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**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

CASCADE NATURAL GAS
CORPORATION

for an accounting order authorizing deferred
accounting treatment of loss in margin due to
Company sponsored conservation programs,
or, in the alternative, the continuation of the
pilot decoupling mechanism that was
approved in Docket UG-060256

NO. UG-101656

CASCADE'S RESPONSE TO PUBLIC
COUNSEL MOTION TO DISMISS

1. Pursuant to WAC 480-07-380(c), Cascade Natural Gas Corporation ("Cascade" or the "Company") by and through undersigned counsel, hereby responds to the Motion to Dismiss made by the Attorney General of Washington, Public Counsel ("Public Counsel"), filed on October 22, 2010 ("Motion").

I. INTRODUCTION

2. On October 1, 2010, Cascade filed a petition that requests an accounting order authorizing deferred accounting treatment of its lost margin resulting from Company-sponsored conservation programs (the "Petition"). The Petition alternatively requests the continuation of the pilot decoupling mechanism approved in the order accepting settlement of Cascade's most recent general rate case, Order 05, in Docket UG-060256.

3. On October 7, 2010, Public Counsel filed a notice of appearance in this proceeding, and on October 22, 2010, Public Counsel filed a Motion to Dismiss Cascade's Petition (the "Motion to Dismiss"). Public Counsel erroneously argues that the Commission should dismiss the Petition because it purportedly violates the terms of Order 05 and the related settlement stipulation. For the foregoing reasons, the Commission should deny the Motion to Dismiss.

II. ARGUMENT

A. The Motion to Dismiss is Time-Barred

4. Public Counsel filed the Motion to Dismiss pursuant to WAC 480-07-380(1), which states as follows:

A party that opposes a pleading must file any motion directed to the pleading no later than the time the responsive pleading is due, or within twenty days after the pleading is served, whichever time is less, unless the party shows good cause for delay.

Pursuant to the Commission's rules, "a person who desires to respond to a petition must file the answer within twenty days after the petition is filed." WAC 480-07-370(1)(c)(iv). As stated above, Cascade filed the Petition on October 1, 2010. Therefore, any answer to the Petition was due on October 21, 2010. Public Counsel, however, filed the Motion to Dismiss one day late, on October 22, 2010. Public Counsel was aware of the Petition either immediately or shortly after Cascade filed the Petition because Public Counsel filed a notice of appearance in this docket on October 7, 2010. Public Counsel provides no explanation for filing the Motion to Dismiss after the deadline. Accordingly, the Commission should deny the Motion to Dismiss as time-barred.

B. Statute and Commission Rules Authorize Cascade's Petition

5. Public Counsel requests dismissal of the Petition, arguing that the stipulation approved in Order 05 calls for extension of Cascade's decoupling pilot to occur only in the context of a general rate case. However, extension of Cascade's decoupling pilot is merely an alternative to Cascade's primary request, which is to be allowed to defer, into Account 186, the loss of margin associated with Company-sponsored conservation programs. *See* Petition at 2. Such request is wholly independent of Order 05 and Docket UG-060256. WAC 480-07-370(b) authorizes Cascade to request an order approving an accounting treatment, and the Petition seeks a Commission order approving its accounting treatment of lost margin resulting from Company-sponsored conservation programs. Further, RCW 80.28.260 authorizes the Commission to grant such request.

6. Public Counsel appears to interpret Cascade's request as a modification of the recently-expired decoupling pilot. *See* Motion to Dismiss at ¶8. Such an interpretation is without merit and disregards the plain language of the Petition. Cascade's request is limited to the deferral of lost margin from Company-sponsored conservation such that "[t]he amounts deferred would be recovered in rates as part of the annual Deferral Tracking Mechanism filings." Public Counsel wrongly labels such request a modification of Cascade's decoupling pilot: "Like the decoupling mechanism, [Cascade's request] allows for replacement of revenues lost as a result of conservation." Motion to Dismiss at ¶8. Under Public Counsel's interpretation, the Commission should summarily dismiss any future request by Cascade related to lost margin as a violation of Order 05. Such result is contrary to the plain language of the Petition, the

Commission's authority, and Commission policy. *See, e.g.*, Notice of Presentation to the State Energy Strategy Advisory Committee, Docket U-100522 (Oct. 6, 2010) (regarding the Commission's receptivity to approving forms of lost margin recovery mechanisms and other mechanisms that are within the Commission's statutory authority to approve).

C. The Motion to Dismiss Fails to Meet the Standard for Dismissal

7. Pursuant to WAC 480-07-380, the Commission will consider a motion to dismiss under the standard for consideration of a motion made under CR 12(b)(6) of the civil rules for Washington superior court.¹ A CR 12(b)6 motion

may properly be granted only when it appears beyond doubt that the plaintiff cannot prove any set of facts that would (a) be consistent with the complaint and (b) warrant relief. Thus, a CR 12(b)(6) motion may not properly be granted if even a hypothetical set of facts is conceivably raised by the complaint and legally sufficient to support a claim.

Havsy v. Glynn, 88 Wn.App. 514, 518 (1997). As stated above, WAC 480-07-370(b) authorizes Cascade to request an order approving an accounting treatment of lost margin resulting from Company-sponsored conservation programs, and RCW 80.28.260 authorizes the Commission to grant such request. Public Counsel has failed to meet the standard for dismissal, and the Commission should deny the Motion to Dismiss.

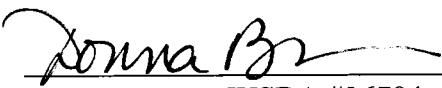
¹ The other standard listed in WAC 480-07-380, CR 12(c), is not applicable in this case. CR 12(c) concerns motions for judgment on the pleadings “[a]fter the pleadings are closed.” The pleadings in this proceeding have not closed, and CR 12(c) does not apply.

III. CONCLUSION

8. For the foregoing reasons, Cascade respectfully requests that the Commission deny the Motion to Dismiss.

DATED: November 1, 2010.

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