BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. CASCADE NATURAL GAS CORPORATION, Respondent.	DOCKET UG-240008

RESPONSE TO BENCH REQUEST NO. 1 AND BRIEF OF THE ENERGY PROJECT

DATED: January 13, 2024

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I. Introduction

1 Bench Request No. 1 asks "how the Commission should consider paragraph 34 of the settlement stipulation following passage of I-2066, specifically Section 4(13) of the Initiative, together with the broader Climate Commitment Act."

2 Paragraph 34 of the Settlement Stipulation first requires Cascade to collect certain data about its financial subsidies for line extensions, then establishes a schedule by which Cascade will reduce the subsidy that existing customers provide new customers for line extensions.

3 The Energy Project (TEP) supports this provision of the Settlement Stipulation because low-income customers should not shoulder the financial burden of subsidies for line extensions that mostly benefit affluent customers who can afford to build a new home or building.

4 As TEP demonstrates in this brief, there is no conflict between paragraph 34 and Section 4(13) of I-2066, which only prohibits involuntarily fuel switching. The Commission should not interpret the voters' approval of I-2066 to require changes in policy that go beyond the initiative's statutory text. Moreover, it is relevant that in the same election, Washingtonians voted to retain the Climate Commitment Act. In doing so, voters endorsed a state policy to increase the cost of greenhouse-gas-emitting activities right now and reduce emissions in the long term. Taken together, the election results mean that Washingtonians support increasing the cost of greenhouse-gas-emitting activities right now, but not turning off an individual's natural gas service without their consent. The Settlement Stipulation achieves this balance. It is consistent with the text of I-2066 and the results of the election, and it results in fair, just, reasonable, and equitable rates.

II. Initiative 2066 does not restrict the Commission's authority to modify Cascade's line extension tariffs.

5 Nothing in I-2066 prohibits the Commission or utilities from modifying line extension policies. To determine the plain meaning of a statute, Washington courts "employ traditional rules of grammar" and choose the most "natural reading" of the text.[1] Section 4(13) of I-2066 precludes the Commission from approving:

> a multiyear rate plan [MYRP] that authorizes a gas company . . . to require a customer to involuntarily switch fuel use either by restricting access to natural gas service or by implementing planning requirements that would make access to natural gas service cost-prohibitive.

By its plain language, Section 4(13) only prohibits MYRPs that require customers to "involuntarily switch fuel use." Nothing in the Settlement Stipulation pertains to fuel switching, let alone involuntary fuel switching, so Section 4(13) is inapplicable. The Commission's analysis can end there. Indeed, the rest of Section 4(13) merely describes the two ways in which a MYRP might require customers to switch fuels: either, first, "by restricting access to natural gas service," or second, "by implementing planning requirements that would make access to natural gas cost-prohibitive." Absent involuntary fuel switching, these explanatory phrases are irrelevant. There is no rational and grammatical construction of Section 4(13) in which these phrases apply to paragraph 34.

6 Even if the Commission considers these two phrases, the Settlement Stipulation does not violate I-2066. First, Section 4(13) precludes Cascade from "restricting access to natural gas service." Nothing in paragraph 34 restricts a customer's access to natural gas service. Merriam-

[1] *State v. Valdiglesias Lavalle*, 2 Wash.3d 310, 318, 320 (Wash. 2023); *see also See Ash v. Washington State Dept. of Labor & Industries*, 173 Wash.App.559, 565 (Wash. Ct. App. 2013) (choosing interpretation that was "rational and grammatical").

Webster's Dictionary, which the Washington Supreme Court has consulted to clarify the meaning of statutory terms, defines "access" as "freedom or ability to make use of something."[2] Both new and existing customers continue to have the unfettered ability to make use of Cascade's natural gas system, through new line extensions and existing pipelines. While the Settlement Stipulation does modify the financial incentives for line extensions, that only impacts subsidies, not access itself.

7 Second, Section 4(13) prevents Cascade from "implementing planning requirements that would make access to natural gas service cost-prohibitive." Here again, there is no conflict with the Settlement Stipulation, as nothing in paragraph 34 implements a planning requirement. Paragraph 34 first requires Cascade to collect certain data about its financial subsidies for line extensions. Collecting data is not a planning requirement. Then, paragraph 34 establishes a schedule by which Cascade will reduce the subsidy that existing customers provide new customers for line extensions. Modifying a schedule of subsidies is not a planning requirement either. Thus, paragraph 34 does not violate I-2006.

8 One could argue that the phrase "that would make access to natural gas service cost-prohibitive" should be read in isolation from the "planning requirement" which precedes it. Such a reading violates the rules of statutory interpretation. In evaluating statutory language, Washington courts parse sentences to determine how each clause interacts with the others; interpretations that do not make grammatical sense are discarded.[3] Here, the only grammatical

[2] Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/access (last visited Jan. 11, 2025); *see Valdiglesias Lavalle*, 2 Wash.3d at 319 (citing online dictionary).

[3] *See Ash v. Washington State Dept. of Labor & Industries,* 173 Wash.App.559, 565.

reading of Section 4(13) is that the phrase "that would make access to natural gas cost-prohibitive" modifies the phrase "planning requirements."

9 That result also follows from the last antecedent rule, under which "courts construe the final qualifying words and phrases in a sentence to refer to the last antecedent unless a contrary intent appears in the statute."[4] The last antecedent is the last word, phrase or clause that can be made an antecedent without changing the meaning of the sentence.[5] Section 4(13)'s final qualifying phrase is "that would make access to natural gas cost-prohibitive," and the last antecedent to that phrase is "planning requirements." Given the lack of statutory intent to the contrary, the Commission should hold that the former applies to the latter, and only the latter.

10 If the legislative text of the initiative were not enough, the official voter pamphlet makes clear that I-2066 has nothing to do with line extension policies.[6] There is no mention of line extension policies in the Attorney General's Explanatory Statement, the argument for, or the argument against the initiative.[7] In sum, I-2066 does not prohibit the Commission from modifying Cascade's line extension policies.

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[4] *Eyman v. Wyman*, 191 Wash.2d 581, 599 (Wash. 2018).

[5] *Eyman*, 191 Wash.2d at 599.

[6] The Washington Supreme Court has held that in the case of any textual ambiguity, the official voters' pamphlet provides insight into an initiative's meaning. *American Legion Post # 149 v. Washington State Dept. of Health*, 164 Wash.2d 570, 586 (Wash. 2008).

[7] *See* Washington Secretary of State, General Election Voter Pamphlet, at 9-11 (Nov. 5, 2024), https://www.sos.wa.gov/sites/default/files/2024-09/Voters%20Pamphlet%202024%20-%20Edition%2006%20-%20King%20-%20Seattle_0.pdf.

III. Regardless, the retroactive application of Initiative 2066 to this rate plan is impermissible under Commission precedent and Washington law.

11 Even if the Commission finds that I-2066 conflicts with the Settlement Stipulation, the initiative does not apply to this proceeding because it did not take effect until December 5, 2024, more than eight months after Cascade filed this MYRP. Under Washington's general rule against retroactivity, a statute only applies prospectively unless it: explicitly provides for retroactivity; clarifies ambiguities in existing legislation; or relates to practice and procedure and does not affect substantive or vested rights.[8] None of these exceptions are relevant to I-2066, whose official voter pamphlet clarifies that the initiative applies "prospectively, not retroactively."[9]

12 In addition, this Commission should adhere to its precedent of refusing to give retroactive effect to statutes concerning MYRPs. In Puget Sound Energy's (PSE) 2022 general rate case, the Commission refused to apply SB 5295's expanded public interest standard retroactively.[10] The Commission also declined to retroactively apply the revised statute in the subsequent proceeding concerning PSE's Tacoma liquified natural gas facility.[11] The same outcome is warranted here.

13 Given the rule against retroactivity, the Commission may only apply the initiative to future rate plans. To determine when a newly-enacted statute can be applied to an ongoing proceeding, courts look to the act or event the statute intended to regulate. If the regulated act, or "triggering

[8] *Kellogg v. National Railroad Passenger Corp.*, 199 Wash.2d 205, 220 (Wash. 2022).

[9] Washington Secretary of State, General Election Voter Pamphlet, at 9.

[10] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dkt. UE-220066/UG-220067, Final Order 24/10, at ¶ 426 (Dec. 22, 2023).

[11] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dkt. UG-230393, Final Order 07, at ¶¶ 93, 110-11 (Apr. 24, 2024).

event," occurred before the statute's effective date, the statute is not applicable.[12] Courts and agencies make this determination by examining the statute's text and the subject matter it regulates.[13] They do not consider these factors in isolation. Under Supreme Court precedent, an initiative's amendments "must be read" in relation to the overall statutory scheme.[14]

14 For example, in *Sound Action v. Washington State Department of Wildlife,* the Pollution Control Hearings Board addressed whether an administrative agency should review a permit application under the legal standard in effect when the application was submitted or the standard in effect when the agency reached its final decision on the application; in the intervening period, the Legislature had amended the statutory scheme governing permit applications. The Board reasoned that under the statutory scheme, the agency's duty to assess the project for compliance with legislative objectives "only arises during that assessment of a complete . . . application."[15] Thus, submission of a complete application, not the agency's final decision, was the "triggering event." Because the legislative changes were made after the application was filed, the agency correctly evaluated the application under the original standard.[16] To find otherwise would create an absurd result, where, for example, the Commission must analyze and implement a law modifying an MYRP which takes effect only one day before the Commission issues its order.

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[12] *Service Emps. Int'l Union Local 925 v. Dept. of Early Learning*, 194 Wash.2d 546, 555 (Wash. 2019) (applying the "triggering event" analysis to initiative).

[13] *Service Emps. Int'l Union Local 925 v. Dept. of Early Learning*, 194 Wash.2d 546, 555.

[14] *American Legion Post # 149*, 164 Wash.2d at 585.

[15] *Sound Action v. Wash. State Dept. of Fish and Wildlife*, Wash. Pol. Control Hearing Bd., No. 20-022, Findings of Fact, Conclusions of Law, and Order, ¶ 24. (June 9, 2021).

[16] *Id*., ¶¶ 20-26. The Superior Court and the Court of Appeals subsequently upheld the Board's decision. *See Sound Action v. Washington State Pollution Control Hearings Board*, 2023 WL 3317949, at *1 (Wash. Ct. App. 2023) (unpublished).

15 Here, Initiative 2066's text and purpose confirm that the triggering event for the initiative's rate case provisions occurred when Cascade filed its MYRP on March 29, 2024. As noted above, Sections 4(13) of the initiative amends the Commission's authority to approve certain MYRPs. Under that statutory scheme, once Cascade files a general rate case, the Commission has eleven months to determine whether the plan advances the public interest, including "environmental health and greenhouse gas emissions reductions, health and safety concerns, economic development, and equity."[17] Just as in *Sound Action*, the statutory scheme contemplates administrative review of Casacade's filing for compliance with specific legislative criteria. And just as in *Sound Action*, the Commission's duty to complete that review arose when Cascade made its original filing in March 2024. This means that the relevant triggering event occurred nearly more than eight months before the initiative's effective date of December 5 (and indeed also before the passing of HB 1589). Thus, application of I-2066 to this proceeding would unlawfully violate the rule against retroactivity.

IV. Conclusion.

16 TEP respectfully requests that the Commission approve the Settlement in full and without conditions.

[17] RCW 80.28.425.

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