

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

CASCADE NATURAL GAS
CORPORATION,
(Advice No. CNG/W15-06-01),

Respondent.

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In the Matter of the Petition of

CASCADE NATURAL GAS
CORPORATION

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

DOCKET UG-151309

**CASCADE NATURAL GAS
CORPORATION’S REPLY TO
NWIGU AND PUBLIC COUNSEL
ANSWER AND OBJECTION TO
PETITION OF CASCADE
NATURAL GAS CORPORATION
FOR A MOTION FOR WAIVER
AND TO THE ENERGY
PROJECT’S ANSWER AND
OBJECTION TO CASCADE
NATURAL GAS PETITION FOR
WAIVER**

I. INTRODUCTION

1. Cascade Natural Gas Corporation (“Cascade”) submits this Reply to the Answer and Objection to Petition of Cascade for a Motion for Waiver filed by Northwest Industrial Gas Users (“NWIGU”) and the Public Counsel Unit of the Washington State Attorney’s Office (“Public Counsel”)¹ and the Answer and Objection to Cascade Natural

¹ Northwest Industrial Gas Users and the Public Counsel Unit of the Washington State Attorney’s Office Answer and Objection to Petition of Cascade Natural Gas Corporation for Waiver (July 9, 2015).

Gas Petition for Waiver filed by the Energy Project.² NWIGU, Public Counsel and Energy Project will be collectively referred to as “Respondents.” Cascade has separately filed a Motion for Permission to Reply consistent with the requirements of WAC 480-07-370(d)(ii).

2. On June 24, 2015, Cascade made a filing with the Washington Utilities and Transportation Commission (“Commission”) requesting a rate increase of 1.59 percent. Under WAC 480-07-505 a rate filing is considered a general rate case (“GRC”)—and subject to the procedures applicable to GRCs—if the increase would meet any of the following criteria:

- the amount requested would increase the gross annual revenue of the company by three percent or more (WAC 480-07-505(a));
- tariffs would be restructured such that the gross revenue provided by any one customer class would increase by three percent or more (WAC 480-07-505(1)(b));
or
- the Company requests a change in its authorized rate of return (“ROR”) or capital structure (WAC 480-07-505(1)(c)).

Cascade’s filing did incorporate a change in authorized ROR; however, the requested change in ROR is a substantial decrease. Therefore, in order to effect this modest rate increase in an expeditious manner, based on recently reviewed and verified information, Cascade requested a waiver of WAC 480-07-505(1)(c). In so doing, Cascade hoped to and reduce litigation expenses, while providing for sufficient process to ensure fair and reasonable rates.

² The Energy Project’s Answer and Objection to Cascade Natural Gas Petition for Waiver (July 10, 2015). The Energy Project filed its Answer after NWIGU and Public Counsel and supported NWIGU and Public Counsel’s Answer in its pleading. If necessary, Cascade will distinguish any argument raised by the Energy Project, but not raised by NWIGU and Public Counsel.

3. Respondents assert that Cascade’s rate request constitutes a GRC under WAC 480-07-505 for two reasons: (1) the filing requests an adjustment to Cascade’s ROR,³ and (2) although the overall rate increase is less than three percent, one individual customer class would receive a rate increase of more than three percent. Respondents also argue that Cascade’s Motion for Waiver is insufficient and should be denied. The Respondents’ arguments are without merit and should be dismissed.
4. It is true Cascade’s request adjusts the ROR; however because Cascade is requesting a significant **decrease** as opposed to an increase, granting a one-time waiver of WAC 480-07-505(1)(c) will achieve the intent of the statute.⁴ Moreover, in arguing that the filing constitutes a GRC because one customer class receives a greater-than-three percent increase, the Respondents misinterpret the plain meaning of the statute, which requires a GRC when the **overall** rate increase exceeds three percent, or when rates paid by any specific customer class are **restructured** resulting in a more-than-three percent increase. As Respondents concede, the overall rate increase is less than three percent, and Cascade did not restructure the tariffs among the customer classes, but instead applied the increase equally across all customer classes. Importantly, the Commission has rejected the argument made here by Respondents that an increase to any one customer class of three percent or more triggers a GRC.⁵ Accordingly, Cascade requests that the Commission grant its waiver request and affirm that an individual customer class increase does not trigger a GRC.

II. ARGUMENT

³ WAC 480-07-505(1)(c). (“The company requests a change in its authorized rate of return on common equity or a change in its capital structure.”)

⁴ WAC 480-07-505(1)(c).

⁵ *In the Matter of Amending Chapters 480-04, 480-14, 480-15, 480-30, 480-31, 480-51, 480-60, 480-62, 480-66, 480-70, 480-75, 480-75, 480-80, 480-90, 480-92, 480-100, 480-110, 480-120, 480-121, 480-140 WAC, Repealing Chapter 480-09 WAC, and Adopting Chapter 480-07 WAC*, Docket No. A-010648, General Order No. 5-510 at 15-16 (Dec. 3, 2003).

A. Cascade’s Waiver Request Complies with WAC 480-07-110 and is in the Public Interest.

5. The Commission may grant an exemption from one of its rules if the request is consistent with the public interest, the purposes underlying regulation, and applicable standards.⁶ The Respondents argue that Cascade did not adequately support the request for the waiver. This position is without merit.
6. Cascade requested the waiver under WAC 480-07-110(2)(a) in order to “provide the Commission with an approach to adjust rates in an expeditious manner, supported by reports already on file with the Commission, reduce the cost of litigation and review, reduce regulatory lag, and produces a result that is fair, just, and reasonable”⁷ and because “the changes requested in Advice No. CNG/W15-06-01 are not significant enough to necessitate a general rate case proceeding.”⁸ The goals articulated by Cascade—of achieving efficiency and savings for the Company, the WUTC and all parties—are clearly consistent with the public interest and serve as adequate basis for a waiver request. Indeed, even the Respondents acknowledge that the Commission has previously determined it was in the public interest to grant a waiver to the rules “in some situations to pursue alternatives to the general rate case process.”⁹
7. Cascade’s proposal is consistent with the public interest, underlying statutes, and applicable standards¹⁰ because it not only reduces the cost of adjusting rates, and reduces regulatory lag, but the rate filing is based upon and supported by Cascade’s recently

⁶ WAC 480-07-110(1).

⁷ Advice No. CNG/W15-06-01 at 1 (June 23, 2015).

⁸ Petition of Cascade Natural Gas Corporation for a Motion for Waiver (June 23, 2015).

⁹ Respondents’ Answer at 8 and *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-1211705, Order 07 (June 25, 2013).

¹⁰ WAC 480-07-110(1).

refiled Commission Basis Report (“CBR”), which Staff extensively audited in anticipation of Cascade’s rate filing and continues to audit.¹¹

8. Respondents’ arguments regarding the public interest standard take several detours that are not point. First the Respondents complain that the Company has not established that absent a waiver it will suffer an “undue hardship.” However, contrary to Respondents’ suggestion, “undue hardship” is just one factor that the Commission *may* consider in evaluating whether the request is in the public interest and is certainly not required.¹² In this instance, Cascade has not claimed that a waiver is necessary to avoid a hardship—nor does the rule require such an assertion. Instead “[t]he standard for consideration is the public interest standard.”¹³ Cascade addressed that standard by asserting that the waiver would save the expense of a GRC, reduce regulatory lag, and because the filing is based on recent, reviewed information, it would result in fair and reasonable rates.

9. As part of their hardship argument, the Respondents also argue that because Cascade utilized the pipeline cost recovery mechanism (“CRM”) this year it must file a rate case within the next four years. Respondents reason that because a rate case is required by the rule it does not constitute a hardship. Once again, Cascade has not argued that a GRC would impose an undue hardship on the Company or anyone else. The Respondents’ theories on the various hardships Cascade is or is not experiencing are not relevant to Cascade’s request, which is based upon an effort to reduce regulatory lag and save expenses as stated in its filing.¹⁴

¹¹ Advice No. CNG/W15-06-01 at 1 (June 23, 2015).

¹² WAC 480-07-110(2)(c). (“The standard for consideration is the public interest standard. Factors the commission *may consider* include...undue hardships...”). Emphasis added.

¹³ WAC 480-07-110(2)(c).

¹⁴ Later the Respondents argue that Cascade’s proposal to restart the four year clock associated with the CRM is a significant issue and therefore the petition should be denied. The Respondents fail to acknowledge that Cascade made this proposal because if its filing is accepted, all costs and revenues from previous CRM filings would be reflected in this filing. Additionally, and fundamentally, Cascade’s proposal is subject to review by the parties and Commission approval.

10. The Respondents also assert that Cascade’s filing is not similar to prior instances in which the Commission waived some GRC requirements.¹⁵ For example, Cascade did not claim that it filed for a rate increase because it was necessitated by mandates from third parties (such as franchise fees).¹⁶ However, the applicability of those cases is irrelevant if the Commission determines it is in the public interest to grant a waiver *in this case* to the rules “to pursue alternatives to the general rate case process.”¹⁷
11. Cascade’s waiver request is driven by the public interest in pursuing alternatives to the GRC process, especially where the changes are relatively modest. This filing is consistent with the Commission’s goal that regulatory processes respond and adapt to a dynamic environment and Commission’s desire to explore mechanisms to streamline regulatory processes.¹⁸ The Commission’s goal is also consistent with the Commission’s action in a recent Puget Sound Energy’s (“PSE”) proceeding¹⁹ where the Commission waived rules related to GRCs and relied on information contained in a CBR.²⁰ There are differences between the filings made by Cascade and PSE, as well the circumstances of the two utilities; however the differences do not undermine the Commission’s stated goal to explore opportunities to reduce regulatory lag or the Commission’s previous finding that addressing this type of concern may be in the public interest.
12. The Respondents also argue that the Company’s filing does not allow for a process to develop a record or submit briefs.²¹ However, Cascade in order to facilitate

¹⁵ Respondents’ Answer at 5-8.

¹⁶ *In re Tariff Revisions to Increase Rates Due to Disposal Fee Increases Filed by Stanley’s Sanitary Service, LLC DBA Stanley’s Sanitary Service*, Docket TG-131951, Order 01 ¶5 (Nov. 27, 2013).

¹⁷ Respondents Answer at 8 and *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-1211705, Order 07 (June 25, 2013).

¹⁸ *See*, Washington Utilities and Transportation Commission 2015-2017 Strategic Plan at 11-12.

¹⁹ Dockets UE-121697/UG-1211705, Order 07 (June 25, 2013).

²⁰ Dockets UE-121697/UG-1211705, Order 07 (June 25, 2013).

²¹ Respondents’ Answer at 9. The Energy Project separately raised some concerns regarding the development of the record, time and resource constraints, and issues related to low income customers.

the review of its request provided the Respondents the CBR filing and supporting documentation nearly one month before Cascade filed its rate increase request.²² Moreover, Staff has made numerous discovery requests and Cascade has provided every data request and response to all parties from Cascade’s last rate case — including the Respondents²³ Importantly, it is worth noting that none of the Respondents have issued any data requests to Cascade despite the clear opportunity to do so.

13. Finally, Cascade seeks a waiver to WAC 480-07-505(1)(c) because it wants to significantly *reduce* its ROR from 8.86% to 7.5%. Absent a waiver, the rules require that any change in ROR, even a reduction, triggers a GRC. However, because the rate increase is not above the threshold for a GRC and Cascade is seeking a ROR reduction based upon its CBR, the public interest is served by granting the waiver. Cascade requests that the Commission find the waiver request in the public interest and grant the waiver to WAC 480-07-505(1)(c).

B. WAC 480-07-505(1)(b) is not Applicable to this Proceeding.

14. The Respondents also argue that Cascade’s filing triggers a GRC because the rate increase assigned to one class of customers exceeds the threshold under WAC 480-07-505(1)(b).²⁴ However, Cascade is not “restructuring” rates and therefore WAC 480-07-505(1)(b) is not applicable to this proceeding. As Cascade explained in its filing, Cascade applied the 1.59% overall increase uniformly to all customer classes on an equal percent of margin basis thus specifically maintaining the current rate structure, and as a result of this mathematical exercise, transportation costumers received a 6.28% increase.

Cascade did not propose to adjust its current low income bill assistance program. However, Cascade did propose a working group to better align a low income assistance program and the agencies most capable of maximizing the dollars allotted to the program. Cascade believes such a process can adequately address issues related to the low income bill assistance program.

²² Advice No. CNG/W15-06-01 at 1 (June 23, 2015).

²³ Advice No. CNG/W15-06-01 at 1 (June 23, 2015).

²⁴ WAC-07-505(1)(b). (“Tariffs would be **restructured** such that the gross revenue provided by any customer class would increase by three percent or more.”) Emphasis added.

Cascade’s filing did not modify the rate design or allocation of revenues among customer classes. Respondents claim that the rate “increase” proposed for transportation customers is the equivalent to “restructuring” under WAC 480-07-505(1)(b) is contrary to the plain meaning of the rule and contrary to the Commission explicit statements made when WAC 480-07-505 was most recently amended.

1. Plain meaning.

15. The Washington Supreme Court has held that the court's fundamental objective is to ascertain and carry out the Legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.²⁵ Furthermore, it is well settled that rules of statutory construction apply to administrative rules and regulations, particularly where they are pursuant to express legislative authority.²⁶ In *Campbell & Gwinn* the Court held that the plain meaning of a statute is discerned from all the Legislature has said in the statute and related statutes, which disclose legislative intent.²⁷ If after that inquiry the statute remains susceptible to more than one reasonable interpretation then it is appropriate to resort to aids to construction, including legislative history.²⁸

2. Restructure does not mean increase.

16. General rate proceedings - Definition.
- (1) Rate filings that are considered general rate proceedings. A general rate proceeding filing is a filing by any regulated company specified in WAC 480-07-500 for an increase in rates that meets any of the following criteria:
- (a) The amount requested would **increase** gross annual revenue of the company from activities regulated by the commission by three percent or more.
 - (b) Tariffs would be **restructured** such that the gross revenue provided by any customer class would increase by three percent or more.

²⁵ *State, Dept. of Ecology v. Campbell & Gwinn, L.L.C.*, 43 P.3d 4, 9 (Wash. 2002). (“*Campbell & Gwinn*”).

²⁶ *City of Kent v. Neigh*, 32 P.3d 258, 263-264 (Wash. 2001).

²⁷ *State, Dept. of Ecology v. Campbell & Gwinn, L.L.C.*, 43 P.3d 4, 9 (Wash. 2002).

²⁸ *State, Dept. of Ecology v. Campbell & Gwinn, L.L.C.*, 43 P.3d 4, 9 (Wash. 2002).

- (c) The company requests a change in its authorized rate of return on common equity or a change in its capital structure.
- (d) The company is a solid waste company regulated under chapter 81.77 RCW, except for filings specified under subsection (3)(a) of this section.²⁹

It appears clear from the plain language that the first provision is triggered where total revenue requirement is increased by over three percent, whereas the second provision is triggered when changes to cost allocation or rate design restructures rates in a fashion that results in an increase to a customer class in excess of three percent.

17. The Respondents suggest that the Commission ignore the plain language of the statute by reading the reference to restructuring out of subsection (b). However, neither the text nor context of the statute allow such a result. It is axiomatic that statutes must not be construed in a manner that renders any portion meaningless or superfluous.³⁰ In other words, the utilization in part (b) of “restructuring” was a meaningful choice. If the use of restructuring was inconsequential the clearest way to convey the Respondents’ version of the rule would be:

- (a) The amount requested would increase gross annual revenue of the company or any customer class from activities regulated by the commission by three percent or more.

However, because an increase of three percent or more to a particular customer class does not trigger a GRC the two separate concepts were not combined.

18. WAC 480-07-505(4) reaffirms this conclusion. The rule addresses Commission discretion and states:

- (4) **Commission discretion.** The commission may require that any filing or proposal by a regulated company to *increase rates for any customer class, or to restructure rates*, is subject to the procedures and protections of subpart B of these rules.³¹

²⁹ Emphasis added.

³⁰ *Cockle v. Dep’t of Labor & Indus.*, 142.2d 801, 809, 16 P.3d 583 (2001).

³¹ WAC 480-07-505(4). Emphasis added.

The Commission's discretion rule demonstrates that an increase in rates is not the same thing as restructuring rates. Indeed for restructuring to have any meaning it must necessarily mean something *other* than an increase in rates. Otherwise any increase in rates for a customer class above three percent would trigger a GRC, but that is not what the rule requires.

19. The rulemaking history also supports the plain language interpretation of the rule.³² In Docket No. A-010648, the Commission considered and adopted changes to a multitude of Commission rules. Public Counsel proposed the following change to WAC 480-07-370:

(4) ~~Commission discretion.~~ **Other filings.** The commission ~~may~~ shall require that any filing or proposal by a regulated company to increase rates for any customer class by 3% or more, or to restructure rates, is subject to the procedures and protections of subpart B of these rules.

20. The Commission noted that Public Counsel believed that the procedures and protections of subpart B “should be required in every case where a party to a proceeding before the Commission would seek to raise rates for any customer class by 3% or more.”³³ However, the Commission declined to adopt the Public Counsel’s language because it found it overly prescriptive. In particular, the Commission determined that WAC 480-07-505(4) reflected the “Commission’s discretion to require general rate proceeding filing and process requirements in connection with any proposal to increase rates.” Furthermore, parties could “ask the Commission to use its discretion in any case where the party believes a regulated company seeks to raise rates for any customer class by 3 percent or more.”³⁴ The Commission’s order refutes the Respondents’ argument that any increase to a customer class above three percent requires a GRC.

³² Docket No. A-010648, General Order No. 5-510 at 15-16 (Dec. 3, 2003).

³³ *Id.*

³⁴ *Id.*

21. Contrary to the Respondents arguments, the plain meaning of restructure as utilized in WAC 480-07-505, is not the same thing as increase. Cascade's overall request to increase rates by 1.59% that when equally applied to all customer classes results in a 6.28% increase to transportation customers does trigger a GRC. That interpretation of the statute is consistent with the plain meaning of WAC 480-07-505, the Commission's order addressing 480-07-505, and previous filings made by Public Counsel.

III. CONCLUSION

22. For the reasons stated above and in its June 23, 2015 filing, Cascade respectfully requests:

- (1) The Commission grant Cascade's Petition for a Motion for Waiver of WAC 480-07-505(1)(c); and
- (2) The Commission determine that WAC 480-07505(1)(b) is not applicable to this proceeding.

Respectfully submitted,



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