

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

WASHINGTON UTILITIES AND	)	
TRANSPORTATION COMMISSION,	)	
	)	DOCKET UG-210755
Complainant,	)	
	)	
v.	)	ALLIANCE OF WESTERN ENERGY
	)	CONSUMERS' RESPONSE TO
CASCADE NATURAL GAS	)	CASCADE'S MOTION TO STRIKE
CORPORATION,	)	
	)	
Respondent.	)	

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**I. INTRODUCTION**

1. Pursuant to WAC 480-07-375(4), Alliance of Western Energy Consumers (“AWEC”) files this response to Cascade Natural Gas Corporation’s (“Cascade”) motion to strike (“Cascade Motion”) portions of AWEC’s Opposition Testimony and Exhibits regarding Excess Deferred Income Taxes (“EDIT”) and Cascade’s Schedule 663. AWEC requests that the Washington Utilities and Transportation Commission (“Commission”) deny Cascade’s Motion because failing to address the treatment of protected-plus EDIT in the context of the Full Multi-Party Settlement will result in a normalization violation, harming Cascade and ultimately ratepayers, and because Cascade should not be allowed to unilaterally limit the scope of its rate case review because it filed Full Multi-Party Settlement.

**II. BACKGROUND**

2. Cascade filed this general rate case on September 30, 2021. After Parties participated in a settlement conference, Cascade and Commission Staff (“Staff”) notified the Commission on February 18, 2022, that they had reached a Full Multi-Party Settlement. The Settling Parties filed the Full Multi-Party Settlement five weeks later on March 22, 2022. As a result, instead of

submitting response testimony to Cascade’s initial rate case filing, AWEC was required to file Opposition Testimony in response to the Full Multi-Party Settlement. Three days later, Cascade sought to strike portions of AWEC’s Opposition Testimony and exhibits, arguing they fell outside the scope of the issues presented in the settlement.

### III. ARGUMENT

3. Cascade argues that parts of AWEC’s Opposition Testimony and exhibits should be stricken from the record because “they are outside the scope of issues presented in this general rate case and the multiparty settlement” and, given the procedural schedule, because Cascade has insufficient opportunity “to fully analyze and respond to all the nuances raised by both of AWEC’s issues.”<sup>1</sup> First, the argument that Cascade has little time or ability to respond to AWEC’s proposed adjustments rings hollow—because, as explained further below, this compressed schedule is entirely of Cascade’s making.

4. Second, Cascade should not be allowed to dictate the issues raised by other parties in opposing the Full Multi-Party Settlement. WAC 480-07-740(3)(c) grants parties opposed to a settlement the right to, among others, “to present evidence in support of their opposition to the settlement.” That is precisely what AWEC has done. AWEC has presented testimony demonstrating that the failure of the Full Multi-Party Settlement to address the protected-plus EDIT *on a going forward basis* would result in a normalization violation, and therefore, the Full Multi-Party Settlement should be either rejected or modified to address this adjustment and other adjustments proposed by AWEC and other parties.

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<sup>1</sup> See Cascade Motion at ¶¶ 1, 9.

**A. The Commission Should Resolve Protected Plus EDIT In This Proceeding to Prevent a Normalization Violation.**

5. The Commission’s review of protected-plus EDIT is not outside the scope of this rate case—it is relevant to whether Cascade’s proposed rates are fair, just and reasonable. Cascade’s Motion asserts, among other things, that AWEC’s recommendations related to protected-plus EDIT is not relevant. The fact that the Multi-Party Settlement does not address this issue does not mean that the proper treatment of protected-plus EDIT is irrelevant. To the contrary, resolving the appropriate treatment of protected-plus EDIT in the context of the Multi-Party Settlement is relevant because, if the Multi-Party Settlement is approved without resolving the correct treatment of protected-plus EDIT on a going forward basis, it will result in a normalization violation which would be harmful to both Cascade and ratepayers.

6. In PLR 101961-21, which Puget Sound Energy submitted in Dockets UE-190529 *et. al.*, the Internal Revenue Service ruled that a ratemaking mechanism designed like Cascade’s Schedule 581 will violate the Normalization Rules of IRC § 168(i)(9). Under the Normalization Rules, a taxpayer is not permitted to adjust its EDIT annually without making similar adjustments to rate base, deferred taxes, book depreciation expense, and tax expense.<sup>2</sup> Under the Normalization Rules, a taxpayer is also not permitted to true up ARAM EDIT based on volume difference between the test year and the rate effective period.<sup>3</sup> Cascade’s Schedule 581, however, is inconsistent with both requirements. The current Schedule 581, for example, is based on protected-plus EDIT over the period November 1, 2020, through October 31, 2021, rather than the calendar year 2020 test period that Cascade has proposed to use in this case, and includes a true-up of prior period amounts. Under PLR 101961-21, the protected-plus EDIT amortization

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<sup>2</sup> See PLR 101961-21 at 12.

<sup>3</sup> *Id.*

included in rates needs to be consistent with the test year amortization, and the Multi-Party Settlement is, therefore, not in the public interest because it does not include protected-plus EDIT amortization based on the test-year levels.

7. The requirement to address the proper treatment of protected-plus EDIT on a going-forward basis in the context of the Multi-Party Settlement is not eliminated by the fact that Docket UG-220198 also contains proposals to address protected-plus EDIT. AWEC's recommendation in this case addresses the proper treatment of protected-plus EDIT on a *going forward basis*, whereas Docket UG-220198 primarily relates to *historical* amounts. While the resolution of the historical amounts may be able to wait, it is necessary and appropriate for the Commission to determine the proper going-forward treatment now rather than waiting until the resolution of Docket UG-220198.
8. Finally, PLR 101961-21 was issued on July 30, 2021, giving Cascade ample opportunity to consider its ramifications on protected-plus EDIT not only when it made its initial filing this past September but also, and especially, in the context of the Multi-Party Settlement. Notwithstanding, Cascade waited until after the Multi-Party Settlement was filed to submit its proposed tariff changes in Docket UG-220198. The fact that Cascade's EDIT-related filing was made almost immediately *after* the Multi-Party Settlement does not mean that those issues are off limits in the Multi-Party Settlement. Parties still have the right and opportunity to present evidence in opposition to the settlement, including evidence demonstrating that the proposed settlement would result in a normalization violation.
9. Cascade's argument about the compressed schedule is also not credible because it took 5 weeks to file the Multi-Party Settlement, it tried to seek a rate effective date for the settlement of June 1<sup>st</sup> over the objection of the non-settling parties, and also had the option to consider all the

protected-plus EDIT issues at once by consolidating Docket UG-220198 with this docket. Yet, in the status conference held on April 14, 2022, Cascade refused to extend the statutory suspension date to consolidate Docket UG-220198 and, accordingly, the Commission suspended UG-220198. During the April 14, 2022, status conference, counsel for AWEC stated that if the cases were not consolidated, AWEC still intended to raise issues related to protected-plus EDIT in response to the Multi-Party Settlement. Cascade did not object to AWEC's statement. And if Cascade has concerns about AWEC's specific protected-plus EDIT calculation, it has ample time to seek discovery and cross examine AWEC's witness at the evidentiary hearing.

**B. Schedule 663 Issues**

10. AWEC's proposed adjustments to Schedule 663 are suggestions to fix the tariff on a going forward basis, and would have no impact on the issues being addressed in the complaint proceeding initiated by Tree Top against Cascade in Docket UG-210745. A rate case is typically where parties can raise and address tariff revisions. Notwithstanding, AWEC is willing to withdraw this request and work with Cascade to address Schedule 663 issues in a future filing.

**IV. CONCLUSION**

11. AWEC recognizes that the procedural schedule in this matter is compressed. The compressed procedural schedule, however, is entirely the responsibility of Cascade. It was Cascade that decided to enter into a settlement agreement with only one party, and took over five weeks to prepare and file the Multi-Party Settlement. There are many considerations that must be evaluated when entering a Multi-Party Settlement, including the ramifications on the procedural schedule. But relevant, substantive issues raised by AWEC and other parties should not fall casualty to Cascade's choice to forego the testimony and settlement negotiations that could have

efficiently resolved them. AWEC respectfully request the Commission deny Cascade's motion to strike.

Dated this 4th day of May, 2022.

Respectfully submitted,



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