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4 **BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION**
5 **COMMISSION**

6 COST MANAGEMENT SERVICES,
7 INC.,

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9 Complainant,

10 v.

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13 CASCADE NATURAL GAS
14 CORPORATION,

15 Respondent.
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Docket No. UG-061256

RESPONDENT'S MOTION TO STRIKE
COMMISSION STAFF'S RESPONSE TO
MOTION FOR CLARIFICATION

RESPONDENT'S ALTERNATIVE
MOTION FOR LEAVE TO REPLY AND
PROPOSED REPLY

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21 **MOTIONS**

22 1. Respondent Cascade Natural Gas Corporation ("Cascade") respectfully moves to
23 strike Commission Staff's Response to Motion for Clarification filed April 9, 2007 ("Staff's
24 Response"). In the alternative, Cascade moves for leave to file a reply to Staff's Response in
25 the form included herein.
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30 **DISCUSSION ON MOTIONS**

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32 2. Staff's Response is based in its entirety on a filing Cascade made with the
33 Commission on March 30, 2007 (revised version) (the "March 30 letter"), a copy of which is
34 attached as Exhibit A hereto.¹ The March 30 letter accompanied Cascade's filing of a
35 contract between Cascade and its affiliate, CGC Energy, Inc. ("CGCE"), and summarized
36 Cascade's arrangement with CGCE, pursuant to RCW 80.16.020 and WAC 480-90-245.
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38 Cascade also discusses in the March 30 letter the fact that CGCE will start to make gas sales
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46 ¹ Cascade did not file the March 30 letter in this docket, and the Commission has assigned
47 Cascade's March 30 letter Docket No. UG-070639.

1 to non-core customers in view of the Commission's suspension of Cascade's proposed tariffs
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3 filed to comply with Order 03 in this docket (the "Order").
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5 3. Staff's Response simply raises questions about the March 30 letter, which Staff
6 characterizes as requests for "clarification." Staff's Response is neither a response to
7 Cascade's or CMS's motion for clarification. Rather, it is a request for clarification, which is
8 untimely because Order 04 required such requests to be filed by March 22, 2007, and Staff
9 already submitted a motion for clarification on that date. Moreover, since it is based on
10 Cascade's March 30 letter, Staff's Response is not, and could not possibly be, a request for
11 clarification of the Order, which was issued January 12, 2007.
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19 4. The gist of Staff's requests for clarification is to ask whether Cascade's activities as
20 reflected in its March 30 letter might be inconsistent with the Commission's intentions in the
21 Order. Staff's Response asks the Commission to address the matters raised in the March 30
22 letter for the first time. Thus, Staff's Response is not a request for clarification of the Order,
23 which did not address any issues raised in Cascade's March 30 letter, and could not have
24 done so since those issues did not exist when the Commission issued the Order.
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31 5. Cascade understands that Staff may have questions about the activities of CGCE and
32 the nature of its relationship with Cascade. Cascade does not dispute that Staff has the
33 authority and responsibility to investigate such issues, and Cascade intends to continue to
34 cooperate fully with any Staff investigation. Cascade thinks, however, that any such
35 investigation should not take place in the context of this CMS complaint proceeding, and
36 that the issues Staff raises may not be considered simply in connection with Staff's request
37 for clarification of the Order. As Cascade argues in other motions and briefs pending before
38 the Commission, the Commission has already resolved all of the issues that CMS has raised
39 in its Complaint and that CMS has standing to raise and the Commission should, therefore,
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1 close this docket. Any issues concerning Cascade's March 30 letter are plainly outside the
2 scope of CMS's Complaint. Moreover, there is nothing in the record upon which the
3 Commission could address the issues raised in Staff's Response. Any issues relating to the
4 March 30 letter should instead be addressed in Docket No. UG-070639, which the
5 Commission has opened to address that specific filing. For these reasons, the Commission
6 should strike Staff's Response.
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12 6. In the event that the Commission does not strike Staff's Response, it should allow
13 Cascade to reply to that Response in the form set forth below. Since Staff's Response
14 requests clarification of how the Order might apply to Cascade's March 30 letter, and since
15 Order 04 contemplated that parties would have the opportunity to respond to any motion for
16 clarification, Cascade should be permitted to reply to Staff's Response.
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22 **PROPOSED REPLY**

23 7. Staff first asks whether Cascade's decision to use an unregulated subsidiary to make
24 non-core gas supply sales "effectively negates the Commission's stated intent in Order 03."
25 Staff's Response at 2. Staff does not identify the "stated intent" it believes the Commission
26 had in the Order, and Cascade does not read the Order as stating any particular intent,
27 especially one relating to potential sales made by an unregulated Cascade subsidiary. In the
28 Order, the Commission addressed the obligations of Cascade under Washington statutes and
29 the Commission's rules when Cascade, as a public service company, makes sales of gas
30 supply to non-core customers. The Commission ruled on the legal issues brought before it
31 and did not address hypothetical other arrangements. In no way did the Order address the
32 obligations of Cascade or its subsidiary in the event a subsidiary of Cascade that is not a
33 public service company were to make such sales. Nor did the Order require that Cascade
34 continue to make those sales itself rather than by a subsidiary, or express any intent that
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1 should be the case. Thus, the activities reflected in Cascade's March 30 letter do not negate
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3 any express or implied intent of the Commission.

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5 8. Cascade is also concerned that Staff would pose this question because Staff itself
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7 advised Cascade in early March 2007 that the best course for Cascade to pursue in the
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9 future, in view of the Order and the potential for future proceedings, is to make these kind of
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11 sales through a subsidiary and not through Cascade. When the Commission suspended
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13 Cascade's proposed tariffs on March 14, 2007, Cascade found itself unable to comply with
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15 the requirement of the Order that it make future sales pursuant to filed tariffs. With certain
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17 customers' existing contracts expiring on March 31, 2007, Cascade was also unable to
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19 comply with the time requirements of WAC 480-80-143 to make such sales pursuant to
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21 special contracts. In view of this situation, Cascade took to heart Staff's suggestion that
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23 Cascade start to make these sales through an unregulated subsidiary. Now that Cascade has
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25 done so, Staff questions whether this course of conduct is somehow inconsistent with the
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27 Order. The Commission should find that there is no inconsistency and that no clarification
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29 of the Order is required because the Order simply does not address these new arrangements.

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31 9. The next question that Staff poses is how the decision reflected in Cascade's March
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33 30 letter will impact Staff's investigation as directed in paragraph 99 of the Order. The
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35 Order directed Staff to investigate Cascade's proposed tariffs and its "existing gas supply
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37 contracts." Order, ¶ 99. Cascade has already suggested, in its response to Staff's March 22,
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39 2007 Motion for Clarification, that Staff should continue and complete its investigation into
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41 Cascade's existing contracts in an informal manner. Cascade's March 30 letter should have
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43 no impact on that investigation, whose scope is limited to Cascade's "existing contracts" as
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45 referenced in the January 12, 2007 Order, which Cascade has already filed with the
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47 Commission. Cascade's March 30 letter does not affect the status of those contracts.

1 10. The Commission also directed Staff to investigate Cascade's proposed tariffs. That
2 investigation will now happen in the context of Docket No. 070332. Again, Cascade's
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4 March 30 letter does not affect that investigation. Cascade continues to make gas supply
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6 sales to existing customers and these proposed tariffs will address how Cascade should make
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8 those sales. The fact that Cascade's subsidiary has started to make the same kind of sales
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10 only means that the level of sales subject to Cascade's tariffs will decrease over time.

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12 11. Staff may have questions or concerns about the activities of Cascade's subsidiary
13 and, in particular, how that subsidiary interacts with Cascade in the course of its business.
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15 Staff has already raised some of these questions and concerns with Cascade and Cascade is
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17 providing information to and discussing these issues with Staff. Indeed, Staff requested that
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19 Cascade supplement its original March 30 letter to provide additional information, and
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21 Cascade did so. It is perfectly appropriate for Staff to investigate these arrangements and to
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23 raise these issues; however, these issues are plainly outside the scope of the investigation the
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25 Commission required in the Order. Issues relating to the activities of Cascade's subsidiary
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27 are altogether new, are not within the scope of CMS's Complaint, and are not addressed by
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29 the Order. Cascade will continue to cooperate with Staff in its investigation into this new
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31 business arrangement and this development should have no impact on Staff's current limited
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33 investigation as required by the Order. However, this new arrangement does not require any
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35 clarification of the nature or scope of Staff's investigation as directed by the Order. Any
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37 issues relating to the March 30 letter that Staff thinks need to be raised formally may be
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39 addressed in Docket No. UG-070639, which the Commission has opened to address that
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41 specific filing.
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45 12. Finally, Staff asks whether the Order "envision[s] that the corporate relationships
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47 between the parties would remain unchanged during the pendency of this docket?" Staff's

1 Response at 2. In fact, nothing has changed in the corporate relationships, if any, between
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3 the parties, Cascade and CMS. Presumably, this is another way of asking Staff's first
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5 question, whether the Commission intended that Cascade would not make these sales
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7 through a subsidiary or otherwise enter into new arrangements with any of its subsidiaries
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9 while this docket remains open. As discussed above, there is nothing in the Order that
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11 addresses explicitly or implicitly whether Cascade is required to continue "business as
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13 usual" while this docket proceeds. Nor is there anything in the Order that affects Cascade's
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15 ability to have its subsidiary make these sales. No clarification of the Order is called for in
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17 this regard.

18 **CONCLUSION**

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21 13. For the foregoing reasons, the Commission should strike Staff's Response because it
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23 is not a response to any party's motion for clarification. Moreover, as a request for
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25 clarification itself, Staff's Response is both untimely and does not seek clarification of the
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27 Order. In the alternative, the Commission should allow Cascade to file this Reply to Staff's
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29 Response and should deny Staff's requests for clarification because no clarification of the
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31 Order is required based on Cascade's March 30 letter.
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DATED: April 16 2007

Respectfully submitted,

PERKINS COIE LLP

By:



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We make warm neighbors

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REVISED
March 30, 2007

Carol Washburn
Executive Secretary
Washington Utilities & Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

Re: Notification of Contract and Arrangement between Cascade Natural Gas Corporation and its subsidiary, CGC Energy, Inc.

Pursuant to RCW 80.16.020 and WAC 480-90-245, Cascade Natural Gas Corporation ("Cascade") submits for filing an original and three copies of its updated Cost Allocation Manual, which reflects the assignment of costs between Cascade and its subsidiaries. Also included with this filing is a copy of the Organization Chart for CGC Energy, Inc. ("CGC Energy") and a copy of the North American Energy Standards Board (NAESB) Base Contract for Sale and Purchase of Natural Gas that has been executed between Cascade and CGC Energy.

The Cost Allocation Manual has been historically included with the Company's affiliated interest report, which is filed annually pursuant to WAC 480-90-264; the most recent report was filed with the Commission on January 27, 2006 and was docketed as UG 070203. The report, which covered activity for the 12 months ending September 30, 2006, reported the Company's subsidiary CGC Energy as inactive. However, effective April 1, 2007, the Company plans to re-activate this subsidiary with the purpose of providing gas supply sales to non-core customers in the State of Washington, including customers outside Cascade's utility service territory. Pursuant to an arrangement between Cascade and CGC Energy, Cascade will provide corporate support services, such as billing, payroll, accounting, federal income tax filings, and general management duties for CGC Energy. The costs associated with providing these services will be allocated as provided in the Cost Allocation Manual. In addition, CGC Energy may purchase gas from Cascade on a wholesale basis pursuant to the terms of the enclosed contract. Pursuant to WAC 480-90-264, Cascade will submit an annual report summarizing all transactions that occurred between Cascade and its subsidiaries one hundred twenty days from the end of the Cascade's fiscal year.

Cascade has provided gas supply sales to non-core customers in the State of Washington since November 1988. These gas supply sales to non-core customers were provided under tariffs until March 1, 2004 when Cascade canceled the gas supply tariffs with the understanding that this activity was authorized pursuant to Cascade's FERC Blanket Marketing Certificate (18 CFR Part 284.402). However, the Commission concluded in its Docket UG-061256 Order 03 that the FERC Blanket Marketing Certificate does not cover retail sales to non-core customers and directed Cascade to file gas supply tariff schedules within 30 days of the effective date of Order 03.

Carol Washburn

Re: Notification of Contract and Arrangement between Cascade Natural Gas Corporation and its subsidiary, CGC Energy, Inc.

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Cascade filed such tariffs on February 12, 2007. However, at the Open Meeting held on March 14, 2007, the Commission suspended Cascade's proposed non-core gas supply tariffs. Under Cascade's proposed tariffs, Cascade would have utilized service contracts pursuant to WAC 480-80-141, of which Cascade would file a sample with the Commission.

Several of Cascade's non-core gas supply sales contracts were due to expire on March 31, 2007. In view of the Commission's suspension of Cascade's proposed tariffs, proceeding under those tariffs with service agreements was not an option for Cascade. Since the inception of this optional service program in November 1988, Cascade had not been required to file non-core gas supply sales contracts as Special Contracts pursuant to WAC 480-80-143. Assuming that option is implied under Order 03, Cascade would not be able to obtain approval for any new contracts as Special Contracts in a timely manner because WAC 480-80-143 requires special contracts to be filed at least 30 days in advance of their effective date. Thus, in order to avoid any violation of Order 03 and still meet its customers' needs by having new contracts in place to replace the contracts that were due to expire on March 31, 2007, Cascade has elected to perform these services under its whole-owned subsidiary, CGC Energy.

In providing these gas supply services through CGC Energy, Cascade will continue to capture the market value of released pipeline capacity for the benefit of Cascade's core customers. Such capacity will be released pursuant to Northwest Pipeline's Electronic Bulletin Board (EBB) rules and procedures. In an effort to determine the fair market value of discounted capacity, Cascade will post the discounted capacity on the EBB with the opportunity for other market participants bid up the price.

If there are any questions regarding this filing, please contact me at (206) 381-6823.

Sincerely,



Jon T. Stoltz
Sr. Vice President
Regulatory & Gas Supply

Enclosures

Carol Washburn


Re: Notification of Contract and Arrangement between Cascade Natural Gas Corporation and its subsidiary, CGC Energy, Inc.

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VERIFICATION

In accordance with RCW 80.16.020, and WAC 480-90-245, I hereby verify that the facts asserted in this letter are true and correct to the best of the signer's belief and that the contract enclosed herewith is a true and correct copy of the original.



Jon T. Stoltz
Sr. Vice President
Regulatory & Gas Supply

CERTIFICATE OF SERVICE

I hereby certify that I have this day served this **RESPONDENT'S MOTION TO STRIKE COMMISSION STAFF'S RESPONSE TO MOTION FOR CLARIFICATION AND RESPONDENT'S ALTERNATIVE MOTION FOR LEAVE TO REPLY AND PROPOSED REPLY** upon all parties of record in this proceeding by causing a copy to be sent by electronic mail and U.S. mail to:

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Dated this 16th day of April, 2007.

PERKINS COIE LLP

By 

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