

1 **SYNOPSIS.** *In this Order, we grant the Company's motion for clarification of Order 08, which approved the parties' Settlement Agreement subject to condition. We clarify the condition – that Cascade hold its core customers harmless should a replacement shipper default on the terms of a capacity release award under paragraph 22 of the Settlement – applies only to the capacity releases specified in paragraph 22 of the Settlement. We deny Cascade's petition for reconsideration of that portion of Order 08.*

SUMMARY

2 **NATURE OF PROCEEDINGS.** Docket UG-061256 involves a complaint by Cost Management Services, Inc. (CMS), against Cascade Natural Gas Corporation (Cascade or the Company), asserting, among other issues, that Cascade is violating state and federal law by selling natural gas at retail to customers that take transportation-only service (non-core customers) without the necessary contracts and tariffs on file.

3 Docket UG-070332 involves tariff revisions Cascade filed in response to Order 03 in CMS' complaint proceeding in Docket UG-061256. The tariff revisions establish schedules for retail gas sales to non-core customers and associated services. The Washington Utilities and Transportation Commission (Commission) suspended the tariff schedules in Order 01 following the March 14, 2007, open meeting.

4 Docket UG-070639 involves Cascade's notice to the Commission that it intends to make retail gas sales to non-core customers through a reactivated affiliate, CGC Energy, Inc (CGC Energy). Dockets UG-070332 and UG-070369 are consolidated.

5 Docket UG-072337 is a complaint by Commission Staff alleging that Cascade violated the terms of the settlement in Docket UG-060256 by failing to share with core customers the net margin of unbundled retail sales of natural gas made through CGC Energy.

- 6 **APPEARANCES.** John A. Cameron and Francie Cushman, Davis Wright Tremaine, LLP, Portland, Oregon, represent CMS. Lawrence H. Reichman and James M. Van Nostrand, Perkins Coie, LLP, Portland, Oregon, represent Cascade. Edward A. Finklea and Chad M. Stokes, attorneys, Cable Huston Benedict Haagensen & Lloyd LLP, Portland, Oregon, represent the Northwest Industrial Gas Users (NWIGU). Simon ffitich and Sarah A. Shifely, Assistant Attorneys General, Seattle, Washington, represent the Public Counsel Section of the Washington Office of the Attorney General (Public Counsel). Gregory J. Trautman, Assistant Attorney General, Olympia, Washington, represents the Washington Utilities and Transportation Commission’s (Commission) regulatory staff (Commission Staff or Staff).¹
- 7 **BACKGROUND AND PROCEDURAL HISTORY.** Cascade provides natural gas service to residential, commercial and industrial customers under a tariff 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 using Cascade’s distribution system to transport gas purchased separately or from a competitive supplier. Cascade’s activities in making unbundled retail sales of natural gas to transportation-only, or non-core, customers are at issue in all four of the dockets addressed by this Order.²
- 8 On February 7, 2008, the parties to all four proceedings – Cascade, CMS, Commission Staff, Public Counsel and NWIGU – filed a full Settlement Agreement (Settlement) with the Commission, resolving all disputed issues in the four dockets. On March 6, 2008, the Commission entered Order 08 in these proceedings, which accepted the Settlement on condition, dismissed the complaint and order in Docket UG-070332 suspending the Company’s tariff revisions, approved the tariff revisions proposed in the Settlement, required the Company to file tariffs to comply with the Order, approved the transfer of contracts for unbundled retail sales from CGC Energy

¹ In formal proceedings, such as this case, the Commission’s regulatory staff functions as an independent arty 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. *See* RCW 34.05.455.

² The procedural history of these four dockets is described in detail in Order 08 in Docket UG-061256, Order 07 in Docket UG-070332; Order 02 in Docket UG-070639, and Order 01 in Docket UG-072337, entered on March 6, 2008, and will not be repeated here.

to Cascade and closed all four dockets after the Commission determines the Company has made tariff filings in compliance with the Order.

- 9 On March 10, 2008, Cascade filed revised tariff pages with the Commission to comply with Order 08, requesting an April 1, 2008, effective date.
- 10 On March 17, 2008, Cascade filed a Petition for Reconsideration and Alternative Motion for Clarification of Order 08, requesting the Commission either reconsider the portion of the order imposing a condition, or in the alternative, clarify that the condition applies only to capacity releases identified in paragraph 22 of the Settlement.
- 11 In response to the Commission's notice of opportunity to file answers to Cascade's petition, Staff and Public Counsel filed answers opposing the petition.

MEMORANDUM

- 12 In its petition for reconsideration, Cascade requests that we reconsider and withdraw Order 08's condition that Cascade hold its core customers harmless should a replacement shipper default on payment under a capacity release award under paragraph 22 of the Settlement. Cascade seeks to supplement the record with the Declaration of Jon T. Stoltz in support of its petition. Alternatively, Cascade requests that we clarify the condition applies "only to the capacity releases contemplated in paragraph 22 of the Settlement Agreement," and not "to other capacity releases Cascade may make."³ For the reasons discussed below, we grant Cascade's motion for clarification and deny its petition for reconsideration.
- 13 The parties agreed to a number of specific actions in the Settlement, including that Cascade would release certain pipeline capacity for the summer months of 2008 and 2009.⁴ In paragraph 22 of the Settlement, Cascade agreed, at CMS' request, to release this capacity and to provide CMS 48 hours advanced notice of the posting of the release on the pipeline's electronic bulletin board.⁵

³ Cascade Petition, ¶ 2.

⁴ Exh. 1, Settlement Agreement, ¶ 22.

⁵ *Id.*, see also Exh. 6, Narrative Summary, ¶ 23.

- 14 After reviewing the parties' responses to bench requests concerning the planned capacity releases, as well as the Narrative Statement and testimony during the March 4 settlement hearing, we determined that the provisions of paragraph 22 of the Settlement did not provide CMS an unfair advantage or preference.⁶ We remained concerned, however, that the nature of the capacity release process would create a risk that Cascade's core customers might bear some costs unfairly. Specifically, we were concerned that if a replacement shipper defaulted on its contract with the pipeline, Cascade would remain liable for the terms of the contract and might seek to recover the amounts from core customers.⁷ Finding that the record was not sufficient to determine the benefit core customers would derive from the capacity releases, we presumed that the released capacity is not necessary to serve core customers.
- 15 We also noted that Cascade did not require replacement shippers under these capacity releases to comply with more stringent credit terms than those required by the pipeline, which may expose the Company to additional risk of default by a replacement shipper.⁸ We based this finding on Mr. Stoltz's testimony in the hearing that Cascade chose not to require a replacement shipper to meet Cascade's creditworthiness requirements and that Cascade may have different and possibly more stringent creditworthiness standards than the pipeline.⁹ For these reasons, we conditioned approval of the Settlement on "Cascade holding core customers harmless should a replacement shipper default on payment under the capacity release award contemplated in paragraph 22 of the Settlement."¹⁰
- 16 Cascade asserts through its petition and Mr. Stoltz's declaration that core customers do receive a benefit from the capacity releases. Cascade purchases a certain level of firm pipeline capacity to meet the current and future needs of core customers for peak winter months.¹¹ This capacity is only available from the pipeline on a year-round basis.¹² Cascade attempts to mitigate the cost of year-round capacity by releasing capacity in the summer, and applying the funds it receives for these capacity releases

⁶ Order 08, ¶ 34.

⁷ *Id.*, ¶ 35.

⁸ *Id.*, ¶ 36, n.39.

⁹ Stoltz, TR. 88:20 – 90:18.

¹⁰ Order 08, ¶¶ 36, 59, 65.

¹¹ Cascade Petition, ¶ 6.

to reduce the costs passed on to core customers through its Purchased Gas Adjustment (PGA) filings.¹³

- 17 Therefore, Cascade asserts that core customers do receive a benefit from capacity releases such as those in paragraph 22 of the Settlement, and that as a result, core customers should be responsible for any losses related to those releases.¹⁴ Cascade also asserts that “in the rare circumstance” that a replacement shipper defaults, Cascade would seek to recall the capacity and re-release it to another replacement shipper to reduce the impact on core customers.¹⁵
- 18 Cascade also contests the assumption in the Order that the Settlement’s credit requirement waiver for the capacity releases at issue would expose ratepayers to additional risk of default.¹⁶ Cascade asserts that its typical credit requirements are no more stringent than the pipeline’s, and contrary to the Commission’s statements in the Order, the Company did not forego the opportunity to impose more stringent credit requirements.
- 19 Cascade is concerned that the condition in the Order may be interpreted more expansively in the future for the propositions that pipeline capacity releases are not needed to serve core customers and that Cascade should always bear the risk of a replacement shipper’s default.
- 20 Staff and Public Counsel assert that Cascade’s petition for review should be denied. They assert that Cascade has already accepted the conditions, by failing to object to any conditions in the Order within five days, as required by the Settlement, and by filing revised tariffs with the Commission in compliance with the Order on March 10. Both parties also assert that the condition is appropriate due to Cascade waiving its creditworthiness requirements for the capacity releases under the Settlement. While Public Counsel does not object to the motion for clarification, both parties assert that clarification is not necessary, as the Order clearly applies the condition only to the capacity releases discussed in paragraph 22 of the Settlement.

¹² *Id.*

¹³ *Id.*, ¶¶ 7-8.

¹⁴ *Id.*, ¶¶ 8-9.

¹⁵ *Id.*, ¶ 9.

¹⁶ *Id.*, ¶¶ 10-11.

- 21 We do not interpret Cascade’s petition as a “rejection of the condition” within the meaning of paragraph 26(d) of the Settlement. Therefore, we need not reach the issue of whether it is time barred.
- 22 We understand Cascade’s concern that our conclusions about the capacity releases identified in paragraph 22, could be interpreted to apply generally to other capacity releases. We did not intend this result. However, by not imposing its own creditworthiness requirements for the capacity releases contemplated in the Settlement, we remain concerned about the risk Cascade may have introduced for core customers, even if that risk is viewed as a potential loss of benefit rather than a cost. Mr. Stoltz’s declaration does not fully alleviate our concerns.
- 23 As Cascade requests in the alternative that we clarify the intent of the Order, we grant the motion for clarification and deny Cascade’s petition for reconsideration and request to supplement the record. The Order clearly limits the condition to apply solely to the specific capacity releases contemplated in paragraph 22 of the Settlement and not to any other releases:

The Settlement Agreement filed by the Parties on February 7, 2008, ... is approved and adopted, subject to the condition that Cascade hold core customers harmless in the event a replacement shipper defaults on payment under its award of pipeline capacity released by Cascade *under the terms of paragraph 22* of the Settlement.¹⁷ (Emphasis added)

FINDINGS OF FACT

- 24 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:

¹⁷ Order, ¶ 65; *see also* ¶¶ 36, 59.

- 25 (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.
- 26 (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.
- 27 (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.
- 28 (4) The parties entered a Settlement Agreement which was approved by the Commission, upon condition that the capacity releases contemplated in paragraph 22 of the Settlement not harm the interests of Cascade’s core customers.

CONCLUSIONS OF LAW

- 29 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:
- 30 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 31 (2) Order 08 should be clarified to reflect that the condition that Cascade’s core customers should be held harmless in the event of default by a replacement shipper applies only to the specific capacity releases contemplated in paragraph 22 of the Settlement.

- 32 (3) The Commission should retain jurisdiction to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS:

- 33 (1) Cascade Natural Gas Corporation's Petition for Reconsideration is denied, and its Alternative Motion for Clarification is granted.
- 34 (2) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective March __, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner