

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

COST MANAGEMENT SERVICES, INC.,	)	
	)	Docket No. UG-061256
Complainant,	)	
	)	
v.	)	
	)	
CASCADE NATURAL GAS CORPORATION,	)	<b>AMENDED COMPLAINT</b>
	)	
Respondent.	)	
	)	

**I. STATEMENT OF RELIEF REQUESTED**

1. Pursuant to RCW 80.04.110, RCW 34.05.240 and WAC 480-07-305, Cost Management Services, Inc. (“CMS”) brings this Amended Compliant against Cascade Natural Gas Corporation (“Cascade”). CMS respectfully requests the Washington Utilities and Transportation Commission (“Commission”) to consolidate this case with Docket No. UG-070332 for further evidentiary proceedings, and then, based on evidence developed on the hearing record, grant the relief specified in Section VII below.
  
2. The names, addresses, and telephone numbers of the persons to whom communications for CMS should be addressed are:

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3. In support of its Amended Complaint, CMS states the following:

## II. THE PARTIES

4. Complainant. CMS is a Washington corporation engaged in the sale and supply of natural gas as a competitive gas marketer. CMS markets competitively priced natural gas to industrial and commercial customers, some of which are located within the service territory of Cascade. CMS is not a “gas company” under RCW 80.04.010<sup>1</sup> because it does not own a “gas plant.”<sup>2</sup> Indeed, CMS does not own, control, operate or manage a natural gas property, plant, equipment, or facility of any kind. The only Cascade customers able to do business with CMS are those that take transportation-only services from Cascade under Schedules 663 or 664 (now consolidated into Schedule 663), *i.e.*, those customers whose access to Cascade’s gas plant allows them to purchase gas from CMS at the Cascade city gate or other delivery point up-stream from the Cascade city gate.

5. CMS focuses its marketing efforts on a market segment consisting of businesses with significant gas consumption, but not sufficiently large to warrant in-house, energy-management expertise. CMS customers comprise a discrete segment of the market for competitive gas supplies. They tend to have gas-consumption levels lower than the entities comprising the Northwest Industrial Gas Users (“NWIGU”) group.

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<sup>1</sup> “‘Gas company’ includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receiver appointed by any court whatsoever, and every city or town, owning, controlling, operating or managing any gas plant within this state.” RCW 80.04.010.

<sup>2</sup> “‘Gas plant’ includes all real estate, fixtures and personal property, owned, leased, controlled, used or to be used for or in connection with the transmission, distribution, sale or furnishing of natural gas, or the manufacture, transmission, distribution, sale or furnishing of other type gas, for light, heat or power.” RCW 80.04.010.

6. CMS acts as agent for its customers in arranging transportation services under Cascade Schedule No. 663, securing interstate pipeline capacity and providing gas-management services that members of the NWIGU have in-house. CMS directly represents the interests of its clients as customers of Cascade in ensuring that Cascade's rates are not unduly discriminatory, unduly preferential, or otherwise in violation of Washington law.
7. Respondent. Cascade is a "gas company" under RCW 80.04.010, subject to the jurisdiction of the Commission. Its principal place of business is 222 Fairview Avenue N., Seattle, WA, 98109-5312. Cascade has actively marketed and sold natural gas to non-core customers, both inside and outside its certificated service territory, under rates and contracts other than those on file with the Commission in violation of RCW 80.28.050, WAC 480-80-143 and other laws and regulations.
8. Public Counsel. CMS is party to a "Joint Presentation and Defense Agreement" with Public Counsel regarding proceedings in Docket No. UG-061256, as they may be consolidated with proceedings in Docket No. UG-070332. CMS, the customers for whom CMS acts as agent, Public Counsel and the customers represented by Public Counsel have mutual interests in presenting and prosecuting issues related to Cascade's unduly discriminatory and unduly preferential retail gas sales to non-core customers. A primary purpose of the Joint Presentation and Defense Agreement is to allow Public Counsel to participate more vigorously in this case by tapping the expertise of CMS on questions relating to natural gas marketing, contracting and interstate pipeline

transportation. The Joint Defense Agreement is attached to this Amended Complaint as **Exhibit 1**.

9. Commission Staff. The Commission Staff has been ordered to investigate Cascade's retail agreements for the sale of natural gas to non-core customers for evidence of undue discrimination and undue preference. As it is with Public Counsel, CMS is cooperating with Staff in its investigation.

### III. JURISDICTION OF THIS COMMISSION

10. The Commission is an agency of the State of Washington vested by statute with the authority to regulate rates, practices, accounts, securities, and property transfers of public service companies, a statutory term that includes gas companies.<sup>3</sup> The Commission is authorized to entertain complaints against Cascade pursuant to RCW 80.04.110. RCW 80.04.110 authorizes any "person or corporation," such as CMS, to file a formal complaint against any public service company regarding any violation of law or Commission regulation. The Commission may impose penalties for violations of law by a public services company, or by its officers, agents and employees, pursuant to RCW 80.04.380 and RCW 80.04.385.

### IV. RELEVANT STATUTES AND RULES

11. Cascade's unlawful retail sales of natural gas implicate the following statutory provisions and Commission rules.

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<sup>3</sup> "Public service company' includes every gas company, electrical company, telecommunications company, and water company." RCW 80.04.010.

12. It is the Commission's duty to ensure that no gas company grant any undue or unreasonable preference or advantage to any customer. RCW 80.28.090 states:

No gas company, electrical company or water company shall 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.

13. It is also the Commission's duty to ensure that no gas company unduly discriminate against any customer. RCW 80.28.100 states:

No gas company, electrical company or water company shall, 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 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. [Emphasis supplied.]

14. The underscored portion of the quoted statute in the preceding paragraph allows for "special contracts" containing negotiated prices different from tariff rates. However, these arrangements are subject to Commission scrutiny, prior to their effective date, under WAC 480-80-143, which requires:

Gas, electric, and water companies must file with the commission all contracts for the retail sale of regulated utility services to end-use customers that:

- (a) State charges or conditions that do not conform to the company's existing tariff; or

(b) Provide for utility services not specifically addressed in the gas, electric, or water company's existing tariffs. [WAC 480-80-143(1).]

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The contract will become effective on the effective date stated in the contract or thirty days after the filing date, whichever occurs later, unless suspended or rejected by the commission. The commission may approve an earlier effective date if requested by the company, in which event the contract shall not become effective on a date that precedes commission approval. A request for an earlier effective date must include a complete explanation of why an earlier effective date is appropriate. [WAC 480-80-143(4).]

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Each application filed for commission approval of a contract must:

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

15. RCW 80.28.190(1) provides:

No gas company shall, after January 1, 1956, operate in this state any gas plant for hire without first having obtained from the commission under the provisions of this chapter a certificate declaring that public convenience and necessity requires or will require such operation and setting forth the area or areas within which service is to be rendered; but a certificate shall be granted

where it appears to the satisfaction of the commission that such gas company was actually operating in good faith, within the confines of the area for which such certificate shall be sought, on June 8, 1955. Any right, privilege, certificate held, owned or obtained by a gas company may be sold, assigned, leased, transferred or inherited as other property, only upon authorization by the commission. The commission shall have power, after hearing, when the applicant requests a certificate to render service in an area already served by a certificate holder under this chapter only when the existing gas company or companies serving such area will not provide the same to the satisfaction of the commission and in all other cases, with or without hearing, to issue the certificate as prayed for; or for good cause shown to refuse to issue same, or to issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate such terms and conditions as, in its judgment, the public convenience and necessity may require.

16. RCW 80.04.380 provides:

Every public service company, and all officers, agents and employees of any public service company, shall obey, observe and comply with every order, rule, direction or requirement made by the commission under authority of this title, so long as the same shall be and remain in force. Any public service company which shall violate or fail to comply with any provision of this title, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every violation of any such order, direction or requirement of this title shall be a separate and distinct offense, and in case of a continuing violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense.

17. RCW 80.04.385 provides:

Every officer, agent or employee of any public service company, who shall violate or fail to comply with, or who procures, aids or abets any violation by any public service company of any provision of this title, or who shall fail to obey, observe or comply with any order of the commission, or any provision of any order of the commission, or who procures, aids or abets any such public

service company in its failure to obey, observe and comply with any such order or provision, shall be guilty of a gross misdemeanor.

18. WAC 480-80-124 states:

Except as provided under WAC 480-80-122, a tariff filing issued without the required statutory notice to the commission and the public has the same status as if the tariff filing had not been issued.

V. ADDITIONAL FACTS

19. On January 12, 2007, the Commission issued Order No. 3 in these proceedings upon cross-motions for summary determination filed by CMS and Cascade. CMS relies on the “Factual Background” statements in Order No. 3, ¶¶ 19-36.

20. In Order No. 3, the Commission ruled that Cascade’s private retail gas sale agreements violated RCW 80.28.050. Cascade was directed by the Commission to file all such agreements in accordance with WAC 480-80-143; however, Cascade has not complied with that Order.

21. On March 1, 2007, the Administrative Law Judge ordered Cascade to provide CMS with copies of its gas-sale contracts with non-core customers. Cascade subsequently furnished copies of some of these agreements, but it is uncertain whether Cascade has provided either the Commission or CMS with copies of all such agreements.

22. CMS’ consultant, Donald Schoenbeck, an expert with over 30 years of relevant experience, has executed a confidentiality agreement pursuant to the protective order in this case. Mr. Schoenbeck’s affidavit, ¶ 1, is attached to this pleading as **Exhibit 2**.

23. Mr. Schoenbeck has reviewed the agreements provided to CMS by Cascade as described in ¶ 21 above. [REDACTED]



[REDACTED]

24.

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

25.

[REDACTED]

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<sup>4</sup> [REDACTED]

[REDACTED]

26.

[REDACTED]

27.

[REDACTED]

28.

[REDACTED]

29.

[REDACTED]

[REDACTED]

30.

[REDACTED]

31.

[REDACTED]

32.

[REDACTED]

33. On March 30, 2007, Cascade submitted notification to the Commission that it intended to sell gas to non-core customers through an affiliate, "CGC Energy." The fate of the existing non-core contracts described in Mr. Shoenbeck's affidavit is not described in Cascade's March 30 notice. Neither does the notice state whether both the affiliate and Cascade, as a regulated gas company, intend to continue selling gas to non-core customers. It appears that Cascade will continue selling gas to non-core customers through an affiliate with few, if any, of the safeguards required to avoid the transfer regulated assets, or the value associated with regulated assets, for the private gain of Cascade's shareholders and of non-core customers.

#### VI. CAUSES OF ACTION

34. In making retail gas sales to non-core customers, Cascade is in continuing violation of the following Washington statutes and Commission regulations:
- Cascade is selling natural gas and interstate pipeline services to retail end-users under contracts and rates other than those on file with this Commission in violation of RCW 80.28.050 and WAC 480-80-143.
  - Cascade is subsidizing non-core customer sales at the expense of its core customers, in fundamental violation of its obligations as a gas company under RCW Chapter 80 and implementing regulations of this Commission.
  - Cascade is granting undue preferences to non-core customers, both in relation to its core customers and in relation to other end-users comprising the "non-core" who either are not offered preferential deals at all or deals on less favored terms (such as higher, arbitrarily determined margins).

- Cascade is unduly discriminating against core customers and other end-users comprising the “non-core,” both in relation to how such customers are forced to pay higher prices, and as such customers may be forced to bear the costs Cascade does not recover from non-core customers.
- Cascade is also unduly discriminating against core customers by incurring opportunity costs through its forbearance of using regulated assets to gain maximum value for core customers, and using them instead for the benefit of non-core customers.

#### **VII. PRAYER FOR RELIEF**

35. WHEREFORE, CMS prays, upon conclusion of the hearing ordered by the Commission in Order No. 3, ¶¶ 54 and 64, for an order of the Commission:

A. ruling that Cascade’s retail sales of natural gas to non-core customers under agreements never filed with the Commission are unduly discriminatory under RCW 80.28.100 and unduly preferential under RCW 80.28.090;

B. imposing such remedies and sanctions against Cascade regarding its unduly discriminatory and unduly preferential retail sales of natural gas to non-core customers as the Commission deems appropriate in the interests of Cascade’s customers;

C. imposing such remedies and sanctions against Cascade regarding its retail sales of natural gas to non-core customers outside its certificated service territory in violation of RCW 80.28.190, at least in instances where Cascade’s physical plant is involved;

D. ordering Cascade, as a regulated gas company, to cease and desist from making retail sales of natural gas to non-core customers in the State of Washington, as inherently in conflict with its legal obligations as a regulated gas company;


E. ordering that Cascade non-core gas sale contracts in effect as of the date of Order No. 3 remain in effect, but only during their remaining terms, without extension, renewal, or assignment to CGC Energy;

F. ordering that any sales of natural gas to non-core customers through a Cascade affiliate include all appropriate regulatory safeguards to ensure that regulated assets, or the value associated with regulated assets, not be lost to Cascade's core customers for the private gain of Cascade's shareholders and of non-core customers; and

G. providing for such other relief or penalties as the Commission may consider appropriate under the circumstances of this proceeding.

DATED this 9th day of April, 2007.

Respectfully submitted,  
Davis Wright Tremaine LLP

By:   
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