

**BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION**

In the Matters of

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,  
Complainant,

v.  
CASCADE NATURAL GAS CORPORATION,  
Respondent.

COST MANAGEMENT SERVICES, INC.,  
Complainant,

v.  
CASCADE NATURAL GAS CORPORATION,  
Respondent.

Docket No. UG-070332

Docket No. UG-061256

**PROTEST, REQUEST FOR TARIFF  
SUSPENSION, AND PETITION TO  
INTERVENE IN DOCKET NO.  
UG-070332 BY COST MANAGEMENT  
SERVICES, INC.;**

**REQUEST FOR CONSOLIDATION  
WITH DOCKET NO. UG-061256;  
AND**

**REQUEST THAT THE COMMISSION  
DIRECT CASCADE TO FILE ITS  
CONTRACTS IN COMPLIANCE  
WITH WAC 480-80-143**

1. Pursuant to WAC 480-07-355 and the Commission's notice of February 15, 2007, Cost Management Services, Inc. ("CMS") hereby protests the tariff revisions filed by Cascade Natural Gas Corporation ("Cascade") on February 12, 2007, in response to the Commission's Order No. 3 in the CMS complaint proceeding against Cascade, Docket No. UG-061256, dated January 12, 2007 ("Commission Order No. 3"). In Commission Order No. 3, the Commission held, *inter alia*, that Cascade's private sales of gas to non-core customers were illegal because the associated contracts, rates and charges, were never filed in accordance with RCW Chapter 80 and applicable WAC regulations.

2. In its February 12 filing, Cascade has belatedly provided to the Commission at least some of "its existing contracts to non-core customers, including contracts for out-of-territory gas sales." These contracts constitute the agreements, rates, terms and

conditions under which Cascade has been making private gas sales to non-core customers. The fact that Cascade illegally failed to file these contracts did not relieve Cascade from the obligation to file them with the Commission. Commission Order No. 3, ¶¶ 57 and 58. Thus, these contracts constitute the regulatory status quo and the tariff revisions included with Cascade's February 12 filing, constitute changes in rates, "form of contract or agreement," and company rules and regulations under which Cascade's proposes to continue making private gas sales to non-core customers. RCW 80.28.060. Cascade's tariff revisions are subject to suspension and hearing under RCW 80.28.060.

3. As grounds for its protest, request for suspension of tariff revisions, request to intervene as a party, request for consolidation of Docket Nos. UG-070332 and UG-061256, and request for contract rejection, CMS states the following:

4. **Names and address of petitioner:**

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5. **Name and address of attorneys representing petitioner:**

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**I. Identity of Petitioner and Its Interests in these Proceedings:**

6. CMS markets natural gas to industrial and commercial customers within the service territory of Cascade. These customers access CMS via Cascade's Schedule No.

663 transportation rate. CMS's interests as a competitive marketer are aligned with those of Cascade's ratepayers because Cascade's cross-subsidization of competitive gas sales at the expense of the customers of its regulated utility services also harms CMS.

7. CMS also acts as agent for its customers in arranging transportation services under Cascade Schedule No. 663, securing interstate pipeline capacity (as necessary) and providing gas-management services that members of the Northwest Industrial Gas Users ("NWIGU") have in-house. In this second agency capacity, CMS directly represents the interests of its clients as customers of Cascade in ensuring that Cascade's rates are not unduly discriminatory, unduly preferential, or otherwise in violation of Washington law.

8. Cascade's tariff revisions were filed in response to Commission Order No. 3 in Docket No. UG-061256. If CMS is to have an effective remedy in its complaint case, it must have an effective role as a party in Commission proceedings to determine the lawfulness of Cascade's tariff revisions filed in response to Commission Order No. 3.

## **II. Protest, Request for Suspension and Petition To Intervene**

9. CMS believes that Cascade is cross-subsidizing its private gas sales to non-core customers at the expense of its core customers. It has done so outside Commission oversight and control under the assertion that the Federal Energy Regulatory Commission had pre-empted Commission jurisdiction over such private sales. In Commission Order No. 3, the Commission rejected Cascade's federal preemption claim and held, *inter alia*, that Cascade had violated RCW 80.28.080. "As Cascade does not have tariff schedules on file addressing sales of natural gas to non-core customers, yet has sold and continues to sell gas to such customers, we find Cascade is in violation of the statute." Commission Order No. 3, ¶63.

10. In purported compliance with Commission Order No. 3, Cascade has now filed a set of four rate schedules, which it characterizes as “revisions.” These revisions would allow Cascade to continue private retail gas sales. The revisions are totally lacking in specifics, leaving private sales to the unilateral determination of Cascade as they have been in the past under the contracts never filed with the Commission until now. CMS believes that the tariff revisions would allow Cascade to perpetuate its unlawful cross-subsidization of private gas sales, creating undue preference for its private customers and undue discrimination against core customers.

11. Cascade’s tariff revisions constitute changes in rates for gas sales to non-core customers, changes in the “form of contract or agreement” for such service and changes in the company’s “rule or regulation relating to” such service – in comparison to current practice under Cascade’s illegal private contracts. Cascade’s private contracts should be deemed to have been on file with the Commission in assessing the tariff revisions it has now made. To treat these self-described “revisions” as initial rates, rules or services would be to reward Cascade for its past illegal conduct. *See* Commission Order No. 3, ¶58 and note 89.

12. CMS requests that these tariff revisions be suspended and set for hearing. CMS seeks intervention as a party in that hearing proceeding.

### **III. Request for Consolidation of Docket Nos. UG-070332 and UG-061256**

13. Cascade's tariff revisions relate directly to the CMS complaint proceeding:

The purpose of this filing is to comply with the Commission's Order 03 in Docket UG-061256, which requires Cascade to file tariff schedules to provide gas supply services to non-core customers and to file its existing contracts for gas supply services to non-core customers, including contracts for out-of-territory gas sales.

Cascade transmittal letter of February 12, 2007, second paragraph.

14. Now that these tariff revisions have been filed, Cascade should be obligated to demonstrate that the revisions eliminate its cross-subsidization of private sales customers at the expense of its core and other regulated sale customers. Now that Cascade's private retail gas contracts have been made available (on a confidential basis) to Commission Staff and CMS, we expect that these contracts will reflect cross-subsidization that has occurred and continues to occur under Cascade's private contracts which are still in effect. The remedies available to the Commission in Docket No. UG-070332 are either reformation of the tariff revisions or, if cross-subsidization is too inherent in Cascade's private gas sales, prohibition of such sales by Cascade as a regulated gas company.

15. These are essentially the same remedies available in Docket No. UG-061256. It seems quite impractical to proceed separately in the two dockets when the integral relationship between them is apparent on the face of Cascade's transmittal letter. CMS asks that Docket Nos. UG-061256 and UG-070332 be consolidated for further proceedings. Cascade should then proceed to file supporting testimony. CMS expects to file data requests, written direct testimony and exhibits in this proceeding. The consolidated cases could then be resolved promptly together. In contrast, proceeding separately could well lead to confusion and potentially anomalous results.

#### **IV. Cascade Should Be Directed to File Its Private Contracts Under WAC Rules**

16. Cascade also purported to enclose with its February 12 filing “its existing contracts to non-core customers, including contracts for out-of-territory gas sales.” The contracts were submitted under seal, without any of the information required regarding contractual rate filings under WAC 480-80-143, even the information required under WAC 480-80-143(7) regarding contracts designated “confidential” by the filing entity. The purported contract filing is patently deficient under Commission rules. Moreover, CMS has been informed that the purported contract filing is also incomplete; several of these private contracts have yet to be filed at all.
17. The Commission has determined that Cascade violated Commission rules by failing to file its private gas sale agreements:

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

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

Commission Order No. 3, ¶¶ 57 and 58.

18. The Commission’s Order cites to the applicable regulation governing the filing of contractual forms of rate, WAC 480-80-143. *Id.*, n. 88. Requirements imposed on Cascade by this regulation include the following:

(5) Each application filed for commission approval of a contract must:

- (a) Include a complete copy of the proposed contract;

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

Cascade provided none of this information when it submitted the contracts in question. The record contains no request for waiver of these requirements, much less an explanation of why the rule was ignored.

19. Contracts designated as "confidential" may not simply be dropped off at the Commission in a sealed envelope, as Cascade has done here. Instead:

(7) Filings under this section may be submitted with portions designated "confidential" pursuant to WAC 480-07-160. However, any filing that designates the essential terms and conditions of the contract as "confidential" shall be rejected by the commission as not in compliance with the public inspection requirement of RCW 80.28.050. Essential terms and conditions are:

- (a) Identity of the customer;
- (b) Nature and characteristics of the service provided, including interruptible, firm, or peak delivery;
- (c) Duration of the contract, including any options to renew;
- (d) Charge(s) for service, including minimum charge provisions;
- (e) Geographic location where service will be provided; and
- (f) Additional obligations specified in the contract, if any.

WAC 480-80-143(7). Cascade provided none of this information regarding any contract.

20. Cascade has presented the Commission with an anomalous situation under the law. Because the contracts were never filed before their proposed effective dates, the Commission's regulatory authority over those contracts has been compromised.

However, unless the Commission enforces WAC 480-80-143 now, it sets an adverse precedent that will allow Cascade (and perhaps other regulated entities) to evade WAC 480-80-143 regarding future contracts.

**V. Conclusion**

21. CMS respectfully requests that its intervention in this proceeding be granted, that Docket Nos. UG-061256 and UG-070332 be consolidated for further proceedings and that Cascade be directed to comply with WAC 480-80-143 as the Commission held in Commission Order No. 3. CMS' interests cannot adequately be represented by any other participant in the case.

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP  
Attorneys for Cost Management Services,  
Inc.

By: 

John A. Cameron

Francie Cushman

DAVIS WRIGHT TREMAINE LLP

March 12, 2007



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this 12th day of March, 2007, served the foregoing **PROTEST, REQUEST FOR TARIFF SUSPENSION, AND PETITION TO INTERVENE IN DOCKET NO. UG-070332 BY COST MANAGEMENT SERVICES, INC.; REQUEST FOR CONSOLIDATION WITH DOCKET NO. UG-061256; AND REQUEST THAT THE COMMISSION DIRECT CASCADE TO FILE ITS CONTRACTS IN COMPLIANCE WITH WAC 480-80-143** upon parties of record in this proceeding, as follows:

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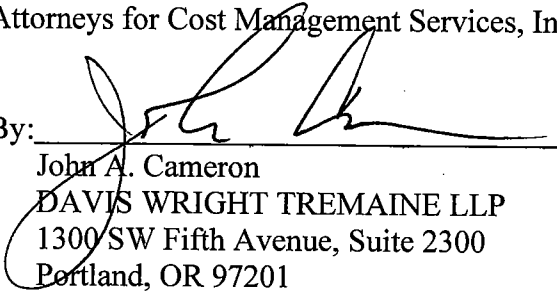
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