

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

CASCADE NATURAL GAS
CORPORATION,

Respondent.

DOCKET UE-170929

COMMISSION STAFF'S
RESPONSE TO THE COMPANY'S
MOTION FOR CLARIFICATION

I. INTRODUCTION

I A party seeking to understand an ambiguity in a Commission order may move for clarification. But a party seeking to change the outcome on an issue must instead move for reconsideration of that issue. Cascade Natural Gas Corporation (“Cascade” or the “Company”), in the guise of asking for clarification of a single sentence in the Commission’s final order in this docket, asks the Commission to change its final order. The Commission should deny the Company’s motion.¹ If the Commission determines that it should clarify Order 06, Staff requests that it simply reiterate that Cascade may true-up its return of the \$1.6 million it over-collected from ratepayers during the interim period of January 1, 2018, through July 31, 2018.

¹ If the Commission treats Cascade’s motion as one for reconsideration, *see* WAC 480-07-395(4), it should deny the motion because, as explained in Section VII.B., the Commission’s Order correctly disposes of the contested issue.

II. RELIEF REQUESTED

2 Staff requests that the Commission deny the Company's motion for clarification or,
alternatively, reiterate that the Company must return the \$1.6 million that it has over-
collected from ratepayers from January 1, 2018, through July 31, 2018 (the "Interim
Period"), and that the "true-up" allowed by the Commission effective November 1, 2019, is
for the purpose of ensuring that the entirety of the \$1.6 million is returned to ratepayers.

III. STATEMENT OF ISSUES

3 Whether the Commission should deny the Company's motion for clarification of
Order 06 in this docket.

IV. STATEMENT OF FACTS

4 On August 31, 2017, Cascade filed with the Commission revisions to its currently
effective Tariff WN U-3 for natural gas service provided in Washington. Cascade requested
an increase in annual revenues of approximately \$5.9 million.

5 On May 18, 2018, the Parties filed a Joint Partial Settlement Agreement
("Settlement") and Joint Testimony in Support of the Settlement, resolving all but one issue
presented in the case and reserving that final issue for litigation.

6 An evidentiary hearing was held on June 20, 2018, for the purposes of presenting the
Settlement and for cross examination and oral argument regarding the single issue reserved
for litigation.

7 The Commission issued its Final Order in this docket, Order 06, on July 20, 2018.²
Order 06 approved the Settlement without condition.³ Order 06 also adopted Staff's

² *Wash. Utils. & Transp. Comm'n v. Cascade Natural Gas Corp.*, Docket No. UG-170929, Order 06 (Jul. 20, 2018) (hereinafter "Order 06").

³ Order 06 at 3, 24, 26, ¶¶ 11, 87, 102, 107.

calculation of the amount over-collected by the Company during the Interim Period (totaling \$1.6 million), and ordered the Company to return the entire \$1.6 million to ratepayers through a separate tariff over 15 months, mirroring the design of the other two separate tariff schedules, refunding excess deferred income taxes, that the Parties agreed to in the Settlement.⁴

8 On July 30, 2018, Cascade filed a motion for clarification of Order 06 pursuant to WAC 480-07-835. Through its motion, Cascade seeks clarification of the last sentence of Paragraph 44 of Order 06 as to what, specifically, the Commission meant when it allowed the Company to “file a true up, effective November 1, 2019, once its actual 2018 tax liabilities are known.”

V. EVIDENCE RELIED UPON

9 Staff relies upon the Settlement, the Joint Testimony in Support of the Settlement, the various responses by the Parties to the Commission’s Bench Request No. 1, the transcript of the June 20, 2018, evidentiary hearing, and Order 06.

VI. APPLICABLE LEGAL STANDARDS

10 The Commission’s procedural rules allow parties who do “not seek to change the outcome with respect to an issue” to file a motion for clarification of a final order within 10 days of service of the order.⁵ The purpose of a motion for clarification is “to ask for clarification of the meaning of an order so that compliance may be enhanced, so that any compliance filing may be accurately prepared and presented, . . . or to correct patent error

⁴ Order 06 at 13-14, ¶¶ 44-45.

⁵ WAC 480-07-835(1).

without the need for parties to request reconsideration and without delaying post-order compliance.”⁶

VII. ARGUMENT

11 The Company’s request does not meet the standard or the purpose of a motion for clarification. Instead, it attempts to change the Commission’s ruling on the single contested issue, which the Commission decided against the Company and in favor of Staff, Public Counsel, and the other intervenors. Staff responds to the Company’s motion for clarification and, in the event the Commission interprets it as a motion for reconsideration, presents its rationale for why reconsideration should also be rejected. No clarification is required and the Commission should deny the Company’s motion. In the event the Commission desires to make edits to Order 06, Staff identifies, below, how the Commission could clarify without reconsidering or changing its order.

A. **The Commission’s Order Does Not Require Clarification**

12 Order 06 could not be clearer: Cascade must return the \$1.6 million in taxes that it over-collected from ratepayers during the Interim Period due to the passage of the Tax Cuts and Jobs Act.⁷ In arriving at that conclusion, the Commission rejected:

- Cascade’s argument, based on the Commission’s First Supplemental Order in Docket U-86-130, that it should keep all of the tax over-collection up until it earns its authorized ROR.⁸

⁶ WAC 480-07-835(1).

⁷ Pub. L. No. 105-97, 131 Stat. 2054 (2017).

⁸ Order 06 at 10, ¶¶ 34-35.

- Cascade’s argument that it should be allowed to keep the tax over-collection because it may earn less than its authorized ROR.⁹
- Cascade’s argument that it should be allowed to keep the tax over-collection because doing so would benefit ratepayers.¹⁰
- Cascade’s argument that it should be allowed to keep the tax over-collection because disallowing the Company to retain these monies would result in retroactive ratemaking.¹¹
- Cascade’s argument that it should be allowed to keep the tax over-collection because no party asked Cascade to file a petition for deferred accounting for the tax over-collection.¹²
- Cascade’s argument that if the Commission decided that the Company must return the tax over-collection, it should use the 2016 test year information to determine the amount and also Cascade’s statement that its actual tax over-collection would be known at a later time.¹³

13 After disposing of each of Cascade’s arguments, Order 06 makes clear what amount the Company over-collected and how that amount should be returned to ratepayers:

- The Commission decided that the amount of the tax over-collected by the Company was \$1.6 million, as correctly calculated by Staff.¹⁴

⁹ Order 06 at 10-11, ¶¶ 36-37.

¹⁰ Order 06 at 11, ¶¶ 38-39.

¹¹ Order 06 at 12-13, ¶¶ 40-41.

¹² Order 06 at 13, ¶ 42.

¹³ Order 06 at 13-14, ¶¶ 43-45.

¹⁴ Order 06 at 13, 14, ¶¶ 43, 45.

- The Commission decided that the \$1.6 million tax over-collection should be returned to ratepayers over a 15-month period through a separate tariff schedule, consistent with the first year amortization schedules for the Protected-Plus EDIT and Unprotected EDIT amounts outlined in the Settlement.¹⁵
- The Commission decided to mirror the Settlement’s structure of separate tariff schedules for Protected-Plus EDIT and Unprotected EDIT, ordering the Company to return the over-collection amount through a separate tariff and allowing the Company to file a true-up at the end of the 15 months to ensure that no more and no less of the \$1.6 million tax over-collection has been returned to ratepayers.¹⁶

1. Give Meaning to the Entirety of Order 06

14 The same principles are used to interpret an order as a statute: the order must be read as a whole, harmonizing all of its provisions.¹⁷ Here, the Commission’s order must be read to give meaning to its ruling, in its entirety. In this instance, both the plain language and the meaning of Order 06 are clear and consistent.

15 Contrary to the Company’s argument in its motion for clarification, Paragraph 44 does not allow the Company to true-up to its actual 2018 tax liabilities.¹⁸ Instead, it simply allows Cascade to file a true-up of the amount returned to ratepayers *once its actual 2018 tax liabilities are known*. The clause, therefore, describes the date November 1, 2019, and what the Company will know at that time, but does not describe what amount the Company may true-up.

¹⁵ Order 06 at 13, ¶ 44.

¹⁶ Order 06 at 13-14, ¶¶ 44.

¹⁷ *City of Vancouver v. Pub. Employment Relations Comm’n*, 180 Wn. App. 333, 352, 325 P.3d 213 (2014).

¹⁸ *Wash. Utils. & Transp. Comm’n v. Cascade Natural Gas Corp.*, Docket UG-170929, Cascade Natural Gas Corporation’s Motion for Clarification, 3-4, ¶¶ 6-9 (Jul. 30, 2018) (hereinafter “CNG Motion for Clarification”).

16 Additionally, Order 06’s meaning is indisputable. The Commission rejected all of the Company’s arguments and determined that the amount the Company over-collected during the Interim Period, and which Cascade must return to ratepayers, is \$1.6 million, as calculated by Staff.¹⁹ The “true-up” allowed in Paragraph 44 is, therefore, of this \$1.6 million. Further, the Commission ordered the Company to return this amount through a separate tariff schedule. This mirrors how the Parties, in the Settlement, agreed to create two new separate tariff schedules to return the amounts for Protected-Plus EDIT and Unprotected EDIT to ratepayers with a true-up every November 1. This link is apparent in the Commission’s reasoning: Paragraph 44 discusses how the Company should “amortize the Interim Period EDIT through a separate schedule over a 15-month period consistent with the first year amortization schedules for the Company’s Protected and Unprotected EDIT amounts.”²⁰ Implementing a similar structure for the return of the over-collected amounts makes sense: it ensures that the entirety of the amount over-collected by the Company will be returned to ratepayers.

17 The penultimate sentence of Paragraph 44 also adds context and support for the correct and complete reading of the order. That sentence reads “As we have repeatedly expressed, the excess deferred taxes should inure to the benefit of ratepayers as soon as reasonably practicable.”²¹ With this language, the Commission emphasized its concern that ratepayers should receive the benefits in a timely manner. The last sentence is, likewise, concerned with the timing of when ratepayers will see that benefit. With the last sentence,

¹⁹ Order 06 at 10-14, ¶¶ 34-45.

²⁰ Order 06 at 13-14, ¶ 44.

²¹ Order 06 at 13-14, ¶ 44.

the Commission allowed for a true-up effective on November 1, 2019, which will ensure that ratepayers have received the full return of \$1.6 million.

18 Reading Order 06 as a whole, taking into account both the plain language and the order's entirety, gives meaning to all the words and clauses in Paragraph 44. The clause containing the words "actual tax liabilities" is not rendered superfluous when the entirety of the order is considered. In fact, all of the Commission's rejections of the Company's arguments, noted above, are consistent with this reading of Paragraph 44: Staff calculated the over-collection correctly; the amount over-collected is \$1.6 million; and, the Company will return the \$1.6 million to ratepayers through a separate tariff schedule, truing-up that amount at the end of 15 months, just as the Parties agreed to for Protected-Plus EDIT and Unprotected EDIT.

2. Provide Greater Clarity: Addition by Subtraction

19 If the Commission desired to add greater clarity to Order 06's already clear ruling, it could choose to do so by simply removing the last clause of the last sentence in Paragraph 44. This would be addition by subtraction, preserving the current meaning of Order 06, in its entirety, and dismissing any mention of the Company's actual 2018 tax liabilities, which does not impact the calculation of what it actually recovered through rates from ratepayers from January 1, 2018, through July 31, 2018, as explained in Section VII.B., below. Paragraph 44, with the stated edit, would appear as follows:

For the reasons discussed above, we find that Cascade failed to carry its burden to prove that allowing the Company to retain the Interim Period EDIT would benefit customers or result in rates that are fair, just, reasonable, and sufficient. We decline to allow Cascade to treat TCJA benefits as period costs and direct Cascade to amortize the Interim Period EDIT through a separate schedule over a 15-month period consistent with the first year amortization schedules for the Company's Protected and Unprotected EDIT amounts. As we have repeatedly expressed, the excess deferred taxes should inure to the benefit of ratepayers as soon as reasonably practicable. To address any discrepancy, Cascade may

file a true up, effective November 1, 2019, ~~once its actual 2018 tax liabilities are known.~~²²

B. Cascade’s Motion Asks the Commission to Reconsider its Resolution of the Contested Issue

20 The Commission’s order is clear and consistent. But the Company was, apparently, dissatisfied with the Commission’s ruling, which rejected all of the Company’s arguments that it should keep any portion of the revenues it over-collected from ratepayers in rates during the Interim Period. Adopting Cascade’s argument, however, would change the Commission’s decision regarding the over-collected amount and how the amount should be calculated. Cascade’s motion for clarification of Order 06 is, therefore, an attempt to relitigate that single contested issue. Cascade’s request is better understood as one for reconsideration of the Commission’s decision, not clarification. It should be summarily rejected.

1. Order 06 Correctly Resolved the Contested Issue

21 The amount of the Company’s tax liabilities in 2018 has no impact on what amounts it over-collected from ratepayers during the Interim Period. The revenue it was permitted to recover in rates from ratepayers was determined in the Company’s last general rate case: Docket UG-152286. The rates set in that case included recovery for taxes at 35 percent. The over-collection amount can only be determined, therefore, using the rates set in Docket UG-152286 and adjusting them for taxes at 21 percent.

22 The Company testified that this is the correct understanding of how taxes are recovered through rates. Commissioner Balasbas asked Mr. Parvinen, who was testifying on behalf of the Company: “And has Cascade collected taxes based on a 35 percent rate from

²² Order 06 at 13-14, ¶¶44.

January 1, 2018, through – and will be going forward through July 31, 2018?” Mr. Parvinen responded, stating: “Well, Cascade has collected the revenues from rates that were established using a 35 percent rate.”²³

23 Exactly. As Staff testified in response to Bench Request No. 1, confirmed by Mr. Parvinen at hearing, and accepted by the Commission in Order 06, Cascade’s actual 2018 tax liabilities do not impact the amount of money that it over-collected from ratepayers from January 1, 2018, through July 31, 2018.²⁴ While the Company’s actual tax liabilities for 2018 will not be known until sometime in the future (but definitely by November 1, 2019), what the Company actually recovered in rates from ratepayers during the Interim Period is a known fixed cost.²⁵ The Company’s actual 2018 tax liabilities, therefore, are not relevant for determining what amount was actually over-collected. Rather, the amount over-collected from ratepayers is properly calculated using revenues determined in the Company’s 2015 general rate case as well as a ratio of January through July volumetric data, as proposed by Staff. The Commission, in Order 06, agreed.²⁶

2. **The Company’s Proposal Would Make Order 06 Internally Inconsistent**

24 The Company’s argument, if accepted, would result in an order that is internally inconsistent. Either \$1.6 million dollars has been over-collected by the Company through rates during the Interim Period, or the Company’s actual 2018 tax liabilities should be used to calculate what was over-collected. It cannot be both. The two calculation methodologies are not compatible. The Commission, throughout Order 06, decided that the former was correct.²⁷ A request for the Commission to change from one method of calculation to

²³ Parvinen, TR 77:8-9.

²⁴ TR 77:5-7.

²⁵ See Order 06 at 10-11, ¶ 36.

²⁶ Order 06 at 10-11, 14, ¶¶ 36, 45.

²⁷ Order 06 at 10-11, 13, 14, ¶¶ 36, 43, 45.

another is a request for the Commission to change its resolution of the single contested issue. The Commission should reject the Company's request to do so.

VIII. CONCLUSION

25 For the reasons stated above, the Commission should deny the Company's motion for clarification or, alternatively, provide even greater clarity that the Company must return the entirety of the \$1.6 million it over-collected from ratepayers in rates between January 1, 2018, and July 31, 2018.

DATED this 31st day of July, 2018.

Respectfully submitted,

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