BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

TREE TOP, INC., Complainant, v. CASCADE NATURAL GAS CORPORATION, Respondent.	)	DOCKET UG-210745 RESPONSE BRIEF OF TREE TOP, INC.

I. INTRODUCTION

1. Tree Top Inc. ("Tree Top") files this Response Brief in response to Cascade Natural Gas Corporation's ("Cascade") Initial Brief.

2. The single issue presented in this case is whether it is fair, just and reasonable for Cascade to assess a $198,845 overrun entitlement charge based off a dysfunctional market hub in Wyoming when Cascade and its customers were not exposed to the dysfunctional market stemming from the Texas Energy Crisis. The overrun entitlement charges were "12.6 times the cost of acquiring a similar amount of gas at the Sumas market over the same period and 67 times Cascade's actual costs."[1]

3. All rates and charges of regulated utilities must be fair, just, reasonable and sufficient under RCW 80.28.010, and overrun entitlement charges are no exception to this mandate. Cascade ignores this legal standard and argues that the Commission may not and should not order refunds under these or any other circumstances. Cascade's position is untenable. Under

[1] Mullins, Exh. BGM-1T at 18:8–10.

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any measure of fairness, it was not fair, just, and reasonable for Cascade to assess such excessive charges to Tree Top based on a market that had no relationship to any actual or potential cost to Cascade—especially when Tree Top delivered more gas than it used over the Presidents' Day weekend in question benefiting Cascade and its customers. Tree Top respectfully requests that the Washington Utilities and Transportation Commission ("Commission") require Cascade to modify the overrun entitlement charge issued to Tree Top using the Sumas market hub, and to net the daily nominations of its four facilities when calculating its overrun entitlement charges in the manner identified in Tree Top witness Mullins Direct Testimony, resulting in a refund of approximately $196,634, inclusive of interest.[2]

II. ARGUMENT

A. Cascade's Continued Reliance on the Filed Rate Doctrine is Misplaced.

4. Cascade continues to challenge the jurisdiction of the Commission to hear this complaint and relies on the filed rate doctrine for the proposition that the overrun entitlement charge is untouchable so long as it was calculated under an approved tariff as provided in RCW 80.28.080.[3] Cascade is simply wrong. The filed rate doctrine is a court-created rule intended to protect an agency's jurisdiction over determining the reasonableness of a rate <u>and</u> to ensure that regulated entities only charge approved rates.[4] In other words, when parties ask a *court* to provide remedies based on an agency-approved tariff or contract, *courts* overwhelmingly invoke

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[2] Mullins, Exh. BGM-1T at 4, Table 1, Line 10.

[3] 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[.]"

[4] *Tenore v. AT&T Wireless Service*, 136 Wash.2d 322, 331–32, 962 P.2d 104, 108 (1998).

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the filed rate doctrine to defer such determinations to the exclusive jurisdiction and expertise of the relevant agency.[5]

5. Here, Tree Top is not asking a court for relief to second guess a rate established by the Commission. Rather, Tree Top filed a complaint with the Commission, which has exclusive jurisdiction and expertise in this subject matter at issue. Tree Top alleges that Cascade's specific application of an overrun entitlement charge resulted in an unreasonable rate. Under RCW 80.04.220, the Commission, after investigation, may determine that the rate is "excessive or exorbitant" and order that the excessive amount be refunded with interest:

> 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.[6]

The grant of authority under RCW 80.04.220 could not be more clear. Further, RCW 80.04.240 lays out the timeline to file a complaint under RCW 80.04.220 and provides in relevant part:

> All complaints concerning overcharges resulting from collecting unreasonable rates and charges or from collecting amounts in excess of lawful rates shall be filed with the commission within six months in cases involving the collection of unreasonable rates and two years in cases involving the collection of more than lawful rates from the time the cause of action accrues, and the suit to recover the overcharge shall be filed in the superior court within one year from the date of the order of the commission.[7]

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[5] *Breiding v. Eversource Energy*, 344 F.Supp.3d 433, 445 (D. Mass. 2018).
[6] RCW 80.04.220 (emphasis added).
[7] RCW 80.04.240

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The legislature has unambiguously authorized the Commission to hear complaints addressing the collection and potential refund of unreasonable rates and established a corresponding statute of limitations for customers to bring such actions.

6. Cascade misses the mark and repeatedly argues that the charges assessed to Tree Top were based on Cascade's lawfully filed tariffs—even though this is not the basis for Tree Top's complaint. Notably, there is no specific rate identified in Cascade's tariff containing the overrun entitlement provision. That provision merely identifies the procedure by which the rate will be calculated. Cascade calculated the charges based on the procedure outlined in its filed rate, and the charges produced were simply unreasonable due to the impacts of the Texas Energy Crisis. Tree Top's request, if granted, would not invoke or violate the filed rate doctrine and would not "violate[s] a fundamental principle of utility ratemaking embodied within Washington statutory law."[8] The relief requested by Tree Top falls squarely within the Commission's jurisdiction and authority.

7. The Commission has a statutory duty to "ensure that all rates, terms, and conditions of service provided to all customers of jurisdictional utilities remain fair, just, and reasonable at all times"[9] and a customer may submit a complaint to the Commission "concerning the reasonableness of any rate" under RCW 80.04.220. Cascade, however, urges the Commission to ignore the power granted to it by the legislature because, according to Cascade, "…the Commission has never exercised its authority under RCW 80.04.220 to order reparations where a

[8] Cascade Initial Brief ¶ 4.
[9] *Air Liquide America Corp. v. Puget Sound Energy, Inc.*, UE-001952, 2001 WL 360623 (Wash. U.T.C. Jan. 22, 2001).

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utility charged rates consistent with its lawfully filed tariff…" Cascade's attempt to ignore the plain and ordinary language in RCW 80.04.220 should be rejected.

8. The filed rate doctrine does not prevent the Commission *itself* from considering the reasonableness of a past charge because the Washington legislature has granted it specific authority to do so.[10] The Commission has jurisdiction over customer complaints concerning acts performed or omitted by any regulated entity in violation "of any provision of this title."[11] Consequently, such complaints may include the reasonableness of rates (RCW 80.04.220), reparations (RCW 80.04.240), and refunds (RCW 80.04.230). Cascade's argument that the filed rate doctrine precludes Tree Top's complaint is undermined by the Commission's express authorization to examine the reasonableness of rates that utilities have charged customers.[12] Because the Commission's authorizing statutes grant it express authority to examine *past charges*, Cascade cannot invoke the filed rate doctrine to prevent the Commission from exercising those powers.

B. Cascade's Argument That The Commission May Only Provide Rate Relief Prospectively Is Misplaced.

9. Cascade argues that the "Commission's basic statutory framework establishes that rates are set prospectively, and not retrospectively."[13] Tree Top does not necessarily disagree with this general proposition. Indeed, when rates are set by the Commission, they are done prospectively, and utilities may over or under earn and rates will not change until the Commission authorizes a new rate. Under this basis statutory framework, even if customers were

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[10] RCW 80.04.220; *Tuerk v. Department of Licensing*, 123 Wash.2d 120, 124–25, 864 P.2d 1382 (1994) ("Administrative agencies have those powers expressly granted to them and those necessarily implied from their statutory delegation of authority.").
[11] RCW 80.04.110(1)(a).
[12] *See Tuerk*, 123 Wash at 124–25.
[13] Cascade Initial Brief, ¶ 26.

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paying more than the cost of service and the utility was overearning, rates would be set prospectively and no customer refunds would be appropriate. Conversely, if customers were paying less than the cost of service and the utility was underearning, no surcharge would be appropriate and rates would be set prospectively. But this basic statutory framework does not limit the Commission's authority to grant the relief requested by Tree Top. There are significant differences between how rates are set for ratemaking purposes and the ability to file a complaint under RCW 80.04.220.

10. Cascade's Schedule 663 tariff does not identify an overrun entitlement rate *per se*, but outlines the procedure for calculating the overrun entitlement rate based on the greater of $1 therm or 150% of the highest market price in an enumerated list, namely NW Wyoming Pool, NW south of Green River, Stanfield Oregon, NW Canadian Border (Sumas), Kern River Opal, or El Paso Bondad.[14] By enumerating those markets in the Commission approved tariff, the Commission is not determining that the future prices in those markets will result in a reasonable rate under any circumstances. Since the prices and market dynamics in those markets are not known until after the fact, it would be impossible for the Commission to prejudge the reasonableness of any possible outcome that may arise with respect to those markets and the application of Schedule 663. Under these circumstances, a customer would be required to file a complaint under RCW 80.04.220 to contest the reasonableness of the rate calculation and the selected market prices used in the calculation. This distinguishes the overrun entitlement rate calculations with fixed cost of service rates, which are set prospectively and generally not allowed to change outside of a general rate case.

[14] Robbins, Exh. CR-3, p. 9.

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11. Other than through the provisions RCW 80.04.220, a customer would have no ability to contest or evaluate the reasonableness of rate, such as the overrun entitlement charges, which is not known until after the charges are calculated. In this case Tree Top received its bill on March 22, 2021, and after attempting to resolve this issue informally with Cascade, paid the assessed overrun entitlement charges under protest. Shortly thereafter, Tree Top, within the six-month statute of limitations, filed its complaint. The fact that there is a lag between the time that Tree Top received the invoice, paid the Overrun Entitlement charges under protest, and when the complaint was submitted in this docket does not limit the Commission's authority over this matter. Cascade's argument implies that if Tree Top had submitted its Complaint the day before the charges were assessed, Tree Top would be within its right to request relief for the unreasonable charges. Such an implication, however, is absurd because it would require customers to bring complaints before charges are calculated. Notwithstanding, given the procedure used to calculate the overrun entitlement charges, and based on the fact that market prices are published after the fact, Tree Top had no way of knowing that the charges were unreasonable until after the charges were calculated and assessed. The fact that Cascade's Tariff specifies a procedure for calculating the overrun entitlement charges does not provide Cascade with unlimited authority to charges unreasonable rates.

12. The Commission has broad authority over Cascade and its rates and terms and conditions of service. Cascade fails to reconcile the specific authority granted to the Commission by the legislature to address unreasonable rates that are not known until after the charges are calculated and assessed. If Cascade is correct, it would render the following statutory provisions meaningless--reasonableness of rates (RCW 80.04.220), reparations (RCW 80.04.240), and

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refunds (RCW 80.04.230). Cascade's argument is untenable, contrary to law and must be rejected.

C. Granting Relief To Tree Top Would Not Undermine The Purpose And Intent Of Overrun Entitlement Charges.

13. Tree Top is not requesting that it be absolved of all overrun entitlement charges. Rather, Tree Top is requesting that the Commission consider whether the formula Cascade applied, which relied on a dysfunctional market hub in Wyoming, resulted in a reasonable outcome that was consistent with the purpose of the tariff under these circumstances. The purpose of the overrun entitlement provision of the tariff is for customers to balance gas on a daily basis, rather than a monthly basis, in certain operational conditions.[15]

14. Cascade argues that "To create an incentive, the entitlement charge necessarily must exceed the costs the customer would otherwise incur by purchasing additional gas themselves."[16] But this is precisely what Tree Top has requested by asking the Commission to assess the overrun entitlement charge based on a regional market hub where Cascade would have otherwise purchased gas and that is more consistent with the potential cost associated with Tree Top's daily imbalance. To be clear, the market price at Sumas was also sufficiently inflated during this time even though it was not experiencing the volatility and dysfunction like the Green River trading hub experienced, due to the unique characteristics of gas markets in the northwest.[17] Accordingly, using the Sumas hub to base an overrun entitlement charge is a reasonable alternative and more consistent with any actual, or potential, costs Tree Top's imbalance imposed on Cascade.

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[15] Mullins, Exh. BGM-1T at 8:4–6.
[16] Cascade's Initial Brief, ¶ 5.
[17] Mullins, Exh. BGM-1T at 21:4–7.

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15. It is undisputed that neither Cascade nor its core gas customers incurred any incremental cost in connection with the entitlement overruns of Tree Top.[18] Due in part to transportation customers, including Tree Top, delivering substantially more gas than consumed during the declared overrun entitlement, Cascade did not incur any overrun entitlement charges from Northwest Pipeline.[19] While Tree Top did exceed its overrun entitlement tolerance at certain plants and certain days, Tree Top used *less* natural gas than it supplied during the overrun entitlement period.[20] In other words, Tree Top delivered more gas than it used over the Presidents' Day weekend to the benefit of Cascade and Cascade's customers. Strictly applying Schedule 663, Cascade assessed an overrun entitlement charge based off the dysfunctional prices at Green River caused at least in part by the Texas Energy Crisis. Those charges amounted to $196,663.96, or "12.6 times the cost of acquiring a similar amount of gas at the Sumas market over the same period and 67 times Cascade's actual costs."[21] The overrun entitlement charges are grossly disproportionate to any actual or potential cost to Cascade and its customers.

16. The prices at the Green River trading hub reached excessive, unreasonable levels due to the Texas Energy Crisis. It is telling that Cascade makes no attempt to demonstrate that the Green River market pricing was reasonable in the context of the overrun entitlement rate calculation, except as a purely punitive measure.[22] This justification, however, runs counter to the purpose of the overrun entitlement provision, and the Commission's role in establishing just, fair, reasonable and sufficient rates for services rendered.[23] The Commission does not allow

[18] Robbins, Exh. CR-1RT at 28:12–13.
[19] Mullins, Exh. BGM-1T at 29:8–31:10.
[20] *Id.* at 14:1–4.
[21] *Id.* at 18:8–10.
[22] Blattner, Exh. LB-1T at 6:3-5.
[23] RCW 80.28.010.

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utilities to charge excessive and unreasonable rates in order to penalize ratepayers. As noted in Tree Top's Opening Brief, Cascade provides a service to transportation customers by acting as an intermediary with Northwest Pipeline in overrun entitlement conditions. The purpose of the overrun entitlement charge is to establish a rate for that service, yet in this instance, the charges were entirely devoid of any relationship to the costs, real or potential, that Cascade incurred in connection with the service provided.

17. The charges Cascade assessed amounted to $196,663.96, or "12.6 times the cost of acquiring a similar amount of gas at the Sumas market over the same period and 67 times Cascade's actual costs."[24] Cascade has never disputed these calculations. Thus, even as incentives go, the level of charges Cascade assessed were excessive relative to cost Cascade incurred by serving as an intermediary between the Northwest Pipeline and Tree Top during the overrun entitlement Period.

D. Cascade's Natural Gas Distribution System Was Not In Jeopardy.

18. Transportation customers have an obligation under Schedule 663 to do their best to balance daily during overrun entitlements, but at no time was Cascade's system in jeopardy. A curtailment is a more severe operating condition than an overrun entitlement. Further, the overrun entitlement threshold under Schedule 663 has various ranges depending on the severity of the conditions. For the most severe conditions, Schedule 663 allows for a 3 percent threshold, and then goes up to 5 percent, 8 percent and 13 percent.[25] In this case, the overrun entitlement threshold was 8 percent, showing that this was not a severe operational condition in the context

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[24] Mullins, Exh. BGM-1T at 18:8–10.
[25] Robbins, Exh. CR-3, p. 9.

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of overrun entitlements. This is not to suggest that Customers may ignore an overrun entitlement, but the charges that are assessed should be reasonable under the circumstances.

19. It is undisputed that the Green River market spiked to excessive levels over the Presidents' Day weekend as a result of the Texas Energy crisis, an event which did not impact Cascade or its core gas customers.[26] The intent of the tariff that applies the greater of $1/therm or 150% of a market rate loses all meaning when it is applied to a broken market that has no relationship with any real cost to the utility or its customers.[27] Therefore, it is appropriate for the Commission to direct Cascade to assess the 150% overrun entitlement charge based on a market that more reasonably represents the cost of Tree Top's imbalance during the Overrun Entitlement.

E. Tree Top's Did Not Engage In Inappropriate Behavior And Was Unable To Update Its Nominations Over The Presidents' Day Weekend.

20. Cascade seeks to distract from the actual issue in this case and attempts to focus the Commission's attention on Tree Top's behavior. Cascade argues "…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 system while failing to adhere to Schedule 663's daily balancing requirement.[28] Instead of working with its customer and investigating whether the charge assessed was fair, just, and reasonable, Cascade tries to portray Tree Top as a bad actor, a repeat offender, and seems to imply that Tree Top was attempting to game the system to use less expensive gas owned by other customers for its food production facilities.

[26] Robbins, Exh. CR-1RT at 25:17–26:21.
[27] *Id.*
[28] Cascade Initial Brief, ¶ 39.

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The fact that Tree Top delivered more gas than it used over the Presidents' Day Weekend to the benefit of Cascade and its customers undermines all these arguments.

21. Cascade further argues, "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." This argument is nonsense. Tree Top delivered more gas than it used demonstrating that it was not trying to avoid the cost of gas. Further, Tree Top does not argue that it, or any other transportation customer, should be allowed to select a market in which to calculate an overrun entitlement charge under any circumstances. Tree Top argues that, *in this specific instance*, where an unprecedented winter storm caused market dysfunction in another part of the country, strict application of the enumerated markets in the Schedule 663 overrun entitlement provision is unreasonable. Tree Top recommends Sumas as a pricing point because it is a logical, regional trading hub for the Pacific Northwest and the market that Cascade was exposed to during the Overrun Entitlement.[29]

22. Cascade also argues that "Tree Top had multiple opportunities to update its gas nominations during the February 2021 Entitlement Period —but failed to do so and shifted the risk of shortages to Cascade and its core customers."[30] Notwithstanding the fact that a party may update its nominations in a technical sense, simply changing a nomination without securing the associated gas supply is meaningless. All of Tree Top's gas is purchased in day ahead markets.[31] Tree Top's gas supplies for the entire Presidents' Day weekend—Saturday February 13, 2021

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[29] Mullins, Exh. BGM-1T at 32:15–33:4.
[30] Cascade Initial Brief, ¶ 5.
[31] Mullins, Exh. BGM-1T at 32:15–33:4.

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through Tuesday, February 16, 2021—had to be secured by 9:00 AM on Friday February 12, 2021.[32] Any potential nominations changes that occur after the fact are therefore limited to gas supplies that have already been procured.[33]

F. It Is Reasonable And Consistent With Cascade's Tariff To Net The Daily Overrun Entitlements Of Tree Top's Four Facilities.

23. In its Initial Brief, Cascade states that "Tree Top's request to net the nominations and usage from its four accounts 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."[34] Cascade's argument is incorrect and misplaced. While Cascade argues that this is "another attempt by Tree Top to shift operational risks to Cascade instead of taking responsibility for procuring the gas it needs"[35] this treatment is necessary and appropriate based on the terms of Cascade's tariff and the way that overrun entitlement charges are assessed to Cascade from Northwest Pipeline. Tree Top had oversupplied some of its plants, while undersupplying others during the overrun entitlement. Therefore, it is reasonable for the daily nominations of Tree Top's four facilities to be netted when calculating overrun entitlement charges.

24. In Cascade's Schedule 663, overrun entitlements are <u>not</u> applied on a meter-by-meter basis. They are applied to each customer. The tariff States "*[c]ustomers* served under this schedule shall pay Company for all unauthorized overrun or underrun quantities that exceed the percentage specified by the Company in its declared entitlement."[36] A customer is subsequently

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[32] *Id.*
[33] *Id.*
[34] Cascade Initial Brief ¶ 46.
[35] Cascade Initial Brief ¶ 6.
[36] Robbins, Exh. CR-3, Schedule 663 at 9 (emphasis added).

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defined in Cascade Rule 2 as "[a]ny person, corporation, partnership, government agency, or other entity that applied for, has been accepted for, and is currently receiving natural gas service."[37] A customer is not defined in Cascade's Tariff as a single point of delivery; a customer represents the entity being served. Since the overrun entitlements apply at the customer level, not the meter level, it is consistent with Cascade's tariff to combine the overrun entitlements for all of a customer's facilities when assessing overrun entitlement charges, as Tree Top Requests.

25. Cascade's statement that this approach "ignores the physical realities of Cascade's natural gas distribution system"[38] is also irrelevant to this proceeding because the physical limitations Cascade identified in testimony were not implicated in the overrun entitlement. The overrun entitlement impacted all delivery points on Cascade's system and any overrun entitlement charges that would have potentially been assessed to Cascade would have been based on the net overrun entitlement for its entire system, not the sum of the individual delivery points. Cascade's objection to this approach is also inconsistent with its Tariff that applies overrun entitlements at the Customer level, not at the point of delivery. Cascade appears to argue for strict application of its tariff when it is in its favor, and a more flexible interpretation when it is not.

G. This Commission Has Approved A Settlement Reducing Overrun Entitlement Charges To A More Reasonable Level.

26. The Commission previously approved a settlement between Puget Sound Energy and a group of transportation customers, reducing overrun entitlement charges from $100/dth to

[37] Cascade Tariff Substitute Seventh Revision Sheet No. 6.
[38] Robbins, Exh. CR-1RT at 36:10–11.

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$10/dth.[39] While Cascade alleges the Puget Sound Energy case was entirely different—Cascade is simply wrong. First, the Puget Sound Energy case involved an overrun entitlement charge assessed to Puget Sound Energy's transportation customers—which is analogous to the situation presented here. Cascade also argues that this case is not applicable because "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."[40] But Cascade's description of this case is misleading. While the complainants in that case offered one legal theory under RCW 80.04.230 for unlawful charges, they also argued that "Pursuant to RCW 80.28.020 and RCW 80.04.220, the Commission should commence an adjudicative proceeding to determine whether the Curtailment Penalty as applied to the Customers' overrun entitlement violations before March 1, 2019 was excessive, exorbitant, unjust, unreasonable, or not intended to yield a reasonable compensation for the service rendered."[41] Furthermore, Puget Sound Energy denied the allegations in the Complaint. The settlement agreement in that case simply contained a description of the allegations made by each party and reduced the overrun entitlement penalties from $100/dth to $10/dth.[42] Finally, even though only a handful of customers brought the complaint, Puget Sound Energy applied the settled rate to all similarly situated customers and this money was refunded by core customers.[43] While Cascade seeks to

[39] Mullins, Exh. BGM-1T at 31:16–19 (*Seattle Children's Hospital et al., vs Puget Sound Energy*, Docket UG 190857, Order 04 (Approving Settlement without Condition).
[40] Cascade Initial Brief ¶ 35.
[41] *Seattle Children's Hospital et al., vs Puget Sound Energy*, Docket UG 190857, First Amended Compliant ¶¶ 61-64.
[42] Mullins, Exh. BGM-1T at 31:16–19 (*Seattle Children's Hospital et al., vs Puget Sound Energy*, Docket UG 190857, Order 04 (Approving Settlement without Condition).
[43] *Id.*

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dramatize the refund process, the impact to core customer rates from the refund would be relatively small.

III. CONCLUSION

27. Under RCW 80.28.010, "[a]ll charges made, demanded or received by any gas company, electrical company, wastewater company, or water company for gas, electricity or water, or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient."[44] Overrun entitlement charges are not an exception to the just, fair, reasonable, and sufficient standard. The only issue before the Commission is whether the overrun entitlement charges assessed to Tree Top were fair, just and reasonable. Cascade assessed Tree Top a total of $196,663.96 in overrun entitlement charges, or 12.6 times the cost of acquiring a similar amount of gas at Sumas and 67 times Cascade's actual costs. Tree Top acknowledges that Cascade strictly and lawfully applied Schedule 663, but simply argues that such strict application in this instance results in unjust and unreasonable rates—especially considering that Tree Top delivered more gas than it used over the Presidents' Day weekend benefiting Cascade and its customers. Tree Top also requests that daily nominations of its four facilities be netted when calculating its overrun entitlement charges.[45] This treatment is consistent with Cascade's tariffs. Accordingly, Tree Top asks the Commission to exercise its inherent and statutory powers to determine a just and reasonable rate in this instance and order Cascade to issue appropriate reparations with interest from the date of Tree Top's payment, June 24, 2021.

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[44] RCW 80.28.010.
[45] Mullins, Exh. BGM-1T at 3:6–9.

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DATED: July 27, 2022.

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