

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

COST MANAGEMENT SERVICES, INC.,  
Complainant,

v.

CASCADE NATURAL GAS CORPORATION,  
Respondent.

Docket No. UG-061256

**RESPONSE OF COST  
MANAGEMENT SERVICES, INC., TO  
CASCADE'S MOTION TO STRIKE  
COMMISSION STAFF RESPONSE  
OR, ALTERNATIVELY, FOR LEAVE  
TO REPLY**

1. On April 16, 2007, Cascade Natural Gas Corporation ("Cascade") moved to strike a response filed by the Commission's Staff on April 9, 2007, as part of a round of pleadings seeking clarification of Commission Order No. 3 ("Staff Response"). Alternatively, Cascade seeks leave to reply to the Staff Response. Complainant Cost Management Services, Inc. ("CMS") urges the Commission to deny Cascade's motion to strike because Staff legitimately seeks Commission guidance about confusion added to this case, subsequent to Order No. 3, by Cascade itself.
2. The Staff Response concerns a filing made by Cascade on March 30, 2007, and subsequently revised ("March 30 Filing"). The March 30 filing has been docketed as UG-070639.
3. The March 30 Filing announces Cascade's intention to continue its retail sales of gas to non-core customers through a wholly-owned subsidiary, CGC Energy." Filing of March 30, p. 2. It is the latest twist in Cascade's efforts to evade Commission jurisdiction and avoid filing its non-core agreements in accordance with WAC 480-80-143. As Cascade's non-core agreements expire, the March 30 Filing states Cascade's intention to renew or extend those contracts through this subsidiary. Presumably, the end

result will be Cascade's claim that its non-core contracts, upon transfer to CGC for extension or renewal, no longer need to be filed with the Commission.

4. According to Cascade, CGC Energy is an inactive subsidiary that will be "reactivated" for this purpose. March 30 Filing, p. 1. No mention is made of any independent business, separate management, or separate assets. CGC Energy appears to just be a conduit through which non-core sales business is to continue as usual.

5. An inactive subsidiary, such as CGC Energy, has no customers, offices, computers, contracts, marketing or sales staff, gas supply inventories – nothing. CGC Energy is an empty shell into which Cascade intends to transfer some or all of its non-core gas sales business and the assets necessary to conduct that business.

6. The March 30 Filing suggests, as one would expect, that CGC Energy has no interstate pipeline capacity of its own. Instead, Cascade's own interstate pipeline capacity, which is among its regulated utility assets, will now be made available to non-core customers through CGC Energy. Filing of March 30, p. 2.

7. This is not simply an affiliate transaction, as the filing claims. Instead, Cascade purports to be reorganizing itself by transferring its non-core gas sales business to CGC Energy. Thus, Cascade's "reactivation" of CGC Energy by transferring pipeline capacity, contracts, customers and other regulated utility assets to an affiliate runs afoul of RCW 80.12.020, which states in relevant part:

No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, ... without having secured from the commission an order authorizing it so to do ... .

WAC 480-80-143 makes no distinction between an independent, third-party transferee and a subsidiary of a "public service company." Either one triggers the statute.

2 – CMS' RESPONSE TO CASCADE'S MOTION TO STRIKE

8. The March 30 Filing does not seek Commission authorization. Quite the contrary, the filing states that Cascade intends to make this happen unilaterally, effective April 1, 2007. However, such presumptuousness violates RCW 80.12.030, which states:

Any such sale, lease, assignment, or other disposition ... made without authority of the commission shall be void.

9. This is not to say that an affiliate of a gas company may never sell gas, only that Cascade must transfer its non-core gas sales business in accordance with the law and not unilaterally through sleight of hand.<sup>1</sup>

10. Cascade's March 30 Filing creates a moving target. It was thus perfectly appropriate for Staff to ask for clarification about on how the March 30 Filing should be reflected in the investigation Staff is undertaking pursuant to Order No. 3. Is the March 30 Filing a legal nullity? All of Cascade's actions relating to non-core gas sales, including the March 30 Filing, are connected so should issues raised in Docket No. UG-070639 be resolved as part of a consolidated hearing? Should Staff recommend penalties under RCW 80.12.060? How does the Commission intend to resolve this new twist in the road added by Cascade? All are appropriate questions in a request for clarification.

11. Contrary to Cascade's assertion, questions posed by the Staff Response are also quite timely. It was submitted almost immediately after the March 30 Filing. This

---

<sup>1</sup> WAC 480-143-180 places the burden on the public service company to file for authorization regarding any disposition having a market value of at least \$20,000. There is a presumption that property is "necessary or useful to Cascade's business as a public service company, "except items that:

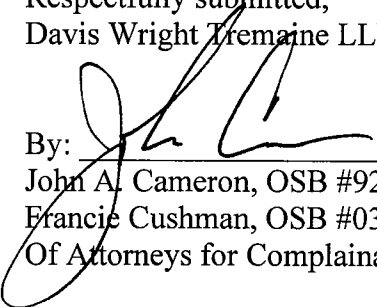
- (1) Are substituted with or replaced by items of equal or greater value or usefulness;
- (2) Are surplus and unneeded assets for which full value is received;
- (3) Are obsolete; or
- (4) Are excluded from the public service company's rate base by commission order, or otherwise."

inquiry could not have been made a part of Staff's motion for clarification of Order No. 3 as the due date for that pleading, March 22, was eight days before Cascade's purported disposition of its non-core business to CGC Energy.

12. Cascade's motion to strike should be denied. Cascade's alternative motion to lodge a reply creates raises questions than answers.

DATED this 19th day of April, 2007.

Respectfully submitted,  
Davis Wright Tremaine LLP

By:   
John A. Cameron, OSB #92037  
Francie Cushman, OSB #03301  
Of Attorneys for Complainant

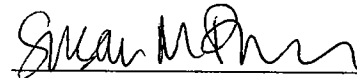
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this 19th day of April, 2007, served the foregoing **RESPONSE OF COST MANAGEMENT SERVICES, INC., TO CASCADE'S MOTION TO STRIKE COMMISSION STAFF RESPONSE OR, ALTERNATIVELY, FOR LEAVE TO REPLY** upon parties of record in these proceeding via Email and US Mail, as follows:

<b>UG-061256</b>				
<b>PARTY</b>	<b>REPRESENTATIVE</b>	<b>PHONE</b>	<b>FACSIMILE</b>	<b>E-MAIL</b>
<b>Cascade Natural Gas</b>	<b>JAMES M. VAN NOSTRAND</b> <b>LAURENCE REICHMAN</b> Perkins Coie LLP 1120 NW Couch St. 10 <sup>th</sup> Floor Portland, OR 97209-4128  <b>JON STOLTZ</b>	(503) 727-2162 (503) 727-2019	(503) 346-2162 (Same)	<u><a href="mailto:JVanNostrand@perkinscoie.com">JVanNostrand@perkinscoie.com</a></u> <u><a href="mailto:LReichman@perkinscoie.com">LReichman@perkinscoie.com</a></u>  <u><a href="mailto:jstoltz@cngc.com">jstoltz@cngc.com</a></u>
<b>Northwest Industrial Gas Users</b>	<b>EDWARD A. FINKLEA</b> <b>CHAD M. STOKES</b> Cable Huston Benedict Haagensen & Lloyd LLP 1001 SW Fifth Avenue Suite 2000 Portland, OR 97204-1136	(503) 224-3092 (503) 224-3092	(503) 224-3176 (503) 224-3176	<u><a href="mailto:efinklea@chbh.com">efinklea@chbh.com</a></u> <u><a href="mailto:estokes@chbh.com">estokes@chbh.com</a></u>
<b>Public Counsel</b>	<b>JUDY KREBS</b> Public Counsel Section Office of Attorney General 800 Fifth Avenue Suite 2000 Seattle, WA 98104-3188  <b>STEVE JOHNSON</b> <b>KATHRYN ZSOKA</b>	(206) 464-6595	(206) 389-2079	<u><a href="mailto:judyk@atg.wa.gov">judyk@atg.wa.gov</a></u>  <u><a href="mailto:stevenj@atg.wa.gov">stevenj@atg.wa.gov</a></u> <u><a href="mailto:kathrynz@atg.wa.gov">kathrynz@atg.wa.gov</a></u>
<b>Commission Staff</b>	<b>GREG TRAUTMAN</b> Assistant Attorney General 1400 S. Evergreen Pk. Dr. SW P.O. Box 40128 Olympia, WA 98504-0128	(360) 664-1187	(360) 586-5522	<u><a href="mailto:gtrautma@wutc.wa.gov">gtrautma@wutc.wa.gov</a></u>

<b>PARTY</b>	<b>REPRESENTATIVE</b>	<b>PHONE</b>	<b>FACSIMILE</b>	<b>E-MAIL</b>
<b>Commission Advisory Staff</b>	<b>ANN RENDAHL</b> (Admin. Law Judge)	(360) 664-1144	(360) 664-2654	<a href="mailto:arendahl@wutc.wa.gov"><u>arendahl@wutc.wa.gov</u></a>
	<b>KIPPI WALKER</b> (Administrative Support)	(360) 664-1139	(360) 664-2654	<a href="mailto:kwalker@wutc.wa.gov"><u>kwalker@wutc.wa.gov</u></a>

Dated this 19th day of April, 2007.



Susan M. Prudhomme  
 Davis Wright Tremaine LLP  
 Suite 2300  
 1300 SW Fifth Avenue  
 Portland, OR 97201-5682  
 (503) 241-2300