

**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

**PETITION FOR ADMINISTRATIVE  
REVIEW OF INITIAL ORDER  
DISMISSING COMPLAINT AND  
CLOSING DOCKET**

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WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,  
Complainant,

v.

CASCADE NATURAL GAS CORPORATION,  
Respondent.

Docket No. UG-070332

**PETITION FOR ADMINISTRATIVE  
REVIEW OF AN INTERLOCUTORY  
ORDER DENYING INTERVENTION**

To The Commission:

1. Pursuant to WAC 480-07-825, Cost Management Services, Inc. (“CMS”), seeks Commission review of the Administrative Law Judge’s initial order<sup>1</sup> in Docket No. UG-061256 (“Order 5”), dismissing CMS’ complaint against Cascade Natural Gas Corporation (“Cascade”) and denying CMS’ motion to amend that complaint. Pursuant to WAC 480-07-810(2)-(3), CMS also seeks Commission review of the Judge’s “Order 2,” denying CMS’s petition to intervene in Docket No. UG-070332, the proceeding to consider rate filings made by Cascade in response to an earlier order in Docket No. UG-061256 that granted certain relief sought by CMS. Although Order 2 is styled as interlocutory, it is final as to CMS, which has been irreparably harmed through denial of its participation in Docket No. UG-070332. The two dockets are interrelated. Order 5 and Order 2 were conjoined in a single document; these appeals are similarly conjoined.

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<sup>1</sup> See WAC 480-07-820.

**I. REVIEW OF FINAL ORDER 5 IN DOCKET NO. UG-061256**

2. As the Commission is now well aware, Cascade's retail sales of natural gas to transportation customers in the State of Washington have been unregulated by this Commission since 2004. This did not occur by legislation or conscious action of the Commission. Instead, it came based on a patently unsustainable claim that a regulation of the Federal Energy Regulatory Commission ("FERC"), expressly limited by its terms and by the Natural Gas Act to wholesale gas sales, somehow deregulated retail gas sales – only in Washington, indeed only regarding Cascade. Despite 75 years of U.S. Supreme Court precedent on the bright line distinction between federal and state jurisdiction over natural gas, despite decades of regulatory and political efforts by state regulators to hold back FERC jurisdictional intrusion into matters affecting state regulation, the Commission never questioned Cascade's *de facto* deregulation. Instead, it has tacitly allowed Cascade to make private gas sales to customers of Cascade's choosing under private rates and contracts not filed with the Commission. The Commission has allowed Cascade to run both regulated and unregulated gas-sale businesses within a single utility company with none of the safeguards that would apply if these two businesses were run as separate affiliates. The Commission has been allowed a situation to develop in which Cascade grants unduly preferential prices and terms of service to customers of its choosing and not to others.

3. None of this would have come to public light had CMS not brought it to the Commission's attention in Docket No. UG-061256. CMS established that FERC had not, and could not have, deregulated retail gas sales by local distribution companies. On

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January 12, 2007, the Commission held for CMS in Docket No. UG-061256 (“Order of January 12”), ruling that:

- FERC has not deregulated Cascade’s non-core gas sales to retail customers and there was no excuse for Cascade’s failure to comply with RCW Chapter 80. Order of January 12, ¶¶48-50.
- Cascade’s private retail sales were not permitted under any retail rate schedule on file with the Commission. Order of January 12, ¶¶56, 60.
- Cascade was in continuing violation of RCW 80.28.050 and WAC 480-80-143 for failure to file its non-core sales agreements. Order of January 12, ¶61.
- Cascade must immediately file all of its non-core agreements in compliance with WAC 480-80-143. Order of January 12, ¶57 and n. 88.

4. Regarding the critical issues of whether Cascade’s non-core gas sales were unduly preferential toward non-core customers or unduly discriminatory against both core customers and non-core customers receiving less favorable private deals, the Commission ordered a hearing:

We therefore deny both CMS’s and Cascade’s cross-motions for summary determination concerning whether Cascade is in violation of RCW 80.28.90 or RCW 80.28.100. Because there are material issues of fact in dispute, we will set the matter for hearing, unless CMS requests otherwise based on our resolution of the remaining issues in this Order. [Order of January 12, ¶64.]

Cascade itself put material facts at issue when it introduced successive declarations of Cascade Vice President Jon Stoltz regarding contested issues in the case.

5. Cascade has never complied with the order to file its non-core agreements under WAC 480-80-143. Instead, on March 30, 2007, Cascade essentially announced its intention to move its private gas-sale contracts “offshore” by passing them to an unregulated affiliate with none of the safeguards against affiliate abuse imposed on affiliates of Avista Corporation in *Avista Corporation d/b/a Avista Utilities*, Commission

Order No. 3, Docket No. U-060273 (February 28, 2007). *See* Commission Staff's Response to Motion for Clarification in Docket No. UG-061256, April 9, 2007.

6. In CMS' amended complaint – submitted in response to directions contained in the Order of January 17 in Docket No. UG-061256 – and in CMS' petition to intervene in Docket No. UG-070332, CMS proposed that these issues be resolved definitively in a single, consolidated proceeding in which:

- Cascade would be directed to file testimony supporting its position.
- Mr. Schoenbeck's affidavit would be replaced with prepared direct testimony for CMS as soon as discovery was completed,
- Staff's informal investigation of Cascade's private contracts would also take the form of prepared direct testimony,
- CMS make Mr. Schoenbeck's expertise available to Public Counsel through their "Joint Defense Agreement."
- The consolidated cases would be decided on the merits upon conclusion of the hearing process.

7. The affidavit of CMS' expert, Donald Schoenbeck, offered with CMS' amended complaint in Docket No. UG-061256, reviewed the 50 private gas sales contracts disclosed by Cascade to establish that Cascade's non-core gas sales misappropriated core gas supplies and core utility assets for the benefit on non-core customers. The Schoenbeck affidavit also explained how Cascade's non-core sales put core customers on the hook for higher costs. Problems addressed by Mr. Schoenbeck go to the heart of the Commission's regulatory responsibilities. With the Schoenbeck affidavit, CMS established a strong likelihood that Cascade's non-core gas sales violated multiple provisions of RCW Chapter 80 and Commission regulations.

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8. Order 5 was issued by the Administrative Law Judge in response to these cooperative efforts of CMS, Staff and Public Counsel, as recounted in CMS amended complaint in Docket No. UG-061256. Order 5 makes these efforts all for naught. To read Order 5, one would have to conclude that the Administrative Law Judge believes it would have been better if the illusion of deregulation by federal preemption had continued and for Cascade's violations of RCW Chapter 80 and Commission regulations to have been left unperturbed.

9. Order 5 neutralizes the Commission's directive that Cascade file its non-core contracts in accordance with WAC 480-80-143. Order 5 ignores the Schoenbeck affidavit, trivializes the Commission's obligations under RCW 80.28.90 or RCW 80.28.100, and countermands the Commission's directive that a hearing be conducted on issues of undue discrimination and undue preference. Essentially, the Judge returns Cascade to the *status quo* prior to the time CMS filed its complaint.

10. Because CMS competes for the private gas sales that Cascade is making illegally, the Administrative Law Judge chose to ignore the consumer interests CMS represents on behalf of its customers and concluded that CMS' position and the well-established expertise of Mr. Schoenbeck should be disregarded because CMS' motives are mercantile rather than altruistic. Yet, every issue raised by CMS relate to regulatory issues well within the Commission's jurisdiction. CMS has never attempted to use this forum to pursue any issue not squarely within the scope of RCW Chapter 80 and Commission regulations. The remedy sought by CMS has been simply that the Commission exercise its jurisdiction under RCW Chapter 80 and enforce Washington State utility laws it was established to enforce.

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11. In any event, CMS' possible motives seem totally beside the point. There is no *mens rea* component to regulation. The Commission should bear in mind that no "altruistic" party has brought Cascade's violations of RCW Chapter 80 to the Commission's attention in the three years since they began.

12. The Administrative Law Judge threw CMS out of the case and terminated the docket based on a strained reading of RCW 80.04.110. Despite the fact that CMS has specifically alleged -- in both its original and amended complaints -- violations of RCW 8028.90 and RCW 80.28.100 by Cascade, despite the fact ¶64 of the Order of January 12 in Docket No. UG-061256 explicitly ordered that a hearing be conducted to determine whether Cascade's non-core gas sales were unduly discriminatory or unduly preferential, and despite the discussions of unduly discriminatory and preferential pricing in the Schoenbeck affidavit, the Judge ruled that CMS' complaint did not relate to discrimination or preference at all. Despite its express allegations to the contrary, CMS use of the term "cross-subsidization" really meant that CMS was challenging the "reasonableness" of Cascade's rates under RCW 80.04.11(1). Finding that CMS lacked standing under RCW 80.04.11(1) to challenge the "reasonableness" of Cascade's rates, the Judge stopped CMS from proceeding with its case.

13. This dismissal of CMS' complaint ignores the concept of cross subsidization, which refers to the practice of charging higher prices to some customers in order to subsidize lower prices to other customers. Cross-subsidization can adversely affect both core and non-core customers, as Mr. Schoenbeck explained in the affidavit accompanying CMS' amended complaint. Non-core customers are being unduly preferred with gas prices that are lower than the tariff prices offered core customers, even

though they may share common rate classification characteristics. Some non-core customers are being unduly preferred with better deals than other core customers. Core customers suffer undue discrimination through their exclusion for cheaper gas deals offered to the selected few of Cascade's choosing.

14. These pricing differences may go to the reasonableness of Cascades various rates. However, these differences also constitute undue discrimination and undue preference under the applicable statutes:

No gas company, electrical company or water company shall make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [RCW 80.28.90.]

No gas company, electrical company or water company shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity or water, or for any service rendered or to be rendered, or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like or contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions. [RCW 80.28.100.]

15. In dismissing Docket No. UG-061256, the Judge ignored these statutes. Yet, there is nothing particularly abstruse about the linkage between special deals and undue discrimination and preference. The California Public Utilities Commission saw the connection some 17 years ago in adopting rules that would bar non-core gas sales, except through existing affiliates structurally separated from their utility kin:

The proposed rules reflected a nearly unanimous view of commenting parties that the utilities should eliminate their noncore portfolios because of the potential for the utilities to discriminate in

favor of their own noncore customers. For the same reason, we rejected proposals to permit the utilities to sell gas to noncore customers out of the core portfolio except as core subscription customers ... [Emphasis supplied.]

Decision 90-09-089, Order Instituting Rulemaking on the Commission's Own Motion to Change the Structure of Gas Utilities' Procurement Practices and to Propose Refinements to the Regulatory Framework for Gas Utilities, p. 10 (September 25, 1990). Note that the California PUC saw the appropriate remedy as almost total prohibition of non-core sales by utilities and their affiliates. Excerpts from this lengthy order appear in Exhibit A.

16. Discrimination remedies that California regulators implemented almost two decades ago, still await resolution in Washington. With all due respect, Order 5 leaves the Commission's regulatory responsibilities concerning Cascade's non-core gas sales in a complete muddle:

- Cascade still has not filed its non-core gas agreements in compliance with WAC 480-80-143, yet Order 5 provides no further guidance on why this violation should be allowed to continue.
- CMS believes that Cascade has not even submitted informally to the Commission all of its non-core agreements. One such non-core customer voluntarily provided a copy of its Cascade agreement to CMS, and that agreement is not to be found among the agreements Cascade provided CMS pursuant to an order of the Administrative Law Judge.
- There is to be no definitive resolution on whether Cascade's non-core gas agreements are unduly discriminatory or unduly preferential, absent some future Commission decision to act.
- Staff is to continue its informal investigation of Cascade's non-core gas agreements leading to some indeterminate end.

17. The shortcomings of the Commission's investigatory directive to Staff deserve amplification. Cascade still has not submitted all of its non-core agreements for Staff's investigation. Assuming that the Commission were to continue countenancing Cascade

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running both regulated and unregulated businesses off a single set of utility books, Staff will be tasked again and again with the obligation to audit each such non-core contract – the prices and terms of which may vary. Gas sales agreements are not often clear on their face; multiple rounds of data requests can be necessary to decipher whether core assets are being misappropriated for non-core gain. This totally unstructured arrangement creates an audit nightmare for Staff. Given Staff’s other workload, and the rate of Staff turnover, CMS believes it will lead to only the most superficial review. Such audits may be no more than an empty process, little more than the review that has occurred over the past 3 years. Yet, that is exactly the process by which the Commission seems likely to attempt to fulfill its regulatory obligations to core customers.

18. CMS’ requests for Commission relief from Order 5 rulings are addressed in Part III of this pleading.

**II. REVIEW OF INTERLOCUTORY ORDER 2 IN DOCKET NO. UG-070332**

19. It seems totally perverse for the Administrative Law Judge to have denied CMS intervention in Docket No. UG-070332, the case that will review the rate schedules proposed by Cascade to remedy the violations of law established by CMS in Docket No. UG-061256. The rate filings in Docket No. UG-070332 were made expressly in response to the Order of January 17 in Docket No. UG-061256. Rather than take up this proposed remedy in the complaint docket, the Commission chose to review it in a new docket from which the Judge has now excluded CMS. It is as if the Judge sought to simplify the issues in Docket No. UG-070332 by excluding CMS – the only party to raise substantive issues about the filing. Again, the message is clear: it would have been better if the

illusion of deregulation by federal preemption had continued and for Cascades violations or RCW Chapter 80 and Commission regulations to have been left unperturbed.

20. CMS has a vital interest in participating in Docket No. UG-070332 to ensure that the remedies flowing from the order of January 17, 2007 in Docket No. UG-061256 are fair and effective. No other party to Docket No. UG-070332 can adequately represent CMS in that proceeding. No other party, other than the rate proponent in that case, appears to have the depth of CMS' expertise in the abstruse areas of natural gas supplies, natural-gas pricing and interstate pipeline capacity releases. Although it is true that CMS competes for gas sales that Cascade has been making illegally, CMS has not and would not raise private issues in Commission proceedings. Instead, it has focused its efforts on bringing to the Commission's attention violations of RCW Chapter 80 and Commission regulations – well within the Commission's jurisdiction.

21. WAC 480-07-355(3) provides in part: "If the petition [to intervene] discloses a substantial interest in the subject matter of the hearing or if the petitioner's participation is in the public interest, the presiding officer may orally grant the petition at a hearing or prehearing conference, or in writing at any time."<sup>2</sup> By denying CMS' intervention in Docket No. UG-070332, the Judge ruled that CMS did not have a "substantial interest in the subject matter of the hearing" to consider the rate schedules filed by Cascade in response to the rulings in favor of CMS found in the Order of January 17 in Docket No. UG-061256. Because WAC 480-07-355(3) is stated in the disjunctive, the Judge must also have found that CMS's participation in Docket No. UG-070332 would not serve the public interest, even though CMS would bring to that proceeding a comprehensive

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<sup>2</sup> Emphasis supplied.

understanding -- lacking from all other participants except the rate applicant itself – about gas marketing, competitive gas sales, interstate pipeline capacity release issues and regulatory precedents from California and other state utility commissions.

22. CMS appreciates the Commission’s preference for uncontested settlements. In Docket No. UG-070332, CMS would continue to work with Commission Staff and Public Counsel to resolve the proceeding without hearing. However, CMS maintains that there are legal issues and principles at stake that cannot simply be swept under the rug or postponed indefinitely for resolution.

### **III. RELIEF REQUESTED BY CMS OF THE COMMISSION**

23. The Commission now has before it two dockets in which mutually exclusive proposals are being advanced by Cascade to rectify the unlawful non-core sales brought to light in to Docket No. UG-061256. In Docket No. UG-070332, Cascade has proposed a set of rate schedules that are totally lacking in detail. There are no prices, terms, or conditions to speak of in these rate schedules. They amount to nothing more than a regulatory fig leaf, providing only the most superficial compliance with the requirement of RCW 80. 80.28.050 that gas company rates terms, conditions and forms of contract be filed with the Commission.

24. On the other hand, in Docket No. UG-070639, Cascade has proposed to conduct non-core gas sales through an affiliate. However, this affiliate would be more of an *alter ego* for Cascade than an independent company. No affiliate safeguards have been proposed by Cascade. It is not clear from Cascade’s filing whether this is proposed as a permanent way by which future non-core gas sales are to be made or whether non-core

gas sales will migrate back to Cascade the utility upon conclusion of Docket No. UG-070332.

25. CMS believes that both Order 5 and Order 2 simply punt forward any resolution of the serious regulatory issues, dating back to 2004, which have been brought to the Commission's attention in its complaint filed in September of 2006. The profusion of different dockets has only confused matters further. Now that the Commission's jurisdiction over Cascade's non-core retail gas sales is beyond question, it is time for the Commission to resolve all issues definitively in a single consolidated proceeding. With this in mind, CMS respectfully requests the following relief from the adverse rulings of the Administrative Law Judge in Order 5, Docket No. UG-061256, and Order 2, Docket No. UG-070332:

1. Reverse the ruling in Order 2 and allow CMS to intervene as a party in Docket No. UG-070332;
2. Consolidate Docket No. UG-070332 with Docket No. UG-070639 to ensure that Cascade's rate proposal to continue selling gas to non-core customers through its regulated utility, and its mutually exclusive proposal to sell gas to non-core customers through a non-regulated affiliate, are resolved by the Commission in a single proceeding; and
3. Take such action regarding continued proceedings in Docket No. UG-061256 as the Commission considers appropriate, while ensuring that CMS may participate as a party in the consolidated proceedings on Cascade's mutually exclusive non-core sales alternative proposals.

26. Given what CMS has said earlier in this pleading about the utter impracticality of contract-by-contract Staff audit of Cascade's non-core sales agreements, CMS believes that Cascade, as a regulated gas company, should not be allowed to sell gas to non-core customers. Instead, Cascade could be permitted, but not required, to conduct non-core

business through an affiliate with appropriate affiliate firewalls and other protections in place.

27. With this in mind, CMS developed in discussions with Commission Staff,<sup>3</sup> the document attached to this pleading as Exhibit B. This “Code Of Conduct” could be implemented to govern non-core gas sales by a Cascade affiliate. It was developed by CMS using the federal, Washington State and provincial regulatory references cited on the last page of Exhibit B. It had been CMS’ intention to use this document in the proceedings once the requested clarifications of the Order of January 17 in Docket No. UG-061256 had been obtained.

28. Cascade’s filing of March 30, 2007, in Docket No. UG- UG-070639 shows some willingness to consider a transfer of its non-core gas sales function out of the gas company into an affiliate. If Cascade’s willingness continues, then CMS is prepared to use Exhibit A as the basis for negotiation of independent-affiliate rules that could resolve these proceeding in a manner acceptable to all parties and provide the Commission with a practical, continuing means of fulfilling its statutory obligations. CMS believes that Staff and Public Counsel might be so inclined. CMS is most certainly mindful of the Commission’s desire for negotiated settlements of contentious cases like the present ones.

#### **IV. APPEAL OF PENALTIES ASSESSED AGAINST CMS**

29. In Order 5, the Administrative Law Judge fined CMS a total of \$4,000 for a clerical error relating to the erroneous submission of a one-page document to CMS’ Schoenbeck affidavit in unredacted format. The Schoenbeck affidavit was submitted in support of CMS’ amended complaint. The error was corrected as soon as it was

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<sup>3</sup> Although, CMS does not mean to imply that Staff is in complete agreement regarding every provision of this “Code Of Conduct.”

discovered and pains were taken to ensure that no unredacted information was disclosed to anyone not a signatory to the confidentiality agreement in Docket No. UG-061256. CMS was blameless in this clerical error; which concerned the mis-collation of an unredacted version of Exhibit 1 with the redacted version of the Schoenbeck affidavit.

The Judge imposed a \$1000 penalty for each of the following:

1. submitting Exhibit 1, a one-page exhibit to the Schoenbeck Affidavit, in an unredacted format without labeling document as confidential,
2. failing to redact an exhibit submitted in support of CMS' proposed amended complaint,
3. failing to properly redact the Schoenbeck Affidavit, and
4. sharing this confidential information with someone not authorized under the protective order.

30. Review of the foregoing list demonstrates that all four "violations" relate to a single clerical error. The one-page exhibit to the Schoenbeck affidavit submitted in support of the amended complaint was mistakenly submitted in unredacted form before the error was discovered and immediately corrected.

31. The fourth "violation" is flatly contradicted by the affidavit of Douglas Betzold, filed with the Commission by CMS on April 9, 2007, and accepted into the record by Order 5. To assure the Judge and the Commission that the clerical error had been harmless and that no confidential information had been disclosed to CMS, Mr. Betzold states in the fourth and fifth paragraphs of his affidavit:

On the morning of April 10, Mr. Cameron was advised that a one-page exhibit to the Schoenbeck affidavit had been submitted without redaction. Upon making this discovery, Mr. Cameron called me on April 10, 2007, to advise me of the mistake. He directed me not to access any information on the Commission's

website unless and until the Schoenbeck exhibit was replaced with a redacted version.

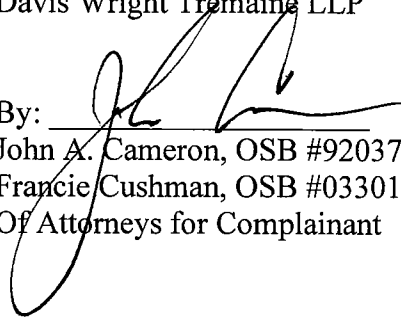
At the time I was called by Mr. Cameron, I had not accessed the Commission's website since before April 9. Prior to the submissions by CMS on April 9, I had reviewed a redacted draft version of the Amended Complaint, but I had not seen the Schoenbeck affidavit or its exhibit even in redacted form. I complied with Mr. Cameron's directive not to access the website. At no time have I obtained confidential information in this docket or in Docket No. UG-060256, the Cascade general rate case. [Emphasis supplied.]

32. Cascade executed some 50 private gas sale agreements with non-core customers, filing none of the relevant rates or contracts with the Commission. Cascade is fined \$5,000 by the Commission. CMS makes a clerical error in improperly filing a one-page exhibit in unredacted form, promptly corrects its error and makes every effort to ensure that no confidential information is misused. For this, the Judge would fine CMS \$4,000. This lack of proportionality is incredible. By denying CMS the hearing ordered by the Commission in the Order of January 12, by refusing to enforce WAC 480-80-143 regarding Cascade's non-core contracts, by denying CMS intervenor status in Docket No. UG-070332, by imposing multiple penalties on CMS for a single clerical error, clearly the Judge is sending a very negative message to potential intervenors. CMS asks the Commission to reconsider the penalties imposed by the Judge.

33. WHEREFORE, CMS respectfully requests the Commission to grant the relief from Order 5 in Docket No. UG-061256 and from Order 2 in Docket No. UG-070332 as requested in this pleading.

DATED this 29th day of May, 2007.

Respectfully submitted,  
Davis Wright Tremaine LLP

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



ALJ/KIM/gn

Decision 90-09-089 September 25, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the )  
Commission's own motion to change )  
the structure of gas utilities' )  
procurement practices and to propose )  
refinements to the regulatory )  
framework for gas utilities. )

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R.90-02-008  
(Filed February 7, 1990)

INTERIM OPINION

This decision adopts final rules for the regulation of the natural gas utilities' procurement practices and related matters. We initiated this rulemaking in R.90-02-008 (OIR), issued February 7, 1990. R.90-02-008 set forth a framework for developing rules designed to resolve several problem areas in our existing regulatory program and to provide increased opportunities for competition and resulting consumer benefits.

I. Summary

This decision set forth new rules for utility gas procurement and transportation services, adopting as part of our rules the essential elements of a Settlement filed on August 15. Today's decision is designed to address certain shortcomings of our existing regulatory program by providing firm access to pipeline capacity on an interim basis and by further limiting the utilities' participation in noncore procurement markets.

We adopt today's rules in recognition that our regulatory program requires certain changes to ease the supply problems posed by pipeline capacity constraints. When new pipeline capacity becomes available, and with the development of nondiscriminatory capacity brokering programs, gas markets will grow increasingly competitive as customers gain access to more reliable transportation. We expect circumstances to improve in this regard over the next few years. As they do, these rules will be modified to reflect changed circumstances.

In summary, our decision today changes our regulatory structure in accordance with much of the Settlement and to provide that the utilities shall:

Eliminate their noncore portfolios;

Develop a "core subscription" service which provides bundled gas procurement and transportation services for customers willing to make a two-year commitment and accept a 75% take-or-pay obligation;

Establish four levels of noncore transportation service with varying customer obligations and rates pending the resolution of capacity brokering issues;

Provide noncore customers pro rata access to firm pipeline services in the case of Southern California Gas Company (SoCal); Pacific Gas and Electric Company (PG&E) shall provide access to the Pacific Gas Transmission (PGT) pipeline in the amount of 250 MMcf per day and 200 MMcf per day on the El Paso Natural Gas Company (El Paso) system;

Limit UEG purchases of firm transportation services to 65% of their demand.

In addition, we adopt a two-year cost allocation proceeding and balancing account treatment for 75% of noncore transportation revenues, as proposed by the Settlement.

We opened this proceeding in order to address allegations that the market structure was not competitive in large part because, according to many, the utilities had too many advantages over competitors. The primary reason appears to be, as it has for several years, to be the utilities' exclusive access to firm interstate pipeline capacity. It appeared to us that this lacking access, in combination with utility procurement of gas for noncore customers, dampened prospects for true competition in gas markets. The issue of access to firm transportation cannot be fully resolved until the capacity brokering programs have been put into place. As we stated in R.90-02-008 and D.90-07-065, however, competition would be furthered by limiting the utilities' participation in the noncore procurement market.

## II. Background

On February 7, 1990, we issued R.90-02-008. The rulemaking proposed general changes to gas utility regulation. We issued the rulemaking after holding an informational en banc hearing in November, 1989 at which numerous parties presented their views about the status of the natural gas industry in California. Several of the parties identified what they believed to be serious problems, and recommended changes to our existing program.

R.90-02-008 proposed several options for resolving what we perceived to be problems with the current regulatory structure. We sought comments on our decision, and stated our intention to issue proposed rules based on those comments and then issue final rules.

After receiving comments on R.90-02-008, we issued a set of proposed rules in D.90-07-065 and asked for comments on the proposed rules. The rules proposed in D.90-07-065 would require several changes to the existing regulatory program:

- o Replace the existing core elect service with a "core subscription" service providing highly reliable gas service to noncore customers that make a commitment of two years or longer and accept a 75% take-or-pay obligation.
- o Establish a firm transportation service for noncore customers that make a commitment of one year or longer and accept a 50% use-or-pay obligation.
- o Eliminate the existing noncore portfolio.
- o Limit core subscription purchases by electric departments of combined utilities to 15% of their annual requirements.

On August 15, 1990, several parties to the proceeding filed a Settlement. On the same day, the parties to an earlier Settlement, which we addressed in D.90-07-065, withdrew their offer of Settlement. Parties to the August 15 Settlement are PG&E, California Industrial Group (CIG), California League of Food Processors and California Manufacturers Association, Mock Resources, Inc. (Mock), San Diego Gas and Electric Company (SDG&E), Toward Utility Rate Normalization (TURN), GasMark, Inc. (GasMark), SoCal, and Enron Marketing, Inc. (Enron).

The following parties filed or submitted comments on the rules proposed in D.90-07-065 or filed comments on the August 15 Settlement:

Alberta Petroleum Marketing Commission (APMC)  
Berry Petroleum Company (Berry)  
Bonus Gas Processors, Inc. (Bonus)  
California Asphalt Pavement Association (CAPA)  
California Cogeneration Council (CCC)  
California Department of General Services (DGS)  
California Energy Commission (CEC)  
California Gas Producers Association (CGPA)  
California Industrial Group, California League  
of Food Processors, and California  
Manufacturers Association (CIG)  
Canadian Petroleum Association (CPA)  
Canadian Producer Group (CPG)  
Capitol Oil Corporation (Capitol)  
City of Long Beach  
City of Palo Alto  
Coastal Gas Marketing Company (CGM)  
Cogenerators of Southern California (CSC)  
Division of Ratepayer Advocates (DRA)  
El Paso Natural Gas Company (El Paso)  
Enron  
Government of Canada  
Hadson Gas Systems, Inc. (Hadson)  
Independent Petroleum Association of Canada  
(IPAC)  
Indicated Producers  
Kern River Gas Transmission Company  
(Kern River)  
Matich Corporation (Matich)  
Ministry of Energy, Mines and Petroleum  
Resources Province of British Columbia  
(Ministry)

Mobil Natural Gas, Inc. (Mobil)  
Mock  
Natural Gas Clearinghouse (NGC)  
Oryx Energy Company, Shell Western E&P Inc.,  
Texaco Inc., Union Pacific Resources Company  
(Oryx)  
PG&E  
Pan-Alberta Gas Ltd. (Pan-Alberta)  
Phillip Morris Management Corporation (Phillip  
Morris)  
Phillips Petroleum Company, Phillips 66  
Natural Gas Company, and Phillips Gas  
Marketing Company (Phillips)  
PSI Gas Marketing, Inc. (PSI)  
Salmon Resources Limited (Salmon)  
SDG&E  
School Project for Utility Rate Reductions  
(SPURR)  
Southern California Edison Company (Edison)  
SoCal  
Southern California Utility Power Pool and  
Imperial Irrigation District (SCUPP)  
Southwest Gas Corporation (Southwest)  
State of New Mexico  
Sunpacific Energy Management and Sunrise Energy  
Co. (Sunpacific)  
Tehachapi Cummings County Water District  
(Tehachapi)  
TURN  
Transwestern Pipeline Company (Transwestern)  
United States Borax and Chemical Corporation  
(Borax)

This decision does not summarize all of the comments of all of the parties because of their large number and because the parties' views have already been partially summarized in D.90-07-065. The decision does, however, attempt to describe all perspectives and the rules we adopt today reflect our consideration of all parties' views.

### III. The Settlement

We encouraged the parties to attempt to negotiate their differences in this rulemaking. We hoped that a settlement would represent to the greatest extent possible the interests of a cross-section of the parties. A Settlement was filed August 15. The Settlement addresses many issues relating to procurement, transportation priority, rate design, and utility incentives. It is obvious that the parties worked long and hard to reach agreement on these issues. Its signatories include representatives of consumers (CIG, California League of Food Processors, California Manufacturers' Association, TURN), utilities (SoCal, PG&E, SDG&E) and brokers (Mock, GasMark, Enron).

While the Settlement may represent a reasonable compromise to the signatories, numerous parties object to it. Among those who oppose the Settlement are consumer and utility representatives (DRA, Long Beach, and Palo Alto), cogenerators (CCC, CSC, US Borax), gas brokers (Sunpacific, PSI, Natural Gas Clearinghouse, PSI), gas producers (Indicated Producers, Capitol Oil, Phillips), governmental agencies (CEC, State of New Mexico) and an interstate pipeline (El Paso). Several other parties oppose certain elements of the Settlement (DGS, Kern River).

Whether ratepayers and the public interest generally would benefit in the short term and over the longer term from the terms of the Settlement is a matter of great concern to us. A contested settlement may serve the public interest; on the other hand, because a settlement represents a series of trade-offs between parties who naturally seek to promote their own interests, a settlement reached on issues as complex as those before us today may not automatically serve the public interest.

TURN asks the Commission to "consider the settlement in the same way that the participants have -- from the perspective that it is better to achieve a broad consensus of support...than to 'win' on every single point." This is an unexpected comment coming from TURN, which has opposed many broadly based settlements on the grounds that they did not represent the public interest. The Commission is not a party to this proceeding and its concerns may differ from those of individual parties or coalitions the parties may build. The Commission must consider whether the Settlement as proposed would establish a program that is fair and economically efficient until new pipeline capacity is available from major producing regions. To the extent a settlement can accomplish this objective must seriously consider such proposals.

We therefore are obligated to consider the several elements of the Settlement to determine whether they are reasonable. As we recently stated:

"In judging such settlements the Commission retains the obligation to independently assess and protect the public interest. Parties to a settlement may chafe at what they perceive as intrusion on bargained-for deals and may believe that this Commission should simply take their word that the settlements serve the interest of the public in addition to the interests of the settling parties. However, settlements brought to this commission are not simply the resolution of private disputes such as those that may be taken to a civil court. The public interest and the interests of ratepayers must also be taken into account, and the Commission's duty is to protect those interests.

"In evaluating settlements, one factor we consider is the range of interests represented by the parties to the settlements and any opposition to the settlements, as well as the settlement itself." (D.90-08-068, pp. 27-28.)



For these several reasons, we have considered the Settlement elements to determine their reasonableness as part of a package of regulatory policies. We will adopt the Settlement with minor changes. Those we do not adopt are those which we believe cannot be considered outside the scope of other proceedings or which compromise our objectives to promote competition and protect the core from unnecessary risk.

Although we do not adopt some elements of the Settlement, we need not, as the Settlement suggests, provide the parties with an opportunity to negotiate new provisions or withdraw from the Settlement. This is because the provisions we adopt have been subjects of this rulemaking and several rounds of comments by the parties. We adopt the Settlement provisions as we adopt any other provision of our regulatory program and after notice and opportunity to be heard. Moreover, the parties should not withdraw from the Settlement because we do not adopt it in total. There is no assumption that any party concurs with any or all of the program elements we adopt today beyond the positions they have advocated as part of the record of this proceeding.

This decision sets forth the parties' views on the rules proposed by D.90-07-065 and compares our proposed rules with those which are included in the Settlement.

#### IV. Industry Structure

##### A. Noncore Procurement Activities and Marketing Affiliates

D.90-07-065 proposed to eliminate the noncore portfolio and prohibit utility noncore marketing affiliates. The proposed rules stated:

The gas utilities shall not sell gas supplies to noncore customers except those which subscribe to core services and as permitted under other rules.

The utilities shall not create new noncore marketing affiliates. The utilities shall show no preference for their own affiliates' gas supplies, except as required to fulfill pre-existing contract obligations, and shall treat those affiliates as they would any other gas supplier. PG&E's preference for A&S supplies shall end when its existing contract obligations end.

The proposed rules reflected a nearly unanimous view of commenting parties that the utilities should eliminate their noncore portfolios because of the potential for the utilities to discriminate in favor of their own noncore customers. For the same reason, we rejected proposals to permit the utilities to sell gas to noncore customers out of the core portfolio except as core subscription customers, discussed in Section IV B.

The proposed prohibition on new noncore marketing affiliates addressed our concerns over inter-affiliate transactions and the difficulty of regulating them. Moreover, no party argued that utility gas sales were required to assure stable and competitively-priced gas supplies for noncore customers.

1. Positions of the Parties

a. The Settlement

The Settlement would eliminate the existing noncore portfolio. It leaves to the Commission's discretion whether to permit noncore customers to purchase gas from a single portfolio. It provides a list of regulatory guidelines for new or existing marketing affiliates (which do not apply to A&S as required to "effectuate the procurement arrangement for supply service over PG&E's northern system as provided for in the settlement"):

Marketing affiliates will be structurally separated from the utility, with necessary requirements to prevent cross-subsidization of unregulated activities;

Marketing affiliates will be treated the same as other unregulated gas marketers, brokers, etc. by the regulated utility in all transactions including pipeline nominations, and access to storage, firm capacity, and information about customer demand and capacity availability;

Costs from the marketing affiliate will not be allocated to core rates or noncore transportation rates, except as necessary to effect the A&S supply arrangement set forth in the settlement.

b. PG&E

PG&E believes that restricting its ability to sell gas to noncore customers through a separate affiliate is "discriminatory" and may restrict gas-to-gas competition. According to PG&E, the prohibition may also hamper its ability to restructure its existing supplies.

c. SoCal

SoCal argues that it would be acceptable to impose a prohibition on utility procurement services to interruptible noncore customers but only if the Settlement as a whole is adopted. It believes limiting its procurement role will increase its business risk because it will have to rely on the unregulated market to serve noncore customers with reliable supplies which SoCal relies upon to keep throughput high and retain associated revenues.

SoCal opposes the prohibition of utility marketing affiliates and believes the Commission may be beyond its jurisdiction if its rules interfere with federal law.

d. DRA

DRA supports the proposed rules on the noncore portfolio and new marketing affiliates. It argues, however, that the Commission should clarify that Alberta and Southern (A&S),

PG&E's Canadian marketing affiliate may not expand its operations into California, for example, by brokering supplies to end-users from sources other than Canada.

e. TURN

TURN supports the proposed prohibition on new marketing affiliates but seeks clarification on treatment of already existing noncore marketing affiliates. It suggests existing affiliates either be prohibited from doing business in the utility's service territory or that strict regulations be adopted to prevent abuses.

TURN also advises close Commission oversight to assure that core customers do not bear costs properly attributable to noncore marketing efforts by A&S if A&S becomes a direct seller in PG&E's noncore market (this could occur in order for A&S to ameliorate take-or-pay liability). TURN supports CIG's list of rules, except that it suggests the rules be expanded to absolutely bar sharing of employees by a utility and its marketing affiliate.

f. Industrial Customers

Like TURN, CIG believes the proposed rules need to address the activities of existing affiliates which are engaged in the production and sale of natural gas inside and outside the state. CIG proposes a set of rules for that purpose. CIG also comments that the Commission should recognize that A&S will have a limited procurement role in facilitating noncore customers' access to Canadian supplies.

g. UEG and Wholesale Customers

Edison argues that supply problems of customers result mainly from inadequate pipeline capacity and will not be alleviated by elimination of the noncore portfolio and a prohibition on marketing affiliates.

Southwest favors elimination of the noncore portfolio only if the utilities are permitted to create marketing affiliates. It believes the Commission has failed to recognize the benefits of utility participation in noncore markets and strongly objects to any limits on the ability of the utilities to create marketing affiliates.

SCUPP strongly supports the proposed rules on noncore sales and marketing affiliates. Long Beach favors unregulated utility marketing affiliates as long as equal access is available to affiliates and their competitors.

**h. DGS**

DGS generally agrees with the Commission's proposal to restrict utility sales of gas to noncore customers and to prohibit the creation of utility marketing affiliates.

**i. CEC**

CEC supports the proposed rules' prohibition on the creation of new marketing affiliates and the elimination of the noncore portfolio.

**j. Independent Gas Producers and Marketers**

Bonus favors new marketing affiliates, which are fully separated, to permitting the utilities to market gas to noncore customers through a core subscription service. It believes that as long as a utility offers gas to noncore customers, its price will be a ceiling for the market. According to Bonus, this price will be lower than competitors can offer because it will not include all of the costs of providing gas.

Hadson, Phillips and Indicated Producers support the proposed rules regarding the noncore portfolio and the treatment of marketing affiliates. Phillips recommends that the Commission oversee the activities of existing affiliates to prevent anti-competitive activity.

NGC does not object to the creation of new utility marketing affiliates.

k. Pipeline Companies

Kern River generally endorses the proposed rules.

l. State of New Mexico

The State of New Mexico agrees with the proposed rules on the subject of noncore sales and affiliates and opposes those in the Settlement as failing to promote competition. New Mexico believes the Settlement retains the utilities' preferential competitive position by allowing their marketing affiliates to compete with alternative suppliers.

2. Discussion

We have considered the Settlement provision which would permit marketing affiliates and the comments supporting the provision. We continue to have concerns about the risks posed by utility marketing affiliates and are not convinced that they are required to assure a stable source of gas supplies for noncore customers. We will therefore prohibit the establishment of new utility marketing affiliates. We will reconsider our rule only if the utilities can demonstrate that the gas market in California is unable to provide reliable and adequate gas supplies to noncore customers.

At the suggestion of TURN and CIG, we will also adopt specific rules for the activities of existing affiliates.

Consistent with the comments of all parties, and our proposal in D.90-07-065, our new rules will not permit a separate noncore portfolio.

Our adopted rules for utility gas marketing affiliates are:

Utility gas marketing affiliates shall maintain separate facilities, books and record of account, which shall be available for inspection by the Commission staff upon reasonable notice;

Employees of the gas utilities shall not perform any functions for utility affiliates except those services which they offer to

others on an equal basis, and utilities shall not share employees with marketing affiliates;

Gas utilities shall not reveal to their affiliate any confidential information provided by customers or nonaffiliated shippers to secure service. Confidential utility information shall be made available to all shippers if it is made available to utility marketing affiliates;

Utilities shall identify and remove from their cost of service all costs, including administrative, general, operating and maintenance costs, incurred by a marketing affiliate, and thereafter prohibit the booking to the partner utilities' system of account costs incurred or revenues earned by the marketing affiliate;

Utilities shall not condition any agreement to provide transportation service, to discount rates for such service, or to provide access to storage service or interstate pipeline capacity to an agreement by the customer to obtain services from any affiliate of the gas utility, except for the provisions contained herein respecting the direct purchase of gas by noncore customers from PG&E's affiliate A&S for the period of years specified herein;

Utilities shall disclose in reasonableness reviews or other such regulatory proceedings each transaction between the parent utility and its marketing affiliate, with sufficient information on the terms and conditions of each transaction as to permit an evaluation of the nature of such transactions. The same information shall be provided to Commission staff at any time upon reasonable notice;

Each gas utility shall submit, within 90 days of the effective date of this decision, a written report, available for public inspection, stating how the utility plans to implement these standards of conduct with respect to any existing affiliate activities in the California market.

Gas utilities shall not procure gas for or sell gas to noncore customers except as otherwise permitted by these rules.

**B. Core Subscription Service for Noncore Customers**

D.90-07-065 proposed to eliminate the current core-elect option and replace it with "core subscription" service. The service was intended to provide a reliable, premium service for customers who do not want competitive options and who are willing to make a commitment to the service.

We stated our view that core subscription should be a service for customers willing to make a commitment to the utility in trade for a reliable service that will require little or no effort on the customer's part. The customer's commitment would in turn reduce utility risk and improve operational and financial planning.

D.90-07-065 also stated that the purpose of the core subscription service would not be to provide noncore customers with access to utility gas supplies when they happen to be priced comparatively low, or a means to increase utility loads. The purpose of the core subscription service would not be to provide customers with yet another competitive option on a short-term basis.

The proposed core subscription service would require a 75% take-or-pay commitment and a two-year time commitment for a combined transportation and procurement service. We rejected proposals to limit take-or-pay obligations which arise for reasons other than switching to alternate fuels or energy sources on the grounds that individual customers, rather than the general body of ratepayers, should bear the risk from their variable demand.



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**CODE OF CONDUCT**  
**GOVERNING AFFILIATE TRANSACTIONS IN COMMODITY SALES AND**  
**BROKERING**  
(Effective Date: \_\_\_\_\_)

This set of standards, rules and prohibitions (“Code of Conduct”) governs the actions of Cascade Natural Gas Corporation (“Cascade”), a Gas Company within the meaning of RCW 80.04.010, regarding retail sales of natural gas to Non-Core Customers. This Code of Conduct specifies the conditions under which Cascade may establish or utilize a separate affiliate for the sole purpose of selling or brokering gas to Non-Core Customers (“Marketing Affiliate”). This Code of Conduct is intended to eliminate the potential for Cascade to cross-subsidize competitive sales and services; protect the confidentiality of consumer information gained by Cascade in its capacity as a Gas Company; and to establish enforceable safeguards against unduly discriminatory or unduly preferential treatment of any Non-Core Customer by Cascade. Cascade and Marketing Affiliate are sometimes referenced in this Code of Conduct individually as “Affiliate” and collectively as “Affiliates.”

1. **Definitions.** “Non-Core Customer” means an end-user of natural gas that purchases local transportation service from a Gas Company to enable that end-user to procure competitively priced gas supplies. Certain other capitalized terms are defined elsewhere in this document or take their meanings from RCW Chapter 80 or WAC Chapter 480.
  
2. **Prohibition of Non-Core Gas Sales by Cascade.** Cascade shall not sell or broker natural gas to any Non-Core Customer. On or before the effective date shown above, Cascade shall withdraw all rate schedules under which it purports to sell natural gas to Non-Core Customers. Cascade’s Non-Core Customer gas-sale agreements in effective on February 12, 2006, may continue to be performed; however, all such contracts shall be allowed to expire at their specified termination dates without extension, renewal, or assignment to Marketing Affiliate.
  
3. **Marketing Affiliate.**
  - a. **Establishment and Organization.** Cascade may, but shall not be obligated to, create or utilize Marketing Affiliate as a separate corporation for the sole purpose of marketing, selling and/or brokering natural gas to Non-Core Customers located in the State of Washington. Cascade and Marketing Affiliate shall be “affiliated interests” under RCW 80.16.010 and applicable regulations of the Washington Utilities and Transportation Commission (“WUTC”). Marketing Affiliate shall not own any Utility Plant that would cause it to become a Gas Company under RCW 80.04.010. Cascade and Marketing Affiliate shall each have separate officers and boards of directors. No officer of Cascade may also serve as an officer of Marketing Affiliate. No more than 50% of the members of the boards of directors of the Affiliates may be shared in common. In addition to the filings required to be made by the WUTC, Cascade shall post on its website a comprehensive organizational chart showing the showing the corporate structural relationship between itself and Marketing Affiliate, the identities and job titles of

all officers of each Affiliate and the names of each member of their respective boards of directors.

- b. **Separate Books and Accounting.** Cascade and Marketing Affiliate shall not commingle funds, revenues, costs, or assets. Costs incurred by either Affiliate shall be recovered, if at all, from its own customers and not from the other Affiliate or the customers of such other Affiliate (including, for Cascade, its customers taking service under Schedule No. 664 or successor rate schedule). Each Affiliate shall maintain separate, audited corporate financial records and books of account, all available for review and regulatory audit by the WUTC.
- c. **Separate Offices.** Cascade and Marketing Affiliate shall maintain separate offices in separate buildings with security-controlled access to the other's premises no greater than that accorded to the general public.
- d. **Separate Employees.** The employees of Cascade and Marketing Affiliate shall function independently of one another in the conduct of all business. Without regard to its jurisdictional status under the Natural Gas Act, each Affiliate shall adhere to the Standards of Conduct promulgated by the Federal Energy Regulatory Commission ("FERC") regarding "shared employees." The Affiliates shall not share employees that are (a) involved in the purchase, sale, brokerage, or marketing of natural gas, or (b) involved in gas marketing, sales or other activities regarding which they have access to non-public information about either Affiliate or confidential information concerning any customer or potential customer. Permanent transfer of employees is not prohibited as long as such transfer is not used as a means to circumvent this Code of Conduct.
- e. **Protection of Non-Public Information and Security of Information Systems.** Neither Affiliate may release or make available to the other any non-public information, including any general market information or specific information regarding any sale or service provided to any natural-gas customer or potential customer of either Affiliate. Any sharing of IT hardware, systems, or services between Cascade and Marketing Affiliate must include specific, enforceable safeguards to protect against any release or exchange of non-public information between Affiliates. Any information not publicly displayed or referenced on Cascade's website is automatically non-public information.
- f. **Separate Marketing, Advertising and Sales Activities.** Joint marketing, advertising and/or sales activities by the Affiliates are prohibited; neither shall there be any sharing or reimbursement of the costs of such activities between them. Marketing Affiliate shall not use Cascade's name or business logo, mislead consumers regarding the differences between Cascade and Marketing Affiliate, or represent to anyone that it has preferential access to Cascade's system or services. Cascade shall not preferentially endorse, promote, or otherwise confer any benefit on Market Affiliate in relation to any unaffiliated gas marketer.

- g. Transfers of Customers.** Neither Affiliate shall transfer or assign any customer to the other Affiliate, except upon the written request of that customer and after authorization by the WUTC in accordance with Section 3(h) below.
  - h. Transactions Between Affiliates.** Transfer of any asset or other item of value between Affiliates shall in accordance with WAC 480-90-245 and subject to advance review and approval by the WUTC. Asymmetrical pricing shall be used in all transfers. Notwithstanding any exception permitted by WAC 480-90-245, any transfer between Affiliates shall be committed to a written agreement that includes, at a minimum, specification of each individual asset, good or service transferred; the term of the transfer; identification of the transferor's cost; and verifiable, market-based documentation of the market value of the asset, good or service subject to transfer. Any transfer or release of interstate pipeline capacity by Cascade to Marketing Affiliate must also comply with Section 5 below.
  - i. Proscribed Financial Transactions Affecting Affiliates.** Neither Affiliate may provide any loan, extension of credit, or guarantee to or regarding the other Affiliate. Marketing Affiliate shall adopt and follow appropriate risk-management practices to ensure that its gas-sale transactions shall not adversely affect the credit rating of Cascade.
  - j. Allocation of Common Costs.** An inter-company administrative services agreement shall be developed and filed with the WUTC. Consistent with the other provisions of this Code of Conduct, allocation of all common overhead, administrative and general costs and income taxes (collectively "Common Costs") between and among Cascade and Marketing Affiliate shall be reasonable and prudent, as determined in applicable orders of the WUTC. Common Costs include only those relating to the following: human resources, pension tax, finance, investor relations, public affairs, risk management, audit, communications (other than advertising and marketing), health and safety. The initial annual allocation of such costs to Market Affiliate shall be deemed to be \$ \_\_\_\_\_, which amount shall be reimbursed annually by Marketing Affiliate to Cascade, for the benefit of Cascade's customers, until the conclusion of Cascade's next general rate case or PGA proceeding.
  - k. Application of Tariffs and Rate Schedules.** Cascade shall uniformly apply and enforce its tariffs, rate schedules and rules in a fair and impartial manner without preferential treatment to, or regarding, Marketing Affiliate. Cascade shall maintain a written log, available for public inspection on its website, detailing the circumstances and manner in which it exercised its discretion under any tariff, rate schedule, or rule.
- 4. Local Transportation Service by Cascade.** Cascade shall continue to make local transportation service available to Non-Core Customers under Schedule No. 664 or successor rate schedule. Local transportation service shall be made available to Non-Core Customers at cost-based rates approved by the WUTC. Cascade shall provide local

transportation service without undue discrimination or preference and specifically refrain from granting any favored treatment or preferential access to any Non-Core Customer purchasing, or considering the purchase of, natural gas from Marketing Affiliate.

5. **Interstate Pipeline Capacity Release.** To ensure that Cascade receives maximum value for its core customers, any interstate pipeline capacity made available by Cascade to any entity shall be by one of the following two exclusive methods:
  - a. Firm interstate pipeline capacity may be made assigned at the highest price authorized by FERC, but not less than the non-discounted, full-tariff rate on file with the FERC.
  - b. Firm interstate pipeline capacity may be released by Cascade (“Firm Capacity Release”), pursuant to the applicable FERC regulation, 18 C.F.R. §284.8, or its successor. The minimum term of any Firm Capacity Release shall be in excess of the period specified in 18 C.F.R. §284.8(h) (currently 31 days) for the purpose of making that provision inapplicable to any capacity released by Cascade. The price of any Firm Capacity Release shall be the “highest rate” determined by the interstate pipeline in accordance with 18 C.F.R. §284.8(e).
6. **Use of Agents or Other Intermediaries.** Use of an agent, broker, intermediary, or other indirect means by Cascade or Marketing Affiliate as a conduit for conducting any activity or arrangement prohibited or controlled by this Settlement Agreement, is prohibited.
7. **Implementation of this Code of Conduct by Each Affiliate.** This Code of Conduct shall be communicated by Cascade and Marketing Affiliate to their respective officers, directors and employees. Each Affiliate shall separately adopt written internal standards, policies and controls to promote compliance with the Code of Conduct, monitor its employees’ compliance and designate a compliance officer responsible for compliance with the Code of Conduct by that Affiliate. Each Affiliate shall conduct periodic compliance reviews, to be shared with the WUTC and posted on Cascade’s website.
8. **Subsequent Adoption of a Generic Code of Conduct by the WUTC.** This Code of Conduct shall remain permanently in effect and to operate in conjunction with applicable laws, including WUTC regulations; provided, however, that the WUTC may conform this Code of Conduct to any rules and regulations, generically applicable to marketing affiliates of Gas Companies, adopted by it subsequent to the effective date shown above.
9. **WUTC Authority.** This Code of Conduct is on file with the WUTC. It is enforceable by the WUTC against Cascade as a Gas Company under RCW 80.04.010 and against Marketing Affiliate pursuant to the WUTC’s authority to review and police relationships between Gas Companies and their corporate affiliates. Nothing in this Code of Conduct limits the authority of the WUTC to review Cascade’s rates or affiliated interest agreements, or to review the prudence of actions taken or withheld by Cascade, either under this Code of Conduct or generally.



References: Affiliate Relationships Code for Gas Utilities, Ontario Energy Board, originally promulgated July 1999, revision effective June 2005 9 ([www.oeb.gov.on.ca](http://www.oeb.gov.on.ca)).

FERC Standards of Conduct for Transmission Providers, 18 C.F.R., Part 358.

WUTC Order No. 3 issued in *Avista Corporation d/b/a Avista Utilities*, Docket No. U-060273 (February 28, 2007).

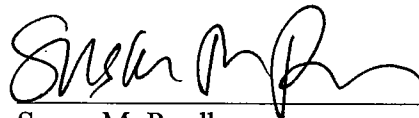
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this 29<sup>th</sup> day of May, 2007, served the foregoing **PETITION FOR ADMINISTRATIVE REVIEW OF INITIAL ORDER DISMISSING COMPLAINT AND CLOSING DOCKET; and PETITION FOR ADMINISTRATIVE REVIEW OF AN INTERLOCUTORY ORDER DENYING INTERVENTION** upon all parties of record in this 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>
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