

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

TREE TOP, INC.,

Complainant,

v.

CASCADE NATURAL GAS
CORPORATION,

Respondent.

DOCKET UG-210745

CASCADE NATURAL GAS CORPORATION
RESPONSE TESTIMONY OF LORI BLATTNER

May 12, 2022

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY	1
II. DESCRIPTION OF THE PARTIES	6
III. SCHEDULE 663 UNAUTHORIZED OVERRUN ENTITLEMENT CHARGES	7
IV. THE REASONABLENESS OF CASCADE’S OVERRUN CHARGES	15
V. THE IMPACTS OF GRANTING TREE TOP’S REQUESTED RELIEF	26
VI. RECOMMENDATION	27

1 **I. INTRODUCTION AND SUMMARY**

2 **Q. Please state your name, business address, and position at Cascade Natural Gas**
3 **Corporation (Cascade or Company).**

4 A. My name is Lori Blattner, and I am the Director of Regulatory Affairs for Cascade and
5 Intermountain Gas Company (Intermountain). My business address is 8113 W. Grandridge
6 Blvd., Kennewick, WA 99336-7166.

7 **Q. Please summarize your educational background and business experience.**

8 A. I graduated from the University of Idaho in 1993 with a Bachelor of Science degree in
9 Agricultural Economics. I joined Intermountain in 1997 as a Regulatory Analyst and was
10 responsible for cost of service, rate design, and weather normalizations, as well as other
11 regulatory issues. I was promoted to Manager, Energy Efficiency and Regulatory Process
12 in 2017. In that role, I was responsible for cost of service and weather normalization as
13 well as launching Intermountain's Energy Efficiency program. I was promoted to Director
14 of Regulatory Affairs for Intermountain in 2019 and to my current position in 2021. In my
15 current role, I am responsible for all regulatory activity in Idaho, Oregon, and Washington,
16 as well as the Energy Efficiency programs for both Cascade and Intermountain.

17 **Q. What is the purpose of your response testimony?**

18 A. The purpose of my testimony is to: (1) explain why Cascade's Tariff Schedule 663
19 (Schedule 663) overrun entitlement charges are necessary to ensure transportation
20 customers bring on adequate gas supplies during critical operational periods; (2)
21 demonstrate why it would not be appropriate to order Cascade to refund overrun charges
22 that were assessed to transportation customers in connection with the February 2021
23 entitlement period that were based on Cascade's lawfully filed tariff and preview the issues

1 that might result should the Washington Utilities and Transportation Commission (WUTC
2 or Commission) grant Tree Top, Inc.’s (Tree Top) request for extraordinary relief; and (3)
3 explain that Cascade would need to refund all transportation customers that incurred
4 overrun entitlement charges during the February 2021 entitlement period—which would
5 in turn require Cascade to claw back the overrun charge revenues from its core customers
6 through its Purchased Gas Adjustment (PGA) mechanism—if the Commission were to
7 grant such novel relief. I also respond to the direct testimony of Tree Top’s witness Bradley
8 G. Mullins (Mr. Mullins) and introduce the other Cascade witness who will offer testimony
9 in this case.

10 **Q. Please summarize your testimony.**

11 A. Transportation customers like Tree Top are responsible for purchasing their own gas and
12 delivering it to Cascade’s local distribution network. Cascade does not purchase or store
13 gas for its transportation customers, nor does Cascade “cut off” transportation customers
14 once they have consumed the quantity of gas they have brought into the system. Instead,
15 when transportation customers consume more gas than they have delivered, they either
16 take gas that Cascade procured for its core customers, or, if available, excess gas from other
17 transportation customers. During normal (non-entitlement) operating conditions,
18 transportation customers must balance their gas consumption monthly and make up for any
19 imbalances by bringing on additional gas within 45 days thereafter. However, the
20 unauthorized use of gas during entitlement periods may threaten the integrity of Cascade’s
21 distribution system and Cascade’s ability to deliver gas to its core customers because
22 Cascade declares entitlement periods during critical operational conditions when the
23 availability of gas is not certain. Therefore, Cascade’s tariff allows Cascade to impose

1 overrun entitlement charges to incentivize its transportation customers to bring on adequate
2 gas during periods when doing so is especially critical.

3 The overrun entitlement charges that Cascade imposed on Tree Top during the
4 February 2021 entitlement period at issue in this proceeding were calculated using
5 Cascade's lawfully filed tariff and were necessary to modify transportation customer
6 behavior. The charges are set at 150 percent of the highest midpoint price for the day at
7 certain regional trading hubs as a financial disincentive to prevent transportation customers
8 from gaming the system by taking lower priced gas purchased by Cascade for its core
9 customers and paying an overrun charge instead of securing additional gas themselves in a
10 higher priced open market. During constrained periods, Cascade may need to purchase
11 additional gas on the spot market, potentially including gas based on pricing at South of
12 Green River NW (Green River). Failure to include a regional trading hub to which Cascade
13 is potentially exposed would diminish the value of the overrun entitlement charge
14 mechanism because the transportation customer would not have the same exposure as
15 Cascade. That is, the February 2021 overrun entitlement charges would not have worked
16 as designed if they were not tied to the Green River market because the overrun charges
17 must be greater than the market prices to which Cascade is potentially exposed to make it
18 more expensive for transportation customers to take core customer gas than it would be for
19 the customer to procure the gas themselves. If the charges were not structured this way, a
20 transportation customer would have a financial incentive to put the burden of securing
21 additional gas on Cascade or even to exploit the market pricing by diverting its previously
22 nominated gas away from Cascade's system and to the higher priced regions. Thus, the
23 charges for unauthorized overruns incentivize transportation customers to properly balance

1 their gas loads and to bring on additional gas as needed to protect the integrity of the
2 upstream pipeline and Cascade’s local distribution system and to limit Cascade’s need to
3 rely on stored reserves that were purchased for Cascade’s core customers. Though Cascade
4 and its core customers were not harmed in this instance, that fact does not make these
5 charges any less reasonable. Indeed, most transportation customers (approximately 67
6 percent) did not incur overrun charges, indicating the mechanism worked as designed.

7 Tree Top argues that the majority of the overrun entitlement charges Cascade
8 imposed were unreasonable because the market on which the charges were based was
9 “dysfunctional” and therefore asks the Commission to refund the allegedly unreasonable
10 charges. Specifically, Tree Top seeks to base the charges on a different market, ostensibly
11 because that market is “the most liquid” trading hub in the region, but practically because
12 doing so would result in lesser charges. Tree Top thereby asks Cascade to deviate from
13 the terms of its tariff and asks the Commission to use its power under RCW 80.04.220 in
14 a novel way. My understanding of Commission precedent is that the Commission itself
15 regularly utilizes penalties to influence behavior and has never exercised its authority under
16 RCW 80.04.220 in the way that Tree Top requests it to do here. Cascade acknowledges
17 that the overrun charges in this instance were higher than they have been in the past—and
18 higher than Tree Top likely expected—but Cascade appropriately applied its tariff, and the
19 charges were not excessive or exorbitant given the market conditions.

20 Granting Tree Top’s request for extraordinary relief could open the door to similar
21 claims at the Commission wherein customers argue that lawfully filed rates are
22 unreasonable as applied—for one reason or another—and therefore warrant reparations.
23 Such collateral attacks on filed rates could serve to undermine the certainty provided by

1 tariffs and result in utilities effectively relitigating rates and charges, which would result in
2 an unnecessary and inappropriate waste of Commission and stakeholder resources. The
3 overrun entitlement charges Cascade imposed on Tree Top were based on tariff language
4 the Commission already approved and were necessary and appropriate to incentivize
5 appropriate behavior and therefore should not be disturbed.

6 If disturbed, Cascade will have to claw back the overrun charge revenues from its
7 core customers because the revenues from the February 2021 overrun entitlement charges
8 that Cascade collected were applied to Cascade's 2021 PGA mechanism. That is, the
9 penalty revenues—which amounted to approximately \$1 million in total¹—were applied
10 to Cascade's PGA to offset other adjustments. To avoid discrimination among Cascade's
11 transportation customers, it is Cascade's understanding that issuing refunds to Tree Top
12 will require Cascade to refund *all* transportation customers that paid February 2021 overrun
13 entitlement charges and debit its next PGA filing to recover these amounts from its core
14 customers.

15 Cascade takes its obligation to serve its core customers seriously. The overrun
16 charge mechanism in Cascade's Schedule 663 appropriately incentivizes Cascade's
17 transportation customers to balance their gas consumption during critical operation periods
18 by making it more expensive to take gas from Cascade's core customers than to buy gas
19 on the open market. The overrun charges promote Cascade's goals of maintaining system
20 integrity and the availability of gas for its core customers during times when supply may
21 be constrained. Conversely, granting Tree Top the relief it requests would threaten these
22 goals by sending the wrong message to Tree Top and other transportation customers and

¹ The total value of the February 2021 overrun entitlement charges was \$1,022,436.45. Washington customers incurred approximately \$910,000 of these penalties.

1 would unfairly and unjustifiably place the risks and burdens created by a transportation
2 customer's failure to balance their usage on the shoulders of Cascade's core customers and
3 other transportation customers. In short, Cascade's overrun charges are a fair and
4 reasonable means of incentivizing appropriate behavior by transportation customers and
5 Cascade applied the overrun charges pursuant to its lawfully filed tariff.

6 **Q. Are there any other witnesses testifying on behalf of Cascade in this case?**

7 A. Yes. Christopher Robbins will offer testimony on behalf of Cascade's Gas Supply group.
8 In his testimony, which I will refer to as the "Gas Supply Testimony," Mr. Robbins will
9 provide additional information on Schedule 663 Distribution System Transportation
10 Service, describe the February 2021 overrun entitlement period in greater detail, review
11 Tree Top's overrun entitlement charges, and explain why the Schedule 663 overrun
12 entitlement charges are necessary to maintain system integrity and protect Cascade's core
13 customers during critical operational periods.

14 **Q. Are you sponsoring any exhibits in this proceeding?**

15 A. Yes, I sponsor the following exhibit:

- 16 • Exhibit LB-2, Washington Natural Gas Utilities' Entitlement Penalty Tariffs

17 II. DESCRIPTION OF THE PARTIES

18 **Q. Please provide a brief overview of Cascade.**

19 A. Cascade provides natural gas distribution service in 96 communities in Washington and
20 Oregon, with headquarters in Kennewick, Washington. Cascade is a wholly owned
21 subsidiary of MDU Resources Group, Inc., which is located in Bismarck, North Dakota,
22 and is a "public service company" and therefore subject to the regulatory authority of the
23 WUTC.

1 **Q. Please briefly explain the relationship between Cascade and Tree Top.**

2 A. Tree Top is a natural gas transportation customer of Cascade and receives natural gas
3 through Cascade’s local distribution system at four different Tree Top facilities in
4 Washington under Cascade’s Schedule 663, including two facilities in Selah (“Ross Plant”
5 and “Juice Plant”), one in Prosser, and one in Wenatchee. As a natural gas transportation
6 customer, Tree Top arranges its own gas supply, which Cascade delivers through its natural
7 gas distribution system. This relationship and Tree Top’s duties and responsibilities as a
8 transportation customer are explained in greater detail in Cascade’s Gas Supply Testimony.

9 **III. SCHEDULE 663 UNAUTHORIZED OVERRUN ENTITLEMENT CHARGES**

10 **Q. Please provide a brief overview of Cascade’s Schedule 663.**

11 A. Schedule 663 provides transportation service on Cascade’s distribution system of
12 customer-supplied natural gas.² For purposes of my testimony, I will refer to customers
13 taking service under Schedule 663 as Transportation Service Customers. A Transportation
14 Service Customer must secure both its gas supply and pipeline transportation capacity
15 services through third party arrangements.³ In other words, the Transportation Service
16 Customer purchases its own natural gas and arranges for that gas to be transported to
17 Cascade’s natural gas distribution system through an upstream pipeline. Cascade then
18 delivers natural gas to the Transportation Service Customer using Cascade’s natural gas
19 distribution system.⁴ Service under Schedule 663 is subject to curtailment (limiting the
20 amount of gas that a customer may use) and entitlement (creating a financial incentive to

² Confidential Response Testimony of Christopher Robbins (Robbins), Exh. CR-3, Schedule 663 at 1.

³ Robbins, Exh. CR-3, Schedule 663 at 1.

⁴ To be clear, the gas the customer arranges to have brought into Cascade’s system is not necessarily, and not likely to be, the same gas that the customer uses. The general framework of Schedule 663 is that the customer “nominates”—or brings on—an amount of natural gas for a given day meant to equal the amount of natural gas it intends on using during that day.

1 align gas supply with consumption).

2 **Q. Please provide additional discussion regarding the entitlement of service under**
3 **Schedule 663.**

4 A. Cascade may declare an entitlement on any day Cascade, in its sole discretion, reasonably
5 determines a critical operational condition warrants the need. During an entitlement
6 period, a Transportation Service Customer must balance its prescheduled natural gas usage
7 with its actual gas usage within a certain threshold percentage daily or be subject to overrun
8 or underrun entitlement charges on its unauthorized gas volumes (Entitlement Period).

9 **Q. What types of factors might Cascade consider in determining that a critical**
10 **operational condition warrants the need for an Entitlement Period?**

11 A. This is not an exhaustive list, but Cascade might consider factors such as capacity
12 constraints, supply interruptions, or the existence of any undertake or overtake situation
13 that threatens to jeopardize system integrity.

14 **Q. Would Cascade declare an Entitlement Period for a reason other than a critical**
15 **operational condition on its distribution system?**

16 A. Yes. Cascade may declare an Entitlement Period because one of its upstream pipelines
17 declared an Entitlement Period.

18 **Q. Why would Cascade declare an Entitlement Period because its upstream provider**
19 **declared an Entitlement Period?**

20 A. Cascade may follow the declaration of the upstream provider for two main reasons. First
21 and foremost, to help ensure the operational integrity of the upstream pipeline, which is the
22 source of Cascade's natural gas and which, if compromised, would inhibit Cascade's
23 ability to provide gas to its core customers. Second, to avoid incurring entitlement charges

1 from the upstream pipeline.

2 **Q. Do the upstream pipelines also have Entitlement Period charges in their tariffs?**

3 A. Yes. Cascade is subject to similar entitlement charges in the tariffs of its upstream
4 pipelines, tariffs that were approved by the Federal Energy Regulatory Commission
5 (FERC). For example, Northwest Pipeline, LLC's tariff (Northwest Pipeline) allows
6 Northwest Pipeline to declare Entitlement Periods and charge its customers for
7 unauthorized use of gas during its Entitlement Periods.⁵ The framework for Northwest
8 Pipeline's overrun entitlement charges (150 percent of highest market hub) is quite similar
9 to the framework in Cascade's tariff.⁶

10 **Q. Do other gas utilities subject to the Commission's jurisdiction also impose charges for**
11 **unauthorized use of gas during Entitlement Periods?**

12 A. Yes, Avista Corporation, dba Avista Utilities (Avista), Northwest Natural Gas Company
13 (NW Natural), and Puget Sound Energy (Puget), all have similar tariff language for overrun
14 entitlement charges.⁷

15 **Q. Does Schedule 663 allow Cascade to declare both overrun and underrun**
16 **entitlements?**

17 Yes, Cascade will designate each Entitlement Period as either an overrun Entitlement
18 Period (Overrun Entitlement) or an underrun Entitlement Period (Underrun Entitlement),
19 and only one condition may exist at a time. During an Overrun Entitlement, a
20 Transportation Service Customer is entitled to take delivered natural gas volumes equal to
21 the amount of natural gas it nominated for that gas day, as gas day is defined in Cascade's

⁵ Northwest Pipeline, FERC Gas Tariff, Fifth Revised Volume No. 1, § 15.5(a-c), Tree Top Exhibit BGM-5 at 12-13.

⁶ *Id.* at 13 (The "rate per Dth [is] set forth in the Statement of Rates of this Tariff").

⁷ Exhibit LB-2, Washington Natural Gas Utilities' Entitlement Penalty Tariffs.

1 tariff (Gas Day)⁸, plus a Company-specified tolerance. During an Underrun Entitlement,
2 a Transportation Service Customer is entitled to take less gas than it nominated for that Gas
3 Day within a Company-specified tolerance.

4 **Q. Please explain what you mean by a “Company-specified tolerance.”**

5 A. For each Overrun Entitlement and Underrun Entitlement it declares, Cascade will specify
6 the percentage by which a Transportation Service Customer’s unauthorized overruns or
7 underruns may differ from its daily nominations before Cascade will apply entitlement
8 charges.

9 **Q. Will you please give an example using an Overrun Entitlement?**

10 A. Yes, the Company declared an eight percent (Stage II) Overrun Entitlement in February
11 2021 (February 2021 Entitlement Period). During a Stage II Entitlement, a Transportation
12 Service Customer is entitled to take up to eight percent more gas each Gas Day than its
13 confirmed nomination for that Gas Day. Gas volumes delivered in excess of that amount
14 (i.e., all volumes exceeding one hundred and eight percent (108%) of the confirmed
15 nomination) constituted an Unauthorized Overrun Volume.

16 **Q. Will you please give an example using an Underrun Entitlement?**

17 A. Yes. During an eight percent (Stage II) Underrun Entitlement, a Transportation Service
18 Customer would be entitled to take up to eight percent less than its confirmed nomination
19 for each gas day during the Underrun Entitlement. If the customer’s underrun exceeded
20 eight percent—for example, if the customer took 12 percent less than its confirmed

⁸ Schedule 663 uses the term “gas day” as defined in Cascade’s tariff Rule 2: “A twenty-four-hour period beginning daily at 7:00 a.m. Pacific Clock Time (PCT), which is Pacific Standard Time or Daylight Savings Time in Kennewick, Washington, whichever is effective at the time of reference. Company’s Gas Day coincides with the Gas Day established in Northwest Pipeline’s tariff, which may change from time to time, upon approval of the Federal Energy Regulatory Commission (FERC).”

1 nomination—the amount by which it exceeded its underrun entitlement (in this example,
2 four percent) would constitute its Unauthorized Underrun Volume.

3 **Q. What charges apply to Unauthorized Underrun Volumes?**

4 A. The Company charges \$1.00 per therm for Unauthorized Underrun Volumes.

5 **Q. What charges apply to Unauthorized Overrun Volumes?**

6 A. The overrun charge that the Company will apply to Unauthorized Overrun Volumes will
7 equal the greater of \$1 per therm or 150 percent of the highest midpoint price for the day
8 at NW Wyoming Pool, NW south of Green River, Stanfield Oregon, NW Canadian Border
9 (Sumas), Kern River Opal, or El Paso Bondad supply pricing points (as published in Gas
10 Daily), converted from dollars per dekatherms to dollars per therm by dividing by ten.⁹
11 The overrun charge is in addition to the incremental costs of any supplemental gas supplies
12 the Company may have had to purchase to cover the Unauthorized Overrun Volumes, in
13 addition to the regular charges incurred in the Rate section of Schedule 663 and any other
14 charges incurred per the Schedule 663 terms and conditions.¹⁰

15 **Q. What is the purpose of charging Transportation Service Customers for Unauthorized**
16 **Overrun Volumes during Overrun Entitlements?**

17 A. The purpose behind the Overrun Entitlement charges is to incentivize Transportation
18 Service Customers to nominate as much gas as they plan on consuming during critical
19 operational periods based on their knowledge of their operations and forecasted gas
20 consumption.

21 **Q. Why is it important for Transportation Service Customers to nominate adequate gas**
22 **supplies during critical operational periods?**

⁹ Robbins, Exh. CR-3, Schedule 663 at 9.

¹⁰ Robbins, Exh. CR-3, Schedule 663 at 9.

1 A. Cascade and the upstream pipelines may declare Entitlement Periods for a variety of
2 reasons, but mostly do so because of capacity constraints, supply interruption, supply
3 shortages or excesses, or the existence of other circumstances that threaten to jeopardize
4 system integrity. These situations all threaten the operational integrity of Cascade’s system
5 and Cascade’s ability to provide gas to its core customers—including residences,
6 businesses, hospitals, and emergency operations centers. Therefore, it is critical that
7 Transportation Service Customers bring adequate supplies onto Cascade’s system to avoid
8 creating a system supply deficiency.

9 **Q. Is this incentive particularly important to Cascade? If so, why?**

10 A. Yes. Cascade is somewhat unique in that approximately 70 percent of the gas flowing
11 through its system is non-core customer-owned gas. That is, Transportation Service
12 Customers bring most of the gas in Cascade’s system into Cascade’s system and are the
13 primary users thereof.

14 **Q. Please explain how Cascade is differently situated than the other Washington LDCs
15 regarding the amount of transport customer gas on its system.**

16 A. As shown in Table 1 below, in comparison with the other LDCs providing service in
17 Washington, Cascade has significantly more transport customer throughput on its system.

1

Table 1

<u>LDC</u>	<u>Core</u>	<u>Transport</u>
Cascade	30%	70%
Avista ¹¹	71%	29%
NW Natural ¹²	81%	19%
Puget ¹³	81%	19%

2 Because the composition of Cascade’s system is heavily weighted toward transport
3 customers, the actions of these customers may have significant impacts on the Company’s
4 ability manage its system and to serve its core customers.

5 **Q. How do the Overrun Entitlement charges encourage Transportation Service**
6 **Customers to nominate adequate gas supplies during Overrun Entitlements?**

7 A. Cascade’s Overrun Entitlement charges are meant to deter Transportation Service
8 Customers from taking gas in excess of nominated amounts during critical operational
9 periods by making it more expensive for them to do so than to purchase and nominate the
10 amount of gas that matches their consumption.

11 **Q. Please explain how this is meant to work in practice.**

12 A. To illustrate, consider Transportation Service Customer A (Customer A), who plans on
13 using and has therefore nominated 1,000 dekatherms (Dth) of natural gas on a certain Gas
14 Day during an Overrun Entitlement. Customer A instead determines that it needs 1,500
15 Dth of natural gas for that same Gas Day due to increased production at its plant. However,
16 due to the supply constraints or other conditions that exist that prompted Cascade to declare
17 the Overrun Entitlement, natural gas is more expensive than usual on the spot market.

¹¹ Avista’s load data was provided to Cascade by a manager in Avista’s Natural Gas Planning group.

¹² NW Natural’s load data was provided to Cascade by an assistant director in its Gas Supply group.

¹³ Cascade calculated Puget’s load data based on Puget’s 2021 Integrated Resource Plan, P. 6-25, Figure 6-24, Natural Gas Energy Demand by Class (Mdth).

1 Absent the Schedule 663 overrun charge mechanism, the customer might consider taking
2 the additional 500 Dth from Cascade without securing additional gas until the Overrun
3 Entitlement ended so that it could avoid paying the higher spot market prices.¹⁴ Imposing
4 overrun charges that are equal to 150% of the highest midpoint price for the day at one of
5 the regional trading points makes it more expensive for the customer to unfairly rely on
6 gas Cascade procured for its core customers—or on extra gas scheduled by other
7 transportation customers—than to procure the additional gas on its own.

8 **Q. Why is it important that Transportation Service Customers bring on their own**
9 **additional gas?**

10 A. As I previously mentioned, Schedule 663 requires Transportation Service Customers to
11 secure both their own gas supply and pipeline transportation capacity to bring that gas to
12 Cascade's gas distribution system. In other words, these customers are always required,
13 by the tariff under which they receive service, to bring on their own gas supply. Cascade
14 is not obligated to and does not purchase gas for Transportation Service Customers, nor
15 does Cascade keep stored reserves for the benefit of its Transportation Service Customers.
16 Therefore, any additional gas that these customers take is either gas that Cascade has
17 procured for its core customers or, if available, excess gas brought on by other
18 Transportation Service Customers. Taking gas from Cascade's core customers or from
19 other transportation customers is not fair, is contrary to the terms under which
20 Transportation Service Customers accept service, and may jeopardize Cascade's ability to

¹⁴ Per Schedule 663, Transportation Service Customers are allowed a five percent monthly imbalance tolerance. That is, these customers may take up to five percent more or less gas than nominated on a monthly basis without incurring additional charges. Upon notification by Cascade that the customer has an imbalance greater than five percent, the customer has 45 non-entitlement days to eliminate any such imbalance. Transportation Service Customers that do not satisfy their monthly imbalances within 45 non-entitlement days must pay Cascade a \$10.00 per MMBtu non-entitlement penalty on the imbalance over the allowed five percent tolerance. Robbins, Exh. CR-3, Schedule 663 at 7.

1 provide gas to its core customers.

2 **Q. Is it especially important that Transportation Service Customers bring on adequate**
3 **gas supplies during Overrun Entitlements?**

4 A. Yes, it is. Mr. Robbins will go into greater detail on this topic in Cascade's Gas Supply
5 Testimony, but Cascade declares Overrun Entitlements during critical operational periods
6 and there are often supply constraints during these times. Therefore, it is even more
7 important than normal for Transportation Service Customers to bring on adequate supplies
8 because Cascade may not be able to make up for gas shortages caused by Transportation
9 Service Customers taking excessive gas amounts.

10 **Q. Please summarize how the Schedule 663 overrun charges help ensure that**
11 **Transportation Service Customers nominate as much gas as they intend to consume**
12 **during Overrun Entitlements.**

13 A. Transportation Service Customers must bring the same amount of gas into Cascade's
14 system that they use daily during Overrun Entitlements, within the Company-specified
15 tolerance. If they do not, they must pay overrun charges that exceed the price of gas
16 available to them in the market and therefore pay more for that additional gas than they
17 would have paid had they purchased the gas themselves. Therefore, they are appropriately
18 incentivized to either limit their consumption to their nominated amounts or purchase and
19 nominate additional gas.

20 **IV. THE REASONABLENESS OF CASCADE'S OVERRUN CHARGES**

21 **Q. Mr. Mullins characterizes a portion of Cascade's Overrun Entitlement charges as**
22 **unreasonable.¹⁵ Do you agree?**

¹⁵ Direct Testimony of Bradley G. Mullins (Mullins), Exh. BGM-1CT at 16:13-17:17.

1 A. No. As I explained earlier, the Schedule 663 Overrun Entitlement charges are meant to
2 incentivize Transportation Service Customers to bring on adequate gas supplies when it
3 might otherwise be cheaper for them to rely on Cascade’s core customer’s gas, so the
4 overrun charges must be greater than the highest pricing at the regional pricing hubs,
5 regardless of what is driving those prices.

6 **Q. What is Mr. Mullins’ rationale for his assertion that it was unreasonable to base the**
7 **overrun charges on Green River?**

8 A. Mr. Mullins alleges that it was unreasonable for Cascade to use the Green River market in
9 calculating Tree Top’s Overrun Entitlement charges because pricing at Green River was
10 based on a “dysfunctional” market.”¹⁶

11 **Q. Do you agree with that assessment?**

12 A. No. I do not have the knowledge or expertise to either refute or affirm his assessment that
13 the Green River prices were based on a dysfunctional market, but I would highlight that
14 Mr. Mullins provided extensive testimony about gas supply shortages¹⁷ that occurred when
15 “system demand for natural gas was at its highest.”¹⁸ My basic understanding is that
16 decreased supplies combined with increased demand leads to higher prices, which seems
17 to help explain the higher prices at Green River during the February 2021 Entitlement
18 Period. However, whether the prices at Green River were based on market dysfunction, or
19 not, that does not affect the reasonableness of the Overrun Entitlement charges.

20 **Q. Please explain.**

21 A. Cascade must ensure it has enough gas on its system to provide service to its core

¹⁶ Mullins, Exh. BGM-1CT at 2:4-7.

¹⁷ Mullins, Exh. BGM-1CT at 17:21-21:2.

¹⁸ Mullins, Exh. BGM-1CT at 19:10.

1 customers. Transportation Service Customers—which make up about 70 percent of
2 Cascade’s load—must purchase and nominate enough gas to meet their own needs; this is
3 a foundational requirement of accepting service under Schedule 663. Cascade’s ability to
4 serve its core customers may be compromised if enough Transportation Service Customers
5 fail to bring on adequate supplies. To avoid this result, Cascade may need to purchase gas
6 on the spot market during an Overrun Entitlement. In that case, Cascade would be exposed
7 to the gas prices at one or more of the regional trading hubs named in Cascade’s Schedule
8 663, whether those prices are based on a dysfunctional market, or not. The purpose of the
9 overrun charges is to incentivize Transportation Service Customers to bring on adequate
10 gas—by making it more expensive than for them to simply rely on Cascade’s gas—so that
11 Cascade is not exposed to the higher prices. In other words, by arguing that Tree Top
12 should not be exposed to the Green River pricing, Mr. Mullins is arguing that Cascade and
13 its core customers should instead bear the risk of that exposure.

14 **Q. Does Mr. Mullins allege that the overrun charges were unreasonable for any other**
15 **reason?**

16 A. Yes. Mr. Mullins asserts that Tree Top’s claim for relief is further justified because Tree
17 Top’s imbalance did not impose any additional costs on Cascade or its core, either based
18 on gas purchases to cover Tree Top account imbalances or on charges from Northwest
19 Pipeline.¹⁹

20 **Q. Do you agree that Tree Top’s overruns did not impose any additional costs on**
21 **Cascade or its core customers?**

22 A. Cascade will address this point further in its Gas Supply Testimony, but Cascade agrees

¹⁹ Mullins, Exh. BGM-1CT at 2:18-3:4.

1 that it did not incur overrun entitlement charges from Northwest Pipeline and has not
2 identified any additional costs it incurred because of Tree Top's overruns. As Mr. Mullins
3 notes,²⁰ CMS²¹ and other marketers delivered more gas to Cascade's system than their
4 transportation customers used during the February 2021 Entitlement Period. However,
5 Tree Top is again missing the point.

6 **Q. In what sense is Tree Top missing the point?**

7 A. Schedule 663 requires Transportation Service Customers to secure their own gas supply
8 and transportation of that gas to Cascade's system. Failing to nominate adequate gas
9 supplies and instead relying on Cascade and its core customers—and the scheduling
10 practices of Cascade's other transportation customers—to cover shortages runs contrary to
11 the terms of Cascade's tariff and it is fundamentally unfair to Cascade's core customers
12 and other transportation customers.

13 **Q. In what way is it unfair to Cascade's other Transportation Service Customers that**
14 **Tree Top failed to deliver sufficient gas to Cascade's system to meet its needs during**
15 **the February 2021 Entitlement Period?**

16 A. A significant portion of Cascade's other transportation customers (approximately 67
17 percent) brought on adequate gas supplies during the February 2021 Entitlement Period.
18 Tree Top inappropriately and unfairly relied on the scheduling practices of these other
19 Transportation Service Customers to cover for its inability or unwillingness to properly
20 nominate gas during the entitlement period. Furthermore, if the nominations of other
21 transportation customers during this time had been insufficient to cover Tree Top's

²⁰ Mullins, Exh. BGM-1CT at 12:5-6.

²¹ Cost Management Services, or CMS, is Tree Top's marketing agent for nominating gas and receiving notices under the terms of Schedule 663. This relationship is discussed in greater detail in the Gas Supply Testimony.

1 deficiencies, Cascade would have had to further draw down its stored reserves—which it
2 purchased on behalf of its core customers—to compensate for Tree Top’s supply
3 deficiencies. Cascade’s ability to transport stored reserves or spot gas to cover transport
4 customer shortfalls is limited because Cascade only contracts for enough upstream pipeline
5 capacity to satisfy the needs of its core customers. Therefore, the insufficient supply
6 provided by customers like Tree Top could have caused Cascade to curtail customers, face
7 system integrity issues, or to be assessed penalties by the upstream pipeline operator.

8 **Q. Mr. Mullins also claims that Tree Top and its marketing agent CMS delivered more**
9 **gas than they used during the February 2021 Entitlement Period and that this**
10 **benefitted Cascade, providing further evidence that the overrun charges were**
11 **unreasonable.²² Do you agree?**

12 A. No. As I said above, the excess gas brought on by transportation customers in this
13 particular case obviated the need to issue curtailments and helped Cascade avoid system
14 integrity issues, but transportation customers like Tree Top should not be allowed to rely
15 on the scheduling practices of other transportation customers to satisfy their gas needs.
16 Furthermore, this argument ignores the need to balance gas *daily* during entitlement
17 periods, ignores the fact that Cascade’s system is not contiguous,²³ and ignores the obvious
18 point that Tree Top is required at the customer level—not at its marketer’s level—to
19 balance its daily gas consumption. Cascade will fully address this point in its Gas Supply
20 Testimony.

²² Mullins, Exh. BGM-1CT at 2:20-3:2.

²³ Robbins, Exh. CR-1CT at 7:19-8:10.

1 **Q. Mr. Mullins also seeks to revise the charges after netting the nominations and usage**
2 **from each of its four accounts.²⁴ Should Tree Top be able to net its plant**
3 **nominations?**

4 A. No. This is another issue that Cascade will address in its Gas Supply Testimony, but this
5 argument is flawed because it is contrary to Cascade’s tariff and because it ignores the fact
6 that portions of Cascade’s distribution system are physically separated from one another.

7 **Q. Do you agree with Mr. Mullins that the overrun charges should be reassessed based**
8 **on the pricing at Sumas instead of Green River?²⁵**

9 A. No. While he does not explicitly say so, Mr. Mullins seems to be suggesting that it would
10 be “more reasonable” to have calculated the Overrun Entitlement charges based on 150
11 percent of the Sumas market price. First, this proposal ignores the tariff language.
12 Schedule 663 does not contemplate Cascade unilaterally deciding which market price to
13 use—instead, it directs Cascade to use “the highest midpoint price for the day” at the named
14 regional supply pricing points.²⁶ Second, it does not account for the physical realities of
15 Cascade’s system. Mr. Robbins will address this further in the Gas Supply Testimony, but
16 when Cascade purchases gas for its customers in southeast Oregon, for example, it does
17 not do so at prices based on Sumas, which is located on the Canadian border in northwest
18 Washington. Third, Mr. Mullins is again focusing on the “lack of harm” to Cascade and
19 its core customers in the February 2021 Entitlement Period while ignoring the tariff
20 language and the purpose of the charges. He is basically saying “no harm, no foul,” which
21 is not a principal found in Cascade’s tariff. The purpose of the overrun charges is to modify

²⁴ Mullins, Exh. BGM-1CT at 3:7-8.

²⁵ Mullins, Exh. BGM-1CT at 32:6-7.

²⁶ Robbins, Exh. CR-3, Schedule 663 at 9.

1 behavior to *avoid potential harm*, not to impose charges *only* when Cascade or its
2 customers suffer actual harm.

3 **Q. If the overrun charges are not meant to compensate Cascade for harms it incurred,**
4 **what are they meant to do?**

5 A. As Cascade said in the letter it sent to Tree Top’s natural gas marketing agent CMS, and
6 as Cascade confirmed in its response to Tree Top Data Request 38,²⁷ the charges are meant
7 to create an incentive for Transportation Service Customers to align their gas consumption
8 with their gas nominations during constrained periods. Cascade acknowledges that the
9 ultimate goal is to avoid harm to the integrity of its system and to protect its core customers
10 from supply disruptions, but also points out that the charges are meant to avoid the unfair
11 results that occur when Transportation Service Customers fail to bring on adequate supplies
12 and instead rely on the nominations of other Transportation Service Customers or core
13 customer’s stored reserves to fill those gaps.

14 **Q. Do you think Commission precedent supports the use of the overrun charges to**
15 **modify Transportation Service Customer behavior?**

16 A. Yes. The Commission has stated that it relies on penalties as an incentive for regulated
17 companies to comply with laws and regulations and to deter future violations²⁸ and that
18 “the primary function of penalties is to gain compliance.”²⁹ The Commission also seems
19 to recognize that the imposition of penalties encourages compliance both by the company
20 penalized and other entities subject to its regulation.³⁰ While these policies obviously apply

²⁷ Mullins, Exh. BGM-4 at 30 (Cascade Resp. to Tree Top DR 38).

²⁸ *MCI Metro Access Transmission Services, Inc. v. US WEST Commc 'ns Inc.*, Docket UT-971063, Final Order at 54, ¶ 293 (Feb. 10, 1999).

²⁹ *Wash. Utils. and Transp. Comm 'n v. Puget Sound Energy, Inc.* Docket UG-001116, Order Accepting Settlement at 3, ¶ 7 (July 25, 2002).

³⁰ *In re Penalty Assessment Against Tel West Comm 'ns, LLC.*, Docket UT-040572, Order 03 at 10, ¶ 39 (Jan. 10, 2005).

1 to situations in which the Commission is imposing penalties, the same principles apply to
2 and support the Schedule 663 Overrun Entitlement charges.

3 **Q. Do you think Commission policy supports the overrun charges Cascade imposed on**
4 **Tree Top for the February 2021 Entitlement Period?**

5 A. Yes. The Commission issued an order in 2013 describing its enforcement policies
6 (Enforcement Policy) and has frequently cited to it when issuing or considering whether to
7 mitigate penalties. The Commission's Enforcement Policy describes multiple factors the
8 Commission considers when determining the appropriate enforcement action and these
9 factors include, among others, whether the company promptly corrected the violations and
10 remedied the impacts, the number of violations, the likelihood of recurrence, and the
11 company's past performance regarding compliance, violations, and penalties.³¹ Cascade
12 will review Tree Top's Overrun Entitlement charges both before and after the February
13 2021 Entitlement Period in greater detail in its Gas Supply Testimony, but Tree Top has a
14 history of noncompliance, failed to adequately update its nominations during the February
15 2021 Entitlement Period despite multiple opportunities to do so, and has incurred additional
16 overrun charges since that event. Again, the Enforcement Policy applies when the
17 Commission is issuing penalties, but the factors the Commission considers would appear
18 to support upholding these charges to Tree Top.

19 **Q. Do you have any concerns about the impact it might have if the Commission were to**
20 **reduce Tree Top's February 2021 Entitlement Period charges?**

21 A. Yes. First, it would send the wrong message to Tree Top, who has a long history of
22 struggling to comply with the Schedule 663 requirements for properly nominating gas

³¹ *In re Enforcement Policy of the Wash. Utils. and Transportation Comm'n*, Docket A-120061, Enforcement Policy of the Washington Utilities and Transportation Commission at 7-9, ¶ 15 (Jan. 7, 2013).

1 during entitlement periods. Second, it would set a bad example for Cascade’s other
2 Transportation Service Customers—and transportation customers of other Commission-
3 regulated gas utilities—in that they may see “reparations litigation” as an avenue for relief
4 when they do not like the charges they incur under the terms of lawfully filed tariffs.
5 Finally, more broadly it could set troubling precedent at the Commission relating to the
6 sanctity of the filed rate doctrine.

7 **Q. Can you please elaborate on that latter point?**

8 A. Yes. RCW 80.28.080 requires Cascade to charge customers the rates specified in its
9 applicable schedule filed and in effect at the time.³² The basic framework of this and other
10 related statutes is that the Commission sets rates prospectively, not retrospectively. While
11 I am not a lawyer, my understanding is that the filed rate doctrine is a judicially created
12 doctrine that prohibits a public utility from charging rates for its services that are different
13 from the rates on file with the Commission³³ and generally prohibits customers from
14 attacking a utility’s lawfully filed rates on a retroactive basis. One benefit of the filed rate
15 doctrine is that the utility and the customer can look to the applicable tariff for the terms
16 that govern their relationship for a specific service. Granting Tree Top the relief it seeks
17 could call that doctrine into question and open the door to other similar challenges when
18 customers are unhappy with the amounts they have paid under the terms of what is
19 effectively a contract for service. Practically speaking, this could strain relations between
20 utilities and their customers, the latter of whom may suddenly feel empowered to try and
21 upset the longstanding rules of utility service. It could also lead to increased litigation at
22 the Commission.

³² RCW 80.28.080(1)(a).

³³ *Brown v. MCI WorldCom Network Services, Inc.*, 277 F.3d 1166, 1170 (9th Cir. 2002).

1 **Q. Do you think that Commission precedent supports granting Tree Top the relief it**
2 **seeks?**

3 A. No. I am not aware of any precedent in which the Commission relied on its authority under
4 RCW 80.04.220 to grant a complainant the type of relief Tree Top is seeking in this case.

5 **Q. What about the Puget Sound Energy case that Tree Top cites to?**

6 A. Mr. Mullins mischaracterizes this case by pointing to it as an example in which “other
7 utilities have worked with customers to modify entitlement charges to a more reasonable
8 level,”³⁴ when in fact Puget Sound Energy arguably had no basis in its tariff on which to
9 issue the overrun charges to begin with. In that case, the parties to the settlement
10 acknowledged in settling the dispute that it was based on “two reasonable but conflicting
11 interpretations” of Puget Sound Energy’s tariff rules,³⁵ which rules Puget Sound Energy
12 subsequently revised to make clearer after working with its natural gas stakeholder group.³⁶

13 **Q. Mr. Mullins also cites to a case in Idaho involving Avista Corporation (Avista) to**
14 **support Tree Top’s claim that the February 2021 Overrun Entitlement charges were**
15 **unreasonable.³⁷ Do you agree?**

16 A. No. In that case, the “turmoil in the gas markets” that led to the penalties apparently caused
17 the customer, Clearwater, to absorb higher natural gas costs that exceeded \$8 million,
18 thereby making it appear to Avista and Clearwater that the *additional* \$962,202 overrun

³⁴ Mullins, Exh. BGM-1CT at 31:13-14.

³⁵ *Seattle Children’s Hosp., et al., v. Puget Sound Energy*, Docket UG-190857 (*Seattle Children’s*), Order 04, Exh. A, Settlement Stipulation and Agreement at 4:10, ¶ 10 (Mar. 2, 2020).

³⁶ Puget Sound Energy filed revisions to its natural gas tariff rules in January 2019 to clarify tariff rule language regarding curtailments and overrun entitlements and add new entitlement penalty charges. *Seattle Children’s*, Joint Brief Supporting Settlement Stipulation and Agreement at 5:4-15, ¶ 9 (Feb. 18, 2020).

³⁷ Mullins, Exh. BGM-1CT at 31:20-32:3.

1 penalty from Avista would be “unduly burdensome.”³⁸ The parties revised the penalty
2 amount to \$500,000 to still provide “meaningful teeth” while not being “unduly
3 burdensome;”³⁹ however, they did not revise the penalty based on the customer’s preferred
4 market pricing point, despite other markets experiencing significantly lower prices during
5 the same period.⁴⁰ On the other hand, in this case, Tree Top has presented no evidence that
6 it absorbed similarly high gas costs during the February 2021 Entitlement Period and
7 instead is trying to handpick a market for the overrun charge from Cascade because doing
8 so would result in lower costs. Letting Tree Top choose the pricing point on which to base
9 the overrun charges—which runs contrary to Cascade’s tariff—would not be fair or just
10 and would not properly incentivize Tree Top to modify its behavior during future
11 entitlements.

12 **Q. Please summarize why the Commission should not grant Tree Top the relief it seeks.**

13 A. The Schedule 663 Overrun Entitlement charges appropriately incentivize Transportation
14 Service Customers to bring on adequate gas supplies during critical operational periods.
15 The charges make it more expensive for these customers to incur the penalties than to
16 procure the gas themselves. The charges must be tied to the highest regional gas pricing
17 point to which Cascade may potentially be exposed to ensure that Transportation Service
18 Customers cannot game the system by taking advantage of the price spread. The prices at
19 Green River were admittedly high—and neither Cascade nor its core customers incurred
20 identifiable additional expenses, in this instance—but tying the charges to Green River is

³⁸ *In re Avista Corp. Petition for Approval of a Settlement Agreement Between Clearwater Paper Corp. and Avista Corp.*, IPUC Case No. AVU-G-20-02, Avista’s Petition at 5 (Apr. 7, 2020).

³⁸ *Id.* at 4-5.

³⁹ *Id.*

⁴⁰ *Id.* at 3.

1 not only reasonable, it is appropriate and necessary to accomplish the purpose behind the
2 penalties: to encourage Tree Top and similarly situated customers to properly balance their
3 usage to their nominated gas volumes during periods of potential supply constraint.
4 Furthermore, Commission precedent related to Commission imposed penalties supports
5 the overrun charges as assessed to Tree Top, does not support mitigation, and granting Tree
6 Top the relief it seeks would potentially disrupt the certainty provided by RCW 80.28.080
7 and the principles of the filed rate doctrine.

8 **V. THE IMPACTS OF GRANTING TREE TOP'S REQUESTED RELIEF**

9 **Q. Please summarize your understanding of the various actions Cascade would need to**
10 **take if the Commission ordered it to issue refunds to Tree Top.**

11 A. Cascade may not treat its customers in an unduly discriminatory or preferential manner.
12 Therefore, Cascade believes it would need to grant the same relief to all its Schedule 663
13 customers upon whom it imposed Overrun Entitlement charges for overruns during the
14 February 2021 Entitlement Period.

15 **Q. What is the total amount Cascade billed?**

16 A. Cascade billed certain Transportation Service Customers a total of \$1,022,436.45 for the
17 February 2021 Overrun Entitlement Period. Of this, approximately \$910,000 was charged
18 to Cascade's Washington transportation customers and the remainder was charged to
19 customers in Oregon.

20 **Q. What did Cascade do with the Overrun Entitlement charge revenues it collected?**

21 A. The Schedule 663 Overrun Entitlement charge revenues were credited to the PGA
22 mechanism in Cascade's 2021 annual filing.

1 **Q. Does this mean the revenues have already been passed on to Cascade’s core**
2 **customers?**

3 A. In effect, yes. The revenues functioned as a credit to help offset increases to core customer
4 rates.

5 **Q. If Cascade were directed to refund Tree Top, how would it accomplish this?**

6 A. As mentioned, Cascade believes it would need to refund all Transportation Service
7 Customers that paid Overrun Entitlement charges for the February 2021 Entitlement
8 Period. To accomplish this, it would need to “claw back” the refund revenues from its core
9 customers by issuing the refunds and passing the difference between the originally billed
10 amount and the revised billed amount through its 2022 annual PGA filing as a debit.

11 **VI. RECOMMENDATION**

12 **Q. What is your recommendation?**

13 A. Cascade recommends that the Commission deny Tree Top’s request for refunds because
14 Cascade’s Overrun Entitlement charges are appropriate and necessary to encourage
15 Transportation Service Customers to purchase the amount of natural gas they intend to
16 consume during entitlement periods—something they are required to do as a term of
17 service under Schedule 663. Tree Top’s failure to adequately nominate gas supplies
18 jeopardized Cascade’s system integrity and ability to provide gas to its core customers
19 during a period of constrained supply. Tree Top inappropriately and unfairly relied on the
20 stored reserves of Cascade’s core customers and on natural gas nominated by other
21 Transportation Service Customers during the February 2021 Entitlement Period. Tree
22 Top’s argument that it brought on additional gas over the entirety of the February 2021
23 Entitlement Period—when netting the nominations of all its plants across all four days of

1 the entitlement period—fails to account for Cascade’s system design and ignores the clear
2 requirements of Cascade’s lawfully filed tariff. Even if true, the allegation that Cascade
3 and its core customers did not suffer actual harm did not relieve Tree Top of its tariff
4 obligations and the Commission should therefore reject Tree Top’s claim for extraordinary
5 relief.

6 **Q. Does this conclude your Response Testimony?**

7 A. Yes.