

REDACTED

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

TREE TOP, INC.,

Complainant,

v.

CASCADE NATURAL GAS
CORPORATION,

Respondent.

DOCKET UG-210745

CASCADE NATURAL GAS CORPORATION'S INITIAL BRIEF

REDACTED

July 13, 2022

TABLE OF CONTENTS

I. INTRODUCTION 1

II. FACTUAL BACKGROUND..... 4

 A. Cascade’s Schedule 663 – Distribution System Transportation Service..... 4

 B. The February 2021 Entitlement Period..... 7

III. PROCEDURAL BACKGROUND..... 9

IV. LEGAL STANDARD..... 13

V. ARGUMENT..... 13

 A. The February 2021 Overrun Entitlement Charges Were Lawfully Imposed, and Should Not Be Reduced or Refunded. 13

 1. Cascade Applied its Tariff as Required by Washington Law..... 13

 2. Tree Top’s Request Contravenes the Filed Rate Doctrine, and the Commission Must Harmonize the Filed Rate Doctrine with its Authority to Issue Refunds Under RCW 80.04.220. 15

 3. The Commission Has Never Ordered Reparations Pursuant to RCW 80.04.220 Where a Utility Charged Rates Consistent with Its Lawfully Filed Tariff. 17

 4. The Cases Tree Top Cites Do Not Apply RCW 80.04.220 and Are Not Controlling in this Dispute..... 20

 B. Tree Top’s Proposal to Apply a Different Market Index Would Undermine the Purpose of the Overrun Entitlement Charge, Unfairly Shifting the Risk of Supply Shortages to Cascade and its Core Customers..... 22

 1. Tree Top’s Proposal Inappropriately Shifts the Risk to Cascade and its Core Customers..... 24

 2. Tree Top’s Proposal Would Require Cascade to Refund a Total of 78 Transportation Service Customers and Claw Back the Revenues from its Core Customers..... 27

 C. Tree Top’s Proposal to Net Plant Nominations and Usage Ignores the Schedule 663 Balancing Requirements and Physical Realities of the Distribution Gas System..... 28

 D. In the Event that the Commission Finds Any of Tree Top’s Arguments Persuasive, Any Changes to Cascade’s Tariff Should be Prospective. 30

VI. CONCLUSION..... 31

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Brown v. MCI WorldCom Network Services, Inc.</i> , 277 F.3d 1166 (9th Cir. 2002)	15
<i>Columbia Gas Transmission Corp. v. Federal Energy Reg. Comm’n</i> , 895 F.2d 791 (D.C. Cir. 1990).....	14, 15
<i>Okeson v. City of Seattle</i> , 150 Wn.2d 540 (2003)	14
<i>People’s Org. for Wash. Energy Res. (POWER) v. Wash. Util. and Transp. Comm’n</i> , 101 Wn.2d 425 (1984)	19
<i>Texas Eastern Transp. Corp. v. FERC</i> , 102 F.3d 174 (1996).....	10
Washington Utilities and Transportation Commission Orders	
<i>Air Liquide America Corp., et al. v. Puget Sound Energy, Inc.</i> , Dockets UE-001952 and UE-001959 (consolidated), Eleventh Supplemental Order (Apr. 5, 2001)	15, 16
<i>Air Liquide America Corp., et al. v. Puget Sound Energy, Inc.</i> , Docket UE-981410, Fifth Supplemental Order (Aug. 3, 1999).....	15
<i>Air Liquide America Corp., et al. v. Puget Sound Energy, Inc.</i> , Dockets UE-001952 and UE-001959 (consolidated), Sixth Supplemental Order (Jan. 22, 2001)	14, 15, 16
<i>American Advertisers Intl., Inc. v. Pacific Nw. Bell Tel. Co.</i> , Cause U-85-69, ALJ’s Findings of Fact, Conclusions of Law and Proposed Order Dismissing Complaint (1986 Wash. UTC LEXIS 44) (Apr. 24, 1986)	18, 20
<i>AT&T Commc’ns et al. v. Qwest Corp.</i> , Docket UT-051682, Order 03 (Feb. 10, 2006)	17
<i>Eschelon Telecom of Wash., Inc. v. Qwest Corp.</i> , Docket UT-033039, Order 03 (Jan. 9, 2004).....	17
<i>Eschelon Telecom of Wash., Inc. v. Qwest Corp.</i> , Docket UT-033039, Order 04 (Feb. 6, 2004)	17

<i>Glick v. Verizon Nw. Inc.</i> , Docket UT-040535, Order 03 (Jan. 28, 2005).....	17
<i>In re Tree Top, Inc. v. Cascade Nat. Gas. Corp.</i> , Docket UG-210745, Order 01, Prehearing Conference Order (Nov. 19, 2021).....	11
<i>In re Tree Top, Inc. v. Cascade Nat. Gas. Corp.</i> , Docket UG-210745, Order 02, Denying Respondent’s Motion for Summary Determination (Feb. 3, 2022).....	12
<i>In re Tree Top, Inc. v. Cascade Nat. Gas. Corp.</i> , Docket UG-210745, Order 04, Second Prehearing Conference Order (Mar. 8, 2022).....	12
<i>Seattle Children’s Hosp., et al., v. Puget Sound Energy</i> , Docket UG-190857, Order 04 (Mar. 2, 2020).....	20, 21
<i>The Lummi Nation v. Verizon Nw. and Qwest Corp.</i> , Docket UT-060147, Order 02 (June 7, 2006).....	17
<i>Wash. State Attorney Gen.’s Off. and the Indus. Customers of Nw. Util. v. PacifiCorp d/b/a Pac. Power & Light Co.</i> , Docket UE-110070, Order 01 (Apr. 27, 2011).....	11, 16, 17
<i>Wash. Util. & Transp. Comm’n v. Avista Corp.</i> , Docket UE-120788, Order 01 (July 27, 2012).....	18
<i>Wash. Util. & Transp. Comm’n v. Fircroft, Inc.</i> , Docket UW-081259, Order 02 (Sept. 11, 2008).....	18
<i>Wash. Util. & Transp. Comm’n v. NW Nat. Gas Co.</i> , Docket UG-121434, Order 01 (Oct. 31, 2012).....	18
<i>Wash. Util. & Transp. Comm’n v. PacifiCorp d/b/a Pacific Power & Light Co.</i> , Docket UE-100749, Order 10 (Aug. 23, 2012).....	14, 15
<i>Wash. Util. & Transp. Comm’n v. Puget Sound Energy</i> , Docket UE-981238, Fourth Supplemental Order (Apr. 5, 1999).....	19
<i>Wash. Util. & Transp. Comm’n v. Puget Sound Power & Light Co. / People’s Org for Wash. Energy Res and Pub Counsel of the Attorney Gen. v. Puget Sound Power & Light Co.</i> , Consolidated Causes U-84-27 and U-84-44, Fourth Supplemental Order (1984 Wash. UTC LEXIS 11) (Sep. 28, 1984).....	18, 19, 20

Codes

RCW 80.04.220	<i>passim</i>
---------------------	---------------

RCW 80.04.230	13, 21
RCW 80.04.240	11
RCW 80.28.020	14, 15
RCW 80.28.080	<i>passim</i>
RCW 80.28.090	27
RCW 80.28.100	27

I. INTRODUCTION

1 In this case, Tree Top, Inc. (Tree Top) asks the Washington Utilities and Transportation Commission (WUTC or Commission) to grant the extraordinary and unprecedented relief of reducing the overrun entitlement charges it incurred pursuant to the terms of Cascade Natural Gas Corporation’s (Cascade or Company) lawfully filed tariff. These charges were incurred as a result of Tree Top’s failure to procure natural gas supplies sufficient to meet its needs during a critical operational period—a fact which is not in dispute in this case. However, Tree Top argues that the charges are nevertheless unreasonable because they were based on a regional trading hub that was affected by supply disruptions during an extreme weather event.

2 Cascade’s tariff provides for overrun entitlement charges that are calculated based on the highest priced regional market and the overrun volumes for each customer account during an entitlement. Tree Top’s request for relief asks that the charges depart from Cascade’s tariff in two ways. First, Tree Top asks that the charges be recalculated based on Tree Top’s preferred index, arguing that the highest market index that was applied per the tariff was based on a “dysfunctional” market. Second, Tree Top asks that the charges be further reduced by recalculating its overrun volumes by first netting its gas nominations and usage across its four Washington plants, arguing that its failure to procure sufficient gas supplies for each plant daily did not impose additional costs on Cascade or its core customers, and instead that Tree Top provided a benefit to Cascade by supplying “excess gas” during the event.

3 Tree Top’s request must fail because it: (1) conflicts with the terms of Cascade’s tariff and is contrary to Washington law and fundamental ratemaking principles, (2) attempts to undermine the purpose of Cascade’s overrun entitlement charges, which is to incentivize transportation customers to supply sufficient gas daily during critical operational periods, and (3) ignores the physical realities of Cascade’s distribution system. Tree Top unfairly shifted the risk of supply

shortages to Cascade and its core customers during a critical operational period and its attempt to avoid responsibility for its actions should be rejected for the reasons described herein.

4 **First**, Cascade is prohibited by statute from charging or collecting any amount for service other than “the rates and charges applicable to such service as specified in its schedule filed and in effect at the time.”¹ Cascade assessed Tree Top overrun entitlement charges based on the applicable rates prescribed in Cascade’s lawfully filed Tariff Schedule 663 (Schedule 663), and doing otherwise would have violated both Cascade’s tariff and Washington law. Tree Top’s requested relief likewise violates a fundamental principle of utility ratemaking embodied within Washington statutory law—that is, that regulators set rates *prospectively*. It appears that the Commission has never exercised its authority under RCW 80.04.220 to order reparations where a utility charged rates consistent with its lawfully filed tariff, and it should not do so here, where Cascade calculated the overrun entitlement charges based on its tariff.

5 **Second**, the purpose of the overrun entitlement charge is to incentivize transportation customers to supply as much gas as they plan to consume during critical operational periods to ensure that the system can operate reliably. To create an incentive, the entitlement charge necessarily must exceed the costs the customer would otherwise incur by purchasing additional gas themselves. In this case, Tree Top seeks to leverage an argument about unusual market conditions to undermine the fundamental purpose behind the charge. Because Tree Top and other transportation customers collectively comprise approximately 70 percent of Cascade’s load, the failure of Tree Top and Cascade’s other transportation customers to bring on sufficient gas during

¹ RCW. 80.28.080(1)(a) states in relevant part that “Except as provided otherwise in this subsection, no gas company, electrical company, wastewater company, or water company may charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such service as specified in its schedule filed and in effect at the time, nor may any such company directly or indirectly refund or remit in any manner or by any device any portion of the rates or charges so specified, or furnish its product at free or reduced rates except to its employees and their families, and its officers, attorneys, and agents[.]”

a constrained period could have jeopardized Cascade’s system integrity. Tree Top had multiple opportunities to update its gas nominations during the February 2021 Entitlement Period²—but failed to do so and shifted the risk of shortages to Cascade and its core customers. Accordingly, upholding the entitlement charges would appropriately keep the risks of system shortages with the customers who created them, while aligning with longstanding Commission precedent and supporting policy goals. Conversely, granting Tree Top’s requested relief would require Cascade to refund all similarly situated customers, would impact other WUTC-regulated natural gas utilities that have the same or similar mechanisms in their tariffs, and could have the unintended consequence of conveying to customers that they can seek reparations whenever they do not wish to pay the charges they incur under the terms of lawfully filed tariffs.

6 **Third**, Tree Top’s request to net nominations and usage from its four accounts should similarly be rejected as another attempt by Tree Top to shift operational risks to Cascade instead of taking responsibility for procuring the gas it needs. Tree Top’s facilities are in different locations on Cascade’s system and delivering gas to one point on Cascade’s system does little to satisfy demand on other parts of the system, particularly during entitlement periods, when capacity and supplies may be constrained. Relatedly, Schedule 663 expressly provides that during an entitlement period, customers must balance their gas consumption daily. Tree Top’s proposal to net nominations and usage ignores the terms of Cascade’s tariff and the realities of a constrained system. If approved, Tree Top’s request to net nominations and usage across its plants would lead to an inequitable result—shifting financial risks to Cascade and other customers—and could lead to future operational harm. Thus, Tree Top’s proposal must be rejected.

² On February 10, 2021, Cascade notified all its Schedule 663 natural gas transportation customers whose gas is transported through the system of Cascade’s upstream provider, Northwest Pipeline, that Cascade was initiating a State II (eight percent) overrun entitlement period starting February 12, 2021 and continuing through February 16, 2021 (the “February 2021 Entitlement Period”). Response Testimony of Christopher Robbins (Robbins), Exh. CR-2, Notice of Feb. 2021 Entitlement.

7 Upholding the charges as imposed is consistent with Washington law and is sound regulatory policy—both related to entitlement charges and the basic ratemaking principle that utilities must charge rates consistent with their filed tariffs. On the other hand, reducing the charges would undermine the purpose of the overrun entitlement charge. If the overrun entitlement charge fails to create a meaningful incentive, the failure to bring on adequate supplies during critical operational periods could potentially jeopardize the integrity of Cascade’s natural gas distribution system. Cascade respectfully requests that the Commission deny Tree Top’s request for extraordinary relief and continue to hold Tree Top and other similarly situated customers accountable for properly matching their gas supplies to their usage during these critical periods by affirming the policy embodied in Cascade’s tariff.

II. FACTUAL BACKGROUND

A. **Cascade’s Schedule 663 – Distribution System Transportation Service.**

8 Schedule 663 provides transportation service of customer-supplied natural gas on the Company’s distribution system.³ Customers receiving service under Schedule 663 (Transportation Service Customers) purchase natural gas through a marketer (supplier) and arrange for that gas to be delivered to Cascade’s system on their behalf.⁴ Schedule 663 requires Transportation Service Customers to request to have a physical quantity of customer-owned gas delivered to a specific

³ Robbins, Exh. CR-1CT at 8:15-16; Robbins, Exh. CR-3, Schedule 663 at 1.

⁴ Robbins, Exh. CR-1CT at 8:20-21; Robbins, Exh. CR-3, Schedule 663 at 1. Schedule 663 requires Transportation Service Customers to designate an agent who has authority to nominate natural gas supplies on the Company’s distribution system for delivery on the customer’s behalf. Robbins, Exh. CR-1CT at 9:6-8; Robbins, Exh. CR-3, Schedule 663 at 4. Tree Top notified the Company on or about June 19, 2018 that it had made Cost Management Services, Inc. (CMS) its exclusive agent to act on behalf of Tree Top “in all natural gas matters, including but not limited to, the supply, the procurement and the billing of natural gas for and on behalf of [Tree Top] for services commencing on April 1, 2019.” Robbins, Exh. CR-4, Tree Top’s Agency Agreement with CMS at 4.

Cascade receipt point(s) for a specific day—as gas day is defined in Cascade’s tariff⁵—which is a process referred to as “nomination” of gas supplies.⁶ Transportation Service Customers may update their nominations multiple times throughout each Gas Day and may even modify their Gas Day nominations the day after the Gas Day, up until 9:00 a.m. CCT.⁷ Cascade delivers natural gas to the Transportation Service Customer using Cascade’s natural gas distribution system.⁸ Service under Schedule 663 is subject to both curtailment (limiting the amount of gas that a customer may use) and entitlement (creating a financial incentive to align gas supply with consumption).⁹

9 Transportation Service Customers must deliver as much gas to Cascade’s system as they use and any difference between a confirmed nomination and the volume of gas used by or delivered to a Transportation Service Customer during a defined period constitutes an imbalance.¹⁰ A positive imbalance exists when the volume of gas confirmed for a Transportation Service Customer’s account is greater than the volume of gas used and a negative imbalance exists when the volume of gas confirmed is less than the volume of gas used.¹¹ Under normal operating conditions, customers served on Schedule 663 must satisfy any monthly imbalance conditions greater than five percent within 45 non-entitlement days or be subject to a non-entitlement penalty

⁵ 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).” Robbins, Exh. CR-1CT at 10, n.16.

⁶ Robbins, Exh. CR-1CT at 10:11-15; Robbins, Exh. CR-3, Schedule 663 at 4. Nominations are not considered final until Cascade has confirmed them with the upstream pipeline.

⁷ Robbins, Exh. CR-1CT at 11:8-12:6.

⁸ Robbins, Exh. CR-1CT at 9:1. To be clear, the gas the customer has delivered to Cascade’s system is not necessarily, and not likely to be, the same gas that the Transportation Service Customer uses. The general framework of Schedule 663 is that the customer has gas delivered to Cascade’s system sufficient to meet its gas needs. In other words, Cascade provides the local transportation and delivery service for customer-owned gas. Robbins, Exh. CR-1CT at 9, n.9.

⁹ Robbins, Exh. CR-1CT at 9:2-4; Robbins, Exh. CR-3, Schedule 663 at 1.

¹⁰ Robbins, Exh. CR-1CT at 13:10-12; Robbins, Exh. CR-3, Schedule 663 at 4.

¹¹ Robbins, Exh. CR-1CT at 13:12-15; Robbins, Exh. CR-3, Schedule 663 at 4.

of \$10.00 per MMBtu¹² on the imbalance amount that exceeds the five percent tolerance.¹³ However, Transportation Service Customers must balance their gas daily during entitlement periods.¹⁴

10 Cascade may declare an entitlement period on any day the Company, in its sole discretion, reasonably determines a critical operational condition warrants the need.¹⁵ For example, when deciding whether to declare an entitlement, the Company may consider capacity constraints, supply interruptions, the existence of any undertake or overtake situation that threatens to jeopardize system integrity, or other factors,¹⁶ or may declare an entitlement because an upstream pipeline has declared one.¹⁷ During an entitlement period, a Transportation Service Customer must balance its prescheduled (nominated) natural gas usage with its actual gas usage within a certain threshold percentage daily or be subject to an overrun or underrun entitlement charge on its authorized gas volumes.¹⁸ During an overrun entitlement, a Transportation Service Customer is entitled to take delivered natural gas volumes equal to the amount of natural gas it nominated for that Gas Day plus a Company-specified tolerance (Overrun Entitlement).¹⁹ Volumes of gas taken in excess of the specified tolerance constitute Unauthorized Overrun Volumes and are subject to an additional charge equal to the greater of \$1 per therm or 150 percent of the highest midpoint price for the day at one of several regional pricing hubs (as published in Platts Gas Daily) named in Cascade's Schedule 663, converted from dollars per dekatherms (Dth) to dollars per

¹² Metric Million British Thermal Unit.

¹³ Robbins, Exh. CR-1CT at 15:4-10; Robbins, Exh. CR-3, Schedule 663 at 7.

¹⁴ Robbins, Exh. CR-1CT at 15:20-21; Robbins, Exh. CR-3, Schedule 663 at 9.

¹⁵ Robbins, Exh. CR-1CT at 15:18-19; Robbins, Exh. CR-3, Schedule 663 at 8.

¹⁶ Response Testimony of Lori Blattner (Blattner), Exh. LB-1T at 8:9-13.

¹⁷ Blattner, Exh. LB-1T at 8:16-17.

¹⁸ Robbins, Exh. CR-1CT at 17:1-2; Robbins, Exh. CR-3, Schedule 663 at 9.

¹⁹ Robbins, Exh. CR-1CT at 17:5-8.

therm by dividing by ten (Overrun Entitlement Charge).²⁰ During an underrun entitlement, a Transportation Service Customer is entitled to take less gas than it nominated for that Gas Day within a Company-specified tolerance.²¹ Volumes of gas not taken that exceed the Company-specified tolerance during an Underrun Entitlement constitute Unauthorized Underrun Volumes and are subject to a \$1.00 per therm charge (Underrun Entitlement Charge).²²

B. The February 2021 Entitlement Period.

11 Cascade notified its Transportation Service Customers at approximately 7:50 a.m. Mountain Time (MT) on Wednesday, February 10, 2021, that it would initiate a Stage II (8 percent) Overrun Entitlement starting Gas Day Friday, February 12, 2021, and continuing through Gas Day Tuesday, February 16, 2021 (February 2021 Entitlement Period).²³ Cascade declared the February 2021 Entitlement Period to match the entitlement declared earlier that morning by Northwest Pipeline²⁴ and the entitlement applied to all customers on the Northwest Pipeline system.²⁵ Northwest Pipeline indicated that it was declaring the entitlement because of “forecasted cooler temperatures and continued customer drafting²⁶ negatively impacting Northwest’s system balancing capabilities,”²⁷ which occurred as winter storms were producing “unprecedented impacts on energy markets, leading to widespread power outages and disruptions in natural gas supplies.”²⁸

²⁰ Robbins, Exh. CR-1CT at 18:7-12; Robbins, Exh. CR-3, Schedule 663 at 9. The regional pricing hubs include NW Wyoming Pool, NW south of Green River (Green River), Stanfield Oregon, NW Canadian Border (Sumas), Kern River Opal, and El Paso Bondad. The overrun charge is in addition to the incremental costs of any supplemental gas supplies the Company may have had to purchase to cover the Unauthorized Volumes, in addition to the regular charges incurred in the Rate section of Schedule 663 and any other charges incurred per the Schedule 663 terms and conditions. *Id.*

²¹ Robbins, Exh. CR-1CT at 17:8-10.

²² Robbins, Exh. CR-1CT at 19:7; Robbins, Exh. CR-3, Schedule 663 at 9.

²³ Robbins, Exh. CR-1CT at 24:17-21; Robbins, Exh. CR-2, Notice of Feb. 2021 Entitlement at 1.

²⁴ Robbins, Exh. CR-1CT at 25:3-4.

²⁵ Robbins, Exh. CR-1CT at 24:21-22; Robbins, Exh. CR-2 Notice of Feb. 2021 Entitlement at 1.

²⁶ In this context, “drafting” means taking gas.

²⁷ Robbins, Ex. CR-1CT at 25:11-13; Robbins, Exh. CR-2, Notice of Feb. 2021 Entitlement at 1.

²⁸ Direct Testimony of Bradley G. Mullins (Mullins), Exh. BGM-1CT at 18:2-4.

12 During the February 2021 Entitlement Period, on six separate occasions Tree Top used more gas at its plants than it had supplied for that plant for that Gas Day, and its margin of error between its nominated gas and the amount it consumed ranged from 24 to 52 percent.²⁹ In one instance, Tree Top consumed more than 150 percent of the gas it nominated, despite having numerous opportunities to update its nominations throughout the event.³⁰ Tree Top did in fact update its nominations for multiple plants for multiple Gas Days over the Presidents’ Day weekend³¹ but still failed to deliver sufficient gas.³² Thereafter, Cascade assessed Tree Top Overrun Entitlement Charges of \$198,884.86 for the February 2021 Entitlement Period based on its Unauthorized Gas Volumes,³³ which Tree Top paid under protest on June 24, 2021.³⁴ Tree Top’s February 2021 Entitlement Period nominations and usage by plant—as well as Tree Top’s Overrun Entitlement Charges—are detailed in Confidential Table 1, below.

Table 1 – Tree Top’s February 2021 Overrun Entitlement Charges³⁵ (Confidential)

13 Tree Top was not the only Transportation Service Customer to incur Overrun Entitlement Charges as a result of the February 2021 event. In total, Cascade imposed Overrun Entitlement Charges on 78 Transportation Service Customers resulting from overruns during the February

²⁹ Robbins, Exh. CR-1CT at 29:21-23.

³⁰ Robbins, Exh. CR-1CT at 3:21-4:3.

³¹ Robbins, Exh. CR-1CT at 31:3-15; as further detailed in Robbins, Exh. CR-8C, February 2021 Tree Top Nomination Audit (Confidential).

³² Robbins, Exh. CR-1CT at 31:12-15.

³³ Robbins, Exh. CR-1CT at 29:19-21.

³⁴ Mullins, Exh. BGM-1CT at 2:2-3.

³⁵ Robbins, Exh. CR-1CT at 30; Robbins, Exh. CR-7C, February 2021 Overrun Entitlement Charges.

2021 Entitlement Period for a total of \$1,022,436.45.³⁶ The revenues Cascade received from customers who incurred these charges were passed back to Cascade’s core customers as a credit to the Purchased Gas Adjustment (PGA) mechanism in Cascade’s 2021 annual filing.³⁷ None of the revenue from the Overrun Entitlement Charges was applied to increase Cascade’s earnings. While these 78 Transportation Service Customers failed to nominate to their consumption during the February 2021 Event, these customers were in the minority, as approximately 67 percent of Cascade’s Transportation Service Customers nominated adequate gas supplies and avoided Overrun Entitlement Charges.³⁸

III. PROCEDURAL BACKGROUND

14 Tree Top filed its Complaint on September 24, 2021, alleging that Cascade imposed upon Tree Top unreasonable Overrun Entitlement Charges by calculating the charges based on pricing at Green River³⁹—which Cascade was required to do by its tariff—and asking the Commission to find that Overrun Entitlement Charges based on prices at Sumas (instead of Green River) would amount to “a fair and reasonable overrun entitlement penalty.”⁴⁰ Tree Top seeks a refund based on the difference between Overrun Entitlement Charges based on Green River pricing and recalculated amounts based on Sumas pricing, plus interest.⁴¹ In answering Tree Top’s Complaint, Cascade disputed the factual and legal bases for Tree Top’s claims and asserted that its actions were consistent with its Commission-approved tariff and designed to discourage Transportation Service Customers from consuming gas in excess of nominated amounts during critical operational

³⁶ Robbins, Exh. CR-1CT at 32:8-9. Details of the charges are included in Robbins, Exh. CR-7C, February 2021 Overrun Entitlement Charges (Confidential). As indicated therein, approximately 67 percent of Cascade’s Transportation Service Customers nominated adequate gas supplies and avoided Overrun Entitlement Charges.

³⁷ Blattner, Exh. LB-1T at 5:6-10.

³⁸ Robbins, Exh. CR-1CT at 32:18-21.

³⁹ Tree Top’s Complaint at 8, ¶ 32 (Sept. 24, 2021).

⁴⁰ Tree Top’s Complaint at 9, ¶ 36.

⁴¹ Tree Top’s Complaint at 9, ¶ 37.

periods.⁴² Cascade raised the filed rate doctrine as an affirmative defense—that “once a rate is in place with ostensibly full legal effect and is not made provisional, it can then be changed only prospectively.”⁴³ Cascade argued that Tree Top had failed to state a claim for which relief may be granted because Cascade followed its tariff and appropriately billed Tree Top for its consumption of excess gas during an entitlement period.⁴⁴

15 On November 3, 2021, the Commission’s Executive Director and Secretary issued a Notice of Virtual Prehearing Conference and Notice Setting Deadline for Response notifying parties that Tree Top had until November 9, 2021, to respond to Cascade’s “Motion to Dismiss.”⁴⁵ Tree Top thereafter filed its response, stating that Tree Top was not arguing that Cascade did not adhere to its filed tariff when assessing the Overrun Entitlement Charges⁴⁶ and acknowledging that regulated entities may only charge lawfully filed rates per the filed rate doctrine,⁴⁷ but arguing that the Commission should nevertheless exercise its jurisdiction under RCW 80.04.220 to grant reparations to Tree Top based on the allegedly exorbitant charges that Cascade imposed.⁴⁸

16 Administrative Law Judge (ALJ) Andrew J. O’Connell convened a virtual prehearing conference on November 16, 2021—hearing arguments from parties on Cascade’s Motion to Dismiss—and subsequently issued an Order denying Cascade’s Motion to Dismiss, but not foreclosing Cascade’s argument that Tree Top’s Complaint should be dismissed for failing to state

⁴² Cascade’s First Amended Answer and Affirmative Defenses to Formal Complaint (First Amended Answer) at 2-3, ¶ 5 (Nov. 23, 2021).

⁴³ *Texas Eastern Transp. Corp. v. FERC*, 102 F.3d 174, 183 (1996).

⁴⁴ First Amended Answer at 11, ¶¶ 43-44.

⁴⁵ The Executive Director and Secretary characterized Cascade’s affirmative defense as its “Motion,” and it will be referred to as the Motion to Dismiss herein.

⁴⁶ Tree Top’s Response in Opposition to Respondent’s Motion to Dismiss (Tree Top’s Response) at 2, ¶ 3 (Nov. 9, 2021).

⁴⁷ Tree Top’s Response at 1, ¶ 2.

⁴⁸ Tree Top’s Response at 2, ¶ 3.

a claim for which relief may be granted based on the filed rate doctrine.⁴⁹ The ALJ's Order also contemplated Cascade filing a Motion for Summary Determination.⁵⁰ Cascade filed its Amended Answer and Affirmative Defenses to Tree Top's Complaint on November 23, 2021, supplementing its initial Answer by asserting as an affirmative defense that Tree Top's Complaint was time barred by the applicable six-month limitations period for reparations claims.

17 On December 17, 2021, Cascade filed its Motion for Summary Determination, asserting that Tree Top's claim for reparations under RCW 80.04.220 was barred by the six-month statute of limitations period contained in RCW 80.04.240 and asking the Commission to issue an order dismissing Tree Top's Complaint because Cascade was entitled to judgment as a matter of law.⁵¹ Cascade argued that claims for reparations under RCW 80.04.220 accrue and the RCW 80.04.240 statutory limitations period begins to run at the time that "the aggrieved party *in the exercise of reasonable diligence* should have discovered the injury."⁵² Cascade argued that Tree Top's claim accrued, at the latest, when Tree Top received the Overrun Entitlement Charge invoices on March 22, 2021, more than six months before Tree Top filed its Complaint on September 24, 2021.⁵³ Tree Top filed its Response in Opposition to Cascade's Motion for Summary Determination on January 6, 2022, and took the position that—despite Commission precedent to the contrary—Tree Top's claim did not accrue when it knew of the alleged injury, but instead when it paid the Overrun

⁴⁹ Order 01, Prehearing Conference Order at 1-2, ¶¶ 4-5 (Nov. 19, 2021). *See also* Virtual Prehearing Conference – Vol. I Transcript at 11:21-12:7 (acknowledging that the Commission will entertain future arguments about whether Tree Top's claim runs afoul of the filed rate doctrine) and at 17:17-21 (acknowledging that ALJ O'Connell would set Nov. 23 as the deadline for Cascade to amend its Answer). ALJ O'Connell issued a Notice of Errata to Order 01 on Nov. 19, correcting the procedural schedule to identify that Cascade's Amended Answer—not its Amended Complaint—was due Nov. 23, 2021.

⁵⁰ Order 01 at 2, ¶ 6 and Appendix B.

⁵¹ Cascade's Motion for Summary Determination at 1-2, ¶ 1 (Dec. 17, 2021).

⁵² Cascade's Motion for Summary Determination at 8, ¶ 12, citing *Wash. State Attorney Gen.'s Off. and the Indus. Customers of Nw. Util. v. PacifiCorp d/b/a Pac. Power & Light Co.*, Docket UE-110070, Order 01 at ¶ 33 (Apr. 27, 2011) (emphasis in original) (internal citations omitted herein).

⁵³ Cascade's Motion for Summary Determination at 8, ¶ 12.

Entitlement Charges under protest on June 24, 2021, thereby making its Complaint timely.⁵⁴

18 On February 3, 2022, ALJ O’Connell issued an Order Denying Tree Top’s Motion for Summary Determination, finding that the test for accrual is “not when the aggrieved party actually discovers the injury, but when the aggrieved party *in the exercise of reasonable diligence should* discover the injury,”⁵⁵ but holding that Tree Top’s cause of action accrued on April 15, 2021, the due date on the invoices for the Overrun Entitlement Charges, and thus determined that Tree Top’s Complaint was timely filed.⁵⁶ ALJ O’Connell convened a Second Prehearing Conference on February 22, 2022, and subsequently issued a Second Prehearing Conference Order adopting a revised procedural schedule.⁵⁷

19 Tree Top filed Direct Testimony of its consultant Bradley G. Mullins on April 8, 2022,⁵⁸ Cascade filed Response Testimony of Christopher Robbins (Gas Supply)⁵⁹ and of Lori Blattner (Policy)⁶⁰ on May 12, 2022, and Tree Top filed its Reply Testimony of Bradley G. Mullins on May 26, 2022.⁶¹ On June 8, 2022, the parties contacted ALJ O’Connell and indicated that neither party intended to cross-examine the other party’s witness(es) during the evidentiary hearing and requested that the hearing be cancelled and that this matter instead be decided by the Commission on a paper record.⁶² ALJ O’Connell thereafter canceled the evidentiary hearing scheduled in this proceeding.⁶³

⁵⁴ Tree Top’s Response at 2-3, ¶ 5 (Jan. 6, 2022).

⁵⁵ Order 02, Denying Respondent’s Motion for Summary Determination at 4, ¶ 16 (Feb. 3, 2022).

⁵⁶ Order 02 at 5, ¶ 18.

⁵⁷ Order 04, Second Prehearing Conference Order (Mar. 8, 2022).

⁵⁸ Mullins, Exh. BGM-1CT.

⁵⁹ Robbins, Exh. CR-1CT.

⁶⁰ Blattner, Exh. LB-1T.

⁶¹ Reply Testimony of Bradley G. Mullins (Mullins Reply), Exh. BGM-7T.

⁶² Notice Canceling Evidentiary Hearing (Set for June 22, 2022, at 9:30 a.m.) at 1.

⁶³ Notice Canceling Evidentiary Hearing (Set for June 22, 2022, at 9:30 a.m.) at 1.

IV. LEGAL STANDARD

20 Tree Top seeks reparations under RCW 80.04.220.⁶⁴ Under that statute, the Commission may order reparations upon a finding that a public service company charged an “excessive or exorbitant” amount for service.⁶⁵ However, the Commission has never ordered reparations where a utility charged its lawful rates for service and has instead primarily relied on RCW 80.04.220 to approve temporary rates, subject to refund.

V. ARGUMENT

A. **The February 2021 Overrun Entitlement Charges Were Lawfully Imposed, and Should Not Be Reduced or Refunded.**

1. Cascade Applied its Tariff as Required by Washington Law.

21 In accordance with RCW 80.28.080, Cascade may not charge any amount for service other than the rates and charges applicable to the service per its then effective tariff. Cascade’s tariff, Schedule 663, requires Transportation Service Customers like Tree Top to balance their gas supplies daily during entitlement periods⁶⁶ or face penalties.⁶⁷ During the February 2021 Entitlement Period, Tree Top failed to procure sufficient daily gas on multiple occasions.⁶⁸ Consequently, Cascade calculated and assessed Tree Top Overrun Entitlement Charges using the methodology contained in Schedule 663. Put simply, this outcome is required by law.

⁶⁴ Tree Top’s Response at 2, ¶ 2. Tree Top did not expressly seek reparations under RCW 80.04.220 in its Complaint but confirmed in its Response in Opposition to Cascade’s Motion to Dismiss that RCW 80.04.220 formed the basis of its request for relief. Tree Top also acknowledged that Cascade charged rates consistent with its tariff. Virtual Prehearing Conference – Vol. I Transcript at 13:9-16. As such, Tree Top has not alleged that Cascade charged an amount in excess of the lawful rates in force at the time the charge was made and is therefore not seeking relief under the applicable statute for overcharges—RCW 80.04.230.

⁶⁵ RCW 80.04.220 states in full: “When complaint has been made to the commission concerning the reasonableness of any rate, toll, rental or charge for any service performed by any public service company, and the same has been investigated by the commission, and the commission has determined that the public service company has charged an excessive or exorbitant amount for such service, and the commission has determined that any party complainant is entitled to an award of damages, the commission shall order that the public service company pay to the complainant the excess amount found to have been charged, whether such excess amount was charged and collected before or after the filing of said complaint, with interest from the date of the collection of said excess amount.”

⁶⁶ Robbins, Exh. CR-1CT at 15:19-21; Robbins, Exh. CR-3, Schedule 663 at 9.

⁶⁷ Robbins, Exh. CR-1CT at 18:7-12; Robbins, Exh. CR-3, Schedule 663 at 9.

⁶⁸ Robbins, Exh. CR-1CT at 3:21-4:3.

22 Tree Top asks that the Commission set aside Cascade’s tariff and instead charge a reduced rate. However, Cascade may not furnish its services “at free or reduced rates except to certain specified entities,”⁶⁹ among which Transportation Service Customers are not included. Thus, Cascade was required by law and the terms of its tariff to impose the Overrun Entitlement Charges on Tree Top that were incurred during the February 2021 Overrun Entitlement Period.

23 Consistent with RCW 80.28.080, the Commission sets rates prospectively—not retroactively—even upon a finding that rates or charges are unjust or unreasonable.⁷⁰ As such, RCW 80.28.020 reflects the rule against retroactive ratemaking, a corollary of the filed rate doctrine, which provides that “once a rate is in place with ostensibly full legal effect and is not made provisional, it can then be changed only prospectively.”⁷¹ This Commission has further explained that retroactive ratemaking “makes adjustments to rates that have already been charged to customers” and is therefore generally improper.⁷²

24 In contrast, and consistent with RCW 80.28.020, the Commission has found it proper to determine the just and reasonable rates to be charged prospectively after finding that certain rates and charges were unjust and unreasonable.⁷³ In *Air Liquide Corp. et al. v. Puget Sound Energy, Inc.*, the Commission held that Puget Sound Energy’s (PSE) Schedule 48 retail rates that were pegged via index pricing to western wholesale power markets that were “volatile and exceedingly high” were not fair, just, or reasonable because customers lacked effective options to achieve price

⁶⁹ RCW 80.28.080 (the specified entities include “employees and their families, and its officers, attorneys, and agents; to hospitals, charitable and eleemosynary institutions and persons engaged in charitable and eleemosynary work; to indigent and destitute persons; to national homes or state homes for disabled volunteer soldiers and soldiers' and sailors' homes”); *Okeson v. City of Seattle*, 150 Wn.2d 540, 557 (2003).

⁷⁰ RCW 80.28.020.

⁷¹ *Wash. Util. & Transp. Comm’n v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-100749, Order 10 at 7-8, n.17 (Aug. 23, 2012), quoting *Columbia Gas Transmission Corp. v. Federal Energy Reg. Comm’n*, 895 F.2d 791, 797 (D.C. Cir. 1990).

⁷² *Id.*

⁷³ *Air Liquide America Corp, et al. v. Puget Sound Energy, Inc.*, Dockets UE-001952 and UE-001959 (consolidated), Sixth Supplemental Order at 47, ¶ 104 (Jan. 22, 2001).

stability.⁷⁴ In that case, western wholesale market prices rose to “unprecedented levels,” reaching a peak one-hour price of \$3,300 in December 2000 after historic prices in the range of \$26 during all of 1999.⁷⁵ Importantly, however, the Commission did not order reparations in this case—instead, the Commission concluded that it must remedy the situation *prospectively* and subsequently approved a settlement by which PSE implemented new rate schedules that included just and reasonable rates.⁷⁶

2. Tree Top’s Request Contravenes the Filed Rate Doctrine, and the Commission Must Harmonize the Filed Rate Doctrine with its Authority to Issue Refunds Under RCW 80.04.220.

25 The filed rate doctrine establishes that “once a rate is in place with ostensibly full legal effect and is not made provisional, it can then be changed only prospectively.”⁷⁷ The “purpose of the doctrine is to ensure that the filed rates are the exclusive source of the terms and conditions by which the [utility] provides ... the services covered by the tariff,”⁷⁸ and the doctrine is embodied in Washington law in RCW 80.28.020⁷⁹ and RCW 80.28.080.⁸⁰ Tree Top seeks to circumvent this principle by alleging that Cascade imposed excessive or exorbitant charges by basing those charges on an allegedly dysfunctional market,⁸¹ even though Tree Top does not dispute that the charges

⁷⁴ Dockets UE-001952 and UE-001959 (consolidated), Sixth Supplemental Order at 47, ¶ 103.

⁷⁵ Dockets UE-001952 and UE-001959 (consolidated), Sixth Supplemental Order at 6, ¶ 13.

⁷⁶ Dockets UE-001952 and UE-001959 (consolidated), Eleventh Supplemental Order at 11, ¶ 25, 30, ¶ 89 (Apr. 5, 2001).

⁷⁷ Docket UE-100749, Order 10 at 7-8, n.17, quoting *Columbia Gas Transmission Corp. v. Federal Energy Reg. Comm’n*, 895 F.2d 791, 797 (D.C. Cir. 1990).

⁷⁸ Docket UE-100749, Order 10 at 7, n.16, quoting *Brown v. MCI WorldCom Network Services, Inc.*, 277 F.3d 1166, 1170 (9th Cir. 2002).

⁷⁹ RCW 80.28.020 states that “Whenever the commission shall find, after a hearing had upon its own motion, or upon complaint, that the rates or charges demanded, exacted, charged or collected by any gas company, electrical company, or water company, for gas, electricity, wastewater company services, or water, or in connection therewith, or that the rules, regulations, practices or contracts affecting such rates or charges are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts **to be thereafter observed and in force**, and shall fix the same by order. (Emphasis added).

⁸⁰ *Air Liquide America Corp., et al. v. Puget Sound Energy, Inc.*, Docket UE-981410, Fifth Supplemental Order at 5 (Aug. 3, 1999).

⁸¹ Tree Top’s Complaint at 8, ¶ 32.

were consistent with Cascade’s tariff.

26 The Commission’s basic statutory framework establishes that rates are set prospectively, and not retrospectively.⁸² And while Tree Top argues that the reparations statute specifically allows the Commission to examine past charges, Cascade does not agree that the scope of the Commission’s authority under RCW 80.04.220 should be read to contravene the filed rate doctrine and the Commission’s statutory requirement to adjust rates only prospectively.

27 Cascade urges the Commission to harmonize its reparations authority under RCW 80.04.220 with the fundamental ratemaking principle of the filed rate doctrine and its rules against retroactive ratemaking by rejecting Tree Top’s claim for extraordinary relief as it has rejected similar claims in the past. The Commission has explained that “the rates it allows to go into effect by operation of law, or approves at the conclusion of a general rate proceeding for publication in the company’s tariff, are the company’s lawful rates,” even if they are later found to be “unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient.”⁸³ For example, the Commission held in an analogous case that rates tied to an index it characterized as “volatile and exceedingly high” were “not fair, just, and reasonable,” but did not order reparations⁸⁴—instead thereafter determining the fair and reasonable rates to charge *prospectively*.⁸⁵ From Cascade’s review of the relevant Commission precedent, it appears the Commission has never applied RCW 80.04.220 in a manner that would contravene the filed rate doctrine and Cascade asks that the Commission decline to do so for the first time in this case.

⁸² RCW 80.28.080.

⁸³ Docket UE-110070, Order 01 at 12, ¶ 29.

⁸⁴ Dockets UE-001952 and UE-001959 (consolidated), Sixth Supplemental Order at 47, ¶¶ 102-104.

⁸⁵ Dockets UE-001952 and UE-001959 (consolidated), Eleventh Supplemental Order at 30, ¶ 89.

3. The Commission Has Never Ordered Reparations Pursuant to RCW 80.04.220 Where a Utility Charged Rates Consistent with Its Lawfully Filed Tariff.

28 Tree Top has requested that the Commission order Cascade to provide reparations pursuant to RCW 80.04.220, which provides the Commission with authority to issue reparations for “excessive or exorbitant” charges:

When complaint has been made to the commission concerning the reasonableness of any rate, toll, rental or charge for any service performed by any public service company, and the same has been investigated by the commission, and the commission has determined that the public service company has charged an excessive or exorbitant amount for such service, and the commission has determined that any party complainant is entitled to an award of damages, the commission shall order that the public service company pay to the complainant the excess amount found to have been charged, whether such excess amount was charged and collected before or after the filing of said complaint, with interest from the date of the collection of said excess amount.

29 Importantly, however, the Commission has never exercised its authority under RCW 80.04.220 to grant reparations where a utility has relied on its lawfully filed tariff to impose charges on a customer for services rendered and should not do so for the first time in this case.

30 The circumstances in which the Commission has substantively applied RCW 80.04.220 are quite limited.⁸⁶ The Commission relies on RCW 80.04.220 as the legal basis for adopting interim rates subject to refund and outside of this context, has substantively applied RCW 80.04.220 only twice.⁸⁷ One example addressed a complaint regarding a component of the utility’s rates that had

⁸⁶ In 4 cases, the Commission has rejected RCW 80.04.220 reparations claims as time barred. *Glick v. Verizon Nw. Inc.*, Docket UT-040535, Order 03 (Jan. 28, 2005); *AT&T Commc’ns et al. v. Qwest Corp.*, Docket UT-051682, Order 03 (Feb. 10, 2006) (however, in Order 04 Interlocutory Order Reversing Initial Order the Commission held that the complainants could pursue their action as a contract claim, which was not time barred); *The Lummi Nation v. Verizon Nw. and Qwest Corp.*, Docket UT-060147, Order 02 (June 7, 2006) (the parties thereafter settled their dispute, as approved by this Commission in Order 03); Docket UE-110070, Order 01.

⁸⁷ In the ALJ’s Recommended Decision in *Eschelon Telecom of Wash., Inc. v. Qwest Corp.*, Docket UT-033039, Order 03 at 12, ¶¶ 37-38 (Jan. 9, 2004) (the ALJ recommended that the Commission require Qwest to refund Eschelon excessive rates for service pursuant to its authority to do so under RCW 80.04.220. However, the Commission held in its Final Order that the issue was “not whether the rate charged was reasonable, but whether it was lawful.” Docket UT-033039, Order 04 at 8, ¶ 23 (Feb. 6, 2004). In other words, the Commission required Qwest to refund Eschelon for unlawful rates, not unreasonable rates. Docket UT-033039, Order 04 at 13, ¶ 48).

been ruled by the Washington Supreme Court as impermissible to include in rates, and the other example related to a service quality issue.⁸⁸ As explained in greater detail below, the circumstances in which the Commission has applied RCW 80.04.220 are vastly different from the circumstances in this case, and importantly the Commission has never applied RCW 80.04.220 to set aside rates charged pursuant to a lawfully filed tariff.

i. RCW 80.04.220 Provides the Commission with Authority to Implement Interim Rates Subject to Refund.

31 The Commission has relied on RCW 80.04.220 as the authority under which it may approve interim rates subject to refund.⁸⁹ For example, the Commission has allowed water utilities to implement revised rates on a temporary basis, subject to refund, on less than statutory notice to provide additional time for public review and comment.⁹⁰ The Commission has similarly approved interim rates subject to refund to give Commission Staff (Staff) additional time to investigate gas utility hedging and procurement strategies.⁹¹ This approach fits with the broader scheme of prospective ratemaking and reflects the Commission’s conclusion that, because they are provisional, interim rates may be refunded pursuant to RCW 80.04.220 if they are later found to

⁸⁸ *Wash. Util. and Transp. Comm’n v. Puget Sound Power & Light Co. / People’s Org. for Wash. Energy Res. and Pub. Counsel of the Attorney Gen. v. Puget Sound Power & Light Co.*, Consolidated Causes U-84-27 and U-84-44, Fourth Supplemental Order (1984 Wash. UTC LEXIS 11) (Sep. 28, 1984) and *American Advertisers Intl., Inc. v. Pacific Nw. Bell Tel. Co.*, Cause U-85-69, ALJ’s Findings of Fact, Conclusions of Law and Proposed Order Dismissing Complaint (1986 Wash. UTC LEXIS 44) (Apr. 24, 1986). Likely due to the age of the case, the only document available is the ALJ’s “Findings of Fact, Conclusions of Law and Proposed Order Dismissing Complaint” (ALJ’s Proposed Order).

⁸⁹ *E.g., Wash. Util. & Transp. Comm’n v. Avista Corp.*, Docket UE-120788, Order 01 at 2, ¶¶ 8-11 (July 27, 2012) (allowing Avista to implement tariff revisions decreasing charges and rates on a temporary basis, subject to revision, pursuant to the Commission’s authority under RCW 80.04.220 to order reparations to the extent the Commission finds that any rate implemented on a temporary basis is excessive or exorbitant).

⁹⁰ *E.g., Wash. Util. & Transp. Comm’n v. Fircroft, Inc.*, Docket UW-081259, Order 02 at 3-4, ¶¶ 14, 16, and 19 (Sept. 11, 2008) (finding it reasonable, based on a Commission Staff analysis, to approve revised rates on a temporary basis with less notice than required by statute, but reserving its rights under RCW 80.04.220 to issue reparations to the extent the Commission finds that the temporary rates are excessive or exorbitant).

⁹¹ *E.g., Wash. Util. & Transp. Comm’n v. NW Nat. Gas Co.*, Docket UG-121434, Order 01 at 3-4, ¶¶ 7, 11-13 (Oct. 31, 2012) (agreeing with Staff that NW Natural’s proposed rate decreases pending Staff review of the utility’s hedging and procurement practices were in the public interest).

be unjust or unreasonable without violating the filed rate doctrine.⁹²

ii. *The Commission's Precedent Applying RCW 80.04.220 Outside the Interim Rates Subject to Refund Context is Limited and Does Not Support Tree Top's Request for Relief.*

32 As explained above, the Commission has only substantively applied RCW 80.04.220 outside the interim rates context twice. The first example is from 1984, in which the Commission issued a complaint against Puget Sound Power & Light Company (Puget) following a Washington Supreme Court decision in which the Court ruled that the Commission lacked the statutory authority to include construction work in progress (CWIP) in rate base.⁹³ The Commission's complaint sought to determine whether Puget's rates were reasonable despite including CWIP.⁹⁴ Separately, the People's Organization for Washington Energy Resources (POWER) and the Public Counsel division of the State Attorney General's Office (Public Counsel) filed a complaint seeking retroactive reduction in Puget's rates, refunds for amounts Puget collected above the proposed reduced rates, and an injunction against then-current rates that included CWIP.⁹⁵ In rejecting complainant's sought after relief, the Commission determined that it should consider the reasonableness of Puget's rates in the context of its results of operations, and in so doing, found Puget's rates reasonable because Puget's rate of return, inclusive of CWIP, resulted in Puget earning an actual rate of return lower than its authorized (i.e., reasonable) rate of return established in its rate case.⁹⁶ In short, the Commission found Puget's rates reasonable even though they included a cost element the Washington Supreme Court ruled could not by law be included in

⁹² *Wash. Util. & Transp. Comm'n v. Puget Sound Energy*, Docket UE-981238, Fourth Supplemental Order at 6 (Apr. 5, 1999) ("Because the interim rates are provisional only and subject to the Commission's judicial powers, if the rate ultimately determined establishes a benchmark lower than the interim rate, and the interim rate is found to have been excessive and unlawful, the Commission may order refunds for the period from the date the interim rate when into effect, without violating the [filed rate doctrine].").

⁹³ *People's Org. for Wash. Energy Res. (POWER) v. Wash. Util. and Transp. Comm'n*, 101 Wn.2d 425 (1984).

⁹⁴ Consolidated Causes U-84-27 and U-84-44, Fourth Supplemental Order (1984 Wash. UTC LEXIS) at 2-3.

⁹⁵ Consolidated Causes U-84-27 and U-84-44, Fourth Supplemental Order (1984 Wash. UTC LEXIS) at 3 .

⁹⁶ Consolidated Causes U-84-27 and U-84-44, Fourth Supplemental Order (1984 Wash. UTC LEXIS) at 16-19.

rates.

33 In the second example, from 1986, the Commission declined to issue an order relieving a telecommunications customer from paying disputed charges because of alleged issues with services received.⁹⁷ In rejecting the customer's claim that the telephone company's rates were unreasonable, the ALJ determined that—while there were indeed some service issues—Pacific Northwest Bell Telephone Company promptly resolved the only service complaints it received and that the customer's claims of improper billing arose at the same time the customer was going through financial struggles.⁹⁸ In short, the Commission found that the complainant customer failed to prove that poor quality service equated to excessive or exorbitant rates for service.⁹⁹

34 In the first of these two cases, the Commission rejected claims that Puget's rates were unreasonable or excessive—despite including an impermissible component—because the utility was earning less than its authorized rate of return,¹⁰⁰ and in the second, rejected a customer's attempt to avoid paying its bills due to allegedly poor quality service.¹⁰¹ In both, the Commission demonstrated its reluctance to disturb lawfully filed rates and schedules when it considered ordering reparations for allegedly excessive or exorbitant rates.

4. The Cases Tree Top Cites Do Not Apply RCW 80.04.220 and Are Not Controlling in this Dispute.

35 Tree Top points to two recent cases to support its request, but these cases are not controlling in this matter. First, Tree Top cites a 2020 settlement between PSE and over a dozen PSE customers in which PSE agreed to reduce overrun entitlement penalties of more than \$900,000, refund customers who had already paid, and revise the bills of customers who had not yet paid.¹⁰²

⁹⁷ Cause No. U-85-69, ALJ's Proposed Order (1986 Wash. UTC LEXIS 44).

⁹⁸ Cause No. U-85-69, ALJ's Proposed Order (1986 Wash. UTC LEXIS 44) at 10-11.

⁹⁹ Cause No. U-85-69, ALJ's Proposed Order (1986 Wash. UTC LEXIS 44) at 13.

¹⁰⁰ Consolidated Causes U-84-27 and U-84-44, Fourth Supplemental Order (1984 Wash. UTC LEXIS) at 19-20.

¹⁰¹ Cause U-85-69, ALJ's Proposed Order (1986 Wash. UTC LEXIS 44) at 13.

¹⁰² *Seattle Children's Hosp., et al., v. Puget Sound Energy*, Docket UG-190857, Order 04 (Mar. 2, 2020).

However, the complainants in that case did not seek reparations under RCW 80.04.220 for *unreasonable charges*, but instead sought refunds under RCW 80.04.230 for *unlawful* charges because PSE’s tariff did not authorize PSE to impose penalties for the unauthorized use of gas during overrun entitlements.¹⁰³ Conversely, in this case Tree Top does not argue that Cascade’s Overrun Entitlement Charges are *unlawful*,¹⁰⁴ but instead claims they are *unreasonable* based on market conditions.¹⁰⁵ Furthermore, the PSE dispute centered on what the parties described in their settlement agreement as “two reasonable but conflicting interpretations” of PSE’s tariff rules,¹⁰⁶ which rules PSE subsequently revised after working with its natural gas stakeholder group.¹⁰⁷ On the other hand, in this case, Tree Top has not asserted in its pleadings or during the pendency of this case that there is a different interpretation at issue, and indeed has conceded that Cascade imposed the Overrun Entitlement Charges consistent with its tariff. Thus, unlike the complainants in the PSE case, Tree Top seeks reparations under RCW 80.04.220, not refunds under RCW 80.04.230. In short, despite the superficial similarities, the PSE case should not guide the Commission’s resolution of this matter because PSE arguably did not have the legal authority to charge the overrun entitlement charges in the first instance whereas Cascade clearly and unequivocally followed its tariff.

36 Second, Tree Top cites a dispute in Idaho in which Avista Corporation agreed that a strict application of its tariff would result in a penalty that was “unduly burdensome.”¹⁰⁸ However, the Washington Commission has no obligation to consider a settlement agreement in Idaho, and the

¹⁰³ Docket UG-190857, Complaint at 14-15, ¶¶ 57-60 (Oct. 1, 2019).

¹⁰⁴ Tree Top’s Response at 2, ¶ 3.

¹⁰⁵ Mullins, Exh. BGM-1CT at 2:3-7

¹⁰⁶ Docket UG-190857, Order 04, Exh. A, Settlement Stipulation and Agreement at 4:10, ¶ 10.

¹⁰⁷ PSE 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. Docket UG-190857, Joint Brief Supporting Settlement Stipulation and Agreement at 5:4-15, ¶ 9 (Feb. 18, 2020).

¹⁰⁸ Exh. BGM-1CT at 32:2-3, citing *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).

circumstances underlying that settlement differ from those that led to Tree Top’s Complaint in at least two ways. The first distinction is that the “turmoil in the natural gas markets” that led Avista to impose the penalties apparently caused the customer to absorb higher gas costs that exceeded \$8 million *in addition to* the penalty it owed Avista, making the additional charge seem “unduly burdensome” to both the customer and Avista.¹⁰⁹ The second distinction is that, whereas Tree Top seeks to reduce its Overrun Entitlement Charges from \$198,844.86 to **\$2,210.90**,¹¹⁰ the customer and Avista mutually agreed to reduce the customer’s penalty to **\$500,000** to still provide “meaningful teeth.”¹¹¹ Tree Top’s proposal to net its nominations and usage by plant and apply an alternative price index would reduce the penalty so drastically as to not provide any teeth whatsoever, and would effectively condone Tree Top’s failure to abide by the terms of the tariff under which it accepts service. In short, the Idaho Avista settlement provides no support for Tree Top’s requested relief in this case.

B. Tree Top’s Proposal to Apply a Different Market Index Would Undermine the Purpose of the Overrun Entitlement Charge, Unfairly Shifting the Risk of Supply Shortages to Cascade and its Core Customers.

37 The Schedule 663 overrun charge must exceed the highest daily regional market price to make it more expensive for Transportation Service Customers to rely on Cascade’s gas—or on excess gas supplied by other customers—than to procure additional gas on their own.¹¹² Yet, Tree Top either overlooks or misunderstands this underlying purpose and asks the Commission to relieve it of the consequences of its failure to supply sufficient gas during a critical operational period because a “dysfunctional” market led to the allegedly unreasonable charges.

38 While Cascade does not take a position on whether the market was in fact “dysfunctional,”

¹⁰⁹ Case No. AVU-G-20-02, Avista’s Petition at 5.

¹¹⁰ Tree Top is seeking a refund of \$188,848.49 plus interest of \$7,785.47, which equates to a total refund of \$196,633.96 and would leave Tree Top with a net penalty of \$2,210.90.

¹¹¹ Case No. AVU-G-20-02, Avista’s Petition at 5.

¹¹² Blattner, Exh. LB-1T at 14:3-7.

Cascade also observed that the prices during the February 2021 weather event can be explained by supply and demand—that is, decreased supplies combined with increased demand created higher prices at Green River.¹¹³ Importantly, because Cascade may also be exposed to those same prices—and the potential for market dysfunction and arbitrage—the Overrun Entitlement Charge in Schedule 663 must be set high enough to send a clear signal to customers to align nomination with usage.

39 Tree Top further supports its claim by asserting that Cascade “was not harmed” by Tree Top’s overruns, and further that Cascade’s Transportation Customers brought on more gas than they consumed over the February 2021 Entitlement Period.¹¹⁴ However, Tree Top understates the potential harm it created through its scheduling practices¹¹⁵ and overstates the alleged benefit it provided by procuring more gas than it consumed during the event.¹¹⁶ In fact, Tree Top shifted the risk of supply shortages to Cascade and its core customers—and other transportation customers—and potentially jeopardized the integrity of Cascade’s gas system¹¹⁷ while failing to adhere to Schedule 663’s daily balancing requirement.¹¹⁸

40 The purpose behind the Schedule 663 Overrun Entitlement Charge is to incentivize Transportation Service Customers to nominate adequate gas supplies when supply shortages could potentially have major impacts on Cascade’s ability to continue to serve its customers.¹¹⁹ The charge must exceed the highest priced regional market—whether that market is “dysfunctional,” or not—to remove the incentive these customers would otherwise have to expose Cascade and its core customers to that market. Tree Top should not be permitted to rely on the fact that other

¹¹³ Blattner, Exh. LB-1T at 16:11-19.

¹¹⁴ Mullins, Exh. BGM-1CT at 31:3-5.

¹¹⁵ Robbins, Exh. CR-1CT at 20:8-16.

¹¹⁶ Mullins, Exh. BGM-1CT at 2:20-3:1.

¹¹⁷ Robbins, Exh. CR-1CT at 4:4-7.

¹¹⁸ Robbins, Exh. CR-1CT at 15:19-16:1; Robbins, Exh. CR-3, Schedule 663 at 9.

¹¹⁹ Blattner, Exh. LB-1T at 11:17-12:8.

transportation customers delivered excess gas¹²⁰ or on the availability of Cascade's stored reserves¹²¹ to avoid responsibility for its failure to do so. Furthermore, granting Tree Top's requested relief would require the Company to claw back the February 2021 Entitlement Period overrun charges from its core customers, thereby impacting core customer bills.¹²² In short, Tree Top's request for relief should be denied because it would undermine the purpose of the Schedule 663 Overrun Entitlement Charge: to avoid system harm during critical operational periods.

1. Tree Top's Proposal Inappropriately Shifts the Risk to Cascade and its Core Customers.

41 The purpose behind Cascade's Overrun Entitlement Charge is to incentivize Transportation Service Customers to nominate as much gas as they plan on consuming during critical operational periods.¹²³ Cascade and the upstream pipelines may declare entitlements for a variety of reasons, but mostly do so because of capacity constraints, supply interruption, supply shortages or excesses, or the existence of other circumstances that threaten to jeopardize system integrity and Cascade's ability to provide gas to its customers.¹²⁴ Tree Top downplays the potential harm it caused by failing to procure sufficient gas,¹²⁵ but Tree Top's argument ignores that approximately 70 percent of the gas flowing through Cascade's system is non-core customer-owned (i.e., transportation customer) gas.¹²⁶ Therefore, the combined effect of multiple Transportation Service Customers simultaneously failing to supply sufficient gas may have significant impacts on Cascade's system during constrained periods.¹²⁷ Therefore, the Schedule 663 overrun entitlement mechanism plays a major role in maintaining system integrity during critical operational periods by financially

¹²⁰ Mullins, Exh. BGM-1CT at 24:19-25:2.

¹²¹ Robbins, Exh. CR-1CT at 20:17-19.

¹²² Blattner, Exh. LB-1T at 27:6-10.

¹²³ Blattner, Exh. LB-1T at 11:17-19.

¹²⁴ Blattner, Exh. LB-1T at 12:1-6.

¹²⁵ Mullins, Exh. BGM-7T at 5:21-6:16.

¹²⁶ Blattner, Exh. LB-1T at 12:10-11.

¹²⁷ Blattner, Exh. LB-1T at 13:2-4.

incentivizing transportation customers to nominate sufficient gas.

42 The Schedule 663 overrun entitlement mechanism is designed to incentivize Transportation Service Customers to supply as much gas as they intend to consume during an entitlement period by making it more expensive for them to take gas in excess of nominated amounts than to procure the additional gas.¹²⁸ In other words, and because Cascade does not “shut off” customers once they consume their nominated gas volumes,¹²⁹ transportation customers facing a potential negative imbalance face two choices: 1) to purchase additional gas on the open market and arrange for it to be delivered to Cascade’s system or 2) to continue drawing Unauthorized Overrun Volumes. Without the Overrun Entitlement Charge mechanism, Transportation Service Customers would have no incentive to purchase the additional gas on that Gas Day,¹³⁰ yet would have an economic incentive to engage in price arbitrage by moving gas they already purchased away from Cascade’s system to higher priced markets.¹³¹ The Schedule 663 Overrun Entitlement Charge mechanism is meant to financially incentivize customers through the use of the 150 percent gas index multiplier, which makes it more expensive to rely on gas they do not own than it would be to secure additional supplies. Therefore, granting Tree Top’s requested relief would effectively signal to Tree Top and other similarly situated customers that they do not need to comply with Cascade’s tariff when it would be expensive to do so—thus shifting such risks to Cascade and its core customers.

43 Tree Top also alleges that it was unreasonable for Cascade to calculate the charges based on the “dysfunctional” Green River market¹³² but it was both lawful and appropriate for Cascade

¹²⁸ Blattner, Exh. LB-1T at 13:7-10.

¹²⁹ Robbins, Exh. CR-1CT at 13:22-14:2.

¹³⁰ The customer may instead seek to cure its imbalance at the end of the month per Schedule 663’s monthly imbalance provision, but that would not satisfy the need to balance gas daily during an entitlement.

¹³¹ Robbins, Exh. CR-1CT at 34:8-10.

¹³² Mullins, Exh. BGM-1CT at 2:5-7.

to base the charges on that regional market. Cascade complied with its tariff by basing the Overrun Entitlement Charges on 150 percent of the Green River pricing on February 15 and 16 because Green River had the highest midpoint price for those days among the Schedule 663 regional trading points. It was also appropriate to base the charges on Green River because the overrun charges must exceed the highest regional prices to deter transportation customers from taking more gas than they have procured, thereby exposing Cascade and its core customers to those prices.¹³³ Tree Top asserts that the Schedule 663 overrun charge is “designed to pass through the costs of Cascade serving as the Receiving Party” on its behalf,¹³⁴ but this is incorrect. Cascade must make up for transportation customer-caused imbalances on its system¹³⁵ and may procure additional gas at Green River.¹³⁶ Therefore, Tree Top and other Transportation Service Customers—who are familiar with and can control their gas consumption—must be the ones exposed to the increased market pricing, not Cascade and its core customers.

44 Importantly, Cascade does not purchase gas to serve its transportation customers’ gas requirements and does not keep stored reserves for their benefit or to satisfy their imbalances.¹³⁷ Any extra gas these customers take is either gas that Cascade has procured for its core customers or, if available, excess gas brought on by other transportation customers.¹³⁸ In addition to being contrary to the Schedule 663 requirements, these outcomes are both fundamentally unfair. Furthermore, other transportation customers will not always supply sufficient excess gas and Cascade will not always have sufficient stored reserves to satisfy any shortages. Accordingly,

¹³³ Blattner, Exh. LB-1T at 13:7-10.

¹³⁴ Mullins, Exh. BGM-7T at 4:4-6.

¹³⁵ Robbins, Exh. CR-1CT at 23:18-24:1.

¹³⁶ Robbins, Exh. CR-1CT at 22:21-22.

¹³⁷ Blattner, Exh. LB-1T at 14:13-15. Tree Top seems to think this fact supports its argument (Exh. BGM-1CT at 23:9-17), yet it only proves Cascade’s point: that transportation customer negative imbalances result in either a) transportation customers relying on excess gas delivered to Cascade’s system by other transportation customers, or gas Cascade has purchased for its core customers, or b) system shortages that threaten system integrity.

¹³⁸ Blattner, Exh. LB-1T at 14:16-18.

shortages caused by transportation customer imbalances directly threaten Cascade’s ability to continue delivering gas—particularly because transportation customers make up approximately 70 percent of Cascade’s load.¹³⁹ Therefore, granting Tree Top’s requested relief would undermine the purpose of the Schedule 663 Overrun Entitlement Charge by removing the financial incentive to procure adequate gas supplies during critical operational periods.

2. Tree Top’s Proposal Would Require Cascade to Refund a Total of 78 Transportation Service Customers and Claw Back the Revenues from its Core Customers.

45 In accordance with the Commission’s statutes prohibiting rate discrimination, Cascade may not treat Tree Top differently than other similarly situated customers.¹⁴⁰ Thus if the Commission were to determine that a refund were appropriate for Tree Top, Cascade would also need to refund all Transportation Service Customers that paid Cascade for Overrun Entitlement Charges incurred during the February 2021 Entitlement Period. Cascade billed 78 Transportation Service Customers a total of \$1,022,436.45 for the February 2021 Overrun Entitlement Period¹⁴¹ and credited the revenues to its Purchased Gas Adjustment (PGA) mechanism in its 2021 annual PGA filing.¹⁴² The revenues functioned as a credit to help offset increases to core customer rates¹⁴³ and Cascade would need to claw back these revenues from its core customers by issuing the refunds and then passing the difference between the originally billed amount and the revised billed

¹³⁹ Robbins, Exh. CR-1CT at 14:16-21.

¹⁴⁰ RCW 80.28.090 states that “No [regulated utility] may make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.” RCW 80.28.100 states that “No [regulated utility] may, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity, wastewater company services, or water, or for any service rendered or to be rendered, or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like or contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.”

¹⁴¹ Of this, approximately \$910,000 was charged to Cascade’s Washington transportation customers and the remainder was charged to customers in Oregon.

¹⁴² Blattner, Exh. LB-1T at 26:21-22.

¹⁴³ Blattner, Exh. LB-1T at 27:3-4.

amount through its annual PGA filing as a debit.¹⁴⁴

C. Tree Top’s Proposal to Net Plant Nominations and Usage Ignores the Schedule 663 Balancing Requirements and Physical Realities of the Distribution Gas System.

46 Tree Top’s request to net the nominations and usage from its four accounts¹⁴⁵ should be rejected as contrary to the terms of Schedule 663 and as an inadequate replacement for meeting the Schedule 663 daily balancing requirements during an entitlement. Tree Top repeatedly asserts that it delivered more gas than it used¹⁴⁶—and that its marketing agent CMS delivered more gas than its customers used¹⁴⁷—during the February 2021 Entitlement Period, thereby benefitting Cascade and its core customers.¹⁴⁸ However, Schedule 663 and the operational conditions that exist during entitlements require Tree Top to balance its gas usage with its nominated volumes *daily*, not over the course of multiple entitlement days.¹⁴⁹ Additionally, delivering gas to one delivery point on Cascade’s system does not necessarily provide a benefit to Cascade’s entire distribution system, due to both Cascade’s system design and the constraints that may exist during an entitlement.¹⁵⁰ Tree Top should not be allowed to net nominations and usage across its accounts or across the February 2021 Entitlement Period because allowing it to do so would not benefit Cascade or its core customers and would not comport with Tree Top’s terms of service.

47 Schedule 663 requires customers to balance their gas supplies and consumption daily during entitlement periods¹⁵¹ and does not allow customers to net the nominations and usage across multiple accounts.¹⁵² Cascade declared the February 2021 Entitlement Period to follow the lead of its upstream provider—Northwest Pipeline—who declared an entitlement because of

¹⁴⁴ Blattner, Exh. LB-1T at 27:8-10.

¹⁴⁵ Mullins, Exh. BGM-1CT at 3:7-8.

¹⁴⁶ *E.g.*, Mullins, BGM-1CT at 2:20-21.

¹⁴⁷ *E.g.*, Mullins, BGM-1CT at 12:4-6.

¹⁴⁸ *E.g.*, Mullins, BGM-1CT at 2:20-21, 14:2-3.

¹⁴⁹ Robbins, Exh. CR-1CT at 15:19-16:1.

¹⁵⁰ Robbins, Exh. CR-1CT at 36:10-37:8; Robbins, Exh. CR-6, Northwest Pipeline Map at 1.

¹⁵¹ Exhibit CR-3, Cascade’s Tariff Schedule 663 at 8-9.

¹⁵² Robbins, Exh. CR-1CT at 8:5-6.

“forecasted cooler temperatures and continued customer drafting [that were] negatively impacting Northwest’s system balancing capabilities.”¹⁵³ Cooler temperatures can increase customer demand, while continued customer drafting puts downward pressure on gas supply, resulting in supply constraints and increased pricing, both of which occurred in February 2021.¹⁵⁴ Furthermore, conditions—and pricing—can change drastically throughout an entitlement period,¹⁵⁵ thereby exposing Cascade and its core customers to different supply and market conditions daily and reinforcing the necessity of having Transportation Service Customers balance their gas daily. In sum, to the extent Tree Top is asking to aggregate the gas it nominated over the entire entitlement period, this request should be denied because doing so is not permitted under Schedule 663 and because it would not satisfy daily system needs during critical operational periods.

48 Similarly, the Commission should reject Tree Top’s request to aggregate the gas it nominated across its accounts because this is not permitted by Schedule 663¹⁵⁶ and because system constraints may prevent Cascade from moving excess gas delivered to one part of Cascade’s system to an area where it is needed.¹⁵⁷ Tree Top’s plants are located within three separate distribution systems—each system having distinct operating conditions—and delivering gas to one distribution system does not support operating conditions in another physically separate system.¹⁵⁸ Cascade may not even be able to take advantage of “excess gas” within a single distribution system because operating pressures and gas flow characteristics are not necessarily consistent across a distribution system (e.g., some areas operate at different pressures).¹⁵⁹ Furthermore, Cascade

¹⁵³ Robbins, Exh. CR-1CT at 25:3-4; Robbins, Exh. CR-2, Notice of Feb. 2021 Entitlement at 1.

¹⁵⁴ Mullins, BGM-1CT at 19:9-20:2.

¹⁵⁵ Robbins, Exh. CR-1CT at 37:1-4.

¹⁵⁶ Robbins, Exh. CR-1CT at 8:5-6.

¹⁵⁷ Robbins, Exh. CR-1CT at 36:17-21.

¹⁵⁸ Robbins, Exh. CR-1CT at 36:11-14.

¹⁵⁹ Robbins, Exh. CR-1CT at 36:14-17.

could not necessarily have moved Tree Top's excess gas from one area of its system to another due to capacity constraints on the system or at the compressor station that separates some of Tree Top's plants.¹⁶⁰ Finally, Northwest Pipeline occasionally issues different entitlement levels across its system and letting customers net accounts could result in customers bringing on excess gas in less restrictive and potentially lower priced zones while failing to bring on adequate supplies in the entitled zone, thereby exposing Cascade to potential system integrity issues and penalties from the upstream pipeline.¹⁶¹ In sum, Tree Top should not be allowed to aggregate its nominations across its accounts or across days during the February 2021 Entitlement Period because neither are permitted by Schedule 663 and both would create potential operational and financial risks during entitlement events.

D. In the Event that the Commission Finds Any of Tree Top's Arguments Persuasive, Any Changes to Cascade's Tariff Should be Prospective.

49 As discussed herein, the Commission should decline to grant Tree Top's request for reparations under RCW 80.04.220 for both legal and policy reasons. Because any changes to Cascade's tariff must be made prospectively, in the event that the Commission finds Tree Top's arguments regarding the application of Schedule 663 to be persuasive, the appropriate resolution would not be reparations, but would instead be an investigation of Schedule 663. While Cascade believes the rationale for the Overrun Entitlement Charge is sound and should not be disturbed, if the Commission desires to consider this issue further, Cascade would not oppose such an investigation. However, it would be critical that all of Cascade's Transportation Service Customers under Schedule 663 be invited to participate as well as other natural gas utilities with similar tariff requirements, and any changes to the tariff would be applied prospectively.

¹⁶⁰ Robbins, Exh. CR-1CT at 36:17-37:2.

¹⁶¹ Robbins, Exh. CR-1CT at 37:2-7.

VI. CONCLUSION

50 Tree Top concedes that Cascade imposed its lawfully filed rates in assessing Overrun Entitlement Charges for the February 2021 Overrun Entitlement Period but claims that Cascade charged excessive or exorbitant rates because the entitlement charges exceeded what Tree Top expected to pay. Tree Top’s failure to nominate sufficient gas supplies during a critical operational period could have jeopardized Cascade’s system integrity and ability to provide gas service to its customers. Granting Tree Top’s requested relief would be unfair to the transportation customers who during the event either supplied sufficient gas to match their consumption or adjusted consumption to match nomination and would undermine the purpose of the entitlement charge mechanism. Cascade’s Schedule 663 Overrun Entitlement Charge mechanism is an important tool used to incentivize Transportation Service Customers to follow Cascade’s tariff and bring on adequate gas supplies. Tree Top seeks to avoid responsibility for its failure to do so and instead asks the Commission to upend fundamental ratemaking principles embodied in Washington law. Tree Top’s request to net its plant nominations and usage would benefit Tree Top but would provide little benefit to Cascade and its core customers and should therefore be rejected.

////

////

////

////

////

Respectfully submitted this 13th day of July 2022.

MCDOWELL RACKNER GIBSON PC

/s/ Jocelyn Pease

Lisa Rackner, WSBA No. 39969
Jocelyn Pease, WSBA No. 50266
McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205
Telephone: 503-595-3925
Facsimile 503-595-3928
lisa@mrg-law.com
jocelyn@mrg-law.com

Attorneys for Cascade Natural Gas Corporation