

**REDACTED**

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

TREE TOP, INC.,

DOCKET UG-210745

Complainant,

v.

CASCADE NATURAL GAS  
CORPORATION,

Respondent.

**CASCADE NATURAL GAS CORPORATION'S RESPONSE BRIEF**

**REDACTED**

**July 27, 2022**

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## I. INTRODUCTION

1 Tree Top, Inc. (Tree Top) disputes charges that Cascade Natural Gas Corporation (Cascade or Company) assessed pursuant to its lawfully filed tariff, asserting that the charges are unreasonable and should instead be based on a lower priced market hub. However, Tree Top *does not* contest the fact that the charges were consistent with Cascade's lawfully filed tariff, or that Tree Top was out of compliance with Cascade's tariff, and thus became subject to the Overrun Entitlement Charges. Indeed, Cascade was obligated to follow its tariff and assess these charges consistent with Washington law.<sup>1</sup> Tree Top ignores this fact and claims that Cascade was not willing to negotiate a lower amount, even though Cascade has no authority to do so.<sup>2</sup> Thus, the question for the Washington Utilities and Transportation Commission (WUTC or Commission) to resolve is whether it should set aside Cascade's lawfully imposed charges and instead retroactively revise the market pricing to a lower priced market hub. Cascade urges the Commission to decline to do so.

2 Contrary to the assertions in Tree Top's Initial Brief, this is not a case about price gouging, and the Texas energy crisis is not "at the heart of this case."<sup>3</sup> This case is about a customer's attempts to reduce the charges it incurred by shifting its responsibility to procure adequate gas supplies to other customers. And to the extent there are risks of market manipulation and arbitrage, Cascade's tariff is designed to protect Cascade and its core customers from precisely those same risks. Instead, transportation customers like Tree Top—who elect to procure their own gas in lieu of taking gas as a core customer—are exposed to those risks, and rightly so. Cascade's Tariff

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<sup>1</sup> RCW 80.28.080(1)(a) prohibits Cascade from "charg[ing], demand[ing], collect[ing], or receiv[ing] 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 ...."

<sup>2</sup> RCW 80.28.080(1)(a) further prohibits Cascade from "directly or indirectly refund[ing] or remit[ting] in any manner or by any device any portion of the rates or charges so specified ...."

<sup>3</sup> Tree Top's Initial Brief at 3, ¶4 (July 13, 2022).

Schedule 663 (Schedule 663) therefore appropriately incentivizes these customers to nominate as much gas as they plan to consume during critical operational periods. Ultimately, it is transportation customers (and their marketers), who control their own nominations and consumption. And absent appropriate incentive structures, it is transportation customers (or their marketers) who might be tempted to engage in the same alleged market manipulation of which Tree Top complains.<sup>4</sup> Accordingly, Cascade asks that the Commission uphold the policy embedded in Cascade's tariff, which is designed to protect Cascade and its core customers and to ensure Cascade's ability to reliably operate its system during constrained periods. Cascade therefore respectfully requests that the Commission decline Tree Top's request for relief.

## II. ARGUMENT

### A. **Tree Top Fails to Demonstrate that the Commission Should Order Reparations Under RCW 80.04.220 for Lawfully Imposed Charges.**

3 Tree Top has not identified any other case in which the Commission exercised its authority under RCW 80.04.220 to order reparations where a utility charged its lawful rates for service. Tree Top's reference to the prior settlement of an overrun entitlement penalty is inapposite because the complainants in that case sought relief under RCW 80.04.230 for unlawful charges<sup>5</sup> and the parties ultimately agreed that there was ambiguity in the terms of Puget Sound Energy, Inc.'s (PSE) tariff.<sup>6</sup> As Cascade has shown, the Commission has relied on RCW 80.04.220 to implement interim rates subject to refund,<sup>7</sup> has only applied this statute outside of that context in limited circumstances,<sup>8</sup> and should not broaden the application of this statute here by granting Tree Top the extraordinary

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<sup>4</sup> By highlighting the potential for market manipulation and arbitrage, Cascade is not suggesting that Tree Top was engaging in such practices.

<sup>5</sup> *Seattle Children's Hosp., et al., v. Puget Sound Energy*, Docket UG-190857, Complaint at 14-15, ¶¶ 57-60 (Oct. 1, 2019).

<sup>6</sup> Docket UG-190857, Order 04, Exh. A, Settlement Stipulation and Agreement at 4:10, ¶ 10 (Mar. 2, 2020).

<sup>7</sup> Cascade's Initial Brief at 18-19, ¶ 31 (July 13, 2022).

<sup>8</sup> Cascade's Initial Brief at 19-20, ¶¶ 32-34.

relief it requests.

4 Tree Top asks the Commission to apply RCW 80.04.220 to change Cascade's rates retroactively—relief which, if granted, would upend fundamental ratemaking principles embodied in Washington law. As Cascade explained in its Initial Brief, rates should be changed only prospectively.<sup>9</sup> Doing so aligns with the filed rate doctrine, as embodied in RCW 80.28.020<sup>10</sup> and RCW 80.28.080,<sup>11</sup> and Commission precedent.<sup>12</sup> It also supports the fair and reliable application of Cascade's tariff.

5 Tree Top, however, argues that Cascade will turn to litigation rather than working with its customers to resolve disputes.<sup>13</sup> By doing so, Tree Top ignores the fact that Cascade cannot simply set aside the terms of its tariff to “work” with an individual customer to negotiate a different result than what is specified in its tariff.<sup>14</sup> Moreover, setting a different rate for Tree Top would be unfair to the customers that actually increased their nominations during this period or altered their consumption to match their nominations to stay within the 108 percent Level II Overrun Entitlement threshold in the tariff.<sup>15</sup> Those customers may have incurred additional costs to avoid the Overrun Entitlement Charges—thus it would be unfair to let Tree Top avoid the penalties it incurred by failing to procure adequate gas or adjusting its consumption to better align with its

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<sup>9</sup> Cascade's Initial Brief at 15-16, ¶¶ 25-27.

<sup>10</sup> 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).

<sup>11</sup> *Air Liquide America Corp., et al. v. Puget Sound Energy, Inc.*, Docket UE-981410, Fifth Supplemental Order at 5 (Aug. 3, 1999).

<sup>12</sup> See Docket UE-981410, Fifth Supplemental Order.

<sup>13</sup> Tree Top's Opening Brief at 18, ¶ 30.

<sup>14</sup> See RCW 80.28.080.

<sup>15</sup> Response Testimony of Christopher Robbins, Exh. CR-2, Notice of February 2021 Entitlement at 1 (May 12, 2022).

nomination.

6        Practically speaking, Tree Top’s recommendation would also create substantial uncertainty regarding the application of the rates and charges in the Company’s tariff. The tariff provides the source for the rates and charges a customer will incur for taking service from Cascade under the applicable schedule. If the Commission instead determines that these circumstances warrant revisiting those charges under RCW 80.04.220, Cascade can no longer be certain that the rates charged pursuant to its lawful tariff will be upheld. This approach would create uncertainty from the customer perspective as well. As it relates to the application of Schedule 663, the charges are typically assessed during constrained periods, so for each period, both the Company and customers may be wondering—are the prices resulting from this constrained period exceptional? Will the market prices in the tariff actually apply? The Company and customers would then potentially need the Commission to weigh in each time to determine the appropriate price during each entitlement period, which would be incredibly inefficient and defeat the purpose of specifying the methodology for calculating the Overrun Entitlement Charge in the tariff.

**B. Tree Top Misunderstands the Purpose of the Schedule 663 Overrun Entitlement Charges.**

7        Tree Top asserts that the Overrun Entitlement Charges were not fair, just, and reasonable—as required by RCW 80.28.010<sup>16</sup>—because they were not based on actual or potential costs Cascade incurred.<sup>17</sup> Cascade does not dispute that its rates and charges must be fair, just, and reasonable, and does not dispute that the Overrun Entitlement Charges are a penalty that still must be evaluated under the same standard. But Cascade asks the Commission to reject Tree Top’s erroneous assertion that the purpose of the Overrun Entitlement Charges is to “cover potential

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<sup>16</sup> RCW 80.28.010(1) requires utility charges to be “just, fair, reasonable and sufficient.”

<sup>17</sup> Tree Top’s Opening Brief at 3, ¶ 5.

overrun entitlement charges assessed by Northwest Pipeline.”<sup>18</sup> This is patently false. In fact, penalties from upstream pipeline transporters like Northwest Pipeline are passed on directly to the transportation customer(s) whose consumption levels contributed to the imposition of the penalty.<sup>19</sup> In other words, Cascade’s Overrun Entitlement Charges are *in addition to* any overrun entitlement charges a transportation customer causes Cascade to incur from the upstream pipeline.

8 Tree Top is also wrong in asserting that Cascade’s Overrun Entitlement Charges are associated with Cascade’s role as an “intermediary” between the upstream pipeline and Cascade’s transportation customers with respect to overrun entitlements.<sup>20</sup> Instead, they are designed to provide the critical function of allowing Cascade to maintain system integrity and protect core customers during critical operational periods.<sup>21</sup> The charges further that goal by making it more expensive for customers to take Cascade’s core customer’s gas than it would be to procure additional gas supplies themselves.<sup>22</sup>

9 Tree Top attempts to distract from this purpose by directing the Commission’s attention to the curtailment charges of other Washington utilities while ignoring the fact that these same utilities have overrun entitlement charge mechanisms that are virtually identical to Cascade’s.<sup>23</sup> Comparing Cascade’s Overrun Entitlement Charges to other utilities’ curtailment penalties is not only misleading—even assuming entitlements are “less severe” than curtailments<sup>24</sup>—it again

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<sup>18</sup> Tree Top’s Opening Brief at 12, ¶ 19.

<sup>19</sup> Robbins, Exh. CR-3, Cascade’s Schedule 663 at 8 (stating that: “Penalties from upstream pipeline transporter and/or other costs incurred by Company as a result of a nomination imbalance or an unauthorized overrun will be passed on directly to those customer(s) or groups of customers whose take levels contribute to the imposition of the penalty. Such penalty shall be allocated among such customers, including Company’s system supply customers, in proportion to the nomination imbalance or unauthorized overrun associated with each customer or group of customers.”).

<sup>20</sup> Tree Top’s Opening Brief at 12, ¶ 19.

<sup>21</sup> Response Testimony of Lori Blattner, Exh. LB-1T at 6:11-13 (May 12, 2022).

<sup>22</sup> Robbins, Exh. CR-1CT at 3:10-13.

<sup>23</sup> Blattner, Exh. LB-1T at 9:10-14; Blattner, Exh. LB-2, Washington Natural Gas Utilities’ Entitlement Penalty Tariffs.

<sup>24</sup> Tree Top’s Opening Brief at 5, ¶ 9.

reflects Tree Top's lack of understanding of the underlying purpose of Overrun Entitlement Charges or attempts to obfuscate that purpose. Cascade's entitlement charges are necessary and appropriate to properly incentivize transportation customers to align their gas consumption with their nominations during critical operational periods.<sup>25</sup>

10       Despite this fact, Tree Top asserts that the charges it incurred were “excessive and not necessary to encourage customers to balance gas” daily.<sup>26</sup> Yet, Tree Top continues to use more gas than it nominated during Overrun Entitlements,<sup>27</sup> suggesting that Tree Top will continue to fail to accurately nominate to consumption during entitlement periods, regardless of the penalty amount. Indeed, Tree Top’s persistent pattern of disregard for the Overrun Entitlement Period suggests that Cascade’s Overrun Entitlement Charges may not be high enough to motivate Tree Top to procure adequate gas supplies when they are most needed.

11       Tree Top argues that the reasonableness of Cascade’s Overrun Entitlement Charges must be measured against the cost of service it receives,<sup>28</sup> but the purpose of the charges is to incentivize customers to bring on adequate gas,<sup>29</sup> so the Commission should instead consider whether the penalty is set at the appropriate level to influence customer behavior. And, as Commission Staff recognized when reviewing another utility’s monthly imbalance charges, “[a]lthough the penalties may sound harsh in the abstract, they are structured that way in the expectation that harsh penalties will modify behavior to the point where no penalties will be assessed.”<sup>30</sup> In approving Washington Natural Gas Company’s monthly imbalance penalties the Commission expressly sanctioned imbalance penalties designed to “provide incentive for accuracy and to prevent the need to loan or

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<sup>25</sup> Robbins, Exh. CR-1CT at 16:1-4.

<sup>26</sup> Tree Top’s Opening Brief at 13, ¶ 22.

<sup>27</sup> Robins, Exh. CR-1CT at 38:14-16.

<sup>28</sup> Tree Top’s Opening Brief at 12, ¶ 20.

<sup>29</sup> Blattner, Exh. LB-1T at 17:8-11.

<sup>30</sup> *Wash. Util. & Transp. Comm'n v. Wash. Nat. Gas Co.*, Dockets UG-940034 and UG-940814 (consolidated), Fifth Supplemental Order at 27 (Apr. 11, 1995).

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store gas.”<sup>31</sup> Thus, Cascade’s Overrun Entitlement Charges are reasonable because they encourage transportation customers to procure sufficient gas during entitlements.<sup>32</sup>

**C. Tree Top’s History of Non-Compliance with Schedule 663 Supports Upholding the Overrun Entitlement Charges.**

12 Tree Top asserts that its own failure to nominate additional gas or adjust its consumption to match its nomination is not relevant to the question of whether the charges are reasonable.<sup>33</sup> However, Tree Top’s pattern of noncompliance is entirely relevant as it underscores the purpose of the penalty and suggests that the full penalty amount should be retained. To be effective, the penalty must be high enough to motivate behavior. Prior to the February 2021 entitlement, Tree Top incurred Overrun Entitlement Charges [REDACTED] since 2018,<sup>34</sup> suggesting that Tree Top may not take seriously its obligation under the tariff to closely match its consumption to its nomination during an entitlement period. When the Commission is considering whether to mitigate penalties—admittedly, in a different context (utility non-compliance)—past behavior is typically considered.<sup>35</sup> Finally, when considering the reasonableness of the February 2021 Overrun Entitlement Charges, the Commission should also bear in mind that the only customers that incurred the charges were those that exceeded 108 percent of nominated amounts,<sup>36</sup> and Tree Top

<sup>31</sup> Dockets UG-940034 and UG-940814 (consolidated), Fifth Supplemental Order at 27.

<sup>32</sup> Approximately 67 percent of Cascade’s transportation customers nominated adequate gas supplies and avoided Overrun Entitlement Charges in February 2021. Robbins, Exh. CR-1CT at 32:18-19. Granting Tree Top’s requested relief would be unfair to those customers who managed to the entitlement.

<sup>33</sup> Tree Top’s Opening Brief at 19, ¶ 31.

<sup>34</sup> Robbins, Exh. CR-10C, Tree Top’s Entitlement Penalties.

<sup>35</sup> *In re Enforcement Policy of the Wash. Utils. and Transp. Comm’n*, Docket A-120061, Enforcement Policy of the Washington Utilities and Transportation Commission at 7-9, ¶ 15 (Jan. 7, 2013). The Commission’s Enforcement Policy describes multiple factors the Commission considers when determining the appropriate enforcement action and these factors include, among others, whether the company promptly corrected the violations and remedied the impacts, the number of violations, the likelihood of recurrence, and the company’s past performance regarding compliance, violations, and penalties.

<sup>36</sup> Robbins, Exh. CR-1CT at 24:17-21.

could have avoided the charge altogether by either nominating more gas<sup>37</sup> or better aligning its consumption to its nomination. Thus, Tree Top’s behavior during the February 2021 event is entirely relevant to the Commission’s consideration of the Overrun Entitlement Charges in this case.

**D. Cascade’s Use of Green River to Calculate the Overrun Entitlement Charges Was Necessary to Further the Purpose of the Charges.**

13 Tree Top frames Cascade’s arguments as stating that the use of Green River as the basis for the entitlement charges was reasonable because it is in Cascade’s tariff, and is reasonable no matter how high, dysfunctional, or broken the market becomes.<sup>38</sup> However, to create an incentive, the tariff must be based on 150 percent of the highest market price to which Cascade may potentially be exposed.<sup>39</sup> Tree Top ignores the risk of arbitrage that would result from failing to include the highest regional market in Cascade’s tariff, whereas the entitlement charge mechanism mitigates this risk.<sup>40</sup> Additionally, Tree Top implies that Cascade should have ignored its tariff and selected a different price on which to base the penalties.<sup>41</sup> Consistent with RCW 80.28.080, Cascade must abide by the terms of its tariff and has no discretion to select a lower market price for the penalties.

14 Tree Top further asserts that the Overrun Entitlement Charges should be based on a different regional market because Cascade was not exposed to Green River pricing.<sup>42</sup> Again, this argument ignores the purpose of selecting the highest market price. Even though Cascade was not

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<sup>37</sup> Cascade’s Initial Brief at 5, ¶ 8 and 8, ¶ 12. While Tree Top claims that it had to nominate all of its gas for the weekend by Friday morning February 12, 2021, the Commission should understand that Tree Top is stating that its business practice is to nominate gas for the weekend by the Friday prior to the weekend. As Cascade explained in its testimony, the tariff allows customers to update their nominations over the weekend and even the day after the event—irrespective of Tree Top’s business practices. Robbins, Exh. CR-1CT at 11:9-12:6.

<sup>38</sup> Tree Top’s Opening Brief at 23, ¶ 35.

<sup>39</sup> Robbins, Exh. CR-1CT at 34:16-20.

<sup>40</sup> Robbins, Exh. CR-1CT at 34:5-12.

<sup>41</sup> Tree Top’s Opening Brief at 7, ¶ 13.

<sup>42</sup> Tree Top’s Opening Brief at 7, ¶ 13.

directly exposed to Green River pricing during the February 2021 event, Cascade has previously made purchases at Green River, and could be in a position to do so again—particularly during a period when gas supplies are constrained.<sup>43</sup> The tariff is designed to protect Cascade and its core customers, and accordingly, must be set to include an adder (150 percent) on the highest market price to which Cascade may be exposed, whether or not that market was “dysfunctional.”<sup>44</sup>

15       Conversely, basing the charges on one of the lower priced regional markets would not place the risk of exposure to the higher priced markets to where it belongs—with transportation customers—and would not remove the potential for market arbitrage. This is no less true simply because Cascade did not purchase gas at Green River during the February 2021 event, and remains true regardless of whether Texas regulators may “unwind electric bills” for certain customers.<sup>45</sup> Tree Top claims its argument does not equate to “no harm, no foul,”<sup>46</sup> yet this is exactly how Tree Top’s arguments read.<sup>47</sup> The retroactive assessment should be rejected as an attempt to undermine the purpose of the entitlement charges.

**E.      Tree Top Selectively Reads Cascade’s Tariff to Support its Argument to Aggregate Plant Nominations and Usage.**

16       Tree Top argues that the Schedule 663 Overrun Entitlement Charges should be levied at the customer level and not the meter level.<sup>48</sup> In support of this assertion, Tree Top quotes

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<sup>43</sup> Robbins, Exh. CR-1CT at 27:7-9.

<sup>44</sup> Robbins, Exh. CR-1CT at 35:8-15; Blattner, Exh. LB-1T at 16:18-19.

<sup>45</sup> Tree Top’s Opening Brief at 2, ¶ 3. To support its assertion that “Texas regulators are taking steps to unwind electric bills,” Tree Top referenced an article describing a settlement between Griddy Energy, LLC. *Texas Utility Settles Over Sky-High Energy Bills from Freeze*, SPECTRUM NEWS 1 (Aug. 31, 2021),

<https://spectrumlocalnews.com/tx/south-texas-el-paso/news/2021/08/31/texas-utility-settles-over-sky-high-energy-bills-from-freeze>. (Last accessed July 20, 2022). The article to which Tree Top cites notes that Griddy Energy sold energy to consumers at \$9,000 per megawatt-hour based on wholesale electricity prices, that Texas governor blamed the power failures on the grid operator, the Electric Reliability Council of Texas, and that Griddy Energy has since filed for Chapter 11 bankruptcy relief. Cascade fails to see the similarity between Griddy’s actions and its own or how this isolated settlement indicates that Texas is taking steps to “unwind bills.”

<sup>46</sup> Tree Top’s Opening Brief at 24, ¶ 37.

<sup>47</sup> See e.g., Tree Top’s Opening Brief at 7, ¶ 13; 14, ¶ 24.

<sup>48</sup> Tree Top’s Opening Brief at 25, ¶ 40.

Cascade's tariff defining charges as being levied against "customers" but also ignores that "customers" taking service pursuant to Schedule 663 must have service agreements with Cascade and must pay Basic Service Charges and Contract Demand Charges, and that these agreements are between Cascade and the various Tree Top plants and that these charges are likewise assessed at the plant level.<sup>49</sup> As Tree Top explained in its testimony, Tree Top's plants are located in different cities—two in Selah, one in Wenatchee, and another in Prosser<sup>50</sup>—and in these different cities, the plants use different equipment and have different operating profiles.<sup>51</sup> Tree Top nominates its gas volumes by plant<sup>52</sup>—a fact that only makes sense when imbalances are considered at the plant (or meter) level. Additionally, Cascade's Tariff Rule 2 defines "Customer" as "any person, firm, or corporation that has applied for, been accepted, and is currently receiving gas and, or distribution service from the Company ... at one location under one rate classification contract." Put simply, Tree Top must balance its nominations daily *at each plant* during entitlements and incurred penalties by failing to do so.

17 Tree Top's proposal to net the nominations and usage of each of its plants ignores the different locations of these plants and the physical characteristics of Cascade's gas distribution system, and rests on the incorrect assumption that Northwest Pipeline always aggregates all points on Cascade's system during entitlements. Tree Top's plants are located within three separate distribution systems—each with its own operating conditions—so delivering "excess gas" to one plant does not support the operating conditions in another system and Cascade may not be able to move the "excess gas" from one system to another due to potential capacity constraints.<sup>53</sup> Tree

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<sup>49</sup> Robbins, Exh. CR-3, Cascade's Schedule 663 at 1.

<sup>50</sup> Direct Testimony of Bradley G. Mullins, Exh. BGM-1CT at 4:11-17 (Apr. 8. 2022).

<sup>51</sup> Mullins, Exh. BGM-1CT at 5:3-9 and Confidential Figure 1.

<sup>52</sup> See e.g., Mullins, Exh. BGM-1CT at 14, Confidential Table 2 (showing nominations by plant). If imbalances at the plant or account level were irrelevant, transportation customers could simply provide a total nominated gas volume for all metered facilities.

<sup>53</sup> Robbins, Exh. CR-1CT at 36:11-37:2. See Robbins, Exh. CR-6, Northwest Pipeline Map at 1.

Top’s implication that Northwest Pipeline *always* considers the aggregate nominations for all delivery points on Cascade’s system<sup>54</sup> is wrong because Northwest Pipeline sometimes issues differing levels of entitlement across its system based on different operating conditions across the system.<sup>55</sup> In such an instance, allowing Tree Top to net its nominations could expose Cascade to entitlement charges and could jeopardize system integrity in the more constrained zones.<sup>56</sup> In short, Tree Top’s proposal does not adequately address operational concerns or potential exposure to charges from the upstream pipeline.

18 Tree Top falls back on its “no harm, no foul” argument by seeking a “more flexible interpretation” of Cascade’s tariff since Tree Top’s failure to bring on adequate gas supplies at each of its plants did not result in harm to Cascade’s system and because Cascade did not incur entitlement charges from Northwest Pipeline *in this instance*.<sup>57</sup> Tree Top claims it “did not perfectly forecast its daily gas requirements” and only exceeded its requirements at “certain plants” on “certain days.”<sup>58</sup> Cascade does not dispute that it did not have to purchase gas or incur penalties because of Tree Top’s nomination errors. But Tree Top understates the risk it created and misses the point. Notably, Tree Top’s imbalances mostly occurred on February 15 and 16,<sup>59</sup> when prices at Green River were the highest and just before prices at other markets rose even higher.<sup>60</sup> In other words, Tree Top overstates the value of the “excess gas” because it procured that gas when prices were lower and failed to procure adequate gas when prices were higher, and the system was more constrained. Importantly, the cumulative effect of transportation customer imbalances could threaten the integrity of Cascade’s system integrity—especially because these customers represent

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<sup>54</sup> Tree Top’s Opening Brief at 25-26, ¶ 41.

<sup>55</sup> Robbins, Exh. CR-1CT at 37:2-4.

<sup>56</sup> Robbins, Exh. CR-1CT at 37:4-7.

<sup>57</sup> Tree Top’s Opening Brief at 26, ¶ 42.

<sup>58</sup> Tree Top’s Opening Brief at 6, ¶ 11.

<sup>59</sup> Tree Top’s Opening Brief at 15, Confidential Table 1.

<sup>60</sup> Robbins, Exh. CR-1CT at 37:19-38:9.

approximately 70 percent of Cascade’s load.<sup>61</sup> Cascade’s tariff is designed to prevent the worst outcome in which reliability or system integrity could be implicated. In other words, just because Cascade did not experience catastrophic harm in this instance does not make the protections built into Cascade’s tariff any less valid.

**F. Tree Top Again Tries to Draw the Commission’s Attention to Settlements That Sound Similar, but That Are Different.**

19 Despite Tree Top’s assertions to the contrary, reconsideration of the reasonableness of a lawfully assessed overrun entitlement charge is without precedent at this Commission.<sup>62</sup> As Cascade explained in its Initial Brief, the question in the PSE case<sup>63</sup> was not whether PSE’s overrun charges were *reasonable*, but whether they were *lawful*.<sup>64</sup> The Commission determines whether charges are illegal and subject to refund, and whether charges are excessive or exorbitant and subject to reparations, pursuant to two different statutes altogether.<sup>65</sup> Furthermore, this Commission is under no obligation to follow the lead of its counterparts in Idaho—particularly in a case with vastly different facts. Importantly, the facts of the Idaho case do not lend support to reducing Tree Top’s penalties because the Idaho Commission approved reducing that customer’s penalty to **\$500,000** to still provide “meaningful teeth,” whereas Tree Top wants to reduce its charges to **\$2,210.90**.<sup>66</sup> Such a reduction would provide no meaningful incentive for Tree Top to nominate adequate gas supplies during future entitlements. Thus, the settlements Tree Top references provide no meaningful guidance in this case.

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<sup>61</sup> Blattner, Exh. LB-1T at 12:10-13.

<sup>62</sup> Tree Top’s Opening Brief at 26, ¶ 43.

<sup>63</sup> Docket UG-190857, Order 04.

<sup>64</sup> Docket UG-190857, Complaint at 14-15, ¶¶ 57-60.

<sup>65</sup> RCW 80.04.230 allows the Commission to order refunds for charges in excess of lawful rates, whereas RCW 80.04.220 allows the Commission to order reparations for excessive or exorbitant charges.

<sup>66</sup> Cascade’s Initial Brief at 22, ¶ 36.

### **III. CONCLUSION**

20        The only question before the Commission is whether to uphold the lawfully imposed Overrun Entitlement Charges, recognizing that the purpose of those charges is to protect Cascade and its core customers from gas shortages and operational harm caused by the failure of transportation customers to procure adequate gas supplies during critical operational periods. Tree Top argues that the Commission should not do so, because its failure to follow Cascade's tariff caused no harm, and thus Tree Top should pay only a nominal penalty. Cascade disagrees. Tree Top should be treated no differently than any other customer and should be held accountable for its inability or unwillingness to comply with Cascade's tariff.

Respectfully submitted this 27th day of July 2022.

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