

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

CASCADE NATURAL GAS
CORPORATION,

Respondent.

DOCKET UG-070332
(Consolidated)

ANSWER TO COMPLAINT

In re Notification of Contract and
Arrangement between

CASCADE NATURAL GAS
CORPORATION,

and its subsidiary

CGC ENERGY, INC.

DOCKET UG-070639
(Consolidated)

1. Respondent Cascade Natural Gas Corporation ("Cascade") respectfully submits this Answer to the Complaint of the Washington Utilities and Transportation Commission ("Commission").
2. Cascade admits the allegations of paragraph 2 of the Complaint.
3. Cascade admits the allegations of the first two sentences of paragraph 3 of the Complaint, and denies the remaining allegations of that paragraph. Without waiving the generality of the foregoing denial, Cascade has always been willing to share the margins generated by the regulated utility business. The issue is whether it is appropriate for the unregulated

ANSWER TO COMPLAINT- 1

Perkins Coie LLP
1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
Phone: 503.727.2000
Fax: 503.727.2222

subsidiary to have the same sharing requirement. The establishment of an unregulated subsidiary to conduct this business was intended to create a playing field that is "level" with the other entities competing for this business. The unregulated subsidiary is responsible for conducting its business. To the extent that the unregulated subsidiary chooses to outsource certain business support services to Cascade, the utility charges the subsidiary for the services performed on the subsidiary's behalf. None of the other entities that sell gas supply services to any of Cascade's transportation customers share any of their margins with customers.

4. Cascade admits the allegations of paragraph 4 of the Complaint.
5. Cascade admits the allegations of paragraph 5 of the Complaint.
6. Cascade admits the allegations of paragraph 6 of the Complaint.
7. In response to the allegations of paragraph 7 of the Complaint, Cascade admits that the Commission issued the referenced Order and states that the Order speaks for itself.
8. Cascade admits the allegations of paragraph 8 of the Complaint.
9. In response to the allegations of paragraph 9 of the Complaint, Cascade admits that it sent the referenced letter and states that the letter speaks for itself.
10. Cascade admits the allegations of paragraph 10 of the Complaint, except denies that CGC Energy is providing gas supply sales "entirely through the actions of Cascade." CGC Energy has its own employees and enters into contracts in its own name. With respect to the allegations that Cascade and CGC Energy "share the same Internet Web site home page," are "housed in the same building," and "share staff with each other," Cascade further responds that it appropriately allocates costs for these activities pursuant to Cascade's Cost Allocation Manual which is on file with the Commission.

11. Cascade admits the allegations of the first sentence of paragraph 11 of the Complaint, except denies that the net margins were to be shared only with "core customers." The Settlement Agreement indicates that the amounts deferred would be shared with all customers except special contract customers. At the time of the Settlement Agreement, Cascade's special contract customers were bypass avoidance customers (*i.e.*, the terms of the special contracts were designed to address a competitive bypass threat). As such, Cascade believed it had agreed to return a share of the amounts deferred to *all* customers (including non-core customers, some of which were purchasing gas supplies from Cascade) except special contract customers. (Order 03 in Docket UG-061256 ("Order 03") stated that the gas supply contracts entered into by Cascade were not supported by tariffs and therefore were a form of special contracts.) Cascade denies the second sentence of paragraph 11 for lack of knowledge or information sufficient to form a belief as to the truth thereof and because the term "key part" is vague and ambiguous.
12. In response to paragraph 12 of the Complaint, Cascade admits that it has informed Commission Staff that CGC Energy will not share with Cascade's customers the net margins CGC Energy earns on gas sales because that is not required by any Commission order and is beyond the jurisdiction of the Commission to require. Cascade has stated that it will share with its customers the net revenue Cascade earns from gas supply sales to non-core customers.
13. Cascade admits the allegations of paragraph 13 of the Complaint.
14. Cascade denies the allegations of paragraph 14 of the Complaint.
15. Cascade admits the allegations of paragraph 15 of the Complaint.
16. Cascade admits the allegations of paragraph 16 of the Complaint.

17. In response to the allegations of paragraph 17 of the Complaint, Cascade admits that the Commission has jurisdiction over Cascade. Cascade further states that the Commission is attempting to exercise jurisdiction over CGC Energy, including requiring CGC Energy to share its revenue with Cascade's customers, and denies that the Commission has such jurisdiction.
18. In response to the allegations of paragraph 18 of the Complaint, Cascade restates its responses to paragraphs 2 through 17 of the Complaint.
19. Cascade denies the allegations of paragraph 19 of the Complaint.
20. Cascade denies that the Commission should make the finding requested in paragraph 20 of the Complaint.
21. Cascade denies that the Commission should make the finding requested in paragraph 21 of the Complaint.
22. Cascade denies that the Commission should order the relief requested in paragraph 22 of the Complaint. Cascade further denies that the Commission has jurisdiction to order CGC Energy to share its revenue with Cascade's customers.
23. Cascade denies that the Commission should order the relief requested in paragraph 23 of the Complaint. Cascade further denies that the Commission has jurisdiction to impose the penalties requested.
24. Cascade denies the allegations of paragraph 24 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

25. Cascade complied with Order 03 by filing tariffs to govern its gas supply sales to non-core customers on February 12, 2007. Cascade's filing reflected an effective date of March 15, 2007. Pursuant to WAC 480-80-123(3)(b), however, Cascade was not required to provide

statutory notice for this tariff change because it was for "a service not previously contained within a regulated utility's existing tariff." Thus, this tariff revision was not subject to suspension pursuant to RCW 80.28.060. Nevertheless, the Commission suspended this tariff on March 14, 2007.

26. In view of the Commission's suspension of Cascade's tariff revisions, Cascade was unable to make gas supply sales as the Commission directed in Order 03, pursuant to filed tariffs. Several of Cascade's non-core customers' gas supply contracts were due to expire on March 31, 2007. Even if Cascade were able to make those sales as special contracts – which option did not seem available to Cascade under Order 03 – Cascade had insufficient time following the Commission's suspension of the tariff revisions to seek approval under WAC 480-80-143 in order to continue to serve these customers. For these reasons, Cascade chose to have its subsidiary, CGC Energy, make the gas supply sales until such time as the Commission approved Cascade's revised tariffs (which Cascade expected would be in the near-term). Cascade fully informed the Commission of this decision and the reasons therefore in its March 30, 2007 letter referenced in paragraph 9 of the Complaint. As indicated in that letter, Cascade planned to appropriately allocate costs for these activities pursuant to Cascade's Cost Allocation Manual, a revised version of which Cascade filed with the letter.
27. Order 05 in Docket UG-060256 ("Order 05"), including the settlement agreement which the Commission approved in Order 05, requires *Cascade* to defer and return to customers a portion of *its* revenue from Gas Management Services. Neither the settlement agreement nor Order 05 requires Cascade or CGC Energy to return to customers any portion of *CGC Energy's* revenue from gas sales. Accordingly, Cascade is not in violation of Order 05 either by CGC Energy's making gas supply sales or by Cascade's intention not to cause CGC Energy to share its revenue with Cascade's customers.

28. Cascade did not reactivate CGC Energy with the intention to avoid any of its obligations under Order 05. Nor did Cascade intend to have CGC Energy make gas supply sales to Cascade's non-core customers for the long-term. Rather, this was simply a short-term solution to a situation the Commission created when it suspended Cascade's tariff revisions. Cascade did not expect that its tariff filing would be controversial, since it set forth the same terms under which Cascade had been making gas supply sales for almost 19 years, including over 15 of those years under tariff. For this reason, Cascade expected that its utilization of CGC Energy to make these sales would be a short-term solution, and that once the Commission had approved Cascade's tariffs, the sales would revert to Cascade and the revenue-sharing as required by Order 05 would be expanded.
29. Furthermore, Cascade respectfully submits that the Commission and its Staff have themselves extended the period during which CGC Energy is making these sales – the very situation the Commission is complaining of – by their delays in considering Cascade's proposed tariff revisions in Docket UG-070332. Cascade should not be held responsible for these delays.

SECOND AFFIRMATIVE DEFENSE

30. The relief sought in the Complaint is beyond the Commission's jurisdiction to order. In paragraph 27 of the Complaint, Staff requests that the Commission order Cascade "to share with core customers . . . the net margins generated from all sales made under contracts with Cascade's wholly-owned subsidiary, CGC Energy, on and after April 1, 2007." CGC Energy is not a public service corporation subject to regulation by the Commission. Accordingly, the Commission lacks the jurisdiction to order CGC Energy to share its revenue with Cascade's customers.

THIRD AFFIRMATIVE DEFENSE

31. Order 05 already includes net revenue of \$200,000 per year from gas sales to non-core customers in calculating Cascade's revenue requirement. That benefit to Cascade's customers is reflected in Cascade's rates and will continue to be reflected in Cascade's rates even if Cascade does not earn that amount of net revenue from these sales. Such imputation of CGC Energy's revenue is a sufficient benefit to Cascade's customers.

FOURTH AFFIRMATIVE DEFENSE

32. Pursuant to RCW 80.04.270, revenue from the sale of merchandise shall not constitute a part of the operating revenues and expenses of a public service company for ratemaking purposes. The sale of gas supply to non-core customers is a sale of merchandise subject to this statute, and the Commission therefore may not consider this revenue in establishing rates for Cascade, including revenue-sharing arrangements.

FIFTH AFFIRMATIVE DEFENSE

33. Cascade incorporates the allegations of paragraph 30 of this Answer.
34. Requiring CGC Energy to share its revenue with Cascade's customers would be a taking of property without just compensation in violation of Article I, Section 16 of the Washington State Constitution and the Fifth and Fourteenth Amendments to the United States Constitution.

SIXTH AFFIRMATIVE DEFENSE

35. In paragraph 23 of the Complaint, Staff requests that the Commission "impose monetary penalties on Cascade under RCW 80.04.380 and/or other sanctions against Cascade" However, pursuant to RCW 80.04.400, actions to recover such penalties must be brought in the Superior Court. The Commission lacks jurisdiction to impose the penalties requested.

36. For the foregoing reasons, the Commission should deny the Complaint and the relief requested therein.

DATED: December 27, 2007

Respectfully submitted,

PERKINS COIE LLP

By: 

Lawrence H. Reichman, OSB No. 86083
James M. Van Nostrand, WSBA No. 15897
1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
Telephone: 503.727.2000
Facsimile: 503.727.2222

Attorneys for Respondent
Cascade Natural Gas Corporation

CERTIFICATE OF SERVICE

I hereby certify that I have this day served this **ANSWER OF CASCADE NATURAL GAS CORPORATION** upon all parties of record in this proceeding by causing a copy to be sent by electronic mail and U.S. mail to:

John Cameron
Davis Wright Tremaine LLP
1300 SW Fifth Avenue, Suite 2300
Portland, OR 97201

Doug Betzold
Cost Management Services, Inc.
2737 - 78th Avenue SE, Suite 101
Mercer Island, WA 98040

Edward A. Finklea
Chad M. Stokes
Cable Huston Benedict
Haagensen & Lloyd LLP
1001 SW Fifth Avenue, Suite 2000
Portland, OR 97204

Simon J. ffitch
Sarah A. Shifley
Public Counsel Section
Office of Attorney General
Suite 2000
800 Fifth Avenue
Seattle, WA 98104

Gregory J. Trautman
Assistant Attorney General
1400 S. Evergreen Park Dr. SW
P.O. Box 40128
Olympia, WA 98504

Ann Rendahl
Kippi Walker
Washington Utilities and
Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

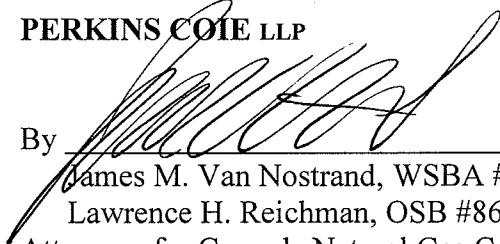
Jon T. Stoltz
Senior Vice President
Cascade Natural Gas Corporation
PO Box 24464
Seattle, WA 98124-0464

Paula E. Pyron
Executive Director
Northwest Industrial Gas Users
4113 Wolf Berry Court
Lake Oswego, OR 97035-1827

Dated this 27th day of December, 2007.

PERKINS COIE LLP

By



James M. Van Nostrand, WSBA #15897
Lawrence H. Reichman, OSB #86083
Attorneys for Cascade Natural Gas Corporation