

**BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION
COMMISSION**

COST MANAGEMENT SERVICES,
INC.,

Complainant,

v.

CASCADE NATURAL GAS
CORPORATION,

Respondent.

WASHINGTON UTILITIES AND
TRANSPORTATION
COMMISSION,

Complainant,

v.

CASCADE NATURAL GAS
CORPORATION,

Respondent.

In re Notification of Contract and
Arrangement between CASCADE
NATURAL GAS CORPORATION,
and its subsidiary CGC ENERGY,
INC.

WASHINGTON UTILITIES AND
TRANSPORTATION
COMMISSION,

Complainant,

v.

CASCADE NATURAL GAS
CORPORATION,

Respondent.

DOCKET NO. UG-061256

PUBLIC COUNSEL'S ANSWER TO
CASCADE'S PETITION FOR
RECONSIDERATION AND
ALTERNATIVE MOTION FOR
CLARIFICATION OF ORDER 08

DOCKET NO. UG-070332

PUBLIC COUNSEL'S ANSWER TO
CASCADE'S PETITION FOR
RECONSIDERATION AND
ALTERNATIVE MOTION FOR
CLARIFICATION OF ORDER 07

DOCKET NO. UG-070639

PUBLIC COUNSEL'S ANSWER TO
CASCADE'S PETITION FOR
RECONSIDERATION AND
ALTERNATIVE MOTION FOR
CLARIFICATION OF ORDER 02

DOCKET NO. UG-072337

PUBLIC COUNSEL'S ANSWER TO
CASCADE'S PETITION FOR
RECONSIDERATION AND
ALTERNATIVE MOTION FOR
CLARIFICATION OF ORDER 01

The Public Counsel Section of the Attorney General's Office (Public Counsel) responds to the Petition for Reconsideration and Alternative Motion for Clarification (Motion) submitted by Cascade Natural Gas Corporation (Cascade) in the above-captioned matters.

On March 6, 2008, the Washington Utilities and Transportation Commission (Commission) issued its Order Accepting Settlement Agreement in these dockets (Order). The Commission included a single condition, that Cascade must hold core customers harmless should Cost Management Services (CMS) or any other replacement shipper default on the capacity release awards described in paragraph 22 of the Settlement Agreement (Condition).¹ On March 17, 2008, Cascade filed a Petition for Reconsideration of the Condition. In the alternative, Cascade asks the Commission to issue an order clarifying that the Condition applies only to the capacity releases contemplated by the Settlement Agreement.

Public Counsel does not support Cascade's Petition for Reconsideration and recommends that it be denied. Public Counsel does not object to Cascade's Motion for Clarification.

I. DISCUSSION

A. Petition for Reconsideration.

Any party may file a petition for reconsideration within ten (10) days of the entry of a final order.² The Commission will reconsider a final order only if the petitioner shows that the challenged order is "erroneous or incomplete"³; in other words, that it contains an incorrect

¹ Order ¶¶36, 59, and 65.

² RCW 35.05.470; WAC 480-07-850.

³ WAC 480-07-850.

“finding of fact or conclusion of law.”⁴ Cascade has failed to show that the Commission erred, factually or legally, in including the Condition in its acceptance of the Settlement Agreement.

1. Cascade’s Petition for Reconsideration should be denied because Cascade has already accepted the Condition.

The Settlement Agreement provides all parties five (5) days to object to any conditions included in the Commission’s acceptance of the Agreement.⁵ Cascade did not do this.

Moreover, on March 10, 2008, Cascade filed revised tariff pages in compliance with the Order, effectively accepting it inclusive of the Condition. Accordingly, it is inappropriate for Cascade to now seek to remove the Condition.

2. The Condition is appropriate because the terms of capacity releases in paragraph 22 of the Settlement Agreement provide no additional benefit to core customers.

Cascade’s core customers derive no benefit from the agreement laid out in paragraph 22. Cascade regularly releases surplus pipeline capacity in the months that such capacity is not needed to serve core customers. The parties have described the releases provided for in paragraph 22 as routine, ones that Cascade would be required to make, regardless of this agreement, under its obligation to operate prudently.⁶ Moreover, there are numerous competitors to CMS operating within Washington that would be likely to bid at full tariff prices for the capacity to be released under paragraph 22.⁷

⁴ WAC 480-07-835.

⁵ Settlement Agreement, ¶26(d). The provision states, in pertinent part: “[i]n the event that the Commission accepts the Agreement upon conditions or with terms not included herein, each Party reserves the right, upon written notice to the Commission and all parties to this proceeding within five (5) days of the Commission’s order, to state its rejection of the conditions.

⁶ Settlement Agreement, ¶22(d). The provision states, in pertinent part: “[a]ll parties agree that the volume, timing, and rate of these releases are presumptively prudent.”

⁷ TR. 99:16-17. *See also* Narrative Statement Regarding Settlement Agreement (Narrative), ¶41. CMS’s portion of the Narrative states, in part: “CMS is to receive a brief advance-notice of those releases [described in Settlement Agreement Attachment C], thereby leveling the playing field with larger shippers who monitor capacity releases by

The only party who will benefit from the agreement in paragraph 22 is CMS. In its narrative, CMS describes the *quid pro quo* nature of the capacity release agreement: “[t]he Settlement Agreement would terminate the CMS complaint proceeding In return, CMS would receive assurances that it can participate in Cascade’s release of surplus pipeline capacity for the summers of 2008 and 2009.”⁸ In the agreement’s absence, Cascade would likely release the capacity and receive full tariff price from any one of the vendors.

3. Core customers should not bear the risk of potential default by a replacement shipper where Cascade has voluntarily waived its own credit requirements.

The Condition is appropriate given the potential, additional risk that Cascade’s waiver creates for core customers.⁹ Cascade’s core customers do not benefit from the waiver of Cascade’s credit requirements. As discussed above, Cascade and CMS believe that numerous other vendors would be interested in purchasing the capacity described in paragraph 22 with the credit requirements in place.

Cascade’s statement that it “understands that the pipeline’s credit requirements provide approximately the same level of protection as Cascade’s requirements” is insufficient to show that waiving its credit requirements does not create additional risk for its core customers.¹⁰ Cascade provides no information regarding its credit requirements in its Petition. In the absence of any information regarding Cascade’s credit requirements, it is reasonable to assume that its requirements may well be more stringent than the pipeline’s.¹¹

the hour and who would *very likely take all of Cascade’s released capacity for themselves* in the absence of notice to CMS” (emphasis added).

⁸ Narrative, ¶41.

⁹ Motion, ¶9. Cascade states that core customers are responsible for all costs if a replacement shipper fails to pay the pipeline for release capacity.

¹⁰ Motion, ¶10. The Motion states only that “Cascade’s understanding . . . is that the pipeline’s credit requirements provide approximately the same level of protection as Cascade’s requirements.”

¹¹ Commissioner Oshie raised this point during the settlement hearing. TR. 90:2-10.

B. Motion for Clarification.

Within ten (10) days after an order is served, any party may file a motion for clarification.¹² A motion for clarification is intended to allow explanation “of the meaning of an order so that compliance may be enhanced” or correction of a “patent error.”¹³ Public Counsel believes that the clarification sought by Cascade is reasonable, although it may be unnecessary.¹⁴ As discussed by Cascade in its Petition, the language of the Order suggests that the Commission intended the Condition to apply only to the capacity releases provided for in paragraph 22 of the Settlement Agreement.¹⁵ The scope of the Commissioner’s questions regarding the waiver of Cascade’s credit requirements also supports this conclusion.¹⁶

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¹² WAC 480-07-835.

¹³ *Id.*

¹⁴ Although not currently before the Commission, Public Counsel does not waive the right to argue that Cascade should hold core customers harmless should it choose to waive its credit requirements in future transactions.

¹⁵ *See* Motion, ¶14.

¹⁶ TR. 88-91.

II. CONCLUSION

For the foregoing reasons, Public Counsel respectfully requests that the Commission deny Cascade's Petition for Reconsideration. Public Counsel does not object to the Motion for Clarification.

DATED this 20th day of March, 2008.

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