

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

TREE TOP, INC., a Washington Corporation

Complainant:

v.

CASCADE NATURAL GAS
CORPORATION, a Washington Corporation,

Respondent.

Docket _____

Tree Top, Inc. (“Tree Top”) hereby alleges as follows:

INTRODUCTION

1. Tree Top files this Complaint because an unprecedented natural disaster in Texas and colder than normal weather in other states resulted in Cascade Natural Gas Corporation (“Cascade”) imposing upon Tree Top an overrun entitlement penalty that is not fair, just, or reasonable.
2. As explained below, the exorbitant overrun entitlement penalty imposed by Cascade does not reasonably reflect any risks or costs actually incurred by Cascade or its customers. Nor is such an exorbitant penalty necessary or appropriate to implement the purpose and intent of an overrun entitlement charge.
3. Cascade may declare an entitlement period on any day the company determines a critical operational condition warrants the constraint period. During a declared overrun entitlement, customers must balance their pre-scheduled or “nominated” natural gas usage with their actual natural gas usage within a certain threshold percentage on a daily basis. For example, during a declared “thirteen percent (13%) overrun entitlement” period, a customer that takes fifteen

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percent (15%) more natural gas than it has nominated would receive an overrun entitlement penalty for the two percent (2%) of gas used above the declared thirteen percent (13%) overrun entitlement.

4. Schedule 663 of Cascade’s tariff, its Distribution System Transportation Service, imposes an overrun entitlement penalty equal to the greater of one dollar (\$1.00) per therm or one hundred and fifty percent (150%) of the highest midpoint price at one of several named natural gas trading hubs, including Northwest Canadian Border (“Sumas”) and NW South of Green River in Wyoming (“Green River”).
5. From February 11–20, 2021, colder than normal weather affected most of the lower 48 states.¹ Further, an unprecedented Arctic cold front moved through Texas crippling the state’s electric and natural gas infrastructure.² The sleet and ice brought on by the storm caused Texans across the state to lose power and heat for several days. Tragically, hundreds of people lost their lives. The National Weather Service predicts that this arctic cold snap will likely go down as the costliest weather disaster in Texas’ state history.
6. Due to this extreme weather event, the natural gas and electric markets in Texas and surrounding states ceased to function properly—and in many cases they did not function at all. As supplies tightened and when natural gas providers cancelled or were unable to fulfill their contracts, utilities and power producers had to turn to the volatile spot market.³ As a result of astronomical prices, and accompanied with accusations of unlawful price gouging, natural gas

¹ <https://www.eia.gov/todayinenergy/detail.php?id=47016>

² *Valentine’s Week Winter Outbreak 2021: Snow, Ice, & Record Cold*, NATIONAL WEATHER SERVICE (last visited Sept. 20, 2021), <https://www.weather.gov/hgx/2021ValentineStorm>.

³ <https://arstechnica.com/tech-policy/2021/07/11-billion-in-9-days-texas-natural-gas-sellers-cashed-in-on-deep-freeze/>

traders and pipeline companies made up to \$11 billion dollars in just nine days.⁴ In the immediate aftermath of the weather event, multiple Texas utilities filed for bankruptcy protection. In recognition of this market dysfunction, Texas state regulators have since taken steps to unwind electric bills and other power transactions that would otherwise be payable under normal market conditions.⁵

7. During this crisis, many natural gas trading hubs saw record prices,⁶ and prices at Green River spiked to a record high of \$119.83/MMBtu. In contrast, prices at regional hubs like Sumas were elevated and peaked at approximately \$14.03/MMBtu. Clearly the price spike of \$119.83/MMBtu at Green River did not reflect a functional market.

8. Fortunately, neither Cascade nor its ratepayers were directly affected by the Texas weather disaster and resulting energy market failures. Tree Top understands that Cascade did not purchase gas during the crisis directly at Green River, or at Green River indexed prices.

9. On February 10, 2021, Cascade declared an “overrun entitlement” on its system. The overrun entitlement was not directly caused by the Texas crisis but rather by weather events and constraints in the region.

10. The penalties that Cascade may charge during an “overrun entitlement,” if any, must be consistent with its Commission-approved tariffs. Specifically, Schedule 663 states:

The overrun charge that will be applied during any overrun entitlement period will equal the greater of \$1.00 per therm or 150% of the highest midpoint price for the day at NW Wyoming Pool, NW south of Green River,

⁴ *Id.*

⁵ *Texas Utility Settles Over Sky-High Energy Bills from Freeze*, SPECTRUM NEWS 1 (Aug. 31, 2021), <https://spectrumlocalnews.com/tx/south-texas-el-paso/news/2021/08/31/texas-utility-settles-over-sky-high-energy-bills-from-freeze>.

⁶ <https://www.eia.gov/todayinenergy/detail.php?id=47016>

Stanfield Oregon, NW Canadian Border (Sumas), Kern River Opal, or El Paso Bondad supply pricing points (as published in Gas Daily)

11. Cascade is not necessarily directly affected by prices at all the hubs listed in Schedule 663. Rather, the overrun entitlement penalty language simply parrots the language in the tariff of Cascade's upstream provider—Northwest Pipeline, LLC (“Northwest Pipeline”), which does have exposure to each of the trading hubs.
12. From February 12–16, 2021, Cascade imposed upon Tree Top an overrun entitlement charge of \$198,884.87. This charge was based on the crisis prices at Green River to which Cascade was never exposed.
13. Modification of overrun entitlement penalties is not without precedent. For example, the Idaho Public Utility Commission found it appropriate to approve a reduction in an overrun entitlement penalty when neither the utility nor its customers were harmed by a customer's overrun entitlement.⁷ In that case, Avista Corporation agreed that strict application of the overrun entitlement penalty was unreasonable and negotiated with the customer to reach a more reasonable penalty.
14. The resulting overrun entitlement charge applied to Tree Top is unduly burdensome, unjust, and unreasonable. Pursuant to Revised Code of Washington (“RCW”) 80.04.110 and Washington Administrative Code (“WAC”) 480-07-370(1), Tree Top respectfully requests a determination by the Commission that a fair and reasonable overrun charge should be calculated based off the highest midpoint price at a trading hub Cascade was actually exposed to, specifically Sumas.

⁷ Avista Corporation's Petition for Approval of a Settlement Agreement Between Clearwater Paper Corporation and Avista Corporation, AVUG2002, Order 34712, 2020 WL 3630529, at *3 (Jun 30, 2020, Idaho P.U.C.).

PARTIES

15. Tree Top is a natural gas transportation customer served by Cascade in the State of Washington. This means that Tree Top is responsible for arranging its own gas supply and Cascade is responsible for using its natural gas distribution system to deliver Tree Top's natural gas supply to a designated point of delivery. Tree Top uses the natural gas transported by Cascade to operate its facilities, employs a significant number of Washingtonians, and contributes to the overall financial well-being and prosperity of the region

16. Pursuant to WAC 480-07-370(1)(b)(i), the complainant's name and address is:

Tree Top, Inc
c/o Terri Bauman
220 E. Second Avenue
P.O. Box 248
Selah, WA 98942-0248
Phone: (509) 698-1434
Email: terri.bauman@treetop.com;

Tree Top, Inc
c/o Monica Taylor
220 E. Second Avenue
P.O. Box 248
Selah, WA 98942-0248
Phone: (509) 698-1434
monica.taylor@treetop.com

17. Pursuant to WAC 480-07-370(1)(b)(i), the individuals designated to receive service for Tree Top, and the attorneys representing Tree Top in this proceeding, are:

Chad Stokes
Cable Huston LLP
1455 SW Broadway, Suite 1500
Portland, OR 97201
Business: (503) 224-3092
cstokes@cablehuston.com

18. Pursuant to WAC 480-07-370(1)(b)(ii), the name and address of Cascade, the company complained of in this Complaint, is:

Cascade Natural Gas Corporation
c/o Mike Parvinen
8113 W. Grandridge Boulevard
Kennewick, WA 99336-7166
michael.parvinen@cngc.com

19. Cascade is engaged in the business of providing natural gas distribution service within the state of Washington.
20. Cascade owns, operates and maintains a natural gas distribution system and provides natural gas service to customers of all types, including Tree Top. Cascade's distribution facilities are connected to interstate natural gas pipelines such as the pipeline owned by Northwest Pipeline.
21. Cascade is a "public service company" subject to the regulatory authority of the Commission for its rates, service, facilities, and practices.

JURISDICTION

22. The Commission has jurisdiction over this Complaint and the parties pursuant to RCW 80.01.040 (general powers and duties of the Commission), RCW 80.04.110 (complaints), RCW 80.04.220 (reparations), RCW 80.04.230 (overcharges and refunds), RCW 80.04.010(14) (defining "Gas company"), RCW 80.04.020 (procedure before Commission courts), RCW 80.28.020 (Commission to fix just, reasonable, and compensatory rates), and WAC 480-07-370(1) (formal complaints).
23. The Commission has the statutory authority and responsibility to determine fair, just, and reasonable rates.
24. The following rules or statutes may be brought into issue by this Complaint: RCW 80.01.040; RCW 80.04.110; RCW 80.04.220; RCW 80.04.230; RCW 80.28.010; RCW 80.28.020; RCW 80.28.080; RCW 34.05.240; and WAC 480-07-370.

STATEMENT OF FACTS

25. From February 11–20, 2021, colder than normal weather affected most of the lower 48 states.⁸ During this same timeframe, a historic weather crisis struck Texas. The weather crisis crippled Texas' energy supply and infrastructure and caused massive dysfunction within Texas' and surrounding states' energy commodity markets. As supplies tightened and when natural gas providers cancelled or were unable to fulfill their contracts, utilities and power producers had to turn to the volatile spot market.⁹ As a result of astronomical and unregulated prices, natural gas traders and pipeline companies made record profits during this nine-day period.¹⁰
26. Prices spiked at the Green River trading hub to an unprecedented \$119.83/MMBtu. At the same time, regional prices at Sumas were elevated but trading at \$14.03/MMBtu.
27. On information and belief, Cascade neither purchased natural gas from nor was directly subject to the dysfunctional gas prices at Green River.
28. Upon information and belief, Cascade was not subject to and did not pay any overrun entitlement penalties to Northwest Pipeline from February 12–16, 2021.
29. Nevertheless, Cascade assessed Tree Top an overrun entitlement penalty from February 12–16, 2021, based off the Green River crisis prices. The total overrun entitlement penalty assessed by Cascade was \$198,884.87.

⁸ <https://www.eia.gov/todayinenergy/detail.php?id=47016>

⁹ <https://arstechnica.com/tech-policy/2021/07/11-billion-in-9-days-texas-natural-gas-sellers-cashed-in-on-deep-freeze/>

¹⁰ *Id.*

FIRST CLAIM AGAINST CASCADE

30. Tree Top realleges the allegations set forth in paragraphs 1 through 29 above.
31. Pursuant to RCW 80.28.020, “[w]henver the commission shall find . . . that the rates or charges . . . collected by any gas company . . . are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law . . . the commission shall determine the just, reasonable, or sufficient . . . charges . . . to be thereafter observed and in force, and shall fix the same by order.”
32. The overrun entitlement penalty assessed against Tree Top by Cascade was exorbitant, due to the application of the dysfunctional prices at Green River caused by, among other things, a historic weather crisis in Texas. In applying Schedule 663 to this case, the Commission should disregard named trading hubs to the extent that the Commission reasonably concludes that the markets were manipulated or in crisis and therefore not functioning properly during the affected time period.
33. An overrun entitlement penalty based off a regional trading hub more effectively and reasonably balances the goals of encouraging compliance with overrun entitlement periods and fixing just and reasonable rates and charges.
34. The Commission has approved tariffs containing overrun entitlement penalties to encourage customers to remain within the allowed tolerance of their daily nominations, thereby ensuring system reliability and stability. While the charge should have enough “teeth” to discourage noncompliance, the overrun entitlement charge assessed to Tree Top goes beyond discouragement and is exorbitant at \$198,884.87. An overrun charge based off a price of

\$14.03/MMBtu would be a substantial penalty in its own right and more successfully accomplishes the Commission's mandate of ensuring just, reasonable, and compensatory rates.

PRAYER FOR RELIEF

WHEREFORE, Tree Top respectfully request that the Commission issue an order:

35. Finding that Cascade's overrun entitlement penalty assessment against Tree Top from February 12, 2021, to February 16, 2021, in the amount of \$198,884.87 was unduly burdensome and not fair, just and reasonable.
36. Finding that an overrun entitlement charge based on prices at Sumas during that same period amounts to a fair and reasonable overrun entitlement penalty.
37. Ordering that Respondent immediately refund the difference between the overrun entitlement penalty calculated at Green River and the overrun entitlement penalty calculated at Sumas with interest.
38. Ordering any other and further relief as the Commission may deem necessary and appropriate.

Dated this 24th day of September 2021.

Respectfully submitted,



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