

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

TREE TOP, INC., a Washington
Corporation,

Complainant

v.

CASCADE NATURAL GAS
CORPORATION, a Washington
Corporation,

Respondent.

DOCKET UG-210745

CASCADE NATURAL GAS
CORPORATION'S ANSWER AND
AFFIRMATIVE DEFENSES TO FORMAL
COMPLAINT

1 Cascade Natural Gas Corporation (“Cascade” or “Company”), submits this Answer to
Tree Top, Inc.’s (“Tree Top” or “Complainant”) Complaint in the above referenced docket.

I. INTRODUCTION

2 Cascade requests that service in this case include the following:

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Cascade’s representatives for purposes of this proceeding are:

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3 Pursuant to WAC 480-07-370(2), Cascade hereby files its Answer and Affirmative
Defenses to the Complaint filed by Tree Top.

4 This case involves allegations by Complainant that the overrun entitlement penalty that
Cascade assessed against it from February 12, 2021, to February 16, 2021, was unduly
burdensome and not fair, just, and reasonable. Cascade disputes the factual and legal bases for
this claim and asserts that its actions are consistent with its filed and approved tariffs and with
applicable Washington law. Furthermore, Tree Top is an industrial customer who elected
optional natural gas distribution system transportation service pursuant to Cascade’s Schedule
663, which requires Tree Top to secure both gas supply and pipeline transportation services
through third-party arrangements.¹ As provided in Cascade’s tariff, service under this schedule
is subject to entitlement, which allows Cascade to declare an entitlement period during critical
operational conditions.² During entitlement periods, each customer served under Schedule
663—including Tree Top—must effectively manage its gas consumption to its nominated
amounts or be subject to overrun or underrun entitlement penalties. As set forth in Cascade’s
Answer below, Tree Top consumed significantly more natural gas than it had nominated during a
Cascade-declared overrun entitlement period, thereby incurring the penalties provided in the
terms of Cascade’s tariff. Tree Top’s failure to comply with the terms of Schedule 663 imposed
costs on Cascade’s core customers and threatened the reliability of Cascade’s natural gas system.
The overrun penalty mechanism in Cascade’s Commission-approved tariff, Schedule 663, is
appropriately and effectively designed to discourage transportation service customers from using
consuming gas in excess of nominated amounts during critical operational conditions. Cascade
therefore requests that the Commission issue an order dismissing the Complaint with prejudice

¹ Cascade Natural Gas Corporation, Schedule 663 – Distribution System Transportation Service, Nineteenth
Revision Sheet No. 663, Effective for Service on and after March 29, 2019 (“Schedule 663”).

² *Id.*

and determining that Cascade appropriately billed Tree Top for penalties for their use of gas in excess of nominated amounts during the overrun entitlement period associated with the February 2021 weather event.

II. ANSWER TO FORMAL COMPLAINT

5 Respondent Cascade answers the Complaint as follows:

6 Cascade denies each and every allegation of the Complaint except as specifically admitted herein.

A. INTRODUCTION

7 Answering Paragraph 1, Cascade denies that the overrun entitlement penalty it imposed on Tree Top is not fair, just, or reasonable. Cascade applied this charge during a declared entitlement period pursuant to its Commission-approved tariff.

8 Paragraph 2 contains opinions to which Cascade is not required to respond. To the extent an answer is required, Cascade denies that the overrun entitlement penalty it imposed on Tree Top does not reasonably reflect any risks or costs actually incurred by Cascade or its customers, and further denies that the amount of the charge is neither necessary nor appropriate to implement the purpose and intent of an overrun charge. The charge is designed to offset costs Cascade may incur to balance its system to account for the transportation customer's gas consumption in excess of nominated amounts and to incentivize transportation customers to accurately forecast their gas needs and modify operations to ensure they use no more gas than they nominated during periods when gas supply is constrained. In fact, Cascade had to utilize alternative gas supply resources to protect its core customers from gas shortages or curtailment or potential penalties that could otherwise be imposed by Northwest Pipeline, LLC ("Northwest Pipeline").

9 Paragraph 3 describes when Cascade may declare an entitlement period and explains that customers must balance their nominated natural gas usage with their actual natural gas usage within a certain percentage daily during such an entitlement period. Cascade admits the allegations in Paragraph 3.

10 Answering Paragraph 4, Cascade admits that Schedule 663 of Cascade’s tariff imposes an overrun entitlement penalty equal to the greater of one dollar (\$1.00) per therm or one hundred and fifty percent (150%) of the highest midpoint price for the day at one of several named natural gas supply pricing points.

11 Paragraph 5 contains both factual allegations and opinion statements. Cascade is not required to respond to the opinion statements. Answering Paragraph 5, Cascade admits that there was a colder than normal weather event in February 2021 that affected Texas and “most of the lower 48 states.”

12 Paragraph 6 contains both factual allegations and opinion statements. Cascade is not required to respond to the opinion statements. Answering Paragraph 6, Cascade admits that the February 2021 weather event impacted the natural gas and electric markets in Texas and surrounding states and forced utilities and power producers to turn to the spot market. Cascade lacks sufficient information or knowledge to either admit or deny the truth of the remainder of the allegations set forth in Paragraph 6 of the Complaint and therefore denies the same.

13 Paragraph 7 makes allegations about gas trading prices during the February 2021 weather event and concludes that the pricing at Northwest South of Green River (“Green River”) clearly “did not reflect a functional market.” Cascade admits that for the period February 13-16, 2021, the pricing at Green River was \$119.83/MMBtu and at Sumas was \$14.03/MMBtu. The characterization of the market is vague and subjective, and Cascade is not required to respond.

14 Answering Paragraph 8, Cascade admits that it did not purchase gas directly at Green River or at Green River indexed prices during the weather event in February 2021, but denies Tree Top’s allegation that neither Cascade nor its customers were directly affected by the February 2021 weather event because Cascade was forced to rely on alternative gas supply resources and, absent the availability of such resources, would have been exposed to prices at other markets, including Green River.

15 Answering Paragraph 9, Cascade admits that it declared an “overrun entitlement” on its system on February 10, 2021. Cascade admits that the overrun entitlement was not directly caused by the Texas crisis but rather by weather events and constraints in the region.

16 Paragraph 10 contains a legal conclusion to which no answer is required. To the extent an answer is required, Cascade admits that its charges (including overrun entitlement penalties) must be consistent with Commission-approved tariffs. Additionally, to the extent that Paragraph 10 recites portions of Cascade’s Schedule 663, the tariff speaks for itself.

17 Paragraph 11 alleges that the Schedule 663 overrun penalty language “parrots” the language in the tariff of Cascade’s upstream provider—Northwest Pipeline—and further alleges that Cascade is not necessarily directly affected by the prices at all the hubs listed in Schedule 663. Cascade admits that its overrun penalty language mirrors that of its upstream provider. Cascade denies that it is not directly affected by the prices at all the hubs listed in Schedule 663. Importantly, Cascade may need to purchase gas on the spot market if it cannot balance its system—which may occur during an entitlement overrun situation—and may need to purchase gas at any one of the trading hubs identified in Cascade’s tariff.

18 Answering Paragraph 12, Cascade admits that it imposed upon Tree Top an overrun entitlement charge of \$198,884.87 for the period of February 12-16, 2021, which was based on

the prices at Green River. Cascade admits that it did not purchase gas directly at Green River or at Green River indexed prices during the weather event in February 2021, but denies that it was not potentially exposed to that market. Cascade was forced to rely on alternative gas supplies and, absent the availability of such resources locally, would have been exposed to prices in other markets, including Green River.

19 Cascade admits the portions of Paragraph 13 alleging that modification of overrun entitlement penalties has been negotiated and approved for Avista Corporation in Idaho, but lacks sufficient information or knowledge to either admit or deny the truth of the remainder of the allegations set forth in Paragraph 13 of the Complaint and therefore denies the same.

20 Paragraph 14 alleges that the overrun entitlement charge that Cascade applied to Tree Top is unduly burdensome, unjust, and unreasonable, and asks this Commission to calculate the overrun charge based on pricing at a different trading hub. Paragraph 14 contains legal conclusions and the Complainant's requested relief and does not contain factual allegations to which an answer is required. To the extent an answer is required, Cascade denies the allegations in Paragraph 14.

B. PARTIES

21 Answering Paragraph 15, Cascade admits that Tree Top is a natural gas transportation customer served by Cascade that is responsible for arranging its own gas supply while Cascade is responsible for using its natural gas distribution system to deliver gas to Tree Top at its designated point of delivery. Cascade lacks sufficient information or knowledge to either admit or deny the truth of the remainder of Tree Top's allegations set forth in Paragraph 15 of the Complaint and therefore denies the same.

22 Paragraph 16 provides Tree Top's name and address and does not require an answer.

23 Paragraph 17 identifies the individual designated to receive service for Tree Top and the
attorneys representing Tree Top and does not require an answer.

24 Paragraph 18 identifies Cascade's name and address. Cascade admits the allegations set
forth in Paragraph 18 of the Complaint.

25 Answering Paragraph 19, Cascade admits that it is engaged in the business of providing
natural gas distribution service within the State of Washington.

26 Answering Paragraph 20, Cascade admits that it operates and maintains a natural gas
distribution system, that it provides natural gas service to various types of customers, and that its
distribution facilities are connected to interstate natural gas pipelines such as the pipeline owned
by its upstream supplier, Northwest Pipeline.

27 Answering Paragraph 21, Cascade admits that it is a "public service company" subject to
the regulatory authority of this Commission.

C. JURISDICTION

28 Paragraph 22 describes the legal basis for Commission jurisdiction over the Complaint
and contains statements and conclusions of law to which Cascade is not required to respond. To
the extent an answer is required, Cascade admits generally that the Commission has jurisdiction
over this Complaint and the parties.

29 Paragraph 23 alleges that the Commission has the statutory authority and responsibility to
determine, fair, just, and reasonable rates. This paragraph contains statements and conclusions
of law to which Cascade is not required to respond. To the extent an answer is required, Cascade
admits Paragraph 23.

30 Paragraph 24 purports to list the rules and statutes that may be brought into issue by this
Complaint. This paragraph contains a statement of law to which Cascade is not required to

respond.

D. STATEMENT OF FACTS

31 Paragraph 25 includes opinion statements and factual allegations about how the February 2021 weather event impacted the natural gas and electric markets in Texas and surrounding states, forced utilities and power producers to turn to the spot market, and allowed natural gas traders and pipeline companies to make record profits in nine days. Cascade is not required to respond to the opinion statements. Answering Paragraph 25, Cascade admits that the February 2021 weather event impacted the natural gas and electric markets in Texas and surrounding states and forced utilities and power producers to turn to the spot market. Cascade lacks sufficient information or knowledge to either admit or deny the truth of the remainder of the allegations set forth in Paragraph 25 of the Complaint and therefore denies the same.

32 Paragraph 26 includes natural gas prices for two trading hubs on unspecified dates. Cascade admits that for the period February 13-16, 2021, the pricing at Green River was \$119.83/MMBtu and at Sumas was \$14.03/MMBtu. Cascade lacks sufficient information or knowledge to either admit or deny the truth of the characterization of the prices as unprecedented, and therefore denies the same.

33 Paragraph 27 makes allegations about potential Cascade gas purchases on unspecified dates. To the extent Paragraph 27 was intended to address the period between February 12-16, 2021, Cascade admits that it did not purchase natural gas from the Green River trading hub between February 12-16, 2021.

34 Answering Paragraph 28, Cascade admits it did not pay any overrun entitlement penalties to Northwest Pipeline between February 12-16, 2021, because Cascade was able to use alternative gas supply resources. Specifically, Cascade used its stored gas reserves to avoid

overruns and to balance its system, but incurred costs in doing so. These costs are borne by Cascade's core customers but may be offset to the extent Cascade receives overrun payments from transportation customers who used more than the amounts they had nominated.

35 Answering Paragraph 29, Cascade admits it charged Tree Top an overrun entitlement penalty of \$198,884.87 for the period of February 12-16, 2021, based on the pricing point at Green River. Cascade lacks sufficient information or knowledge to either admit or deny the truth of the remaining allegations set forth in Paragraph 29 of the Complaint, including whether pricing at Green River reflected "crisis prices," and therefore denies the same.

E. FIRST CLAIM AGAINST CASCADE

36 Answering Paragraph 30, Cascade realleges its response to Paragraphs 1-29 above as if fully set forth herein.

37 Paragraph 31 recites portions of a Washington statute. The referenced statute speaks for itself and therefore requires no answer.

38 Answering Paragraph 32, Cascade denies that the overrun charge it assessed against Tree Top was exorbitant and disagrees with Tree Top's assertion that the Commission should ignore the terms of Schedule 663 by disregarding named trading hubs to the extent that the Commission concludes that the markets were manipulated or "in crisis."

39 Paragraph 33 alleges that an overrun entitlement penalty based off a regional trading hub would more appropriately balance the goals of encouraging compliance with overrun entitlement periods and fixing just and reasonable rates. Cascade understands the trading hubs listed in Schedule 663 to be regional trading hubs on both Cascade's and Northwest Pipeline's respective systems, and to the extent Tree Top asserts that these regional hubs are appropriate for basing an overrun entitlement penalty, Cascade admits the same. To the extent Tree Top had intended for

“regional” trading hubs to refer to the Northwest region, these allegations describe Tree Top’s preferences, and accordingly, no answer is required. To the extent an answer is required, Cascade denies the allegations contained in Paragraph 33 of the Complaint because they are contrary to Cascade’s Commission-approved tariff.

40 Answering Paragraph 34, Cascade admits that the purpose of overrun entitlement penalties is to encourage customers to remain within the allowed tolerance of their daily nominations, thereby ensuring system reliability and stability. Cascade further admits that the charge should have enough “teeth” to discourage noncompliance but denies that the overrun entitlement charge assessed to Tree Top goes beyond discouragement and is exorbitant. Tree Top alleges that a penalty based off \$14.03/MMBtu would be a substantial penalty, which is an opinion statement and therefore no answer is required. Cascade denies Tree Top’s allegation that an overrun charge based off a price of \$14.03/MMBtu would more successfully accomplish the Commission’s mandate of ensuring just, reasonable, and compensatory rates because it would not adequately incentivize transportation customers to supply additional gas to their facilities during overrun entitlement periods. The structure of the Schedule 663 overrun penalty mechanism financially incentivizes transportation customers to balance their consumption to their nominated amounts during an entitlement period, which is critical to maintaining the reliability and integrity of Cascade’s system.

F. PRAYER FOR RELIEF

41 Paragraphs 35-38 do not contain factual or legal allegations and do not require an answer, and are therefore denied.

III. DEFENSES AND AFFIRMATIVE DEFENSES

42 *Filed Rate Doctrine.* Tree Top’s First Claim is barred by the filed rate doctrine because

Cascade appropriately billed Tree Top for consumption of gas in excess of nominated amounts during an entitlement period, consistent with its tariff schedules, rules, and transportation service agreement with Tree Top on file with the Commission at the time the penalties were charged.

43 *Failure to State a Claim for Which Relief May Be Granted.* With respect to the First Claim, all of Cascade's actions were consistent with Cascade's approved tariffs and Washington law, therefore Complainant has failed to state a claim for which relief may be granted.

IV. CASCADE'S ALLEGATIONS

44 In addition to the answers and affirmative defenses provided above, Cascade alleges the following facts relevant to Tree Top's complaint:

45 Cascade makes available natural gas transportation service to customers under tariff Schedule 663. Schedule 663 and the transportation service agreement outline the responsibilities of Cascade and customers regarding the transportation service. Tree Top elected this optional natural gas transportation service, chose to purchase natural gas from a third-party supplier, and to have their gas transported daily to Cascade's system through Northwest Pipeline's system by working with their designated supply agent or themselves. By choosing service under Schedule 663, Tree Top agreed to align its natural gas consumption with its nominated gas amounts during entitlement periods, or face an overrun penalty.

46 During the February 2021 weather event, Tree Top did not change its confirmed nominations during the entitlement period to more accurately match their volumes delivered. Tree Top had significant levels of gas consumption in excess of nominated amounts during the declared overrun entitlement period over the course of multiple days.

47 During the February 2021 weather event, 78 out of 248 transportation service customer accounts in both Oregon and Washington incurred overrun entitlement penalties totaling

\$1,022,436.45. Specific to the Washington transportation service customers, 74 out of 216 customer accounts incurred overrun entitlement penalties totaling \$1,003,305.33. On the other hand, 142 transportation service customer accounts in Washington were able to manage their consumption during the February 2021 weather event closely enough to their nominated amounts to avoid incurring entitlement overrun penalties.

48 The February 2021 weather event was not the first time Cascade has had to impose overrun entitlement penalties on Tree Top for consumption in excess of nominated amounts during an entitlement period.

49 The purpose of the overrun entitlement penalty is to encourage customers to follow the terms of Schedule 663 to preserve system integrity and reliability during critical operational periods. Cascade's core customers bear the cost imposed by transportation service customers by consuming gas in excess of nominated amounts during an overrun entitlement period. Therefore, the penalties for use of gas in excess of nominated amounts during entitlement periods flow back to Cascade's core customers through the Purchased Gas Adjustment mechanism.

V. REQUEST FOR RELIEF

50 WHEREFORE, Cascade respectfully requests that the Commission issue an order dismissing Tree Top's Complaint with prejudice and determining that Cascade appropriately billed Tree Top for the entitlement overrun penalties.

DATED: October 25, 2021.

Respectfully Submitted,

McDOWELL RACKNER GIBSON PC

/s/ Jocelyn Pease

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