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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 COST MANAGEMENT SERVICES,)
 INC.,)
 Complainant,)
)
 vs.) DOCKET NO. UG-061256
) Volume I
 6 CASCADE NATURAL GAS) Pages 1 - 28
 CORPORATION,)
)
 Respondent.)

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10 A prehearing conference in the above matter
 11 was held on September 14, 2006, at 9:35 a.m., at 1300
 12 South Evergreen Park Drive Southwest, Olympia,
 13 Washington, before Administrative Law Judge ANN
 14 RENDAHL.

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16 The parties were present as follows:

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

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20 CASCADE NATURAL GAS CORPORATION, by JAMES M.
 VAN NOSTRAND and LAWRENCE REICHMAN, Attorneys at Law,
 Perkins Coie, 1120 Northwest Couch Street, Tenth Floor,
 21 Portland, Oregon 97209; telephone, (503) 727-2162.

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

25 Kathryn T. Wilson, CCR

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

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

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1 P R O C E E D I N G S

2 JUDGE RENDAHL: Let's be on the record. Good
3 morning. I'm Ann Rendahl, the administrative law judge
4 presiding over this proceeding. We are here before the
5 Washington Utilities and Transportation Commission this
6 morning, Thursday, September the 14th, 2006 for a
7 prehearing conference in Docket UG-061256, which is a
8 complaint file by Cost Management Services, Inc.,
9 against Cascade Natural Gas Corporation.

10 The purpose of our prehearing this morning is
11 to address first whether this matter should be
12 consolidated with Cascade's general rate case, which
13 coincidentally is Docket UG-060256, or whether the docket
14 should proceed separately, or whether the issue should
15 be addressed only in one case or the other, and we will
16 also address the standard matters for a prehearing
17 conference, including interventions, the need for
18 discovery or protective orders, and also Cost
19 Management's motion for leave to file a reply.

20 So before we go any farther, let's take
21 appearances, and I would like to begin first with Cost
22 Management Services, and because this is a new docket,
23 we need to go through the full panoply of name,
24 address, party you represent, telephone number, fax
25 number, e-mail address.

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1 MR. CAMERON: My name is John Cameron here
2 representing Cost Management Services. I'm in the
3 Portland office of Davis, Wright, Tremaine, 1300
4 Southwest Fifth Avenue, Suite 2300, Portland, Oregon,
5 97201. My phone number is (503) 778-5206. My e-mail
6 address is johncameron@dwt.com. My fax is (503)
7 778-5299.

8 JUDGE RENDAHL: Thank you. And for Cascade?

9 MR. VAN NOSTRAND: I'm James Van Nostrand of
10 Perkins Coie, LLP, 1120 Northwest Couch Street, Tenth
11 Floor, Portland, Oregon 97209. My phone is (503)
12 727-2162; fax, (503) 346-2162; e-mail address,
13 jvannostrand@perkinscoie.com, and also appearing for
14 Cascade is my partner, Lawrence H. Reichman,
15 R-e-i-c-h-m-a-n, same address. Phone is (503)
16 727-2019; fax, (503) 346-2019, and e-mail is
17 lreichman@perkinscoie.com.

18 JUDGE RENDAHL: I know that Mr. Finklea for
19 the Northwest Industrial Gas Users filed a petition to
20 intervene and a notice of appearance, so let's take
21 Mr. Finklea's appearance first.

22 MR. FINKLEA: Edward A. Finklea with the law
23 firm Cable, Huston, Benedict, Haagensen and Lloyd, LLP,
24 representing the Northwest Industrial Gas Users. My
25 address is Suite 2000, 1001 Southwest Fifth Avenue,

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1 Portland, Oregon, 97204. My phone number is (503)
2 224-3092, and my fax is (503) 224-3176. My e-mail is
3 efinklea@chbh.com. Also appearing in this proceeding
4 with me is my partner, Chad Stokes, the same address,
5 same phone number, and his e-mail address is
6 cstokes@chbh.com.

7 JUDGE RENDAHL: Before we go any farther, is
8 there anyone, Mr. Cameron, with Cost Management
9 Services that you would like to be added e-mail address
10 or for our courtesy e-mail list?

11 MR. CAMERON: I would like to add Doug
12 Betzold of CMS.

13 JUDGE RENDAHL: Your e-mail address,
14 Mr. Betzold?

15 MR. BETZOLD: cmsincl@qwest.net.

16 JUDGE RENDAHL: And likewise for Cascade, is
17 there anyone in addition to the attorneys who you want
18 to be included in our e-mail list.

19 MR. VAN NOSTRAND: Yes. John Stoltz, and the
20 e-mail is jstoltz@cngc.com.

21 JUDGE RENDAHL: Ms. Glaser, I know you are on
22 the line, so if you will hold on, I'm going to go
23 through the folks in the room here and get back to you.
24 I know that Public Counsel is here, and Commission
25 staff is here. Is there any other party who wishes to

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1 participate in this case here in the room? So we will
2 start with you, Ms. Krebs.

3 MS. KREBS: Judy Krebs, assistant attorney
4 general representing Public Counsel. Address is 900
5 Fourth Avenue, Suite 2000, Seattle, Washington, 98146.
6 Phone is (206) 464-6595. Fax is (206) 389-2079.
7 E-mail is judyk@atg.wa.gov. That will be my address
8 for mailing purposes until, I believe, Monday or
9 Tuesday, and we will be updating our address.

10 We have since moved. We are on Fifth Avenue
11 instead of Fourth Avenue, very nice offices, and we
12 will be getting everybody our new address via a
13 supplement to the docket and any other docket we are a
14 part of. The phone numbers and fax numbers and e-mail
15 will remain the same.

16 JUDGE RENDAHL: Is there anyone else you wish
17 to have on our courtesy list?

18 MS. KREBS: Can I e-mail you that information
19 because I'm not recalling at this time?

20 JUDGE RENDAHL: If you can send me the names
21 and e-mail addresses of those, please. Mr. Trautman?

22 MR. TRAUTMAN: Greg Trautman, assistant
23 attorney general for Commission staff. My address is
24 1400 South Evergreen Park Drive Southwest, Post Office
25 Box 40128, Olympia, Washington, 98504. My telephone

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1 number is area code (360) 664-1187. My fax number is
2 area code (360) 586-5522, and my e-mail address is
3 gtrautma@wutc.wa.gov.

4 JUDGE RENDAHL: And Ms. Glaser?

5 MS. GLASER: Yes. The Coalition is not
6 intending to intervene in this separate case, so I'm
7 here for information purposes only. Do you still want
8 all my information?

9 JUDGE RENDAHL: No, that's fine.

10 MS. GLASER: Northwest Energy Coalition will
11 not intervene.

12 JUDGE RENDAHL: The next issue we need to
13 talk about is the agenda. I want to make sure I have
14 all the issues to be discussed on my list, and those
15 are the petition to intervene by the Northwest
16 Industrial Gas Users, the issue of consolidation or how
17 we treat these two cases, Cost Management's motion for
18 leave to reply. Then the standards issues, the need
19 for protective order, whether to apply discovery rules,
20 whether we should discuss a settlement conference in
21 this matter, and then the schedule for the proceeding.

22 So are there any other issues anybody wishes
23 to discuss this morning? Okay. Let's move to the
24 petition for intervention. First, is there any
25 opposition to the petition for intervention filed by

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1 Mr. Finklea yesterday? I'm hearing nothing in this
2 room, so Mr. Finklea, the petition to intervene by
3 Northwest Industrial Gas Users in this Docket 061256 is
4 granted.

5 MR. FINKLEA: Thank you, Your Honor.

6 JUDGE RENDAHL: And the next issue is
7 consolidation, and as I mentioned, we have a situation
8 where the issues Cost Management raises in the rate
9 case and in this complaint are similar. Under WAC
10 480-07-320, it's within the Commission's discretion to
11 consolidate matters where the facts or principles of
12 law are related, and in considering whether to
13 consolidate, I also would like you all to address this,
14 whether we should consolidate, whether it makes sense
15 to do that given the schedule in the rate case, or
16 whether we should just address the cases separately, or
17 does it make sense to only address the issues in the
18 Complaint, so whether CMS still wishes to address the
19 same issues in the rate case or only address these same
20 issues in the Complaint. So let's begin with you,
21 Mr. Cameron.

22 MR. CAMERON: Thank you, Your Honor. As we
23 said in the Complaint, we think the issues are matters
24 of law, principally, so we oppose consolidation. We
25 see no practical value in doing so. We filed testimony

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1 in the rate case to address your other point. Really
2 not addressing an operative provision of the rate
3 schedule.

4 The point we take in the Complaint is that
5 the activities of Cascade which we complain are taken
6 wholly apart from the rate schedules. The point made
7 in the rate case per our witness, Ted Layman, was that
8 given our position on the law, we thought that two
9 sentences in Schedule 663 and 664 were deceptive, were
10 false in that they stated that Cascade had authority
11 under a blanket marketing order from the Federal Energy
12 Regulatory Commission to make deregulated retail sales.
13 We think that's false.

14 That is the fundamental issue in the
15 Complaint case is merely a derivative issue in the rate
16 case. There is no issue of a just or reasonable rate
17 that we raise in the testimony. It's simply a
18 statement that we think two statements in the schedule
19 are incorrect and should be deleted by the Commission
20 if the Company doesn't do so voluntarily.

21 It seems to me that as the Commission decides
22 the case in the Complaint, it would flow automatically
23 what should happen in the rate case; that is, if there
24 is no authorization under the FERC blanket certificate
25 as Cascade claims in Schedule 663 and 664, there would

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1 be no question but that those provisions should be
2 removed, but they are not applications of the rate
3 case. Our testimony, I think, makes that clear. We
4 just wanted to make sure that that base was covered in
5 the rate case.

6 JUDGE RENDAHL: So do you intend to put on
7 any additional testimony or argument in the rate case
8 on these issues or just address them in the Complaint
9 case?

10 MR. CAMERON: Well, we will maintain our
11 position in the rate case that Schedule 663 and 664
12 should be cleaned up by removing those sentences, but
13 that's the extent of our participation in the rate case
14 on that issue.

15 Generally, we support the position taken by
16 Mr. Finklea's group in the rate case. Our single issue
17 we raise separately is the one I just stated, but we
18 will maintain that issue. I think that issue will drop
19 out were the Commission to decide on the Complaint
20 before the conclusion of the rate case, and reading the
21 testimony of the Company in response to Mr. Layman, and
22 I won't try to put words in Mr. Van Nostrand's mouth
23 too much, but he does take issue with what Mr. Layman
24 has stated in his testimony, but my understanding of
25 the Company's statement in that testimony is that they

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1 prefer to address it in the Complaint proceeding and
2 chose not to do so in rebuttal testimony beyond that
3 statement.

4 So again, back to the Complaint, our position
5 is that we raised an issue of law. Whether the FERC
6 blanket certificate covers what the Company has been
7 doing in the way of retail sales off tariff, there was
8 a secondary issue raised by the Company in its answer,
9 and that is whether there was any existing rate
10 schedule, retail rate schedule of the Company that
11 would authorize directly or through implication what
12 they are doing. That too is a legal issue.

13 As far as we are concerned, we filed a
14 complaint. The Company has answered on these matters
15 of law. We filed a reply together with a motion for
16 leave to reply. We think the issues are teed up for
17 clean decision by the Commission. We don't see the
18 need for evidentiary discovery or presentation. Again,
19 the issues are legal, so to inject those into the rate
20 case, which by nature is a number-driven exercise, I
21 think would only add confusion. It would add delay on
22 resolving the issues raised in the Complaint, and our
23 preference would be that the Commission take up the
24 Complaint separately, decide those matters of law, and
25 as I said before, depending on the outcome of that

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1 decision on the Complaint, I think the issue raised by
2 Ted Layman in the rate case on behalf of CMS will just
3 drop out.

4 Either the language in question is deceptive
5 or false or it's not. I don't see a need for much
6 discovery or cross-examination of the rate case on that
7 issue. It is truly derivative of what's decided in the
8 Complaint case.

9 JUDGE RENDAHL: Okay. Thank you.
10 Mr. Van Nostrand?

11 MR. VAN NOSTRAND: Thank you, Your Honor. As
12 to the procedural matters arguments made by
13 Mr. Cameron, we are not all that far apart. I think
14 it's our view that there doesn't necessarily need to be
15 any consolidation, that these are really issues of law.

16 I think the concern that we have whether or
17 not the matters are consolidated, they needed to be
18 decided on a concurrent basis because of the issue of
19 how the revenues and expenses associated with these
20 services are treated in the rate case. We have the
21 Company basically taking the position that they are
22 below the line. They are deregulated and not to be
23 included in the revenue requirement, and Staff is
24 taking the position they should be treated above the
25 line, and so we need to be in a position to know when

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1 the Commission issues its order in the rate case
2 whether or not the CMS issues need to be resolved,
3 whether or not in the Commission's view the Company has
4 the authority to continue buying these services, but we
5 don't want to be in the position where the revenues are
6 captured for rate-making purposes in accordance with
7 Staff's recommendation and then subsequently the
8 Commission decide that the Company doesn't have the
9 authority to perform these services, in which case
10 there is a hole there.

11 So whether or not it's consolidated, we think
12 it's important that they be decided concurrently, so
13 the Commission can probably address both these issues
14 at the same time, but when they issue the rate case,
15 they need a ruling on these legal issues so that the
16 rulings are consistent with respect to how the revenue
17 should be treated for rate-making purposes.

18 MR. CAMERON: If I might be heard on that,
19 not to dispute. Perhaps the Complaint should be
20 decided first and that decision be used as guidance in
21 the rate case.

22 JUDGE RENDAHL: All right. We will get back
23 to that. Mr. Van Nostrand, did you have anything
24 further?

25 MR. VAN NOSTRAND: No, I think that is it.

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1 JUDGE RENDAHL: Mr. Finklea, do you have any
2 thoughts on this issue?

3 MR. FINKLEA: We concur with CMS's position.
4 We are in the same place as far as there is no need to
5 consolidate with the rate case. As to the timing issue
6 of decisions, I don't know that we take a position on
7 that, but I understand the dilemma that Cascade is in,
8 but if the language is ultimately going to be removed
9 from the tariff, the Commission does have authority at
10 any time, I think, to require tariff changes outside of
11 the cycle of an actual general rate case where, as
12 Mr. Cameron said, we are mostly focusing on prices of
13 services that Cascade provides that goes to whether the
14 service itself is lost.

15 In the rate case, we are more focused on the
16 prices for the services that Cascades provides rather
17 than any focus on whether this particular service
18 that's the subject of the Complaint is lawful.

19 JUDGE RENDAHL: Okay. Ms. Krebs?

20 MS. KREBS: At this time, we have no position
21 on consolidation. Although, we are interested to hear
22 what all the other parties are saying.

23 If there is a decision despite the parties'
24 wishes for consolidation, we ask that there be
25 revisiting of the whole procedural schedule. There has

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1 been numerous representations that this could be
2 decided on a purely legal basis, which implies
3 briefing. However, if there is some factual dispute
4 that is determined by the Commission to exist, in other
5 words, the summary judgment is rejected because there
6 is a material disputed fact, then it is problematic in
7 terms of going to hearing on October 9th, and there
8 will need to be testimony.

9 So I guess we are a little concerned about
10 the unknown, and because of that lean against
11 consolidation just mostly because of practical reasons
12 and because the arguments against it seem to show that
13 they can be resolved separately.

14 JUDGE RENDAHL: Thank you, and Mr. Trautman?

15 MR. TRAUTMAN: Commission staff agrees with
16 what appears to be all the parties that the matters
17 should not be consolidated. There does appear to be
18 legal issues in the Complaint docket. Staff can
19 understand the position of Cascade wishing to have at
20 least concurrent decisions because there is some
21 overlap, there is some connection in terms of how the
22 revenues and expenses are treated and then the other
23 issue of the legality of service.

24 We do think they should be handled in
25 separate dockets, and the briefing in the Complaint

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1 case need not necessarily trace the exact briefing
2 schedule in the rate case. In fact, we think perhaps
3 that the briefing could be somewhat later. There could
4 be a single round of briefing. We agree this should
5 not be consolidated into the rate case, and we can
6 agree to having concurrent decisions so that the cases
7 will be consistent.

8 JUDGE RENDAHL: So the cases in your mind,
9 the order should come out on the same day or prior to
10 the rate case decision?

11 MR. TRAUTMAN: I guess we don't oppose that.
12 My understanding is the Company is requesting that the
13 order in the Complaint case come out no later than the
14 rate case decision, which I think would be somewhere
15 around mid January, and Staff doesn't oppose that
16 request.

17 JUDGE RENDAHL: Anybody else wish to speak on
18 this issue? Well, it appears that we most likely
19 shouldn't consolidate, and it's possible with the
20 procedural schedule that we will talk about for this
21 case that we can address how to resolve the issues in
22 the Complaint prior to or at the same time as the rate
23 case order comes out, but we will have to keep in mind
24 the schedule that we do have in the rate case and
25 whether it's possible for you to do any additional

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1 briefing prior to or after the hearing or when you want
2 to do that.

3 Before we talk about other procedural issues,
4 let's talk about Cost Management's request and motion
5 to file a reply or leave to file a reply that they
6 filed with the motion. Is there any opposition by the
7 Company to the reply or to the motion?

8 MR. VAN NOSTRAND: Yes, Your Honor, and
9 frankly, I wasn't prepared to address that. The way I
10 read the Commission rules, it was deemed denied five
11 days after filing unless the Commission granted motion
12 for permission to reply, so I read the rules as it
13 being a moot issue at this point, 37(d)(1),(d)(2).

14 MR. CAMERON: We inquired of Your Honor about
15 that rule, and were told that you would take it up at
16 this prehearing, so we assumed that that five-day lapse
17 was without prejudice to us.

18 JUDGE RENDAHL: My apologies to the Company.
19 I did not obviously read the rule firstly, and I did
20 inform the Company when they inquired when I would be
21 willing to rule on the motion that I intended to do so
22 at the prehearing conference.

23 MR. CAMERON: You mean CMS when you say
24 "Company"?

25 JUDGE RENDAHL: Yes, to CMS. My apologies

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1 for the confusion.

2 MR. VAN NOSTRAND: If you want to hear
3 argument on it.

4 JUDGE RENDAHL: Yes. You can go ahead and
5 argue.

6 MR. VAN NOSTRAND: My feeling is when you
7 really read what's in the reply to the answer, the
8 answer to the reply, if we are going to go down the
9 path of establishing legal briefing, I don't know that
10 there is any point to be gained by having additional
11 pleading. I don't believe there was anything in that
12 pleading that can't be included in the subsequent legal
13 briefing in this matter. That seems to be totally
14 unnecessary to have an additional pleading.

15 I think the Commission's rules speak for
16 themselves in terms of having a presumption against
17 filing a reply to an answer, and I think that
18 presumption should be honored particularly in this case
19 where we are going to decide the matter on the basis of
20 legal argument.

21 JUDGE RENDAHL: Mr. Cameron?

22 MR. CAMERON: We certainly don't oppose
23 intervenors, staff, public counsel, taking a position
24 on this. We expect it. As to our motion for request
25 to reply, we addressed three issues.

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1 First, the rate schedule and written
2 statements of the Company heretofore have justified
3 these unregulated sales based solely on the FERC
4 blanket marketing certificate. We address that in the
5 Complaint. In its answer, the Company raised a number
6 of retail rate schedules, some in effect, some
7 canceled, as alternate backstop justifications for what
8 they have been doing, the sales they have been making.

9 That's a brand-new issue. We chose to
10 address it in the reply by pointing out to the
11 Commission that none of these rate schedules were on
12 point. None of them spoke to the commodity sales of
13 natural gas, regulated or unregulated. Instead, they
14 were wholly different and distinguishable.

15 The second issue we raised was also a new one
16 raised by the Company, and that is to suggest that this
17 commission had to defer to the Federal Energy
18 Regulatory Commission because there were fundamental
19 issues of federal law at stake that this commission
20 could not decide.

21 Our reply pointed out that there is no
22 federal issue, that there is no question of compliance
23 with any federal regulation or federal law. Instead,
24 the issues are solely matters of state law, whether
25 there is any reason whether the Company should not be

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1 complying with the provision of the Washington code
2 that require all rates to be on file and to protect
3 consumers against undue discrimination or problems.
4 Those are the sole issues at stake in this case. There
5 are no federal issues.

6 The final issue we address went to a question
7 of our motivation raised in the Complaint suggesting
8 that we are ourselves were in a competitive by choosing
9 to file this complaint. As we made clear in the reply,
10 our sole motivation is to make sure that the Company
11 follows the law. It seemed to state in its answer that
12 the law was a secondary concern and that competing
13 really against itself, against its own tariffs, was the
14 fundamental principle that the Company held. We wanted
15 to make it clear we didn't agree with that, that the
16 legal issues were the ones we were raising, and our
17 purpose was not in a competitive but solely to insure
18 that the Company competed consistent with Washington
19 law. So those three issues are all new issues.

20 I think in particular, the new retail rate
21 schedules that the Company purported to use as
22 justification for unregulated sales were something that
23 had to be addressed, and hence, we filed a reply. We
24 coupled it as the regulations provide with a motion for
25 leave filing them both. So we would reiterate our

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1 motion for leave to file that reply.

2 JUDGE RENDAHL: Is there any other party that
3 wishes to weigh in on this? All right. My apologies
4 to both parties, the Complainant and Cascade, in my
5 misreading and not reading carefully the rule. In this
6 situation where the Commission is going to be requiring
7 additional briefing in this matter, I don't believe
8 there is any prejudice to Cascade in granting the
9 motion for leave to reply because all parties are going
10 to be fully briefing all the issues, and the Company,
11 Cascade, will have an opportunity to respond to any
12 issues raised in the reply as well, and again, because
13 of lack of prejudice, the Commission is not going to be
14 addressing the issue solely on the Complaint, the
15 answer, and the reply. I'm going to grant the motion
16 for leave to file the reply, and again, my apologies to
17 all parties on that matter.

18 MR. CAMERON: Thank you.

19 JUDGE RENDAHL: Let's turn to the standard
20 issues. I've heard the parties state there is no need
21 for discovery. This isn't an issue of fact in this
22 case. It's an issue of law. Do you all see any need
23 to invoke the discovery rules in this case at this
24 point?

25 MR. CAMERON: No, ma'am.

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1 JUDGE RENDAHL: With that, we won't invoke
2 the discovery rules, and is there any need for a
3 protective order in this particular case at this point?

4 MR. CAMERON: I don't think so. Anyone have
5 a different idea?

6 JUDGE RENDAHL: Let's be off the record for a
7 moment.

8 (Discussion off the record.)

9 JUDGE RENDAHL: I wanted to give the parties
10 an opportunity to think about a protective order, and
11 Mr. Cameron, do you have a thought on that?

12 MR. CAMERON: There has been discovery in the
13 rate case covered by protective order relating to the
14 number of unregulated sales that the Company has been
15 making, and that discovery has included the names of
16 customers under those transactions. Conceivably, the
17 Commission may want to explore that information as it
18 decides the Complaint.

19 JUDGE RENDAHL: I guess that raises some
20 issues for me in terms of using data that's been
21 obtained in one case for the purposes of another case,
22 and I have some concerns about that and whether it's
23 appropriate, so if it's CMS's intent to use that data
24 in its briefing, to attach it to the briefing or
25 somehow use that factual information for the Commission

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1 to make its decision, then I think we do need to talk
2 about discovery and if we need to talk about a
3 protective order.

4 MR. CAMERON: It is not our intention to do
5 so.

6 JUDGE RENDAHL: Any other thoughts on
7 protective order?

8 MR. VAN NOSTRAND: Your Honor, I share the
9 same concern that the issue that we raised in our
10 answer, the impropriety, we believe that using the
11 discovery process in the rate case to essentially
12 gather the evidence to form the basis for this
13 particular complaint. Since a lot of that evidence was
14 produced subject to a protective order because of
15 confidentiality concerns and competitive concerns, I
16 think we are going to need a protective order to the
17 extent we may want to rely on that evidence in response
18 to the Complaint now that it's out there.

19 Now that the evidence has been gathered in
20 one form, it's implicitly being directly used in this
21 proceeding, and I think we are going to need a
22 protective order to preserve our ability to provide a
23 complete record. There is evidence regarding sales,
24 particularly special contracts or customer service
25 agreements with the identities of customers, and they

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1 may be relevant. We may need them or not, but we
2 wouldn't want to preclude our ability to use that data
3 because of the absence of a protective order.

4 JUDGE RENDAHL: Would the Commission's
5 standard protective order address Cascade's concerns?

6 MR. VAN NOSTRAND: Yes. It has provisions
7 that would preclude Mr. Cameron from sharing
8 information directly with CMS.

9 JUDGE RENDAHL: Would the protective order,
10 the version that was used in the rate case satisfy
11 Cascade's concerns?

12 MR. VAN NOSTRAND: Yes.

13 JUDGE RENDAHL: Would that work for CMS?

14 MR. CAMERON: I have no objection to that.
15 It is not our intention to use any information covered
16 by the protective order outside of the rate case. We
17 addressed it in the Complaint merely to show that these
18 sales existed, not to further probe.

19 As I said before, it's our fundamental
20 position that these are issues of law, that discovery
21 is not necessary, so it's not been our intention to use
22 that information further. It's not been shared by CMS.
23 We've fully complied with the protective order. As we
24 said in the Complaint, we regard our use of information
25 in the Complaint docket, we address that in the reply,

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1 so we will stand on that justification, but to my way
2 of thinking, this issue could be decided after a
3 further round of briefs in which other parties,
4 intervenors have a chance to weigh in on what we
5 continue to believe are the legal issues, and the
6 Commission can decide the case on the basis of those
7 legal issues, but if the Company wants to cover this
8 with a protective order as a backstop, I certainly have
9 no objection to that.

10 JUDGE RENDAHL: Well, is there any other
11 party that wishes to weigh in on the protective order
12 issue? With that, I think we will issue a standard
13 protective order like the protective order that was
14 entered in the Cascade rate case, and that will be
15 entered in the near future either concurrently with the
16 prehearing conference order or soon after.

17 The next issue I want talk about is, and I
18 ask this because it's something we ask in most
19 prehearings, is whether there is any benefit or use in
20 convening a settlement conference in this case or
21 whether we should simply go to briefing and then if
22 need be, address settlement conference later. Any
23 thoughts?

24 MR. CAMERON: I think we just should just go
25 to a briefing decision.

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1 JUDGE RENDAHL: That's what I thought, but I
2 thought I would just raise the question.

3 MR. VAN NOSTRAND: I reluctantly agree with
4 Mr. Cameron.

5 JUDGE RENDAHL: So the next issue is the
6 procedural schedule, and I suggest we go off record to
7 discuss schedule and go back on record to put your
8 decisions for the schedule on the record.

9 (Discussion off the record.)

10 JUDGE RENDAHL: While we were off the record,
11 we talked about a number of issues involving schedule
12 and what should be filed. The parties, primarily Cost
13 Management and Cascade, will initiate discussions with
14 each other about a statement of undisputed facts, and
15 the parties will file that statement of undisputed
16 facts with the Commission on Friday, November 3rd, and
17 the parties also agreed that simultaneous cross-motions
18 for summary determination would be filed by November
19 the 15th and that any responses or answers to the
20 cross-motions for summary determination by any party
21 would be filed on December the 1st.

22 We discussed that Intervenors, Staff, Public
23 Counsel may also file cross-motions for summary
24 determination on November 15th, but if they choose not
25 to, they may answer the motions that were filed on the

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1 15th. They may answer on December 1st to the motions
2 that were filed on November 15th. These dates are the
3 same dates as the briefing dates in the Cascade rate
4 case, and the parties agreed to do so so that any
5 decision in both matters would be at least concurrent.

6 The parties agreed to waive an initial order
7 to allow this to proceed quickly and also agreed and
8 requested that the parties be allowed to submit the
9 documents electronically on the due date and submit a
10 paper copy of the documents to the Commission on the
11 following business day.

12 In the prehearing conference order, I will
13 identify the number of paper copies that you need to
14 file. It may or may not be different than in the rate
15 case. I don't know if the staffing needs are the same
16 on this case as they are in the rate case.

17 I explained off the record that following the
18 decision on the motions for summary determination, we
19 will decide whether there is any need for further
20 process, and if there is, we will convene a prehearing
21 conference and discuss that schedule. Is there
22 anything else we need to discuss this morning?

23 MR. CAMERON: Regarding the waiver of the
24 initial decision, do the commissioners have to agree to
25 that, or is it a fait accompli that we are waived.

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1 JUDGE RENDAHL: I believe it's the latter,
2 but it would be helpful, and maybe you could all do
3 this for me, file a letter with the Commission
4 identifying that you are waiving the initial order in
5 this proceeding and wish to go directly to the final
6 order, so if you could all take that step, that would
7 be very helpful.

8 MR. CAMERON: Should that be a joint filing
9 by all parties in the case?

10 JUDGE RENDAHL: It doesn't need to. The
11 transcript will reflect that you all have agreed to
12 waive the initial order to allow this to go to a final
13 order. It doesn't need to be a joint filing, but if
14 all of you do file, then that would be very useful.

15 Is there anything else we need to talk about
16 this morning? If you wish to order a transcript from
17 this morning's proceeding, you can talk to the court
18 reporter afterwards, and I will be issuing the
19 prehearing conference order soon after, hopefully by
20 Monday, in this case, and with that, I think this
21 prehearing is adjourned. Thank you very much.

22 (Prehearing conference concluded at 10:35 a.m.)

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