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

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20 WASHINGTON UTILITIES AND  
21 TRANSPORTATION COMMISSION,

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23 Complainant,

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25 v.

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27 CASCADE NATURAL GAS  
28 CORPORATION,

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30 Respondent.  
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Docket No. UG-070332

RESPONDENT'S RESPONSE TO  
PETITION TO INTERVENE OF COST  
MANAGEMENT SERVICES, INC.

34 **I. INTRODUCTION**

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36 1. Respondent Cascade Natural Gas Corporation ("Cascade") respectfully submits this  
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38 response to the Petition to Intervene filed by Cost Management Services, Inc. ("CMS") on  
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40 March 12, 2007 (the "Petition").<sup>1</sup> The Commission should deny CMS's Petition because  
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42 CMS does not have a substantial interest in the subject matter of this proceeding and  
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44 because its participation is not in the public interest. As an unregulated competitor of  
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47 <sup>1</sup> CMS raised several other issues in the Petition, to which Cascade will respond in different documents, as  
indicated in the letter Cascade's counsel filed with the Commission on March 14, 2007.

1 Cascade, who is not a customer, CMS does not have a substantial interest in the terms and  
2 conditions of Cascade's tariffs. CMS seeks to intervene in order to gain a competitive  
3 advantage through the regulatory process. The Commission, however, does not have  
4 jurisdiction to consider the impact of Cascade's proposed tariffs on CMS, an unregulated  
5 competitor.  
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10 2. Apparently recognizing the insufficiency of its own interests, CMS also purports to  
11 represent the interests of a majority of Cascade's customers. CMS, however, has no  
12 authority to represent the interests of any of Cascade's customers, and may represent only its  
13 own interests in seeking permission to intervene in this proceeding. Despite its claim that it  
14 seeks to protect Cascade's customers, CMS's clear interest is to enhance its competitive  
15 position. The Commission should deny CMS's Petition because CMS does not have an  
16 adequate interest in this proceeding that is within the Commission's jurisdiction to consider.  
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## 25 II. DISCUSSION

### 26 A. CMS Does Not Have Standing To Intervene in This Tariff Proceeding and the 27 Commission Does Not Have Jurisdiction To Consider CMS's Interests

28 3. This proceeding will consider the rates, terms, and conditions under which Cascade  
29 may make unbundled gas supply sales to its non-core customers. CMS markets gas supply  
30 to Cascade's non-core customers in competition with Cascade. Petition, ¶ 6. CMS claims  
31 that it has standing to intervene in this proceeding because it may be harmed by Cascade's  
32 sales, which CMS claims are cross-subsidized by Cascade's core customers. *Id.*, ¶¶ 6, 9.  
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40 4. It is well established by both Commission and Supreme Court precedent that, as an  
41 unregulated competitor of Cascade, CMS does not have standing to intervene in  
42 Commission proceedings based on alleged harm to CMS. In *Cole v. Washington Utilities &*  
43 *Transportation Commission*, 79 Wash. 2d 302, 485 P.2d 71 (1971), the Supreme Court  
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1 agreed with the Commission in holding that the Commission lacks jurisdiction to consider  
2 the effects of a regulated utility's practices on an unregulated competitor. The issues in *Cole*  
3 are quite similar to those that CMS seeks to raise in this proceeding. In *Cole*, a residential  
4 customer who was also a competitive fuel oil dealer claimed that Washington National Gas  
5 Company's ("WNG") home "dry-out" gas service rates violated RCW 80.28.090 and  
6 80.28.100 because they unduly discriminated against residential consumers. 79 Wash. 2d  
7 at 308-09. The complainant also claimed that WNG's conversion burner leasing program  
8 violated RCW 80.28.020 because it was operated below cost, and also violated the  
9 discrimination statutes. *Id.*

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11 5. The Oil Heat Institute ("OHI") sought to intervene in the proceeding to assert that  
12 WNG's practices harmed the competitive fuel oil industry. The Commission denied  
13 intervention and the Supreme Court affirmed. The court upheld denial of OHI's petition to  
14 intervene on the grounds that OHI did not have a "substantial interest" in the rates charged to  
15 customers of a regulated competitor. The court also agreed with the Commission that OHI's  
16 concerns were clearly beyond the concerns of the Commission under a reasonable  
17 interpretation of the term "public interest." The Commission had concluded that its  
18 jurisdiction extended "only to consider the effects of competitive practices of one regulated  
19 utility upon another regulated utility and no other business. [The] interest of the public  
20 which is to be protected is that only of customers of the utilities which are regulated." 79  
21 Wash. 2d at 306. The court agreed and affirmed denial of OHI's petition to intervene.

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23 6. Similarly in this case, CMS alleges that Cascade's gas supply sales are made at rates  
24 that are subsidized by core customers and discriminate among non-core gas supply  
25 customers. Petition, ¶ 10. While CMS claims that these terms harm some of Cascade's  
26 customers, CMS does not identify how it would be harmed by such sales. Nevertheless, any

1 alleged competitive harm to CMS does not present a substantial interest upon which the  
2 Commission may grant intervention. In addition, any harm to CMS is not the sort of "public  
3 interest" that the Commission may consider under WAC 480-07-355. In fact, any alleged  
4 harm to CMS is simply beyond the jurisdiction of the Commission to consider because CMS  
5 is an unregulated competitor of Cascade. As such, CMS is not bound by the same rules and  
6 regulations in pursuing its business opportunities.  
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13 7. The Commission should not permit CMS to continue to use the regulatory arena to  
14 gain an advantage over Cascade in the marketplace. As the Alabama Public Service  
15 Commission stated, in applying *Cole* to dismiss, for lack of jurisdiction, a claim by an  
16 unregulated competitor challenging a utility's sales practices:  
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21 These cases recognize that the basic objective of public  
22 service commissions is to assure that rates charged by utilities  
23 subject to their jurisdiction are fair to the consuming public as  
24 well as to the regulated entity, and that these commissions  
25 should not be called on by businesses not subject to their  
26 regulation for protection from competition from the regulated  
27 utility. It would be unfair for this Commission to become a  
28 forum for imposing restrictions on the competitive activities of  
29 a regulated utility at the behest of, and simply to protect the  
30 competitive position of their unregulated competitors.  
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32 *Alabama Propane Gas Association, Inc. v. Alabama Power Company*, 98 P.U.R.4th 459,  
33 1988 WL 391393 (Ala. P.S.C. 1988).  
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36 8. In *Re Puget Sound Power and Light Company*, Docket Nos. UE-951270, 96-0195,  
37 4th Supplemental Order, 1996 WL 497460 (WUTC 1996), the Commission allowed a  
38 competitor to intervene notwithstanding *Cole*, because that merger case presented the "basic  
39 issue" of "the economic effects of the merger upon competition generally as the industry  
40 transitions from monopoly to retail competition." 1996 WL 497460 at \*2. The Commission  
41 stressed, however, that it did not allow such "intervenors to intervene for the purpose of  
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1 demonstrating the economic effects of the merger upon them individually." *Id.* Three years  
2 later, the Commission denied a competitor's petition to intervene in a merger proceeding  
3 because such competitive issues were not central to that case. *In the Matter of the*  
4 *Application of PacifiCorp and Scottish Power PLC*, Docket No. E-981627, Fourth  
5 Supplemental Order (May 4, 1999).  
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10 9. In this case, CMS seeks to assert only its own alleged harm and the Petition does not  
11 raise issues about the effects of Cascade's tariffs upon competition generally. Moreover,  
12 such issues are not likely to be central to this case because Cascade and other utilities have  
13 been making competitive gas sales for over 18 years. In addition, Cascade submits that such  
14 broad, industry-wide concerns are not an appropriate topic for one company's tariff filing.  
15 Thus, the Commission should not permit CMS to raise broad competitive issues in this case,  
16 even if it had asserted such issues in the Petition.  
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25 **B. CMS May Not Represent Cascade's Customers' Interests in This Proceeding**

26 10. Apparently recognizing that its own interests are insufficient to justify its  
27 intervention in this proceeding, CMS has the audacity to claim that it is representing the  
28 interests of most of Cascade's customers. CMS, however, has no authority to represent the  
29 interests of Cascade's customers, and its Petition to Intervene must rest on its own interests.  
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35 11. CMS first asserts that it represents the interests of Cascade's core customers when it  
36 states: "CMS's interests as a competitive marketer are aligned with those of Cascade's  
37 ratepayers because Cascade's cross-subsidization of competitive gas sales at the expense of  
38 the customers of its regulated utility services also harms CMS." Petition, ¶ 6. In this guise,  
39 CMS purports to represent the interests of Cascade's core customers, whom CMS claims  
40 suffer from this alleged cross-subsidization. *Id.*, ¶ 9. CMS next claims to represent its own  
41 customers, Cascade's non-core customers to whom CMS markets gas supply, to ensure that  
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1 Cascade's rates are not discriminatory. *Id.*, ¶ 7. CMS claims that this representation arises  
2 out of its acting as an "agent" for these unnamed customers in arranging for transportation  
3 and pipeline services and providing gas management services. *Id.* By definition, these  
4 customers are not Cascade's customers for gas supply and, thus, would not be affected by  
5 any alleged price discrimination.  
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11 12. CMS may not be allowed to represent any interests but its own in seeking to  
12 intervene in this case. In *In re Application No. B-079273 of AQUA EXPRESS, LLC*, Docket  
13 No. TS-040650, Order 02, 2004 WL 3421993 (WUTC 2004), the Inlandboatmen's Union of  
14 the Pacific ("IBU") sought permission to intervene in a case considering the application of  
15 Aqua Express for a certificate to provide ferry service. The IBU asserted that its interest  
16 was to protect the Washington State Ferries ("WSF") from injurious competition as well as  
17 to represent the interests of the general public. The Commission held that "[t]he IBU cannot  
18 stand in the shoes of the WSF to assert its interests, nor represent the general public, but  
19 must assert its own interests in the proceeding." Similarly in this case, CMS may assert only  
20 its own interests in seeking to intervene in this proceeding.  
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31 13. Even if CMS could rely on other parties' interests in seeking to intervene, which it  
32 cannot, CMS has not established its authority to represent any customers' interests. With  
33 respect to its own unidentified customers, CMS purports only to have authority to arrange  
34 for transportation and pipeline services. CMS does not identify its customers, nor does it  
35 demonstrate that any of its customers have given it authority to represent them in  
36 intervening in Cascade's tariff proceeding, which does not even pertain to the terms of  
37 transportation services. CMS's authority to represent such alleged customers cannot be  
38 based on such an adequate showing. Even more unsupportable is CMS's claim to represent  
39 Cascade's core customers, with whom CMS has no relationship. Moreover, CMS fails to  
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1 explain how it could reconcile the interests of Cascade's core and non-core customers when  
2 CMS claims that Cascade's core customers subsidize sales to non-core customers.

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5 14. The Commission should deny CMS's unsupported attempt to represent the interests  
6 of Cascade's customers and deny its Petition to Intervene since CMS does not have a  
7 substantial interest of its own to represent in this proceeding. Any interests of Cascade's  
8 customers may be more than adequately represented by Staff and Public Counsel in this  
9 case.  
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### 14 III. CONCLUSION

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17 15. For the foregoing reasons, Cascade requests that the Commission deny the Petition to  
18 Intervene of Cost Management Services, Inc.  
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23 DATED: March 22, 2007

**PERKINS COIE LLP**

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served this **RESPONDENT'S RESPONSE TO PETITION TO INTERVENE OF COST MANAGEMENT SERVICES, INC.** 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 22nd day of March, 2007.

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