

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

TREE TOP, INC.,

Complainant,

v.

CASCADE NATURAL GAS CORP.,

Respondent.

DOCKET UG-210745

ORDER 01

PREHEARING CONFERENCE  
ORDER

- 1 **NATURE OF PROCEEDING.** On September 24, 2021, Tree Top, Inc., (Tree Top) filed with the Washington Utilities and Transportation Commission (Commission) a formal complaint (Complaint) against Cascade Natural Gas Corporation (Cascade). The Complaint alleges that Cascade imposed an exorbitant overrun entitlement penalty on Tree Top that it asserts is not fair, just, or reasonable. On October 25, 2021, Cascade filed its Answer to the Complaint (Answer).
- 2 **CONFERENCE.** The Commission convened a virtual prehearing conference on November 17, 2021, before Administrative Law Judge Andrew J. O’Connell.
- 3 **APPEARANCES.** Chad M. Stokes, of Cable Huston LLP, Portland, Oregon, represents Tree Top. Lisa Rackner and Jocelyn Pease, of McDowell Rackner & Gibson PC, represent Cascade. Contact information for the representatives is attached as Appendix A to this Order.
- 4 **MOTION TO DISMISS.** In its Answer, Cascade requested the Commission dismiss the Complaint and determine that Cascade appropriately billed Tree Top for the entitlement overrun penalties, citing the filed rate doctrine and asserting that Tree Top failed to state a claim for which relief may be granted as affirmative defenses (Motion).<sup>1</sup> On November 9, 2021, Tree Top filed a Response to Cascade’s Motion and, during the

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<sup>1</sup> Answer at 10-11, 12, ¶¶ 42-43, 50.

prehearing conference, the Parties had an additional opportunity to present their positions.

5 The Commission agrees with Tree Top that Cascade’s Motion should be denied. The Commission determines that the Motion is not appropriately included in or supported by the Answer and the rationale underpinning Cascade’s argument, while not foreclosed, is not persuasive to justify dismissal at this stage of the proceeding. The Commission may provide relief to customers who have been charged an unreasonable rate or who have not been charged the lawful rate.<sup>2</sup> The Complaint requests relief for charges of allegedly unreasonable, or exorbitant, rates. Accordingly, we determine dismissal is inappropriate.

6 **PROCEDURAL SCHEDULE.** The Parties presented an agreed procedural schedule at the prehearing conference, which establishes a deadline for Cascade’s expected motion for summary determination. After a ruling on Cascade’s expected motion, the Parties request that the Commission convene a second prehearing conference, if necessary. The Commission adopts the Parties’ proposed procedural schedule as presented and discussed at the prehearing conference. It is attached to this Order as Appendix B.

7 **DISCOVERY.** The Commission finds that this docket meets the criteria of WAC 480-07-400(2)(b) and that the Parties may conduct discovery pursuant to the Commission’s discovery rules in WAC 480-07-400 – 425. The Commission urges the Parties to work cooperatively together to avoid having to bring discovery matters forward for formal resolution.

8 **DOCUMENT FILING AND SERVICE REQUIREMENTS.** Parties must file and serve all pleadings, motions, briefs, and other pre-filed materials in compliance with all of the following requirements:

(a) Parties must submit electronic copies of all documents by 5 p.m. on the filing deadline established in the procedural schedule (or other deadline as applicable) unless the Commission orders otherwise. Parties must comply with WAC 480-07-140(6) in formatting, organizing, and identifying electronic files.

(b) The Commission accepts only electronic versions of documents for formal filing. Parties must submit documents electronically through the Commission’s web portal ([www.utc.wa.gov/e-filing](http://www.utc.wa.gov/e-filing)). If a party is unable to

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<sup>2</sup> RCW 80.04.220; RCW 80.04.230; RCW 80.04.240.

use the web portal to submit documents for filing, the Commission will accept a submission via email to [records@utc.wa.gov](mailto:records@utc.wa.gov), provided that the email:

(1) explains the reason the documents are not being submitted via the web portal, and (2) complies with the requirements in WAC 480-07-140(5)(b). No paper copies of any pleading need to be filed.

(c) Documents filed with the Commission must conform to the formatting and other requirements in WAC 480-07-395 and WAC 480-07-460, and must comply with the requirements in WAC 480-07-160 and the protective order in this docket for documents that include information designated as confidential.

(d) Parties must electronically serve the other Parties and provide courtesy electronic copies of filings to the presiding administrative law judge ([andrew.j.oconnell@utc.wa.gov](mailto:andrew.j.oconnell@utc.wa.gov)) by 5 p.m. on the filing deadline unless the Commission orders otherwise. If Parties are unable to email copies, they may furnish electronic copies by delivering them on a flash drive only.

9 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission has limited ability to provide dispute resolution services. If you wish to explore those services, please contact Rayne Pearson, Director, Administrative Law Division (360-664-1136).

10 **NOTICE TO PARTIES: A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of this Order, in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this docket, subject to Commission review.**

Dated at Lacey, Washington, and effective November 19, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ *Andrew J. O'Connell*

ANDREW J. O'CONNELL  
Administrative Law Judge

**APPENDIX A  
PARTIES' REPRESENTATIVES  
DOCKET UG-210745**

<b>PARTY</b>	<b>REPRESENTATIVE</b>	<b>PHONE</b>	<b>E-MAIL</b>
Tree Top, Inc.	Chad M. Stokes Cable Huston LLP 1455 SW Broadway, Suite 1500 Portland, OR 97201	(503) 224-3092	<a href="mailto:cstoke@cablehuston.com">cstoke@cablehuston.com</a>
	Terri Bauman 220 E. Second Ave. P.O. Box 248 Selah, WA 98942-0248	(509) 698-1434	<a href="mailto:terri.bauman@treetop.com">terri.bauman@treetop.com</a>
	Monica Taylor		<a href="mailto:monica.taylor@treetop.com">monica.taylor@treetop.com</a>
Cascade Natural Gas Corp.	Lisa Rackner McDowell Rackner & Gibson PC 419 SW 11th Ave., Suite 400 Portland, OR 97205	(503) 595-3925	<a href="mailto:lisa@mrg-law.com">lisa@mrg-law.com</a>
	Jocelyn Pease		<a href="mailto:jocelyn@mrg-law.com">jocelyn@mrg-law.com</a>
			<a href="mailto:alisha@mrg-law.com">alisha@mrg-law.com</a>
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	Michael Parvinen Director of Regulatory Affairs Cascade Natural Gas Corporation 8113 West Grandridge Blvd. Kennewick, WA 99336-7166	(509) 734-4593	<a href="mailto:michael.parvinen@cngc.com">michael.parvinen@cngc.com</a>
		<a href="mailto:cngcregulatory@cngc.com">cngcregulatory@cngc.com</a>	

**APPENDIX B  
PROCEDURAL SCHEDULE  
DOCKET UG-210745**

<b>EVENT</b>	<b>DATE</b>
Initial Discovery Requests	<b>November 22, 2021</b>
Cascade's Amended Complaint	<b>November 23, 2021</b>
Cascade's Motion for Summary Determination <sup>1</sup>	<b>December 17, 2021</b>
Tree Top's Response to Motion for Summary Determination	<b>January 6, 2022</b>
Second Virtual Prehearing Conference	<b>TBD, if necessary</b>

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<sup>1</sup> At the prehearing conference, the Parties indicated they would negotiate and present a list of agreed facts.