

[Service Date March 6, 2008]

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

COST MANAGEMENT SERVICES, INC.,)	DOCKET UG-061256
)	
Complainant,)	ORDER 08
v.)	
CASCADE NATURAL GAS CORPORATION,)	
)	
Respondent.)	
.....)	
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,)	DOCKET UG-070332
)	
Complainant,)	ORDER 07
v.)	
CASCADE NATURAL GAS CORPORATION,)	
)	
Respondent.)	
.....)	
In re Notification of Contract and Arrangement between)	DOCKET UG-070639
)	
CASCADE NATURAL GAS)	ORDER 02
CORPORATION, and its subsidiary)	
CGC ENERGY, INC.)	
.....)	
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,)	DOCKET UG-072337
)	
Complainant,)	
v.)	ORDER 01
CASCADE NATURAL GAS)	
CORPORATION,)	
)	
Respondent.)	
.....)	

ORDER ACCEPTING SETTLEMENT AGREEMENT ON CONDITION;
DISMISSING COMPLAINT AND ORDER SUSPENDING TARIFF REVISION;
APPROVING TARIFF REVISIONS; REQUIRING COMPLIANCE FILING;
APPROVING TRANSFER OF CONTRACTS; CLOSING DOCKETS

- 1 **SYNOPSIS.** *The Commission approves and adopts, with one condition, an uncontested Settlement Agreement that resolves all disputed issues in four dockets relating to Cascade's unbundled retail sales of natural gas to non-core customers. The condition requires Cascade to hold its core customers harmless should a replacement shipper default on the terms of a capacity release award under the Settlement. The Commission also approves revised tariff pages allowing Cascade to make unbundled retail sales under existing contracts and approves the transfer of the contracts from Cascade's affiliate, CGC Energy, to Cascade.*

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 the Commission's Staff (Staff) alleging that Cascade violated the terms of the settlement in Cascade's recent rate case 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).¹ Gregory J. Trautman, Assistant Attorney General, Olympia, Washington, represents the Washington Utilities and Transportation Commission's (Commission) regulatory staff (Commission Staff or Staff).²
- 7 **COMMISSION DECISION.** We find reasonable the terms of the parties' Settlement, in which Cascade agrees to wind down its unbundled retail sales and brokering activities by October 31, 2008. In the Company's wind-down plan, Cascade's affiliate, CGC Energy, will transfer to Cascade any existing contracts, under which Cascade will make sales pursuant to revised tariff pages filed with the Settlement. Cascade will not enter into any new contracts. We also find reasonable the proposal that Cascade ensure core customers are made whole from its unbundled retail sales activities, by Cascade sharing 50 percent of any net margins gained on the sales by both CGC Energy and Cascade under the methodology approved in Cascade's recent rate case in Docket UG-060256.
- 8 We also find reasonable Cascade's agreement to modify its natural gas procurement strategies for core customers, and the terms for releasing surplus pipeline capacity for the summers of 2008 and 2009. We condition approval of the Settlement on Cascade holding its core customers harmless should a replacement shipper default on the terms of its award of pipeline capacity released by Cascade under the terms of the Settlement. The Settlement terms, together with this condition, satisfactorily resolve

¹ Judith Krebs initially represented Public Counsel in this matter, and then Simon ffitich was substituted as the representative for Public Counsel. Sarah Shifely is now representing Public Counsel in this matter.

² 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 other parties 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 regulatory Staff. See RCW 34.05.455.

the contested issues in four pending dockets, Dockets UG-061256, UG-070332, UG-070639 and UG-072337.

- 9 We conclude that it is in the public interest to approve and adopt the Settlement Agreement, on condition, approve the Company's proposed tariff revisions, and approve the transfer of existing contracts from CGC Energy to Cascade.

MEMORANDUM

I. Background and Procedural History

- 10 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 under Schedules 663 or 664 of the tariff 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 here.
- 11 On August 1, 2006, CMS filed a formal complaint against Cascade in Docket UG-061256 asserting that Cascade was violating state law by selling natural gas at retail to non-core customers in its service territory without tariffs, special contracts or other Commission-regulated mechanisms in place. Later in the proceeding, CMS also raised issues regarding Cascade's unbundled retail sales to non-core customers outside of Cascade's service territory (off-system unbundled retail sales).
- 12 On January 12, 2007, the Commission entered Order 03 in the complaint proceeding after considering the parties' cross-motions for summary determination. We found Cascade in violation of certain state laws and Commission rules, assessed a penalty, required Cascade to file new gas supply tariffs and existing gas supply contracts with the Commission, and deferred the remaining issues for further investigation and hearing.

- 13 On February 12, 2007, Cascade filed in Docket UG-070332 revisions to its Tariff, WN U-3, reflecting gas supply service options available to non-core customers. We suspended the tariff filing on March 14, 2007.
- 14 On March 30, 2007, Cascade filed a letter in Docket UG-070639 stating that it was reactivating its affiliate CGC Energy to make retail sales of natural gas to non-core customers, including customers outside of Cascade's service territory.³
- 15 Motions for clarification of Order 03, a petition to intervene in the tariff proceeding, a motion to consolidate Dockets UG-061256 and UG-070332, and a number of responsive pleadings were filed. After the initial order on these pleadings was entered in May, 2007, CMS sought review of the decision. On October 12, 2007, we entered Order 06 in Docket UG-061256, granting the petition for review and reversing in part the initial order. In Order 03, entered the same day in Docket UG-070332, we consolidated the tariff proceeding with Cascade's affiliate filing in Docket UG-070639.
- 16 The Commission convened prehearing conferences in the complaint proceeding and consolidated dockets on November 20, 2007, in Olympia, Washington, before Administrative Law Judge Theodora Mace to establish procedural schedules for the proceedings.
- 17 On December 7, 2007, the Commission issued a complaint against Cascade in Docket UG-072337, alleging that the Company had not complied with the terms of a settlement agreement reached in its general rate case in Docket UG-060256, in particular a provision in which it agreed to defer net margins realized each month in unbundled retail sales and to return these amounts each year on a percentage of margin basis to all customers, except to Special Contract customers.

³ Cascade notified the Commission it planned to make sales through the affiliate because its proposed tariff filing was suspended on March 14, and certain contracts were due to expire at the end of March, such that filing new contracts 30 days in advance was not an option. *See* Cascade letter, filed March 30, 2007, in Docket UG-070639.

- 18 On February 7, 2008, the parties to all four proceedings – Cascade, CMS, Commission Staff, Public Counsel, and NWIGU – filed a full settlement agreement with the Commission, resolving all disputed issues in the four dockets. The parties filed a Narrative Statement Regarding Settlement Agreement on February 19.
- 19 On February 11, the Commission issued four bench requests to the parties concerning the terms of the Settlement. On February 21, Public Counsel filed a letter responding separately to Bench Request Nos. 2 through 4, and notifying the Commission that it joined in the parties’ response to Bench Request No. 1. On February 22, counsel for CMS filed the joint responses of CMS, Cascade, Staff, and NWIGU to Bench Request Nos. 2 through 4, and the joint response of all parties to Bench Request No. 1.
- 20 The Commission held a hearing on the proposed Settlement on March 4, 2008, in Olympia, Washington, with Chairman Mark H. Sidran, Commissioners Patrick J. Oshie and Philip B. Jones, and Administrative Law Judge Ann E. Rendahl presiding.

II. Proposed Settlement

- 21 Cascade, CMS, Commission Staff, Public Counsel, and NWIGU have entered into a full settlement agreement (Settlement), resolving all disputed issues in the four pending dockets. The Settlement addresses Cascade’s unbundled retail sales of natural gas, but has several distinct component parts, given the different focus of each docket.
- 22 First and foremost, Cascade agrees to wind down its unbundled retail sales and brokering activity both within and outside of its service territory by October 31, 2008.⁴ Cascade will not renew or extend any existing contracts that may expire on or before October 31, 2008, nor will it enter any new contracts prior to October 31.⁵ Cascade includes a plan for winding down these activities in Exhibit A to the Settlement, including notice to customers. As some of the contracts expire as early as

⁴ Exh. 1, Settlement, ¶¶ 13-17. Under the terms of the Settlement, Cascade may still sell surplus natural gas at points upstream from any Washington local distribution company (LDC) city gate to mitigate costs for the benefit of core customers. *See* Exh. 6, Narrative, ¶ 16.

⁵ Exh. 1, Settlement, ¶ 14.

March 31, 2008, the parties seek approval of the Settlement by March 7, 2008, to provide timely notice to customers to make alternative arrangements.⁶

23 Second, Cascade agrees that any unbundled retail sales made prior to winding down its activities will be subject to the 50 percent revenue-sharing provision approved in Cascade's recent rate case in Docket UG-060256. Cascade agrees to make the sales under tariffs approved by the Commission, specifically revised Schedules 682, 684 and 684-A to its Tariff WN-U 3 attached as Exhibit B to the Settlement.⁷ The parties request the Commission lift the suspension of the tariffs in Docket UG-070332 and approve the revised tariffs in Exhibit B upon approving the Settlement.⁸ The parties state that the revised tariff pages are essentially the same as those filed on February 12, 2007, but include the October 31, 2008, expiration date.⁹ Cascade will file compliance tariffs after the Commission approves the Settlement.

24 Third, Cascade agrees to transfer existing CGC Energy contracts for unbundled retail sales to Cascade. The parties request that the Commission approve the transfers pursuant to RCW 80.16.020, a provision governing transactions between a public service company and an affiliate, as a part of approving the Settlement.¹⁰ The Settlement and wind-down plan include the possibility that, prior to Commission approval of the Settlement, Cascade may sell to a third party its "book" of gas supply business, *i.e.*, existing agreements and some or all of Cascade's or CGC Energy's

⁶ Exh. 6, Narrative, ¶ 16.

⁷ Exh. 1, Settlement, ¶ 16.

⁸ *Id.*

⁹ Exh. 6, Narrative, ¶ 17.

¹⁰ Exh. 1, Settlement, ¶ 17. RCW 80.16.020 provides, in part:

"Every public service company *shall file with the commission* a ... contract or arrangement providing for the furnishing of management, supervisory[,] construction, engineering, accounting, legal, financial, or similar services, or any contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing, other than those enumerated in this section, hereafter made or entered into between a public service company and any affiliated interest The filing must be made prior to the effective date of the contract or arrangement. Modifications or amendments to the contracts or arrangements with affiliated interests must be filed with the commission prior to the effective date of the modification or amendment. *Any time after receipt of the contract or arrangement, the commission may institute an investigation and disapprove the contract, arrangement, modification, or amendment thereto if the commission finds the public service company has failed to prove that it is reasonable and consistent with the public interest. ...*" (Emphasis added).

interests in other agreements for the purchase of gas supply and pipeline transportation related to the unbundled retail sales.¹¹

- 25 Fourth, to address the Commission's complaint in Docket UG-072337, Cascade agrees to share 50 percent of the net margin received under existing CGC Energy contracts for the time period between the transfer of the contracts to Cascade until October 31, 2008, in accordance with the methodology agreed to by the parties and approved by the Commission in Docket UG-060256.¹² Cascade will also defer for amortization during the annual Purchased Gas Adjustment (PGA) process under the methodology in Docket UG-060256, an amount equal to 50 percent of the net margins from sales generated by CGC Energy from unbundled retail sales from April 1, 2007, until the effective date of the transfers.¹³ Cascade will also include in the amount deferred for amortization an additional \$24,000 in penalties or interest.¹⁴
- 26 Further, if CGC Energy sells its "book" of gas supply business to a third party before the Commission approves the Settlement, Cascade agrees to defer for amortization during the PGA process an amount equal to 50 percent of the net gain generated by CGC Energy for these assignments.¹⁵ The parties agree that the net gain will be distributed following the rate case settlement methodology, and that the amount shared will not be less than what would have been shared without the transaction.¹⁶
- 27 Fifth, Cascade has agreed to revise its gas procurement strategies for core customers by replacing a portion of its Sumas gas supply with gas supply from the Rockies to address Staff's questions about the Company's gas procurement strategies.¹⁷ The Settlement states that Rockies gas currently costs less than gas supply from Sumas and the Alberta natural gas pricing point.¹⁸ Cascade agrees to revise its strategies to acquire physical supplies on a rolling five-year basis and to take advantage of the disparities between supply basins, and to maximize opportunities to purchase lower-

¹¹ See Exh. 1, Settlement, ¶ 20; see also Exh. 2; Exh. 7, Joint Response to Bench Request No. 1.

¹² Exh. 1, Settlement, ¶ 17; see also Exh. 6, Narrative, ¶ 19.

¹³ Exh. 1, Settlement, ¶ 18.

¹⁴ *Id.*, ¶ 19.

¹⁵ Exh. 1, Settlement, ¶ 20; see also Exh. 6, Narrative, ¶ 20.

¹⁶ *Id.*

¹⁷ Exh. 1, Settlement, ¶ 21; see also Exh. 6, Narrative, ¶ 21.

¹⁸ Exh. 1, Settlement, ¶ 21.

priced Rockies gas.¹⁹ The parties agree that these revisions are presumptively prudent, but that Cascade's transactions will be reviewed in the PGA process or in a general rate case.²⁰

28 In the last substantive section of the Settlement, Cascade agrees - at CMS' request and in return for agreeing to terminate its complaint proceeding²¹ - to make certain reservation releases of pipeline capacity. These capacity releases are specified in Exhibit C of the Settlement, concern Rockies gas for delivery at Bellingham, Washington, or a mutually agreeable point through the Northwest Pipeline's (the pipeline) electronic bulletin board (EBB), at the maximum allowable rate paid by Cascade to the pipeline at the time of release.²² Cascade agrees to make the specified capacity releases for summer of 2008 and summer of 2009 supply on the pipeline's EBB on or before March 21, if the Commission approves the Settlement.²³ Cascade agrees to give CMS two business days advanced notice of the releases by e-mail notification, which notice is intended to level the playing field with larger shippers, who all electronically monitor the pipeline's EBB. CMS does not have the ability to electronically monitor the bulletin board.²⁴ The parties agree that the volume, timing and rate of the releases are presumptively prudent.²⁵ Cascade and CMS state that they "reasonably believe that the arrangement ... is not inconsistent with any Federal Energy Regulatory Commission (FERC) requirements."²⁶ Cascade further agrees to hold its customers harmless if FERC determines the provisions violate its rules or requirements.

¹⁹ *Id.*; Exh. 6, Narrative, ¶ 22.

²⁰ Exh. 1, Settlement, ¶ 21; Exh. 6, Narrative, ¶ 22.

²¹ Exh. 6, Narrative, ¶ 41.

²² Exh. 1, Settlement, ¶ 22; Exh. 6, Narrative, ¶ 23.

²³ Exh. 1, Settlement, ¶ 22.

²⁴ *Id.*, ¶ 22 (b); Exh. 6, Narrative, ¶ 41.

²⁵ Exh. 1, Settlement, ¶ 22 (d).

²⁶ *Id.*

III. Discussion and Decision

29 The Commission may accept a proposed settlement, with or without conditions, or may reject it.²⁷ In reviewing a settlement, we must “determine whether a proposed settlement meets all pertinent legal and policy standards.”²⁸ Specifically, we may approve settlements “when doing so is lawful, when the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.”²⁹ The Commission has described this standard as “a three-part inquiry”:

(1) We ask whether any aspect of the proposal is contrary to law; (2) We ask whether any aspect of the proposal offends public policy; and (3) We ask if the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.³⁰

30 Having reviewed the Settlement and accompanying Narrative Statement, the responses to bench requests, and having heard testimony, we find that the Settlement satisfies these criteria for the reasons discussed below. We approve the Settlement on condition that Cascade hold core customers harmless in the event a replacement shipper defaults on the terms of its award of pipeline capacity released by Cascade under the terms of the Settlement.

31 The provisions in the Settlement concerning Cascade’s winding down of unbundled retail sales and brokering activities by October 31, 2008, the transfers of contracts from CGC Energy to Cascade and tariff modifications necessary to allow Cascade to continue to make sales under existing contracts fairly and reasonably resolve the disputed issues in CMS’ complaint against Cascade, and Cascade’s tariff and affiliated interest filings. The Settlement ensures that Cascade will share with core customers the net margins on sales made under contracts held by CGC Energy or by Cascade, until Cascade ceases unbundled retail sales and brokering activity. These provisions resolve Staff’s concerns that Cascade is not complying with the terms of the rate case settlement in Docket UG-060256. Staff’s concerns about Cascade’s gas

²⁷ WAC 480-07-750(2).

²⁸ WAC 480-07-740.

²⁹ WAC 480-07-750(1).

³⁰ *Washington Utilities and Transportation Commission v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-032065, Order 06 at 26, ¶ 59 (October 2004) [*WUTC v. PacifiCorp*].

procurement strategies for core customers are appropriately addressed by Cascade's agreement to modify its procurement strategies.

32 Cascade's agreement to make certain capacity releases in paragraph 22 of the Settlement appears reasonable on its face. Cascade provides, through Exhibit C to the Settlement, information about the proposed capacity releases that is now publicly available to any interested person. However, paragraph 22(b), in which "Cascade will provide solely to CMS at least 48 hours ... advance notice of the posting of such [capacity] releases on the EBB," may appear to provide an unfair or anticompetitive preference or advantage to CMS. Such a preference would not be appropriate under RCW 80.28.090 and RCW 80.28.100, the very statutes on which CMS bases its complaint against Cascade. After the parties provided additional information in response to bench requests and in hearing about the process for offering, bidding on and awarding the proposed releases, we are persuaded that CMS receives no unfair advantage under this provision.

33 In describing the process for accomplishing capacity releases under the pipeline's electronic bulletin board (EEB), the parties state that a "capacity release" relates to a transaction by a shipper, such as Cascade, holding firm capacity under contract with a pipeline, in which the shipper agrees to release or sell capacity for use by a "replacement shipper."³¹ The parties further describe that under FERC rules,³² a shipper may either auction capacity to the highest bidder on a public bulletin board, such as the Northwest Pipeline EBB, or may contract at the maximum price in the pipeline's tariff with a replacement shipper of its choosing.³³ Under an auction process, the shipper posts its release of capacity offer on the EBB, either at the pipeline's full tariff rate or a discount.³⁴ Pipeline customers with a valid user ID may post a bid on the offered release. If the shipper demands the full tariff rate, there is no competitive price auction. Under such circumstances, the EBB administrator awards the winning bid to the first-in-time bidder.

³¹ Exh. 7, Joint Response to Bench Request No. 2.

³² See 18 C.F.R. § 284.8 (a) – (e).

³³, Exh. 7, Joint Response to Bench Request No. 2, quoting from *Pan-Alberta Gas, Ltd. v. FERC*, 251 F.2d 173, 174-75 (D.C. Cir. 2001).

³⁴ *Id.*

34 The capacity release proposed in paragraph 22 is not a privately contracted release, but an auctioned release at the full tariff rate, i.e., not a competitive auction under the EBB process. The parties explain that some large shippers electronically monitor the EBB for postings constantly, whereas CMS lacks this monitoring capability. The parties are not aware of any other competitive shipper who is similarly situated to CMS, lacking the ability to electronically monitor the pipeline's EBB. The parties assert that CMS would have no chance of acquiring Cascade's released capacity without advanced notification, and that even with the advanced notice, there is no guarantee that CMS will be the first to post a bid or be awarded the bid by the EBB administrator. The parties assert that because pre-arranged releases to a single shipper at the full tariff rate are allowed under FERC rules, allowing advanced notice of posting to the EBB does not harm other parties or shippers and does not give CMS an unreasonable preference or advantage.³⁵ CMS, Cascade and Staff further assert that the proposed arrangement in paragraph 22 is not inconsistent with any FERC requirements.³⁶ Under these circumstances, we find that the provisions of paragraph 22(b) merely provide CMS with an opportunity to bid on the proposed capacity releases and do not provide CMS with an unfair advantage or preference.

35 We are concerned, however, that the nature of the capacity release process creates some risk that Cascade's core customers may bear some costs unfairly. In a capacity release, when the pipeline administrator decides the winning bid, the winner enters into a new capacity contract with the pipeline as the replacement shipper. The replacement shipper pays the agreed price to the pipeline directly, not to the releasing shipper. The pipeline will then credit the releasing shipper's account, but the releasing shipper must pay to the pipeline any balance due under the original contract it holds with the pipeline, which remains in effect.³⁷ Thus, after a replacement shipper is awarded the capacity releases identified in the Settlement, Cascade remains liable to the pipeline for the rate set forth in its original contract. Should the replacement shipper default under its replacement contract with the pipeline, Cascade

³⁵ *Id.*, Joint Response to Bench Request No. 3.

³⁶ *Id.*, Joint Response to Bench Request No. 4.

³⁷ Exh. 7, Joint Response to Bench Request No. 2, citing *Pan-Alberta Gas*, , 251 F.2d at 174-175; 18 C.F.R. § 284.8(f). .

would bear the liability for these losses and could look to core customers to pay the costs for the defaulted contracts.³⁸

36 The record before us is insufficient to determine with any precision what, if any, benefit core customers derive from the capacity Cascade would release under the terms of the Settlement. It seems reasonable, however, to presume that the released capacity is not needed to serve core customers. If that is so, then it is reasonable to insulate core customers from any risk of default by a replacement shipper. On balance, we find it appropriate to condition our 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. This condition is intended to ensure core customers are not burdened by any costs Cascade may incur in the event a replacement shipper defaults.³⁹

37 In paragraphs 21(c) and 22(d) of the Settlement, the parties agree that the revisions to Cascade's gas procurement strategies and practices, the steps to implement the strategies and the volume, timing and rate of capacity releases are "presumptively prudent." The parties confirmed during the hearing that their agreement in this regard is not intended to, and does not bind the Commission to any finding or result in future proceedings.

38 Settlements "are by nature compromises of more extreme positions that are supported by evidence and advocacy."⁴⁰ We find the overall result in this Settlement, with the condition described above, to be reasonable, well supported by the evidence, in the

³⁸ The replacement shipper's relationship to Cascade is analogous to that of a sublessor to a primary leaseholder. If the sublessee defaults and does not pay the rent, the lessee remains responsible to the lessor for the monthly rent.

³⁹ We note that the Settlement terms weaken the credit protections afforded Cascade under the FERC rules, and may expose the Company to additional risk of default by a replacement shipper. See Paragraph 22 (c). Under the applicable rules, Cascade may require replacement shippers to comply with more stringent credit terms than those required by the pipeline. Cascade has forgone this protection and agreed, as to the capacity releases covered by the Settlement, to rely solely on the pipeline's credit requirements. This further supports our decision to condition our acceptance on Cascade bearing the risk of default by a replacement shipper for these releases. Core customers (ratepayers) should not be responsible to bear this risk where Cascade has relinquished its right to require more stringent credit terms.

⁴⁰ *WUTC v. PacifiCorp*, ¶ 61.

public interest, and lawful. The Settlement fully resolves the issues in the four dockets, conserving valuable party and Commission resources that would otherwise be devoted to litigation. Although Cascade leaves the market reluctantly, the Company realizes its continued participation would result in continued controversy and increased Commission oversight.⁴¹ The Settlement removes Staff's and Public Counsel's concerns about the impact of Cascade's activities on core customers and may benefit those customers.⁴²

39 In sum, after reviewing the Settlement and evidence in the record in these dockets, we approve it on condition, and approve the proposed transfer of contracts from CGC Energy to Cascade,⁴³ dismiss the complaint and order suspending the February 12, 2007, proposed tariff revisions, approve the tariff revisions proposed in the Settlement, and require Cascade to file tariff pages in compliance with this Order within five business days of the effective date of this Order. We also find that the four dockets addressed in the Settlement – Dockets UG-061256, UG-070332, UG-070639 and UG-072337 – should be closed after the Commission's Executive Secretary issues a letter accepting the Company's compliance filing.

FINDINGS OF FACT

40 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:

41 (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.

⁴¹ Exh. 6, Narrative, ¶ 32.

⁴² *Id.*, ¶¶ 31, 32, 34, 36, 37-38.

⁴³ Although RCW 80.16.020 requires only filing of affiliated interest transactions with the Commission and does not require approval, for purposes of approving the Settlement, we approve the transaction.

- 42 (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 in the business of supplying utility services and natural gas to the public for compensation.
- 43 (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.
- 44 (4) On August 1, 2006, CMS filed a formal complaint against Cascade in Docket UG-061256 asserting that Cascade was violating state law by selling natural gas at retail to non-core customers in its service territory without tariffs, special contracts or other Commission-regulated mechanisms in place.
- 45 (5) On February 12, 2007, Cascade filed with the Commission in Docket UG-070332 revisions to its Tariff, WN U-3, reflecting gas supply service options available to non-core customers. The Commission suspended Cascade’s tariff filing on March 14, 2007.
- 46 (6) On March 30, 2007, Cascade filed with the Commission a letter in Docket UG-070639 stating that it was reactivating its affiliate, CGC Energy, to make retail sales of natural gas to non-core customers, including customers outside of Cascade’s service territory.
- 47 (7) On December 7, 2007, the Commission issued a complaint against Cascade in Docket UG-072337, alleging that the Company had not complied with the terms of a settlement agreement reached in its general rate case in Docket UG-060256.
- 48 (8) On February 7, 2008, the parties filed a full Settlement Agreement that, if approved, would resolve the contested issues in all four pending dockets.

- 49 (9) The capacity release proposed in paragraph 22 of the Settlement is an auctioned release at the full pipeline tariff rate, not a competitive auction under the Northwest Pipeline's electronic bulletin board (EBB) process. The winning bid will be determined by the first bid in time after the posting of the release on the EBB.
- 50 (10) Other likely bidders electronically monitor the EBB and have the ability to immediately bid upon the posting of the release on the EEB.
- 51 (11) CMS does not have the ability to electronically monitor the EEB and therefore is unlikely to successfully bid against those with such abilities.
- 52 (12) There are no other known likely bidders who are similarly situated to CMS, without the ability to electronically monitor the EEB.
- 53 (13) Advance notice of Cascade's posting of a capacity release offer on the pipeline's electronic bulletin board only gives CMS the opportunity to post a bid on the EEB but does not guarantee its bid will be successful.
- 54 (14) While Cascade will be releasing pipeline capacity to a replacement shipper, Cascade remains ultimately liable to the pipeline for the amount of the original contract in the event the replacement shipper defaults on its contract with the pipeline.

CONCLUSIONS OF LAW

- 55 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:
- 56 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, this proceeding.

- 57 (2) The Settlement Agreement filed by all parties in the four related dockets on February 7, 2008, if approved, would result in rates and practices for Cascade in making and winding down unbundled retail sales of natural gas that are fair, just, reasonable and sufficient, and are neither unduly preferential nor discriminatory.
- 58 (3) Paragraph 22(b) of the Settlement does not provide CMS an unfair advantage in bidding on Cascade's proposed releases of pipeline capacity.
- 59 (4) It would not be fair, just and reasonable for Cascade's core customers to have any liability for the costs of Cascade's contract with the pipeline if a replacement shipper defaults on its award of pipeline capacity that Cascade released under the terms of paragraph 22 of the Settlement.
- 60 (5) Approval and adoption of the Settlement, attached as an appendix to this Order and incorporated by this reference, as conditioned, is in the public interest, is a reasonable resolution of the disputed issues, and is lawful.
- 61 (6) Cascade should be required to make such compliance and subsequent filings as are necessary to effectuate the terms of this Order.
- 62 (7) The Commission should retain jurisdiction to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS:

- 63 (1) The proposed tariff revisions Cascade Natural Gas Corporation filed on February 12, 2007, in Docket UG-070332, and revised in Exhibit B to the Settlement Agreement are approved, and the Complaint and Order Suspending Tariff Revisions entered on March 14, 2007, is dismissed.
- 64 (2) The transfer of any existing contracts for unbundled retails sales of natural gas to non-core customers from CGC Energy, Inc., an affiliate of Cascade Natural Gas Corporation, to Cascade Natural Gas Corporation, is approved.

- 65 (3) The Settlement Agreement filed by the Parties on February 7, 2008, which is attached as an appendix to this Order and incorporated by reference, 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.
- 66 (4) Cascade Natural Gas Corporation is required to make a compliance filing within five days of the effective date of this Order, including such new and revised tariff sheets as are necessary to implement the requirements of this Order.
- 67 (5) The Commission Secretary is authorized to accept by letter, with copies to all parties to this proceeding, such filings as Cascade Natural Gas Corporation makes to comply with the terms of this Order.
- 68 (6) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective March 6, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.