

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

COST MANAGEMENT SERVICES, INC,	)	DOCKET UG-061256
	)	
	)	ORDER 03
Complainant,	)	
	)	ORDER GRANTING IN PART
v.	)	CMS’S MOTION FOR SUMMARY
	)	DETERMINATION; DENYING IN
CASCADE NATURAL GAS CORPORATION,	)	PART CASCADE’S MOTION FOR
	)	SUMMARY DETERMINATION;
Respondent.	)	ASSESSING PENALTIES AND
	)	ORDERING OTHER RELIEF;
	)	DENYING CMS’S MOTION TO
	)	TAKE OFFICIAL NOTICE
.....	)	

1 ***SYNOPSIS:*** *We grant CMS’s motion for summary determination, in part, finding that Cascade cannot rely on FERC regulations to sell natural gas at retail to non-core customers and violates state law by failing to file with the Commission tariffs and special contracts for such sales. We deny CMS’s motion on the issue of Cascade’s sales outside of its service territory, as the facts do not demonstrate a violation of law. We find CMS did not misuse the discovery process in Docket UG-060256, in filing this complaint and deny Cascade’s motion on this issue. Finally, we deny CMS’ motion to take official notice of Cascade’s recent regulatory filing.*

2 *Cascade is responsible for complying with state law and accountable for any violations. Given that the Commission allowed Cascade to cancel its gas supply tariffs, we find it would be inequitable to assess penalties for violations resulting from Cascade’s failure to have tariffs on file. We find a \$5,000 penalty is appropriate, however, for Cascade’s failure to file its special contracts with the Commission. We also require Cascade to file with the Commission, within 30 days of the effective date of this Order, the necessary gas supply tariffs and contracts – including contracts for sales outside of Cascade’s territory.*

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GLOSSARY

3     **PROCEEDING.** Docket UG-061256 involves a complaint by Cost Management  
Services, Inc. (CMS), against Cascade Natural Gas Corporation (Cascade or the  
Company), asserting Cascade is violating state law by selling natural gas at retail to  
non-core customers, i.e., customers that take transportation-only service, without  
tariffs and contracts on file with the Washington Utilities and Transportation  
Commission (Commission).<sup>1</sup>

4     The Commission convened a prehearing conference in this proceeding at Olympia,  
Washington on September 14, 2006, before Administrative Law Judge Ann E.  
Rendahl. The matter was presented to Chairman Mark H. Sidran and Commissioners  
Patrick J. Oshie and Philip B. Jones for decision on cross-motions for summary  
determination. This Order resolves all contested issues.

5     **APPEARANCES.** John A. Cameron and Ryan Flynn, Davis Wright Tremaine, LLP,  
Portland, Oregon, represent CMS. James M. Van Nostrand and Lawrence H.  
Reichman, Perkins Coie, LLP, Portland, Oregon, represent Cascade. Edward A.  
Finklea and Chad M. Stokes, Cable Huston Benedict Haagensen & Lloyd LLP,  
Portland, Oregon, represent the Northwest Industrial Gas Users (NWIGU). Judith  
Krebs, Assistant Attorney General, Seattle, Washington, represents the Public  
Counsel Section of the Washington Office of the Attorney General (Public Counsel).  
Gregory J. Trautman, Assistant Attorney General, Olympia, Washington, represents  
the Commission's regulatory staff (Commission Staff or Staff).<sup>2</sup>

6     **COMMISSION DETERMINATION.** After reviewing the stipulated facts and  
relevant law, we find that Cascade is violating state law by selling natural gas at retail  
to non-core customers without the appropriate tariffs or contracts on file with the  
Commission. We also find that Cascade's sales of natural gas at retail are not  
governed by Federal Energy Regulatory Commission (FERC) regulations. While the  
facts show that Cascade is selling natural gas to customers outside of the Company's

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<sup>1</sup> A glossary of acronyms and terms used in this Order is attached for the convenience of readers.

<sup>2</sup> In formal proceedings, such as this case, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an "ex parte wall" separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners' policy and accounting advisors from all parties, including advocacy Staff. RCW 34.05.455.

service territory, the facts are not sufficient for us to find that these sales violate state law. Thus, we grant CMS's motion for summary determination, in part, finding there is no genuine issue as to any material fact and that CMS is entitled to judgment as a matter of law, except as to Cascade's out-of-territory sales and as to CMS' claims of undue preference and discrimination. Finally, we deny CMS's motion to take official notice of Cascade's December 26, 2006, filing in Docket UG-061916.

7 After considering the facts and the Commission's procedural rules, we find as a matter of law that CMS did not misuse the discovery process in the general rate case in Docket UG-060256 to obtain the information that forms the basis of this complaint and deny Cascade's motion for summary determination on this issue.

8 Cascade bears the ultimate burden to comply fully with state law and is responsible for any violations thereof. We recognize that Cascade asked permission from the Commission to cancel its tariffs for gas supply sales to non-core customers, and that the Commission allowed the tariffs to be cancelled by operation of law.<sup>3</sup> However, the Commission did not give Cascade permission to cease filing its gas supply contracts with the Commission. In these circumstances, we find that a \$5,000 penalty is appropriate for Cascade's violations of state law. We also require Cascade to file with the Commission, within 30 days of the effective date of this Order, the necessary gas supply tariffs and contracts – including contracts for out-of-territory sales.

## MEMORANDUM

### **I. Procedural History**

9 CMS filed a formal complaint against Cascade on August 1, 2006, asserting that Cascade is violating state law by selling natural gas at retail to non-core customers without tariffs, special contracts or other Commission-regulated mechanisms in place.

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<sup>3</sup> Utilities must provide the Commission notice of changes in tariffs or contracts thirty days prior to the effective date of the change. *See* RCW 80.28.060. If the Commission does not suspend a proposed tariff change, such as Cascade's tariff revision in question, prior to the stated effective date, the change will take effect by operation of law. *Id.* The Commission holds regular open meetings to address items that come before it. The "no-action" agenda is that part of the Commission's regular open meeting where items that are believed to be noncontroversial and which can take effect by operation of law without further Commission action are placed. *See* WAC 480-07-900(4)(b).

CMS filed its complaint based on Cascade's testimony and responses to data requests in Cascade's general rate case in Docket UG-060256.<sup>4</sup>

- 10 On August 22, 2006, Cascade filed an answer requesting the Commission dismiss the complaint as subject to FERC jurisdiction.<sup>5</sup> CMS filed a reply on August 28, 2006.
- 11 In the notice of prehearing conference, the Commission included a notice of possible consolidation with the general rate case. The Northwest Industrial Gas Users (NWIGU) was granted intervenor status at the September 14, 2006, prehearing conference.
- 12 On September 18, 2006, Judge Rendahl entered Order 01, the prehearing conference order. The order did not consolidate the two dockets for hearing, but left to the Commission's discretion under WAC 480-07-320 whether to consolidate the matters for decision. Based on agreement of the parties to a procedural schedule and to waive their right to an initial order, the order set a procedural schedule allowing the Commission to resolve the complaint on cross-motions for summary determination prior to or at the same time as the Commission enters a final order in the general rate case, Docket UG-060256.<sup>6</sup>
- 13 Also on September 18, 2006, the Commission entered Order 02, a protective order.
- 14 In a Settlement Agreement filed in Cascade's general rate case on October 11, 2006, Cascade agreed to remove disputed language from Schedules 663 and 664, and CMS and Cascade stipulated to certain facts for purposes of this proceeding.
- 15 On November 8, 2006, Cascade and CMS filed stipulated facts, including 24 exhibits. On November 15, 2006, CMS and Cascade filed cross-motions for summary determination. Cascade attached the Declaration of Jon T. Stoltz, Cascade's Senior Vice President for Gas Supply and Regulation. NWIGU also filed an initial brief.

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<sup>4</sup> CMS Reply, ¶ 25.

<sup>5</sup> Cascade Answer at 59-60.

<sup>6</sup> *Cost Management Services, Inc. v. Cascade Natural Gas Corp.*, Docket UG-061256, Order 01, ¶ 13 (Sept. 18, 2006).

- 16 On December 1, 2006, Cascade and CMS filed responses to their respective cross-motions. Cascade attached to its response the Supplemental Declaration of Jon T. Stoltz. Staff and NWIGU also filed responsive briefs.
- 17 On January 4, 2007, CMS filed a motion asking the Commission to take official notice of a regulatory filing Cascade made on December 26, 2006 in Docket UG-061916.
- 18 On January 9, 2007, Cascade filed a response to CMS's motion, attaching the Second Supplemental Declaration of Jon T. Stoltz.

## II. Factual Background

- 19 Cascade is a natural gas local distribution company (LDC) engaged in Washington State in the business of supplying utility services and natural gas to the public for compensation.<sup>7</sup> Cascade provides service to residential, commercial and industrial customers under its Tariff WN-U-3, filed with the Commission. For commercial and industrial customers, Cascade provides the option of unbundled service, e.g., the customer may purchase transportation-only service under Schedules 663 or 664 using Cascade's distribution system to transport gas purchased separately or from a competitive supplier.<sup>8</sup> Transportation-only customers are referred to as non-core customers, to distinguish them from core residential, commercial and industrial customers who take a bundled service. Cascade has historically provided other related services to non-core customers, including gas supply, pipeline capacity, balancing, and gas management services.
- 20 CMS is a competitive gas marketer, supplying and selling natural gas to industrial and commercial customers.<sup>9</sup> CMS competes with Cascade in Washington in selling natural gas to Cascade customers who take transportation-only service from Cascade under Schedules 663 and 664.<sup>10</sup>

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<sup>7</sup> Stipulated Facts, ¶ 1; *see also* RCW 80.04.010.

<sup>8</sup> *See* Stipulated Facts, ¶ 5.

<sup>9</sup> *See* CMS Complaint, ¶ 5; *see also* Stipulated Facts, ¶ 2.

<sup>10</sup> Stipulated Facts, ¶ 2.

21 In November 1988, Cascade proposed and the Commission approved tariff revisions in Docket No. 88-2498-T allowing Cascade to unbundle services on its system.<sup>11</sup> Unbundling allows a utility company to offer access to separate parts of its network or system in order to encourage competition for commodities or services. By providing unbundled access to transportation services on its distribution system, Cascade allowed customers to purchase gas from another supplier or from Cascade, on a competitive basis. The tariff revision required transportation-only customers to elect gas supply options independent of service on the regular distribution system, and established three gas supply tariff schedules.<sup>12</sup>

22 In September and November 1989, Cascade proposed additional tariff revisions intended to complete its unbundling package. In Docket Nos. 89-3273-T, 89-3364-T, 89-3365-T, and 89-3449-T, Cascade proposed a number of tariff revisions to reorganize its tariff and allow direct billing for pipeline capacity for non-core customers, as well as to recover the costs for distribution capacity, balancing service and underground storage.<sup>13</sup> These tariff revisions resulted in moving the original gas supply tariffs to four new tariff schedules:<sup>14</sup>

- Schedule 681 (Optional firm gas supply)
- Schedule 682 (Optional best efforts spot market gas supply)
- Schedule 683 (Optional customer owned gas supply)
- Schedule 684 (Optional customer specific gas supply)

23 The Commission also approved the creation of additional schedules for related unbundled services:<sup>15</sup>

- Schedule 663 (Distribution system transportation service)
- Schedule 664 (Large volume distribution system transportation service)
- Schedule 685 (Optional firm pipeline capacity)
- Schedule 686 (Optional interruptible pipeline capacity)

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<sup>11</sup> Stipulated Exhibit 20 at 6, 8; *see also* Stipulated Facts, ¶ 12.

<sup>12</sup> Stipulated Exhibit 20 at 8; *see also* Stipulated Facts, ¶ 12.

<sup>13</sup> Stipulated Exhibit 20 at 3-8; Stipulated Facts, ¶ 13.

<sup>14</sup> Stipulated Exhibit 20 at 4; *see also* Stipulated Exhibits 2-5, 8-11; Stipulated Facts, ¶ 13.

<sup>15</sup> Stipulated Exhibit 20 at 4; *see also* Stipulated Exhibits 6-7, 12-15; Stipulated Facts, ¶ 13.

- Schedule 688 (Optional underground gas storage)

- 24 The gas supply tariff schedules provide that the schedules are supplemental to Cascade's unbundled transportation tariffs, Schedules 663 and 664.<sup>16</sup> The tariffs also provide that the service is provided under contract, such that the cost of service under the tariff is based on certain fees and costs established by long-term supply contracts,<sup>17</sup> on negotiated prices on the open spot market,<sup>18</sup> or on the cost of supply at the city gate.<sup>19</sup>
- 25 The Commission approved current Schedule 687, optional gas management services, in May 2000.<sup>20</sup> The services available under this schedule include daily nominations, reviewing nomination confirmations, pipeline balancing services, monthly reports, and release of a customer's unused firm delivery capacity, but not optional gas supply services.<sup>21</sup>
- 26 In January 2004, Cascade filed tariff revisions with the Commission seeking to cancel its gas supply tariffs based on FERC blanket marketing authority.<sup>22</sup> Specifically, Cascade asserted that the purpose of the filing was to "update the Company's non-core schedules to remove obsolete references to the pipeline companies and to cancel the optional gas supply schedules which actually are under FERC jurisdiction."<sup>23</sup> Cascade further asserted that "customers who have existing contracts with Cascade for optional gas supplies services will not be impacted, as the Company will continue to provide the optional firm and/or spot market supplies per the terms of their service contract."<sup>24</sup>

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<sup>16</sup> Stipulated Exhibits 8-11.

<sup>17</sup> *Id.* at 2-10.

<sup>18</sup> Stipulated Exhibit 9 at 2-6.

<sup>19</sup> Stipulated Exhibit 10 at 2-5. "City gate" is a term used in the natural gas industry referring to the place where a local distribution company receives the natural gas from the pipeline company.

<sup>20</sup> Stipulated Exhibit 14 at 3; *see also* Stipulated Exhibit 21 at 5-8.

<sup>21</sup> Stipulated Exhibit 14 at 1-3; *see also* Stipulated Exhibit 21 at 5-8.

<sup>22</sup> Stipulated Facts, ¶ 14.

<sup>23</sup> Stipulated Exhibit 16 at 1; *see also* Stipulated Facts, ¶ 14.

<sup>24</sup> Stipulated Exhibit 16 at 2.



- 27 The Commission allowed the tariff revisions to go into effect on its no-action agenda at the March 1, 2004, open meeting.<sup>25</sup> The tariff pages state that the tariff is cancelled and that “Cascade does offer a number of gas supply purchasing options as permitted by 18 CFR Part 284.402 Blanket Marketing Certificates of the FERC regulations.”<sup>26</sup> In the same filing, Cascade added the following language to Schedules 663 and 664: “Gas Supplies purchased through the Company will be in accordance with the FERC regulations (18 CFR Part 284.402 Blanket Marketing Certificates).”<sup>27</sup>
- 28 In 2005 and 2006, Cascade sold natural gas as a commodity to 44 transportation-only, or Schedule 663 and 664, customers under contracts specifying negotiated rates for gas commodity.<sup>28</sup> None of the rates, contracts or forms of contract for these gas supply sales is on file with the Commission.<sup>29</sup> In addition, none of Cascade’s sales of gas to Schedule 663 or 664 customers were “sales for resale.”<sup>30</sup>
- 29 Cascade currently accounts for the revenues from its gas management services and optional gas supply sales under Schedule 687.<sup>31</sup>
- 30 Cascade has entered into gas supply contracts with entities outside of Cascade’s service area, including the Fairchild and McChord Air Force Bases, which are in Avista Corporation (Avista) and Puget Sound Energy, Inc. (PSE) service areas, respectively.<sup>32</sup>
- 31 In testimony accompanying Cascade’s general rate case filed in Docket UG-060256 on February 14, 2006, Cascade’s witness Stoltz proposed to remove revenues and expenses associated with gas management services from the Company’s revenue requirement calculation, asserting the services are authorized under FERC orders and

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<sup>25</sup> Stipulated Exhibits 8 at 1; 9 at 1; 10 at 1; 11 at 1. See the Commission’s website ([www.wutc.wa.gov](http://www.wutc.wa.gov)) for notations in the Records Management System under Docket UG-040134. See also, *supra*, n.3.

<sup>26</sup> Stipulated Exhibits 8 at 1; 9 at 1; 11 at 1.

<sup>27</sup> Stipulated Exhibits 6-7; see also Stipulated Facts, ¶ 14.

<sup>28</sup> Stipulated Facts, ¶ 8.

<sup>29</sup> *Id.*, ¶¶ 8, 18.

<sup>30</sup> *Id.*, ¶ 9.

<sup>31</sup> *Id.*, ¶ 17.

<sup>32</sup> Stipulated Exhibit 23; Stipulated Facts, ¶ 27.

regulations.<sup>33</sup> Stoltz further states that FERC Order 547 “removed restrictions on local distribution company ... marketing certificates, and allows LDCs to freely compete in the sale of gas with other marketers.”<sup>34</sup>

32 CMS intervened in the general rate case, and filed testimony protesting Cascade’s assertion that its sales of natural gas at retail are allowed under FERC regulations.<sup>35</sup> CMS issued data requests concerning Cascade’s sales of natural gas and activity under Schedules 663, 664, and 687, to which Cascade provided responses.<sup>36</sup> CMS refers in its complaint to information Cascade provided in response to these data requests.<sup>37</sup>

33 Commission Staff recommended that all of Cascade’s revenues and expenses for gas management services under Schedule 687 be included in the revenue requirement calculation, asserting the revenues should be considered “above the line” for ratemaking purposes.<sup>38</sup>

34 On October 11, 2006, the parties to the general rate case, including CMS, filed a Settlement Agreement (Settlement) which addressed, in part, the treatment of revenues accounted for under Schedule 687.<sup>39</sup> In the Settlement, Cascade and Staff agreed to allow Cascade to exclude from its revenue requirement revenues and expenses for gas management services, but agreed to include in revenue requirement \$200,000 from Cascade’s gas management services.<sup>40</sup> Cascade and Staff also agreed that, prospectively, Cascade would defer 50 percent of its net margins from gas management services, and return this amount to all customers, except special contract customers, in the Company’s annual deferral adjustment mechanism.<sup>41</sup>

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<sup>33</sup> Stoltz, Exh. No. 21-T at 7:3-10; *see also* Stipulated Exhibit 1; Stipulated Facts, ¶ 21.

<sup>34</sup> Stoltz, Exh. No. 21-T at 7:16-18.

<sup>35</sup> Stipulated Facts, ¶ 20; *see also* Lehmann, Exh. No. 341-T at 3:24 – 4:11.

<sup>36</sup> Stipulated Facts, ¶ 20; Stipulated Exhibit 19.

<sup>37</sup> CMS Cross-Motion, ¶¶ 36-38.

<sup>38</sup> Stipulated Facts, ¶ 22; *see also* Parvinen, Exh. No. 361-T at 11:1 – 12:3.

<sup>39</sup> Stipulated Exhibit 22; Stipulated Facts, ¶ 23.

<sup>40</sup> Stipulated Facts, ¶ 24; Stipulated Exhibit 22 at 4 (Settlement Agreement, ¶ 12(b)(i)).

<sup>41</sup> Stipulated Facts, ¶ 24; Stipulated Exhibit 22 at 5 (Settlement Agreement, ¶ 12(b)(ii)).

35 Cascade and CMS also agreed in the Settlement that the Company would remove language concerning FERC blanket marketing authority from tariff Schedules 663 and 664, and agreed to certain stipulated facts.<sup>42</sup>

36 On December 26, 2006, Cascade filed in Docket UG-061916 a summary of commodity and demand costs for the Company's core market gas supply portfolio, reporting that the Company does not plan to file a Purchase Gas Adjustment for 2006.

### III. Discussion and Decisions

#### A. Rules Governing Motions for Summary Determination

37 In resolving CMS' and Cascade's competing motions for summary determination, we must determine whether there are any genuine issues of material fact, and whether the moving party is entitled to judgment as a matter of law.<sup>43</sup> We also follow the standards for motions for summary judgment under Washington superior court civil rules.

38 The burden is on the moving party to show there is no genuine issue as to a material fact, and that, as a matter of law, summary determination is proper.<sup>44</sup> Material facts are those upon which the outcome of the litigation depends.<sup>45</sup> If the moving party satisfies its burden, the non-moving party must present evidence showing that material facts are in dispute.<sup>46</sup> The non-moving party must present specific facts showing there is a genuine issue for trial, but may not rely on speculation or bare assertions that there are facts in dispute.<sup>47</sup> We must consider all the facts and inferences in the light most favorable to the non-moving party.<sup>48</sup> Finally, we must grant the motion only if, after considering all the evidence, we find reasonable persons would reach only one conclusion.<sup>49</sup>

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<sup>42</sup> Stipulated Facts, ¶ 24; Stipulated Exhibit 22 at 5-6 (Settlement Agreement, ¶¶ 12(b)(iii), (iv)).

<sup>43</sup> WAC 480-07-380(2).

<sup>44</sup> *Atherton Condo Ass'n v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *See* CR 56(e); *see also La Plante v. State*, 85 Wn.2d 154, 158, 531 P.2d 299 (1975); *Seven Gables Corp. v. MGM/UA Entertainment Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986).

<sup>48</sup> *Atherton*, 115 Wn.2d at 516.

<sup>49</sup> *Morris v. McNicol*, 83 Wn.2d 491, 494-95, 519 P.2d 7 (1974).

39 To sum up, we must grant CMS' motion *if* CMS can show that there are no material issues of fact in dispute, Cascade cannot refute this, and CMS is correct as a matter of law that (1) Cascade may not rely on FERC authority to sell gas supply at retail, (2) Cascade is selling natural gas at retail in Washington state in violation of state law, and (3) Cascade is selling natural gas outside of its service territory in violation of RCW 80.28.190. Similarly, we must grant Cascade's motion *if* Cascade can show that there are no material issues of fact in dispute, CMS cannot refute this, and Cascade is correct as a matter of law that (1) the Commission authorized Cascade to sell natural gas without tariff prices in place, (2) the sales are allowed under tariff Schedule 687, and (3) CMS misused the discovery process.

### **B. Sales of Natural Gas under FERC Blanket Marketing Authority**

40 CMS moves for summary determination that Cascade's Schedules 663 and 664 inappropriately rely on FERC regulations to authorize retail natural gas sales.<sup>50</sup> In resolving CMS's motion, we must first consider whether there are any genuine issues of material fact in dispute.

41 We find the material facts are not in dispute: Cascade relied upon FERC regulations governing blanket marketing certificates in requesting cancellation of its optional gas supply tariffs filed with this Commission.<sup>51</sup> Cascade included references to its supposed authority for natural gas sales under FERC regulations in its Schedules 663 and 664, and in language cancelling its tariff schedules for optional gas supply.<sup>52</sup> In testimony filed in the general rate case, Cascade's witness Stoltz asserted that gas supply sales are authorized under FERC orders and regulations.<sup>53</sup> Stoltz further states that FERC Order 547 "removed restrictions on local distribution company ... marketing certificates, and allows LDCs to freely compete in the sale of gas with other marketers."<sup>54</sup> Finally, Cascade's gas sales to non-core customers were not for resale, implying that the sales were retail sales, made directly to end users.<sup>55</sup> Even

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<sup>50</sup> CMS Cross-Motion, ¶ 80; *see also* CMS Complaint, ¶¶ 33-34.

<sup>51</sup> Stipulated Exhibit 16.

<sup>52</sup> Stipulated Exhibits 6 at 1; 7 at 1; 8 at 1; 9 at 1; 11 at 1.

<sup>53</sup> Stoltz, Exh. No. 21-T at 7:3-10.

<sup>54</sup> *Id.* at 7:16-18.

<sup>55</sup> Stipulated Facts, ¶ 9.

considering these facts in the light most favorable to Cascade does not change the fact that Cascade relied on supposed FERC authority for retail sales of natural gas.

42 Cascade does not offer any specific facts to refute these stipulated facts. The Stoltz Declaration supporting Cascade's cross-motion states the following as "facts ... in addition to those set forth in the Stipulated Facts:"

In 2004, Cascade understood that many of the unbundled gas sales and other services it provided to non-core customers located in Washington were also authorized pursuant to federal authority by the blanket marketing certificate FERC granted to Cascade pursuant to 18 C.F.R. § 284.402. In addition, Cascade believed that several of its existing tariffs contained both state jurisdictional and federal jurisdictional services, thereby creating an overlap of state and federal authority and the potential for confusion. Accordingly, Cascade canceled Supplemental Schedule Nos. 681, 682, 683, and 684 by tariff filings effective March 1, 2004.<sup>56</sup>

43 The declaration fails to show any genuine issue of material fact in dispute. While framed as "facts," the declaration states only Cascade's argument as to why it sought to cancel its tariff schedules. Thus, the issue in dispute is purely a question of law – whether FERC regulations authorizing blanket marketing certificates allow LDCs to make retail sales of gas.

44 Statutes governing FERC authority and regulations governing blanket marketing certificate authority specifically focus on sales of natural gas *for resale*, not retail. First, under the Natural Gas Act FERC has jurisdiction over:

[T]he transportation of natural gas in interstate commerce, *to the sale in interstate commerce of natural gas for resale* for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural gas companies engaged in such transportation or sale, *but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution* or to the production or gathering of natural gas.<sup>57</sup>

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<sup>56</sup> Stoltz Declaration, ¶¶ 1, 3.

<sup>57</sup> 15 U.S.C. §717(b) (emphasis added).

45 Then, in 1992, FERC entered Order 547 to encourage competition in sales of natural gas at the wholesale level, specifically to allow non-pipeline marketers to engage in wholesale sales of gas for resale.<sup>58</sup> In its order, FERC issued a new rule concerning blanket marketing certificate authority, which provides:

Any person who is not an interstate pipeline is granted a blanket certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing the certificate holder to make *sales for resale at negotiated rates in interstate commerce of any category of gas that is subject to the Commission's Natural Gas Act jurisdiction*. A blanket certificate issued under Subpart L is a certificate of limited jurisdiction which will not subject the certificate holder to any other regulation under the Natural Gas Act jurisdiction of the Commission other than that set forth in this Subpart L, by virtue of the transactions under this certificate.<sup>59</sup>

46 The language of the Natural Gas Act and the FERC rule both refer to interstate sales for resale, not retail sales. We find that Cascade may not rely on its FERC authority governing resale sales to make intrastate retail sales to non-core customers. We are persuaded by the plain language of the statute and regulation, FERC's explanation of its authority and the cases on which CMS relies in finding that FERC authority does not extend to retail sales of natural gas. FERC's order and introductory statement to the new rule make clear that the rule does not apply to retail sales by local distribution companies such as Cascade.<sup>60</sup> The 10<sup>th</sup> Circuit Court of Appeals addressed the boundaries of federal and state authority over the regulation of natural gas companies, finding that FERC's jurisdiction included only the transportation or sale of natural gas in interstate commerce for resale, and natural gas companies engaged in such transportation or sale.<sup>61</sup>

47 Cascade makes a number of arguments to support its actions, none of which excuses the Company from relying on FERC regulations as authority for making retail sales. Cascade asserts that its services to non-core customers are covered by both federal

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<sup>58</sup> Amendments to Blanket Sales Certificate – Final Rule, Order No. 644, FERC Docket No. RM03-10-000, 105 FERC ¶61217, at ¶ 11 (Nov. 17, 2003).

<sup>59</sup> 18 C.F.R. § 284.402 (emphasis added).

<sup>60</sup> CMS Complaint, ¶¶ 28-29, citing Regulations Governing Blanket Marketer Sales Certificates, Order No. 547, Fed. Energy Reg. Comm'n Rep. (CCH) ¶30,957, at 30,718, 30,724 n.34 (Nov. 2, 1992).

and state law.<sup>62</sup> Cascade asserts that several of the services it provides for non-core customers, including making nominations and balancing on behalf of customers in connection with interstate transportation of gas, are authorized by its FERC blanket marketing certificate.<sup>63</sup> Cascade also asserts that it made the tariff revisions in 2004 to avoid confusion from the overlap of state and federal authority over these services.<sup>64</sup> As a further defense to its actions, Cascade asserts that the Commission authorized the Company to cancel its tariff schedules and to rely on FERC regulations.<sup>65</sup>

48 While Cascade may legitimately rely on its FERC blanket marketing certificate when making wholesale sales for resale or for other services it provides to non-core customers, Cascade may not rely on this authority to sell natural gas at retail to non-core customers in Washington. Cascade must distinguish between sales for retail and resale and follow both state and federal laws governing these sales. Further, the fact that the Commission allowed Cascade to cancel its gas supply tariffs by allowing the tariff revision to go into effect by operation of law does not carry as much weight as a fully considered order approving the Company's request.<sup>66</sup>

49 Cascade also asserts that the Commission is not the proper forum for CMS' complaint, asserting that only FERC may determine the extent of its jurisdiction.<sup>67</sup> Cascade argues "there is no 'bright line' governing many issues of state and federal jurisdiction over natural gas sales and transportation."<sup>68</sup> We reject Cascade's suggestion that only FERC can resolve this complaint. The primary focus of CMS' complaint concerns possible violations state law. In resolving the complaint, we must determine whether Cascade appropriately relies on FERC regulations to avoid compliance with state law.

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<sup>61</sup> CMS Complaint, ¶ 21, citing *Cascade Natural Gas Corporation v. FERC*, 955 F.2d 1412 (10<sup>th</sup> Cir. 1992); see also CMS Cross-Motion, ¶¶ 62-63.

<sup>62</sup> Cascade Answer, ¶¶ 10, 12; Cascade Cross-Motion at 2, n.2, Cascade Response at 14.

<sup>63</sup> Cascade Response at 14.

<sup>64</sup> Cascade Response at 15.

<sup>65</sup> Cascade Answer, ¶ 6-7.

<sup>66</sup> See, *supra*, n.3.

<sup>67</sup> Cascade Answer, ¶¶ 3, 9-13.

<sup>68</sup> *Id.*, ¶ 10.

50 We grant CMS's motion for summary determination on this issue. We find there is no genuine dispute of material fact, and that, as a matter of law, FERC regulations authorizing blanket marketing certificates allow LDCs to sell natural gas for resale, but not to sell natural gas at retail. FERC regulations do not allow Cascade to avoid compliance with state law.

### C. Cascade's Sales of Natural Gas in Washington

#### 1. Sales within Cascade's Service Territory

51 CMS moves for summary determination that Cascade is making unregulated retail sales of natural gas and violating provisions of RCW 80.28 by selling natural gas as a commodity to non-core customers without tariffs or special contracts on file with the Commission.<sup>69</sup> In its cross-motion, Cascade asks the Commission to find that its gas supply sales to non-core customers do not violate state law, asserting that the Commission "authorized" Cascade to make these sales without tariff prices in place, and that the sales are allowed under Schedule 687.<sup>70</sup>

52 The following material facts are not in dispute: Prior to March 1, 2004, Cascade's tariff on file with the Commission included several schedules authorizing optional gas supply services – the sale of natural gas as a commodity – to its non-core customers.<sup>71</sup> The actual prices for natural gas supply that Cascade sold under Schedules 681, 682, 683, and 684 were never listed in the schedules, but were communicated to customers on a monthly basis or under specific contracts.<sup>72</sup> In January 2004, Cascade asked permission from the Commission to cancel its optional gas supply rate schedules.<sup>73</sup> The Commission allowed Cascade's tariff filing cancelling the schedules to become effective by operation of law by taking no action on the agenda item at the March 1, 2004, open meeting.<sup>74</sup> Cascade no longer has contracts on file with the Commission for any of its non-core gas supply arrangements.<sup>75</sup> Cascade has continued to sell

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<sup>69</sup> CMS Cross-Motion, ¶¶ 22-25, 35-36, citing RCW 80.28.050, RCW 80.28.060, RCW 80.28.080, RCW 80.28.090, RCW 80.28.100, WAC 480-80-124, and WAC 480-80-143.

<sup>70</sup> Cascade Cross-Motion at 9-15, 19.

<sup>71</sup> See Stipulated Facts, ¶¶ 12-13.

<sup>72</sup> *Id.*, ¶ 15.

<sup>73</sup> *Id.*, ¶ 14; Stipulated Exhibits 8-11, 16.

<sup>74</sup> See the Commission's website ([www.wutc.wa.gov](http://www.wutc.wa.gov)) for notations in the Records Management System under Docket UG-040134. See also, *supra*, n.3.

<sup>75</sup> Stipulated Facts, ¶ 18.



natural gas as a commodity to its non-core customers.<sup>76</sup> The majority of Cascade's natural gas sales to non-core customers since March 2004 are priced based on an index, with prices communicated on a monthly basis.<sup>77</sup> While the Company records revenues and expenses for gas supply services under Schedule 687 along with revenues and costs from its gas management services, that schedule does not include a reference to gas supply services or authorize Cascade to sell natural gas as a commodity.<sup>78</sup>

53 In his declarations, Stoltz states, as fact, that Cascade has not filed form contracts with the Commission since March 1, 2004 "because it was informed by Commission Staff that it is no longer necessary to file updated forms of these contracts."<sup>79</sup> Staff does not address this allegation. We cannot verify Stoltz's statement. Even considering the statements in the light most favorable to Cascade, however, the Staff cannot bind the Commission by giving advice – only the Commission may decide whether such contracts should be filed. More to the point, the statement does not refute any of the stipulated facts, nor does it identify any genuine issue of material fact in dispute. Cascade offers the statement as a defense or excuse for its actions.

54 Stoltz also states that 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" March 2004, e.g., through an indexed price or price fixed by contract.<sup>80</sup> He also states that Cascade sells gas supply to non-core customers under contract, separate from contracts for transportation service, with no price concession for customers purchasing both services.<sup>81</sup> He further states that Cascade has made available to Staff and other parties to the rate case copies of its gas supply contracts and other documents relating to gas supply sales.<sup>82</sup> Viewed in the light most favorable to Cascade, these statements reveal a genuine dispute of material fact as to whether the Company has given preferences to certain customers or discriminated in selling natural gas to non-core customers.

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<sup>76</sup> *Id.*, ¶ 8.

<sup>77</sup> *Id.*, ¶ 16.

<sup>78</sup> *Id.*, ¶ 17; *see also* Stipulated Exhibit 14.

<sup>79</sup> Stoltz Declaration, ¶ 7.

<sup>80</sup> *Id.*, ¶ 5.

<sup>81</sup> Stoltz Supplemental Declaration, ¶ 2.

<sup>82</sup> *Id.*, ¶¶ 4-5.

55 Given the facts, we must determine whether Cascade’s actions violate state law. A number of statutes in RCW 80.28 and Commission rules govern the responsibilities of public service companies, including gas companies like Cascade. First, RCW 80.28.050 requires companies to file tariffs and contracts with the Commission identifying the rates and charges for services.<sup>83</sup> This statute requires Cascade to have tariffs or contracts on file for *all* rates or charges. While Cascade once had tariffs and contracts on file for its sales of gas to non-core customers, it cancelled its gas supply tariff schedules and stopped filing gas supply contracts with the Commission.

56 The undisputed facts show that Cascade no longer has tariffs in place governing its sales of natural gas to non-core customers, which, without more, shows that Cascade is in violation of RCW 80.28.050. We reject CMS’ argument that the Commission’s action was ministerial and without full effect.<sup>84</sup> The Commission did not affirmatively approve cancellation of the tariffs or the underlying reasons for cancellation through an order, but allowed Cascade to cancel the tariff schedules by taking no action on the request.<sup>85</sup> We also reject Cascade’s argument that the Commission is estopped from finding Cascade in violation of the law.<sup>86</sup> Although the Commission erred in allowing the tariff schedules to be cancelled, the mistake does not relieve Cascade of its obligations to comply with the law.<sup>87</sup> In addition, Cascade may not rely on the Commission’s action as an endorsement of the Company’s position that FERC regulations authorize sales of natural gas to non-core customers.

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<sup>83</sup> RCW 80.28.050 provides: “Every gas company, electrical company and water company shall file with the commission and shall print and keep open to public inspection schedules in such form as the commission may prescribe, showing all rates and charges made, established or enforced, or to be charged or enforced, all forms of contract or agreement, all rules and regulations relating to rates, charges or service, used or to be used, and all general privileges and facilities granted or allowed by such gas company, electrical company or water company.”

<sup>84</sup> See CMS Response, ¶ 40.

<sup>85</sup> See, *supra*, n.3; see also *Washington Utilities and Transportation Commission v. Olympic Pipeline Company*, Docket No. TO-011472, Twentieth Supplemental Order, ¶ 113 (Sept. 27, 2002).

<sup>86</sup> Cascade Answer, ¶¶ 6, 63; Cascade Cross-Motion at 7; Cascade Response at 4.

<sup>87</sup> See *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 20, 43 P.3d 4 (2002): “Estoppel against the government is not favored.” See also *Babcock v. Mason County Fire Dist. No. 6*, 144 Wn.2d 774, 789, 30 P.3d 1261 (2001), quoting *Meany v. Dodd*, 111 Wn.2d 174, 179-80, 759 P.2d 455 (1988): “ ‘It is only where a direct inquiry is made by an individual and incorrect information is clearly set forth by the government, the government intends that it be relied upon and it is relied upon by the individual to his detriment, that the government may be

The Commission actions may serve, however, to mitigate any penalty that would otherwise be appropriate for these violations.

57 The Commission’s rules governing gas companies require companies to “file with the commission all contracts for the retail sale of regulated utility services to end-use customers” that state charges or conditions different from existing tariffs or that provide services not addressed in existing tariffs.<sup>88</sup>

58 Allowing Cascade to cancel its tariff schedules does not result in a waiver of statutory requirements to file contracts, or the Commission’s rules requiring filing of special contracts.<sup>89</sup>

59 Thus, Cascade’s claim that it no longer files gas supply contracts based on Staff’s advice does not excuse its actions or preclude us from finding Cascade in violation of the statute and rules governing special contracts.<sup>90</sup> Staff opinions are not binding on the Commission. In addition, apart from its cancellation of the gas supply tariffs, there is no evidence that Cascade sought permission from the Commission to stop filing contracts under the statute or rule.

60 Cascade incorrectly asserts that it made its gas supply sales pursuant to Schedule 687: This schedule does not address sales of natural gas to non-core customers, but

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bound.’ The plaintiff must seek an express assurance and the government must unequivocally give that assurance.”

<sup>88</sup> WAC 480-80-143(1). The rule further provides that applications for approval of contracts must: (a) Include a complete copy of the proposed contract; (b) Show that the contract meets the requirements of RCW 80.28.090 (Prohibiting unreasonable preference) and RCW 80.28.100 (Prohibiting rate discrimination); (c) Demonstrate, at a minimum, that the contract charges recover all costs resulting from providing the service during its term, and, in addition, provide a contribution to the gas, electric, or water company's fixed costs; (d) Summarize the basis of the charge(s) proposed in the contract and explain the derivation of the proposed charge(s) including all cost computations involved; and (e) Indicate the basis for using a contract rather than a filed tariff for the specific service involved. If the basis for using a contract is the availability of an alternative service provider, identify that provider. WAC 480-80-143(5).

<sup>89</sup> WAC 480-80-010(2) provides: . If the commission accepts a tariff price list or contract that conflicts with these rules, the acceptance does not constitute a waiver of these rules unless the commission specifically approves the variation consistent with WAC 480-80-015 (Exemptions from rules in chapter 480-80 WAC).

<sup>90</sup> Cascade Cross-Motion at 6; *see also* Stoltz Declaration, ¶ 7.

governs other services related to such sales and transportation-only service.<sup>91</sup> Staff agrees that Schedule 687 does not address retail gas sales, but argues that it would be unfair to declare sales since 2004 illegal due to the Commission's acceptance of the tariff cancellations.<sup>92</sup> While Cascade may attribute all revenues and costs from its gas supply operations to Schedule 687 in its rate case filing as if the revenues and costs were under tariff, this does not make gas supply operations subject to the schedule. In addition, Staff's recommendation in the rate case that costs and revenues for gas supply sales should be included under this schedule does not bind the Commission to Staff's recommendation.

61 We grant CMS' cross-motion for summary determination in part, and deny Cascade's cross-motion on this issue in part, finding there is no genuine dispute of material fact, and that as a matter of law, Cascade is in violation of RCW 80.28.050 and WAC 480-80-143 for failing to file gas supply tariffs and special contracts with the Commission. We address the appropriate remedies for these violations below.

62 RCW 80.28.060 prohibits companies from changing its rates or charges without first obtaining Commission approval.<sup>93</sup> Cascade sought permission to cancel its gas supply tariffs, and the Commission allowed it to do so. While Cascade may have acted in error, it followed the statutory requirements. We deny CMS' cross-motion for summary determination of violations of this statute and grant Cascade's cross-motion on the issue.

63 RCW 80.28.080 requires companies to charge only the rates and charges included in their tariff schedules.<sup>94</sup> As Cascade does not have tariff schedules on file addressing

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<sup>91</sup> Cascade Cross-Motion at 10.

<sup>92</sup> Staff Reply, ¶ 9.

<sup>93</sup> RCW 80.28.060 provides: "Unless the commission otherwise orders, no change shall be made in any rate or charge or in any form of contract or agreement or in any rule or regulation relating to any rate, charge or service, or in any general privilege or facility which shall have been filed and published by a gas company, electrical company or water company in compliance with the requirements of RCW 80.28.050 except after thirty days' notice to the commission and publication for thirty days ..."

<sup>94</sup> RCW 80.28.080 provides: "No gas company, electrical company or water company shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such service as specified in its schedule filed and in effect at the time, nor shall any such company directly or indirectly refund or remit in any manner or by any device any portion of the rates or charges so specified ..."

sales of natural gas to non-core customers, yet has sold and continues to sell gas to such customers, we find Cascade is in violation of the statute. As we discuss above, Cascade may not rely on the Commission's inaction as an excuse for violating the statute. We grant CMS' cross-motion for summary determination and deny Cascade's cross-motion on this issue.

64 RCW 80.28.090 prohibits companies from giving an undue or unreasonable preference or advantage to any person,<sup>95</sup> while RCW 80.28.100 prohibits companies from charging different rates or charges to similarly situated persons, e.g., acting with undue discrimination.<sup>96</sup> While we agree with CMS that the purpose of these statutes is to discourage discrimination among similarly situated customers and prevent anti-competitive behavior,<sup>97</sup> CMS has not set forth sufficient facts to show that Cascade has provided an undue preference or advantage or charged different rates or charges to similarly situated persons. The stipulated facts merely identify that Cascade sells natural gas to non-core customers based on an index or set price. Without more, CMS can demonstrate only the possibility that undue preference or discrimination has occurred. Further, the statements in Stoltz's Supplemental Declaration present facts that refute or call into question whether Cascade has given undue preferences or acted with undue discrimination. We therefore deny both CMS's and Cascade's cross-motions for summary determination concerning whether Cascade is in violation of RCW 80.28.90 or RCW 80.28.100. Because there are material issues of fact in dispute, we will set the matter for hearing, unless CMS requests otherwise based on our resolution of the remaining issues in this Order.

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<sup>95</sup> RCW 80.28.090 provides: "No gas company, electrical company or water company shall make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

<sup>96</sup> RCW 80.28.100 provides: "No gas company, electrical company or water company shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity or water, or for any service rendered or to be rendered, or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like or contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions."

<sup>97</sup> CMS Cross-Motion, ¶ 37, citing *National Union Insurance Company of Pittsburgh, PA v. Puget Sound Power & Light*, 94 Wn. App. 163, 176, 976 P.2d 481 (1999).

65 In summary, we grant CMS' cross-motion for summary determination, in part, finding that Cascade is violating RCW 80.28.050, RCW 80.28.080 and WAC 480-80-143 for failing to file tariffs and special contracts for its sales of gas supply to non-core customers. We also grant Cascade's cross-motion, in part, finding the facts do not demonstrate Cascade is violating RCW 80.28.060.

66 At one time Cascade had tariffs and contracts on file with the Commission to provide optional gas supply services. It no longer has such tariffs and contracts on file, however, and is selling gas as a commodity without such tariffs and contracts. Cascade must have tariffs and contracts on file to provide this service. We assess penalties against Cascade for failing to maintain contracts for this service on file with the Commission, but find it inequitable to assess penalties for other violations. To address all of the violations, Cascade must correct its mistaken reliance on FERC regulations and promptly file the necessary tariff schedules and appropriate contracts with the Commission. We address this condition further in our discussion below of the appropriate remedies.

67 Cascade asserts that it would be inconsistent for the Commission to find the gas sales unlawful and to accept the terms of the Settlement that require Cascade to share revenue from the sales with core customers.<sup>98</sup> While Cascade asserts that the Commission will harm core customers by depriving them of this financial benefit, CMS counters that the benefit to customers is minimal and the Settlement should not be a reason for rejecting CMS's motion.<sup>99</sup> Although we find Cascade acted unlawfully in failing to file tariffs and contracts, we see no reason that our decision in this case should cause us to reject the Settlement in the rate case. We find it inequitable to deny appropriate ratemaking treatment to services the Commission allowed Cascade to pursue without tariffs on file when the law violation at issue can be readily cured. As we discuss in the order we enter concurrently in Docket UG-060256, we condition our acceptance of paragraph 12(b)(ii) of the Settlement governing prospective treatment of gas management services revenue on the Company complying with the terms of this Order within 30 days of the effective date.

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<sup>98</sup> Cascade Cross-Motion at 16-17.

<sup>99</sup> *Id.*; see also CMS Response, ¶¶ 46-50.

## 2. Retail Sales of Natural Gas Outside of Cascade's Service Territory

68 CMS also moves for summary determination that Cascade's sales of natural gas to entities outside of its service territory are in violation of RCW 80.28.190.<sup>100</sup> CMS did not assert this violation in its complaint, but argues the issue for the first time in its motion for summary determination.<sup>101</sup> For this reason, Cascade argues that CMS's claim is outside the scope of the proceeding.<sup>102</sup> Although Cascade's point is well taken, we will address the issue here in the interest of judicial economy.

69 The stipulated facts show that Cascade is providing service to certain entities outside of its service territory, and is providing service in the territory served by Avista and PSE. In his Supplemental Declaration, Stoltz clarifies that when Cascade sells natural gas to a customer who receives distribution service from another gas company, the company is notified that Cascade will be delivering the gas.<sup>103</sup> Stoltz attaches to his declaration the notice sent to PSE for the sale of gas to McChord Air Force Base and the Naval Air Station in Everett.<sup>104</sup> These additional facts do not refute the stipulated facts or show a dispute of material fact, but only explain the Company's process for such extra-territorial sales.

70 RCW 80.28.190 provides, in pertinent part, "No gas company shall operate in this state any gas plant for hire without first having obtained [permission] from the commission . . ." <sup>105</sup> The Commission has interpreted this statute to apply only to circumstances where a gas company seeks to offer services involving gas plant outside of its service territory.<sup>106</sup> The statute does not prohibit Cascade from selling gas as a commodity to a customer in another gas company's territory.

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<sup>100</sup> CMS Cross-Motion, ¶¶ 38-55.

<sup>101</sup> CMS Cross-Motion, ¶¶ 38-48.

<sup>102</sup> Cascade Response at 16.

<sup>103</sup> Stoltz Supplemental Declaration, ¶ 6.

<sup>104</sup> Exhibit 1 to Stoltz Supplemental Declaration.

<sup>105</sup> RCW 80.28.190.

<sup>106</sup> Cascade Response at 20, 22, citing to *Application of Avista Utilities for a Certificate of Convenience and Necessity to Operate Gas Plant for Hire*, Docket UG-010319, Order Granting Application (Apr. 25, 2001); *see also* Application filed in Docket UG-010319 (Mar. 6, 2001); *Application of Puget Sound Energy for a Certificate of Convenience and Necessity to Operate Gas Plant for Hire in the General Area of King County*, Docket UG-021031, Order Granting

71 CMS's reliance in this proceeding on the Commission's action in Docket UG-001119 is misplaced. In that proceeding, the Commission denied motions for summary determination stating that there was a question of fact as to whether Cascade would be providing service involving the operation of gas plant.<sup>107</sup> The order identifies only that compliance with RCW 80.28.190 is a fact-specific inquiry. In addition, CMS asks us to regulate out-of-territory sales under this statute, regardless of the use of gas plant, asserting the term "service" must be construed broadly under RCW Title 80, and the Commission is required to "regulate in the public interest ... the business of supplying any utility service or commodity to the public for compensation."<sup>108</sup> We do not find it appropriate to expand our interpretation of RCW 80.28.190 to the extent CMS requests.

72 We deny CMS' motion for summary determination on this issue. The undisputed facts demonstrate only that Cascade is selling natural gas as a commodity out of its service territory. CMS does not present facts showing that Cascade is providing service while operating gas plant for hire. Viewing the facts in the light most favorable to Cascade, it appears that Cascade's contracts for extra-territorial gas commodity sales do not involve the operation of any gas plant. Without more, the stipulated facts are insufficient on which to grant CMS' cross-motion for summary determination on this issue. Because CMS did not allege Cascade's violation of RCW 80.28.190 in its complaint, CMS must amend its complaint if it seeks to pursue this claim further.

73 Consistent with our decisions above, we direct Cascade to file with the Commission, within 30 days of the effective date of this Order, its contracts for out-of-territory gas sales. Filing these contracts with the Commission will allow us to evaluate whether Cascade is in compliance with RCW 80.28.190.

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Application (October 23, 2002); *In the Matter of the Application of Cascade Natural Gas Corporation for a Limited Certificate of Public Convenience and Necessity to Operate a Gas Plant for Hire throughout the State of Washington*, Docket UG-020632, Order Holding That A Certificate Of Public Convenience And Necessity Is Not Required (June 18, 2002).

<sup>107</sup> *In the Matter of the Application of Cascade Natural Gas Corporation for a Certificate of Public Convenience and Necessity to Operate a Gas Plant for Hire in the General Area of Grant County*, Docket UG-001119, First Supplemental Order Denying Summary Determination (Jan. 19, 2001); *see also* Cascade Response at 17, 20-23.

<sup>108</sup> CMS Cross-Motion, ¶ 41, quoting RCW 80.01.010, RCW 80.01.040(3).



#### D. Misuse of Discovery

74 Cascade moves for summary determination that CMS improperly based its complaint on discovery responses CMS obtained as an intervenor in the general rate case in Docket UG-060256.<sup>109</sup> Cascade asserts that CMS's complaint is based on discovery gained in the rate case.<sup>110</sup> Cascade asserts that the use of discovery in one proceeding for use in another proceeding is improper and a violation of both the Commission's procedural rules and the protective order in the rate case.<sup>111</sup> Cascade requests the Commission dismiss the complaint to discourage such tactics.

75 CMS issued data requests in the rate case docket concerning Cascade's sales of natural gas and activity under Schedules 663, 664, and 687, to which Cascade provided responses.<sup>112</sup> CMS filed its complaint in this docket on August 1, 2006, based on information included in Cascade's responses to data requests in the rate case.<sup>113</sup> The parties included in the exhibits to their stipulated facts Cascade's data request responses.<sup>114</sup> In addition, a protective order in the rate case, Order 02 in Docket UG-060256, provides: "No Confidential Information ... may be requested, reviewed, used or disclosed ... except for purposes of this proceeding."<sup>115</sup>

76 The Commission's former procedural rules provided: "Data requests must seek only information that is relevant to the issues in the adjudicative proceeding or that may lead to the production of information that is relevant."<sup>116</sup> The Commission recently modified this rule to state that "discovery through data requests must not be used for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the costs of litigation."<sup>117</sup>

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<sup>109</sup> *Id.* at 17-18.

<sup>110</sup> Cascade Answer, ¶14.

<sup>111</sup> *Id.*; *see also* Cascade Cross-Motion at 18.

<sup>112</sup> Stipulated Facts, ¶ 20; Stipulated Exhibit 19.

<sup>113</sup> CMS Cross-Motion, ¶¶ 36-38.

<sup>114</sup> Stipulated Facts, ¶ 20; Stipulated Exhibit 19.

<sup>115</sup> *WUTC v. Cascade Natural Gas Corporation*, Docket UG-060256, Order 02 ¶ 7 (Apr. 13, 2006).

<sup>116</sup> Former WAC 480-07-400(4).

<sup>117</sup> *See* WAC 480-07-400(3), effective August 27, 2006.

77 CMS asserts it filed the complaint to “cleanly present a fundamental legal issue to the Commission outside a rate case, which can be largely number-driven.”<sup>118</sup> CMS argues that nothing in the Commission’s rules “prohibits a party from simultaneously using in two parallel proceedings the facts gathered in one of the proceedings – provided those facts are relevant to both.”<sup>119</sup> CMS argues that the Commission need not rely on any evidence in the rate case to reach a decision on the complaint, as the parties have filed a set of stipulated facts and exhibits.<sup>120</sup> Finally, CMS argues that it has not used any information covered under the protective order in its complaint.<sup>121</sup>

78 We deny Cascade’s cross-motion for summary determination on this issue. Our procedural rules prohibit misuse of discovery. CMS’s use of discovery in the rate case to file this complaint does not violate either the former or current rule on use of discovery. The data at issue is clearly relevant to both cases. Further, it was reasonable for CMS to file the complaint to separate the issues for decision.

79 While CMS may not have revealed in the complaint confidential information subject to protective order in the rate case, or used such information in the stipulated facts filed with the Commission, it is clear CMS “used” the information in considering whether to file a complaint. We are concerned that parties who obtain information subject to protective order comply with the terms of the protective order. We do not find CMS’s actions in this instance so egregious, however, to merit dismissing the complaint.

#### **E. Motion to Take Official Notice**

80 CMS asks the Commission to take official notice of facts in a notice Cascade filed with the Commission on December 26, 2006, advising the Commission it would not seek a Purchased Gas Adjustment for 2006. Specifically, CMS asks the Commission to take official notice of information in an attachment that identifies that Cascade made certain gas supply sales under tariff schedules that have been cancelled.<sup>122</sup> CMS argues that the information in Cascade’s filing contradicts facts Cascade

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<sup>118</sup> CMS Reply, ¶ 25.

<sup>119</sup> *Id.*, ¶ 71.

<sup>120</sup> *Id.*, ¶¶ 76-77.

<sup>121</sup> CMS Reply, ¶ 25.

<sup>122</sup> CMS’ January 4 Motion, ¶¶ 1, 3-4.

asserted in this proceeding, namely that the sales were accounted for under Schedule 687.<sup>123</sup>

81 Cascade requests the Commission deny CMS' motion, asserting, among other arguments, that the record in this proceeding is closed and that CMS now seeks to discredit a fact to which it previously stipulated as "true and correct" for purposes of the proceeding.<sup>124</sup> Specifically, the parties stipulated to the fact that "Cascade currently accounts for the revenue from its optional gas commodity sales by attributing it to Rate Schedule 687."<sup>125</sup>

82 The Commission may take official notice of any judicially cognizable fact.<sup>126</sup> "Judicially cognizable facts" are adjudicative facts subject to judicial notice.<sup>127</sup> The data in Cascade's December 26 filing are not "judicially cognizable facts."<sup>128</sup> More importantly, it is not necessary for us to consider this information in deciding the issues before us. We deny CMS' motion to take official notice of Cascade's December 26 filing.

#### F. Requested Relief

83 CMS requests the following relief if we grant its motion for summary determination:<sup>129</sup>

- (1) Direct Cascade to cease and desist from making retail sales of natural gas within Washington in its service territory without rates or tariffs on file;
- (2) Direct Cascade to cease and desist from making retail sales of natural gas outside of its service territory without complying with RCW 80.28.190;

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<sup>123</sup> *Id.*, ¶ 5.

<sup>124</sup> Cascade's January 9 Response at 1-2.

<sup>125</sup> Stipulated Facts, ¶ 17.

<sup>126</sup> WAC 480-07-495.

<sup>127</sup> See Evidence Rule 201(b): "**Kinds of Facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

<sup>128</sup> See Cascade January 9 Response at 4-5.

<sup>129</sup> CMS Cross-Motion at 28-29, CMS Response, ¶¶ 57-58.

- (3) Hold non-core customers harmless, but review Cascade's contracts and require Cascade to file them with the Commission;
- (4) Remove references in Cascade's tariff schedules to FERC regulations,
- (5) Impose penalties or grant other relief, as appropriate; and
- (6) Award CMS attorney's fees and costs.

84 Cascade argues the complaint should be dismissed or that we should choose not to adjudicate the matter. Cascade also argues that we should hold customers harmless, no matter how we resolve the complaint.<sup>130</sup> Cascade further argues we should resolve the matter in a way that does not result in rejecting paragraph 12 of the Settlement Agreement, which addresses treatment of gas management service revenues.<sup>131</sup>

85 Staff similarly argues that customers should be held harmless, and recommends that Cascade should revise its tariffs to include optional gas supply services. Staff also suggests we initiate a Staff investigation to review Cascade's competitive activities.<sup>132</sup>

86 Consistent with CMS, Cascade and Staff, NWIGU argues that we should hold non-core customers harmless when resolving CMS's complaint.<sup>133</sup>

87 We address these requests for relief in turn:

### 1. Penalties

88 As we discuss above, we find Cascade in violation of RCW 80.28.050, RCW 80.28.080 and WAC 480-80-143 for failing to have tariffs schedules on file for its sales of natural gas to non-core customers and for failing to file contracts for these sales with the Commission. We do not find Cascade in violation of RCW 80.28.060, as Cascade complied with the statutory requirements, or RCW 80.28.090 or RCW 80.28.100, as CMS has not demonstrated that Cascade gave undue preferences or acted with undue discrimination in its arrangements with non-core customers.

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<sup>130</sup> Cascade Answer at 17.

<sup>131</sup> Cascade Cross-Motion at 16-17.

<sup>132</sup> Staff Reply Brief, ¶¶ 10-13.

<sup>133</sup> See NWIGU Initial and Reply Briefs.

89 CMS requests the Commission assess penalties for Cascade’s violations of state statutes and rule. Under RCW 80.04.380, we may assess penalties of up to \$1,000 per day for each violation of statute, rule or order.<sup>134</sup>

90 CMS argues that the Commission must assess penalties after finding violation of statutes or rules, even if there is no identifiable harm.<sup>135</sup> Cascade asserts that penalties are not automatic and are not appropriate in this matter.<sup>136</sup> Cascade asserts that the Commission has applied several factors in determining whether to award penalties, including “whether (1) the offending conduct was associated with new requirements, (2) the offending party should have known its conduct constituted a violation, (3) the conduct was gross or malicious, (4) repeated violations occurred, (5) the Commission previously had found violations, (6) the offending conduct improved, and (7) remedial steps were undertaken.”<sup>137</sup> Cascade asserts that applying these factors to the circumstances of this case demonstrates that penalties are not warranted.

91 While the facts do not show Cascade’s motivation for failing to file tariffs and special contracts with the Commission, we find that Cascade has a duty to know and comply with state statutes and the Commission’s rules, including those governing tariffs and contracts for services. It is not a defense to a violation of law that the Commission failed to catch the error in a filing and allowed it to take effect by operation of law. More importantly, Cascade should have known it could not rely on Staff’s advice, but must seek Commission permission or approval for waivers from the Commission’s rules. If Cascade has a question about certain obligations under statute or rule, it may file a petition seeking a declaratory ruling.

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<sup>134</sup> RCW 80.04.380 provides: “Any public service company which shall violate or fail to comply with any provision of this title, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense.”

<sup>135</sup> CMS Cross-Motion, ¶ 60, quoting *Rose Monroe v. Puget Sound Power & Light Co.*, Docket No. UG-85-70, Order Affirming Proposed Order (Oct. 1986).

<sup>136</sup> Cascade Response at 25.

<sup>137</sup> *Id.*, citing *MCIMetro Access v. U S WEST, Inc.*, Docket UT-971063 ¶ 158 (Feb. 10, 1999); *Washington Utilities and Transportation Commission v. Electric Lightwave, Inc.*, Dockets UT-001532 and UT-001533 (Mar. 19, 2001).

92 The record in this proceeding does not support assessing a penalty based on harm. However, as CMS notes, we need not determine harm to assess a penalty. Though not precluded from assessing penalties for Cascade's failure to maintain tariffs, we find it inequitable to do so after the Commission's inaction allowed the Company to cancel its tariff schedules. With respect to Cascade's failure to file contracts with the Commission, however, we assess a *de minimis* penalty of \$5,000 to discourage future violations of this sort.<sup>138</sup>

93 Within 30 days of the effective date of this Order, Cascade is directed to file gas supply tariff schedules and special contracts – including gas supply contracts for out-of-territory sales – as required below. Failure to do so may result in additional penalties.

## 2. Cease and Desist In-Territory Retail Sales

94 Consistent with our finding below that voiding existing contracts would unfairly harm customers, we do not find it appropriate to order Cascade to cease and desist its current sales of natural gas to non-core customers. Although we find that Cascade unlawfully failed to file tariffs and contracts with the Commission, ordering Cascade to cease and desist its sales under its existing contracts is not the appropriate remedy. We direct Cascade to correct its errors in relying on FERC regulations and to comply with state law, in particular RCW 80.28.050. Failure to do so may result in additional penalties, including an order to cease and desist making additional sales without complying with state law.

## 3. Cease and Desist Out-of-Territory Sales

95 CMS asks the Commission to order Cascade to cease and desist making out-of-territory sales of natural gas. Given our findings above that the facts do not support that Cascade is acting contrary to RCW 80.28.190, there is no basis for such a remedy. We reject CMS's request. However, consistent with our decision above, we require Cascade to file within 30 days of the effective date of this Order all special

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<sup>138</sup> We have authority to assess substantial penalties where warranted. *See* RCW 80.04.380. For example, while we do not know the number of gas supply contracts Cascade has entered into

contracts for sales of gas to out-of-territory customers. Failure to do so may result in additional penalties including an order to cease and desist making additional sales without complying with state law.

#### 4. References to FERC Regulations in Tariff Schedules

96 Cascade and CMS agree in the Settlement Agreement to remove language in Schedules 663 and 664 referring to authority under FERC regulations.<sup>139</sup> As we accept the Settlement in an order in Docket UG-060256 entered concurrently with this Order, there is no need to direct Cascade in this docket to remove the language. CMS's request for relief on this issue is moot.

#### 5. Validity of Unfiled Contracts

97 In its complaint and motion, CMS requests that the Commission find Cascade's gas supply contracts with non-core customers to be void or voidable, given the Company's alleged unlawful actions.<sup>140</sup> Cascade, Staff and NWIGU argue against such a remedy, asserting that Cascade's customers should be held harmless however the Commission resolves the complaint. They argue that CMS' proposed remedy would unfairly impose great hardship on customers, rather than the Company, who they claim should bear responsibility for any violations.<sup>141</sup> Cascade and NWIGU assert that voiding the contracts would require non-core customers to seek new arrangements for gas supply during the winter, when prices for natural gas are the highest.<sup>142</sup> In its responsive pleading, CMS concurs with these arguments, agreeing that the Commission should seek a remedy that holds customers harmless for any unlawful actions by the Company.<sup>143</sup> CMS also requests that Cascade's contract customers be notified that Cascade violated the law by offering rates and contracts different from those on file with the Commission.<sup>144</sup>

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since March 2004, one contract entered into from March 2004 to March 2005 could subject the Company to a penalty of up to \$360,000.

<sup>139</sup> Stipulated Facts, ¶ 24; Stipulated Exhibit 22 at 5 (Settlement Agreement, ¶ 12(b)(iii)).

<sup>140</sup> CMS Complaint, ¶ 47; CMS Cross-Motion, ¶ 80.

<sup>141</sup> Cascade Cross-Motion at 15-16; NWIGU Initial Brief, ¶¶ 3-4; Staff Response, ¶ 9.

<sup>142</sup> Cascade Cross-Motion at 15-16; Cascade Response at 23; NWIGU Initial Brief, ¶ 5.

<sup>143</sup> CMS Response, ¶¶ 57-58.

98 We agree with all parties that CMS's initial request to void existing contracts would unfairly harm Cascade's customers. We do not void existing contracts, but require Cascade to file these contracts with the Commission for review, in conjunction with filing new tariff schedules for gas supply services. We reject CMS's request that Cascade notify its customers that it has violated the law. We will review existing contracts to ensure Cascade is in compliance with state laws and regulations governing special contracts.

## 6. Staff Investigation

99 Staff suggests that the Commission direct Staff to investigate Cascade's competitive activity to ensure the Company meets statutory requirements.<sup>145</sup> Because we require Cascade to file gas supply tariff schedules and its existing gas supply contracts with the Commission, we do not find it necessary to initiate a Staff investigation. We fully expect Staff to investigate Cascade's competitive activities thoroughly in reviewing these filings.

## 7. Attorney's Fees

100 CMS requests it be awarded its attorney's fees and costs for bringing the complaint.<sup>146</sup> Cascade correctly argues that the Commission lacks statutory authority to award attorney's fees in proceedings before the Commission.<sup>147</sup> Nor have the courts found that the implied authority to do so exists.<sup>148</sup> The Commission has never imposed attorney's fees, and we decline to do so here.

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<sup>144</sup> *Id.*, ¶ 58.

<sup>145</sup> Staff Response, ¶ 13.

<sup>146</sup> CMS Cross-Motion, ¶ 80.

<sup>147</sup> Cascade Response at 26-27; *See also Application of Kleen Environmental Technologies, Inc.*, Docket TG-040248, Order 08 ¶¶ 15-18 (Feb. 1, 2005), citing *Cohn v. Dept of Corrections*, 78 Wn. App. 63, 895 P.2d 857 (1995); *Turek v. Dept. of Licensing*, 123 Wn.2d 120, 864 P.2d 1382 (1994); *Trachtenberg v. Washington State Dept. of Corrections*, 122 Wn. App. 491, 93 P.3d 217 (2004).

<sup>148</sup> *See, supra*, n.148.



**FINDINGS OF FACT**

101 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary findings of fact, incorporating by reference pertinent portions of the preceding detailed findings:

102 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including gas companies.

103 (2) Cascade Natural Gas Corporation is a “public service company” and a “gas company,” as those terms are defined in RCW 80.04.010, and as those terms otherwise are used in Title 80 RCW. Cascade is engaged in Washington State in the business of supplying utility services and natural gas to the public for compensation.

104 (3) Cost Management Services, Inc., is a competitive gas marketer, supplying and selling natural gas to industrial and commercial customers, including Cascade customers who take transportation-only service from Cascade under Schedules 663 and 664.

105 (4) From 1988 until March 1, 2004, Cascade offered optional gas supply services to non-core, i.e., transportation-only customers, through a number of tariff schedules.

106 (5) In January 2004, Cascade sought permission from the Commission to cancel its optional gas supply tariff schedules, asserting authority for these sales under FERC regulations.

107 (6) On March 1, 2004, the Commission allowed the cancellation of Cascade’s optional gas supply tariff schedules by operation of law by taking no action on the Company’s tariff revision. Cascade’s tariff revisions included references

in Schedules 663 and 664 to authority for natural gas sales under FERC regulations.

- 108 (7) Cascade continued to sell natural gas as a commodity to non-core customers under contract asserting its reliance on its FERC blanket marketing authority to make these sales.
- 109 (8) Cascade accounted for the costs and revenues for its sales of natural gas to non-core customers under Schedule 687.
- 110 (9) Cascade's sales of natural gas to non-core customers are not sales for resale.
- 111 (10) In 2004, Cascade ceased filing with the Commission its special contracts with non-core customers for optional gas supply.
- 112 (11) Schedule 687 allows Cascade to provide optional gas management services. The services available under this schedule include daily nominations, reviewing nomination confirmations, pipeline balancing services, monthly reports, and release of a customer's unused firm capacity, but not optional gas supply services.
- 113 (12) Cascade has entered into gas supply contracts with entities outside of its service area, including the Fairchild and McChord Air Force Bases, which are located in Avista's and PSE's service areas.
- 114 (13) CMS issued data requests in Docket UG-060256, Cascade's rate case, concerning Cascade's sales of natural gas and activity under Schedules 663, 664 and 687, and Cascade responded to these data requests.
- 115 (14) CMS filed its complaint in this proceeding based on Cascade's responses to CMS's data requests in Docket UG-060256.
- 116 (15) A protective order in Docket UG-060256 prohibits the use of confidential information being used or disclosed except in the proceeding in which the order was entered.

CONCLUSIONS OF LAW

- 117 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law incorporating by reference pertinent portions of the preceding detailed conclusions:
- 118 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 119 (2) The Commission may take official notice of any judicially cognizable fact. The data that CMS asks the Commission to take official notice of do not qualify as “judicially cognizable facts.”
- 120 (3) The Commission must grant a motion for summary determination if the moving party demonstrates that there is no genuine issue as to a material fact, and that the moving party is entitled to judgment as a matter of law.
- 121 (4) FERC regulations, 18 C.F.R. § 284.402, authorize non-pipeline marketers to engage in wholesale sales of gas for resale, but not retail, purposes.
- 122 (5) Cascade may not rely on its authority under FERC regulations governing blanket marketing certificates when selling natural gas at retail to its non-core customers.
- 123 (6) RCW 80.28.050 requires public service companies to file tariffs and contracts with the Commission identifying all rates and charges for service.
- 124 (7) It is a regulated company’s duty to file tariffs which conform to state law. Where a tariff filing violates state law, it is not a defense that the Commission’s inaction allowed the nonconforming tariff to take effect by operation of law.
- 125 (8) WAC 480-80-143 requires gas companies to “file with the commission all contracts for the retail sale of regulated utility services to end-use customers”

that state charges or conditions different from existing tariffs or that provide services not addressed in existing tariffs.

- 126 (9) Allowing cancellation of its tariff schedules, does not constitute a waiver under WAC 480-80-010(2) of the statutory requirements to file contracts, or rules requiring filing of special contracts.
- 127 (10) Staff opinions are not binding on the Commission, and public service companies cannot rely on Staff advice as a defense to violating statutes or rules.
- 128 (11) Cascade's Schedule 687 does not allow Cascade to provide optional gas supply services.
- 129 (12) Cascade is in violation of RCW 80.28.050 and WAC 480-80-143 for failing to file with the Commission its gas supply tariffs and contracts for service to non-core customers.
- 130 (13) RCW 80.28.060 prohibits a public service company from changing its rates or charges without Commission approval. While Cascade may have acted in error in seeking to cancel its gas supply tariff schedules, the Company complied with RCW 80.28.060 in seeking approval from the Commission for the cancellation.
- 131 (14) RCW 80.28.080 requires public service companies to charge only the rates and charges in its tariff. Cascade violates RCW 80.28.080 by selling natural gas to non-core customers without rates and charges in its tariff.
- 132 (15) RCW 80.28.090 and RCW 80.28.100 prohibit public service companies from giving undue preferences or advantages or acting with undue discrimination. There is a material dispute of fact regarding CMS's allegation that Cascade violated these statutes.

- 133 (16) RCW 80.28.190 prohibits Cascade from operating any gas plant for hire outside of its service territory without Commission approval. Cascade is not in violation of the statute because selling gas as a commodity is not “operating gas plant” within the meaning of the statute.
- 134 (17) CMS’s use of discovery in the rate case to file its complaint in this docket does not violate discovery rules.
- 135 (18) The Commission may assess penalties for Cascade’s violations of RCW 80.28.050, RCW 80.28.080 and WAC 480-80-143.
- 136 (19) The Commission lacks authority to impose attorney’s fees.

**ORDER**

**THE COMMISSION ORDERS:**

- 137 (1) Cost Management Services, Inc.’s, Motion for Summary Determination is granted, in part, consistent with this Order.
- 138 (2) Cost Management Services, Inc.’s motion requesting the Commission take official notice of Cascade Natural Gas Corporation’s December 26, 2006, filing in Docket UG-061916 is denied.
- 139 (3) Cascade Natural Gas Corporation’s Motion for Summary Determination is denied, in part, consistent with this Order.
- 140 (4) Within 30 days following the effective date of this Order, Cascade Natural Gas Corporation must file with the Commission tariff schedules to provide gas supply services to non-core customers and must file its existing contracts for gas supply services to non-core customers, including contracts for out-of-territory gas sales.

- 141 (5) Within 15 days following the effective date of this Order, Cascade Natural Gas Corporation must pay to the Commission's Public Service Revolving Fund a penalty of \$5,000 for violations of RCW 80.28.050 and WAC 480-80-143.
- 142 (6) The Commission retains jurisdiction to effectuate the terms of this order.

Dated at Olympia, Washington, and effective January 12, 2007.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

**NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.**

## **GLOSSARY**