Docket No. UG-210745 - Vol. I

Tree Top, Inc. v. Cascade Natural Gas Corporation

November 16, 2021



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COURT REPORTING AND LEGAL VIDEO

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Docket No. UG-210745 - Vol. I - 11/16/2021

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	BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION	1 2	NOVEMBER 16, 2021 3:04 p.m.
		3	5.04 p.m. * * * *
	TREE TOP, INC.	4	JUDGE O'CONNELL: Good afternoon. The time
) Complainant,)	5	is approximately 3:04 p.m. on Tuesday, November 16, 2021.
)	6	My name is Andrew O'Connell. And I am an administrative
	vs.) Docket No. UG-210745	7	law judge with the Washington Utilities and
		8	Transportation Commission. And I will be presiding in
	CASCADE NATURAL GAS) CORPORATION,)	9	this matter.
		10	We are here today for a virtual prehearing
	Respondent.)	11	conference in Docket UG-210745, which concerns a formal
		12	complaint filed with the Commission on September 24,
	VIRTUAL PREHEARING CONFERENCE - VOL. I	13	2021, by Tree Top, Incorporated, against Cascade Natural
	PAGES 1-22	14	Gas Corporation.
	ADMINISTRATIVE LAW JUDGE ANDREW O'CONNELL	15	The complaint alleges in general that Cascade
	November 16, 2021	16	imposed an exorbitant over an entitlement penalty on Tree
	3:04 p.m.	17	Top that Tree Top asserts is not fair, just, or
		18	reasonable.
		19	Let's move forward with short form appearances
		20 21	from the parties as I have in the docket all of the
		21	information for the representatives. Let's begin with Tree Top.
		23	MR. STOKES: Good afternoon, Your Honor.
		24	Chad Stokes for Tree Top, Inc.
	DATE TAKEN: NOVEMBER 16, 2021 REPORTED BY: CARISA KITSELMAN, RPR, CCR 2018	25	JUDGE O'CONNELL: Okay. And for Cascade?
	Page 2		Page 4
1	APPEARANCES	1	MS. PEASE: Good afternoon, Your Honor.
2 3	ADMINISTRATIVE LAW JUDGE: ANDREW O'CONNELL	2	Jocelyn Pease for Cascade Natural Gas
5	RAYNE PEARSON	3	Corporation.
4		4	JUDGE O'CONNELL: Okay. Thank you.
5 6	FOR COMPLAINANT: CHAD STOKES	5	So the first thing I want to address is
_	Cable Huston	6	Cascade's request that the Commission dismiss the
7	1455 Southwest Broadway Suite 1500	7	complaint for failure to state a claim upon which relief
8	Portland, Oregon 97201	8	can be granted pursuant to the filed rate doctrine.
9	503.224.3092 cstokes@cablehuston.com	9	In its answer to the complaint, Cascade asserted
10	FOR CASCADE NATURAL GAS:	10	that affirmative defense, including that it followed its
11	JOCELYN PEASE McDowell, Rackner & Gibson, PC	11 12	filed tariff and its charges to Tree Top. I issued notice allowing Tree Top to respond to this defense and
12	419 SW 11th Avenue	13	indicated that I would address this issue at this
10	Suite 400	14	prehearing conference.
13	Portland, Oregon 97205 503.595.3925	15	Let me turn to Cascade. I reviewed your answer,
14	jocelyn@mrg-law.com	16	the affirmative defenses that you include, and Tree Top's
15	MIKE PARVINEN Director of Regulatory Affairs	17	response. Would you briefly respond to Tree Top's
16		18	response and address why your request is appropriate at
17 18	ALSO PRESENT: RYAN SMITH LORI BLATTNER	19	this point and whether the Commission has the authority
19	KYLE MURPHY	20	to examine the past charges that are complained of.
20 21		21	MS. PEASE: Yes, Your Honor.
21		22	So Cascade views this complaint as relatively
	* * * *	23	straightforward. And I think as Your Honor understands,
23 24		24	Cascade's perspective is that it charged the rates
25		25	consistent with its tariff. And for that reason, we had
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1 (Pages 1 to 4)

	Page 5		Page 7
1	included an affirmative defense regarding the filed rate	1	And, in particular, the relevant statute,
2	doctrine.	2	RCW 80.04.240, provides for a six-month statute of
3	And Tree Top in its response has asserted that	3	limitations. And specifically applies to claims brought
4	the filed rate doctrine should not apply; that the	4	under RCW 80.04.220, the reparation statute.
5	Commission would not be constrained by the filed rate	5	And the Commission has previously determined
6	doctrine.	6	that the test for claim accrual for purposes of this
7	However, the filed rate doctrine is embodied in	7	statute of limitations runs from the time that the
8	the Commission statutes. In particular, RCW 80.28.080.	8	aggrieved party in the exercise of reasonable diligence
9	And the Commission has previously interpreted and applied	9	should have discovered the injury.
10	the filed rate doctrine in considering its actions.	10	And while we do not yet have facts in our record
11	And while Tree Top states in its response that	11	concerning the application of the statute of limitations
12	the Commission has express authority under the reparation	12	in this case or and we do not yet have facts in the
13	statute, 80.04.220, to examine past charges, Cascade	13	record relevant to the time when Tree Top would have
14	would urge that the Commission should instead view its	14	known would have had notice of this potential claim,
15	authority under RCW 80.042.220, to avoid running afoul of	15	Cascade believes that it will be able to demonstrate that
16	the filed rate doctrine. Or the prohibition on	16	Tree Top's complaint was filed too late for the
17	retroactive rate making, which is a corollary of the	17	Commission to consider it under the applicable statute of
18	filed rate doctrine.	18	limitations.
19	And from review of the Commission's precedent	19	And on this point, I would add as well that I
20	applying the reparation statute, RCW 80.04.220, it	20	that Cascade has consulted with counsel for Tree Top.
21	appears that the Commission itself has not applied the	21	And we both acknowledge that and I will not presume to
22	reparation statute in a manner that would contravene the	22	speak for Mr. Stokes, and, of course, he can speak for
23	filed rate doctrine. And we would urge that the	23	himself, but that neither party has briefed this issue at
24	Commission declined to do so here.	24	this point.
25	I would note, as it relates to our motion to	25	So with that, I would ask, have I have I
	Page 6		Page 8
1	dismiss that was included within our answer, it it was	1	addressed your question?
2	Cascade's intention that this issue would be fully	2	And if so, I would conclude.
3	briefed through a motion for summary determination to be	3	JUDGE O'CONNELL: Yes, I think you have.
4	held at some to be provided at some point after the	4	Thank you.
5	prehearing conference.	5	I do want to give a chance for Tree Top to
б	And so I recognize you're considering this issue	6	respond.
7	without the benefit of having it be fully briefed for you	7	If you could, please, address first the request
8	and would offer that that could be something that Cascade	8	that the Commission dismiss. And then perhaps also
9	could do to provide supplemental briefing on this issue,	9	well, let's start with that.
10	if Your Honor were inclined to consider it.	10	Mr. Stokes, go ahead.
11	And as one additional matter related to the	11	MR. STOKES: Thank you.
12	application of the the reparations statute, Cascade	12	So on the filed rate doctrine, first of all, the
13	would also seek leave to amend its answer. Because	13	motion to dismiss, I don't think Cascade intended it to
14	through ongoing investigation following the filing of	14	be a motion to dismiss.
15	Cascade's answer, we determined that there is additional	15	A motion to dismiss has to be in a separate
16	affirmative defense that should apply in this case, which	16	filing under the Commission's rules. And it actually
17 18	is the six-month statute of limitations provided in	17 18	says the Commission won't even consider a motion to
18	RCW 80.04.240.	19	dismiss not in a separate motion. So it was improperly filed to the extent that they were asking for it.
20	So I realize I'm now going beyond the scope of the question that Your Honor had posed as to the filed	20	But even if you ignore that, the filed rate
20	rate doctrine but had wanted to preview that Cascade	20	doctrine clearly does not apply here. The Commission has
21	would seek leave to amend its answer to include this	22	express authority granted from the State of Washington to
23	additional affirmative defense and would seek leave to	23	consider the just and reasonableness of rates and it
24	provide briefing on this matter, if requested if	24	includes reparations.
25	allowed by Your Honor.	25	The 80.28.080 that was cited, that applies to
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2 (Pages 5 to 8)

1 the company. So the filed rate doctrine in this context means that regulated utilities have to file ther – have to charge ther filed rate. Commission is authorized by the State is common and doct in any way prohibit the Commission from reviewing those rates charged, and upon a finding that the charges were upist and reasonable, the Commission can lock at those rates and determine if ther are damages and oder reparations; so, therefore, a motion to dismiss on this is a legal issue. Nould'nt require this ways same issue in a motion for summary determination, this is a legal issue. Would'nt require that ways have been filed or an answer was filed. JUDEG CONNELL: Okay. Thank you for both of your presentations on that. 10 On the issue of filing a motion to dismiss on this issue should have been filed or an answer was filed. Mr. Stokes, I do want to come back by ouin well address the question of amending the answer in just a morent. 11 Thank you both for your presentations but the request based upon the filed rate doctrine. Mr. Stokes, I do want to come back by ouin well address the question of amending the answer in just a morent. 12 So to be with issue upagin at anothy more detains applies. Thank you both for your presentations. by the well address the question a more has the arguments at this point. I don't im going to detain the arguments at this point. I don't im going to detain the arguments at this point. 12 And once I'm done with that, I'l address the company from onig back in the vort not not review an affidavit to determine whether or not we're sateking to have not genession from the company from onig back in the vort not the customers? 13		Page 9		Page 11
2 Is a doctrine was created that the Commission has express submity. 3 to charge their life ortes. if does not in any way prohibit the Commission 4 It does not in any way prohibit the Commission fire charges were unjust and reasonable, the 7 Commission can look at those rates and determine if there are charges and order reparations, so, therefore, a JUDEG CONNELL: Okay. Thank you for both 11 this issue should be rejected. Mr. Stokes, I do want to come back to you in 11 this very same issue in a motion to dismiss on this amoment. 12 the decision of a mending the answer in just a moment on the statut of limitations argument, and 13 an affidavit. And so that - a motion to dismiss on this issue should be rejected. 14 issue should have bean field or an answer was field. 15 So to key this issue up again at another motion 16 for summary determination would not only unreasonably in the field rate doctrine. 17 the field reat doctrine rate applies. 18 allowed because there's on factual issues on a field an answer in just an anoten rate sprease the attomy reparation. 19 reasonableness of the rates that were charged here for appropriate. And an emetrafing the idaed on thaving more informalis an spreasent with the commission	1	the company. So the filed rate doctrine in this context	1	Commission is authorized by the State so this common
3 to charge their lifed rates. 3 directed that the Commission from reviewing those rates charged, and upon a finding 4 If does not in any way prohibit the Commission 5 5.1 1.1 Commission can lock at these rates and determine if them that. 6 Commission can lock at these rates and determine if them that. So it - 1 don't think it can be any more clear 7 motion to dismiss on this is use should be reported. Mr. Stokes, I do want to come back to you in 9 public the them that. Mr. Stokes, I do want to come back to you in 9 public the them that. Mr. Stokes, I do want to come back to you in 9 public the them them them them them them them				-
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3 (Pages 9 to 12)

	Page 13		Page 15
1	some agreed date between the parties for a motion for	1	opening motion for summary determination in our response
2	summary judgment or some sort of point in time when facts	2	brief. And then we would seek to have another prehearing
3	will have been established through discovery or become	3	conference once we have a ruling on that motion. Because
4	apparent through discovery that would support arguments	4	we don't want to obviously, if the Commission were to
5	from either side.	5	dispose of this case on the statute of limitations issue,
6	So, Mr. Stokes, let me turn it back over to you.	6	we don't want to run up a bunch of legal bills throughout
7	MR. STOKES: Yes, Your Honor. I just want	7	the testimony and that sort of thing.
8	to clarify one of the last things you said.	8	But I think there's pretty strong case law in
9	It's not our position that Cascade did not	9	front of the Washington Supreme Court that indicates when
10	charge rates consistent with this tariff. So we we	10	the matter accrues based on that statute. Understand
11	did not allege that. So they were they applied their	11	that Cascade will take a different position on that.
12	filed tariff rates.	12	So we have an issue that needs to be decided by
13	I just want to make sure that was understood.	13	the Commission.
14	That was not one of our arguments that they weren't	14	JUDGE O'CONNELL: Okay. Very good.
15	following their filed rates. I just wanted to clarify	15	Ms. Pease, let me turn it back to you.
16	that.	16	MS. PEASE: Thank you.
17	JUDGE O'CONNELL: My understanding was that	17	To respond to Mr. Stokes, I would agree with his
18	your argument is that the Commission has the authority to	18	characterization that we do have different views as to
19	go back and consider whether the rates charged were	19	how that statute of limitations period may apply here.
20	reasonable even	20	And we've consulted and agreed upon a schedule for
21	MR. STOKES: Correct.	21	presenting that issue to the Commission for briefing.
22	JUDGE O'CONNELL: in light of whether	22	So I would agree with Mr. Stokes'
23 24	they were part of company's filed tariff; is that	23 24	characterization of our communications.
24	correct? MR. STOKES: Correct. Yes, Your Honor.	25	JUDGE O'CONNELL: Okay then. That would be a naturally good transition to
23	MR. STORES. Conect. Tes, Tournonor.	2.5	That would be a haturally good transition to
	Page 14		Page 16
			1490 10
1	So	1	talking about procedural schedule.
2	JUDGE O'CONNELL: Mr. Stokes, when I'm	2	talking about procedural schedule. But before we do that, I just want to stay on
2 3	JUDGE O'CONNELL: Mr. Stokes, when I'm saying about the facts being established, the things that	2 3	talking about procedural schedule. But before we do that, I just want to stay on the record, ask, and then inquire on the record about any
2 3 4	JUDGE O'CONNELL: Mr. Stokes, when I'm saying about the facts being established, the things that I noted piqued my interest were the market prices at	2 3 4	talking about procedural schedule. But before we do that, I just want to stay on the record, ask, and then inquire on the record about any petitions for intervention. None have been filed with
2 3 4 5	JUDGE O'CONNELL: Mr. Stokes, when I'm saying about the facts being established, the things that I noted piqued my interest were the market prices at Sumas and at the other hub. And the difference there.	2 3 4 5	talking about procedural schedule. But before we do that, I just want to stay on the record, ask, and then inquire on the record about any petitions for intervention. None have been filed with the Commission to this point.
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4 (Pages 13 to 16)

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1And then we would schedule a prehearing conference once we have a ruling on that to establish the rest of the proceeding.1MR. STOKES: I think the plan is that will try to to negotiate stipulated facts. But understand that Cascade believes that they may discovery on this issue. And that discovery requ go out by November 22nd.4JUDGE O'CONNELL: Okay. Understood.4discovery on this issue. And that discovery requ go out by November 22nd.5So looking at the calendar and in consideration of Thanksgiving, would Ms. Pease, let me ask about your schedule.6JUDGE O'CONNELL: And traditionally, according to Commissioner rule, responses are done	need some
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% What is the more appropriate data payt weak to % top days	ue within
8 What is the more appropriate date next week to 8 ten days.	
9 set as a deadline for an amendment to the answer? 9 Is that what the parties anticipated?	
10 MS. PEASE: I think we could aim to set it 10 MR. STOKES: Yes.	
11 for the 23rd. I think that should work just fine. 11 MS. PEASE: Yeah.	
12 JUDGE O'CONNELL: Okay. I will set that 12 JUDGE O'CONNELL: Thank you.	
13date.13Okay. Then what I will do is I will include	
14 Mr. Stokes, is there any objection to me setting 14 that date for discovery requests in the agreed pro-	cedural
15 that date as the date for the amendment to the answer? 15 schedule.	
16 MR. STOKES: No objection. 16 Now, I know both parties and their	
17 JUDGE O'CONNELL: Okay. I will memorialize 17 representatives are familiar with the Commission	s rules
18that in the prehearing conference order.18for discovery and the procedures for proceedings	at the
19And my understanding at this point is that the19Commission, just as a brief reminder, we require	all
20 procedural schedule that's been agreed is November 23rd 20 filing and service to be done electronically. And	fany
21 for Cascade's amendment to the answer. 21 party wants to add additional people to for the	
22 December 17th for Cascade's motion for summary 22 service, please send those to my e-mail which is	
23determination.23andrew.j.oconnell@utc.wa.gov.	
And January 6th for Tree Top's response to that 24 And I have one more item I'd like to addres	S
25 motion for summary determination. 25 before we adjourn for the day. And then I will as	: if
Page 18	Page 20
1 At that point, depending on what the ruling 1 there's anything else that we need to address.	
2 what the decision is on that motion, we will set a 2 So I would like to primarily direct my next	
3 prehearing conference. 3 question to Cascade.	
4 Have I accurately captured that? 4 Do the parties anticipate the need at this t	me
5 MR. STOKES: Yes, Your Honor. 5 for a protective order in this case?	
6 JUDGE O'CONNELL: I'm seeing nods. 6 And if the proceeding goes on beyond the	motion
7 MS. PEASE: Yes, Your Honor. 7 for summary determination, we could also addre	ss whether
8 JUDGE O'CONNELL: So I'm do the parties 8 there needs to be a protective order at that point	
 anticipate that there's going to be discovery between now and then, December 17th? and then, December 17th? 	u need a
11 MP_STOKES: That is a good question	
11 MS. PEASE: I believe at this point, no. 12 Could we confer for five minutes maybe offline?	I
13	
14 the record for five minutes. And to give the parties 13 particular question, but I don't I don't believe s	
15 some privacy. I will sign off, and I will sign back on in	
16 five minutes. 15 I would think it would be at the next stage, assur	ning we
17 It is currently 3:28 p.m. I will sign back on 16 arrive there.	
18 at 3:33. And we're off the record. Thank you. 17 So I don't believe we need one right now.	
19 (A break was taken from 18 JUDGE O'CONNELL: Okay. Very goo 10 10 No. Design Ma Otalian in these synthisms	
3:27 p.m. to 3:39 p.m.) 19 Ms. Pease, Mr. Stokes, is there anything e	ISE
20 that we need to address today?	اممع
21 JUDGE O'CONNELL: We're back on the record 21 MR. STOKES: Not for Tree Top, Your	IUNOF.
22after a short recess. The time is approximately22Thank you.233:40 p.m.23JUDGE O'CONNELL: Okay.	
· •··• Furn	
24Ms. Pease, Mr. Stokes, let me turn to you and24Ms. PEASE: No. Nothing from Cascad25ask what you have come up with.25JUDGE O'CONNELL: Okay. I will issu	

5 (Pages 17 to 20)

	Page 21	
1	prehearing conference order shortly, containing the	
2	agreed procedural schedule, the dates that we have	
3	discussed.	
4	If there is nothing else, then we are adjourned.	
5	Thank you. We'll be off the record.	
6	(Adjourned at 3:43 p.m.)	
	(Aujoumeu at 5.45 p.m.)	
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	Page 22	
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1	Page 22 CERTIFICATE	
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2 3	C E R T I F I C A T E STATE OF WASHINGTON	
2	CERTIFICATE	
2 3	C E R T I F I C A T E STATE OF WASHINGTON	
2 3 4	C E R T I F I C A T E STATE OF WASHINGTON COUNTY OF KITSAP I, Carisa Kitselman, a Certified Court Reporter	
2 3 4 5	C E R T I F I C A T E STATE OF WASHINGTON COUNTY OF KITSAP	
2 3 4 5 6	C E R T I F I C A T E STATE OF WASHINGTON COUNTY OF KITSAP I, Carisa Kitselman, a Certified Court Reporter in and for the State of Washington, do hereby certify	
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