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1 P R O C E E D I N G

2 JUDGE MACE: Let's be on the record in Docket
3 UG-601256. This is a complaint of Cost Management
4 Services, Inc., against Cascade Natural Gas
5 Corporation. Today's date is November 20th, 2007. My
6 name is Theodora Mace. I'm the administrative law
7 judge who has been assigned to this case. I believe
8 you all entered the long form of your appearance at
9 prior sessions of this proceeding, and so what I will
10 ask is that you just introduce yourselves briefly today
11 on the record, and I will begin with you, Mr. Reichman.

12 MR. REICHMAN: Good afternoon, Your Honor.
13 Lawrence Reichman with Perkins Coie representing
14 Cascade Natural Gas Corporation.

15 MR. CAMERON: Good afternoon, Your Honor.
16 I'm John Cameron with Davis Wright Tremaine
17 representing Cost Management Services.

18 MR. FFITCH: Your Honor, good afternoon,
19 Simon ffitch, assistant attorney general with the
20 Public Counsel office. I would like to also enter an
21 appearance for a second attorney for our office, Sarah
22 Shifley.

23 MR. TRAUTMAN: I'm Gregory J. Trautman,
24 assistant attorney general for Commission staff.

25 JUDGE MACE: We have on the conference bridge

0046

1 Mr. Finklea. Would you give your appearance at this
2 time?

3 MR. FINKLEA: Yes, Your Honor. I'm Ed
4 Finklea for the Northwest Industrial Gas Users from the
5 law firm Cable, Huston, Benedict in Portland, and I
6 appreciate the ability to appear by bridge --

7 JUDGE MACE: When you are speaking later
8 during the proceeding if that's required, you are going
9 to have to speak up a little bit because we are having
10 a little trouble hearing you.

11 We are here today for a prehearing conference
12 as ordered by the Commission. I was reviewing that
13 order and basically set a schedule but there may be
14 other items that need to be addressed. So let me ask
15 first if there are other things that we need to address
16 before we go ahead with talking about scheduling.

17 MR. CAMERON: If I could be heard, Your
18 Honor, before we went on the record, we had continued a
19 discussion that we've been having individually about
20 the schedule in this case, and it was the consensus at
21 the time the conference began that we would enter
22 appearances and then ask you to take us off the record
23 while we continue that discussion and hopefully come
24 back with a consensus proposal.

25 JUDGE MACE: I have no problem with that.

0047

1 Make sure you include Mr. Finklea who is on the
2 conference bridge. If that's what you've agreed to,
3 then how long do you think you need?

4 MR. TRAUTMAN: One thing that I need a little
5 clarification on is how the Commission envisions this
6 docket will interplay with the upcoming docket, which
7 is the tariff-affiliated-interest docket, because from
8 Staff's perspective, the dockets are really quite
9 related. One, I suppose this docket referred to the
10 existing contracts and the other one to future sales,
11 but they involve similar issues, so I guess I needed
12 some clarification on how the dockets are going to work
13 together.

14 MR. REICHMAN: This docket, of course, is
15 CMS's complaint docket, and as the Commission said,
16 they have the complaint and they have the burden in
17 this case, and as I understand the Commission's orders,
18 what's left in this case is CMS's claim that existing
19 contracts, contracts that were in existence as of
20 January 2007, when the Commission entered Order 03,
21 somehow involved discrimination or undue preference
22 between customer groups, and I think the last order of
23 the Commission looked at that as really a
24 backward-looking docket, so just looking at those
25 existing contracts.

0048

1 The consolidated cases are sort of a
2 going-forward case, how well Cascade made sales of gas
3 to noncore customers on a going-forward basis, and
4 cascade has filed tariffs, and Cascade is currently
5 using an affiliate to do these sales since the tariffs
6 it filed were suspended, but that's kind of a
7 forward-looking case, different parties, CMS has been
8 denied intervention in the tariff case, so that's
9 helpful from our perspective how we understand.

10 MR. TRAUTMAN: It's on the latter point, Your
11 Honor, but I'm not sure from Staff's perspective that
12 would be the case. I think the same types of issues
13 would arise.

14 JUDGE MACE: Let's hear from Mr. Cameron.

15 MR. CAMERON: The last order in this case as
16 relates to the complaint proceeding granted our request
17 for administrative appeal and granted us leave to file
18 an amended complaint, which we are prepared to do, but
19 going back earlier in our complaint docket, Staff was
20 directed to prepare an investigative report on the
21 issues arising in our case, and it is our understanding
22 through discussions with Staff that they are about to
23 finalize their report and submit it.

24 We don't think CMS is foreclosed from raising
25 issues that are not bounded by the contracts that were

0049

1 in effect historically. Instead, we think we can amend
2 our complaint to address the very same issues, but as
3 the facts have changed over time. We would like the
4 opportunity to review Staff's report before amending
5 our complaint. We think it makes sense to do so, and
6 it doesn't make any sense to do otherwise. Rather than
7 have these cases go off in different directions,
8 different people pursuing different issues, we think it
9 makes sense to review the Staff report, perhaps comment
10 on it, as Staff counsel has suggested, and then take it
11 from there, see where the cases go.

12 I agree with Staff that the various dockets
13 do seem to interrelate. That's the point we attempted
14 to make, among others, in our earlier pleadings. This
15 concerns the regulatory implications of a noncore gas
16 business that Cascade Natural Gas is conducting. It
17 manifests itself in the complaint docket. It manifests
18 itself in the consolidated dockets that are up for
19 prehearing after this one concludes. It only makes
20 sense for us to sit and sort through these issues
21 reflected on the Staff report and then try to make
22 sense out of these various dockets and hopefully come
23 up with perhaps a stipulated set of facts, a narrowing
24 of the issues, and perhaps through discussions, maybe
25 some semblance of a consensus resolution of these

0050

1 issues.

2 JUDGE MACE: Mr. Trautman, does the Staff
3 report touch on simply the existing contracts?

4 MR. TRAUTMAN: No. That's the question that
5 I was going to raise. Staff's report looks at both the
6 existing contracts but also forward-going, the current
7 contracts, and the affiliate option. So clearly, the
8 orders contemplate and refer to a Staff investigation
9 for Docket 061256. Staff is also intending to do a
10 similar investigation in the other dockets for which
11 reading the Commission's orders, the procedural
12 parameters are not quite as clear-cut, so we envisioned
13 a report that addresses both aspects. Now, I don't
14 know how the Commission intends to handle that.

15 JUDGE MACE: I'm a little confused by what
16 you are saying because -- I'm asking you does the same
17 report involve both dockets?

18 MR. TRAUTMAN: Currently, yes, it does.

19 JUDGE MACE: So there are not two separate
20 reports.

21 MR. TRAUTMAN: No, we don't have two separate
22 reports.

23 JUDGE MACE: Will you have another report for
24 the tariff and the affiliate dockets?

25 MR. TRAUTMAN: I guess that depends on what

0051

1 the Commission requires. We had envisioned a single
2 report, but in light of the separation of the dockets,
3 Your Honor, I'm not clear what -- Staff envisioned
4 having a single report.

5 JUDGE MACE: Mr. ffitch, did you want to
6 address this at all?

7 MR. FFITCH: Not at this time, Your Honor,
8 thank you.

9 JUDGE MACE: Mr. Reichman?

10 MR. REICHMAN: Staff obviously is involved in
11 both proceedings and that's fine. I think we just need
12 to be careful here because CMS did move to intervene in
13 the tariff docket, and the Commission did deny that, so
14 I'm concerned about respecting what the Commission
15 intended of keeping these two issues separate, and
16 again, as I understand it, one is sort of
17 backward-looking at existing contracts and one is
18 forward-looking, and the Commission was quite clear
19 that CMS was not an appropriate party to be involved in
20 the forward-looking docket, so Staff, I guess, can come
21 up with whatever report it thinks is appropriate, but I
22 just want to say that I'm concerned about a blending of
23 these issues when the Commission seemed to treat them
24 differently and treat them separately.

25 MR. TRAUTMAN: I just want to say one thing.

0052

1 Mr. Reichman keeps talking about a blending of the
2 issues, and there has been no showing of how the issues
3 in the two dockets differ. The chronology differs.
4 There is existing and future contracts, but the issues
5 of whether the rates are reasonable, whether there is
6 cross-subsidization, whether there is an undue
7 preference, from Staff's perspective, it's not at all
8 clear that the issues are different.

9 JUDGE MACE: Mr. Trautman, what I'm reading
10 is probably the same order that you have in front of
11 you, and what I see is that the Commission quite
12 clearly set apart the complaint proceeding from the
13 other two proceedings and indicated that CMS was not a
14 party to the tariff and the affiliate proceeding, and
15 so just on the face of the orders that I have in front
16 of me, I think that there is two separate proceedings
17 here and that we are going to go forward with two
18 separate proceedings. It may be that you have a report
19 that you will file in both proceedings, but it seems
20 pretty clear to me the Commission does not want to
21 consolidate these proceedings and it views these issues
22 as different in some way.

23 So we have to work out a schedule for the
24 complaint proceeding and then for the other
25 proceedings, and I can see that there may be some

0053

1 question about which goes first. I would hope that you
2 might be able to work that out yourselves using
3 whatever logic you can come up with. In one respect,
4 it seems it might be beneficial to have the complaint
5 -- well, strike that.

6 I can't determine from this order what the
7 Commission had in mind in terms of trying to coordinate
8 the schedules of the two proceedings. It seems like
9 the Commission may have expected that they would go
10 forward more or less together. That may not be doable.
11 So I guess I think you need to work on the schedule
12 first and try to bring your best wisdom to it, and then
13 if there is a dispute, I can either resolve it myself
14 or we can take it to the Commission. However, this is
15 two separate proceedings here, and the complaint
16 proceeding will have a different schedule than the
17 tariff and the affiliate proceeding.

18 MR. CAMERON: I'm not here today on behalf of
19 CMS to reparse out the different proceedings. Our only
20 point today is that it only makes sense to read the
21 Staff report before deciding how to proceed in either
22 case, and because that report is supposed to be
23 forthcoming next month before Christmas, it seems to
24 make sense to develop a schedule that first calls for
25 the release of the report, the review by the parties,

0054

1 and then rejoining in another prehearing conference to
2 decide where to go next.

3 JUDGE MACE: I'm not opposed to that per se,
4 but I would like to hear from Staff and other parties
5 whether they have anything to add to or comment on with
6 regard to your suggestion.

7 MR. TRAUTMAN: I think that sounds
8 reasonable. I would like a little opportunity to go
9 off the record and get the details down. The other
10 question is does the Commission have any preference of
11 how the report is filed, in other words, in the form of
12 testimony, in the form of a Staff report, without
13 having a particular witness's name?

14 JUDGE MACE: My immediate reaction would be
15 that there should be some witness who sponsors the
16 report but that the report itself could be an exhibit
17 to that witness's testimony, and I'm assuming you would
18 file that in this case since it appears to be that the
19 Commission indicated that Staff would participate, and
20 I suppose if you want to file it in the other case,
21 that's appropriate too. I would have to go back and
22 look at the Commission's order to see what provision
23 there might be for that.

24 MR. TRAUTMAN: My understanding of the exact
25 procedure in the other case is that it's not clearly

0055

1 delineated.

2 JUDGE MACE: Right. Mr. ffitch, you had your
3 hand raised.

4 MR. FFITCH: Thank, Your Honor. I did want
5 to say that Public Counsel having heard the proposal
6 for first seeing the Staff report and then essentially
7 deciding how to proceed with the two dockets, we
8 believe that's a reasonable approach and an efficient
9 approach to this, so I do think it would also be
10 helpful for us to talk a bit off the record, but our
11 first reaction to that is it seems to be a good next
12 step in the docket?

13 JUDGE MACE: How about Mr. Finklea.

14 MR. FINKLEA: We are in agreement with
15 Mr. ffitch that what Mr. Cameron has proposed sounds
16 like a reasonable way to proceed. Given we are waiting
17 for a Staff report and as a representative of current
18 customers who are obviously interested in both the
19 complaint proceeding and the tariff proceeding, to set
20 the schedule after we have seen the Staff report
21 strikes us as reasonable.

22 JUDGE MACE: Mr. Reichman?

23 MR. REICHMAN: Thank you, Your Honor. We are
24 happy to wait and see Staff's report before we set a
25 further schedule. I'm just a little bit questioning

0056

1 the form of it and the fact that whether it be
2 testimony or not and how that squares with the fact
3 that CMS has the burden, and the Commission was pretty
4 clear that Staff did not have the burden in this case,
5 so I'm just not sure how that should be treated.

6 JUDGE MACE: I think if we make a provision
7 for Staff to file this report understanding that it's
8 what the Commission required and that the burden isn't
9 affected by it that it would be acceptable to have
10 Staff file it that way, but if anybody has a
11 reservation about it, they should say so.

12 MR. REICHMAN: I'm not clear that the
13 Commission required Staff to file a report here in
14 Order 06 in Paragraph 52, and Commission refers to the
15 prior order and were they allowed Staff to pursue an
16 investigation if CMS did not go forward with its
17 complaint. Then it later said, "Given CMS's intent to
18 amend its complaint and adjudicate its claims, we
19 expect Staff to fully participate in the proceeding by
20 investigating the issues CMS raises and recommending
21 appropriate action." So I'm not sure that the
22 Commission necessarily required Staff to prepare an
23 independent investigation or file it clearly. They
24 wanted Staff to be involve in investigating the claims.

25 JUDGE MACE: You don't have an objection to

0057

1 Staff filing a report though, if that's the form their
2 investigation takes.

3 MR. REICHMAN: We do not.

4 MR. TRAUTMAN: Staff intends to do so. Let
5 me just ask again. So a point of clarification, is the
6 investigative report you envision, this will only be --
7 is the report in this docket, is it to be a single
8 report that would include issues in the other docket
9 and you would only look at those portions that pertain
10 to 1256, or does the Commission envision two reports,
11 perhaps?

12 JUDGE MACE: I can't speak for the Commission
13 itself. I think you should file your report according
14 to your reading of the Order. My understanding of this
15 case, however, is that it's relatively narrowly
16 defined, and whatever your report says about issues
17 that are in this case probably won't be able to be
18 considered in this case.

19 MR. REICHMAN: Your Honor, I would certainly
20 agree with that reading, and it might make it simpler
21 and avoid disputes down the road if Staff could limit
22 the report in this case to the issues in this case, and
23 then if Staff wants to file another report or submit
24 other testimony in the other case, they could keep
25 those issues separate. Otherwise, I think we run the

0058

1 risk of trying to unwind something and keep the issues
2 in the appropriate boxes.

3 MR. CAMERON: I do not agree with that. We
4 have always felt as Staff has if there was a set of
5 issues here touching on statutory responsibilities of
6 the Commission regarding discrimination preference, a
7 variety of other statutory requirements, affiliates,
8 I'm not sure they cut that easily.

9 I think Staff would have discretion to file
10 the report that they see fit, and the parties after
11 reviewing it can recommend to the Commission the
12 appropriate action, the appropriate treatment of the
13 report, but it makes no sense to divide a book in two
14 and constrain Staff from following its investigative
15 leads where it sees fit.

16 JUDGE MACE: Mr. Trautman, is the report
17 actually ready at this time?

18 MR. TRAUTMAN: No, it's not ready to be filed
19 at this time.

20 JUDGE MACE: So if I said at this time you
21 need to file a report in this docket so it only covers
22 the issues in this docket, it wouldn't mean that you
23 would have to unthread pieces --

24 MR. TRAUTMAN: It's not in completed form.
25 I'm not sure I can say we wouldn't have to unthread

0059

1 anything, but the report itself is intended to be filed
2 within about a month.

3 JUDGE MACE: As we've been discussing it and
4 I've been hearing counsel, I am concerned that if your
5 report covers issues that are not pertinent to this
6 docket that it will present us with a lot of problems,
7 especially in light of the fact that the Commission to
8 me seems fairly certain, based on how it handled this
9 separation of these two dockets. So I'm going to
10 require that the report address only issues in this
11 docket, and if you want to file a report in the other
12 docket, you may do so, but they should cover the issues
13 in those dockets.

14 MR. TRAUTMAN: Could we then on that note
15 have some time to go off the record?

16 JUDGE MACE: Yes, certainly, and I'm assuming
17 you will have a date for the filing, and I would like
18 you also to determine a date for the next prehearing
19 conference so we are not without some target date for
20 our next hearing. I'm assuming you won't develop a
21 full schedule at this point. Anything else? How much
22 time? We have until 2:30 because at 2:30 is when the
23 other docket is scheduled to go on the record.

24 (Discussion off the record.)

25 JUDGE MACE: So what have you come up with

0060

1 for a schedule? Who will address that?

2 MR. TRAUTMAN: I think I can do that, Your
3 Honor. I believe what we've agreed to is by December
4 28th of 2007, Staff will release its investigative
5 report in this docket, which is 061256. January 25th,
6 2008, would be the deadline for parties in the docket
7 to submit written comments regarding the investigative
8 report. February 15th, 2008, Staff would release its
9 final report after review of the parties' comments.
10 CMS will amend its complaint by February 29th, 2008,
11 and a prehearing conference would be on Friday, March
12 7th, if that fits with the Commission's schedule, to
13 determine further procedure.

14 JUDGE MACE: Everybody agrees to that? You
15 too, Mr. Finklea?

16 MR. FINKLEA: Yes, ma'am.

17 JUDGE MACE: That sounds acceptable to me, so
18 I don't think we need to reread it since it's on the
19 record, and if there is nothing else, then --

20 MR. REICHMAN: I would like to raise one
21 issue. The comments that we filed, we are not
22 anticipating that those will be filed as testimony,
23 just as comments on the report, and the reason I say
24 that is we are not going to have the amended complaint
25 until much later, so I don't think we should be

0061

1 required to file testimony addressing the issues.

2 JUDGE MACE: I assume that these comments are
3 presumably to be addressed to Staff if Staff is going
4 to file a final report and that the comments would not
5 be testimony.

6 MR. REICHMAN: I just wanted to clarify that.
7 That was my assumption as well.

8 JUDGE MACE: Anything else?

9 MR. FFITCH: I wanted to clarify then that
10 the comments are not filed in the docket but they go to
11 Staff directly? Is that the expectation?

12 JUDGE MACE: That's an interesting question.

13 MR. CAMERON: I would suggest they be
14 submitted to Staff with copies to the other parties.
15 Our purpose is to advise Staff about anything we think
16 should be changed in the draft report, so it is
17 directed to them. They can deal with it as they see
18 fit or ignore the comments if they choose.

19 JUDGE MACE: I can't think what evidentiary
20 value those comments would have for the proceeding. I
21 assume that if you are going to file testimony, the
22 testimony will be reflecting your position in the
23 proceeding and the comments are simply directed to
24 Staff's report.

25 MR. REICHMAN: When Staff releases the draft,

0062

1 I guess we'll call it, on 12/28, that would not be
2 filed? That would simply be served on the parties, or
3 would that be filed as well?

4 MR. TRAUTMAN: We intended to file that.

5 JUDGE MACE: I understood that it would be
6 filed. It's kind of odd. I have to say I haven't seen
7 this procedure before at the Commission in a case of
8 this nature, but it doesn't mean it hasn't happened or
9 isn't appropriate.

10 Well, as I think about it, if Staff's final
11 report is what it's going to rest itself on, perhaps
12 the draft report doesn't need to be filed in the docket
13 but simply served on the parties, but I'm open to --

14 MR. TRAUTMAN: Then the final report would be
15 filed with the Commission, and it could be filed as an
16 attachment to testimony; correct?

17 JUDGE MACE: Correct.

18 MR. REICHMAN: Your Honor, I think I would
19 agree with that. I think if Staff had filed the
20 report, we might like to have our comments on file just
21 as a matter of public record, but if Staff is only
22 going to circulate the draft, then I don't think we
23 need to have out comments on file.

24 JUDGE MACE: I suppose if it became an issue
25 in the proceeding that the Commission could ask that

0063

1 the earlier documents be filed as exhibits. So in
2 order not to clutter the record, let's just at this
3 point just call for the filing of Staff's final report
4 attached to testimony.

5 MR. CAMERON: If something has to be filed
6 later on, the situation can always be recovered.

7 JUDGE MACE: Right. Very well then.
8 February 15th is the date for the filing of the final
9 Staff report. CMS will file its amended complaint on
10 February 29th, and there will be a prehearing on
11 March 7th. Anything else? Then we are adjourned.
12 Thank you.

13 (Prehearing adjourned at 2:17 p.m.)

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