUDGE THOMPSON: Thank you very much.

And for Cascade?

ATTORNEY CARSON: Good morning, your Honor. Sherree Strom Carson with Perkins Coie, representing Cascade Natural Gas.

Also with me is Byron Starkey with Perkins, representing Cascade as well.

And as I said, there are several representatives of Cascade on the line as well.

JUDGE THOMPSON: Thank you.

And for Sapphire Gas Solutions?

ATTORNEY WILKINSON: Your Honor, George Wilkinson with Vinson & Elkins.

With me today is Kevin Moscon.

JUDGE THOMPSON: Thank you very much.

And I'll just check one more time. Do we have any other organizations on the call that want to give a verbal notice of appearance at this time?

Okay. Hearing none, that brings us to the petitions for intervention. I don't believe we have any other petitions to intervene other than Sapphire Gas Solutions, LLC. I have reviewed the petition to intervene from Sapphire.

At this time, I'd like to know if there are any objections to the petition. I'll go ahead and start with staff.

ATTORNEY STRAUSS: Your Honor, staff does not take a position on Sapphire's petition to intervene. However, if that petition is granted, staff may request a limitation.

JUDGE THOMPSON: Okay. And Cascade?

ATTORNEY CARSON: Cascade does have some concerns about Sapphire's intervention or requested intervention. I'm happy to run through those.

We think the best option may be for the commission to grant them a limited intervention. And I'm happy to discuss more.

JUDGE THOMPSON: Please go ahead.

ATTORNEY CARSON: Okay. So, Cascade has concerns about Sapphire's requested intervention for a number of reasons.

First, Sapphire is not an entity that is regulated by the commission. And allowing Sapphire to intervene in a role similar to a respondent would impair the orderly and prompt conduct of the proceeding, we believe. And this is a concern that the commission must take into consideration when ruling on a petition to intervene.

And additionally, to intervene, Sapphire must show a nexus between its purpose and an interest protected by a Washington statute within the commission's

jurisdiction. And because Cascade is a regulated entity, and for purposes of this proceeding, the commission looks to Cascade for compliance with laws. It's not clear that Sapphire can show a substantial interest in the proceeding.

The second concern is -- the second reason that Sapphire provides for intervening is that it can provide information. But all the information Sapphire can provide is obtainable either through discovery to Cascade, since Sapphire is its agent, its contractor, its consultant, or through subpoena or deposition to Sapphire directly, making intervention unnecessary.

And third, and a primary concern, is this proceeding is not the proper forum to litigate Sapphire's indemnification obligations to Cascade, which the petition raised that issue. And it's very important that the commission recognize that is not within its jurisdiction.

Sapphire has potential remedies in other courts to address indemnification if there are disagreements between Cascade and Sapphire. And expanding this proceeding to include indemnification would be outside the commission's jurisdiction, would broaden the scope of the case, and would impair the orderly and prompt conduct of the proceeding.

So those are our concerns with granting intervention to Sapphire.

With those concerns in mind, we do believe that if intervention is to be granted, a limited intervention would be appropriate. And I can, you know, walk you through. We have, like, four limitations that we propose, if you'd like me to address those now.

JUDGE THOMPSON: Let's go ahead and hear those now, and then I'll go ahead and turn to Sapphire and round back to staff and then Cascade, if appropriate.

ATTORNEY CARSON: Okay. So first, in paragraph 3 of its petition to intervene, Sapphire talked about the need to challenge the application of Washington law and Regulation 49 CFR Parts 192 and 193.

So we agree, you know, Sapphire's intervention should be limited to presenting arguments regarding the application of Washington law and these regulations as identified in paragraph 3 of its petition to intervene.

In terms of discovery, Sapphire should be directed to coordinate discovery with Cascade to avoid duplication or the expansion of issues. And in other words, it would be Cascade, not Sapphire, who would issue any discovery. And all discovery from other parties should be directed to Cascade, who will then work with Sapphire, its contractor consultant, to obtain

information and respond to this -- to any requests.

Third, Sapphire should be specifically prohibited from seeking discovery on or attempting to raise or litigate any indemnification issues. Again, under commission rules, Cascade is the one who's being held responsible in this proceeding for the actions of its contractors. So Sapphire should be prohibited from seeking discovery from Cascade or otherwise litigating issues related to indemnification.

And fourth, Sapphire has expressed its current intent not to call witnesses. If Sapphire later seeks to present testimony, it should seek leave of the commission by a motion and justify the need for the testimony.

And just kind of as a backdrop, this type of limited intervention has been granted by the commission in prior cases; for example, where labor unions sought to intervene in the sale of a regulated entity and there were concerns, and in fact, a past history of the labor unions using the proceedings to circumvent the collective bargaining process, so kind of using the proceedings for a different purpose. That's in Docket UT-090842.

So we just want to make sure that, you know, we have limitations so that particularly with regard to the indemnification, that is not an issue that's being litigated here. Thank you.

JUDGE THOMPSON: Thank you very much for that.

I'll go ahead and turn to you, Mr. Wilkinson.

ATTORNEY WILKINSON: Thank you, your Honor.

First, I'll address the four stated reasons why Sapphire's intervention should be limited.

First of all was the idea that Sapphire somehow is not regulated by the commission. We believe that Sapphire is actually regulated by the commission. And that's something that goes to the heart of this enforcement matter and goes to the heart of the legal defenses that Sapphire wishes to raise, and why we believe that Sapphire needs to be a party to properly raise those arguments on the proper application of the incorporated Federal Regulations Part 192 and Part 193.

The second point, on showing a sufficient nexus, we believe that Sapphire's position as a regulated entity under Part 193 is a significant and substantial interest in an enforcement action that's purporting to bring causes of actions related to the operation of an LNG facility under Part 193, as opposed to a gas pipeline under Part 192.

As to information available from Sapphire, you know, we will concede the point that we can either be subpoenaed -- you know, we can be subpoenaed to provide information.

And we have cooperated with the UTC's investigation through Cascade from the very beginning in providing information. But participation as a party makes that information more available and also brings potentially to light relevant things that we choose -- facts we choose to raise, rather than what we've been asked to provide in the past.

As to not being the proper forum for litigation of indemnification, we couldn't agree more. The only reason we raised that is, as stated in the petition for intervention, is that the indemnity demand, defense demand, creates, we believe, a conflict in the positions of Cascade and Sapphire in our interests in the defense of this matter and any resolution of this matter. And it's precisely that conflict as the reason why Sapphire believes it needs to be a party to protect those interests.

We have absolutely no interest in seeking to use this proceeding for discovery or otherwise seeking to litigate a defense or indemnity obligation, but only raise it because of the conflict issues that it presents.

In terms of the limitations, we certainly do intend to challenge the application of law, and that's something we'd like to talk about further.

We are happy to continue coordinating discovery

with Cascade, but don't believe that if our interests diverge on discovery, that we should be prohibited from seeking something that Cascade is not willing to ask for because of the aforementioned conflict issues.

The prohibition on seeking discovery on indemnity, your Honor, we certainly have no objection to that. That's not something we ever intend to do, as I previously explained.

JUDGE THOMPSON: And then would you also be okay with sticking with not calling witnesses for now, but having the optionality to seek leave of the commission should you wish to present a witness if this ends up going to hearing?

ATTORNEY WILKINSON: Yes, your Honor.

JUDGE THOMPSON: Okay. Staff, do you have any response or thoughts on the arguments or concerns with intervention or the conditions or limitations to intervention?

ATTORNEY STRAUSS: Yes, your Honor. So as previously stated, staff doesn't really have a position on Sapphire intervening.

However, if the commission does grant that petition, staff would support the limitation regarding indemnification, but staff would oppose limitations on discovery, specifically staff's ability to seek discovery

directly from Sapphire.

JUDGE THOMPSON: Okay. And does the company have any thoughts?

It sounds like to me there's agreement with conditions 1, 3, and 4.

2 on discovery seems to be perhaps the hangup here. And so I think there's certainly a way that we can work around this.

I'll just say that before hearing from the company, the WAC and statute regarding intervention allows the commission to impose conditions and change those conditions at any time during the proceeding, if needed, to be able to conduct an orderly and prompt proceeding.

And so what I think, you know, is a very real possibility is perhaps we have Sapphire and Cascade coordinate on discovery being sought by Sapphire and Cascade. It sounds like that is a doable thing right now.

I understand that the interests may diverge at some point and that may need to be changed.

But would the company have any concerns with staff being able to seek discovery directly from Sapphire?

ATTORNEY WILKINSON: No, your Honor. We tried to be very open with the UTC throughout its investigation

and would seek to continue to do so.

JUDGE THOMPSON: Okay. And would Cascade have any concerns?

ATTORNEY CARSON: Yeah, Cascade does have some concerns with that. I mean, just in terms of -- you know, with all due respect to Mr. Wilkinson, who says that Sapphire is regulated by the commission, Sapphire isn't faced with these penalties by the commission like Cascade is in this proceeding.

And so it's important to Cascade when these discovery requests are issued, that they be able to -- you know, if there's a difference in opinion, for example, on a data request that goes directly to Sapphire, that would be problematic.

And I guess one way that you could address that is that, you know, if staff can go directly to Sapphire with discovery, then if Cascade should be able to respond as well, if they, you know, view it differently or have concerns or, you know, just think a different response is appropriate. Then I think maybe -- I think we could live with that sort of situation.

I mean, hopefully that situation doesn't come up. But I could see that there might be some difference of viewpoint, and so that's why we would like to coordinate the discovery.

But if, you know, that can't happen in terms of the responses to staff, then I think Cascade would want the opportunity to respond as well to the data request.

JUDGE THOMPSON: Okay. And I think that that goes to the coordination aspect. If staff is seeking responses directly from Sapphire, I think under the coordination piece of these limitations, the expectation would be that Cascade and Sapphire would coordinate.

I do want to raise a potential issue that I see with that, and that is in the timing of discovery responses, because we may have that additional coordination. Do we need to perhaps extend discovery responses out an additional three days beyond what's typical so that that coordination can take place?

ATTORNEY CARSON: I don't have any objection to that.

ATTORNEY WILKINSON: I don't have any objection to that, your Honor.

ATTORNEY STRAUSS: Staff wouldn't object to that either.

I guess the one caveat would be in the proposed procedural schedule, we do have a reduction in response time. Staff would still like to see some reduction in response time after response testimony is filed, just because at that point, things are pretty well developed.

So just considering that aspect.

ATTORNEY CARSON: I agree with that. It's pretty short turnaround time, you know, between once the direct testimony is filed and the response and then the rebuttal. So I agree with shortening it. So I guess maybe that's ten days then, instead of 13 days. Is that what we're talking about?

JUDGE THOMPSON: That's what I'm thinking. So, yeah, we'd start with 13 and then shorten down to ten, where we typically shorten down to seven.

Okay. I think at this time, I'll go ahead and just note that I will grant the petition for intervention with limitations discussed here today. And that will be in the prehearing conference order.

I do take note, and I'm cognizant of the fact that at some point in time, the interests of Sapphire and Cascade might -- may diverge. For instance, if staff and Cascade are able to come to some sort of settlement agreement and Sapphire opposes that settlement agreement. If we get to that point, I would just remind the parties that the limitations can be changed. Intervention is not firmly in place throughout the entire proceeding. And so there are options for the parties to address concerns that arise later in the proceeding if needed.

But with that, we can go ahead and move to the

procedural schedule. I did receive a suggested schedule from staff, and my understanding is that Cascade has agreed to that schedule. Is that correct?

ATTORNEY CARSON: Yes, that's correct, your Honor.

JUDGE THOMPSON: Okay. Does Sapphire actually -- before I even get that far, I'll note just for the benefit of the parties that the week of October 6th and the week of October 13th will not work for Commissioner Rendahl. I believe that she has a NARUC conference, and then she'll be out of the country at another conference the following week.

And so looking at commissioner availability, I think -- let's see. I'm looking at perhaps the week of September 22nd. The 24th or 26th look available.

The week -- or the day of October 21st looks to be available. The 24th is also available.

And then the first full week in November is a possibility as well.

It looks like I do have some flexibility to perhaps add a half day before October 24th. So we could start in the afternoon of the 23rd, going into the 24th.

But that raises the question of how long do we foresee needing for a hearing. Do we believe that this is a one-day hearing, a two-day hearing?

I just want to make sure that I keep that in mind as I'm trying to work with the commissioners' schedules.

And I'll go ahead and turn to staff first.

ATTORNEY STRAUSS: Yes, your Honor. I would foresee this being a one-day hearing at most.

I would say that the September dates for me, I'm out of town that week, so I would not be able to do that week in September. But the October, November dates should work.

JUDGE THOMPSON: Okay. And Cascade, is there any thoughts on the length of the hearing or availability on those dates?

ATTORNEY CARSON: I agree with a one-day hearing. That should be sufficient.

I will need to check with the Cascade team about those dates, and happy to do that if we want to take a little break. I think for me, those dates will work, but I'll double check.

JUDGE THOMPSON: We can go ahead and take a brief break here in just a moment.

But I'll go ahead and ask from Sapphire if there's any thoughts on one-day versus two-day. I know that you don't appear often in front of the commission, but usually one or two days is all our proceedings take.

So any thoughts there, and then availability on those dates just discussed?

ATTORNEY WILKINSON: Your Honor, if I might, I did have perhaps a broader observation on the proposed procedural schedule that might affect hearing dates, in that we believe there ought to be scheduling deadlines for dispositive motions, motion to dismiss, motion for summary judgment that are heard, ideally, before testimony, or resolved before testimony is due. We believe that there is -- that that has the potential to greatly simplify the proceedings. But it would be helpful to have dispositive motions considered.

JUDGE THOMPSON: I'll turn back to that in just a moment.

On the question of one day versus two day?

ATTORNEY WILKINSON: One day.

JUDGE THOMPSON: One day?

ATTORNEY WILKINSON: I'm sorry, your Honor. Yes, one day.

JUDGE THOMPSON: That's okay.

And then for Sapphire's availability, does the week of October 20th or perhaps the first full week in November work?

ATTORNEY WILKINSON: Yes, your Honor.

JUDGE THOMPSON: Okay. And then turning back to

staff, do you have any thoughts on deadlines for dispositive motions?

ATTORNEY STRAUSS: No position, your Honor, on deadlines for dispositive motions. I guess given when the proposed schedule has testimony due, I would maybe have preference for the filing deadline for those to be in early June, just to avoid things overlapping unnecessarily. But no, no position otherwise.

JUDGE THOMPSON: Okay. And Cascade?

ATTORNEY CARSON: I don't think we have any position regarding dispositive motions.

I agree they obviously should be early, and June seems like a reasonable time frame for filing.

JUDGE THOMPSON: Okay. Just looking at calendars real quickly.

Okay. I'll go ahead and include something in the prehearing conference order regarding deadlines for dispositive motions. I will note, the prehearing conference order, because I will need to coordinate with the commissioners on their calendars to ensure that the dates I've selected will actually work, will likely come out next week. It probably won't be today just because of commissioner availability.

But at this time, if Cascade would like to take a moment to check on availability, we can go ahead and

take a brief recess.

ATTORNEY STRAUSS: Your Honor, just briefly. Oh, apologies.

ATTORNEY CARSON: I was just going to say that I have gotten a message that those weeks would work for Cascade, and it looks like they work on my calendar. So that's October 21st, October 24th, or November -- the first full week of November. Is that right?

JUDGE THOMPSON: That's right.

ATTORNEY CARSON: Yeah. So I'm told that that works for Cascade, and I can make that work as well.

JUDGE THOMPSON: Okay, wonderful. We will not take a brief recess, then.

Staff, you had something to add?

ATTORNEY STRAUSS: Oh, yes. I was just going to propose that if we are pushing the date of the hearing, perhaps we also push the date of cross-exam exhibits, witness lists, and time estimates being due, just to give the parties more time to finalize those.

JUDGE THOMPSON: Okay. We can do that.

Okay. We don't have any discussion, I don't think, around intervenor funding.

We don't have any prioritized groups taking part. And so I don't believe we need to go over that.

The rest of this will sort of just be

boilerplate: Commission -- commission rules regarding discovery, errata, et cetera.

If the parties, in relation to data requests, have discovery disputes, they should attempt to work those out in good faith. If they cannot, then they should bring those motions to the commission for resolution. I would encourage any party to pick up the phone or have a Zoom call with opposing counsel before filing a motion to compel or a motion to strike testimony for a discovery violation.

I would also ask the parties to include that they have made that attempt in any motion, just so that we're aware that that good faith effort has been made.

I don't believe that we need to impose the requirements that we have in the past regarding identifying each data request by subject in the cover letter and the distribution email, and having those grouped together. Do the parties feel differently about that?

ATTORNEY STRAUSS: I don't think that's necessary, your Honor.

JUDGE THOMPSON: Okay. Cascade?

ATTORNEY CARSON: I agree.

JUDGE THOMPSON: Okay. Thank you.

And Sapphire?

ATTORNEY WILKINSON: I agree.

JUDGE THOMPSON: Okay. Wonderful.

I'm guessing the answer to this question will be yes, but would the parties like to have a protective order in this docket?

ATTORNEY STRAUSS: Yes, your Honor, just because this does concern pipelines that may be subject to privacy limitations, especially regarding public disclosure of locations of pipelines.

JUDGE THOMPSON: Okay. We will go ahead and issue a protective order as well.

Are there any special considerations for the protective order?

Do we need to have highly confidential information designations?

ATTORNEY CARSON: From Cascade's perspective, I don't believe so. I think a standard protective order should be fine.

JUDGE THOMPSON: Okay. And Sapphire, do we have -- it looks like we may have lost Mr. Wilkinson.

Mr. Moscon, are you on the line still?

ATTORNEY MOSCON: I am, your Honor.

JUDGE THOMPSON: Okay.

ATTORNEY MOSCON: We don't have any issue with that.

(Overlapping speech)

JUDGE CONNOR: Thank you very much.

The commission requires electronic filing of documents for formal filings. I don't believe that we need to have -- well, let's go ahead and stay with the normal practice, unless there's any objection to doing so, of requiring paper copies of testimony, exhibits and briefs within two days of electronically filing these same documents. Is there any concern with requiring paper copies for the commissioners?

ATTORNEY CARSON: I don't have an objection to paper copies of testimony and exhibits.

I don't believe we usually provide paper copies of briefs.

JUDGE CONNOR: Okay.

ATTORNEY CARSON: At least in recent cases we haven't. But, you know, I guess we can do that.

ATTORNEY STRAUSS: Staff doesn't have an objection, necessarily. If it's avoidable, that'd be great. But otherwise, if it's not, we will manage.

JUDGE THOMPSON: Okay. I'll take that under advisement and check with the commissioners as to their preference. We do have a new commissioner, and so I'll check in and see what the current preference there is. And then I'll go ahead and provide for whether or not

paper copies are necessary in the prehearing conference order.

Parties know commission rules provide for electronic service of documents. And the commission will serve parties electronically, and the expectation is that the parties will serve one another electronically as well.

If any party has not yet designated a lead representative for service, please do so via email to me as soon as possible.

I'm looking at the service list. I don't think that that's a concern. I see a lead representative for everybody.

But if you do have additions, would like to add names and email addresses of other representatives or support staff who should receive electronic courtesy copies of all documents filed in this proceeding, please email that to us as well. My email is Connor.thompson@utc.wa.gov. That's C-O-N-N-O-R.Thompson@utc.wa.gov.

And then finally, errata sheets. Under WAC 480-07-460(1)(b), the deadline for filing errata sheets to exhibits may be established in the prehearing conference order. Does any party have an objection to setting a deadline a week prior to the evidentiary

hearing, starting with staff?

ATTORNEY STRAUSS: No objection, your Honor.

JUDGE THOMPSON: Thank you.

And Cascade?

ATTORNEY CARSON: No objection, your Honor.

JUDGE THOMPSON: And Sapphire?

ATTORNEY WILKINSON: No objection, your Honor.

And just a note, this is George Wilkinson. I lost my connection somehow, so I came down to my colleague's office.

JUDGE THOMPSON: That's okay. We appreciate you jumping back on and understand the technical issues. I think it happens to all of us.

Is there anything else we need to address today? And I'll go ahead and start with staff. I see a head shake.

ATTORNEY STRAUSS: Nothing additional.

JUDGE THOMPSON: Thank you.

And Cascade?

ATTORNEY CARSON: No, nothing for Cascade. Thanks.

JUDGE THOMPSON: Okay, thank you.

And for Sapphire?

ATTORNEY WILKINSON: No, your Honor. Nothing for Sapphire.

JUDGE THOMPSON: Okay, wonderful. I will issue an order shortly containing the procedural schedule and other guidelines for disposition of this case.

Again, I will check with the commissioners on availability and adjust dates accordingly.

I will include a deadline for dispositive motions and adjust timelines contained in the suggested pre- -- or procedural schedule in the prehearing conference order based upon the evidentiary hearing date.

We will also issue a standard protective order.

And with that, we are adjourned. Thank you very much, everybody.

ATTORNEY STRAUSS: Thank you.

ATTORNEY CARSON: Thank you.

ATTORNEY WILKINSON: Thank you, your Honor.

(Proceeding concluded at 10:06 a.m.)

CERTIFICATE OF REPORTER)
STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I, Elizabeth Patterson Harvey, a Certified Court Reporter and Registered Professional Reporter within and for the State of Washington, do hereby certify under penalty of perjury that the foregoing legal recordings were transcribed under my direction; that I received the electronic recording in the proprietary format; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of May, 2025.

Elizabeth Patterson Harvey

Elizabeth Patterson Harvey
CCR 2731
Certified Court Reporter in
The State of Washington

My license expires December 21, 2025