

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

TREE TOP, INC.,

Complainant,

v.

CASCADE NATURAL GAS CORP.,

Respondent.

DOCKET UG-210745

INITIAL ORDER 05

BACKGROUND

- 1* On September 24, 2021, Tree Top, Inc., (Tree Top) filed with the Washington Utilities and Transportation Commission (Commission) a formal complaint against Cascade Natural Gas Corporation (Cascade) (Complaint). The Complaint alleges that Cascade charged Tree Top an unreasonable rate for its natural gas consumption between February 12-16, 2021, and requests that the Commission order Cascade to refund a large portion of the amount charged.
- 2* On October 25, 2021, Cascade filed an answer to the Complaint. In its answer, Cascade requested the Commission dismiss the Complaint and determine that Cascade appropriately billed Tree Top for the entitlement overrun penalties, citing the filed rate doctrine and asserting that Tree Top failed to state a claim for which relief may be granted as affirmative defenses.¹ Tree Top filed a Response to Cascade's motion to dismiss on November 9, 2021.
- 3* On November 17, 2021, the Commission convened a virtual prehearing conference before Administrative Law Judge Andrew J. O'Connell. The parties were afforded additional opportunity during the prehearing conference to present their positions on Cascade's motion to dismiss.

¹ Answer at ¶¶ 42-43, 50.

- 4 On November 19, 2021, the Commission issued Order 01, Prehearing Conference Order, denying Cascade's motion to dismiss and adopting the parties' agreed procedural schedule, which required Cascade to file a motion for summary determination on December 17, 2021, and Tree Top to file any response by January 6, 2022.
- 5 On December 17, 2021, Cascade filed its motion for summary determination, requesting the Commission dismiss Tree Top's Complaint and arguing that Tree Top was barred by the six-month statute of limitations imposed by RCW 80.04.240.
- 6 On February 3, 2022, the Commission issued Order 02, Denying Cascade's Motion for Summary Determination and finding that Tree Top had timely filed its Complaint within the six-month statute of limitations, which began April 15, 2021.
- 7 On February 22, 2022, the Commission convened a second virtual prehearing conference.
- 8 On March 8, 2022, the Commission issued Order 04, Second Prehearing Conference Order, establishing a procedural schedule and setting an evidentiary hearing in this matter for June 22, 2022.
- 9 On April 8, 2022, Tree Top filed with the Commission its initial testimony and exhibits.
- 10 On May 12, 2022, Cascade filed with the Commission its response testimony and exhibits.
- 11 On May 26, 2022, Tree Top filed with the Commission its reply testimony and exhibits.
- 12 On June 9, 2022, the Commission issued a Notice Canceling Evidentiary Hearing in this matter pursuant to a joint request to have this matter decided on a paper record by the parties, neither of whom intended cross-examination for any opposing witness.
- 13 On July 13, 2022, Tree Top and Cascade each filed with the Commission opening briefs.
- 14 On July 27, 2022, Tree Top and Cascade each filed with the Commission response briefs.
- 15 Chad M. Stokes, of Cable Huston LLP, Portland, Oregon, represents Tree Top. Lisa Rackner and Jocelyn Pease, of McDowell Rackner & Gibson PC, represent Cascade.

DISCUSSION

- 16 Tree Top is a food processing manufacturer with its headquarters and four different processing facilities in Cascade's service territory: Tree Top's Main Plant and Ross Plant in Selah, Washington, Wenatchee Plant in Wenatchee, Washington, and Prosser Plant in Prosser, Washington. Each plant receives natural gas service from Cascade under Schedule 663.²
- 17 Under Schedule 663, Cascade provides transportation of natural gas via its distribution system to certain customers (Schedule 663 customers), who are allowed and required to purchase gas themselves and have it delivered to Cascade's system for their consumption.³
- 18 Transportation service under Schedule 663 is subject to entitlement and curtailment.⁴ During a curtailment period, a Schedule 663 customer may not take more than the amount of gas indicated by the curtailment.⁵ During an entitlement period, a Schedule 663 customer may take an amount of gas different than it nominates, but a "penalty condition" is applied to the differing amount.⁶ During an *overrun* entitlement period, the penalty condition is applied when a Schedule 663 customer fails to secure sufficient daily gas for its consumption and *exceeds* (overruns) the amount of gas that it has nominated for the day.⁷

² Mullins, Exh. BGM-1CT at 4:11-19.

³ Robbins, Exh. CR-3 (Cascade's Tariff Schedule 663, effective for service on and after March 29, 2019, Docket UG-190083) at 1. Schedule 663 customers may authorize a third-party agent, through whom the customer will secure gas supply and pipeline transportation capacity. The third-party agent (market or supply agent) nominates and transports natural gas to Cascade's system on behalf of the Schedule 663 customer. *Id.*

⁴ *Id.* at 1. Under Schedule 663, Cascade can declare an entitlement period on any day it, "in its sole discretion, determines a critical operational condition warrants the need." *Id.* at 8.

⁵ *Id.* at 1, 3; *see* Blattner, Exh. LB-1T at 7:19-8:1.

⁶ Robbins, Exh. CR-3 at 8-9.

⁷ *Id.* at 8-9; *see* Blattner, Exh. LB-1T at 7:19-8:1; Mullins, Exh. BDM-1CT at 7:6-17. An allowed percent tolerance above the nomination is allowed prior to triggering the penalty condition. Robbins, Exh. CR-3 at 8-9.

- 19 On February 10, 2021, Cascade declared an overrun entitlement period from February 12-16, 2021 (Entitlement Period).⁸
- 20 Schedule 663's charge for any overrun is the greater of \$1.00 per therm or 150 percent of the highest midpoint price for the day at NW Wyoming Pool, NW south of Green River, Stanfield Oregon, NW Canadian Border (Sumas), Kern River Opal, and El Paso Bondad.⁹
- 21 During the Entitlement Period, Cascade calculated an entitlement rate using the 150 percent adjustment based on the price at Kern River Opal for February 12, 2021, and based on the price at NW south of Green River for February 13-16, 2021.¹⁰
- 22 Cascade issued charges totaling \$1,022,436.45 to 78 of the Schedule 663 customers for overruns during the Entitlement Period.¹¹
- 23 Tree Top had overruns on a total of six occasions during the Entitlement Period at either of its Prosser, Wenatchee, or Ross Plants.¹² Cascade issued charges to Tree Top totaling \$198,884.87 for these overruns.¹³

A. Legal Standard

- 24 The Commission's statutory authority and duty requires it to regulate the rates, services, facilities, and practices of gas companies.¹⁴ In addition, the Commission must establish rates, terms, and conditions for natural gas service that are "fair, just, reasonable and sufficient."¹⁵ The Commission may provide relief to customers who have been charged an unreasonable rate or who have not been charged the lawful rate.¹⁶

⁸ Robbins, Exh. CR-3 at 9; Robbins, Exh. CR-2 at 1. A Stage II overrun entitlement was declared, which allows a tolerance of eight percent from each Schedule 663 customer's daily nomination. *Id.*

⁹ Robbins, Exh. CR-3 at 9.

¹⁰ Mullins, Exh. BGM-1CT at 16:1-10.

¹¹ Robbins, Exh. CR-1CT at 32:8-9.

¹² Mullins, Exh. BGM-1CT at 14:1-15:18.

¹³ Robbins, Exh. CR-1CT at 32:13-15; Mullins, Exh. BGM-1CT at 14:1-15:18.

¹⁴ RCW 80.01.040; RCW 80.04.010.

¹⁵ RCW 80.04.110; RCW 80.28.010; RCW 80.28.020.

¹⁶ RCW 80.04.220; RCW 80.04.230; RCW 80.04.240.

- 25 Gas companies are required to furnish and supply natural gas service to customers and may only make and receive fair, just, reasonable, and sufficient charges for providing that service.¹⁷ Statute prohibits gas companies from charging, demanding, collecting, or receiving any different rate or charge than those in its schedule filed and in effect at the time.¹⁸ The Commission most recently approved Schedule 663's rates during Cascade's 2019 general rate case, Docket UG-190083. Those rates were effective during the Entitlement Period.
- 26 Tree Top and Cascade disagree regarding which legal standard applies. Tree Top acknowledges that Cascade strictly and lawfully applied Schedule 663 when issuing its charges to Tree Top.¹⁹ Tree Top argues, however, that the resulting amount of the charge as calculated by Cascade was unreasonable.²⁰ The Commission is granted the express authority to consider whether a rate was unreasonable because the charge was excessive or exorbitant for the service provided.²¹
- 27 Here, Tree Top presents evidence and argument that the amounts charged may have been the unreasonable result of a dysfunctional market at the pricing hub used by Cascade in the calculation of its tariff charge, which is outside of Cascade's control.²² In addition, Tree Top argues that Cascade applied its tariff lawfully, but unreasonably, by failing to net the amounts of gas nominated by its four plants.²³ Essentially, Tree Top argues that Cascade should have considered its four plants as a single customer under Schedule 663 instead of as separate customers. These present novel questions of law under RCW 80.04.220 regarding whether a lawfully applied tariff may, nonetheless, result in an excessive or exorbitant rate unintended when the rates were approved.²⁴

¹⁷ RCW 80.28.010.

¹⁸ RCW 80.28.080.

¹⁹ Tree Top's Opening Brief at ¶¶ 29, 44.

²⁰ *Id.*

²¹ RCW. 80.04.220.

²² Mullins, Exh. BGM-1CT at 15:22-22:16; Tree Top's Opening Brief at ¶¶ 14, 22, 38.

²³ Mullins, Exh. BGM-1CT at 3:7-8, 33:8-14; Mullins, Exh. BGM-7T at 8:6-9:10; Tree Top's Opening Brief at ¶¶ 39-42.

²⁴ Washington courts and the Commission have applied the filed rate doctrine to reject complaints alleging that the rate charged was more than the lawful, authorized rate. *AT&T Commc'ns of the Pac. Nw., Inc., TCG Seattle, TCG Oregon, and Time Warner Telecom of Wash., LLC, v. Qwest*

- 28 Cascade argues, as it did in its initial motion to dismiss, that the filed rate doctrine and ratemaking principles against retroactive ratemaking preclude a finding in Tree Top's favor because the rate was charged according to Cascade's tariff.²⁵ There are very limited exceptions to the filed rate doctrine, which is a principle of regulatory ratemaking that preserves an agency's primary jurisdiction to determine the reasonableness of rates and insures that regulated utilities charge only approved rates.²⁶ It promotes deference to the expertise and rate-setting authority of the regulatory agency by limiting a court's authority to depart from approved rates.²⁷
- 29 Tree Top argues that the filed rate doctrine need not be a limitation on the Commission's authority to examine the reasonableness of past charges, particularly when that authority is granted expressly.²⁸ The Commission has been expressly granted the authority to determine whether a rate was excessive or exorbitant for the service provided and order the return of the excess amount charged. This authority granted by RCW 80.04.220 may not be barred by the filed rate doctrine if Tree Top can show that the rate charged was lawful, but nonetheless excessive or exorbitant.

B. Decision

- 30 We find that the Commission may consider Tree Top's novel arguments and determine whether the amount charged to Tree Top by Cascade was excessive or exorbitant for the service it provided during the Entitlement Period. As we explain below, we determine it

Corp., Docket UT-051682, Order 03 (Feb. 10, 2006); *Wash. State Attorney Gen. Office, Indus. Customers of Nw. Utils. v. PacifiCorp d/b/a Pac. Power & Light Corp.*, Docket UE-110070, Order 01 (Apr. 27, 2011); *State ex rel. Std. Oil Co. v. Dep't of Public Work*, 185 Wash. 235 (1936); *State ex rel. Model Water & Light Co. v. Dep't of Pub. Serv.*, 199 Wash. 24 (1939). Tree Top's arguments, however, are unique and unanticipated by Commission and Washington court precedent.

²⁵ Cascade's Answer at ¶ 42; Cascade's Initial Brief at ¶¶ 21-27.

²⁶ *Tenore v. AT&T Wireless Serv.*, 136 Wash.2d 322 (1998); *Breiding, et. al., v. Eversource Energy and Avangrid, Inc.*, 939 F.3d 47 (1st Cir. 2019); *Coll v. First Am. Title Ins. Co.*, 642 F.3d 876 (10th Cir. 2011); *see Georgia v. Pa. R.R.*, 324 U.S. 439, 458 (1945); *Square D Co. v. Niagara Frontier Tariff Bureau*, 476 U.S. 409 (1986); *Cost Mgmt. Servs. v. Wash. Nat. Gas Co.*, 99 F.3d 937, 946 (9th Cir. 1996); *Cty. of Stanislaus v. Pac. Gas & Elec. Co.*, 114 F.3d 858, 865 (9th Cir. 1997); *Coll v. First Am. Title Ins. Co.*, 642 F.3d 876 (10th Cir. 2011); *Okla. Gas & Elec. Co. v. FERC*, 454 U.S. App. D.C. 229 (2021).

²⁷ *Breiding, et. al., v. Eversource Energy and Avangrid, Inc.*, 939 F.3d 47 (1st Cir. 2019).

²⁸ Tree Top's Response in Opposition to Cascade's Motion to Dismiss at ¶¶ 12-13; *Tuerk v. Dep't of Licensing*, 123 Wash.2d 120, 124-25 (1994).

was not. We also determine that Tree Top, having been afforded the opportunity, has failed to show that the unique circumstances presented in this case require any exception to the filed rate doctrine.

- 31 Tree Top argues that the charge by Cascade is unreasonable because of the influence of an extreme weather event in Texas, the sufficiency of gas on Cascade’s system, the incorrect assessment of overruns by Tree Top’s plants as separate customers, and the resolution of another case before the Commission in Docket UG-190857. Given the circumstances presented in this case, none of these arguments is persuasive.
- 32 **Extreme Weather Event.** In February 2021, a winter storm system struck the southern and southwestern United States, including Texas and Oklahoma. That storm system “produced widespread impacts across the United States, leaving millions without power and leading to the Texas 2021 Energy Crisis.”²⁹ The weather event led to a dramatic decline in gas production and the gas supplies of Northwest Pipeline, LLC, (NW Pipeline) were severely disrupted.³⁰ These supply shortages and cold temperatures increased the demand for gas and led to high market prices.³¹
- 33 Tree Top argues that these prices were the result of a dysfunctional market. Tree Top argues that, “*in this specific instance*, where an unprecedented winter storm caused market dysfunction,” applying the terms of Schedule 663 strictly is unreasonable.³² Many of Tree Top’s arguments presuppose that gas markets in February of 2021 were dysfunctional. For example, Tree Top argues that the 150 percent overrun charges should not be based on the Green River hub, due to its dysfunction, and should instead “be calculated based on market rates that are reasonable.”³³ We observe, however, that it is possible for critical circumstances to influence market prices to high levels due to unexpectedly high demand for gas without creating a dysfunctional market. Determining whether the markets during February 2021 were dysfunctional is within the jurisdiction of the Federal Energy Regulatory Commission, which is examining the February 2021

²⁹ Mullins, Exh. BGM-1CT at 17:21-18:1.

³⁰ Mullins, Exh. BGM-1CT at 17:21-21:2; Robbins, Exh. CR-1CT at 25:10-26:16; Blattner, Exh. LB-1T at 16:6-19.

³¹ Mullins, Exh. BGM-1CT at 17:21-21:2; Robbins, Exh. CR-1CT at 25:10-26:16; Blattner, Exh. LB-1T at 16:6-19.

³² Tree Top’s Opening Brief at ¶ 38 (emphasis in original).

³³ *Id.* at ¶ 34.

extreme weather event.³⁴ We decline to make any finding regarding whether a dysfunctional market existed.

34 Regardless, Tree Top’s argument misses the point. It is not the market rate at Green River, in this instance, that must be reasonable, but instead the rate charged by Cascade for the natural gas service considering the circumstances during the Entitlement Period. Tree Top has failed to show that the charges were excessive or exorbitant for the service provided by Cascade to Tree Top under the extreme circumstances described in the record. To the contrary, the service provided by Cascade during the Entitlement Period supports and justifies the reasonableness of the charges as prescribed by Schedule 663. We explain the circumstances, and the context of the service provided, below.

35 Cascade is statutorily obligated to provide safe and reliable gas service to its core customers, for whom Cascade procures and delivers natural gas to its system.³⁵ Cascade gets approximately 70 percent of its gas from the NW Pipeline.³⁶ The extreme weather event, increased demand for gas, decreased supply, and cold temperatures placed “Cascade’s system . . . at a greater risk of being harmed by disruptions to its upstream supply.”³⁷ The portions of Schedule 663 that require customers to abide by entitlement and curtailment declarations exist precisely for the purpose of helping shield Cascade and its core customers from the negative outcomes of market and operational risks during entitlement and curtailment periods.

36 There are many benefits for Schedule 663 customers. They are not dependent upon Cascade to procure gas supplies on their behalf, as are Cascade’s core customers. These customers are larger users of natural gas, able to make decisions about their consumption and nominations to manage their own risks, and able to procure their own gas supplies on favorable terms. These customers depend upon Cascade only for the use of Cascade’s gas distribution system as a vehicle through which to receive the gas they procure for their consumption. Schedule 663 is designed to balance the benefits to Schedule 663 customers with benefits to Cascade and its core customers. Part of this balance is the requirement that Schedule 663 customers abide by entitlements and curtailments, when declared by Cascade, for the purpose of preserving the integrity of Cascade’s system for

³⁴ See Mullins, Exh. BGM-6 at 5.

³⁵ RCW 80.28.010.

³⁶ Robbins, Exh. CR-1CT at 25:3-9; 26:8.

³⁷ *Id.* at 25:17-26:16.

its core customers, such as residences, hospitals, and emergency operations centers that rely upon Cascade's procurement of sufficient gas supplies to avoid outages during critical times.³⁸

37 Approximately 70 percent of Cascade's distribution system throughput is from Schedule 663 customers.³⁹ This is nearly the inverse of the other investor-owned natural gas distribution companies in Washington.⁴⁰ The performance, therefore, of these customers can significantly impact Cascade's ability to manage its system and serve core customers if enough fail to procure a sufficient supply of gas.⁴¹

38 When a Schedule 663 customer takes more gas than it has nominated to bring on to the system, bypassing procuring its own supply from the market, that gas comes from the supply that Cascade has procured for its core customers or excess gas that other Schedule 663 customers unexpectedly have not used. If more gas is taken than is available, it can "jeopardize Cascade's ability to provide gas to its core customers."⁴² Cascade witness Blattner explains that, to avoid jeopardizing the system, Cascade would procure gas on the spot market even if it were during an overrun entitlement period.⁴³ This, however, would expose Cascade to higher market prices. Blattner argues persuasively that

The purpose of the overrun charges is to incentivize Transportation Service Customers to bring on adequate gas—by making it more expensive than for them to simply rely on Cascade's gas—so that Cascade is not exposed to the higher prices. In other words, by arguing that Tree Top should not be exposed to the Green River pricing, [they are] arguing that Cascade and its core customers should instead bear the risk of that exposure.⁴⁴

³⁸ See Blattner, Exh. LB-1T at 12:1-6.

³⁹ *Id.* at 17:1-3.

⁴⁰ *Id.* at 12:16-13:4.

⁴¹ *Id.* at 13:2-4; 16:21-17:5.

⁴² *Id.* at 14:13-15:1.

⁴³ *Id.* at 17:5-6.

⁴⁴ *Id.* at 17:8-13.

39 We find it would be inequitable and contrary to the design of Schedule 663 to allow a shift of the risks of market prices, a supply shortage, or system integrity failure to Cascade and its core customers.

40 Schedule 663 is designed to disincentivize the shifting of this operational risk. Cascade witness Robbins explains that “[w]hen market pricing is high, transportation customers may find it more appealing to take gas from Cascade’s distribution system beyond what they have nominated than to subject themselves to the higher prices.”⁴⁵ The overrun charge in the schedule must, therefore

be greater than the highest midpoint price of the regional pricing markets to which Cascade and transportation customers are exposed by a large enough factor to encourage the transportation customers to purchase the gas themselves instead of pushing the risk of shortages to Cascade. . . . It is a matter of ensuring that it is more expensive for transportation customers to fail to bring on adequate supplies and pay a penalty than it is for them to purchase additional gas supplies on the higher priced open market because their deficiencies could potentially jeopardize Cascade’s system integrity.⁴⁶

We agree.

41 There were warnings as early as February 3, 2021, that the winter storm system would impact gas supplies of NW Pipeline.⁴⁷ NW Pipeline communicated to customers in early February regarding the likelihood of an entitlement period for February 12-16.⁴⁸ Cost Management Services, Inc. (CMS), Tree Top’s marketing agent, was aware prior to the declaration of the Entitlement Period that an entitlement period was likely for February 12-16 and requested updated usage estimates from Tree Top in order to procure

⁴⁵ Robbins, Exh. CR-1CT at 33:16-20.

⁴⁶ *Id.* at 34:16-35:2.

⁴⁷ Mullins, Exh. BGM-1CT at 18:8-10; Mullins, Exh. BGM-6 at 1-2.

⁴⁸ Mullins, Exh. BGM-1CT at 10:15-16.

additional gas supplies.⁴⁹ NW Pipeline and Cascade declared matching overrun entitlement periods for February 12-16, 2021.⁵⁰

- 42 Tree Top received notice of the critical conditions caused by the extreme weather event, was aware that market prices were affected, and had the time and ability to take appropriate action to assess and manage the risk to avoid costly overruns. Importantly, Tree Top was aware of the rates in Schedule 663 and the consequences for any overruns during the Entitlement Period. The actions it took, through its agent, to update and correct its gas nominations for the Entitlement Period were insufficient to procure the necessary gas supplies for its consumption. Tree Top was responsible for its nominations and assumed the known financial and operational risks of potential overruns during the circumstances of the Entitlement Period.
- 43 Neither are we persuaded by Tree Top's argument that the rate charged is excessive and exorbitant because the amount of gas it took from Cascade's distribution system during the Entitlement Period did not cause Cascade to overrun during the Entitlement Period. During an entitlement period declared by NW Pipeline, Cascade faces constraints similar to its Schedule 663 customers: it must avoid overruns and must balance its gas daily to avoid entitlement charges from the upstream pipeline. Cascade had a sufficient supply of gas on its system due to either the gas it had procured for its core customers or gas that other Schedule 663 customers had nominated but not used. This fortunate outcome hinders rather than supports Tree Top's argument. It highlights the prudent procurements made by Cascade and enough of the other Schedule 663 customers to ensure they would not have overruns during the Entitlement Period.
- 44 Tree Top has failed to show that Cascade's strict application of its tariff under these combined circumstances was unfair, unjust, or unreasonable and resulted in excessive or exorbitant rates. Instead, it appears from the record presented that the rates charged were commensurate with the critical circumstances threatening Cascade's system considering its obligations to provide service for its core customers during an extreme cold weather event and the equitable balance, previously described, struck by Schedule 663.

⁴⁹ Robbins, Exh. CR-4; Mullins, Exh. BGM-1CT at 11:4-9. CMS is also the marketing agent for other Schedule 663 customers. Mullins, Exh. BGM-1CT at 11:15-12:8.

⁵⁰ Robbins, Exh. CR-1CT at 25:3-9; Mullins, Exh. BGM-1CT at 10:16-11:3; *see* Blattner, Exh. LB-1T at 8:11-9:9.

- 45 **Aggregation of Tree Top’s Plant Nominations.** Tree Top argues that the charge assessed was unreasonable because Cascade assessed overruns for each of Tree Top’s plants separately and did not aggregate the daily nominations as a single customer.⁵¹ Some of its plants had nominated an excess supply of gas while others overran their nominations.⁵² Tree Top justifies aggregating the charges on a daily basis because Tree Top is the customer, Cascade applies the charges to Tree Top and not to each separate plant, and NW Pipeline aggregates overrun charges to Cascade.⁵³
- 46 We reject Tree Top’s arguments and find that Cascade’s assessment of charges to each plant separately was reasonable. First, each of Tree Top’s four plants has its own account with Cascade.⁵⁴ Second, Tree Top’s plants are located on separate and distinct parts of Cascade’s distribution system; excess gas on one plant’s portion of the distribution system does not offset the risks presented by an overrun at another plant.⁵⁵ It would, therefore, be contrary to the purpose and rate design of Schedule 663 to allow one plant to shift the risks to other customers on its separate portion of the distribution system. Third, Tree Top fails to explain why it could not have taken action to update and redistribute its own nominations, as late as 9 a.m. the morning following the relevant gas day, to avoid the overrun charges.⁵⁶ If contractual limitations prevented the reallocation of excess nominated gas from one plant to another, this would further support separate assessments for the plants. Regardless, we find Tree Top’s arguments unpersuasive that Cascade’s failure to aggregate the charges made those charges unreasonable.
- 47 **Docket UG-190857.** Tree Top argues that “reconsideration of the reasonableness of an overrun entitlement charge is not without precedent with this Commission. The Commission itself approved a settlement between Puget Sound Energy and a group of customers, reducing overrun entitlement charges from \$100 [per dekatherm] to \$10 [per dekatherm].”⁵⁷

⁵¹ Tree Top’s Opening Brief at ¶ 39.

⁵² *Id.*; see Mullins, Exh. BGM-1CT at 14, Confidential Table 2.

⁵³ Tree Top’s Opening Brief at ¶¶ 39-41.

⁵⁴ Robbins, Exh. CR-4.

⁵⁵ Robbins, Exh. CR-1CT at 36:10-37:8.

⁵⁶ *See id.* at 11:9-12:10.

⁵⁷ Tree Top’s Opening Brief at ¶ 43; Mullins, Exh. BGM-1CT at 31:16–19.

48 Tree Top’s reference to and reliance upon Docket UG-190857 is misplaced and we reject any argument of precedence from that case, which involved different factual circumstances and issues of law. Docket UG-190857 concerned charges made under a curtailment, not an entitlement as in this case.⁵⁸ Docket UG-190857 was resolved by a full settlement, wherein the parties jointly agreed on “a compromise of the amount of penalties owed . . . based on two reasonable but conflicting interpretations of the language in the tariff rules.”⁵⁹ Here, there is no dispute concerning the language in Cascade’s tariff or whether Cascade lawfully applied its tariff. Docket UG-190857 concerned allegations that Puget Sound Energy (PSE) had charged unlawful rates under RCW 80.04.230, not that PSE had charged excessive or exorbitant rates under RCW 80.04.220.⁶⁰ In addition, Order 04 in Docket UG-190857 is not precedential. That order approving the settlement in that docket without condition is an initial order, which became final by operation of law. According to Commission rule, such an order “does not reflect a decision by the commissioners and has no precedential value.”⁶¹ Accordingly, we assign no weight in this proceeding to Tree Top’s arguments regarding Docket UG-190857.

49 **Conclusion.** Ultimately, we find that Tree Top has failed to show that the rate charged by Cascade was unreasonable and resulted in a charge that was excessive or exorbitant for the natural gas services provided under the circumstances existing during the Entitlement Period. In addition, given the opportunity to make its showing, Tree Top has failed to show that the circumstances of this case presented novel issues that justify a departure from Commission precedent applying the filed rate doctrine. Accordingly, we determine that Tree Top’s Complaint should be dismissed.

⁵⁸ *See id.* at ¶¶ 2, 39-55.

⁵⁹ *Seattle Children’s Hosp., et. al., v. Puget Sound Energy*, Docket UG-190857, Initial Order 04, Exh. A, Settlement Stipulation and Agreement, at 4, ¶ 10.

⁶⁰ *Seattle Children’s Hosp., et. al., v. Puget Sound Energy*, Docket UG-190857, Complaint at ¶¶ 55-60.

⁶¹ WAC 480-07-825(1)(c). In addition, the rule requires that parties citing such an order must identify it as an initial order. Tree Top does not. Tree Top’s Opening Brief at 27, n. 101; Mullins, Exh. BGM-1CT at 31, n. 33.

FINDINGS AND CONCLUSIONS

- 50 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate rates, regulations, practices, accounts, securities, transfers of property and affiliated interests of public service companies, including natural gas companies.
- 51 (2) The Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 52 (3) Cascade is a “public service company” and “gas company” as those terms are defined in RCW 80.04.010 and used in Title 80 RCW. Cascade provides natural gas utility service to customers in Washington.
- 53 (4) Cascade is responsible for providing gas to its core customers, for whom Cascade procures and delivers natural gas to its system.
- 54 (5) Tree Top is a food processing manufacturer with its headquarters and four different processing facilities in Cascade’s service territory: Tree Top’s Main Plant and Ross Plant in Selah, Washington, Wenatchee Plant in Wenatchee, Washington, and Prosser Plant in Prosser, Washington.
- 55 (6) Each of Tree Top’s plants receive natural gas service from Cascade under Schedule 663.
- 56 (7) Cascade provides transportation of natural gas via its distribution system to Schedule 663 customers.
- 57 (8) Schedule 663 customers are allowed and required to purchase gas themselves and have it delivered to Cascade’s system for their consumption.
- 58 (9) Schedule 663 customers are subject to entitlement and curtailment.
- 59 (10) During an entitlement period, a Schedule 663 customer may take an amount of gas different than it nominates, but a “penalty condition” is applied to the differing amount. During an overrun entitlement period, the penalty condition is applied when a Schedule 663 customer fails to secure sufficient daily gas for its consumption and exceeds (overruns) the amount of gas that it has nominated for the day.

- 60 (11) Schedule 663's charge for any overrun is the greater of \$1.00 per therm or 150 percent of the highest midpoint price for the day at NW Wyoming Pool, NW south of Green River, Stanfield Oregon, NW Canadian Border (Sumas), Kern River Opal, and El Paso Bondad.
- 61 (12) Schedule 663 is designed to balance the benefits to Schedule 663 customers with benefits to Cascade and its core customers. Part of this balance is the requirement that Schedule 663 customers abide by entitlements and curtailments, when declared by Cascade, for the purpose of preserving the integrity of Cascade's system for its core customers, such as residences, hospitals, and emergency operations centers who rely upon Cascade's procurement of sufficient gas supplies to avoid outages during critical times.
- 62 (13) In February 2021, a winter storm system struck the southern and southwestern United States, causing a dramatic decline in gas production and gas supplies of NW Pipeline were severely disrupted. These supply shortages and cold temperatures increased the demand for gas and led to high market prices.
- 63 (14) Cascade gets approximately 70 percent of its gas from the NW Pipeline.
- 64 (15) The extreme weather event, increased demand for gas, decreased supply, and cold temperatures placed Cascade's system at a greater risk of being harmed by disruptions to its upstream supply.
- 65 (16) The portions of Schedule 663 that require customers to abide by entitlement and curtailment declarations help shield Cascade and its core customers from these kinds of market and operational risks.
- 66 (17) On February 10, 2021, Cascade declared an overrun entitlement period from February 12-16, 2021.
- 67 (18) During the Entitlement Period, Cascade calculated an entitlement rate using the 150 percent adjustment based on the price at Kern River Opal for February 12, 2021, and based on the price at NW south of Green River for February 13-16, 2021.
- 68 (19) Cascade issued charges totaling \$1,022,436.45 to 78 of the Schedule 663 customers for overruns during the Entitlement Period.

- 69 (20) Cascade issued charges to Tree Top totaling \$198,884.87 for overruns on a total of six occasions during the Entitlement Period at either of its Prosser, Wenatchee, or Ross Plants. Cascade assessed the charges for each of Tree Top's plants separately instead of aggregating the plants' daily nominations. Some of Tree Top's plants had nominated an excess supply of gas.
- 70 (21) Tree Top failed to show that Cascade's assessment of overrun charges to each of Tree Top's plants separately was unreasonable.
- 71 (22) Tree Top failed to show that the charges were excessive or exorbitant for the service provided by Cascade under the circumstances. To the contrary, the service provided by Cascade during the Entitlement Period supports and justifies the reasonableness of the charges as prescribed by Schedule 663.
- 72 (23) Tree Top has failed to show that the circumstances require any exception to the filed rate doctrine.
- 73 (24) The Commission should dismiss Tree Top's Complaint.

ORDER

74 **THE COMMISSION ORDERS THAT** the complaint filed with the Washington Utilities and Transportation Commission by Tree Top, Inc., on September 24, 2021, alleging that Cascade Natural Gas Corporation charged an unreasonable rate between February 12-16, 2021, is dismissed.

DATED at Lacey, Washington, and effective August 18, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ *Andrew J. O'Connell*
ANDREW J. O'CONNELL
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2)(a) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(2)(b). WAC 480-07-825(2)(c) states that any party may file and serve an *Answer* to a Petition for Review within ten (10) days after the Petition is filed.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).