

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

THE PUBLIC COUNSEL SECTION OF	)	
THE OFFICE OF THE WASHINGTON	)	DOCKET NO. U-030744
ATTORNEY GENERAL,	)	
	)	ORDER NO. 01
Complainant,	)	
	)	
v.	)	
	)	PREHEARING CONFERENCE
CASCADE NATURAL GAS	)	ORDER
CORPORATION, AND PACIFICORP	)	
D/B/A PACIFIC POWER & LIGHT	)	
COMPANY,	)	
	)	
Respondents.	)	
.....	)	

1     **PREHEARING CONFERENCE:** On May 22, 2003, the Public Counsel Section of the Office of the Attorney General (“Complainant” or “Public Counsel”) filed with the Commission a complaint against Cascade Natural Gas Corporation (“Cascade”), and PacifiCorp d/b/a Pacific Power & Light Company (“PacifiCorp”), regarding the proper regulatory treatment of charges imposed on the Respondents by the Yakama Indian Nation via a “Franchise Ordinance.” The Commission conducted a prehearing conference on August 11, 2003, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, and Administrative Law Judge Dennis J. Moss.

2     **PRESIDING OFFICERS/RECUSAL:** Chairwoman Showalter and Commissioner Hemstad will preside at this matter, assisted by ALJ Moss. Commissioner Patrick J. Oshie has recused himself, based on his prior business association as legal counsel to the Yakama Nation, the sovereignty that has levied the charges that are part of the subject matter of this proceeding.

3 **PARTIES:** Simon ffitich, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section of the Office of Washington Attorney General. Louis D. Peterson, John L. West and Mary E. Crego, Hills Clark Martin & Peterson, P.S., Seattle, Washington, represent Cascade Gas Corporation. James M. Van Nostrand, Stoel Rives LLP, Seattle, Washington, represents PacifiCorp. P. Stephen DiJulio and Jeffery A. Richard, Foster, Pepper & Shefelman PLLC, Seattle, Washington, represent the City of Toppenish. Eric Richter, Henke & Richter, Seattle, Washington, represents Elaine Willman, et al. Lynn F. Logen, Puget Sound Energy, Bellevue, Washington represents his company. Mark P. Trincherro, Davis Wright Tremaine LLP, Portland, Oregon, represents Charter Communications, Inc. Judith A. Endejan, Graham & Dunn PC, Seattle, Washington, represents Verizon. William E. Hendricks III, Sprint Corporation, Hood River, Oregon, represents his company.

4 **PETITIONS TO INTERVENE:** The following parties filed petitions to intervene, or petitioned orally at prehearing for intervenor status:

1. City of Toppenish
2. Elaine Willman, *et al.* (46 customers of PacifiCorp, Cascade, or both)
3. Puget Sound Energy, Inc.
4. Charter Communications, Inc.
5. Verizon Northwest, Inc.
6. Sprint Corporation

Each of the petitioners asserted a substantial interest in the proceeding and argued that its participation would be in the public interest.

5 PacifiCorp and Cascade object to the petitions to intervene by the City of Toppenish and Elaine Willman, *et al.*, insofar as these parties seek to broaden the issues in this proceeding. Willman, *et al.* and the City of Toppenish wish to

challenge whether the charges should be treated for regulatory purposes as a tax or as a franchise fee. Both Willman, *et al.*, and Toppenish acknowledged at the prehearing conference their desire to have the Commission determine that question on the basis of whatever record is developed in this proceeding. Willman, *et al.*, underscored the matter by filing an amended Petition for General Intervention and Special Intervention on August 15, 2003.

6 Public Counsel supported Willman, *et al.*, and Toppenish in its “Response to Petitions To Intervene.” Public Counsel argues that “[t]he issues raised in the petitions regarding appropriate collection of the tribal charge are corollary issues implicit in the case, and understood by all parties to be part of the underlying dispute.”

7 PacifiCorp and Cascade argue that Public Counsel’s Complaint “does not challenge the regulatory characterization of the charges associated with the Ordinance.” *PacifiCorp Opposition to Petition for Intervention of Elaine Willman, et al.*, at 2. PacifiCorp argues that Toppenish “seeks to rehash issues that the Commission already addressed in Docket Nos. UG-021502 (Cascade) and UE-021637 (PacifiCorp).” *Id.* at 3. We note that the Complaint does refer to the “proper regulatory treatment” of the Ordinance in its introduction, *Complaint at* 2, and incorporates that language into its three claims for relief by reference. However, neither the “Claims” sections, nor the “Relief Requested” section of Public Counsel’s Complaint asks the Commission to make a determination concerning whether the charges under the Ordinance should be treated for regulatory purposes as a franchise fee or a tax.

8 We find that Willman, *et al.* and Toppenish, as ratepayers subject to the tariff charges at issue, have a substantial interest in the outcome of this proceeding. We also find that administrative convenience favors granting the petitions for special intervention, for expansion of the issues to reach the question of characterization of the charge imposed by the Yakama Nation. The alternative

would be that the petitioners file a separate complaint, then prosecute it independently or seek consolidation with this complaint, a process that would unnecessarily consume the parties' and the Commission's resources.

9 Accordingly, the respective petitions to intervene of Willman, *et al.* and Toppenish are granted. The question of the regulatory characterization of the charge may be addressed.

10 Puget Sound Energy, Inc., Charter Communications, Inc., Verizon Northwest, Inc., and Sprint Corporation all have shown a substantial interest in the outcome of this proceeding. Legal determinations made here may affect their rights as companies regulated by the Commission, and subject them to the imposition of similar charges under the subject ordinance, or similar levies that may be imposed by other sovereign Indian nations. Therefore, their requests to intervene are granted.

11 **DISCOVERY:** The parties initiated voluntary discovery prior to the prehearing conference. Discovery will continue pursuant to the Commission's discovery rule, WAC 480-09-480. The Commission urges the parties to work cooperatively together to avoid having to bring discovery matters forward for formal resolution.

12 **PROCESS AND PROCEDURAL SCHEDULE:** The Commission establishes the procedural schedule that is attached to this Order as Appendix 1, which is incorporated into the body of this Order by reference. Please note that no formal process is scheduled for settlement discussions. Only one party, Public Counsel, argued for such process. At least one of the respondents, PacifiCorp, stated its view that settlement negotiations would not be productive. Under these circumstances, the Commission will not assign a settlement judge to assist the parties. The parties are free to pursue any such discussions on their own. This procedural determination is without prejudice to the request for assistance being

renewed at a later time if the principal parties agree among themselves to engage in settlement negotiations or if the assistance of a settlement judge might further the identification of issues or agreement as to the operative facts in which the issues arise.

13 Please note, too, that the procedural schedule does not, at this time, include a date for a hearing to receive comment from members of the public who are not parties. Although Public Counsel requests such process, the Commission believes that it is premature to consider such a request before determining whether the complaint will proceed beyond the stage of dispositive motions and the issues are therefore defined.

14 **DISPOSITIVE MOTIONS:** The procedural schedule calls for dispositive motions to be filed by September 15, 2003. It will best conserve the parties' and the Commission's resources to consider early whether some or all of the issues raised by Public Counsel's Complaint, and by the Respondents' affirmative defenses, can be resolved as matters of law.

15 **FILING; COPIES OF MATERIALS:** Parties must submit an original and 14 copies of all documents filed. All filings must be mailed to the Commission Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250, or delivered by hand to the Commission Secretary at the Commission's records center at the Washington Utilities and Transportation Commission, 1300 S. Evergreen Park Drive, S.W., Olympia, Washington, 98504. Both the post office box and street address are required to expedite deliveries by U.S. Postal Service.

16 An electronic copy of all filings should be provided by e-mail delivery to <[records@wutc.wa.gov](mailto:records@wutc.wa.gov)>. Alternatively, Parties may furnish an electronic copy by delivering with each filing a 3.5 inch IBM-formatted high-density diskette including the filed document(s). The Commission prefers that parties furnish

electronic copies in .pdf (Adobe Acrobat) format, supplemented by a separate file in MS Word 6.0 (or later), or WordPerfect 5.1 (or later) format.

17 All paper copies of testimony, exhibits, and briefs are required to conform to the publication guidelines attached to this Order as Appendix 2 and to the Commission's procedural rules governing filings. Any filing that fails to conform to these standards may be required to be refiled.

18 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the date of mailing of this statement, pursuant to WAC 480-09-460(2). Absent such objections, this prehearing conference order will control further proceedings in this matter, subject to Commission review.**

DATED at Olympia, Washington, and effective this 26th day of August 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS  
Administrative Law Judge

**APPENDIX 1**

**PROCEDURAL SCHEDULE**  
**DOCKET NO. U-030744**

<b>EVENT</b>	<b>DATE</b>	<b>INTERVAL</b>
Complaint filed	May 22, 2003	
First Prehearing Conference	August 11, 2003	
Dispositive Motions	September 15, 2003	
Answers to Dispositive Motions	September 29, 2003	14 days after motions
Public Counsel and aligned parties: prefiled direct testimony and exhibits	November 10, 2003	
Cascade, PacifiCorp and aligned parties: prefiled response testimony and exhibits	December 15, 2003	35 days after direct
Public Counsel and aligned parties: prefiled rebuttal testimony and exhibits	January 16, 2004	32 days after response
Prehearing Conference	January 29, 2004	Two business days prior to evidentiary hearing
Evidentiary Hearing	February 2, 2004	(5 days reserved for use, if needed)
Briefs	February 25, 2004	21 days after hearing
Statutory Deadline (10 months from filing)	March 22, 2004	26 days after briefs

## APPENDIX 2

### I. Requirements for ALL paper copies of testimony, exhibits, and briefs

A. All paper copies of briefs, prefiled testimony, and original text in exhibits **must** be

- On 8 ½ x 11 paper, punched for insertion in a 3-ring binder,
- Punched with **OVERSIZED HOLES** to allow easy handling.
- Double-spaced
- 12-point or larger text and 10-point or larger footnotes, Palatino Linotype, Times New Roman or equivalent serif font.
- Minimum one-inch margins from all edges.

Other exhibit materials need not be double-spaced or 12-point type, but must be printed or copied for optimum legibility.

B. All electronic and paper copies must be

- **SEQUENTIALLY NUMBERED** (all pages). **THIS INCLUDES EXHIBITS.** It is not reasonable to expect other counsel or the bench to keep track of where we are among several hundred (or sometimes even just several) unnumbered pages.
- **DATED ON THE FIRST PAGE OF EACH ITEM** and on the label of every diskette. If the item is a revision of a document previously submitted, it must be clearly labeled (**REVISED**), with the same title, and with the revision date clearly shown.

### II. Identifying exhibit numbers; Exhibits on cross examination.

A. **Identifying exhibits.** Parties are required to mark prefiled testimony and exhibits for identification. Parties must mark all written testimony and exhibits for identification prior to submission as follows:

- (i) Identify the sponsoring witness by including the witness's initials,
- (ii) Place a hyphen after the witness's initials and insert a number; beginning with Arabic numeral 1, and sequentially number each

subsequent exhibit (including any subsequent written testimony) throughout the proceeding;

- (iii) Place the letter “C” after the number if the testimony or exhibit includes information asserted to be confidential under any protective order that has been entered in the proceeding.

For example, John Q. Witness's prefiled testimony and accompanying exhibits should be marked as follows:

Testimony or Exhibit	Marked for identification
John Q. Witness's prefiled direct testimony	Exhibit No. ____ (JQW- 1)
First exhibit to John Q. Witness's prefiled direct testimony (non-confidential)	Exhibit No. ____ (JQW-2)
Second exhibit to John Q. Witness's prefiled direct testimony (confidential)	Exhibit No. ____ (JQW- 3C)
Third exhibit to John Q. Witness's prefiled direct testimony (non-confidential)	Exhibit No. ____ (JQW-4)
John Q. Witness's prefiled rebuttal testimony	Exhibit No. ____ (JQW-5)
First exhibit to John Q. Witness's prefiled rebuttal testimony (non-confidential)	Exhibit No. ____ (JQW-6)

Counsel and other party representatives who are unfamiliar with this method of marking testimony and exhibits for identification should ask the presiding officer for further guidance.

- B. **Exhibit List:** Prepare a list of your exhibits with their premarked designations and descriptions in digital form and in a format specified by the Commission. You will be required to submit your exhibit list to the presiding officer prior to the evidentiary hearing. This will simplify identification and ease administrative burdens.

**NOTE: Be prepared to submit all of your possible exhibits on cross examination several days prior to the hearing.** We will schedule a prehearing conference to deal with the exhibits as close as possible to the hearing itself, but we have administrative needs that require prefiling.

**APPENDIX 3**

**PARTIES' REPRESENTATIVES**

DOCKET NO. U-030744

updated 8/12/2003

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL ADDRESS
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