

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

CASCADIA WATER, LLC,

Respondent.

DOCKET UW-240151

**WATER CONSUMER ADVOCATES OF
WASHINGTON’S SCHEDULING
CONFERENCE MEMORANDUM**

1. Water Consumer Advocates of Washington (WCAW) respectfully requests that Utilities and Transportation Commission (Commission) enter an order to establish the scope of the issues and availability for use of evidence submitted between the filing of responsive testimony on November 20, 2025, and the entry of the Commission’s Final Order Rejecting Settlement on April 22, 2025.

2. On May 5, 2025, the parties met to discuss the conduct of further proceedings following the Commission’s Final Order Rejecting Settlement but were unable to reach “agreement on the scope of the issues that remain open in the proceeding.”¹

3. The factual issues regarding the tariff submitted by Cascadia and the proposed settlement between Cascadia and Commission Staff are identical. To approve either a utility’s proposed tariff or a settlement, the Commission must find that the proposed rates are fair, just, reasonable, and sufficient.²

4. For the reasons discussed below, the Commission should order:

¹ Email from Pamela Anderson to Judge Fukano, May 5, 2025.

² See Final Order Rejecting Settlement at ¶¶ 33-34.

- (a) Further litigation regarding the prudence of Cascadia Projects 3, 7, 8, 12, and 13 is barred; and
- (b) All testimony and exhibits admitted into evidence through the hearing before the Commission on February 11, 2025, are part of the record and may be relied upon for the remainder of this case.

I. Prudence of Investments

A. Case Status

5. Only prudent capital investments may be included in the rate base. The requisites for prudent investing apply to both tariff filings and settlements.³

6. The parties presented extensive evidence on the issue of prudence. In particular, Cascadia and Staff submitted written testimony and other evidence on the issue of prudence both before their proposed settlement and after.⁴ Both parties also testified regarding prudence at the hearing before the Commission on February 11, 2025.

7. In their post-hearing briefs, Cascadia and Staff submitted extensive argument on the issue of prudence.⁵

8. Based on the evidence, the Commission made detailed findings about the issue of prudence.⁶

³ See *id.* at ¶¶ 36-38.

⁴ Staff's written testimony after settlement is at Stark, Exh. RS-7T at 11 (incorporating Staff testimony submitted 11/20/2024) and Exh.RS-12T at 1-21. Cascadia's written testimony after settlement is at Rowell/Lehman, Exh. MJR-CJL-1JT at 16-28 and Rowell/Lehman Exh. MJR-CJL-8JT at 10-24 and 28-32.

⁵ Cascadia Post-Hearing Brief at ¶¶ 19-30; Cascadia Reply Brief at ¶¶ 15-29; Staff Post-Hearing Brief at ¶¶ 13-31; Staff Reply Brief at ¶¶ 17-18.

⁶ See Final Order Rejecting Settlement at ¶¶ 44-62.

9. The Commission concluded that Cascadia failed to prove that 5 of 14 capital investments (referred to as Projects 3, 7, 8, 12, and 13) are prudent.⁷

10. The Commission rejected the settlement in its entirety because “the results-only nature of the settlement precludes the Commission from determining reasonable, discrete disallowances related to specific projects or other elements of the revenue requirement.”⁸

11. “[B]ecause the Commission’s determination that the five projects previously discussed are not fully prudent is sufficient to warrant rejecting the proposed settlement, the Commission declines to reach the remaining issues as unnecessary to the disposition of this case, including the determination of prudence for the remaining 9 of 14 capital projects.”⁹

B. Remaining Issues

12. The Commission has yet to determine whether capital investments in Projects 1, 2, 4, 5, 6, 8, 9, 10, 11, and 14 are prudent.

13. Further litigation regarding the prudence of Projects 3, 7, 8, 12, and 13 is precluded by the doctrine of collateral estoppel, also referred to as issue preclusion. Issue preclusion applies because each of the four required elements (italicized below) required by Washington Supreme Court precedent¹⁰ is satisfied for the following reasons:

(1) *The issue decided in the earlier proceeding was identical to the issue presented in the later proceeding.* The issue of whether Cascadia prudently invested in Projects 3, 7, 8, 12, and 13 is the same whether decided in evaluating Cascadia’s proposed tariff or the

⁷ See *id.* at ¶¶ 63-68, 81-82.

⁸ *Id.* at ¶ 68.

⁹ *Id.* at ¶ 68, n. 135.

¹⁰ *E.g., Christensen v. Grant County Hosp. Dist. No. 1*, 152 Wash.2d 299, 307, 96 P.3d 957 (2004),

proposed settlement. Moreover, the issue of prudence was issue was "actually litigated and necessarily determined"¹¹ in that proceeding.¹²

(2) *The earlier proceeding ended in a judgment on the merits.* The Commission designate its order a “Final Order” and rejected the proposed settlement on the merits after specifically finding that Cascadia failed to prove that Projects 3, 7, 8, 12, and 13 are prudent.¹³

(3) *The party against whom issue preclusion is asserted was a party to, or in privity with a party to, the earlier proceeding.* Cascadia was a party to the litigation regarding the proposed settlement.

(4) *Application of issue preclusion does not work an injustice on the party against whom it is applied.* Cascadia has every opportunity to prove Projects 3, 7, 8, 12, and 13 are prudent. Before submitting the proposed settlement, Cascadia submitted its affirmative case in the form of written testimony and exhibits to establish that the projects it sought to include in the rate base are prudent.¹⁴ The proposed settlement was submitted after Public Counsel and WCAW had submitted responsive testimony that the projects are not prudent. Cascadia submitted two additional rounds of responsive testimony to rebut the responsive testimony and prove prudence.¹⁵ Cascadia’s witnesses testified about prudence and Cascadia’s counsel cross-examined opposing witnesses at the hearing on February 11, 2025. Even if Cascadia has evidence that it failed to submit, it cannot overcome its admissions that it did not have any evidence to prove the required element

¹¹ See *Shoemaker v. City of Bremerton*, 109 Wash.2d 504, 508, 745 P.2d 858 (1987).

¹² See Final Order Rejecting Settlement at ¶¶ 44-68.

¹³ See *id.* at ¶¶ 63-68, 81-82.

¹⁴ Lehman, Exh. CJL-1T at 9-33.

¹⁵ Rowell/Lehman, Exh. MJR-CJL-1JT at 16-28 and Rowell/Lehman Exh. MJR-CJL-8JT at 10-24 and 28-32.

of prudence, including no contemporaneous documentation of its decision making, no timely alternatives analyses,¹⁶ and no cost-benefit analyses¹⁷ for its projects. In addition, Cascadia may not cure its failure to present contemporaneous documentation of prudence by submitting post hoc analysis.¹⁸

14. “[C]ollateral estoppel is intended to prevent retrial of one or more of the crucial issues or determinative facts determined in previous litigation.”¹⁹ Allowing Cascadia to relitigate issues of prudence would violate principles of judicial economy and impose unnecessary expenses on the other parties. Relitigation of issues would be particularly unfair to Cascadia’s customers because Cascadia’s litigation costs may be included in the rate base.²⁰ It is also unfair to Washington taxpayers who fund the Commission and its staff and the Office of the Attorney General.

15. “Pursuant to WAC 480-07-750(2)(c), if the Commission rejects a proposed settlement, the adjudication returns to its status at the time the Commission suspended the procedural schedule to consider the settlement.”²¹ This rule ensures that issues not fully addressed in consideration of a settlement will be addressed in considering the original tariff submission. It does not require parties to relitigate and the Commission to again decide in proceedings regarding the tariff issues resolved in rejecting a proposed settlement.

¹⁶ Exh. CJL-13X, Cascadia Responses to WCAW DR 1; Lehman, TR. 251:3–8, 251:4–8, 252:19–253:8.

¹⁷ Lehman, TR. 261:11–13, 310:2–7, 212:18–213:4; Lehman, Exh. CLJ-115X at 10 (Cascadia response to WCAW DR 120).

¹⁸ *Wash. Utils. & Transp. Comm’n v. Pacific Power & Light*, Docket UE-152253, Order 12 (Final Order) at ¶¶ 94, 107 (Sept. 1, 2016); *In the Matter of the Investigation of Avista Corporation*, Docket UE-190882, Order 05 at ¶57 (March 20, 2020).

¹⁹ *Luisi Truck Lines, Inc. v. Wash. Utils. & Transp. Comm’n*, 72 Wash.2d 887, 894, 435 P.2d 654 (1967).

²⁰ Cascadia’s ability to recover its costs also means that Cascadia has no incentive to refrain from relitigating issues it has lost.

²¹ Final Order Rejecting Settlement at ¶ 86.

C. Relevant Evidence in Further Proceedings

16. Because the question of prudence is identical in considering a tariff or settlement, all evidence submitted up to and including the February 11, 2025, hearing before the Commission is relevant to the issue of the prudence of Projects 1, 2, 4, 5, 6, 8, 9, 10, 11, and 14.

17. Excluding evidence submitted after November 20, 2024, would result in needless expense. Parties would be forced to resubmit testimony, and the Commission would need to hear cross-examination on issues that it heard on February 11, 2025. The substance of the evidence would not change but all record citations would need to change.

II. Cost of Capital

A. Case Status

18. “The Settling Parties have proposed a results-only settlement, sometimes referred to as a “black box” settlement, that contains no specified capital structure, cost of debt, cost of equity, or weighted cost of capital. . . .”²²

19. “In some circumstances, a results-only settlement is an appropriate tool to facilitate resolution where parties can agree on the reasonableness of the overall outcome, but not the individual components.”²³

20. The revenue requirement must be within “an acceptable range of possible outcomes supported by the evidence in the record.”²⁴

21. The revenue requirement comprises several components including Cascadia’s cost of capital.

²² *Id.* at ¶ 25.

²³ *Id.* at ¶ 69.

²⁴ *Wash. Utils. & Transp. Comm’n v. Deer Meadows Water Company*, UW-100642, Order 04 (Nov. 10, 2010).

22. The Cascadia-Staff settlement specified the amount of Cascadia's revenue requirement. Cascadia's cost of capital and the resulting reasonable rate of return are components of the revenue requirement. Neither of these components were specified in the proposed settlement.

23. The parties presented extensive evidence on the issue of Cascadia's cost of capital. In addition to evidence submitted before settlement, Cascadia submitted written testimony and other evidence on the issue of the cost of capital after entering into the proposed settlement.²⁵

24. The Commission did not determine Cascadia's cost of capital or decide the reasonable rate of return.

B. Remaining Issues

25. What is the reasonable rate of return on Cascadia's investments that are prudent?

C. Relevant Evidence in Further Proceedings

26. All evidence submitted up to and including the February 11, 2025, hearing before the Commission is relevant to the issue of the cost of capital.

27. Excluding evidence submitted after November 20, 2024, would result in needless expense. Parties would be forced to resubmit testimony, and the Commission would need to hear cross-examination on issues that it heard on February 11, 2025. The substance of the evidence would not change but all record citations would need to change.

²⁵ Cascadia's written testimony after settlement is at Rowell/Lehman, Exh. MJR-CJL-1JT at 15-17 and Exh. MJR-CJL-8JT at 24-26.

III. Single-Tariff Pricing

A. Case Status

28. Single-tariff pricing is a component of Cascadia's proposed tariff and the proposed settlement.²⁶

29. Whether it arises in connection with a proposed tariff or settlement, the evidence relevant to whether single-tariff pricing results in fair, just and reasonable rates is identical

30. The parties presented extensive evidence on the issue of single-tariff pricing. In particular, Cascadia and Staff submitted written testimony and other evidence on the issue of single-tariff pricing both before their proposed settlement and after.²⁷ Both parties also testified regarding the issue at the hearing before the Commission on February 11, 2025.

31. In rejecting the proposed settlement, the Commission did not decide whether single-tariff pricing results in fair, just and reasonable rates.

B. Remaining Issues

32. To what extent, if any, does single tariff pricing result in fair, just and reasonable rates for all customers of Cascadia?

C. Relevant Evidence in Further Proceedings

33. All evidence submitted up to and including the February 11, 2025, hearing before the Commission is relevant to the issue of single-tariff pricing.

34. Excluding evidence submitted after November 20, 2024, would result in needless expense. Parties would be forced to resubmit testimony, and the Commission would need to hear

²⁶ See Final Order Rejecting Settlement at ¶¶ 2 and 26.

²⁷ Staff's written testimony after settlement is at Sevall, Exh. SS-4T at 6 and Exh. SS-6T at 6-7. Cascadia's written testimony after settlement is at Rowell/Lehman, Exh. MJR-CJL-1JT at 5-6 and 10-11 (adopting Sevall's testimony submitted 11/20/2024) and Exh. MJR-CJL-8JT at 27-28.

cross-examination on issues that it heard on February 11, 2025. The substance of the evidence would not change but all record citations would need to change.

IV. Conclusion

35. For the reasons discussed above, the Commission should order:
- a) Further litigation regarding the prudence of Cascadia Projects 3, 7, 8, 12, and 13 is barred; and
 - b) All testimony and exhibits admitted into evidence through the hearing before the Commission on February 11, 2025, are part of the record and may be relied upon for the remainder of this case.

Respectfully submitted,

Water Consumer Advocates of Washington

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