

0064

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3	COST MANAGEMENT SERVICES,)	
	INC.,)	
4)	
	Complainant,)	
5)	
	vs.)	DOCKET NO. UG-061256
6)	Volume IV
	CASCADE NATURAL GAS)	Pages 64 - 102
7	CORPORATION,)	
)	
8	Respondent.)	

9

10 A settlement conference in the above matter
11 was held on March 4, 2008, at 10:00 a.m., at 1300
12 South Evergreen Park Drive Southwest, Olympia,
13 Washington, before Administrative Law Judge ANN
14 RENDAHL, CHAIRMAN MARK SIDRAN, COMMISSIONERS PATRICK J.
15 OSHIE, PHILIP B. JONES.

16

The parties were present as follows:

17

18 COST MANAGEMENT SERVICES, INC., by JOHN A.
19 CAMERON, Attorney at Law, Davis Wright Tremaine, LLP,
1300 Southwest Fifth Avenue, Suite 2300, Portland,
Oregon 97201; telephone, (503) 778-5206.

20

21 CASCADE NATURAL GAS CORPORATION, by LAWRENCE
22 REICHMAN, Attorney at Law, Perkins Coie, 1120 Northwest
Couch Street, Tenth Floor, Portland, Oregon 97209;
telephone, (503) 727-2000.

23

24 WASHINGTON UTILITIES AND TRANSPORTATION
25 COMMISSION, by GREGORY J. TRAUTMAN, Assistant Attorney
General, 1400 South Evergreen Park Drive Southwest,
Post Office Box 40128, Olympia, Washington 98504;
telephone, (360) 664-1187.
Kathryn T. Wilson, CCR

0065

1 PUBLIC COUNSEL, by SARAH A. SHIFLEY,
Assistant Attorney General, 800 Fifth Avenue, Suite
2 2000, Seattle, Washington 98104; telephone, (206)
464-6595.

3
4 NORTHWEST INDUSTRIAL GAS USERS, by EDWARD A.
FINKLEA, Attorney at Law, Cable, Huston, Benedict,
Haagensen & Lloyd, LLP, 1001 Southwest Fifth Avenue,
5 Suite 2000, Portland, Oregon 97204; telephone, (503)
224-3092.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0066

1

2

INDEX OF EXHIBITS

3

4

EXHIBIT:

ADMITTED:

5

6

1 - 8

69

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0067

1 JUDGE RENDAHL: Good morning. I'm Ann
2 Rendahl, administrative law judge with the Washington
3 Utilities and Transportation Commission in Washington
4 presiding this morning with Chairman Mark Sidran,
5 Commissioners Patrick Oshie and Philip Jones.

6 We are here to have a hearing on a settlement
7 agreement this Tuesday, March 4th, 2008. This
8 settlement agreement is intended to resolve all
9 disputed issues in four dockets involving Cascade
10 Natural Gas Corporation's unbundled retail sales of
11 natural gas, and the dockets are Docket UG-061256,
12 which is Cost Management Services', Inc., or CMS's,
13 complaint against Cascade; Docket UG-070332, which is
14 Cascade's tariff filing to reestablish tariffs
15 authorizing the Company to make unbundled retail sales
16 to noncore customers; Docket UG-070639, which concerns
17 Cascade's notice to reinstate its affiliate, CGC
18 Energy, Inc., to make unbundled retail sales after the
19 Commission suspended the tariff filing in Docket
20 UG-070322, and finally, Docket UG-072337, which is the
21 Commission staff's complaint against Cascade alleging
22 violation of the settlement entered into and approved
23 by this commission in Cascade's rate case in Docket
24 UG-060256, so a lot of numbers and dockets involved.

25 And I'll note for the record that while two

0068

1 of the dockets, the tariff filing and UG-070332, and
2 the affiliate filing in UG-070639 have been
3 consolidated. The other dockets have not. So while
4 they are not formally consolidated for hearing or
5 decision, we will be considering them together for
6 hearing today because the Settlement addresses all four
7 dockets.

8 So before we go any farther, let's take
9 appearances from the parties beginning with the
10 Company.

11 MR. REICHMAN: Lawrence Reichman for Cascade
12 Natural Gas Corporation.

13 MR. CAMERON: John Cameron here for Cost
14 Management Services.

15 MR. FINKLEA: Ed Finklea for the Northwest
16 Industrial Gas Users.

17 MS. SHIFLEY: Sarah Shifley for the office of
18 Public Counsel.

19 MR. TRAUTMAN: Greg Trautman, assistant
20 attorney general for Commission staff.

21 JUDGE RENDAHL: Is there anyone on the bridge
22 line who wishes to make an appearance this morning?
23 Okay.

24 At this point, while we were off the record
25 we discussed the fact that the parties have stipulated

0069

1 to exhibits for this settlement hearing. There are
2 eight exhibits, including the Settlement agreement and
3 the various exhibits to the Settlement agreement, the
4 narrative statement, and responses to Bench requests.
5 Do the parties have any objection to admitting Exhibits
6 1 through 8 into the record?

7 MR. REICHMAN: No objection.

8 MR. TRAUTMAN: No, Your Honor.

9 JUDGE RENDAHL: Then the exhibits numbered
10 one through eight and identified in the stipulated
11 exhibit list will be admitted into the record. Do
12 counsel for any of the parties wish to make a brief
13 statement before we bring the witnesses forward?

14 MR. REICHMAN: Your Honor, I would be happy
15 to make a brief statement on behalf of the parties just
16 to put the Settlement in a bit of context, if that
17 would be helpful.

18 JUDGE RENDAHL: Thank you, Mr. Reichman.

19 MR. REICHMAN: Good morning. I'm just going
20 to make a brief statement about the background of the
21 disputes and the dockets and how the Settlement
22 addresses those issues, and we are available for
23 questions as will be the panel of witnesses.

24 We think that this settlement achieves a
25 reasonable resolution of issues in four contested

0070

1 proceedings. The first docket that kind of started
2 this whole thing was Docket UG-061256 was the complaint
3 of Cost Management Services, or CMS, against Cascade.
4 This complaint challenged Cascade sale of gas to
5 transportation customers on an unbundled basis. CMS
6 claimed that these sales should be made pursuant to
7 tariffs or special contracts that be filed with the
8 Commission, and they also raised concerns that these
9 services may disadvantage core customers.

10 In Order 03 issued in January of 2007, the
11 Commission required Cascade to file tariffs to govern
12 these services. In Order 06 issued last fall, the
13 Commission held that CMS could continue to pursue
14 certain claims that there was a disadvantage to core
15 customers from the sales. The next thing was that
16 Cascade filed tariffs as required by Order 03 in that
17 docket. Cascade filed those tariffs in February of
18 2007, and the Commission suspended those tariffs in
19 March of 2007, and those tariffs are the subject of
20 Docket UG-070332.

21 The next thing that happened was in view of
22 the suspension of the tariffs and the immediate
23 expiration of some its gas supply contracts, Cascade
24 chose to reactivate a subsidiary called CGC Energy to
25 be able to continue to make these sales and filed that

0071

1 information as well as a revised and updated cost
2 allocation manual with the Commission. That was
3 docketed as UG-070639, which was also consolidated with
4 the previous docket, the tariff docket.

5 The next thing that happened was in December
6 of last year, the Commission served a complaint on
7 Cascade claiming that making these gas supply sales
8 through CGC Energy and not sharing the revenue from
9 those sales with Cascade's customers violated this
10 commission's order approving the Settlement in
11 Cascade's last rate case, which was Docket UG-060256.

12 So those are the proceedings that are in
13 front of us, and we think that the Settlement achieves
14 a reasonable resolution of all of the issues in all of
15 these proceedings. I'm just going to summarize the
16 high points of the Settlement. The first is the
17 wind-down and termination of Cascade's gas supply
18 business. While Cascade believes that this business
19 was in the interest of its customers and consistent
20 with all applicable legal requirements, Cascade
21 understands that Staff has some concerns that this
22 business should not be conducted in a way that may harm
23 core customers. I think Cascade realized that this
24 would require greater Commission oversight over the
25 sales in the future, and Cascade was willing to agree

0072

1 that it would wind down and terminate this business by
2 October 31st of this year.

3 Termination of this business resolves the
4 issues raised in CMS's complaint and any concerns that
5 may have been raised resulting from Staff's
6 investigation. So it addresses all the issues in the
7 first docket, the CMS complaint docket. It also moots
8 the need to review Cascade's tariff. The tariff we are
9 asking the Commission to approve will be in effect only
10 through October 31st, and the parties have agreed that
11 the terms are reasonable.

12 The second aspect of the Settlement is that
13 there will be a sharing of the revenue that CGC Energy
14 has earned since April 1st, 2007, when it started to
15 make these gas sales. Cascade has agreed to share all
16 of the net margins of CGC or 50 percent of the net
17 margins on the same terms as the rate case settlement,
18 and this puts customers in the same position as if
19 Cascade had continued to make those sales, as if the
20 tariffs had not existed.

21 In addition, Cascade will defer an additional
22 \$24,000 to address an issue raised by Public Counsel
23 that there should be interest or penalties. There is a
24 possibility that Cascade is trying to sell this book of
25 business. If a sale is achieved before October 31st,

0073

1 Cascade will share 50 percent of those net revenues.
2 So this aspect of the Settlement resolves the need to
3 review the arrangements between Cascade and CGC Energy
4 as well as any further proceedings on the Commission's
5 latest complaint.

6 The third aspect are certain revisions to
7 Cascade's gas procurement practices for core customers.
8 Staff had raised some concerns in reviewing the gas
9 procurement practices and the gas supply practices,
10 basically trying to insure that core customers were
11 getting the benefit of the best prices for gas supply.
12 With Staff's support, Cascade will further revise its
13 gas procurement practices in order to provide core
14 customers greater access to Rocky's Supply, which
15 recently has been the cheaper source of gas.

16 And then finally, Cascade has agreed to
17 release some excess capacity. This is pipeline
18 capacity for summer months only, and Cascade has also
19 agreed to give CMS advance notice of the posting of
20 that release so that they will have an opportunity to
21 bid on that on the pipeline's electronic bulletin
22 board. Cascade and CMS have discussed this release
23 with counsel and believe that these releases are
24 consistent with all applicable FERC requirements and
25 have agreed to hold customers harmless if they are not.

0074

1 That provision was in response to a concern by Public
2 Counsel as to they just wanted to make sure this was
3 consistent with FERC requirements and make sure the
4 customers were not harmed by this.

5 So in conclusion, we ask the Commission to
6 approve the Settlement and close all of these four
7 dockets. Specific approvals that we are asking the
8 Commission grant as well are to approve the revised
9 tariffs, which are Exhibit A to the Settlement
10 agreement, Exhibit 3 for the purposes of this
11 proceeding, and in addition for the Commission to
12 approve the transfer of the contracts from CGC Energy
13 to Cascade as an affiliate transaction so that the
14 business can during the wind-down phase being conducted
15 by Cascade, the revenues there will be shared pursuant
16 to the rate case settlement.

17 So that's all I have. I realize this was
18 kind of a high-level summary. We were happy to bring
19 the panel up to answer any questions you may have, and
20 counsel is available to answer any legal questions you
21 might have.

22 JUDGE RENDAHL: Thank you very much. So at
23 this point, let's bring the panel forward. So can we
24 fit all four witnesses at this front table here?
25 Let's go off the record for a moment.

0075

1 (Discussion off the record.)

2 JUDGE RENDAHL: Good morning. Starting with
3 you, Mr. Stoltz, if you could please state your name
4 and your address for the record and the party you are
5 representing.

6 MR. STOLTZ: I'm Jon D. Stoltz of Cascade
7 Natural Gas, 222 Fairview Avenue North, Seattle,
8 Washington.

9 JUDGE RENDAHL: Mr. Parvinen?

10 MR. PARVINEN: Michael Parvinen,
11 P-a-r-v-i-n-e-n, of the Commission, 1300 Evergreen Park
12 Drive Southwest, Olympia, 98504.

13 JUDGE RENDAHL: Mr. Schoenbeck?

14 MR. SCHOENBECK: Don Schoenbeck here on
15 behalf of Cost Management Services. My business
16 address is 900 Washington, Suite 780, Vancouver,
17 Washington, 98960.

18 JUDGE RENDAHL: Ms. Pyron?

19 MS. PYRON: Paula Pyron, P-y-r-o-n, on behalf
20 of Northwest Industrial Gas Users. My business address
21 is 4113 Wolfberry Court, Lake Oswego, Oregon,
22 97035-1827.

23 JUDGE RENDAHL: Let's be off the record for a
24 moment. I need to clarify a technical difficulty here.

25 (Discussion off the record.)

0076

1 JUDGE RENDAHL: Back on the record. The
2 bridge line is not available because somebody has their
3 phone on hold, and when that happens, we have lovely
4 music on the bridge line that will interrupt the
5 hearing here, so the bridge line is off, and I think
6 we've resolved the issue of the microphones as well.
7 With that, would all four of you please raise your
8 right hands?

9

10 Whereupon,

11

THE PANEL,

12 having been first duly sworn, were called as witnesses
13 herein and were examined and testified as follows:

14

15 JUDGE RENDAHL: Let's go ahead. First I
16 guess I'll turn to the commissioners and ask if they
17 have any questions for the witnesses. Mr. Jones?

18

19 COMMISSIONER JONES: I'll start off. Good
20 morning, everybody. Can you hear me? I'm going to
21 first go to Exhibit A to the wind-down plan time line
22 and explore this issue of purchasing the book. I think
23 the agreement calls for Cascade providing each customer
24 with a complete list of third-party marketers that are
25 currently providing this type of service in its service
area. Has that been done yet?

0077

1 MR. STOLTZ: No. We have not given them the
2 complete list. We were waiting for Commission approval
3 before doing so. We are prepared to do that promptly.

4 COMMISSIONER JONES: Can you provide me with
5 any idea of how big the universe of third-party
6 marketers is in your service area?

7 MR. STOLTZ: It is not large. I think it's
8 four or five vendors that currently provide these type
9 services to our customers.

10 COMMISSIONER JONES: Can you define "book"
11 for me in layperson terms? I think it's outstanding
12 contracts for supply as well as transport capacity. If
13 you could define "book" for me.

14 MR. STOLTZ: The book would be the sales
15 contracts to the customers with the underlying gas
16 supply contracts and capacity release contracts.

17 COMMISSIONER JONES: So you are waiting for
18 this commission to act on the Settlement agreement, and
19 at that point, you intend to provide that list of
20 third-party marketers.

21 MR. STOLTZ: Yes, that's correct. We will be
22 providing the list of third-party marketers to our
23 customers who are currently buying from us.

24 COMMISSIONER JONES: Then in terms of the
25 time line -- this is mainly for Cascade -- there is

0078

1 reference in the wind-down plan time line to the
2 3/31/08 date for contracts expiring by that date, and
3 then as Counsel suggested, there is the November 1 date
4 that you just referenced as the final time line by
5 which the wind-down plan would be finished. So what is
6 the significance of the March 31 date as a time line to
7 get the book, either Cascade retaining the book or
8 Cascade selling the book?

9 MR. STOLTZ: Certain sales contracts expire
10 on March 31st. We have agreed not to renew those on
11 April 1, so it's imperative that our customers know
12 that Cascade will not be offering renewals and that
13 they will have to acquire their services from a
14 third-party marketer, or if we sell the book, we will
15 let them know who is purchasing the book, and those
16 customers would have the option of signing up with a
17 new marketer who now owns the book or buying from one
18 of the other vendors.

19 COMMISSIONER JONES: Is it a substantial part
20 of the outstanding book that expires, the contracts
21 that expire on Mach 31st?

22 MR. STOLTZ: I haven't done an exact tally,
23 but approximately half of the contracts will be
24 expiring on the 31st.

25 COMMISSIONER JONES: That's all I have on

0079

1 that subject.

2 JUDGE RENDAHL: Are there any other questions
3 from the commissioners?

4 COMMISSIONER OSHIE: I had a follow-up, but
5 do you have some questions?

6 JUDGE RENDAHL: I had a follow-up on this one
7 point. Mr. Stoltz, if the Commission approves the
8 Settlement agreement, how much time between the order
9 approving and -- let me rephrase that. It was my
10 understanding on reading the Settlement that if the
11 Commission were to approve the Settlement agreement and
12 Cascade had not yet sold the book, then all of those
13 contracts would be transferred to Cascade. Is that
14 correct, or is there some other opportunity for Cascade
15 to sell the book to another marketer?

16 MR. STOLTZ: We would transfer those
17 contracts back to Cascade that are currently served by
18 CGC Energy on approval of tariffs, so we would do that
19 as quickly as the tariffs were approved. If was sold
20 the book beforehand, that would not be necessary. We
21 will just terminate the business on the effective date
22 of sales of the book, and that new marketer would take
23 over that. We wouldn't need the tariffs since we would
24 have no customers being served there.

25 JUDGE RENDAHL: At this point, you have not

0080

1 sold the book.

2 MR. STOLTZ: We have not. We have a couple
3 of interested parties who have expressed a number that
4 is better than the face value of the book, but we are
5 still in negotiations, so it's not sold.

6 JUDGE RENDAHL: Mr. Oshie?

7 COMMISSIONER OSHIE: I'll defer to the
8 chairman, not because he is the chairman, but I have a
9 few follow-up questions on some of the other matters
10 before us.

11 CHAIRMAN SIDRAN: I'll take your deference on
12 any grounds I can get it. I have a follow-up question
13 and then an unrelated question. With respect to the
14 four or five vendors, and you may not, Mr. Stoltz, be
15 the appropriate witness to answer this so I'll invite
16 any of the panel, but with regard to the four or five
17 other vendors that are in this market, are any others
18 similarly situated to CMS in terms of their lack of
19 monitoring access to the bulletin board; does anyone
20 know?

21 MR. STOLTZ: I'm not aware that any of the
22 other vendors would lack that capability. Certainly
23 the other vendors are fairly significant players. BP
24 is one of those, and they operate through ITI
25 Resources, which is selling these types of services for

0081

1 as long as Cascade has, which is over 20 years, so they
2 are very, very familiar with the bulletin board as well
3 as the customers.

4 CHAIRMAN SIDRAN: It may have been in the
5 material, but I don't think I saw it, but is there a
6 term to the capacity commitments that are going to be
7 released? In other words, how long does this last,
8 this contract for capacity?

9 MR. STOLTZ: The capacity releases that we've
10 agreed to this in this settlement are test for the
11 summer of '08 and the summer of '09, just those two.

12 CHAIRMAN SIDRAN: So after that takes place
13 then, let's say hypothetically CMS acquires this
14 capacity for those periods of time. After the summer
15 of '09, what happens.

16 MR. STOLTZ: Each year, as we have in the
17 past, we will evaluate whether we have any excess
18 capacity, and we will either enter into prearranged
19 deals with customers or release it on the bulletin
20 board for bid.

21 CHAIRMAN SIDRAN: So you will basically
22 retain the option after the summer of '09.

23 MR. STOLTZ: That's correct.

24 CHAIRMAN SIDRAN: I want to ask an unrelated
25 question, and this has to do with Paragraph 21-C of the

0082

1 Settlement agreement. It says, quote, The parties
2 agree that these revisions, referring to revisions to
3 the gas procurement strategy, and the steps to be taken
4 to implement such strategies are, quote, presumptively
5 prudent and appropriate as far as this overall
6 settlement.

7 I read that to mean that's an agreement among
8 the parties as to how they are going to view it. I
9 assume there is no intention to suggest that it has any
10 binding effect on the Commission's ultimate opinion
11 with respect to any issues that might arise with
12 respect to the prudence; am I right?

13 MR. SCHOENBECK: I would say that's correct.

14 MS. PYRON: I would also agree.

15 MR. PARVINEN: Since this language came from
16 Staff in this paragraph, we had in mind when it was
17 drafted, and that was based on what we know now, this
18 strategy is something that the parties agreed to on a
19 going-forward basis through the PGA process, Staff will
20 review that process at those particular times and make
21 recommendations if appropriate then.

22 CHAIRMAN SIDRAN: Okay. Well, I just wanted
23 to clarify that whatever you all think you are doing
24 with respect to agreeing prudence is not expected to be
25 adopted by the Commission as the Commission's opinion

0083

1 about prudence, and everyone is shaking their heads so
2 I will take that in an affirmative way. That's all I
3 have at this time. Thank you.

4 JUDGE RENDAHL: Commissioner Oshie?

5 COMMISSIONER OSHIE: Thank you, Judge
6 Rendahl. Let's go back to the questions about the
7 release capacity, and I just want to explore a couple
8 of areas with the Company and perhaps the parties if
9 they would like to participate in the dialogue, but
10 with regard to the release, Mr. Stoltz, and perhaps,
11 Mr. Schoenbeck, you would like to participate in this
12 as well, what's the significance of the 48-hour advance
13 notice when Cascade is to release capacity into the
14 summer of '08 or summer of '09?

15 MR. STOLTZ: It was designed to give CMS an
16 opportunity to know when it was going to be closed.
17 Since I do not have the electronic surveillance
18 automatic programming that would automatically pick up
19 those types of postings. We did not enter into a
20 prearranged deal with CMS because of some concerns that
21 somebody at the FERC level would complain that this was
22 a tying arrangement and that Cascade was getting more
23 than max value for the capacity by having it tied to a
24 settlement in a state docket, so that's why we did not
25 do a prearranged deal. The next best thing we could do

0084

1 for CMS would be to give them notification of when it
2 was going to be posted.

3 COMMISSIONER OSHIE: It's my understanding,
4 and perhaps this is more of a legal issue than a
5 contractual matter, but any prearranged deal would that
6 we entered into sometime in the future, maybe next
7 summer, for example. If you wanted to release capacity
8 to CMS, could that be done on a prearranged basis as
9 well as submitted to the electronic bulletin board for
10 bids by other parties as well?

11 MR. STOLTZ: Absolutely. Cascade has many
12 times done prearranged deals with certain vendors. The
13 thing that makes this one unique is it's tied to a
14 settlement.

15 COMMISSIONER OSHIE: Is there any magic to
16 the 48 hours, or does that put the Company on some
17 level playing field?

18 MR. STOLTZ: It was just the stated number so
19 it would be a known advance notice. No magic to it at
20 all.

21 COMMISSIONER OSHIE: So hypothetically,
22 Cascade wants to release capacity. CMS wants to bid --
23 let's put it that way -- on the release. They get 48
24 hours advance notice. Everyone else gets notice at the
25 time the capacity is officially released by Cascade?

0085

1 MR. STOLTZ: That's correct.

2 COMMISSIONER OSHIE: At that point then,
3 anyone who wants to bid, including CMS, may bid to
4 whoever the pipeline owner is, or maybe you will have
5 to explain that. I'm assuming this is -- what pipeline
6 are we talking about?

7 MR. STOLTZ: It's all Williams Northwest
8 Pipeline.

9 COMMISSIONER OSHIE: So then Northwest would
10 handle essentially the valuation of the bids, determine
11 their economic efficiency, and make a decision as to
12 who would be awarded or what entity would be awarded
13 the contract.

14 MR. STOLTZ: Yes. It's based on a
15 first-come-first-served basis provided that the
16 replacement shipper meets the worthiness.

17 COMMISSIONER OSHIE: So how is CMS not
18 advantaged if it's based on first-come-first-served
19 basis?

20 MR. STOLTZ: From what I understand, there
21 are programs that automatically pick up these bids and
22 place the response through the program, so it could be
23 pretty close to instantaneous as well, so there is no
24 guarantee that CMS will get this capacity.

25 COMMISSIONER OSHIE: Are there ever an

0086

1 opportunity for ties in this, and how are ties broken?
2 Maybe it's a different situation which there may be a
3 tie, if you will, and those replacement shippers in
4 their bid.

5 MR. STOLTZ: I'm not aware of any provision
6 that would qualify as a tie. I think it's
7 first-come-first-served on the response to the
8 electronic bulletin board of the pipeline. Maybe Don
9 has more information.

10 MR. SCHOENBECK: I just agree with that. In
11 the case of bidding the full as-billed rate, it would
12 be the first person to do it, and if you think in terms
13 of the parties are sophisticated enough to do the
14 electronic acquisitions at least on the power side, it
15 gets down to the millisecond. They are that quick in
16 making the bid occur, and for clients such as CMS that
17 doesn't have that capability, they may not necessarily
18 get the bid, and particularly with respect to when you
19 look at the releases, how they've been structured.
20 It's a series of releases, so CMS would have to go
21 through the releases at any given time sequentially, so
22 they are going through four different releases. So at
23 best, they maybe could get one out of four. So a
24 prearranged deal from CMS's point of view would
25 obviously be preferable, but there is a concern it be

0087

1 tied to the Settlement, but there is no guarantee that
2 CMS will get the release capacity.

3 COMMISSIONER OSHIE: If it actually goes to
4 the bulletin board?

5 MR. SCHOENBECK: Even a prearranged deal goes
6 to the bulletin board. So even if it would be
7 prearranged, there would still be notice given on the
8 bulletin board. So everything released from Cascade
9 goes to the bulletin board. If it's not a prearranged
10 deal, it would be a first come first serve.

11 COMMISSIONER OSHIE: Is there anything
12 stopping CMS and Cascade from entering into a
13 prearranged deal between the period in which it gets
14 notice 48 hours prior to the release and the release
15 point or time?

16 MR. SCHOENBECK: I thought that was an
17 intriguing question you raised. I'm not a lawyer, but
18 I don't think there would be. I don't know what
19 Cascade feels about that.

20 MR. STOLTZ: I too am not a lawyer so I
21 really do not address that from a legal aspect. My
22 legal advice is that there is a possibility that any
23 prearranged deal could have been tied back to the
24 settlement even if it's done post this approval, so we
25 would have strong reservations against doing something.

0088

1 COMMISSIONER OSHIE: Mr. Cameron?

2 MR. CAMERON: I believe I've been designated
3 to answer the legal questions with regard to the
4 capacity. I will just offer briefly the comment that
5 under the FERC regulations, a prearranged deal can be
6 arranged at any time, so it could have been done under
7 FERC rules before the settlement was negotiated or any
8 time up to the actual posting on the bulletin board.

9 What constrains us here is Cascade's concern,
10 which we think is a very rigid interpretation but we
11 honor it, that there might be a tie-in between the
12 capacity deal and this settlement, at least in the eyes
13 of some people, so we refrained from that. We avoided
14 doing what the Commission regulations allow and simply
15 gave CMS a little bit of advance notice to overcome the
16 electronic capabilities of others in the market, but
17 FERC regulations are pretty much wide open on
18 prearranged deals but for the special concern of this
19 case about a possible tie-in.

20 COMMISSIONER OSHIE: Thank you. Before I
21 leave this subject, let's go to a provision in the
22 release of capacity, Paragraph 22 of the Settlement
23 agreement under C, and I'll read the first clause.
24 "The posted capacity will not include provisions
25 regarding Cascade's credit worthiness requirements."

0089

1 Mr. Stoltz, can you explain what's intended by this
2 section, or Section C, but particularly that clause
3 within Paragraph C?

4 MR. STOLTZ: It's primarily indicating that
5 CMS does not have to pass Cascade's credit worthiness.
6 They already have to meet the credit requirements of
7 the pipeline. They will be the replacement shipper.

8 Cascade still holds the contract. We do have
9 some exposure that if the pipeline happened to approve
10 a replacement shipper who later defaulted that the
11 contract would fall back to us. So in certain
12 instances, we have required that the replacement
13 shipper also pass our credit test, and in this case, we
14 are waiving that.

15 COMMISSIONER OSHIE: Essentially your
16 testimony is that there are two levels of a credit
17 test, if you will. One established by the pipeline and
18 the other established perhaps by the Company if it
19 chooses to do so.

20 MR. STOLTZ: Yes, that's correct.

21 COMMISSIONER OSHIE: How would the Company's
22 credit-worthiness test be different from the pipeline's
23 credit-worthiness test?

24 MR. STOLTZ: I'm sorry; I can't answer that.
25 I've not looked at the pipeline's credit worthy

0090

1 criteria that closely.

2 COMMISSIONER OSHIE: Maybe I'm making an
3 assumption here, but I would assume the pipeline's
4 credit-worthiness test may be less stringent than the
5 Company's because under any circumstance, the Company
6 is going to be responsible for the performance of the
7 underlying contract and if the replacement shipper
8 should default.

9 MR. STOLTZ: That assumption could be true.
10 I just don't know.

11 COMMISSIONER OSHIE: So the exposure here by
12 this provision is that it's possible that the
13 replacement shipper, not CMS, would be awarded the
14 contract by the pipeline, and that particular placement
15 replacement shipper may not have met Cascade's credit
16 requirements if it had chosen to include that in the
17 posting.

18 MR. STOLTZ: Yes. I think you are correct.

19 COMMISSIONER OSHIE: I don't have any further
20 questions.

21 JUDGE RENDAHL: Do the commissioners have any
22 further questions? Commissioner Jones?

23 COMMISSIONER JONES: Just to follow-up on
24 Commissioner Oshie's question because I had a similar
25 question on the credit-worthy standards. Is it

0091

1 generally true that the parties have followed the NAESB
2 standards on capacity releases in Paragraph 22?

3 MR. STOLTZ: Yes, it is.

4 COMMISSIONER JONES: In that paragraph on
5 capacity release, it says there are two criteria to be
6 met for capacity release time lines. One is all
7 information provided by the releasing and replacement
8 shipper is valid, and the replacement shipper is credit
9 worthy when the bid is tendered. So I'm still having,
10 with your answer, having a problem grappling with who
11 is going to judge the credit worthiness of the
12 replacement shipper.

13 MR. STOLTZ: It will be Williams Northwest
14 Pipeline.

15 COMMISSIONER JONES: Under the capacity
16 release procedures in this NAESB document?

17 MR. STOLTZ: Yes.

18 COMMISSIONER JONES: And we really do not
19 have a witness from Northwest Pipeline to which we can
20 address these questions to.

21 MR. STOLTZ: We do not.

22 COMMISSIONER JONES: That's all I have.

23 JUDGE RENDAHL: I have a few more questions
24 on this paragraph and then a few on other paragraphs.
25 So for a full tariff price release by Cascade or any

0092

1 other releasing shipper, who determines the criteria
2 for the award? Is it the electronic bulletin board
3 administrator, in this case, Northwest, or is it the
4 release shipper?

5 MR. STOLTZ: It's the electronic bulletin
6 board administrator.

7 JUDGE RENDAHL: And as you said, that's a
8 first-come-first-served basis for a full tariff price
9 of bid.

10 MR. STOLTZ: Yes, that's correct.

11 JUDGE RENDAHL: In the Settlement agreement,
12 the parties have attached as Exhibit C, which is
13 Exhibit 4. Is there any other information that Cascade
14 will provide as a part of its release? Is it called a
15 bid? It's not a bid. It's an offer?

16 MR. STOLTZ: It's a capacity release posting.

17 JUDGE RENDAHL: In its capacity release
18 posting, Cascade will provide the information that's in
19 Exhibit C. Is there any other types of information
20 that Cascade provides at that point in the posting?

21 MR. STOLTZ: I believe Exhibit C would
22 represent a summary of the postings. These are not for
23 the year 2008. These are not constant volumes, so
24 there will have to be a series of postings, not just
25 one posting, and this is the summary of what those

0093

1 would be.

2 JUDGE RENDAHL: Is there any other types of
3 information that's provided with the posting?

4 MR. STOLTZ: It does show where the capacity
5 originates or the receipt point and the delivery point,
6 and that's all that's necessary to be shown on a
7 posting.

8 JUDGE RENDAHL: The parties assert that the
9 arrangement is not inconsistent with FERC rules or the
10 Northwest Pipeline tariff, and the parties talk about
11 whether this arrangement is contrary to the
12 Commission's, the statutory provisions in RCW 80.28.490
13 or 80.28.100, which were two key provisions at issue in
14 this case.

15 MR. STOLTZ: I'm sorry. Was there a question
16 in that?

17 JUDGE RENDAHL: Yes. What is the parties'
18 position on that, whether there is any issue with the
19 Commission statutes?

20 MR. STOLTZ: We do not believe there are any
21 issues with Commission statutes. The Commission has
22 always sought that the Company's maximize their
23 capacity release for the benefit of the core customers.
24 Core customers are paying those costs imbedded in their
25 rates, and any time it's not being used by core, we try

0094

1 to mitigate that by releasing the capacity.

2 Obviously, we can get full tariff value for
3 that capacity, then there is 100 percent mitigation for
4 the unused capacity during those periods of time.

5 JUDGE RENDAHL: I'm mostly concerned about
6 that provision, Subsection B about the advance notice
7 to CMS, so the parties contend there is no issue with
8 the Commission statutes or violating Commission
9 statutes on that point?

10 MR. STOLTZ: As far as Cascade is concerned,
11 we have no concerns.

12 JUDGE RENDAHL: Commissioner Jones?

13 COMMISSIONER JONES: Since you are on this
14 FERC rule-making issue, I have one more question on
15 that. Can anybody summarize what the FERC rule-making
16 on capacity releases is designed to correct? Does
17 anybody provide a high-level summary of that, please?

18 MS. PYRON: I can provide a high-level
19 summary. You are asking the question, Commissioner,
20 about the pending rule-making?

21 COMMISSIONER JONES: Yes.

22 MS. PYRON: There is a notice going back
23 several years on litigation and prior review by FERC of
24 the question of whether the cap on short-term capacity
25 release, releases for one year or less, whether a party

0095

1 may bid or sell capacity for more than the maximum
2 pipeline tariff rate.

3 That is an issue FERC is currently examining.
4 The comments that have gone in on that issue, again,
5 like in prior years when FERC has taken comments on
6 that issue, are all over the place, and in fact,
7 variations of that have been proposed. The Northwest
8 Industrial Gas Users proposed our own variation, and I
9 won't go into that, but that's where that issue is at.

10 The other component of that notice of taking
11 comment on this issue was also a new asset management
12 release program that FERC is contemplating in this same
13 package and has been raised by others concerned with
14 tying of the release capacity where an entity might be
15 able to have a third-party marketer do this combined
16 packaging and not be violating the tying or
17 restrictions. FERC has indicated in its last round of
18 asking for comment that it was contemplating lifting
19 the cap on short-term release market and then ask for
20 comment on that proposal. That is where the docket now
21 stands.

22 COMMISSIONER JONES: The short-term is
23 defined as one year or less.

24 MS. PYRON: Yes.

25 COMMISSIONER JONES: So just so I understand

0096

1 Paragraph 21-D where the parties of the Settlement
2 agreement say, perhaps Cascade and CMS reasonably
3 believe that the arrangement in Paragraph 22 is not
4 inconsistent with any FERC requirements, and then
5 Cascade will hold its customers -- I assume that's core
6 customers -- harmless from any costs if FERC determines
7 otherwise.

8 So what I read this, and this is a question
9 for the parties, is if FERC comes out with a different
10 interpretation of these capacity releases of less than
11 one year, then it really has no impact because of the
12 hold harmless clause on Cascade's customers.

13 MS. PYRON: That would be my understanding.
14 Certainly everybody around the table would give their
15 guess as to what FERC will do, but as to what they do,
16 from a customer perspective, we are a signatory to this
17 because we believe this is a reasonable resolution
18 Cascade is standing behind protecting the customers in
19 the event of any alternative.

20 COMMISSIONER JONES: Ms. Shifley, is that
21 your understanding too? I understand this is an
22 important point for Public Counsel.

23 MS. SHIFLEY: That's our understanding.

24 JUDGE RENDAHL: Okay. I have a few more
25 questions. The first has to do with the transfer of

0097

1 the contracts from CGC Energy to Cascade in Paragraph
2 17, and as Mr. Reichman stated in his opening
3 statement, parties request that the Commission approve
4 that transfer, and in my reading of the statute, it
5 doesn't require the Commission to approve such
6 transactions but says the Commission may -- it requires
7 the Company to file and the Commission may disapprove,
8 but I just want to clarify that the parties are asking
9 the Commission to actually affirmatively approve this
10 transaction; is that correct?

11 MR. STOLTZ: Yes, that is correct.

12 JUDGE RENDAHL: Is there a reason why you are
13 seeking that?

14 MR. STOLTZ: I think we are seeking it
15 primarily because we do have pending tariffs. The
16 tariffs have to be approved, and that would be adequate
17 approval from the Commission for us to transfer those
18 contracts back to Cascade.

19 JUDGE RENDAHL: This is a question for Staff.
20 What role will Commission staff have in monitoring or
21 reviewing the terms for the contracts from the
22 affiliate to Cascade?

23 MR. PARVINEN: The contracts themselves are
24 already an existing document for the time period that
25 they are still in place, so they will not change. They

0098

1 will just transfer over. So what Staff would look at
2 is in the next deferral amortization, they will look at
3 the balances from the revenues derived from those
4 contracts and verify that the revenues matched up with
5 the individual contracts and the capacity releases and
6 so forth. It would be the same review.

7 Even if they sold the book, we would look at
8 the calculation of those revenues and see what they
9 received from the sale of the book, but that would be
10 the primary time that would occur is in the deferral
11 amortization, which would be the next two deferrals
12 because since they file in September or October -- the
13 period we look at ends in June, typically, so the
14 revenues until this coming June we would look at, and
15 then the following deferral amortization, we would look
16 at those from June through October.

17 JUDGE RENDAHL: One last question that I have
18 is if the Commission enters an order approving the
19 Settlement by March 7, which is when I understand the
20 parties have requested, what is the Company's preferred
21 effective date for the tariff revisions? What's the
22 anticipated effective date?

23 MR. STOLTZ: We would file compliance
24 tariffs. I don't believe we file anything other than
25 the exhibits themselves so we don't have any official

0099

1 tariff filing, so we would file compliance and give
2 Staff two or three days to review those and ask for an
3 effective date three or four days after the issue date.

4 JUDGE RENDAHL: Commissioner Oshie?

5 COMMISSIONER OSHIE: Thank you, Judge
6 Rendahl, a couple of follow-up questions. I think this
7 question was already answered, but I want to make sure
8 I understand it. There are competitors to CMS
9 operating within Cascade within Washington since this
10 settlement only is applicable in Washington, so are
11 there competitors within Washington?

12 MR. SCHOENBECK: Absolutely. As Mr. Stoltz
13 said earlier, the BP, IGI, in particular, is a very
14 strong marketer in Washington.

15 COMMISSIONER OSHIE: Are there other
16 competitors within Washington that do not have the
17 capability of electronically monitoring the bulletin
18 board?

19 MR. SCHOENBECK: That I'm not sure of.

20 MR. STOLTZ: I do not know of any either. I
21 don't know the capabilities of the marketers.

22 COMMISSIONER OSHIE: Let me ask one more
23 follow-up question. I want to understand how this
24 settlement will actually play out in terms of the
25 relationship between CMS and Cascade with regard to the

0100

1 capacity releases.

2 Is Cascade barred from entering into a
3 prearranged deal with another party when it wants to
4 release its capacity in the summer of '08 or summer of
5 '09 without giving CMS the effect of right of first
6 refusal to the same deal under the same terms?

7 MR. STOLTZ: We are not.

8 COMMISSIONER OSHIE: On the terms of the
9 settlement, would the Company have to give CMS 48 hours
10 notice of its intent to enter into a prearranged deal
11 for the release of your shipping capacity?

12 MR. STOLTZ: No, we would not. We are only
13 obligated to the volumes shown on this exhibit.

14 COMMISSIONER OSHIE: Then let's make it
15 specific to those volumes. That's exactly what I
16 meant. The volumes that are being considered by this
17 settlement, those that are possibly to be released in
18 the summer of '08 and the summer of '09, is Cascade,
19 again the same question, is Cascade essentially barred
20 by this agreement to enter into a prearranged deal with
21 another shipper without either giving CMS notice of
22 terms and conditions or a right of first refusal to
23 take the deal under those terms and conditions.

24 MR. STOLTZ: Under that scenario, yes, we
25 would be barred, but we do not have redundant capacity

0101

1 that we could release to another party on a prearranged
2 deal and still honor our commitment to post this on the
3 electronic bulletin board for open bid.

4 COMMISSIONER OSHIE: So CMS essentially
5 has -- you either enter into a prearranged deal with
6 CMS and no other party for this capacity, or it goes to
7 the electronic bulletin board under the terms and
8 conditions expressed in the agreement but with 48 hours
9 going to CMS before such a posting.

10 MR. STOLTZ: Yes, that's correct.

11 JUDGE RENDAHL: Are there any other questions
12 for the panelists? Okay. With that, I don't have any
13 further questions. Is there anything further we need
14 to address this morning at this settlement hearing;
15 Mr. Cameron?

16 MR. CAMERON: I would just offer a point of
17 clarification. I believe this is a legal point
18 regarding the Northwest Pipeline tariff. Replacement
19 shippers are required to satisfy the pipeline's credit
20 requirements as a condition of participating on the
21 electronic bulletin board, so there will be no renegade
22 replacement shipper who is not credit worthy who might
23 step in and obtain this capacity. That opportunity is
24 precluded by the tariff itself. One further point, CMS
25 is already qualified under the credit performance.

0102

1 JUDGE RENDAHL: Is there anything further we
2 need to address this morning? With that, thank you
3 very much for appearing this morning and testifying,
4 and this hearing is now adjourned.

5 (Settlement hearing adjourned at 10:57 a.m.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25