

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

COST MANAGEMENT SERVICES, INC.,

DOCKET NO. UG-061256

Complainant,

v.

CASCADE NATURAL GAS
CORPORATION,

Respondent.

**COMMISSION STAFF'S BRIEF IN RESPONSE TO MOTIONS AND BRIEFS OF
CASCADE NATURAL GAS CORPORATION AND COST MANAGEMENT
SERVICES, INC.**

December 1, 2006

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I. INTRODUCTION

1 CMS asks that the Commission find that Cascade's sales of natural gas to its transportation customers are unlawful, because they are not made at prices that are specified in Cascade's published tariffs. CMS also asks that the Commission order Cascade to cease making such sales, and determine whether Cascade's existing contracts are void or voidable.¹ In response, Cascade states that CMS's complaint should be dismissed, because Cascade's sales of natural gas to non-core transportation customers have been authorized by the Commission since 1988. Although Cascade additionally claims that these sales are authorized by its Federal Energy Regulatory Commission (FERC) blanket marketing certificate, *see* 18 C.F.R. § 284.402, Cascade has agreed to remove references to the federal rule in its tariff, and it does not ask the Commission to rule on issues concerning federal authority.² The issue at hand, thus, is whether Cascade's sales of unbundled natural gas have been lawfully made pursuant to Commission-authorized tariffs.

2 Staff believes, for the reasons set forth below, that Cascade's arguments are well-taken, and that the complaint should, therefore, be dismissed. However, Staff does believe that Cascade's tariff language concerning the pricing of its natural gas commodity in the future should be made more specific, and furthermore, that it may be advisable to require Cascade to reinstitute certain tariffs that were previously withdrawn, with Commission authorization, in March 2004. However, Staff agrees with Cascade that its sales of natural gas have been made pursuant to Commission-authorized tariffs since 1988, and that the Commission should not, in this proceeding, declare such sales illegal.

¹ Complaint, ¶ 2.

² *See* Cascade's Motion for Summary Determination and Memorandum in Support (resubmitted version, November 22, 2006) ("Brief of Cascade"), at 2-3.

3 Staff takes note, however, of CMS’s arguments that Cascade’s sales of natural gas are injurious to competition. Specifically, CMS contends that because Cascade sells gas to non-core customers through the regulated entity, there is the potential for cross-subsidization of non-core customers by Cascade’s core customers, undue discrimination and undue preference. CMS suggests that Cascade could remedy this situation by forming a separate marketing affiliate to make sales of natural gas. The Commission may wish to further investigate competitive issues concerning Cascade’s natural gas sales in a subsequent docket.

4 Staff additionally notes that it has consistently sought to ensure that core customers are not harmed by Cascade’s gas sales to non-core customers. Accordingly, in the pending Cascade rate case, Docket No. UG-060256, Staff has recommended that the Commission approve a multi-party settlement under which \$200,000 of Cascade’s net revenues from sales of natural gas would be included in determining Cascade’s revenue requirement, and under which Cascade would share 50 percent of its net margin from these sales with core customers on an ongoing basis.

II. ARGUMENT

A. **Cascade’s sales of natural gas have been made pursuant to Commission-authorized tariffs since 1988.**

5 As the Stipulated Facts and Cascade’s brief set forth in detail, Cascade’s unbundled gas supply options have continually been offered under Commission-authorized tariffs from 1988 to the present. More specifically, from December 1, 1989, through March 1, 2004, Cascade sold optional, unbundled gas supply to non-core customers under Supplemental Schedules 681 through 684. In addition, Cascade offered Optional Gas Management Services pursuant to Schedule 687, effective May 11, 2000. On March 1, 2004, Cascade

cancelled Supplemental Schedules 681 through 684, with the cancellation sheets noting that Cascade continued to offer several gas supply purchasing options, as permitted by its FERC blanket marketing certificate. The Commission allowed each of these tariff offerings to become effective, as well as the subsequent cancellation of certain tariffs.³

6 The optional gas supply schedules in effect from 1989 through 2004 stated, “The charges for the cost of gas for customers electing this option shall include all the cost of such supply incurred by the Company at the city gate (excluding pipeline transportation charges).”⁴ The schedules further stated either that the cost of gas supply for the upcoming month would be reported to each customer prior to the start of the month, or that the cost of the gas supply would be pursuant to the terms of the supply contract for each customer.⁵ The Declaration of Jon T. Stoltz, ¶ 4, explains that customers whose price is communicated monthly enter into a published, variable, *Inside FERC* index-priced contract with Cascade, while customers who wish a fixed price supply arrangement do so under the terms of their supply contracts. This latter information was not set forth in the tariffs themselves.⁶

7 RCW 80.28.050 requires gas companies to file with the Commission, and keep open to public inspection, “schedules in such form as the Commission may prescribe, showing all rates and charges made, established, or enforced . . . by such gas company[.]” While the tariffs on file with the Commission from 1989 through 2004 may not be an ideal model of clarity, they did reference in general terms the manner in which the charges for gas supply

³ Stipulated Facts, ¶ 13; Exhibits 8-11, 14. *See also* Brief of Cascade, at 5-7.

⁴ The quoted language is from Supplemental Schedule 684, Exhibit 11; the language in Supplemental Schedule 681, Exhibit 8, is substantially the same.

⁵ *Id.*

⁶ The majority of Cascades’ unbundled gas sales to its transportation customers are priced based upon a published *Inside FERC* index. Declaration of Jon T. Stoltz, ¶ 5.

would be determined, and these tariffs were duly approved by the Commission. Staff believes that Cascade's sales of gas under these tariffs should be found to have been legal.

8 Since March 1, 2004, when the optional gas supply schedules were cancelled, Cascade has accounted for and reported its revenue from unbundled gas sales under Supplemental Schedule 687. The tariff cancellations were allowed to take effect by the Commission, and they contained the further notation that Cascade would provide such sales under its FERC blanket marketing certificate.⁷ According to the Declaration of Jon T. Stoltz, ¶ 5, Cascade has conducted and priced its sales of non-core gas supply and related services in largely the same manner as it did prior to that date.

9 The problem is that Supplemental Schedule 687 does not contain the language regarding gas sales as did the now-cancelled schedules. This is, at least in part, because Cascade stated that such sales were made pursuant to its FERC blanket marketing certificate. Cascade now states, however, that it is not asking the Commission to find that its natural gas sales are authorized by federal law. Staff believes that the lack of language in Supplemental Schedule 687 specifically addressing natural gas sales is an issue that should be rectified in the future, perhaps through a compliance filing, regarding future sales of natural gas to non-core customers. However, given the history of tariff filings in this matter and the Commission's apparent acceptance of those filings, Staff believes that it would be inequitable, and unfair to Cascade's current customers, to now find that Cascade's past sales of gas were illegal.

⁷ Exhibits 8-11.

B. Cascade should be required to file tariffs that provide greater specificity regarding the terms, conditions and charges for natural gas sales.

10 Staff believes that the Commission should require Cascade to file tariffs that provide greater specificity for customers regarding its sales of natural gas. This could be done through a compliance filing. While the tariff schedules may not have specific prices for gas sales, they should make clear the formula or methodology pursuant to which the price will be determined. For example, if customers will be purchasing gas under a variable index, such as the *Inside FERC* index price referenced in the Declaration of Jon T. Stoltz, ¶ 4, that information should be clearly stated in the tariff. This might be achieved by having Cascade refile the previously cancelled optional gas supply schedules (Supplemental Schedules 681 through 684) with greater specificity as to the terms, conditions, and charges for service noted above. Such language revisions are also consistent with the overall intent of the tariff and notice provisions of RCW 80.28.050.

C. Staff shares CMS’s concern that core customers not be harmed by Cascade’s sales of natural gas to non-core customers. Staff has addressed this concern in the settlement agreement pending in Docket No. UG-062656. The Commission may wish to further investigate competitive issues concerning Cascade’s natural gas sales in a subsequent docket.

11 Staff takes note of CMS’s arguments that Cascade’s sales of natural gas are injurious to competition. Specifically, CMS contends that because Cascade sells gas to non-core customers through the regulated entity, there is the potential for cross-subsidization of non-core customers by Cascade’s core customers, undue discrimination, and undue preference. CMS suggests that Cascade could remedy this situation by forming a separate marketing affiliate to make sales of natural gas.⁸

⁸ Complainant’s Motion for Summary Determination on All Issues (“Brief of CMS”) at 26, ¶¶ 75-76.

12 Staff has consistently sought to ensure that core customers are not harmed by Cascade's gas sales to non-core customers. Indeed, Staff made clear its position, in May 2000, that revenues generated under Supplemental Schedule 687 should not be adverse to the interests of core customers, and the Commission agreed.⁹ Accordingly, in the pending Cascade rate case, Docket No. UG-060256, Staff has recommended that the Commission approve a multi-party settlement under which \$200,000 of Cascade's net revenues from sales of natural gas would be included in determining Cascade's revenue requirement, and under which Cascade would share 50 percent of its net margin from these sales with core customers on an ongoing basis.

13 The Commission may wish to further investigate competitive issues concerning Cascade's natural gas sales in a subsequent docket. Such an investigation might examine whether Cascade's current practice of making gas sales to non-core customers through the regulated company offers Cascade unfair competitive advantages, and might examine possible remedies, such as requiring Cascade to provide such sales through a separate marketing affiliate. Based on the record in this case, Staff cannot say at this time that unfair competitive advantages do or do not exist.

DATED this 1st day of December, 2006.

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⁹ Exhibit 21 at 6, 8 (Staff memo and Commission order, Docket No. UG-000597).