

**BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION
COMMISSION**

COST MANAGEMENT
SERVICES, INC.,

Complainant,

v.
CASCADE NATURAL GAS
CORPORATION,

Respondent.

DOCKET NO. UG-061256

PUBLIC COUNSEL'S
RESPONSE TO MOTIONS FOR
CLARIFICATION OF ORDER NO. 3

1. The Public Counsel Section of the Attorney General's Office ("Public Counsel") respectfully responds to the Motions for Clarification of Commission Order No. 03 submitted by Cascade Natural Gas Corporation ("Cascade"), Cost Management Services, Inc. ("CMS") and Commission Staff ("Staff") in the above captioned matter.
2. The Washington Utilities and Transportation Commission ("Commission") issued Order No. 03 on January 12, 2007 resolving CMS's and Cascade's cross-motions for summary judgment in this docket. On March 22, 2007, Staff, CMS and Cascade filed motions for clarification of Order No. 03. Public Counsel addresses only the issues of unreasonable preference and rate discrimination as discussed in the clarification motions.
3. Cascade requests clarification as to whether this adjudication should proceed in order to resolve the factual disputes regarding allegations of unreasonable preference and rate discrimination. Cascade Motion, ¶¶ 13-23. That is somewhat surprising since the

Commission's order clearly states that there is a genuine issue of material fact "as to whether the Company [Cascade] has given preferences to certain customers or discriminated in selling natural gas to non-core customers." Order No. 03, ¶ 54. There should be no question that the commission intended this adjudication to proceed on the merits to resolve these questions.

4. Cascade's unwillingness to acknowledge that there are disputed facts is without logic. In essence, Cascade argues that the Commission should ignore violations of RCW 80.28.090 (Unreasonable preference prohibited) and RCW 80.28.100 (Rate discrimination prohibited) simply because their revelation arose from a complaint brought by CMS and was not specifically pled in the complaint. Cascade Motion, ¶¶ 13-23.

5. It appears to Public Counsel that because CMS provides gas management services to some of Cascade's core customers, it has standing in this matter. Even if the Commission believed that *Cole v. WUTC*, 79 Wn.2d 302, 485 P.2d 71 (1971) applied to these facts such that CMS lacked standing to pursue these claims, Public Counsel clearly has standing to pursue them.¹ In addition, the Commission possesses broad authority of its own to enforce Title 80.² In essence, Cascade is asking the Commission to take a blind eye to what it has already found to be colorable claims of undue preference and discrimination. Cascade's request should be rejected and these matters be allowed to proceed on the merits.

¹ See, RCW 80.04.110; RCW 80.04.510.

² The Commission is authorized to "[e]xercise all the powers and perform all the duties prescribed therefor by this title [Title 80] and by Title 81 RCW, or by any other law." See generally RCW 80.01.040; *Tanner Electric Cooperative v Puget Sound Power & Light*, 128 Wn. 2d 656 (1996).

6. With regard to Cascade's request for clarification that these issues should not be pursued further because CMS's complaint did not clearly outline these allegations, we understand that CMS is amending its complaint. This amendment is unnecessary. The complaint put Cascade clearly on notice that it faced questions about, *inter alia*, the interaction between gas sales to non-core and core Cascade customers. A gas company who protests ignorance about the likelihood of defending against cross-subsidies on the face of such a complaint is suspect or incompetent. CMS's amendment to its complaint should nonetheless be granted to obviate Cascade's further litigation on this question.
7. Cascade's last ditch effort to remove these issues from Commission consideration through "clarification" arises because there remain serious questions as to whether cross-subsidization between non-core and core Cascade customers is occurring and if so, the magnitude of the monies involved. Public Counsel is deeply concerned about this possibility and urges the Commission to allow these allegations to be aired through this proceeding rather than putting it off for another day, to be raised by another complainant, and through another complaint.
8. Moreover, on the heels of Cascade's General Rate Case,³ decided January 2007, the specter of cross-subsidies calls into question the accuracy of Cascade's current revenue requirement. It may well be the case that ratepayers are paying higher rates due to a revenue requirement that has excluded core income that has wrongfully been identified as non-core or that core customers are paying higher gas prices than non-core

³ Docket No. UG-060256.

customers. If rates are too high as a result of this conduct, these monies must be refunded to core customers through rate credits or other means.⁴

9. Because of this Public Counsel entered a “Joint Participation and Defense Agreement” with CMS in order to learn whether CMS’s expert, Mr. Donald Schoenbeck, has identified cross-subsidies and if so, the amounts. Upon review of the confidential affidavit of Donald W. Schoenbeck filed in this docket, it is clear that Mr. Schoenbeck has begun to identify conduct by which Cascade engaged in cross-subsidies, unreasonable preferences and undue discrimination between core and non-core customers. Only by proceeding to adjudication, as the Commission expected in Order No. 03, will the truth of these matters be tested. Public Counsel urges the Commission to reject Cascade’s eleventh-hour attempt to avoid the consequences of its behavior and refuse any additional efforts by Cascade to skirt adjudication of this matter.

DATED this 9th day of April, 2007.

ROBERT M. MCKENNA
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⁴ The Commission’s finding of a genuine issue of material fact likely recognized the magnitude of the allegations and sought that they be resolved sooner than later.