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Commenting Party's Name:	Cost Management Services, Inc.
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Cost Management Services, Inc. ("CMS") is an independent marketer of natural gas throughout Washington and Oregon. CMS submitted written comments on April 23, 2010 and June 4, 2010. CMS also participated in each of the two workshops conducted in this proceeding. This document contains CMS' statements of position regarding each of the following four policy options identified in the Commission's supplemental notice of July 2, 2010:

1) Full decoupling, including all declines and all increases in sales from any source.
2) Lost margin adjustment for declines in sales due only to company sponsored conservation efforts.
3) Attrition adjustment based on the results of an attrition study.
4) An independent conservation provider (*i.e.* similar in concept to the Energy Trust of Oregon).

As before, our comments relate to the Commission's regulation of jurisdictional gas companies.

<u>None of the First Three Policy Options Has Any Real Merit</u>

Each of the first three policy options would represent a labor-intensive attempt to offset the adverse effects of regulatory shortcomings that are part of the status quo:

- The failure of rates to send accurate price signals to consumers, and
- The false expectation that ratemaking can overcome the divided loyalties and inherent conflict of interest that result from forcing utilities to compete against themselves by simultaneously running both an energy sales business and an energy-conservation/efficiency business.

The first regulatory shortcoming is one of rate-design. Whether the policy option is described as "decoupling," "lost-margin adjustment," or "attrition-adjustment," the problem in search of remedy is how to permit a utility to recover its allowed fixed costs when its sales volumes decline due to energy conservation or energy efficiency.[1] It takes no leap of logic to see that fixed costs will necessarily go unrecovered, from time to time, to the extent they must be recovered, if at all, through volumetric rates. This problem could be largely ameliorated, if not solved entirely, if the Commission would design rates so that fixed costs were recovered through

[1] Actually, the first policy option is phrased so broadly that it covers sales-volume variations due to any cause whatsoever.

fixed charges (demand charges and customer charges), rather than through volumetric rates that are currently designed to recover a combination of both variable costs and fixed costs.[2]

The second regulatory shortcoming was addressed throughout CMS' comments dated June 4, 2010. Entrusting the conflicting objectives of energy sales and energy conservation to the same regulated entity would make sense only if there were no alternative. Clearly, such an alternative exists in the form of an independent entity modeled on the Energy Trust of Oregon ("ETO"). Using the same ratepayer-contributed funds that currently support utility-sponsored conservation, an independent entity, like ETO, could devote itself singly to the task of developing conservation and energy efficiency, leaving it to the State's utilities to devote themselves singly to the business of running regulated energy companies. No conflict of interest.

To the extent I-937 might be construed to complicate the question of how best to pursue conservation, CMS notes that this law does not apply to gas companies. This should make the regulatory solution for gas companies an easier case.[3]

CMS also reiterates a point it made in its comments of June 4 – a point amplified by Public Counsel at the Commission's second workshop. If the Commission decides, as a matter of public policy, to insulate utilities against the risks associated with "all declines and all increases in sales from any source," it will have effectively shifted all the risk of the utility business from shareholders to the State's ratepayers. The reward for such a riskless enterprise is not the return on equity now awarded utilities. Instead, it may be more analogous to the average cost of long-term debt for a public utility district. It seems highly unlikely that any utility would accept that sort of return in return for decoupling, a lost-margin adjustment, or an attrition adjustment.

Finally, CMS suggests that the Commission consider practical limitations in the efficacy of ratemaking solutions like the ones encompassed in the first three policy options identified in the July 2 Notice. Most rate cases before the Commission are concluded through negotiated settlements. Given the frequency with which the State's utilities have been filing rate cases, it could hardly be otherwise. Settlements rarely advance new policy directives clearly and crisply. Instead, they are negotiated armistices reflecting the minimum level of compromise with which

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[2] To the extent strict adherence to fixed/variable pricing might be perceived to work some hardship on low-income consumers, the solution is not to persist in designing rates to recover fixed costs volumetrically. Instead, the solution better lies, within the residential class, in the design of residential customer charges that recover all of the fixed costs allocated to that class.

[3] It should be noted, however, that in Oregon the Energy Trust operates in a regulatory environment in which that State's electric utilities also face statutory conservation obligations. Perhaps the Commission could divide up conservation responsibilities under I-937, directing utilities to focus on "high-efficiency cogeneration owned and used by a retail electric customer to meet its own needs," and reserving for an independent third-party, like ETO, the development of energy conservation and efficiency, using the ratepayer funds collected by utilities.

all parties were willing to live, rather than go to hearing. Trying to advance conservation through such a mechanism would be acting through indirection.

Conservation Development Should be Entrusted to an Independent Provider

It is worth repeating that the ETO is never mentioned in Oregon statutes. Instead, ETO is the independent entity created by the Oregon Public Utility Commission to spearhead Oregon's energy conservation efforts, using funds collected through a statutorily created "public purpose charge." In Washington, this Commission has already established administratively a variant of the public purpose charge, collected by Washington's regulated suppliers as a part of retail rates. CMS sees no reason why this Commission could not follow the path already established in Oregon as the best way to spend those ratepayer funds in the service of conservation and energy efficiency. The Commission would be well-advised to craft its expectations into a contract with that third party, much like the contract between the Oregon PUC and ETO.[4]

As we stated in earlier comments, any concern about this Commission's legal authority to follow Oregon's example should not be allowed to frustrate immediate action. If the Commission has legal concerns, it should still act now, possibly seeking legislative ratification of its actions in the next session of the Legislature.

To reiterate comments submitted by CMS in April, we ask that the Commission not lose sight of its other public policy goals in enhancing its commitment to conservation. One of those goals is competition. Regulated gas companies should not be permitted to tie a customer's conservation grants to that customer's continued purchase of natural gas from that gas company. This problem relates specifically to the grant agreements of Puget Sound Energy ("PSE"), but may also affect the grant agreements of other gas companies. Competition should work hand-in-hand with conservation. The Commission need not, and should not, sacrifice one for the other.

Creation of an independent conservation entity, modeled on ETO, would completely avoid this anticompetitive situation. To the extent large customers participated in conservation-grant arrangements, they could then do so through contracts with the independent entity, not with its local gas company. Under this arrangement, there would be no opportunity to tie grant money to continued commodity purchases from the grant recipient's regulated gas company.

If the Commission were to continue the status quo under which utilities and gas companies both supply energy and play the lead role in conservation, CMS believes that it should require PSE and other regulated entities that execute conservation-grant agreements with their customers to file such agreements as "special contracts" pursuant to WAC 480-80-143(1), which provides:

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[4] Perhaps another Washington State entity like the Washington State Building Code Council might also become a signatory to such an agreement in as much as stricter building codes are an important part of the energy conservation/efficiency solution.

Gas, electric, and water companies must file with the commission all contracts for the retail sale of regulated utility services to end-use customers that:

(a) State charges or conditions that do not conform to the company's existing tariff; or

(b) Provide for utility services not specifically addressed in the gas, electric, or water company's existing tariffs.

Both WAC 480-80-143(1)(a) and (b) are implicated by such agreements. PSE grant agreements require the continued "retail sale of regulated utility services" "to end-use customers" that receive grants, even though the grants are not funded by PSE. Either or both the conservation grant and the tied-in sale of gas are utility services provided on terms "not specifically addressed in the gas, electric, or water company's existing tariffs."

In sum, CMS asks the Commission to do each of the following:

1. Transfer conservation responsibility to an independent third party, modeled on the Oregon experience with ETO, for regulated gas companies, even if not also for regulated electric utilities.

2. Direct PSE and other regulated entities that employ conservation-grant agreements with their customers to remove or cease enforcing any provision in such agreements that ties receipt of a grant to continued purchase of electricity or gas from the regulated entity. This will allow customers to purchase transportation services from the regulated entity, while sourcing their commodity supply in competitive energy markets.

3. Direct PSE and other regulated entities that employ conservation-grant agreements with their customers to file such agreements as special contracts pursuant to WAC 480-80-143(1).