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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3	COST MANAGEMENT SERVICES,)	
	INC.,)	
4)	
	Complainant,)	
5)	
	vs.)	DOCKET NO. UG-061256
6)	Volume II
	CASCADE NATURAL GAS)	Pages 29 - 42
7	CORPORATION,)	
)	
8	Respondent.)	

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10 A prehearing conference in the above matter

11 was held on March 1, 2007, at 11:48 a.m., at 1300

12 South Evergreen Park Drive Southwest, Olympia,

13 Washington, before Administrative Law Judge ANN

14 RENDAHL.

15 The parties were present as follows:

16 COST MANAGEMENT SERVICES, INC., by JOHN A.

17 CAMERON and FRANCIE CUSHMAN, Attorneys at Law, Davis

18 Wright Tremaine, LLP, 1300 Southwest Fifth Avenue,

Suite 2300, Portland, Oregon 97201; telephone, (503) 778-5206.

19 CASCADE NATURAL GAS CORPORATION, by JAMES M.

20 VAN NOSTRAND and LAWRENCE REICHMAN, Attorneys at Law,

Perkins Coie, 1120 Northwest Couch Street, Tenth Floor,

Portland, Oregon 97209; telephone, (503) 727-2162.

21 WASHINGTON UTILITIES AND TRANSPORTATION

22 COMMISSION, by GREGORY J. TRAUTMAN, Assistant Attorney

23 General, 1400 South Evergreen Park Drive Southwest,

Post Office Box 40128, Olympia, Washington 98504;

24 telephone, (360) 664-1187.

25 Kathryn T. Wilson, CCR

Court Reporter

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1 PUBLIC COUNSEL, by JUDITH KREBS, Assistant
Attorney General, 800 Fifth Avenue, Suite 2000,
2 Seattle, Washington 98104; telephone, (206) 464-6595.

3 NORTHWEST INDUSTRIAL GAS USERS, by CHAD M.
STOKES (via bridge), Attorney at Law, Cable, Huston,
4 Benedict, Haagensen & Lloyd, LLP, 1001 Southwest Fifth
Avenue, Suite 2000, Portland, Oregon 97204; telephone,
5 (503) 224-3092.

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1 P R O C E E D I N G

2 JUDGE RENDAHL: Good morning. We are here
3 before the Washington Utilities and Transportation
4 Commission this morning, Thursday, March 1st, 2007, for
5 a prehearing conference in Docket UG-061256, which is a
6 complaint filed by Cost Management Services, Inc.,
7 against Cascade Natural Gas Corporation. I'm Ann
8 Rendahl, the administrative law judge presiding over
9 this proceeding.

10 The purpose of the prehearing this morning,
11 as stated in the Notice, is to discuss how best to
12 proceed in this matter following the Commission's
13 entering Order 03 in this docket, and I had intended to
14 hear a status report on the record from the parties
15 after their conversation this morning, but we've had a
16 discussion about that off the record, and I will repeat
17 a bit of that after we take appearances.

18 I had intended to have the parties identify
19 the issues for resolution and also set a procedural
20 schedule for addressing the issues. So let's take
21 appearances, and then we will go further, so beginning
22 with Cost Management Services.

23 MR. CAMERON: John Cameron of the law firm of
24 Davis Wright Tremaine, LLP, here for Cost Management
25 Services.

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1 JUDGE RENDAHL: For Cascade Natural Gas?

2 MR. REICHMAN: Lawrence Reichman with Perkins
3 Coie, and also James Van Nostrand with Perkins Coie.

4 JUDGE RENDAHL: For staff?

5 MR. TRAUTMAN: Gregory J. Trautman, assistant
6 attorney general, for Commission staff.

7 JUDGE RENDAHL: Public counsel?

8 MS. KREBS: Judith Krebs, assistant attorney
9 general for the public counsel section of the attorney
10 general's office.

11 JUDGE RENDAHL: For the Northwest Industrial
12 Gas Users?

13 MR. STOKES: This is Chad Stokes from the law
14 firm Cable Huston representing the Northwest Industrial
15 Gas Users.

16 MR. CAMERON: At this point, I would like to
17 introduce Ms. Cushman and enter her appearance as well.

18 MS. CUSHMAN: Francie Cushman on behalf of
19 Cost Management Services.

20 JUDGE RENDAHL: When you give your first
21 appearance, you have to give your address, telephone
22 number, fax number, and e-mail too, if you would,
23 please.

24 MS. CUSHMAN: My address at Davis, Wright,
25 Tremaine is 1300 Southwest Fifth Avenue, Portland

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1 Oregon, 97201. My phone number is (503) 778-5287. My
2 fax number is (503) 778-5299. My e-mail address is
3 franciecushman@dwt.com.

4 JUDGE RENDAHL: Thank you very much. So we
5 are going to talk about the status report of your
6 conversations this morning, but as I mentioned, we had
7 that off the record, and I understand from the parties
8 that there are a few questions you all have about
9 Order 03 and what it means and how we proceed.

10 So after some discussion, we've decided that
11 the best way to approach this is for the parties to
12 file motions seeking clarification of various points of
13 the Order and allow an opportunity for responses, and
14 then I will enter an order that will give you all
15 guidance on issues that you seek clarification on, and
16 then if we need to, we will have further proceedings.

17 So we set a schedule for those issues. On
18 Thursday, March 22nd, the parties will file their
19 individual motions for clarification. On Monday, April
20 the 9th, the parties will file responses to any of
21 those motions for clarification, and in the motions, if
22 you could also include whatever briefing you need to on
23 the issues and arguments you need to on the issues that
24 you are seeking clarification on so that other parties
25 can respond appropriately, and then we will schedule a

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1 prehearing conference for May 2nd -- it's a
2 Wednesday -- at 9:30 in the morning, and we will make
3 that tentative, but we'll schedule it just in case to
4 have a placeholder.

5 Before we went on the record, both
6 Mr. Cameron and Mr. Reichman were beginning to identify
7 some of the issues that they sought clarification on,
8 and given the motions and briefing that will follow, I
9 don't see a need to do so on the record this morning.
10 Is there anyone who has a different opinion? Okay.

11 Now, there is only one other issue I wanted
12 to bring up this morning, and that is whether the
13 parties see a need at this point to invoke the
14 discovery rules. We didn't do so at the first
15 prehearing we had in this case, and I understood you
16 all had worked out some discovery on your own, but
17 given that we are going forward with motions for
18 clarification, at this point, I don't know if this is
19 something that's pressing.

20 MR. CAMERON: I would like to file discovery
21 requests if we enter an order to that effect.

22 JUDGE RENDAHL: But do you need them prior to
23 the resolution of the motions on clarification, or is
24 this an issue that we should deal with after that
25 point?

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1 MR. CAMERON: Well, I believe I have a right
2 to the contracts that the Company has filed, and I
3 would like to receive them as soon as possible. We
4 would prefer not to wait for the briefing yet to come.

5 JUDGE RENDAHL: Okay, and this is based on
6 arguments and letters that went back and forth between
7 you and Mr. Reichman?

8 MR. CAMERON: Yes.

9 JUDGE RENDAHL: Mr. Reichman?

10 MR. REICHMAN: We think it would be premature
11 to have discovery at this point, and specifically the
12 contracts containing confidential information, and we
13 would expect that there may be some issues that the
14 Commission may have to decide about how or whether
15 those are produced.

16 So given that our position is that there
17 really is no need for further proceedings in this case,
18 we would ask that we proceed with the issue
19 clarification and then address the need for discovery
20 at the prehearing conference. At that point, we will
21 know what the issues are and we will be able to -- I
22 think that would be sufficiently timely as well.

23 MR. CAMERON: I would note that I'm a
24 signatory to the confidentiality agreement in this case
25 under which the contracts were filed, and

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1 confidentiality is not an issue here. We would review
2 them in confidence. We have retained an expert to
3 review them, and we would certainly not disclose them
4 to parties outside CMS who are not privy to the
5 confidentiality agreement.

6 JUDGE RENDAHL: Any response to that,
7 Mr. Reichman?

8 MR. REICHMAN: Well, I think it's sort of
9 unclear as to the status of the filing. We filed a
10 tariff with a compliant filing, and the Commission said
11 it's not really a compliant filing. We set that for a
12 new proceeding. Likewise, and this is going to be an
13 issue, I think, that needs to be clarified, it said
14 file the contract and Staff will investigate, and we
15 read that that is something outside this proceeding.

16 So the Company did cite the protective order,
17 that is true, but it's unclear that it's really filed
18 in this case or that it's relevant to this case, and
19 until the Commission clarifies what the scope is of the
20 issues remaining in this case, we intend to argue there
21 are no issues remaining in this case, that it would be
22 premature to have discovery, and that CMS would not be
23 prejudiced until waiting until these issues are
24 clarified before discovery can proceed.

25 MR. CAMERON: But there are two issues here.

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1 The first is in what form or filing the contracts were
2 required to be submitted. You will see that on our
3 list of issues. That's not the issue that I'm pursuing
4 here. I'm looking to obtain the contracts for their
5 evidentiary value, again, under seal to be sure, but
6 without regard to that legal issue of whether they
7 should have been filed formally or whether the
8 procedures followed by Cascade are adequate. I would
9 just like to receive them to pursue the case.

10 JUDGE RENDAHL: But to the extent that you
11 all have noted there are issues for clarification as to
12 whether and how this case would proceed, is there an
13 urgency to getting them until the issues are resolved?

14 MR. CAMERON: We have been waiting for them
15 long enough. They were filed on February 12th. We've
16 seen no sign of them since then. We would like to
17 receive them now, and I think we are prejudiced by just
18 having to wait indefinitely. We would like to prepare
19 our case. The issues to be clarified will help us in
20 deciding how to proceed with the case, but the basic
21 problem we face is we need the contract to prepare our
22 case to consider whether do we amend our complaint and
23 other actions we might take in this case.

24 JUDGE RENDAHL: Well, Mr. Reichman,
25 Mr. Cameron is a signatory to the protective order, and

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1 these documents were filed in the case, so I do believe
2 he is entitled to see the contracts. Now, the issue of
3 the expert who has not yet signed the protective order,
4 as I understand. Is that correct?

5 MR. CAMERON: He will not see anything until
6 he signs it. I guarantee that.

7 JUDGE RENDAHL: I have not reviewed the
8 protective order since it was put into place, what the
9 extent of expert review under the protective order.
10 There is a variety of different language in the
11 protective orders that the Commission has entered over
12 time, so I don't recall the nature of that. So if
13 there is a need to amend the protective order to
14 address that, I don't know at this point. That might
15 be something you may wish to look into amongst
16 yourselves. But to the extent that you, Mr. Cameron,
17 are entitled to see these documents now because they
18 were filed in the docket. Whether or not these issues
19 actually move forward in the case is a separate issue,
20 but I do believe you are entitled to see the documents,
21 and I do believe that Cascade should provide copies of
22 the contract to Mr. Cameron, and we can pursue the
23 issue with the expert's access to these documents after
24 you all look at the protective order and decide whether
25 it needs to be amended.

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1 MS. CUSHMAN: Perhaps that can be an issue in
2 the motion for clarification?

3 JUDGE RENDAHL: If you can't resolve it
4 amongst yourselves.

5 MR. CAMERON: I appreciate that. Thank ou.

6 MR. VAN NOSTRAND: Your Honor, I believe it
7 was the standard form of protective order, and I think
8 we were satisfied that the issue that Mr. Cameron
9 addressed, which is the ability of CMS personnel to
10 access it, is taken care of by having Mr. Cameron and
11 an expert have access to it --

12 JUDGE RENDAHL: And one expert or an expert?

13 MR. VAN NOSTRAND: Yes. So I don't believe
14 we saw a need to amend the protective order. The
15 standard form works in these circumstances.

16 MR. CAMERON: Unless there be any confusion,
17 our expert is Don Schoenbeck, who knows this routine
18 quite well. I'm completely comfortable with him as I
19 suspect other parties would be as well.

20 JUDGE RENDAHL: Having looked at Paragraph 8
21 of the protective order, Order 02, it does provide
22 access to experts designated by the parties, and as you
23 say, Mr. Van Nostrand, it does preclude access to the
24 Company itself, so if you are all satisfied, then let's
25 go the normal route and have Mr. Schoenbeck fill out

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1 the appropriate paperwork, and there are already
2 exceptions to the Company. Cascade can address that at
3 that time, but as to access to the contracts for now,
4 as a signatory to the protective order, you are
5 entitled to see those since they were filed in the
6 docket.

7 MR. CAMERON: Thank you, Your Honor.

8 JUDGE RENDAHL: With that, I would say that
9 we should defer the issue of invoking discovery until
10 after I rule on the motions, if that's acceptable, and
11 with that, I don't see any other issue that you all
12 have brought forward unless there is something else we
13 need to address.

14 MR. CAMERON: Can I ask you one question
15 without asking you to resolve it, and that is the
16 tariff filings made by Cascade have been docketed by
17 the Commission in UG-070332. Again, without asking you
18 to decide it right now, were one or more of us to ask
19 for consolidation of the complaint with that new
20 docket, when would it be timely to do so?

21 JUDGE RENDAHL: After the resolution of the
22 open meeting. Those tariffs are scheduled to be
23 addressed at the March 14th open meeting, and if the
24 commissioners choose to suspend those tariffs, then it
25 would be appropriate. If the commissioners choose to

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1 let the tariffs go into effect, then I'm not sure
2 what's left there to address, so I think it depends on
3 the commissioners' resolution at the open meeting, if
4 that helps you.

5 MR. CAMERON: It does.

6 MR. REICHMAN: Might I suggest that it might
7 be more appropriate to address consolidation after the
8 clarification issues are resolved, because again, we
9 intend to assert there is really nothing left for
10 resolution in this case. It seems to make sense the
11 scope of this case be resolved before any consolidation
12 takes place.

13 JUDGE RENDAHL: You make a good point. We
14 can decide the issue of clarification at the
15 appropriate time, but I don't think it precludes CMS
16 from seeking consolidation after the open meeting.
17 That's when it would be ripe for consolidation, and
18 when we choose to do that, we will take it under
19 consideration.

20 MR. REICHMAN: Thank you.

21 MS. KREBS: I have one question, Your Honor.
22 In the cross-motions for summary judgement between CMS
23 and Cascade, the nonmoving parties had the right to
24 respond, not raising issues outside, and I was
25 wondering if there would be a problem with having an

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1 opportunity to just reply to the motions for
2 clarification as long as they don't move outside the
3 scope of the motions.

4 JUDGE RENDAHL: I see no problem with that.

5 I think we should use the same format as we did before,
6 so to the extent that Northwest Industrial Gas Users or
7 Public Counsel, I'm assuming that both parties maybe do
8 not have issues for clarification. If you do, then
9 please file a motion, but if you don't, then you may
10 file a response on April 9th.

11 Is there anything else we need to address
12 this morning? All right. I'll be entering a
13 prehearing conference order in the next few days, and
14 if there is any clarification you need of that, please
15 let us know, and with that, I think we will be in
16 recess. Thank you.

17 (Prehearing conference adjourned at 12:05 p.m.)

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